

Judgment Sheet

**IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT**

W.P No.2684-P/2016.

JUDGMENT

Date of hearing.....21.06.2017.....

Appellant/Petitioner (s)...By Mr. Zartaj Anwar, Advocate.....

Respondent (s)/ etc by Mr.Sabah-ud-Din Khattak, Advocate,

MUHAMMAD NASIR MAHFOOZ,J.- Through the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan,1973, petitioner praying that;

“On acceptance of this writ petition an appropriate writ may please be issued directing the respondents to release the pay and other back benefits of the petitioner for the period i.e. 01.11.2005 to 12.04.2010 stopped/withheld by the respondents due to his false implication in a criminal case, after the acquittal it is the every right of petitioner to be paid his pay and other benefits for the intervening period. Refusal on the part of the respondents to the release his pay and benefits w.e.f. 01.11.2005 and only entitling him for pay w.e.f 13.04.2010 instead of 01.11.2005 (i.e from the lodging

of false FIR) is illegal unlawful, in violation of the law, against the Express provision of law/Rules, and ineffective upon the rights of the petitioner.

Or any remedy deems just and proper may also be awarded in favour of the petitioner and against the respondents.”

2 Brief facts of the case are that as alleged by the petitioner he was initially appointed as Electrician in the respondent department and performed his duties efficiently. In the year 2009 he was falsely charged in a criminal case under Sections 302/324/148/149 PPC of P.S Badaber vide FIR No.762 dated 19.10.2005 and due to his implication in the said case he was suspended from service vide order dated 03.02.2006 and the suspension order was extended from time to time. After facing trial he was acquitted of the charges by the learned Additional Sessions Judge-III, Peshawar vide judgment and order dated 30.07.2011 and thereafter he was reinstated in service vide letter dated 14.12.2011. However, he was denied arrears and benefits for the intervening period from 01.11.2005 to 12.04.2010. He further states

that vide letter dated 08.10.2012 respondents approved payment of salaries only for the period for which he remained behind the bar. He submitted an other application dated 04.07.2013 for the grant of benefits and arrears of pay and vide order dated 21.04.2014 the suspension period was treated as leave with pay, however, vide corrigendum dated 09.07.2014, the suspension period was treated as four months on full pay and remaining on half pay. Finally, the petitioner was only held entitled for the payment of salaries w.e.f. 13.04.2010 while for the remaining period i.e. 01.11.2005 to 12.04.2010 he was denied the payment of arrears of his pay and other benefits. Hence invokes jurisdiction of this Court.

3. Respondents submitted their para-wise comments, wherein between the period i.e. 01.10.2005 till his date of arrest on 13.04.2010 he remained absent without any plausible reason or information. It is mentioned that the petitioner has failed to explain his absence period and Fundamental Rule (FR) 54 is being mis-

interpreted. Petitioner is denied the said relief as he remained fugitive from law and absconder.

4. We have heard learned counsel for the parties and perused the available record.

5. In order to substantiate his submissions learned counsel for the petitioner referred to two judgments of the august of Supreme Court of Pakistan reported as 2006 SCMR 421 and 2007 SCMR 855.

6. Needless to mention that extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, is to be exercised for rule of law and safe administration of justice based on guiding principles. But guiding principle yields to guiding precedents of the august Supreme Court of Pakistan.

7. In one of such guiding precedents a recent judgment of the august Supreme Court of Pakistan reported as 2017 SCMR 965, the relevant para is reproduced as under:

“It has come on the record that during the period of absence, no attempt was made on behalf of the respondent to apply for leave. The respondent’s counsel

himself stated before the Tribunal that the reason for his absence was that he went underground being involved in a murder case and it was only on the basis of a compromise with the victim's relatives that he was acquitted in September, 2012. Though the criminal case came to an end in September, 2012 and he was acquitted on account of compromise reached with the complainant party, nevertheless before reaching the compromise, he was not in custody but remained an absconder and only surrendered before the law after the compromise was reached with the victim's family members. To seek condonation of absence during his absconsion would amount to putting premium on such act. If this is made a ground for condonation of absence, then in every case where the civil servant is involved in a criminal case and absconds, his absence from duty would have to be condoned. The act of absconsion or being a fugitive from law can not be regarded as a reasonable ground to explain absence. Even where a person is innocent, absconsion amounts to showing mistrust in the judicial system."

8. We have considered the arguments of learned counsel for the parties as well as the judgments cited at the bar. The case of present petitioner can be squarely dealt with by more recent judgment of august Supreme Court of Pakistan mentioned above, therefore, no distinguishing features can be drawn of the present case.

9. We, therefore, hold that the petitioner is not entitled to the relief asked for, hence this writ petition is dismissed without any order as to cost.

Announced.
21.06.2017.
(Ayub)

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