

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi
Mr. Justice Irfan Saadat Khan

Civil Appeals No.836-L, 837-L/2013

Against the judgment dated 16.1.2013
passed by Lahore High Court, Lahore in
W.Ps. No. 25273 & 23756 of 2011

Mst. Shahida Siddiqa (In CA 836-L/13)
Allied Bank Limited through its President, etc (In CA 837-L/13)
...Appellant(s)

VERSUS

Allied Bank Limited through its President, etc (In CA 836-L/13)
Mst. Shahida Siddiqa (In CA 837-L/13)
...Respondent(s)

For the Appellant(s):

In Person
(in CA 836-L/2013)

Mr. Farooq Zaman Qureshi, ASC
Thr: video link from Lahore
(in CA 837-L/2013)

For the Respondent(s):

Mr. Farooq Zaman Qureshi, ASC
Thr: video link from Lahore
(in CA 836-L /2013)

In person
(in CA 837-L/2013)

Date of Hearing: 14.11.2023

ORDER

Irfan Saadat Khan, J.- C.A. No.836-L/2013: This Appeal, with leave of the Court granted vide order dated 06.08.2013, has been filed by the Mst. Shahida Siddiqa ("**Appellant**"), against the judgement of the Lahore High Court, Lahore, dated 16.01.2013, ("**Impugned Judgement**"), whereby the judgments of both the Courts below, the Punjab Labour Appellate Tribunal ("**Appellate Tribunal**"), dated 19.09.2011, and the Punjab Labour Court, Faisalabad ("**Labour Court**"), dated 19.06.2010, were modified by the learned Single Judge of the High Court with the observation that the Appellant shall retire from the service of Allied Bank

Limited, ("**Respondent Bank**"), compulsorily with effect from the date of her dismissal.

2. Briefly, the facts necessary to decide the matter before us are that the Appellant joined the Respondent Bank as Assistant in the year 1979. She was promoted as Officer Grade-III in 1986 and Officer Grade-II in 1995. On 11.04.2007, the Appellant was transferred to the Allied Bank Samundri Road Branch, Faisalabad ("**Branch**"). It was at this Branch of the Respondent Bank, where she was suspended and charge sheeted, on 19.10.2007, with the allegation of being privy to a fraud. Subsequently, Inquiry Proceedings were initiated against her and the Inquiry Officer, vide report dated 25.01.2008, concluded that the charges against the Appellant stood partially proved. Consequently, vide letter dated 07.05.2008, the Respondent Bank imposed a major penalty on the Appellant and dismissed her from service.

3. Being aggrieved the Appellant filed a grievance petition before the Labour Court, which vide judgment, dated 19.06.2010, re-instated her in the Respondent Bank's service albeit with a lower Grade, and declined to award her any back benefits. Being dissatisfied with the Order, both the Appellant and the Respondent Bank filed Appeals before the Appellate Tribunal, which vide its consolidated judgment, dated 19.09.2011, dismissed both the appeals and upheld the Order of the Labour Court. Subsequently, both the Appellant and the Respondent Bank filed Writ Petitions before the Lahore High Court, which were disposed of in the following terms:

"In the instant case though the connivance of the accused/petitioner with the main accused/Shaukat Naeem Warraich in the commission of the fraud/misappropriation is not proved from the evidence available on the record, but her failure to discharge her duties diligently is proved from the documentary evidence brought on the record and in view of the settled principle of law that a 'man can tell a lie but a document not', she has rightly been held 'negligent'. However, keeping in view her length of service, spreading over 28 years, and unblemished past career, her dismissal from service would be a harsh punishment. Similarly, re-instatement into service though with reduction of Grade would also not be justified in the facts and circumstances

of the case as re-instatement of the petitioner would amount to force the employer to take back a "negligent" employee in its institution, which has already sustained heavy loss at the hands of the said employee. So in my view compulsory retirement of the petitioner in the given circumstances would foster the interest of justice."

4. The main allegation for imposing a major penalty on the Appellant and her subsequent dismissal from service was that she had been negligent in performing her duties by disclosing the secret code to her former Bank Manager, namely Shoukat Naeem Warraich, who defrauded the Bank and misappropriated hefty amounts, in his capacity as the Manager of the Branch. During the Inquiry Proceedings, the Appellant refuted all the charges leveled upon her. The Labour Court after examining all of those aspects concluded, through Order dated 19.06.2010, that there was no direct allegation against her with regard to embezzlement, preparation of any fabricated instrument, and using the same for her own benefit. However, the Court opined that she had been negligent and careless in performing her duty and thus reinstated her without back benefits, in a lower grade i.e. Grade-III rather than Grade-II. The aforementioned Order was upheld by the Appellate Tribunal vide Order dated 19.2.2011. In the Petitions filed by the present Appellant and the present Respondent Bank before the Lahore High Court, Lahore, the High Court, vide Impugned Judgement dated 16.01.2013, observed that the Appellant's negligence demanded that she be compulsory retired instead of being re-instated.

5. We have heard the Appellant, who is appearing in-person, and the learned counsel for the Respondent Bank and have perused the record with their assistance. Upon careful consideration of the matter, we have found that the Impugned Judgement of the High Court is contrary to the principles of justice. Perusal of the Impugned Judgement of the High Court reveals that it appears to be self-contradictory as the High Court has first observed that the Appellant has an unblemished past career,

spanning over 28 years, and that her dismissal from service would be a harsh punishment; and yet, the High Court found it appropriate to then observe that the Appellant be compulsorily retired from service. In our view these observations of the High Court in fact defeat the ends of justice rather than fostering the same, as awarding compulsory retirement would be equivalent to meting out harsh treatment to her.

6. It is a settled proposition of law that a penalty should be proportionate to the guilt. The modern notion of proportionality requires that the punishment ought to reflect the degree of moral culpability associated with the offence for which it is imposed.¹ Given the fact that the Labour Court and the Appellate Tribunal found the Appellant negligent of not properly keeping the secret code but did not see any merit in the allegations of embezzlement, the imposition of a major penalty of compulsory retirement from service would definitely be harsh.

7. In *Saifullah*² this Court has observed:

"6. We have heard the learned Counsel for the parties and have also perused the available record as well as the judgment of the Tribunal. Admittedly there is no allegation against the appellant of having embezzled any amount and on the contrary, there is admission on the part of his co-accused Muhammad Tariq regarding the said embezzled amount which he had admitted and promised to return in part payments on two different dates. In the given circumstances and in the absence of any substantial and cogent evidence placing the appellant to be in collusion with Muhammad Tariq co-accused and particularly when there is an admission of the said guilt on his part alone, would not be fair and justifiable. At the most the failure of the appellant to get signatures in hand to hand cash book could have been considered to be a lapse on his part which could not entail the major penalty of removal from service resulting in his compulsory retirement rather fall within the parameter of inefficiency on the part of the appellant. Punishment should always commensurate with the guilt proved. We have observed that in the circumstances, case against the appellant cannot be considered to be of fraud, forgery or embezzlement rather at the most it can be considered to be that of inefficiency.

7. In the light of the above, we while partially allowing this appeal convert the punishment of compulsory retirement of the appellant to that of stoppage of five years increments following his reinstatement in service. However, no back benefits are granted to the appellant."

¹ Divisional Superintendent, Postal Services v. Nadeem Raza (2023 SCMR 803)

² Saifullah v. Divisional Superintendent, Postal Services (2016 SCMR 1430)

8. In the decision rendered in *Auditor-General of Pakistan*³ this Court held:

“The element of bad faith and willfulness may bring an act of negligence within the purview of misconduct but lack of proper care and vigilance may not always be willful to make it a case of grave negligence inviting service punishment. The philosophy of punishment is based on the concept of retribution, which may be either through the method of deterrence or reformation. The purpose of deterrent punishment is not only to maintain balance with the gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society, whereas the concept of minor punishment in the law is to make an attempt to reform the individual wrong doer. In service matters, the extreme penalty for minor acts depriving a person from right of earning would definitely defeat the reformatory concept of punishment in administration of justice. In view thereof, we would not take any exception to the view of the matter taken by the Tribunal.”

9. We, therefore, under the circumstances, partly allow the Appeal filed by the Appellant by setting aside the Impugned Judgement of the High Court dated 16.01.2013, and up hold those of the Labour Court and Appellate Tribunal to the extent of the demotion to a lower grade; with the modification that the Appellant will be entitled to all back benefits as available to a Grade-III Officer, from the date of her dismissal to the date of her retirement. She will also be entitled to all the pensionary benefits as available to the said Grade Officer.

10. C. A. No.837-L/2013: Since, we have partly allowed the present Appeal, No. 836-L/2013, this Appeal filed by the Respondent Bank, stands dismissed. The parties are left to bear their own cost.

Judge

Judge

Judge

ISLAMABAD
14th Nov., 2023
Arshed/Ahsan

“Approved for reporting”

³ Auditor-General of Pakistan v. Muhammad Ali (2006 SCMR 63)

