

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Justice Shahid Waheed
Justice Aqeel Ahmed Abbasi
Justice Salahuddin Panhwar



Civil Petition No.253-P/2023

(Against the judgment dated 28.02.2023 passed by the Peshawar High Court, Mingora Bench in W.P. No.665-M/2022)

Govt. of Khyber Pakhtunkhwa through Secretary Home, Peshawar and others

...Petitioner(s)

Versus

Attiq Ullah Khan

...Respondent(s)

For Petitioner(s): Mr. Zahid Yousaf Qureshi, AOR for AG KPK
a/w Mr. Shakirullah S.O (Home) KPK
a/w Mr. Muslim Shah, DSP

Amicus Curiae: Syed Ghulam Shabir Shah, ASC

For Respondent(s): N.R.

Assisted by: Ms. Zainab Bashir, Judicial Law Clerk,
Supreme Court of Pakistan.

Date of Hearing: 09.10.2025.

JUDGMENT

AQEEL AHMED ABBASI, J.- Through instant petition for leave to appeal the petitioners have assailed the judgment dated 28.02.2023 passed by the Peshawar High Court, Mingora Bench, in Writ Petition No. 665-M/2022.

2. Briefly, the facts, as stated in the impugned judgment, passed by the Peshawar High Court, Mingora Bench are that the respondent namely Attiq Ullah Khan was appointed as Special Police Force (hereinafter referred to as “**S.P.O**”) in the police Department, District Buner vide appointment order dated 01.09.2009 and after performing his duty for more-than a decade he was terminated from service vide order dated 08.05.2019 on the ground that since the respondent has been convicted to civil prison for a period of one year in pursuance to execution proceedings and as such he was removed from service vide the aforesaid order. The said order was challenged by the respondent through Writ Petition No. 30-M/2021 which came-up before the Peshawar High Court

for hearing on 24.11.2021 and the same was allowed/disposed of in the following terms: -

"We, in the circumstances, set aside all the orders impugned in the writ petitions mentioned above and direct that all the respective petitioners shall be restored on the same terms and conditions on which they had been serving prior to their termination. The respective competent authorities may if so desire, conduct fresh inquiries against the petitioners wherein they shall also be confronted with the allegations levelled against them and should also be provided opportunity of hearing. Thereafter the competent authorities would be at liberty to pass any appropriate orders. Since the petitioners have not served the department during the intervening period, therefore they are not granted any back benefits. All these constitutional petitions are accordingly disposed of."

In compliance of the aforesaid order of the Peshawar High Court, the respondent was re-instated in service, however, an inquiry was initiated against him. During the course of aforesaid inquiry a Show Cause Notice, Statement of allegations and charge-sheet was issued to the respondent, which were duly replied by him. However, the explanation submitted by the respondent was found un-satisfactory and he was again terminated from service by Petitioner No.4 on the recommendations of the inquiry Committee vide order dated 05.04.2022, which order was challenged by the respondent before the Peshawar High Court, Mingora Bench in Writ Petition No. 665-M/2022. The Division Bench of the Peshawar High Court, Mingora Bench allowed the writ petition, set aside the termination order of the respondent dated 05.04.2022 and re-instated him in service. The petitioners feeling aggrieved by such decision have filed instant civil petition for leave to appeal.

3. When the matter was taken-up for hearing on 19.09.2025, this Court passed an order, while framing a question of law in the following terms: -

"The question before us is whether civil imprisonment as a consequence of the execution of a civil liability amounts to "conviction" and therefore affects the terms and conditions of service of the petitioner (sic). Let the learned Additional Advocate General Khyber Pakhtunkhwa refer to case law on the subject. In order to seek further assistance, we appoint Syed Ghulam Shabir Shah, ASC (Contact No. 0304-2220222) as an amicus curiae to assist the Court in this regard. Office shall dispatch a copy of this petition to the amicus curiae who will assist the court on the next date of hearing. To come up on 09.10.2025"

This question of public importance requires careful consideration, and therefore, we hereby grant leave. The learned AOR representing the petitioners and the learned Amicus Curiae is prepared to argue the matter based on the existing record. Given the circumstances, we proceed further by converting this petition into an appeal.

4. Pursuant to aforesaid order, **Mr. Ghulam Shabir Shah, ASC** (hereinafter referred to as "**Amicus**") in the instant case, shown appearance and filed a detailed brief through C.M.A No. 10345/2025 containing the relevant law(s), rule (s) and the case law(s) on the question of law as formulated by this Court vide aforementioned order, for the opinion of the learned Amicus, copy of which was already supplied to Additional Advocate General, Khyber Pakhtunkhwa (hereinafter referred to as "**AAG, KPK**") representing the petitioners. The learned Amicus after having briefly referred to chronology of the events in the instant matter, drew our attention to the definition of term "misconduct" as defined in section 2 (l) of the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011 as well as in the Khyber Pakhtunkhwa Police Rules, 1975 (hereinafter referred to as "**Police Rules, 1975**") in Section 2 (3) and has submitted that *prima facie*, respondent was never confronted with the allegation of misconduct covered under the aforesaid definitions nor proceeded against pursuant to regular inquiry, while imposing the major penalty of removal from service. According to learned Amicus, the only allegation against the respondent was that since, respondent was convicted for one-year to civil imprisonment therefore, he was found guilty of misconduct. However, according to learned Amicus, no reason whatsoever has been given to treat detention in a civil prison for one year, arising from execution proceedings in a civil matter, as misconduct, nor it has been declared that civil imprisonment is equivalent to a conviction in a criminal case.

5. It will be advantageous to reproduce hereinunder the conclusion as drawn in the written brief by the learned Amicus: -

"28. It is respectfully submitted that detention in civil prison under the code of civil procedure is a coercive measure for the enforcement of a civil decree, not a penal sentence arising from a criminal conviction. The statutory framework of the CPC, read with Prisons Act, 1894 and the Pakistan Prison Rules, 1978, maintains a categorical distinction between civil and criminal custody. The term "conviction" is reserved exclusively for those under a criminal sentence. Accordingly, Rule 8 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, and Khyber Pakhtunkhwa Police Rules, 1975, which enables direct dismissal upon conviction is not attracted to a case of civil imprisonment arising from execution proceedings.

29. Nevertheless, in appropriate cases, the underlying conduct may fall within the general head of "misconduct" under Rule 2(l) of the 2011 Rules, and Rule of the Khyber Pakhtunkhwa Police Rules, 1975, particularly where such conduct constitutes a violation of the Khyber Pakhtunkhwa Government Servant (Conduct) Rules, or behavior unbecoming of a Government servant. However, any such disciplinary action must be taken only after a proper inquiry, applying the standard embodied in the Rule 19 of the Conduct Rules and guided by proportionality. In essence, a default in civil debt may amount to misconduct only where it is proved to be willful,

habitual, or reflective of disregard for service discipline or public confidence.

30. For these reasons, it is submitted that *civil imprisonment for non-payment of a decree cannot be equated with "conviction" for purpose of service law*, and any departmental action, if warranted, must proceed under the ordinary disciplinary framework in accordance with due process and the principles of fairness, proportionality, and reasoned determination."

6. Learned AOR representing the Government of Khyber Pakhtunkhwa through Secretary Home Peshawar, present alongwith Mr. Shakirullah S.O (Home) KPK and Mr. Muslim Shah, DSP has submitted that the respondent was found guilty of misconduct on account of being convicted to civil prison for a period of 01 year on his failure to obey the order of the Court in execution proceedings in respect of an amount of Rs. 7,50,000 /- which was to be paid by the respondent. Therefore, the Division Bench of Peshawar High Court was not justified to allow the petition filed by the respondent. Learned AOR has further submitted that the respondent belongs to disciplined force of police, therefore, was under legal obligation to obey the Court order, however, he failed to comply with the Courts order, therefore, was rightly sentenced to civil prison for a period of 01 year and also liable to be dismissed from service under the Police Rules, 1975. Per learned AOR, the inquiry was conducted and opportunity of being heard was also provided to the respondent, however, he failed to submit any reasonable explanation or evidence of his innocence, therefore, the Division Bench of Peshawar High Court, Mingora Bench, Swat was not justified to hold that civil imprisonment does not amount to conviction. It has been further submitted that, the lending and borrowing of money by a civil servant during his service, amounts to misconduct under the Khyber Pakhtunkhwa Government Servant (Conduct) Rules, 1987. It has been prayed that the impugned judgment may be set aside.

7. We have heard Syed Ghulam Shabbir Shah, learned Amicus in the instant case and Mr. Zahid Yousaf Qureshi, learned AOR representing the petitioners and have also gone through the record and the relevant rules with their assistance. The precise issue involved in the instant case revolves around determination of an issue farmed by this Court on 19.09.2025 to the effect that whether civil imprisonment as a consequence of the execution of a civil liability amounts to "conviction" and, therefore, affects the terms and conditions of the service of the respondent. Since the facts are not disputed between the parties, therefore, we need not repeat the same and would address the

aforementioned question of law. Record of the case reveals that respondent was proceeded against as a consequence of execution of a civil liability wherein on his failure to obey the order of the Civil Court in execution proceedings in respect of an amount of Rs.7,50,000 /-, he was sent to civil prison for a period of 01 year. It has, however, come on record that on account of compromise between the parties, the respondent was released within a period of 3 months, thereafter, the department proceeded against him while issuing charge-sheet dated 21.02.2022 and statement of allegations dated 25.02.2025 issued by District Police Officer (DPO), Buner available at pages 55 and 56 of the paper book respectively in following terms:

No.11 /Enquiry,
Dated 21-02-2022

CHARGE SHEET

"I, **Abdur Rashid Khan (PSP)**, District Police Officer, Buner as competent authority, hereby charge you **SPO Atiqullah** while posted to **Police Lines Daggar** as follow:-

✓ That you was enlisted as contract employee on 01.09.2009 and the Court of Civil Judge 1st Daggar convicted you in a Civil Case for 1 year imprisonment.

✓ That on violation of contract and conviction in person, you were removed from service vide OB No. 76 dated 8/5/2019.

✓ That you has been re-instated in service on your previous status as an outcome, of the Honorable Peshawar High Court Mingora Bench's judgment dated 24.11.2021 passed vide WP # 30-M/2020 vide OB # 23 dated 11.02.2022 for the purpose of proper inquiry against you.

1. By reasons of the above, you appear to be guilty of misconduct and have rendered yourself liable to proceed against you departmentally.

2. You are; therefore, require to submit your written reply within 07 days of the receipt of this Charge Sheet to the Enquiry Office.

3. Your written reply, if any, should reach the Enquiry Committee within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.

4. Intimate as to whether you desire to be heard in person or not?

5. A statement of allegations is enclosed"

Sd/-
Abdullah Khan (PSP)
District Police Officer,
Buner

DISCIPLINARY ACTION

I, **Abdur Rashid (PSP)** District Police Officer, Buner as competent authority, is of the opinion that **SPO Atiqullah** while posted to **Police Lines** have rendered himself liable to be proceeded against departmentally and committed the following acts/omission.

STATEMENT OF ALLEGATIONS

✓ That you was enlisted as contract employee on 01.09.2009 and the Court of Civil Judge 1st Daggar convicted you in a Civil Case for 1 year imprisonment.

✓ That on violation of contract and conviction in person, you were removed from service vide OB No. 76 dated 8/5/2019.

✓ That you has been re-instated in service on your pervious status as an outcome of the Honorable Peshawar High Court Mingora Bench's judgment dated 24.11.2021 passed vide WP # 30-M/2020 vide OB # 23 dated 11.02.2022 for the purpose of proper inquiry against you.

1. For the purpose of scrutinizing the conduct of said officer with reference to the above allegations **Mr. Muhammad Shah Khan DSP HQ:** is appointed as Enquiry Officer.

2. The Enquiry Officer shall conduct proceedings accordingly and shall provide reasonable opportunity of defense and hearing to the accused officer, record its findings and make within ten (10) days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused officer.

3. The accused officer shall join the proceeding on the date, time and place fixed by the Enquiry Officer."

Sd/-
Abdullah Khan (PSP)
District Police Officer,
Buner

OFFICE OF THE DISTRICT POLICE OFFICER, BUNER
No. 640 /Enquiry, Dated Daggar the 25/02/2022

8. Thereafter, an inquiry was conducted in the light of above charge sheet and statement of allegations and said report was furnished on 10.03.2022 after recording the statement of respondent which reveals that pursuant to a sales transaction of a car amounting to Rs. 9,50,000/- the respondent paid an amount of Rs. 2,00,000/-, however, the remaining amount of Rs. 7,50,000/- could not be paid within the stipulated period, therefore, the owner of the vehicle filed a suit for recovery against the respondent which was decreed according to which the respondent was required to make the payment of aforesaid amount. However, the said amount could not be paid as per order of the Court, therefore, the respondent was sent to civil prison to ensure the recovery of the decretal amount. It has further transpired that in view of settlement between the parties and payment of the decretal amount the respondent was released within 03 months. It is pertinent to note that no other departmental proceedings were pending against the respondent, whereas, the respondent was issued the charge-sheet and statement of allegations while treating the period of 03 months when the respondent remained in the civil prison as period of conviction. It is equally important to observe that the department while proceeding against the respondent failed to make mention of the law or the rules under which the departmental proceedings were initiated against the respondent, however, on a query of this Court, the learned AOR, representing the petitioners, has submitted that there is no mention of any law or the rules neither in the charge-sheet, statement of allegation, nor in show cause notice and in the order of the Competent Authority, however, the respondent has been proceeded in terms of Police

Rules, 1975. We are of the opinion that this fact alone is sufficient to declare the entire proceedings initiated by the department against the respondent as nullity in the eyes of law for the reason that the respondent was not confronted with the relevant law and the rule according to which respondent was held liable to be proceeded and dismissed from service. Reference in this regard can be placed on this Court's judgment in the case of Sanaullah Sani vs Secretary Education Schools and others (2024 SCMR 80). However, even if it is presumed that respondent was confronted with the allegations against him, it has been noted that except sentencing the respondent to civil prison, there is no other allegation of misconduct against him.

9. In order to verify as to whether merely "sending" the respondent to civil prison amounts to conviction, and falls within the definition of misconduct, we will examine the definition of the term "misconduct" as defined in the Khyber Pakhtunkhwa Police Rules, 1975 and Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 which reads as follows:

The Khyber Pakhtunkhwa Police Rules, 1975

"Rule 2 (iii) 'Misconduct' means conduct prejudicial to good order of discipline in the Police Force, or contrary to Government Servants (Conduct) Rules or unbecoming of a Police Officer and a gentleman, any commission or omission which violates any of the provisions of law and rules regulating the function and duty of Police Officer to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government Officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Police Officer."

Khyber Pakhtunkhwa Government Servants Efficiency & Discipline Rules, 2011

"Rule 2(1) (l) "misconduct" includes-

(i) conduct prejudicial to good order or service discipline; or

(ii) conduct contrary to the Khyber Pakhtunkhwa Province Government Servants (Conduct) Rules, 1987, for the time being in force; or

(iii) conduct unbecoming of Government servant and a gentleman; or

(iv) involvement or participation for gains, directly or indirectly, in industry, trade, or speculative transactions by abuse or misuse of official position to gain undue advantage or assumption of such financial or other obligations in relation to private institutions or persons as may compromise the performance of official duties or functions; or

(v) any act to bring or attempt to bring outside influence, directly or indirectly, to bear on the Governor, the Chief Minister, a Minister or any other Government officer in respect of any matter relating to the appointment, promotion, transfer or other conditions of service; or

(vi) making appointment or having been appointed or promoted on extraneous grounds in violation of any law or rules; or

(vii) conviction for a moral offence by a court of law"

From bare perusal of the definition of misconduct as defined in the aforesaid rules it has been noted that in case a civil servant has been sent to civil prison on his failure to deposit the decretal amount pursuant to a judgment or decree in a civil suit, does not fall within the definition of misconduct, for the reason that civil servant in the instant matter has not been charged for any moral offence, nor has been convicted by Court of law for a criminal offence. Reference in this regard can be made to recent order dated 16.05.2025 passed by this Court in the case of Muhammad Arshad vs Deputy District Food, Multan etc. in CPLA No.1919-L/2016 wherein, while defining the scope of disciplinary proceedings it has been held as under: -

"...This leads us to conclude that the law envisages that every step undertaken in disciplinary proceedings must align with the foundational principles of natural justice and procedural fairness, and any deviation from these principles risks undermining the validity of the final order, thereby calling into question the integrity and legitimacy of the entire disciplinary process."

10. Having examined the definition of the term "misconduct" we may now delineate the term "conviction" to answer the proposed question of law in the instant matter. The term "conviction" has not been defined under any statutes including the Code of Criminal Procedure, 1898 (CrPC), Pakistan Penal Code, 1860 (PPC), Code of Civil Procedure, 1908 (CPC), Khyber Pakhtunkhwa Police Rules, 1975 or any Service Laws governing disciplinary action of civil servants in Pakistan. It originates in criminal law and refers to formal finding of guilt after criminal trial. It is defined in various dictionaries as under:

Black's Law Dictionary (12th Edition)

Conviction. 1. The act or process of judicially finding someone guilty of a crime; the state of having been proved guilty.

2. The judgment (as by a jury verdict) that a person is guilty of a crime.

Merriam-Webster Dictionary (2023 Edition)

Conviction: the act or process of finding a person guilty of a crime especially in a court of law.

Concise Oxford English Dictionary (12th Edition)

Conviction: an instance of formally being found guilty of a criminal offence in a court of law.

From perusal of definition of the term "conviction" as defined in the aforementioned dictionaries it has emerged that conviction is the result of a criminal trial in respect of a criminal offence and does not relate to civil proceedings. Therefore, even if a civil servant has been sent to civil

prison pursuant to execution proceedings in a civil suit it will not amount to his conviction.

11. It will not be out of place to refer to the terms criminal prisoner, convicted criminal prisoner and civil prisoner as defined in the Prisons Act, 1894 as per Rule (ii), (iii) and (iv) which read as follows:

(ii) "**criminal prisoner**" means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial;

(iii) "**convicted criminal prisoner**" means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1882, or under the Prisoners Act, 1900;

(iv) "**civil prisoner**" means any prisoner who is not a criminal prisoner;

From perusal of hereinabove definitions, it has emerged that criminal prisoners and convicted criminal prisoners are sent to jail pursuant to order of any Court or authority exercising criminal jurisdiction in respect of a criminal offence, whereas, a civil prisoner is not sent to prison in respect of criminal offence, rather committed to civil prison in terms of Section 51, CPC. The primary objective of Arrest and Detention under Section 51(c), CPC, is to recover the decretal amount and not to punish the judgment-debtor. It is a settled general principle that civil imprisonment/detention is not a punitive measure but a coercive and remedial tool to enforce order(s) and decree(s) of the Court and can be purged upon compliance of the Courts order. Reference in this regard can be placed on the cases of Cecil Hicks, District Attorney for County of Orange, California, Acting on Behalf of Alta Sue Feiock v. Phillip William Feiock. (485 U.S. 624), United States vs. United Mine Workers of America (330 U.S. 258) and Salvatore Shillitani vs. United States of America (384 U.S. 364, 1966).

12. To sum up hereinabove discussion, we feel no hesitation to decide the question of law as formulated in the instant matter by holding that **civil imprisonment as a consequence of execution of a civil liability does not amount to conviction, and, therefore, does not affect the terms and conditions of service of the civil servant**. The impugned judgment dated 28.02.2023 passed by the Division Bench of Peshawar High Court, Peshawar, Mingora Bench in W.P. No.665-M/2022 is unexceptionable. Accordingly, the instant petition for leave to appeal was converted into appeal and dismissed through verbal order announced in open Court while imposing cost of Rs. 2,00,000/- to be deducted from

salary of the Petitioner No.4 i.e., District Police Officer, Daggar District Buner, for illegally removing the respondent from service and dragging him in frivolous litigation up to this Court which not only resulted in waste of public expenditure but also in consuming the precious time of the Court at the expense of other litigants. However, while writing the judgment in detail, by taking a lenient view, we reduce the amount of cost to Rs. 50,000/- to be deducted from salary of the Petitioner No.4. This civil appeal stands dismissed in the aforesaid terms.

Before parting with the judgment, we may appreciate the able assistance provided by Amicus on the subject legal issue on short notice.

Judge

Judge

Judge

Islamabad:

09.10.2025

Approved for Reporting

Tameer Ahmed