

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Gulzar Ahmed, HCJ

Mr. Justice Ijaz ul Ahsan

Mr. Justice Sajjad Ali Shah

**Civil Appeal No.1618/2019.**

(Against the order dated 18.7.2017 passed by the  
Islamabad High Court in WP No.3793/2016)

**NAB through its Chairman**

**... Appellant(s)**

**Versus**

**Muhammad Shafique**

**... Respondent (s)**

For the Appellant (s) : Mr. Imran ul Haq Khan, DPG NAB

For the Respondent(s) : Raja Muhammad Anwar Khan Abbasi, ASC  
Mr. Ahmed Nawaz Ch. AOR

Date of Hearing : 06.01.2020

**Judgment**

**Sajjad Ali Shah, J.** The respondent in the year 1990 was appointed as Upper Division Clerk in the Ministry of Food, Agriculture and Life Stock, Islamabad and thereafter was placed in surplus pool. The respondent ultimately on 18.12.2002 was absorbed in the appellant-NAB as UDC. He absented himself from duty for a continuous period of 66 days from 23.11.2009 giving rise to disciplinary proceedings which resulted in his compulsory retirement. The respondent against such major penalty invoked constitutional jurisdiction of the Islamabad High Court by pleading *inter alia* that since the office order dated 12.3.2010 through which major penalty of compulsory retirement from service was imposed also directs the treatment of his un-authorized absence from duty of 66 days from 23.11.2009 to 27.1.2010 as extraordinary leave (EOL) without pay, therefore, the major penalty of compulsory retirement could not be sustained. The High Court, through the impugned judgment, while accepting such plea allowed the petition by setting aside the major penalty

of compulsory and directed the reinstatement of the respondent with all back benefits.

2. Leave was granted by this Court vide order dated 30.9.2019 to examine as to whether in the circumstances, penalty of compulsory retirement could not be imposed upon the respondent.

3. The learned Deputy Prosecutor General NAB contends that during 7 years of service with the appellant, the respondent remained absent for a total period of 1627 days and in this respect various warning letters were issued to him but he did not improve his behaviour rather once again on 23.11.2009 absented himself which absence continued for 66 days. Show cause notice in the meanwhile was accordingly issued on 18.12.2009. It was responded by the respondent on 29.12.2009 requesting the adjustment of his casual leave against his absence. However, the response submitted by the respondent did not find favour with the competent authority, consequently, vide order dated 12.3.2010 the competent authority while imposing major penalty directed the compulsory retirement of the respondent. So far as the conversion of the un-authorized absence from duty as extraordinary leave, it was submitted that this was only for the purpose of settlement of respondent's dues. In the circumstances, it was submitted that the impugned judgment lacks legal sanctity and could not be sustained.

4. On the other hand, learned counsel for the respondent contended that rule 9(3) of the Revised Leave Rules, 1980 empowers the competent authority to grant extraordinary leave retrospectively in lieu of absence from leave and since the competent authority has exercised such discretion by treating the respondent's un-authorized absence of 66 days as extraordinary leave, therefore, there was no occasion to impose major penalty of compulsory retirement. Counsel, in support of his contention, placed reliance on the judgments of this Court in the case titled Lahore Development Authority vs. Muhammad Nadeem Kachloo (2006 SCMR 434),

Director General Intelligence Bureau vs. Muhammad Javed (2012 SCMR 165) and Muhammad Sharif Abbasi vs. Member, Water, WAPDA Lahore (2013 SCMR 903).

5. We have heard the contentions of learned counsel for both the parties and have perused the record as well as the case law cited at bar.

6. It appears from the record that the respondent not only absented himself from duty but during his absence, he received a show cause notice, responded it and still continued with his absence. The show cause notice seeking explanation of the respondent for his un-authorized absence was issued on 18.12.2009 containing the following charge:-

*"You are absent from duty since 23<sup>rd</sup> November, 2009 without any intimation/prior approval of your office incharge as reported by Ops Division. You were served an explanation on 1<sup>st</sup> December, 2009 with the direction to explain your position within three days followed by 2 x reminders dated 10<sup>th</sup> and 14<sup>th</sup> December, 2009, but you did not reply so far. You were also directed to report for duty immediately, but you are still absent from duty".*  
*Therefore, you Mr. Muhammad Shafique, UDC, NAB (HQ), Islamabad are called upon to show cause within period of 10 (Ten days) from the date of receipt of this notice as to why one of the penalties as defined in para 11.03(1) of NAB's TCS should not be imposed upon you on account of misconduct".*

7. The respondent on 29.12.2009, almost within the prescribed period, responded to the show cause notice, the relevant portion of the said response, which is very relevant to resolve the controversy, is reproduced as follows:-

*"In the mean time I had been suffering from severe back-ach and getting some formal treatment but in vain and the pain was increasing day by day. It is worth of mention here that I had been attending the office during those days. So I decided to be treated from some specialist and I did so. In the result of detailed check up by the doctor I was advised complete bed-rest (Doctor's advice will be submitted in couple of days) and because of that I submitted casual leave applications one after another, w.e.f. 1<sup>st</sup> December 2009 onward. It is humbly requested to treat my absent days as leave. I shall be highly obliged".*

8. The response submitted by the respondent did not find favour with the competent authority which vide office order dated 12.3.2010

directed the respondent's compulsory retirement by imposing one of the major penalties. Since this office order also directed the treatment of respondent's un-authorized absence as extraordinary leave without pay and the entire controversy, as projected before us, revolves around the treatment of respondent's such un-authorized absence from duty as extraordinary leave, therefore, it would be proper to reproduce the office order dated 12.3.2010 imposing major penalty of compulsory retirement which reads as under:-

*"In pursuance of Show Cause Notice issued vide this Bureau's letter of even number dated 18<sup>th</sup> December, 2009 the competent authority i.e. Director General HR & Fin has imposed a major penalty i.e. 'compulsory retirement from service' upon Mr. Muhammad Shafique, UDC, NAB, Islamabad under section 11.03(1)(b)(ii) of NAB's TCS with immediate effect.  
The un-authorized absence from duty for a period of 66 days from 23<sup>rd</sup> November, 2009 to 27<sup>th</sup> January, 2010 is hereby treated as EOL (without pay)."*

9. Perusal of this office order would reflect that the competent authority in the first paragraph of office order has expressed its mind explicitly on the unauthorized absence of the respondent by imposing the major penalty of compulsory retirement from service with immediate effect. So far as the second portion of the office order is concerned, since the penalty imposed by the competent authority was of compulsory retirement which follows the payment of salaries and other dues till the date of imposing such penalty, therefore, in our opinion, it was necessary to give finding as to how such absence is to be treated, therefore, to say that since the un-authorized absence of the respondent was treated as extraordinary leave in term of rule 9(3) of the Revised Leave Rules, 1980 does not appeal to our mind. If this would have been the case then the first paragraph of the office order would be redundant, on the contrary it categorically provides for the consequences of the un-authorized absence.

10. No doubt sub-Rule 3 of Rule 9 of "The Revised Leave Rules, 1980" empowers the authorized officer to treat the un-authorized absence

of an employee as extraordinary leave without pay but such treatment is not to be automatically allowed in every case. In our opinion, such powers are to be exercised in very genuine cases where the authorized officer finds that imposing of major penalty on account of unauthorized absence of an employee would be too harsh or is not warranted under the circumstances. However, where the authorized officer after due application of mind upon examining/adjudging the misconduct has imposed one of the major penalties and thereafter keeping in mind that the gap between the unauthorized absence of the employee and the imposition of major penalty is to be provided with some kind of treatment provides for accordingly, then such treatment may it not be necessary would undo the major penalty.

11. So far as the case law relied upon by the learned counsel for the respondent is concerned, in the cases of Lahore Development Authority vs. Muhammad Nadeem Kachloo and Director General Intelligence Bureau vs. Muhammad Javed (*supra*), the competent authority after awarding major penalty of dismissal from service had directed the petitioner's un-authorized absence as leave without pay. The cases can be differentiated as after imposing the penalty of dismissal from service, an employee may not be found entitled to any dues, therefore, there could hardly be any reason to provide for the treatment of their un-authorized absence as leave without pay. Beside in our view this was not a good interpretation of the office order imposing major penalty for the simple reason that the subsequent portion of the office order whereby the treatment of the un-authorized leave was provided as extraordinary leave without pay, at the most could be superfluous and redundant but could not be treated to nullify the major penalty which of course is imposed after adjudging the conduct of an employee. In case where the competent authority wanted to condone the absence of an employee by directing its treatment as one kind of leave, then the competent authority would have shown its intention by providing reasons for condoning such absence or at least would not have in the same

breath imposed major penalty of dismissal or compulsory retirement. The benefit of such naïve drafting cannot be given to an employee who otherwise by his conduct deserved one of the major penalties. Additionally, it is not disputed that the conversion of unauthorized absence, as EOL without pay is not a penalty/punishment so that one can say that such treat cannot co-exist with the major penalty/minor penalties. It is very obvious that if a man has absented himself from work without the permission of his employer, he of course is not entitled as of a right for payment of salary for such period.

12. So far as the case of Muhammad Sharif Abbasi vs. Member, Water, WAPDA Lahore (*supra*) is concerned, in that case on account of unauthorized absence, after awarding major penalty of compulsory retirement the un-authorized absence was treated as EOL without pay. However, in the said case the Court's opinion was mainly swayed on account of the fact that the petitioner in that case was an employee of the WAPDA and admittedly was hospitalized in WAPDA's own hospital, therefore, the major penalty of compulsory retirement was not found sustainable.

13. These are the reasons of our short order of even date which was in the following terms:-

*"We have heard the learned counsel for the parties and have also gone through the record of the case. For reasons to be recorded, this appeal is allowed and the impugned judgment passed by the High Court dated 18.7.2017 is set aside resulting in dismissing of Writ Petition No. 3793/2016, filed by the respondent against the petitioner".*

Chief Justice

Judge

Islamabad, the  
6<sup>th</sup> January, 2020

A. Rehman

Not Approved for Reporting.

Judge