2011 SCMR 484

[Supreme Court of Pakistan]

Present: Javed Iqbal and Jawwad S. Khawaja, JJ

NAZIR AHMED---Petitioner

Versus

CAPITAL CITY POLICE OFFICER, LAHORE and another---Respondents

Civil Petition No. 2526-L of 2009, decided on 3rd November, 2010.

(On appeal from the judgment dated 19-10-2009 passed by the Punjab Service Tribunal, Lahore in Appeal No. 3594 of 2007).

(a) Constitution of Pakistan---

----Art. 13---Initiation of disciplinary proceedings against an employee after his acquittal in criminal case---Validity--Criminal proceedings and disciplinary proceedings were not synonymous or interchangeable for having distinct features and characteristics--- Provisions of Art. 13 of the Constitution and maxim "nemo debet bis vexari pro una et eadem causa" (no person should be twice disturbed for the same cause) would not apply to such case.

Bejoy Dutta v. The King AIR 1951 Cal. 452; Bejoy Datta v. The King ILR 1950 1 Cal 502; A.M. Rangachariar v. Venkataswami AIR 1935 Mad. 56; Public Prosecutor v. Sabapathy Chetty AIR 1938 Mad. 847 and Rahman Smail v. Emperor 39 Cri L Jour 712-rel.

(b) Constitution of Pakistan---

----Art. 13---Provisions of Art. 13 of the Constitution---Applicability---Essential conditions stated.

Article 13 of the Constitution sanctifies the well-settled principle of law that no person will be tried for an offence on the same set of facts on which he has already been acquitted or convicted. For applicability of the rule of "autre fois acquit", essential conditions to be satisfied are: (1) there must have been a trial of the accused for the offence charged against him, (2) the trial must have been by a court of competent jurisdiction, and (3) there must have been a judgment or order of acquittal, (4) the parties in the two trials must be the same, (5) fact-in -issue in the earlier trial must be identical with what is sought to be re-agitated in the subsequent trial.

Ismail A. Rehman v. Muhammad Sadiq PLD 1990 Kar. 286; Ramzan Bibi v. Muzaffar Hussain PLD 1967 Lah. 186 and State v. Muhammad Moosa PLD 1970 Kar. 386 rel.

Sheikh Masood Akhtar, Advocate Supreme Court/Advocate-on-Record for Petitioner.

Nemo for Respondents.

Date of hearing: 3rd November, 2010.

JUDGMENT

JAVED IQBAL, J.---This petition for leave to appeal is directed against judgment dated 19-10-2009 whereby appeal preferred on behalf of petitioner has been dismissed.

2. Precisely stated "the facts of the case are that the appellant was served with a show-cause -notice dated 13-11-2004 on the charge that one Khuram Shahzad was taken to Police Station in connection with a camera theft case and handed over to you for interrogation. You did not adopt safe custody measures, as a result of which Khuram Shahzad committed suicide in your room. Consequently, a case F.I.R. No.615 of 2004 under section 156, P.P.C. was registered against the appellant at Police Station Ghaziabad. The appellant submitted reply to the show-cause notice and explained his position. The authority did not find the reply of the appellant satisfactory and imposed penalty of reduction in rank i.e. ASI to Head Constable with immediate effect under Punjab Removal from Service (Special Powers) Ordinance, 2000. Feeling aggrieved, the appellant tendered a departmental appeal dated 21-3-2005 which was disposed of vide order dated 27-11-2007, whereby the appellate authority, taking a lenient view, converted the punishment of reduction in rank into withholding of one annual increment". The order dated 27-1.1-2007 was assailed by means of appeal before the learned Service Tribunal which has been dismissed, hence this petition.

3. Sheikh Masood Akhtar, learned Advocate Supreme Court entered appearance on behalf of petitioner and contended that the petitioner was acquitted in the criminal case got registered against him and hence the question of further proceedings did not arise which amounts to double jeopardy and besides that the disciplinary proceedings should have been stayed till the decision of criminal case which could not be done by the competent authority which escaped the notice of learned Service Tribunal causing serious prejudice against the petitioner. It is next contended that there was absolutely no lawful justification for initiation of disciplinary proceedings under the Punjab Removal from Service (Special Powers), Ordinance, 2000, in the absence of any allegation as criminal case could not have been reopened which was rightly decided by the Court of competent jurisdiction.

4. We have carefully examined the above mentioned contentions in the light of relevant provisions of law and record of the case. We have perused the judgment impugned carefully. We are not persuaded to agree with the prime contention of learned Advocate Supreme Court on behalf of petitioner that no disciplinary action could have been taken against the petitioner after his acquittal for the simple reason that criminal

proceedings would have no substantial bearing on merits of the case because the criminal proceedings and disciplinary proceedings are not synonymous or interchangeable having distinct features and characteristics. The provisions as enumerated under Article 13 of the Constitution of Islamic Republic of Pakistan would have no application in this case. It is well-established by now that "this Article sanctifies the well settled principle of law that no person will be tried for an offence on the same set of facts on which he has already been acquitted or convicted. For applicability of the rule of autre fois acquit essential conditions to be satisfied are (1) there must have been a trial of the accused for the offence charged against him, (2) the trial must have been by. a Court of competent jurisdiction and (3) there must have been a judgment or order of acquittal, (4) the parties in the two trials must be the same, (5) fact-in-issue in the earlier trial must be identical with what is sought to be reagitated in the subsequent trial". (Ismail A. Rchman v. Muhammad Sadiq PLD 1990 Kar. 286, Ramzan Bibi v. Muzaffar Hussain PLD 1967 Lah.186, State v. Muhammad Moosa PLD 1970 Kar. 386). It is worth mentioning that the maxim nemo debet bis vexari pro una et eadem causa (no person should be twice disturbed for the same cause) is also not applicable in the case of petitioner. In this regard reference can be made to the following authorities:

> Bejoy Dutta v. The King (AIR 1951 Cal. 452), Bejoy Datta v. The King (ILR 1950 1 Cal. 502), A.M. Rangachariar v. Venkataswami (AIR 1935 Mad. 56), Public Prosecutor v. Sabapathy Chetty (AIR 1938 Mad. 847), Rahman Samail v. Emperor (39 Cri L Jour 712).

5. The upshot of the above discussion is that the petition being devoid of merit is dismissed and leave refused.

S.A.K./N-2/SC Leave refused.

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