2011 SCMR 408

[Supreme Court of Pakistan]

Present; Iftikhar Muhammad Chaudhry, C. J., Raja Fayyaz Ahmed and Ch. Ijaz Ahmed, JJ

MUHAMMAD NADEEM ARIF and others---Petitioners

Versus

INSPECTOR-GENERAL OF POLICE, PUNJAB, LAHORE and others---Respondents

Civil Petitions Nos.492 to 495 of 2009, decided on 13th May, 2009.

(Against the judgment dated 6-3-2009 passed by the Lahore High Court, Lahore in I.C.As. Nos. 154 to 157 of 2008).

(a) Constitution of Pakistan---

----Art.199---Civil Procedure Code (V of 1908), O.XX, R.1(2)---Constitutional petition---Announcement of judgment by High Court after six months of hearing the arguments of parties---Validity---Provisions of O. XX, R.1(2), C. P. C., were directory, but not mandatory---High Court, after considering contentions of petitioner had dismissed petition with cogent reasons---No prejudice was shown to have been caused to petitioner by announcing judgment after such delay---Supreme Court upheld impugned judgment in circumstances.

Muhammad Bakhsh's case 1989 SCMR 1473; Juma Khan's case PLD 2002 SC 823; Samiul Haq's case 2001 SCMR 1053; Ali Khan Subanpoto's case 1997 SCMR 1590; Raja Hamayun Sarfraz Khan's case2007 SCMR 307; Syed Iftikhar-ud-Din Haider Gardezi's case 1996 SCMR 669 and Muhammad Ovais's case 2007 SCMR 1587 rel.

(b) Administration of justice---

----Every case is to be decided on its own peculiar circumstances and facts.

(c) Police Act (V of 1861)---

----S. 12---Instructions/rules/policy issued by Inspector-General of Police without approval of Provincial Government---Validity---Such instructions/rules would not be valid and would have no legal sanctity---Long practice of department to follow such instructions/rules conflicting with parent statute or rules could not remain operative, but must be ignored---No one would be obliged to obey such directions/instructions/departmental practice---Principles.

Qayyum Nawaz Khan's case 1999 SCMR 1594 ref.

Siddiq Akbar's case 1998 SCMR 2013 rel.

(d) Locus poenitentiae, principle of---

----Award of benefit to a person in violation of law would not attract principle of locus poenitentiae.

Jalaluddin's case PLD 1992 SC 207 fol.

(e) Interpretation of statutes---

----Departmental construction of statute, though not binding on court, could be taken into consideration, if same was followed by department consistently.

Siddiq Akbar's case 1998 SCMR 2013 rel.

(f) Interpretation of statutes---

----Conflict between departmental practice/instructions/directions and rules---Effect---Rules would prevail---Principles.

The role of the directions/instructions is to supplement, never to contradict or conflict with rules. A direction/instruction cannot abridge or run counter to statutory provisions. If there is any conflict between the rules and the directions/instructions/departmental practice, then rules prevail. Instructions or departmental practice cannot amend or supersede the rules. A rule can be amended by another rule and not by a direction/instruction/departmental practice.

Departmental practice consistently followed by the department with regard to any issue or provision has force of law, but it is not absolute in all respect.

The principle of locus poenitentiae has more force than the principle qua the departmental practice followed by the department qua any instructions or rules consistently since long. Where the action is in derogation of section or law, then the locus poenitentiae is not absolute.

Anwar Ahmed Lari's case 1990 SCMR 1013; Chairman, Regional Transport Authority's case PLD 1991 SC 14; Messrs Airport Support Services' case 1998 SCMR 2268 and Jalaluddin's case PLD 1992 SC 207 ref.

(g) Interpretation of statutes---

----Departmental instructions and statutes must be read as an organic whole.

(**h) Words and phrases---**

----"Approval "---Meaning.

Black's Lay? Dictionary and Aftab Ahmed Khan Sherpao's case PLD 1997 Pesh. 93 ref.

(i) Words and phrases---

----"Approval" and "consultation or consent"---Comparison---Approval is more mandatory and stronger as compared to the word consultation or consent.

(j) Constitution of Pakistan---

----Art.9---Due process of law, doctrine of---Scope---Right of access to justice to all was founded on such doctrine---Such right would include a right to be treated according to law, a right to have a fair and proper trial and a right to have an impartial court or Tribunal---Justice could be done only by an independent judiciary---Principles.

Sharaf Faridi and 3 others v. The Federation of Pakistan PLD 1989 Kar. 404 and Fauji Foundation and another v. Shamimur Rehman PLD 1983 SC 457 rel.

(k) Civil Service---

----Seniority is a vested right of an employee.

Anwar Ahmed Lari's case 1990 SCMR 1013 rel.

(l) Public offices---

----Government offices being public trust should be regulated in a manner to promote sense of public service with a view to make a welfare State---Principles stated.

The Government officers are like public trust and, therefore, the same should be regulated in fair, transparent and economically so as to promote the sense of public service and thereby to make a welfare State. The public offices should not be held for improper motives. The social justice and economic justice can also be done through fair administrative policies. No policy can be congenial, if it breeds corruption.

(m) Civil service---

----Promotion---Out-of-turn promotion---Scope.

Out of turn promotion is not only against the Constitution, but also against Injunctions of Islam. Out of turn promotion in a public department generates frustration and thereby diminishes the spirit of public service. It generates undue preference in a public service. Element of reward and award is good to install the spirit of service of community, but it should not be made basis of accelerated promotion.

Qayyum Nawaz Khan's case 1999 SCMR 1594 ref.

Hafiz S.A. Rehman, Senior Advocate Supreme Court for Petitioners.

Ms. Afshan Ghazanfar, A.A.-G., Naseer Baloch, DSP (Legal), Lahore and Fazal Rahim, DSP (Legal) Sheikhupura for official Respondents.

Nemo for Proforma Respondents.

ORDER

CH. IJAZ AHMED, J.---We intend to decide captioned petitions by one consolidated judgment having similar facts and law.

2. Detailed facts of the case is need not to be reproduced as the same have been stated in the impugned judgment as well as in the memo of petitions. However, necessary facts out of which the captioned petitions arise are that petitioners were initially appointed as Constables. Subsequently they were granted one step promotion as Head Constable Instructors on their joining the staff of Police Training School and they claimed confirmation in the rank of Head Constable from the date of one step promotion. The Inspector-General of Police vide letter dated 22-3-2008 declined their request on the plea that they had not qualified lower school course and could be detailed for such course on completion of at least 3 years at the training school and after having completed and passed successfully, only then they could be promoted as Head Constable and could retain their rank. Petitioners being aggrieved filed Constitutional petitions in the Lahore High Court with the prayer that one step promotion be declared promotion for all purposes and they may be allowed to join intermediate training course. The writ petitions were accepted by treating one step promotion of the petitioners as Head Constables as regular promotion in all respects. Petitioners were also held entitled for intermediate training course required for promotion as A.S.-I. Respondents Nos.1 and 2 being aggrieved filed four I.C.As. in the Lahore High Court, Lahore which were accepted vide impugned judgment dated 26-8-2008. Hence the present petitions.

3. Learned counsel for the petitioners submits that I.C.As. were heard on 26-8-2008 whereas the judgment was announced on 6-3-2009, therefore, the impugned judgment is violative of law laid down by this Court in various pronouncements as the impugned judgment was announced after six months. He further urges that memorandum dated 22-3-2008 is also hit by Article 25 of the Constitution. Respondent No.1 had withdrawn the Office Order dated 23-2-2002 and office order dated 8-11-2002 through the Memorandum dated 22-3-2008. He further urges that memorandum in question wherein the criteria of promotion on the basis of seniority from the date of passing lower school course was introduced in violation of the previous policy and practice of the department. The Memorandum in question is also in consistent with or in violation of the law laid down by this Court in Qayyum Nwaz Khan's case (1999 SCMR 1594).

4. The learned Assistant Advocate-General Punjab, submits that selection policy issued by the competent authority vide memorandum dated 8-11-2002/23-2-2002 does not in any way indicate that an official can claim his promotion from the date he joins Police Training School/Police Training Institution. Policy dated 8-11-2002 clearly envisages that his seniority would be reckoned with the batch mates of lower school course. She further submits that learned High Court was justified to hold that afore-said Office Order dated 23-2-2002 issued by the Inspector-General of Police, without approval of the Government of the Punjab, has no legal sanctity. She further submits that all the policies relied upon by the learned counsel of the petitioners were- issued by respondent No.1 without securing approval from the Government of the Punjab in terms of section 12 of Police Act, 1861. She further submits that it appears that I.C.As. were heard on 26-8-2008 but the petitioners did not attach order of the Lahore High Court wherein the judgment was reserved. Therefore, the contention of the learned counsel that the judgment was announced after six months does not borne out from the record. Even otherwise no prejudice has been caused to the petitioners as all the contentions raised by the learned counsel for the petitioners were mentioned in the impugned judgment which were rejected by the learned High Court after application of mind with cogent reasons.

5. We have given our anxious consideration to the contentions of the learned counsel of the parties and perused the record. It is an admitted fact that date of hearing as mentioned in the impugned judgment is 26-8-2008 whereas it was announced on 6-3-2009. It is the duty of the petitioners to bring on record the order of the High Court wherein the judgment was reserved or copy of the relevant register wherein the intimation was sent by the staff of the High Court to the concerned branch that the judgment in question was reserved. However, in the interest of justice and fair play we have considered the contentions of the learned counsel for the petitioners to find out prejudice caused to the petitioners as the impugned judgment was announced after six months. The afore-said proposition of law was considered and decided by this Court in Muhammad Bukhsh's case (1989 SCMR 1473) and laid down the following principle:--

> "No doubt the judgment was announced one year after it had been reserved but we find that the learned Judge adverted to all the points as mentioned above. Nevertheless it is proper that once the arguments conclude and the judgment reserved, it has to be announced within reasonable period. We are sure that in future no unnecessary delay will take place in announcement of judgments."

The aforesaid principle was reaffirmed by this Court in Juma Khan's case (PLD 2002 SC 823) by observing that merely because of the delay in pronouncement of judgment, decision, itself is not vitiated 'unless and until prejudice has caused to the petitioners. It is also observed that Order XX, rule 1(2), C.P.C., is directory in nature and not mandatory in nature as observed by this Court in Juma Khan's case. The afore-said principle was also' upheld in Samiul Haq's case (2001 SCMR 1053) in the following terms:--

> "While interpreting rule 31 of Order XLI, C.P.C., the learned Division Bench has dealt with all the contentions of the petitioner's counsel in the judgment,

> therefore, no prejudice was caused to the petitioner. But it is always proper and advisable that after pronouncement of judgment, the High Court would write the judgment without unnecessary delay."

The aforesaid principle has also been followed in Ali Khan Subanpoto's case (1997 SCMR 1590) as depicted from para 10 wherein it is specifically mentioned that no prejudice seems to have been caused to the petitioner. Rule 30 and Rule 31 of Order XLI, C.P.C. were examined by this Court in Raja Hamayun Sarfraz Khan' case 2007 SCMR 307) and laid down the following principle:--

> "The examination of the above provisions of law and ingredients show that where a law provides for writing, announcing and signing a judgment, all that must be done in a way, to give validity to the judgment."

This Court has also considered the afore-said provisions of Rules 30 and 31 of Order XLI, C.P.C. wherein the impugned judgment was set aside as the same was not announced within six months. See Syed Iftikhar-ud-Din Haider Gardezi's case (1996 SCMR 669 at 673). Even in this case, this Court has observed as under:--

> "It is not possible for this Court to determine this matter finally because substantial evidence available on record could not be considered by the High Court to come to some conclusion one way or the other. In other words, it could safely be held that the dispute between the parties was not decided keeping in view the evidence on record."
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> Similarly at page 675 it has been observed as under:--
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> "This case is also hit by rule 31 as all the points which were argued and relied upon the learned counsel for the appellants were not considered for their proper determination on the basis of available evidence .We would also hold that evidence of Saeed Ahmad D.W. was not considered by the High Court the just decision of the appeal. This being so, the appeal of the appellants shall be deemed to be still pending' decision before the High Court."

Contrary view has been taken by this Court in Muhammad Ovais' case (2007 SCMR 1587). Even in this case, the Court observed in para 8 as under:--

> "In the lengthy arguments addressed before us on merits, we were referred to a bulk of documentary evidence going to the very route of the case which was never found mentioned in the impugned judgment of the High Court. This omission seems to be caused only and only due to the delay of ten months in question."

It is proper to mention here that in the case in hand all the contentions raised before the learned High Court in the impugned judgment were noted, considered and rejected with cogent reasons coupled with the fact that the petitions were heard in the Lahore High Court on 26-8-2008 and judgment was announced on 6-3-2009. The petitioners have not brought on record any document to show that the judgment was reserved on

26-8-2008 by annexing with the petition interim order of the High Court or copy of the concerned register of the Lahore High Court. It is settled-law that each and every case is to be decided on its own peculiar circumstances and facts.

6. In view of the foregoing discussion who do not find any force in the contentions of the learned counsel of the petitioners that the judgment be set aside merely on the ground that it was announced after six months. The ratio of the afore-said cases is that it is the duty and obligation of the petitioners to point out that by announcing the judgment after considerable delay had caused prejudice to the petitioners. The learned High Court in the impugned judgment after quoting all the relevant rules and provisions of Police Act had given findings of fact that Office Order dated 23-2-2002/8-11-2002 was issued by the Inspector-General of Police without approval of the Government of the Punjab, therefore, the same has no legal sanctity. Section 12 of the Police Act confers power upon the Inspector-General of Police to frame rules after securing approval from the Government of the Punjab. The learned counsel of the petitioners has failed to bring on record any document to show that the memorandum dated 23-2-2002/8-11-2002 or any instructions issued by the Inspector General of Police has the backing of the Government of the Punjab. The said provision was interpreted' in Siddiq Akbar's case 1998 SCMR 2013 wherein Standing Order No.II issued by the Inspector-General of Police having not been approved by Provincial Government was devoid of its legal status and was, therefore, of no legal authority by observing that merely because a Standing Order has held ground for a number of years is not sufficient to assume grant of approval. The basic memorandum relating to the policy/rule which was issued by the Inspector-General of Police in favour of the petitioners was not valid itself having any legal backing, therefore, learned High Court was justified to declare the same having no legal sanctity. It is settled principle of law that where benefit is awarded to a person in violation of law then principle of locus poenitentiae does not attract as law laid down by this Court in Jalaluddin's case (PLD 1992 SC 207). The departmental construction of statute, although not binding on the Court, can be taken into consideration specially if it was followed by the department consistently and applying this principle Siddiq Akbar's case was decided while interpreting section 12 of the Police Act on 8-5-1998. The department consistently followed those instructions of the Inspector-General of Police which were issued without approval of the Provincial Government. The instructions as well as departmental practice are illegal and violative of the directions or instructions on departmental practice conflicting with the parent statute or rule cannot remain operative and must be ignored even though they have been followed long, have been found to be convenient and have worked fairly in practice. No one is obliged to obey such directions/instructions/departmental practice. The role of the directions/instructions is to supplement, never to contradict or conflict with rules. A direction/instruction cannot abridge, or run counter to, statutory provisions. If there is any conflict between the rules and the directions/instructions/departmental practice, the rules prevails. Instruction or departmental practice cannot amend or supersede the rules. A rule can be amended by another rule and not by a direction/ instructions/departmental practice. Therefore, the argument qua department has consistently followed the instructions have no force. The afore-said dictum is binding on each and every organ of the State by virtue of Articles 189 and 190 of the Constitution.

7. Petitioners request was declined by the Inspector-General of Police vide memorandum dated 22-3-2008 which was challenged by the petitioners by invoking extraordinary jurisdiction of the High Court under Article 199 of the Constitution which was accepted by the learned Single Judge of the High Court vide judgment dated 6-5-2008. The judgment of the learned Single Judge was implemented by the respondents vide memorandum dated 18-2-2009 in the following terms along with others wherein the total numbers are 119:--

> "In compliance of the orders of the Lahore High Court issued in writ petitions, following Head Constables are deputed for Intermediate School Course which commenced from 16-2-2009 in Police College, Sihala, subject to the decisions of the Intra Court appeals pending in the Lahore High Court on the subject."

8. The judgment of the learned Single Judge was reversed by the Division Bench of the Lahore High Court vide judgment dated 6-3-2009 which was also implemented by the respondents vide memo. dated 6-4-2009 in the following terms:--

> "In pursuance of the judgment dated 6-3-2009 passed by the honourable Lahore High Court, Lahore, in ICA/Appeal No.154 of 2008 the permission granted to the 126 officials (list enclosed) for joining Intermediate School Course commenced with effect from 16-2-2009 at Police College, Sihala is hereby withdrawn."

9. Petitioners are 33 in numbers whereas their other colleagues in the orders of the respondents are not before this Court. The petitioners have also alleged that action of the respondents is also hit by Article 25 of the Constitution as depicted from the different orders passed by the respondents dated 9-4-2007, 13-9-2007, 15-10-2007, 11-4-2007 and 14-11-2007 wherein similar requests of the head constables were accepted. There are various pronouncements of this Court with regard to one step promotion out of turn on account of bravery such as Qayyum Nawaz Khan's case (1999 SCMR 1594). The controversy in Qayyum Nawaz Khan's case supra was with regard to promotion of upper subordinates only. The seniority of upper subordinates is finally determined from the date of their confirmation in the post while seniority of lower subordinates is determined from the date of their appointment and their confirmation for the said purpose is immaterial as is depicted from para 15 of the impugned judgment. The relevant instructions on the subject dated 8-11-2002 are as follows:--

> A constable with the qualification prescribed in para 6 above and not more than 30 years of age and having a minimum of seven years of service may be taken as Head Constable Instructor on one step promotion.
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> On successful completion of three years tenure he will be sent for lower school course. On successful completion of the lower school course, he will be brought on list C.I. as Head Constable and will be reverted back to his district/unit as Head Constable of list C.I.

His seniority on list C.I. of his district/range/unit would be reckoned with the batch mates of lower school course.

10. It is settled principle of law that instructions and statutes must be read as an organic whole. The claims of the petitioners, with regard to one step promotion as a Head Constable on joining the training school treating as regular promotion/confirmation in all respects, are not within the framework of the afore-said instructions. The question of validity of policy/instructions issued by the respondents off and on under section 12 of the Police Act, 1861 was not challenged except in Qayyum Nawaz Khan's case and Siddiq Akbar's case supra. In both the cases the rules regarding promotion, seniority were not under-challenge. It is no doubt that departmental practice consistently followed by the department with regard to any issue or provision has force of law but it is not absolute in all respect. In the case in hand both the above-mentioned principles relating to discrimination and departmental practice have no force in view of facts and circumstances of the case in hand. The department had given benefit to the Head Constables, according to them due to one step out of turn promotion on the basis of the instructions issued by the Inspector General of Police under section 12 of the Police Act, 1861, which of course was issued without the approval of the Provincial Government. According to the Black's Law Dictionary the expression "approval" means the act of confirmation, ratifying, sanctioning or consenting to some act or thing done by another and implies knowledge and exercise of discretion after knowledge. See Aftab Ahmad Khan Serpao's case (PLD 1997 Pesh. 93). The word approval is more mandatory and stronger as compared to the word consultation or consent. This question arises first time with regard to grant of promotion one step out of turn promotion on account of performance of the personnel of the disciplinary force i.e. police force along with promotion from the date of joining the course in the training school. These instructions are in violation of Article 25 of the Constitution qua other members. In the disciplinary force who would not get a chance to show their worth would be entitled to get one step out of turn promotion along with seniority which is not in consonance of law and Constitution. In fact it creates frustration in the department among the officials of same batch on the well known principle of due process of law. "Doctrine of "due process of law"---Right of "access to justice to all" is a well recognized inviolable right enshrined in Art.9 of the Constitution and is equally found in the doctrine of "due process of law"---Right includes the right to be treated according to law, the right to have a fair and proper trial and a right to have an impartial Court or Tribunal Justice therefore can only be done if there is an independent judiciary which should be separate from Executive and not at its mercy or dependent on it. Sharaf Faridi and 3 others v. The Federation of Pakistan PLD 1989 Kar.404.

"Due process of law" contained in America Constitution meaning and application of doctrine with reference to precedents. Fauji Foundation and another v. Shamimur Rehman PLD 1983 SC 457.

"the term "due process of law" is summarized as follows:--

(1) He shall have due notice of proceedings which affect his rights.

(2) He shall be given reasonable opportunity to defend.

(3) that the Tribunal or Court before which his right are adjudicated is so constituted as to give reasonable assurance of his honesty and impartiality; and

(4) that it is a Court of competent jurisdiction. Ibid

The seniority is vested right of an employee as laid down by this Court in Anwar Ahmed Lari's case (1990 SCMR 1013), therefore, such deviation is not in consonance with the object and spirit of the Police Act, 1861 red with Articles 4, 5(2) of the Constitution and Article 25 of the Constitution. It appears that the Inspector General of Police had issued instructions off and on without judicial application of mind which is the primary duty of the public functionary in view of the law laid down by this Court in Chairman, Regional Transport Authority's case (PLO 1991 SC 14). After addition of section 24-A in General Clauses Act, 1897 which was interpreted by this Court laying down the principle that public functionaries must have to pass the orders within reasonable time with reasons after applying independent mind as law laid down by this Court in Messrs Airport Support Services' case (1998 SCMR 2268). The principle of locus poenitentiae has more force than the principle qua the departmental practice followed by the department qua any instructions or rules consistently since long. Even then this Court laid down a law to deviate from the general principle of locus poenitentiae where the action is in derogation of section or law then the locus poenitentiae is not absolute as laid down by this Court in Jalaluddin's case (PLD 1992 SC 207).

11. In view of the afore-said discussion the said pleas of the learned counsel of the petitioners have no force. The employees of the Police Department are serving in terms of instructions and policy issued by the Inspector-General of Police off and on in violation of section 12 of the Police Act, 1861. In this view of the matter, the Inspector-General of Police is well within his right to issue policy/framed rules keeping in view the circumstances and difficulties of the employees under section 12 of the Police Act, 1861 or Article 122 of Police Order, 2002. The Government offices are like public trust and, therefore, the same should be regulated in fair, transparent and economically so as to promote the sense of public service and thereby to make a welfare State. The public offices should not be held for improper motives. The social justice and economic justice can also be done through fair administrative policies. No policy can be congenial if it breeds corruption. Out of turn promotion, as envisaged in the impugned instruction, is not only against Constitution but also against Injunctions of Islam. Out of turn promotion in a public department generates frustration and thereby diminishes the spirit of public service. It generates undue preference in a public service. Element of reward and award is good to install the spirit of service of community but it should not be made basis of accelerated promotion. Let copy of this order be sent to all the Provincial Police Officers and Islamabad Capital City Police Officer to look into the matter and frame rules to save the agony of police officials/officers as well as to save the public exchequer from unnecessary litigation.

12. In view of what has been discussed above we do not find any infirmity or illegality in the impugned judgment. Therefore, this petition has no merit and the same is

dismissed. Leave refused.

S.A.K./M-78/SC Leave refused.

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