

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE GULZAR AHMED, CJ

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CIVIL APPEAL NO. 648 OF 2021**

*(On appeal against the judgment dated  
14.05.2019 passed by the Punjab Service  
Tribunal, Lahore in Appeal No. 2887/2017)*

*Deputy Inspector General of Police, Lahore etc*

*...Appellants*

**VERSUS**

*Sarfraz Ahmed*

*...Respondent(s)*

*For the Appellants:*

*Mr. Zafar Hussain Ahmed, Addl. A.G  
Mr. H. Majid, DSP*

*For the Respondent:*

*Mr. Umer Farooq, ASC*

*Date of Hearing:*

*04.10.2021*

...

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** *Through this appeal by leave of the Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellants have called in question the judgment dated 14.05.2019 passed by the Punjab Service Tribunal, Lahore, whereby the service appeal filed by the respondent against his dismissal from service was allowed.*

2. *Briefly stated the facts of the matter are that the respondent while serving as a constable in Police Station Lower Mall, Lahore was proceeded against departmentally for wilful absence from duty from 21.12.2016 to 16.02.2017 and having been found involved in three criminal cases. It was also alleged that he had close relations with gangs of criminals, which were involved in cases of robbery, dacoity, kidnapping for ransom, theft etc. The respondent was issued show cause notice on 19.12.2016, which was duly replied by him. Thereafter, a regular*

*departmental inquiry was conducted wherein the allegations leveled against the respondent were found correct. On the basis of such inquiry report, the respondent was awarded major penalty of dismissal from service by the competent authority vide order dated 16.02.2017. Being aggrieved, the respondent filed departmental appeal but the same was rejected vide order dated 22.07.2017. He then filed service appeal before the Punjab Service Tribunal, Lahore, which has been allowed vide impugned judgment. Hence, this appeal with leave of the Court.*

3. *Learned Additional Advocate General argued that it was established on record that the respondent had close relations with gangsters, who are involved in many cases of kidnapping for ransom, extortion of money, dacoity and illicit weapons etc, therefore, keeping in view the fact that he was a member of the disciplined force, he does not deserve any leniency by this Court as this would cause adverse affect on other members of the force; that while awarding the penalty of dismissal from service, all the legal requirements were duly followed i.e. a regular inquiry was conducted and the respondent was given personal hearing by the competent authority but the learned Service Tribunal did not take this aspect into consideration and passed the impugned judgment in a slipshod manner.*

4. *On the other hand, learned counsel for the respondent has defended the impugned judgment. He contended that the period of wilful absence was condoned by the authority by treating the same as leave without pay. He added that another allegation against the respondent in the show cause notice was that he has been found involved in three FIRs bearing number 630/2016, 699/2016 & 702/2016 but in all of the three, the respondent has been acquitted of the charge, therefore, the learned Service Tribunal has rightly reinstated him into service.*

5. *We have heard learned counsel for the parties at some length and have perused the record with their able assistance.*

*The learned Service Tribunal allowed the appeal filed by the respondent mainly on two grounds i.e. (i) that the respondent has been acquitted of the charge by the courts of competent jurisdiction in the three criminal cases registered vide*

*FIR Nos. 630/2016 dated 19.11.2016 under Section 387/506 PPC, 699/2016 dated 29.12.2016 under Sections 399/402 PPC and 702/2016 dated 29.12.2016 under Sections 13/20/65 of the Arms Ordinance, and (ii) the period of absence was condoned by the authority by treating the same as leave without pay. However, we have found that the department had conducted a regular inquiry in which it was found that the respondent has close relations with criminals operating in Lahore city against whom as many as 37 FIRs have been registered for the offences of robbery, kidnapping for ransom, dacoity etc. The detail of those FIRs has been duly mentioned in the dismissal order. When we confronted learned counsel for the respondent with this aspect of the matter, he could not give any plausible explanation. The learned Tribunal did not even discuss this aspect of the matter in the impugned judgment. The department has followed all the legal formalities while awarding penalty of dismissal to the respondent and he was given full opportunity to defend himself. So far as the condonation of the period of absence by allowing it without pay is concerned, it is admitted position that the respondent remained absent for a long period of about 55 days without taking prior leave or without informing his higher ups. The respondent being a member of the highly disciplined force was required to maintain strict discipline having regard to nature of duties enjoined to these forces and such an attitude cannot be excused and tolerated. In WAPDA Vs. Shan Elahi (1998 SCMR 1890), this Court has candidly held that employer/competent authority in case of unauthorized absence of employee from duty will be entitled to dismiss, remove or terminate the services of the employee concerned with effect from the date of unauthorized absence of the employee and the penalty of dismissal from service could be maintained even though the absence has been treated as leave without pay. In the case of NAB Vs. Muhammad Shafique (2020 SCMR 425), the respondent was awarded major penalty of compulsory retirement for his unauthorized absence of 66 days. The competent authority in the order of imposing major penalty had also treated the period of absence as Extraordinary Leave/Leave without pay. The respondent went to the High Court by pleading that since the office order through which major*

*penalty of compulsory retirement from service was imposed also directs the treatment of his unauthorized absence as extraordinary leave without pay, therefore, the penalty could not be sustained and ultimately succeeded in getting the relief. However, in appeal filed by the department against the impugned judgment of the High Court, this Court while setting aside the impugned judgment held that 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, it was necessary to give finding as to how such absence is to be treated but where an employee is dismissed from service he may not be entitled to any dues, therefore, there could hardly be any reason to provide for the treatment of his unauthorized absence as leave without pay. The Court further held that "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 naive 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 coexist 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."*

6. *In WAPDA Vs. Shan Elahi supra case, it was also held that the Service Tribunal is competent to confirm, set aside, vary or modify the punishment but such power is to be exercised not arbitrarily or capriciously or on the basis of wrong premises or misconception of law. Even otherwise, learned Law Officer has disputed the fact of condoning the absence period. In this view of the matter, we are constrained to observe that the impugned judgment passed by the learned Service Tribunal suffers from misreading and non-reading of the evidence and the same cannot sustain in the eyes of law.*

7.            *For what has been discussed above, this appeal is allowed and the impugned judgment is set aside.*

*CHIEF JUSTICE*

*JUDGE*

*JUDGE*

Lahore, the  
4<sup>th</sup> of October, 2021  
Approved For Reporting  
**Khurram**