

IN THE FEDERAL SHARIAT COURT

(Appellate/Revisional Jurisdiction)

PRESENT

**MR.JUSTICE HAZIQUL KHAIRI, CHIEF JUSTICE
MR.JUSTICE DR.FIDA MUHAMMAD KHAN
MR.JUSTICE SALAHUDDIN MIRZA
MR.JUSTICE MUHMAMAD ZAFAR YASIN**

SHARIAT PETITION NO.38/L OF 1992

Muhammad Rasheed Rashid ... Petitioner
E/7 Postal Colony Wahdat Road,
Lahore

Versus

Government of Pakistan, --- Respondent
Ministry of Finance, Islamabad

Petitioner ... In person

Counsel for NWFP Government ... Mr.Aziz-ur-Rehman,
Advocate,

Counsel for Sindh Government. ... Mr.Fareed-ul-Hassan,
Asstt: A.G.Sindh

For Punjab and, ... Nemo
Baluchistan Governments.

For Federal Government ... Nemo

Date of Institution ... 17.11.1992

Date of hearing ... 17.02.2009

Date of decision ... 26-05-2009

JUDGMENT

SALAHUDDIN MIRZA, J.-According to the petitioner, Rules 16, 17, 18 18-A and 19 of the 'Revised Leave Rules 1980 (as amended up-to-date) issued by the Finance Department of the Federal Government are violative of the Injunctions of the Holy Quran and Sunnah. The impugned rules are reproduced below:

16. **Leave preparatory to retirement.**--- (1) The maximum period up to which a civil servant may be granted leave preparatory to retirement shall be three hundred and sixty-five days.

(2) Such leave may be taken, subject to availability, either on full pay, or partly on full pay and partly on half pay, or entirely on half pay, at the discretion of the civil servant.

(3) An officer of BPS-21 or BPS-22 who, on or after the 19th day of February, 1991, opts to retire voluntarily after he has completed twenty-five years of service qualifying for pension may be granted leave preparatory to retirement equal to entire leave at his credit in his leave account on full pay or till the date on which he completes the sixtieth years of his age, whichever is earlier;

Provided that such officer shall not be entitled to conversion of leave preparatory to retirement on full pay under rule 6 into leave on half pay.

17. **[Encashment of refused leave preparatory to retirement.**—(1) If in case of retirement on superannuation or voluntary retirement on completion of thirty years qualifying service a civil servant cannot for reasons of public service, be granted leave preparatory to retirement duly applied for in sufficient time, he will in lieu thereof be granted lump-sum leave pay for the leave refused to him subject to a maximum of one hundred and eighty days leave on full pay].

(2) Such leave can be refused partly and sanctioned partly but the cash compensation shall be admissible for

the actual period of such leave so refused not exceeding one hundred and eighty days.

(3) The payment of leave pay in lieu of such refused leave may be made to the civil servant either in lump-sum at the time of retirement or may, at his option, be drawn by him month-wise for the period of leave so refused.

(4) For the purpose of lump-sum payment in lieu of such leave, only the "Senior Post Allowance" will be included in "Leave Pay" so admissible.

(5) In case a civil servant on leave preparatory to retirement dies before completing one hundred and eighty days of such leave his family shall be entitled to lump-sum payment equal to the period falling short of one hundred and eighty days.

18. **Power to refuse leave preparatory to retirement, etc.—**

(1) ordinarily, leave preparatory to retirement shall not be refused.

(2) All orders refusing leave preparatory to retirement to a civil servant and recalling civil servant from leave preparatory to retirement shall be passed only by the authorities specified below :-

(i) For civil servants of B-17 Secretary Establishment
and above Division- Personally.

(ii) For civil servants of B-16 Secretary of the Division
and below concerned Personally.

(3) The authorities specified in sub-rules (2) shall not delegate these powers to any other authority.

(4) All proposals regarding refusal of such leave to an officer of B-17 and above shall be referred to the Secretary Establishment Division, with detailed justification at least three months before an officer is due to proceed on such leave.)

[18-A. Encashment of leave preparatory to retirement.—(1) A civil servant may fifteen months before the date of superannuation or thirty years qualifying service on or after the 1st July, 1983, at his option, be allowed to encash his leave preparatory to retirement if he undertakes in writing to perform duty in lieu of the whole period of three hundred and sixty-five days or lesser period which is due and admissible.

[Provided that a civil servant who does not exercise the option within the specified period shall be deemed to have opted for encashment of L.P.R.]

[(2) In lieu of such leave, leave pay may be claimed for the actual period of such leave subject to a maximum of one hundred and eighty days].

[(3) If at any time during such period leave is granted on account of ill health supported by medical certificate or for performance of Haj, the amount of cash compensation on account of leave pay shall be reduced by an amount equal to the leave pay for half the period of leave so granted, for example, if an employee who has opted for encashment of such leave, has taken sixty days leave, his cash compensation equal to thirty days leave shall be forfeited.

(4) The civil servant shall submit the option to the authority competent to sanction leave preparatory to retirement, who shall accept the option and issue formal sanction for the payment of cash compensation.)

[(5) For the purpose of payment in lieu of such leave.

- (a) the rate of leave pay shall be the rate admissible @ [at the time the leave pay is drawn,]
- (b) the leave pay may be drawn at any time for the period for which duty has already been rendered; and
- (c) only the "Senior Post-Allowance" will be included in the leave pay as admissible.]

19. [In-service death etc.—(1) In case a civil servant dies, or is declared permanently incapacitated for further service by a Medical Board, while in service, a lump-sum payment equal to leave pay up to one hundred and eighty days out of the leave at his credit shall be made to his family as defined for the purposes of family pension or, as the case may be, to the civil servant.

(2) For the purpose of lump-sum payment under sub-rule (1) only the "Senior Post Allowance" will be included in the "leave pay" so admissible."

2. The contention of the petitioner is that a government servant

earns 4 days' earned leave for every month of his service per Rule-3

(1) of the said Rules and there is no maximum limit on the

accumulation of such leave per Rule 3 (3) but Rule 16 puts a



maximum ceiling of 365 days to such accumulation and, as a result, any leave in excess of 365 days just goes down the drain. Moreover, if a government servant does not opt to avail all this accumulated 365 days' earned leave at the time of his retirement, he is paid, in lieu thereof, encashment of leave salary equivalent to salary for 180 days instead of the entire 365 days and his grievance against Rule 19 is that it deprives the widow of a government servant who dies while still in service to avail encashment benefits of the entire 'earned and accumulated' leave at the credit of the deceased government servant (and is held entitled to lump-sum payment equal to leave pay up to 180 days out of the leave at his credit). According to him the stipulations per impugned 'Rules' are contrary to the Injunctions of Quran and Sunnah. In support of his contention he relies upon the following suraas of the Holy Quran and the sayings of the Holy Prophet:

Quranic ayaat.

- (1). Ayut 283 Sura Al Baqra.
- (2). Ayut 58 Sura Al Nisa.

(3). Ayat 1 Surah Al-Maida.

(4). Ayat 34 Surah Bani Israel.

A translation of these ayaat is given below:

Ayat 283 Surah Al-Baqarah

“And if you are on a journey and do not find a scribe to write the document then resort to taking pledges in hand.

But if any of you trusts another, let him who is trusted, fulfill the trust and fear Allah, his Lord.

And do not conceal what you have witnessed, for whoever conceals it, his heart is sinful.

Allah has full knowledge of all that you do.”

Ayat 58 Surah Al-Nisa

“Allah commands you to deliver trusts to those worthy of them, and when you judge between people, judge with justice. Excellent is the admonition Allah gives you. Allah is All-Hearing, All-Seeing.”

Ayat 1 Surah Al-Maida

“Believers! Honour your bonds! All grazing beasts of the flock are permitted to you except those which are recited to you hereinafter, but you are not allowed to hunt in the state of ihram (the state of Pilgrim Sanctity). Indeed Allah decrees as He wills.”


Ayat 34 Surah Bani Israel

“(x) And do not even go near the property of the orphan-except that it be in the best manner-till he attains his maturity.

(xi) And fulfil the covenant, for you will be called to account regarding the covenant.”



Ahadees/sayings of the Holy Prophet.

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- (1). Per Abu Hurera, the Holy Prophet said that God said to him "I shall quarrel with three types of persons on the day of qiyamat -- -- **One**, those who swore by his name but did not keep the promise; **two**, those who sold a 'free man' for valuable consideration; **three**, those who engaged a man to do some work for monetary consideration but did not pay him. Per Sahi Bukhari (but reference number of the Hadees not given.
 - (2). Per Abdullah bin Umar, the Holy Prophet said that 'pay a mazdoor his mazdoori before his sweat dries up'. Ibn Maja but reference number of Hadees not given.
 - (3). Per Abu Saeed, the Holy Prophet said that 'every ahad-shikan (one who breaks an agreement/promise) shall have a 'nishaan' over his head whose height/prominence will be in proportion to the enormity of his crime. Per Muslim but reference number of hadees not given.
 - (4). Per Abu Imama, the Holy Prophet said that God will send that man to hell and make jannat haraam for him who deprives a Muslim of his dues even if the dues are as trivial in value as the branch (tahni) of a peeloo tree. (This time name of the book of Hadees is also not disclosed apart from the reference number of Hadees).

Note: Instead of the traditional spelling 'hadith' we have used, and shall further use the phonetic spelling 'Hadees' in this judgement.

3. The only respondent in this petition is the Government of Pakistan through the Ministry of Finance but this Court vide order dated 09.05.1994 decided to hear the viewpoint of the provinces as well as they have similar 'leave rules' and so notices were also issued to them. The Federal Government and the Governments of NWFP, Punjab and Sindh have filed comments while the Government of Balochistan, through its application moved by its Advocate General, has adopted the comments of the Punjab government as reflected by the order of this Court dated 17.02.2009. The same day the petitioner was heard in detail in support of his contentions and learned counsel of Sindh and N.W.F.P. were also heard who countered the arguments of the petitioner. We could not hear the counsel of the Federation and of Punjab and Balochistan as they did not appear in spite of service of notice. We have gone through the record with the help of those who were present on the date of hearing.

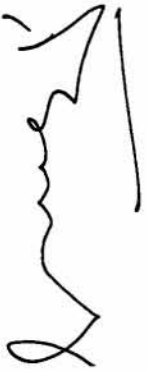
4. We may at the outset clarify that the jurisdiction of this Court under Article 203 D of the Constitution of the Country is to determine

as to whether any enactment, rule or law is violative of any Injunctions of Islam as enunciated by the Holy Quran and Sunnah and NOT to dilate upon its merits or demerits.

5. A perusal of the comments/objections filed by the Federal Government and those filed by the Governments of Punjab, NWFP and Sindh (Balochistan relying on the ones filed by the Government of Punjab) shows that according to them the impugned Rules 16 to 19 are not in violation of the Injunctions of Islam as enunciated by the Holy Quran and the sayings of the Holy Prophet.

6. The ayaat of the Holy Quran and the sayings of the Holy Prophet on which the petitioner has relied and which have been reproduced in full in the preceding part of the judgement enjoin the Muslims to reduce to writing, as far as possible, all business transactions even when they are on a journey and abide by their word of mouth and fulfill their promises, and when they are called upon to decide disputes amongst people they should do so with justice and prohibits them from usurping the property of orphans and to pay the

wages to the persons employed by them. The sayings of the Holy Prophet, on which reliance is placed by the petitioner, further elaborate these Injunctions of the Almighty God. However, Muslims are not enjoined to pay their employees even when they render no service to them. The concept of 'holiday' or of 'leave', whether casual or earned, is a much later phenomenon which emerged through social evolution and has no religious sanction. Never in the lifetime of the Holy Prophet was any worker granted a paid weekly holiday or any paid leave. It may be noted that in Islam Friday is the holiest of the days of the week but Islam does not countenance idleness or lethargy even on Fridays. On the contrary, the Holy Quran enjoins Muslims to spread out and engage themselves in the affairs of the world after offering the Friday prayer. In ayaat 9 & 10 of Sura Al Jumu'ah God Almighty says *"O Believers! When the call for the prayer is made on Friday, hasten to the remembrance of Allah and give up all trading. That is better for you, if you only knew. But when the Prayer is ended, disperse in the land and seek Allah's Bounty"*. It is thus clear that God



Almighty does not admit of a holiday or leave even on Fridays.

Quoting the Holy Quran and the sayings of the Holy Prophet in support of or against certain provisions of any 'leave rules', whether the Revised Leave Rules 1980 or any other rules, is an act of utmost misconception on the point. The Quranic ayaat or the sayings of the Holy Prophet, on which the petitioner has relied, do not indicate that a man is entitled to be paid for the days on which he has not rendered any service to his employer. Benefits of weekly holidays and 'earned and casual leave' are the creations of social evolution and when a government servant is not satisfied with the rules and regulations governing his service, he can agitate his grievances before the various forums provided by the State for the redressal of his grievances.

7. Besides, when a man enters government service, he undertakes to abide by the terms and conditions of service and the rules and regulations governing his service which include the leave rules in force and which are subject to amendment from time to time. Ayat 1 of Surah Al-Maida and part of Ayat 34 of Surah Bani Israel are, in

fact, attracted in this context where the Almighty God exhorts "Believers! Honour your bonds" and 'fulfill the covenant, for you will be called to account regarding the covenant. This is not to say that Rules 16, 17, 18, 18-A and 19 of the Revised Leave Rules 1980 are good and are not oppressive. They may be bad, unjust or oppressive but the proper forum to assail them is not this Court as they do not violate any Injunction of Islam and therefore they may be challenged before the competent authority, a Service Tribunal, a Civil Court or even before a High Court under its writ jurisdiction.

8. For the aforementioned reasons we are not inclined to give the relief asked of us in the prayer clause of the petition.

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JUSTICE SALAHUDDIN MIRZA

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JUSTICE HAZIQUL KHAIRI
 Chief Justice

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JUSTICE DR.FIDA MUHAMMAD KHAN

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JUSTICE MUHAMMAD ZAFAR YASIN

Announced at- *Islamabad*
 on- *26-05-2009*
 ABDUL RAHMAN/**

Fit for reporting
SK
26.5.09