

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench-V:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Shahid Waheed

C.P. 4835/2019

*(Against the judgment of the Punjab Service Tribunal (at Rawalpindi),
dated 21.10.2019, passed in Appeal No.3087 of 2019)*

Ijaz Akbar

... Petitioner

Versus

The Director General (Ext.) L&DD, Punjab, Lahore and others

... Respondents

For the petitioner: Mr. M. Bashir Khan, ASC.

For the respondents: Mr. Sanaullah Zahid, Addl. A.G., Punjab.
Dr. Farooq, Additional Director, L&DD, Punjab.
Mr. Wasim Ahmed, Superintendent, L&DD,
Punjab.

Date of hearing: 30.01.2023

ORDER

Syed Mansoor Ali Shah, J.- The petitioner seeks leave to appeal against a judgment of the Punjab Service Tribunal, dated 21.10.2019 ("impugned judgment"), whereby the Tribunal while maintaining the findings of the departmental authorities as to his guilt on the charge of willful absence from duty, has partly allowed his appeal by reducing his penalty from forfeiture of two-year service to forfeiture of one year service.

2. Briefly, the facts of the case are that the petitioner was a Junior Clerk in the Department of Livestock and Dairy Development (L&DD), Government of Punjab, and posted in the office of the District Officer Livestock, Chakwal. He remained absent from his duty from 02.02.2016 to 11.06.2016. Upon report of the inquiry officer holding the petitioner guilty of the charge of willful absence from duty and recommending for the imposition of a major penalty, the departmental competent authority imposed the major penalty of dismissal from service on the petitioner under Section 4(b)(vi) of the Punjab Employees Efficiency, Discipline and Accountability Act 2006 ("PEEDA Act"). The departmental appellate authority, however, on appeal of the petitioner

converted the penalty of his dismissal from service into forfeiture of his past two-year service and reinstated him in service. The departmental appellate authority also ordered that the intervening period from the starting date of his absence from duty, i.e., 02.02.2016, to the date of his rejoining service upon reinstatement would be treated as an extraordinary leave without pay. The petitioner preferred a service appeal to the Tribunal, which was partly allowed to the extent of reducing his penalty from forfeiture of two-year service into forfeiture of one-year service, by maintaining the findings of the departmental authorities as to his guilt on the charge of willful absence from duty. The petitioner, being not satisfied with the judgment of the Tribunal, has filed the present petition for leave to appeal.

3. The sole contention made before us by the learned counsel for the petitioner is that as the departmental appellate authority had ordered to treat the period of absence of the petitioner from duty as an extraordinary leave without pay, therefore, the petitioner could not have been held guilty of misconduct and punished for the said absence from duty. He has placed reliance, in support of his contention, on *LDA v. Nadeem Kachloo* (2006 SCMR 434), *Director-General, I.B. v. Muhammad Javed* (2012 SCMR 165) and *Sharif Abbasi v. WAPDA* (2013 SCMR 903).

4. On the other hand, the learned counsel for the respondents submits that once the departmental appellate authority had converted the penalty of dismissal for service into that of forfeiture of his two-year past service and had thus reinstated the petitioner into service, the period of his absence from duty had to be given some treatment for the purpose of regularizing his reinstatement in service, and such treatment does not wash out the guilt of the petitioner. In this regard, he has relied upon *DIG, NH&MP v. Ghulam Mustafa* (2019 SCMR 95) and *NAB v. Muhammad Shafique* (2020 SCMR 425).

5. We have considered the contentions of the learned counsel for the parties, read the cases cited by them and examined the record of the case.

6. The unauthorized absence of a civil servant from his duty is an act which is prejudicial to 'good order' and 'service discipline', and thus constitutes misconduct for taking disciplinary action against him.¹ Section 2(n)(vii) of the PEEDA Act has explicitly included the act of

¹ *Imtiaz Lali v. Returning Officer* PLD 2008 SC 355; *Muhammad Ali Bukhari v. Federation of Pakistan* 2008 SCMR 214.

'absence from duty without prior approval of leave' in the definition of 'misconduct' for the purpose of application of that Act. And, as per Rule 2.11 of the Punjab Civil Services Pension Rules 1955, a Government servant forfeits his past service in case of his absence from duty without leave. Similarly, Article 420 of the Civil Service Regulations states that an interruption in the service of an officer entails forfeiture of his past service subject to certain exceptions mentioned therein. In view of this legal consequence of the absence from duty, a disciplinary authority, or an appellate authority, tribunal or court, when imposes a penalty lesser than dismissal or removal from service on a delinquent civil servant for his misconduct of being absent from duty, it has to make an incidental order as to what treatment should be given to the period of his absence for the purpose of giving continuity to his service; otherwise, the whole past service of the civil servant will stand forfeited, which would be the imposition of an additional penalty neither prescribed by the law nor imposed by the authority. The best possible incidental order, which may be made in such a situation, is therefore to make a fictional arrangement to account for such period of absence from duty in the service record of the civil servant by treating (deeming) the same as an extraordinary leave without pay, rather than any other kind of leave; as in case of treating the said period as a leave of some other kind of leave (even if found due), the delinquent civil servant may claim pay of that period also, which would amount to awarding him a benefit rather than awarding a penalty for his fault. Thus, after imposing a penalty other than dismissal or removal from service, the making of an incidental order as to treating (deeming) the period of absence from duty as an extraordinary leave without pay, in no way, washes out the misconduct committed. It may be underlined here that although Section 4(b)(iii) of the PEEDA Act provides for the penalty of forfeiture of past service for a specific period, it has also limited the same to a maximum of five year period and thus does not permit the forfeiture of the whole past service exceeding a period of five years. In the present case, had the departmental appellate authority not ordered to treat the period of absence of the petitioner from his duty as an extraordinary leave without pay, his whole past service would have been forfeited, instead of the imposed penalty of forfeiture of past service of two years (reduced to one year by the Tribunal).

7. In case of an unauthorized absence of a civil servant from his duty, two courses are open to the departmental authority: (i) to condone the unauthorized absence by accepting his explanation (if found

justified) and sanction the *ex-post facto* leave under the relevant leave rules, or (ii) to initiate the disciplinary proceedings against him and impose a penalty for the misconduct. Therefore, a civil servant who remains absent from his duty may apply for condonation of the absence by offering an explanation and seek the sanction of *ex-post facto* leave for that period. If the departmental authority is satisfied that there was a sufficient cause for his absence, it may condone the absence and sanction the leave *ex-post facto*. If leave is so sanctioned, then the departmental authority cannot initiate disciplinary proceedings against the civil servant for that absence from duty. However, where the civil servant who is unauthorizedly absent does not resume duty and offer any satisfactory explanation, or where the explanation offered by him is not satisfactory, the departmental authority is to initiate the disciplinary proceedings and impose an appropriate penalty, which may range from a major penalty of dismissal or removal from service to a minor penalty of censure or withholding of increment for a specific period, mainly depending upon the nature of service, the position (duty) of the civil servant in that service, the period of absence and the cause for the absence. Where the penalty imposed on the delinquent civil servant is dismissal or removal from service, it may not be necessary to pass any incidental order relating to the period of absence, unless it is deemed necessary to recover any amount of pay, or other service benefits, received by the civil servant during the period of his absence from duty; but where any other penalty is awarded for the unauthorized absence from duty, it will be necessary to pass some incidental order as to how the period of absence should be accounted for and dealt with in the service record of the civil servant. If the unauthorized absence from duty remains unaccounted for, it will result in an interruption in service of the civil servant, thereby forfeiting his whole past service and affecting his seniority, pension etc. Such incidental order directing how the period of absence should be treated in the service record of the civil servant is thus an administrative arrangement, which does not affect or supersede the order imposing the penalty.²

8. The learned two-member benches of this Court in *Nadeem Kachloo, Muhammad Javed and Sharif Abbasi* referred to by the learned counsel for the petitioner have, it is most respectfully observed, mistakenly mingled the two distinct concepts of : (i) the grant of *ex-post facto* leave to the civil servant who remained absent from his duty, by

² State of Punjab v. P.L. Singla AIR 2009 SC 1149.

accepting his explanation (if found justified), and (ii) the fictional treatment given to the period of his absence from duty after holding him guilty of the misconduct for that absence and imposing a penalty other than his dismissal or removal from service, for continuity of his service. The statement of law made therein, that by treating the period of absence from duty as an extraordinary leave without pay, the ground of unauthorized absence no more remains available for awarding any penalty, does not state the correct legal position. These cases, so as far as they make the said statement of law either expressly or impliedly, are overruled, while the contra view of a three-member bench of this Court in *Muhammad Shafique* is respectfully agreed to. *Muhammad Shafique* has differentiated between the retrospective grant of extraordinary leave without pay for the absence under Rule 9(3) of the Revised Leave Rules 1980 and the treatment given to the period of absence after imposition of the appropriate penalty for the misconduct of being absent from duty, and rightly held that treating the period of absence in the latter case as extraordinary leave without pay does not undo the penalty imposed.³

9. In view of the above legal position, the contention of the learned counsel for the petitioner is found meritless. The impugned judgment does not call for any interference. The petition is therefore dismissed and the leave to appeal, declined.

Judge

Judge

Islamabad,
30th January, 2023
Approved for reporting
Asif

Judge

³ Muhammad Shafiq case has been followed in the cases of Federation of Pakistan v. Mamoon Malik 2020 SCMR 1154 (2-MB) and NBP v. Zahoor Mengal 2021 SCMR 903 (3-MB).