Chairman of Agriculture Development Bank of Pakistan
Versus
Mumtaz Khan
PLD 2010 SC 695

JUDGMENT

ASIF SAEED KHAN KHOSA, J.---The appeal in hand throws up an issue which has never been brought up before this Court earlier and, thus, the case in hand is a case of first impression. The facts leading to filing of this appeal are quite simple and admit of noambiguity but the question raised before the Court is novel and, therefore, the same has been attended to by us with acute consideration.

Mumtaz Khan respondent was a Mobile Credit Officer serving with the Agricultural Development Bank of Pakistan when he was implicated in a case of murder through F.I.R.No.327 registered at Police Station Naurang, District Lakki Marwat on 8-9-1991 in respectof an offence under section 302, P.P.C. read with section 34, P.P.C. As a result of trial of that criminal case the respondent was convicted by the learned Sessions Judge, Lakki Marwat for an offence under section 302(b), P.P.C. read with section 34, P.P.C. vide judgment dated 15-11-1995 and was sentenced to imprisonment for life and a fine of Rs.40,000 or in default of payment whereof to undergo simple imprisonment for five years. The respondent preferred an appeal in that regard but his appeal was dismissed bythe Peshawar High Court, Dera Ismail Khan Bench vide judgment handed down on 1-4- 1998. We have been informed that the respondent had not challenged his conviction and sentence any further and after a few months of the decision of his appeal an application had been submitted by him before the learned Sessions Judge, Lakki Marwat seeking hisacquittal on the basis of a compromise arrived at between him and the heirs of the deceased. That application submitted by the respondent was allowed by the learned Sessions Judge, Lakki Marwat on 22-9-1998 and the respondent was acquitted of the charge on the basis of compromise. On the departmental side, the respondent was servedwith a show cause notice on 22-1-1996 as by then he had already been convicted and sentenced by the criminal Court on the charge of murder and the respondent submitteda reply thereto on 28-1-1996. In view of the respondent's already recorded conviction on the charge of murder by the criminal Court the respondent was removed from service on3-3-1996. After earning his acquittal from the criminal Court on the basis of compromisethe respondent filed a departmental appeal on 12-10-1998 seeking his reinstatement in service with all the back benefits but that appeal was dismissed by the competent authority on 26-2-1999. Thereafter the respondent preferred an appeal before the FederalService Tribunal, Islamabad in that regard which appeal was allowed by a majority of twoagainst one by the Federal Service Tribunal, Islamabad vide judgment dated 3-7-2000 and the respondent was ordered to be reinstated in service with all the back benefits. Thatjudgment rendered by the Federal Service Tribunal, Islamabad had been assailed by the appellants before this Court through C.P.L.A. No.1391 of 2000 wherein leave to appeal was granted on 14-2-2002 to consider the following points:--

"(a) Whether the appeal before the Federal Service Tribunal was not time barred?

Whether a convicted person, who is released after payment of Diyat amount,could be said or could be declared as a person acquitted honourably and in that

eventuality, could such a person, who is released on payment of Diyat, was liableto be reinstated into service?

Whether the payment of Diyat absolves a person from the accusation ofmurder? and

Whether the respondent was an acquitted person or was a convicted personeven after the payment of Diyat?"

Hence, the present appeal before this Court.

We have heard the learned counsel for the parties at some length and have gone through the record of this case with their assistance.

It has been argued by the learned counsel for the appellants that the judgment passed by this Court in the case of Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department, Peshawar 1998 SCMR 1993 and relied upon by the Federal Service Tribunal, Islamabad in the impugnedjudgment was not relevant to the facts of this case as the said precedent case did not pertain to an acquittal in a criminal case on the basis of compromise. It has also been argued by him that by virtue of the provisions of section 53, P.P.C. Diyat is a form of punishment and it was also held so in the case of Shehzad Ahmad alias Mithu and another
v. The State 2005 PCr.LJ 1316 and, thus, acquittal earned by the respondent in the case of murder by payment of Diyat to the heirs of the deceased had not washed away the blemish of the respondent regarding his being a punished person and such blemish had rendered him incapable of pressing into service his acquittal for the purpose of seeking reinstatement in service. It has further been argued by him that the compromise enteredinto by the respondent on the charge of murder amounted to admission of guilt on his part, as held in the case of Muhammad Siddique v. The State PLD 2002 Lahore 444, and,thus, it even otherwise offends against public policy to reinstate a person in service who is a self-condemned murderer. The learned counsel for the appellants has lastly argued that the departmental appeal filed by the respondent was barred by time and, therefore, the Federal Service Tribunal, Islamabad ought to have dismissed his appeal on this score.In support of this submission the learned counsel for the appellants has placed reliance upon the cases of The Chairman P.I.A. C. and others v. Nasim Malik PLD 1990 SC 951 and Muhammad Aslam v. WAPDA and others 2007 SCMR 513.

As against that the learned counsel for the respondent has maintained that the entire controversy presented before the Federal Service Tribunal, Islamabad and also before thisCourt regarding acquittal of the respondent on the basis of paying Diyat to the heirs of thedeceased is misconceived because the respondent had earned his acquittal after paying Badal-i-Sulh to the heirs of the deceased under section 310, P.P.C. and not upon paymentof Diyat. He has elaborated that Diyat may be a punishment contemplated by the provisions of section 53, P.P.C. but Badal-i-Sulh is surely not a punishment mentioned in that section. He has also argued that the respondent's appeal before the Federal Service Tribunal, Islamabad had been filed well within the period of limitation and in the comments submitted by the appellants before the Federal Service Tribunal,

Islamabad no objection had been raised by them regarding the appeals filed by the respondent before the Service Tribunal or before the departmental authority being barredby time. He has further maintained in this respect that there is nothing available on the record of this case to establish that the respondent's appeal filed before the departmentalauthority was barred by time or any objection had ever been raised before the departmental authority in that regard or that the said appeal had been dismissed on the ground of limitation. The learned counsel for the respondent has gone on to submit that no allegation had ever been levelled against the respondent regarding commission of any illegality, irregularity or impropriety by him in his service and the blemish upon the respondent on the basis of his conviction in a case of murder stood washed away on the basis of his acquittal in that criminal case and, thus, there was no impediment in his reinstatement in service with all the back benefits. The learned counsel for the respondenthas highlighted that even in the order passed on 3-3-1996 regarding the respondent's removal from service it had specifically been mentioned that the said removal from service was conditional and was reversible in case of his acquittal in the relevant criminalcase. With these submissions the learned counsel for the respondent has supported the majority verdict rendered through the impugned judgment handed down by the Federal Service Tribunal, Islamabad.

The learned Deputy Attorney-General appearing on the Court's notice has also maintained before us that the respondent had earned his acquittal in the relevant case ofmurder not on the basis of payment of Diyat to the hefts of the deceased but upon paymentof Badal-i-Sulh to them and, therefore, his acquittal was without any blemish and the same warranted his reinstatement in service with all the back benefits. The learned Deputy Attorney-General has also supported the majority opinion recorded by the Federal Service Tribunal, Islamabad through the impugned judgment rendered by it on 3-7-2000.

After hearing the learned counsel for the parties and going through the record of this case with their assistance and after perusing the precedent cases cited before us we, haveentertained no manner of doubt that the majority verdict delivered by the Federal ServiceTribunal, Islamabad reinstating the respondent in service with all the back benefits was quite justified both on facts and in law. We may observe that prior to introduction of the Islamic provisions in the Pakistan Penal Code, 1860 an acquittal of an accused person could be recorded when the prosecution failed to prove its case against him beyond reasonable doubt or when faced with two possibilities, one favouring the prosecution andthe other favouring the, defence, the Court decided to extend the benefit of doubt to the accused person and an acquittal could also be recorded under section 249-A, Cr. P. C. or section 265-K, Cr. P. C. when the charge against the accused person was found to be groundless or there appeared to be no probability of his being convicted of any offence. After introduction of the Islamic provisions in the Pakistan Penal Code, 1860 it has now also become possible for an accused person to seek and obtain his acquittal in a case of murder either through waiver/Afw under section 309, P.P.C. or on the basis of compounding/Sulh under section 310, P.P.C. In the case of waiver/Afw an acquittal can be earned without any monetary payment to the heirs of the deceased but in the case of compounding/Sulh an acquittal may be obtained upon acceptance of Badal-i-Sulh by theheirs of the deceased from the accused person. In the present case the respondent had

been acquitted of the charge of murder by the learned Sessions Judge, Lakki Marwat as aresult of compounding of the offence and such compounding had come about on the basis of acceptance of Badal-i-Sulh by the heirs of the deceased from the respondent. It is true that Diyat is one of the forms of punishment specified in section 53, P.P.C. but any discussion about Diyat has been found by us to be totally irrelevant to the case in hand because the respondent had not paid any Diyat to the heirs of the deceasedbut he had in fact paid Badal-i-Sulh to them for the purpose of compounding of the offence. It goes without saying that the concept of Badal-i-Sulh is totally different from the concept of Diyat inasmuch as the provisions of subsection (5) of section 310, P.P.C. and the Explanation attached therewith show that Badl-i-Sulh is to be "mutually agreed" between the parties as a term of Sulh between them whereas under section 53, P.P.C. C Diyat is a punishment and the provisions of section 299(e), P.P.C. and section 323, P.P.C. manifest that the amount of Diyat is to be fixed by the Court. The whole edifice of his arguments built by the learned counsel for the appellants upon Diyat being a form of punishment has, thus, appeared tows to be utterly misconceived.

The provisions of the first proviso to subsection (1) of section 338 -E, P.P.C. clearly contemplate acquittal of an accused person on the basis of compounding of an offenceby invoking the provisions of section 310, P.P.C. and the effect of such compounding has also been clarified in most explicit terms by the provisions of subsection (6) of section 345, Cr.P.C. in the following words:--

"The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded."

The legal provision mentioned above leave no ambiguity or room for doubt that compounding of an offence of murder upon payment of Badal-i-Sulh is not a result of payment of Diyat which is a form of punishment and that such compounding of the offence leads to nothing but an acquittal of the accused person. It has already been clarified by this Court in the case of Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department Peshawar 1998 SCMR 1993 as follows:--

"We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of doubt are Honourable for the reason that theprosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals."

The said precedent case also involved a question of reinstatement in service of an accused person implicated in a criminal case who had been acquitted by the criminal Court and this Court had declared that an acquittal had no shades and there was no concept of Honourable or dishonourbale acquittals. It had specifically been noted by

this Court in that case that there could also be cases involving acquittals on the basis of compromise between the parties and after raising a query regarding the status of such acquittals this Court had hastened to add that "All acquittals are certainly honourable". If that be the case then the respondent in the present case could not be stigmatized or penalized on account of his acquittal on the basis of compromise. In view of the discussion made above and also in view of the novel situation presented by this case the precedent cases cited by the learned counsel for the appellants have been found by us to be missing the mark, if not irrelevant to the controversy in hand.

As regards the submission made by the learned counsel for the appellants based upon the issue of propriety of reinstating in service a person who, by virtue of compounding of an offence of murder, is a self-condemned murderer we may observe that we have pondered over the said issue from diverse angles and have not felt persuaded to agree with the learned counsel for the appellants. Experience shows that it is not always that a compromise is entered into by an accused person on the basis of admission of guilt by him and in many cases of false implication or spreading the net wide by the complainant party accused persons compound the offence only to get rid of the case and to save themselves from the hassle or trouble of getting themselves acquitted from Courts of law after arduous, expensive and long legal battles. Even in the present case the respondent and his brother were accused of launching a joint assault upon the deceased upon the bidding and command of their father and before the learned trial Court the respondent's brother had maintained in unequivocal terms that he alone had murdered the deceased and the respondent and their father had falsely been implicated in this case. Be that as it may, un ultimate acquittal in a criminal case exonerates the accused person completely for all future purpose vis-a- vis the criminal charge against him as is evident from the concept of autrefois acquit embodied in section 403, Cr.P.C. and the protection guaranteed by Article 13(a) of the Constitution of Islamic Republic of Pakistan, 1973 and, according to our humble understanding of the Islamic jurisprudence, Afw (waiver) of Sulh (compounding) in respect of an offence has the effect of purging the offender of the crime. In this backdrop we have found it difficult as well as imprudent to lay it down as a general rule that compounding of an offence invariably amounts to admission of guilt on the part of the accused person or that an acquittal earned through such compounding may have ramifications qua all spheres of activity of the acquitted person's life, including his serviceor employment, beyond the criminal case against him. We may reiterate that in the case of Dr. Muhammad Islam (supra) this Court had categorically observed that "All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals".The sway of those observations made by this Court would surely also encompass an acquittal obtained on the basis of compounding of the offence. It is admitted at all handsthat no allegation had been levelled against the respondent in the present case regardingany illegality, irregularity or impropriety committed by him in relation to his service andhis acquittal in the case of murder had removed the only blemish cast upon him. His conviction in the case of murder was the only ground on which he had been removed fromservice and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service. It may not be out of place to mention here that even the order of removal of the respondent from service passed on 3-3-1996 had expressly provided that the respondent'scase would be considered by the competent authority for his reinstatement in service in case he was acquitted of the criminal charge. Thus, on this score as well we have found the respondent to be quite justified in claiming his reinstatement in service upon earningan acquittal from the competent criminal Court.

As far as the submission made by the learned counsel for the appellants regarding the respondent's appeal being barred by time is concerned suffice it to observe in this contextthat admittedly the respondent's appeal before the Federal Service Tribunal, Islamabad was preferred within the requisite period of limitation. There is no material available before us to conclude or hold

that the respondent's departmental appeal was barred by time and, if so, whether the delay in the respect, if any, had been condoned or not and onwhat basis the said appeal had been dismissed. The order of dismissal of the respondent'sappeal by the departmental authority did not mention that his appeal had been filed beyond the period of limitation or that the same was dismissed on the ground. We have further noticed that no such objection had been raised by the appellants before the Federal Service Tribunal, Islamabad. As the assertion of the learned counsel for the appellants regarding the respondent's departmental appeal being barred by time does not find support from any document produced before us, therefore, it is not possible for us to follow the principle laid down in the cases of The Chairman P.I.A.0 and others v. Nasim Malik PLD 1990 SC 951 and Muhammad Aslam v. WAPDA and others 2007 SCMR 513 cited by the learned counsel for the appellants in that regard. We may also observe in thiscontext that the respondent had been acquitted in the criminal case on 22-9-1998 and hehad filed his departmental appeal on 12-10-1998, i.e. within three weeks of his acquittal in the criminal case. It would have been a futile attempt on the part of the respondent to challenge his removal from service before earning an acquittal in the relevant criminal case and, thus, in the peculiar circumstances of this case, we have found it to be unjust and oppressive to penalize the respondent for not filing his departmental appeal before earning his acquittal in the criminal case which had formed the foundation for his removalfrom service.

For what has been discussed above this appeal is dismissed and the impugned majorityverdict rendered by the Federal Service Tribunal, Islamabad on 3-7-2000 is upheld and maintained.

M.H./C-3/S Appeal dismissed.