

NATIONAL INDUSTRIAL RELATIONS COMMISSION
FULL BENCH AT ISLAMABAD

Before: **Abdul Rasool Memon, Chairman**
Muhammad Zubair Khan, Member
Shabbir Hussain Awan, Member

Appeal No. 12A(127)/2022
CMA No. 24A(80)/2022

Pakistan Television Corporation (PTV) through its Managing
Director, PTV Headquarter Islamabad

.....Appellant

Versus

Rana Shahzadus Salam S/o Rana Abdus Salam, News
Producer/Reporter, PTV News Centre Agha Khan Road, F-5/1
Islamabad and 19 others

.....Respondents

Present: Mian Haseeb Ali Bhatti, counsel for the appellant
Mr. Ch. Sagheer Ahmed, counsel for the
respondents

ORDER

07.09.2023 Muhammad Zubair Khan, Member

Appellant aggrieved by the order dated
27.06.2022 passed by the learned Single Bench NIRC
Islamabad in petition No. 4B (88)/2021, brought this appeal
u/s 58 of the Industrial Relations Act, 2012 against the
respondents twenty in numbers.

2. The facts relevant for the disposal of this appeal
are that the respondents twenty in numbers aggrieved by
the letter dated 05.03.2021 filed a grievance petition u/s 33
of the Industrial Relations Act, 2012, contending that they
joined PTV Corporation in the year 2006 and services of the

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respondents were regularized vide office order dated 02.07.2013 w.e.f 20.02.2006; that the appellant office vide letter dated 05.08.2019 cancelled / withdrawn the office order dated 02.07.2013. Further averred that vide office order dated 30.12.2020 re-fixed the salaries of the respondents and issued impugned letter dated 05.03.2021 through which the recovery of payment made to the respondents in light of order dated 02.07.2013. Further averred that the appellant intend to deduct Rs.20,000/- per month from the salaries of the respondents. Further averred that before issuing of impugned letter neither any show-cause-notice was issued nor notice of personal hearing provided to them.

3. The respondents served the grievance notice upon the appellant but the same was not replied. The respondents challenged the impugned letter dated 05.03.2021 on the grounds that the same is illegal, unlawful and against the judgments of superior courts and law of the land. Further prayed that the impugned letter dated 05.03.2021 is against the judgment in case titled The Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another v. Jalaluddin reported as PLD 1992 S.C 207 and also contended that the case of respondents fall under the principle of *locus poenitentia*. The respondents prayed that the impugned letter dated 05.03.2021 may kindly be set aside and declared to be illegal, unlawful and void ab-initio and against the right of the respondents. The respondents also annexed with grievance petition various documents as well as grievance notice.

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4. The appellant contested the petition by submitting written statement and contending that the respondents have not impugned the office order dated 23.12.2019 and admitted the contents of para-2 to 4 of the petition; that in compliance of Hon'ble Supreme Court order dated 29.01.2018 the services of the respondents were regularized from 20.12.2010. Further averred that some employees of news and current affairs filed a petition in Islamabad High Court for regularization of their services from their date of engagement by 2006. The Islamabad High Court accepted the petition in favour of the respondents/petitioners against which the appellant filed intra court appeal in Islamabad High Court which was dismissed and in compliance with order dated 01.11.2012 services of the 15 producers Group V and 19 Producers current affairs were regularized w.e.f 20.02.2006 and they were granted arrear as per their entitlement.

5. The appellant/PTV filed C.P No 658 and 659 of 2015 before the august Supreme Court of Pakistan for setting aside the judgment dated 18.03.2015 of Balochistan High Court which was accepted vide order dated 29.01.2018 and the following was held in para-13 that ***"In view of above, it is clear and obvious that the Respondents i.e. contract employees of PTV were entitled to be regularized but not from the date of initial appointment nor were entitled from date of such appointment"***. Therefore, notice was sent to the producer news and current affairs for reversal of their regular services w.e.f 30.12.2010 and compliance of the order dated

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29.01.2018 passed by Hon'ble Supreme Court of Pakistan in CM No. 658 and 659 of 2015 and In Islamabad High Court Islamabad in writ petition No. 1403/2018 and writ petition No. 1548/2018 letter dated 02.07.2013 regarding regularization of services from 20.02.2006 were cancelled and withdrawn and their service regularized w.e.f 30.12.2010 and their seniority have also been fixed as it was prior to issuance of the letter dated 02.07.2013. Further requested that the petition of the respondents be dismissed.

6. Arguments heard and record perused.

7. The operative part of the impugned order is reproduced as under:

"9. It is settled position that payment received by an employee in pursuance of bonafide order of employer which was subsequently disclosed as passed illegally does not make the employee liable for recovery of the said amount already paid, though the department would have the right to stop further such payment. In the instant case, the petitioners were regularized with effect from 2006 in pursuance of judgments of Hon'ble Supreme Court which was again withdrawn by orders of these courts. The respondent has stopped payment of salaries fixed after order for regularization dated 02.07.2013 but they are not justified to recover the payment, the petitioners already received in terms order dated 02.07.2013.

10. In view of above stated points the petition is allowed and respondent is directed to not recover the payment already paid in pursuance of order dated 02.07.2013. The complaint is also disposed of as the petition has been allowed. There is no order as to costs. File be consigned to R.R.

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The only question involved in the present appeal is that when on the order of august Supreme Court the respondents were regularized from 2006 and they were paid since 2006 till 2010 over and above payment made to the respondents can be recovered after they were reverted and their regularization were re-fixed.

8. In a case titled The Engineer in Chief Branch through Ministry of Defence, Rawalpindi and another reported in PLD 1992 Supreme Court 207. While dilating upon same like situation held that,-

"recovery of amount paid on incorrect order and the recipient had received the same on a bonafide belief that he was entitled to it, payer was not entitled to recover the amount from payee during the period when incorrect order remained in field and principle of *Locus Poenitentiae* will be applicable to the case".

9. In another case law reported as 2020 SCMR 188 titled Shams Ur Rehman v. Military Accountant General, Rawalpindi and another, the august Supreme Court held the following:

"Civil service---Higher selection grade (BPS) granted due to fault of department---Whether salary and benefits paid due to such fault / error could be recovered---Locus poenitentiae, principle of --- Estoppel---Petitioner (civil servant) was appointed as senior auditor in BPS-11---Subsequently petitioner was erroneously granted selection grade BPS-15 and sought recovery of salary and benefits paid to him on the principle of locus poenitentiae---Held, that for almost 9 years the petitioner served in selection grade BPS-15 was apparently had no role in obtaining such post--When the petitioner performed the work of a higher post of selection grade BPS-15 for almost

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9 years, then on the principle of locus poenitentiae the benefits paid to him, could not be recovered as said principle would not apply---Further the principle of estoppels would be applicable in the present case against the department from recovering the emoluments and benefits of BPS-15 from the petitioner----Petition for leave to appeal was converted into appeal and allowed."

10. The Government of Pakistan Law and Justice Division, Islamabad issued office memorandum dated 22nd February, 2016 on the subject opined that:-

"The undersigned is directed to refer to the Department of Communication Security Cabinet Division's ADM-5703/2015/900 dated 15th February 2016 on the subject cited above and to state that the principle of *Locus Poenitentiae* simply suggests that payment made to a Civil Servant under the orders of the Competent forum cannot be recovered if subsequently is found that legally the amount could not be paid. The future payment can be stopped with effect from the date of disclosure of the defect of the order of grant of financial benefits, but the payment already made cannot be recovered. The judgment of the FST is based on such principle and it has to be equally applied to all those falling in the same category".

11. In the present case too, the services of the respondents/petitioners were regularized by the order of august Supreme Court and later on the same was withdrawn in civil review petition No. 471/2015 and civil appeal No. 658 and 659 of 2015, Civil Petition No.3265 and 3269 of 2015, Civil Misc. Application No.1446 of 2016, in Civil Review petition No. 471 of 2016 and Civil Review petition No. 10 of 2017 in Civil

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Appeal No.725 of 2014 and para No.12, 13 and 14 are relevant for disposal of this appeal.

12. We have gone through the above mentioned judgment of august Supreme Court of Pakistan where it has been held that contract employees of PTV were entitled to be regularized but not from the date of their initial appointment nor were entitled to back benefits from the date of such appointment, however the persons regularly employed on probation were alone entitled to be permanent employees. It has not been mentioned in the above mentioned judgment that the respondents will return the back benefits received by them. According to the *locus poenitentiae* the benefits when the respondents received not due to their fault but due to the wrong order of the Court and the Appellant, therefore, the same cannot be recovered.

For what has been discussed above we find no illegality and irregularity in the impugned order passed by the learned Single Bench, hence the same is maintained and the present appeal is dismissed, with no orders as to cost. File be consigned to record room.

Announced in the open court

(Abdul Rasool Memon)
Chairman

(Muhammad Zubair Khan)
Member

(Shabbir Hussain Awan)
Member