

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi  
Mr. Justice Irfan Saadat Khan

**Civil Petitions No.1007 and 1112-L/2022**

Against the judgment dated 14.1.2022 passed by  
Punjab Service Tribunal, Lahore in Appeal  
No.4490/2014

Pervaiz Hussain Shah  
Secretary to Government of the Punjab Food  
Department, Lahore, etc.

(In CP 1007/12)  
(in CP 1112-L/22)  
...Petitioner(s)

**VERSUS**

Secretary to Government of Punjab Food  
Department Lahore and another  
Pervaiz Hussain Shah

(In CP 1007/12)  
(in CP 1112-L/22)  
...Respondent(s)

For the Petitioner(s):

Mr. Muhammad Aftab Alam Rana, ASC  
Syed Rifaqat Hussain Shah, AOR

In person (in CP1112-L 2022)

For the Respondent(s):

Barrister Mumtaz Ali, Addl. AG  
Abdul Majid, DFC  
M. Rizwan, Assistant  
M. Nawaz, Assistant

In Person (in CP1112-L 2022)

Date of Hearing:

14.11.2023

**JUDGMENT**

**Irfan Saadat Khan, J.-** C.P. No. 1007/2022: Pervaiz Hussain Shah, (“**Petitioner**”), and Secretary to Government of Punjab Food Department, Lahore (“**Respondent**”), seek Leave to Appeal against the judgement of the Punjab Service Tribunal, Lahore, (“**Tribunal**”) dated 14.01.2022, (“**Impugned Judgement**”), whereby the Tribunal had partially allowed the Appeal of the Petitioner, in the following terms:

“Furthermore, it is not proved/alleged against the appellant that to which extent his conduct has caused the financial loss to the Government Exchequer, hence, he is only guilty of negligence. Therefore, appeal in hand is partially allowed and the impugned orders are modified in that punishment of “Withholding of 100% Pension” is converted in “Withholding of 50% Pension”.”



2. Briefly, the facts necessary to decide the matter before us are that departmental proceedings were initiated against the Petitioner along with 4 others under the provisions of the Punjab Employees Efficiency, Discipline, and Accountability Act, 2006 ("**PEEDA**") on the charges of inefficiency, misconduct, and corruption. An inquiry into the matter was conducted by a 3-member Inquiry Committee, and vide its Order, dated 10.06.2014, the Petitioner was given the punishment of having the entirety of his pension withheld, as per Section 4(1)(c)(i) of PEEDA.<sup>1</sup> Aggrieved by the Order, the Petitioner filed a departmental Appeal before Chief Secretary, Punjab. The said Appeal was not decided within the stipulated period; therefore, the Petitioner approached the Tribunal by filing a service Appeal.

3. The aforementioned service Appeal was dismissed by the Tribunal, via its consolidated judgement dated 21.05.2019, along with those of 4 others. The judgment passed by the Tribunal was then challenged before this Court through Civil Appeals Nos. 2125 to 2129 of 2019. This Court, vide Order dated 12.02.2021, dismissed Civil Appeals Nos. 2125 to 2127 of 2019; whereas Civil Appeal No. 2128 of 2019 stood abated, due to the death of the Appellant in the said Appeal. As for Civil Appeal No. 2129 of 2019, which was that of the present Petitioner, the matter was remanded to the Tribunal for deciding it afresh in accordance with the law.

4. It has now transpired that the Tribunal partially allowed the Appeal that was remanded to it by this Court, in the aforementioned terms.<sup>2</sup> However, the Petitioner is dissatisfied with the fate of the said Appeal; hence, the present Civil Petition.

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<sup>1</sup> 4. Penalties – (1) The competent authority may, notwithstanding anything contained in any law or the terms and conditions of service of the accused, by an order in writing, impose one or more of the following penalties, namely:-

(c) Penalties after retirement-

(i) withholding of pension or any part thereof

<sup>2</sup> Paragraph 1 of this Judgment.



5. Mr. Muhammad Iqbal Aftab Alam Rana, ASC, appeared on behalf of the Petitioner and stated that since the Tribunal concluded that the allegation upon the Petitioner of embezzlement and benefiting of said embezzlement was not proved, and that the Petitioner was held guilty of negligence only, therefore, withholding 50% of the Petitioner's pension merely on the basis of negligence was quite harsh and not in accordance with the law. Hence, the learned Counsel has prayed for the entirety of the Petitioner's pension to be restored by reiterating that withholding 50% of the Petitioner's pension in view of his service background and unblemished career was unjustified.

6. On the other hand, Additional Advocate General Punjab ("**Additional AGP**") states that since the Petitioner was the District Food Controller ("**DFC**") of Rahimyar Khan, and embezzlement of wheat stock, bardana, and other stock articles happened under his watch and supervision from PR Centre Rahimyar Khan, therefore, some responsibility had to be attributed to him for the misappropriation that took place during scheme year 2011-2012. The Additional AGP further stated that even if one were to assume, for argument's sake, that the Petitioner was not on site when the said misappropriation took place, he could not be entirely absolved from the said misappropriation since it was the Petitioner's job as DFC to keep a watchful eye over the stock. Hence, the Additional AGP was of the view that the Petition filed by the Petitioner is liable to be dismissed whereas that filed by the department may be allowed and the Impugned Judgement be modified to hold that the entirety of the Petitioner's pension be withheld instead of 50%.

7. We have heard the learned Counsel for both the parties and have perused the record with their assistance.

8. The expression "negligence" in fact connotes a dearth of attentiveness and alertness or disdain for duty. The genus of accountability and responsibility differentiates and augments an act of



gross negligence to a high intensity rather than an act of ordinary negligence. To establish gross negligence, the act or omission must be of a worsened genre whereas ordinary negligence amounts to an act of inadvertence or failure of taking on the watchfulness and cautiousness which by and large a sensible and mindful person would bring into play under the peculiar set of circumstances.<sup>3</sup> Furthermore, Lord President Clyde in *Hunter v Hanley*<sup>4</sup> vis-à-vis negligence, observed: “in relation to professional negligence I regard the phrase ‘gross negligence’ only as indicating so marked a departure from the normal standard of conduct of a professional man as to infer a lack of that ordinary care which a man of ordinary skill would display.”<sup>5</sup>

9. In view of the facts before us, we find ourselves in agreement with the Tribunal’s observation that the physical absence of the Petitioner at the time of the embezzlement of wheat stock, bardana, and other stock articles, was justified as given his position, as the DFC, the Petitioner had to visit other districts, on the directions of departmental higher-ups and could not be available at all the sites under his supervision, at the same time. However, being in a supervisory position comes with the added burden of keeping track of all things that fall under the supervisor’s supervision, which in the instant case would be keeping track of wheat stock, bardana, and other stock articles. Therefore, the Petitioner’s absence from the site of embezzlement, albeit due to the nature of his job, cannot be used as a handy excuse to absolve himself of the loss caused to the public exchequer. Nevertheless, we are of the view, that the Petitioner’s negligence is not ‘gross negligence’ as outlined above, given that the Petitioner’s conduct was not ‘so marked a departure

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<sup>3</sup>The Postmaster General Sindh Province, Karachi v. Syed Farhan (2022 SCMR 1154).

<sup>4</sup>Hunter v. Hanley (1955 S.L.T 213).

<sup>5</sup>Stroud’s Judicial Dictionary of Words and Phrases, 10th Edition, Volume 2, (pp. 816).



from the normal standard of conduct of a professional man as to infer a lack of that ordinary care which a man of ordinary skill would display.’<sup>6</sup>

10. This Court in *Sabir Iqbal* has held that an administrative measure must not be more drastic than necessary or to sum up in a phrase - not taking a sledgehammer to crack a nut.<sup>7</sup> However, the 3-member Inquiry Committee, vide its Order, dated 10.06.2014, after having considered all the facts before it and listening to the contentions of the accused, found that allegations against the Petitioner had been proved beyond any shadow of doubt and imposed the major penalty of withholding 100% of his pension.<sup>8</sup> In our view, the Inquiry Committee’s decision was not only disproportionate but also unreasonable; thus, seeing it fit to use a sledgehammer to crack a nut. It is now a settled proposition of law that a penalty should be proportionate to the guilt. Since the current constitutional era has been termed as the ‘age of proportionality’,<sup>9</sup> the modern notion of proportionality requires that the punishment ought to reflect the degree of moral culpability associated with the offence for which it is imposed.<sup>10</sup>

11. Moreover, the Inquiry Committee’s decision fails the tests of proportionality, suitability, and necessity as laid down in *Sabir Iqbal*:<sup>11</sup>

“According to De Smith’s Judicial Review, the standards of proportionality and unreasonableness are inextricably intertwined. Unreasonableness contains two elements of proportionality when it requires the weight of relevant considerations to be fairly balanced and when it forbids unduly oppressive decisions. Under the first element, proportionality is a test requiring the decision-maker to maintain a fair balance. Under this category the courts evaluate whether manifestly disproportionate weight has been attached to one or other considerations relevant to the decision. The second element is that the courts consider whether there has been a disproportionate interference with the claimants rights or interests. A more sophisticated version of proportionality provides for a structured test. Here the courts ask first whether the measure, which is being challenged, is suitable to attaining the identified ends (the test of suitability). Suitability here includes the

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<sup>6</sup> Ibid.

<sup>7</sup> *Sabir Iqbal v. Cantonment Board, Peshawar* (PLD 2019 SC 189).

<sup>8</sup> The Petitioner retired from service on 20.06.2013.

<sup>9</sup> Kremnitzer, M., Steiner, T., Lang, A. (2022). *Proportionality in action: Comparative and Empirical Perspectives on the Judicial Practice* (pp. 1). Cambridge University Press.

<sup>10</sup> *Divisional Superintendent, Postal Services v. Nadeem Raza* (2023 SCMR 803).

<sup>11</sup> Ibid.



notion of “rational connection” between the means and ends. The next step asks whether the measure is necessary and whether a less restrictive or onerous method could have been adopted (the test of necessity - requiring minimum impairment of the rights or interest in question).”

12. This brings us to the question of withheld pension, as prayed for the Additional AGP and as decided by the Tribunal. Pension is a regular payment made to a person or to a deceased person’s dependants, especially by a government or an employer, in consideration of past services or for disability, poverty, or other charitable reasons.<sup>12</sup> It is to be noted that pension is not a bounty;<sup>13</sup> it should be considered as a recognition of the satisfactory service of the retiring person. Furthermore, vis-à-vis pension in *The Government of N.W.F.P. through the Secretary to the Government of N.W.F.P Communications and Works Departments, Peshawar*<sup>14</sup> it was held:

“it is a right acquired after putting in satisfactory service for the prescribed minimum period.”

We find ourselves in disagreement with the view of the learned Additional AGP that the entirety of the Petitioner’s pension be withheld, and also disagree with the Tribunal’s decision of withholding the Petitioner’s pension at 50% for the entirety of his pension entitlement period. If the case before us were that of ‘gross negligence’ on the part of the Petitioner only then would the learned Additional AGP’s prayer warrant acceptance and the Tribunal’s decision be proportionate. In the decision rendered in *Auditor-General of Pakistan*<sup>15</sup> this Court held:

“The element of bad faith and willfulness may bring an act of negligence within the purview of misconduct but lack of proper care and vigilance may not always be willful to make it a case of grave negligence inviting service punishment. The philosophy of punishment is based on the concept of retribution, which may be either through the method of deterrence or reformation. The purpose of deterrent

<sup>12</sup> Shorter Oxford English Dictionary on Historical Principles, 6<sup>th</sup> Edition, Volume 2 (pp. 2149). Oxford University Press.

<sup>13</sup> The Federation of Pakistan thr. the General Manager/Operations Pakistan Railways v. Shah Mohammad (2021 SCMR 1249).

<sup>14</sup> The Government of N.W.F.P. through the Secretary to the Government of N.W.F.P. Communications and Works Departments, Peshawar v. Mohamad Said Khan (PLD 1973 SC 514).

<sup>15</sup> Auditor-General of Pakistan v. Muhammad Ali (2006 SCMR 63).



punishment is not only to maintain balance with the gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society, whereas the concept of minor punishment in the law is to make an attempt to reform the individual wrong doer. In service matters, the extreme penalty for minor acts depriving a person from right of earning would definitely defeat the reformatory concept of punishment in administration of justice. In view thereof, we would not take any exception to the view of the matter taken by the Tribunal.”

13. Presently, Section 4(1)(c)(i) of PEEDA,<sup>16</sup> provides for:

(i) withholding of pension or any part thereof [for a specific period keeping in view the loss caused to the Government];

(Emphasis Added)

In the aforementioned provision of PEEDA, the following: ‘for a specific period keeping in view the loss caused to the Government’ was inserted by the Punjab Employees Efficiency, Discipline, and Accountability (Amendment) Act, 2017, (“**Amended Act**”).<sup>17</sup> A bare perusal of the Amended Act shows that it was curative in nature, further evidenced by its preamble.<sup>18</sup> A curative act is generally passed to provide some correction or omission made in the existing statute.<sup>19</sup> Furthermore, acts of this character are obviously retroactive, and hence entitled, as general rule, to retrospective operation.<sup>20</sup> In *Rajby Industries*<sup>21</sup> this court held:

“It is well settled that the curative statute is meant for lawmakers to recuperate the prior enactment for rectifying the defect or omission. In order to find out whether any beneficial, remedial or curative legislation has a retrospective effect, the litmus test is to explore whether it is intended to clear up an ambiguity or oversight in the prevailing or standing law and in its pith and substance, it corrects or modifies an existing law or an error that interferes with interpreting or applying the statute. For sure, its scope is clarificatory in nature but if it has no such character or essence, it cannot be deduced to be retroactive merely for the reason that it amounts to beneficial legislation. The retroactive application of curative legislation can be gauged and measured from the plain language and

<sup>16</sup> Amended Act published in the Punjab Gazette (Extraordinary), dated: 08 November 2017, (pp. 3151-3152), s.2.

<sup>17</sup> Ibid.

<sup>18</sup> It is necessary further to amend the Punjab Employees Efficiency, Discipline, and Accountability Act, 2006 (*XII of 2006*) for purposes of specifying the period after which certain punishments shall cease to have effect, for expressly providing that a former employee shall also have a right of appeal; and, for the matters appearing hereinafter.

<sup>19</sup> Understanding Statutes, 4<sup>th</sup> Edition, S.M. Zafar, (pp. 234).

<sup>20</sup> Ibid.

<sup>21</sup> *Rajby Industries Karachi v. Federation of Pakistan* (2023 SCMR 1407).



intention of legislature. It is by and large passed to supply a conspicuous omission or to elucidate misgivings as to the meaning of the previous law.”

The Amended Act’s provision of a timeframe with regards to a major penalty of withholding pension, in our view is intended to clear up the ambiguity, vis-à-vis as to how long can pension be withheld as a penalty, in the pre-amended PEEDA, and thus qualifies the test laid down by this court of being retrospective in nature.

14. Hence, keeping in mind the retrospectivity of the Amended Act and the effect of the Petitioner’s negligence, we convert this Petition into Appeal and partly allow the same, by modifying the Impugned Judgement, in the following terms:

“The Petitioner’s pension be confined to 50% from the period of service ranging 2014 to 2016,<sup>22</sup> only; whereas, pension for the remainder of his service, apart from the aforementioned period of service, will be paid in its entirety, i.e. 100% by the department.”

15. C.P. No. 1112-L/2022: In view of what has been observed and held above, the Civil Petition filed by the department stands dismissed. The parties are left to bear their own costs.

Judge

Judge

Judge

ISLAMABAD  
14<sup>th</sup> Nov., 2023  
Arshed/A.J.K, LC

“Approved for Reporting”

<sup>22</sup> Since the Inquiry Committee’s Order recommending withholding of 100% pension came on 10.06.2014, and the Petitioner had retired from service on 20.06.2013, we find it appropriate to hold that a 2-year penalty is proportionate to the Petitioner’s negligence; therefore, only the pension for a period of 2 years from the said date, i.e. 10.06.2014 to 10.06.2016, should be withheld at 50%.