

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)



Bench-II:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Aqeel Ahmed Abbasi

C.P.L.A. No. 2646/2023

(Against the judgment dated 11.04.2023 passed by the Federal Service Tribunal, Islamabad in Appeal No. 970(R)CS/2019)

Shahbaz Latif

... Petitioner

Versus

DIG Pakistan Railways Headquarters Officer, Lahore etc.

... Respondent(s)

For the Petitioner: Mr. Misbah Gulnar Sharif, ASC.

For the Respondents: Mr Imran Masood, ASC.
(Through V.L. Lahore Registry)
Mian Ghulam Hussain, ASC.

Assisted by: Mr. Umer A. Ranjha, Judicial Law Clerk,
Supreme Court of Pakistan

Date of Hearing: 19.05.2025.

JUDGMENT

Syed Mansoor Ali Shah, J.- The sole question arising for determination in the present case is whether the petitioner, despite having been wrongly appointed due to securing 377 marks in Matriculation against the required threshold of 399 marks, a discrepancy discovered only after he had rendered 15 years of continuous service is liable to refund the salary received during that period, as directed by the impugned judgment.

2. It is trite that public employment secured through misrepresentation or tampered credentials is void ab initio and confers no vested right upon the appointee. Nonetheless, the issue of retrospective salary recovery for services rendered over a significant period engages broader principles of fairness, equity, and administrative accountability. In the present case, the petitioner entered public service in 2003. It was not until 2018, after fifteen years of continuous and uninterrupted service that the department initiated an inquiry into his educational credentials. There is no material on record to show that the petitioner deliberately concealed or suppressed his academic record during this time or resisted

verification. On the contrary, his service was accepted, utilized, and remunerated without demur or objection.

3. In the present circumstances, the doctrine of *quantum meruit* finds clear and compelling application. This equitable principle permits reasonable compensation for services rendered where one party has knowingly accepted and benefited from the work of another, even in the absence of a valid or enforceable contract.¹ For over fifteen years, the petitioner continuously performed duties that fulfilled institutional needs and was compensated accordingly. To retrospectively invalidate such remuneration despite the employer's full knowledge and acceptance of the services rendered would be contrary to the fundamental tenet that no person should unjustly enrich themselves at the expense of another. In this case, it is the employer department that stands to benefit unjustly.

4. The doctrine of *quantum meruit*, literally meaning "as much as he has earned" or "as much as he deserves" is a foundational principle of equity and restitution in both common law and civil law jurisdictions. It enables a party to claim reasonable compensation for services rendered or work performed, even where a contract is void, unenforceable, or otherwise defective. The doctrine rests not merely on contractual notions, but on the broader equitable premise that a person who has received and retained a benefit should not be allowed to do so without paying reasonable compensation, particularly where the services were not intended to be gratuitous.² This creates an implied obligation in law, akin to a quasi-contract, compelling restitution where unjust enrichment would otherwise result.

5. In the context of Pakistani law, the principle finds statutory recognition in Section 70 of the Contract Act, 1872, which provides: "*Where a person lawfully does anything for another person...not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.*" Therefore, even where an employment appointment is found to be irregular, if the employee has continuously and faithfully discharged official functions and the employer has enjoyed the resulting benefit over a significant period, the doctrine of *quantum meruit* furnishes both a moral and legal basis to preclude retrospective recovery of salary. Labor that is not donated but knowingly

¹ Craven-Ellis v. Cannons Ltd (1936) 2 KB 403 and Benedetti v. Sawiris [2013] UKSC 50.

² State of West Bengal v. M/s B.K. Mondal and Sons AIR 1962 SC 779.

accepted must be compensated regardless of technical infirmities in the appointment process.

6. Alongside, the doctrine of *administrative acquiescence* must also be considered. Rooted in principles of equity and fairness, this doctrine is based on the idea that if a person, observing another about to perform an act that might infringe upon their rights, remains silent in circumstances where an objection might have prevented the act, they may later be estopped from objecting.³ Transposed to public law, it implies that prolonged inaction or silence by a public authority, particularly where it had the duty and opportunity to act may amount to institutional acquiescence.⁴ In such cases, the authority's delay in enforcing its rights or correcting an irregularity can defeat retrospective punitive action, especially where the individual affected has acted in good faith and to the authority's benefit throughout. The prolonged inaction by the department, its failure to undertake any meaningful verification or scrutiny of the petitioner's appointment for fifteen years amounts to institutional negligence. Significantly, it was only after the passage of fifteen years that the department initiated any inquiry into the petitioner's appointment. This belated action, without any intervening misconduct by the petitioner, underscores that the lapse lies entirely with the department. Administrative silence over such an extended period, particularly where it results in the receipt and acceptance of services, may amount to acquiescence and estop the department from seeking retrospective punitive measures. The petitioner cannot be faulted for the department's own dereliction of its gatekeeping responsibilities. While the eventual termination of service due to irregular appointment may be legally sustainable, the direction for recovery of fifteen years' salary without any allegation or proof of fraud or mala fide intent on the part of the petitioner is manifestly disproportionate, inequitable, and legally untenable.

7. We specifically queried learned counsel for the respondents as to whether the petitioner had in fact continuously and satisfactorily performed his duties throughout his tenure. The learned counsel candidly conceded that the petitioner had indeed discharged all assigned responsibilities without lapse. In such circumstances, the employer having accepted and benefited from fifteen years of unblemished service cannot now seek restitution of benefits already consumed. Principles of equity,

³ Ramsden v. Dyson (1866) LR 1 HL 129; Sardar Ali Khan v. State Bank of Pakistan 2022 SCMR 1454 and Market Committee, Multan v. Additional Commissioner (Consolidation) Multan 2023 SCMR 1683.

⁴ HP Wade, CR Forsyth and the Rt Hon Lord Woolf, De Smith's Judicial Review (8th edn, Sweet & Maxwell 2018).

good conscience, and public interest dictate that in the absence of fraud or dishonest conduct by the employee, retrospective recovery of wages is not only unjust, but contrary to settled legal precedent. See Shams ur Rehman⁵ and Jalaluddin⁶. The recovery of salary for services lawfully and diligently performed is impermissible, notwithstanding defects in the initial appointment. We are, therefore, of the considered view that the order for recovery in the present case is arbitrary, excessive, and in clear violation of equitable principles and binding precedent.

8. Accordingly, the impugned judgment is set aside to the extent it orders recovery of salary from the petitioner. However, the petitioner's dismissal from service, on account of ineligibility at the time of appointment, shall remain intact and unaffected by this decision.

9. This petition is hereby converted into an appeal and is partially allowed in the above terms.

Islamabad,
19th May, 2025.

Approved for reporting

*Umer A. Ranjha, LC**

Judge

Judge

⁵ Shams ur Rehman v. Military Accountant General, Rawalpindi 2020 SCMR 188.

⁶ Engineer in Chief v. Jalaluddin PLD 1992 SC 207.