

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-1168 of 2020

(Dr. Itrat Malik v State Life Insurance Corporation of Pakistan & others)

Date

Order with signature of Judge

Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul_Karim Memon

Date of hearing: 04.02.2025

Date of Order : 0 .02.2025

Mr. Shoaib Moihuddin Ashraf, advocate for the Petitioner.

Mr. Assadullah Shaikh advocate for respondents

Ms Wajeeha Mehdi Assistant Attorney General for Pakistan

ORDER

Adnan-ul_Karim Memon, J: Dr. Itrat Malik, the petitioner, requests that this court declare the orders dated November 19, 2019, and May 9, 2019, invalid. The petitioner further requests all resulting relief, including back benefits and continued service, per this court's order dated May 29, 2018, passed in C.P No.D-4377 OF 2012.

2. In an earlier round of litigation this court vide order dated 29.05.2018 passed in C.P No.D-4377 OF 2012, set aside her dismissal from service order dated 11.10.2012 and directed Chairman State Life Insurance Corporation of Pakistan (hereinafter referred to as SLIC) to reinstate the Petitioner to her original position and conduct an impartial inquiry into the allegations within two months, allowing her to be heard. Back benefits will depend on the outcome of this inquiry, which will be conducted according to the Respondent Company's rules and regulations. The respondent company assailed the findings of this Court to the Supreme Court. The Supreme Court upheld this Court's decision. Subsequently, the petitioner was censured by the competent authority of SLIC vide orders dated 09.05.2019 and 19.11.2019, and her back benefits were treated as leave without pay due to a minor penalty.

3. Mr. Shoaib Moihuddin Ashraf, learned counsel for the Petitioner contended that the orders dated May 9, 2019, and November 19, 2019, are legally flawed, invalid, unlawful, biased, erroneous, and contrary to justice, equity, and good conscience as they were not based on sound judgment and should be overturned. Specifically, the petitioner's counsel argues that the original order (May 9, 2019) and the appellate order (November 19, 2019) violate Section 24-A of the General Clauses Act 1898, as they lack reasoning, fail to establish points of determination, and ignore the petitioner's defense; that the orders lack justification for the

censure penalty and wrongly treat the dismissal period (October 11, 2012, to June 13, 2018) as leave without pay; that the SLIC authorities failed to address the petitioner's submissions in response to the final show cause notice (August 29, 2018) and the departmental appeal (June 20, 2019); that the findings regarding frequent, excessive, and unauthorized leave, habitual lateness, and leaving early are vague and general, lacking specific dates and details, rendering the inquiry and resulting orders unsubstantiated and unlawful as this assertion is supported by the statement of Mr. Waseem Ali Bhutto (Management Representative) who was not given oath; that some leave applications, he submitted as evidence (P-29, P-30, and P-1) relate to a period *after* the charge sheet (April 12, 2012) and should not have been considered; that the inquiry committee wrongly considered document P-14 (leave statement dated February 3, 2012), as it was not authenticated by its author, similar to how document P-45 was correctly disregarded; that the committee also erred by considering document P-15 (extraordinary leave statement dated November 2, 2011), as it represents a closed matter with a warning issued to the petitioner. Similarly, documents P-16, P-17, P-18, P-19, P-43, and P-33 relate to past, concluded leave transactions; no evidence supports the alleged other instances of unauthorized leave. He added that the committee failed to acknowledge the testimony of Mr. Bhagu Mal Talreja (former Function Head), who stated that all the petitioner's leaves were approved. He emphasized that any ambiguity in the approval process should have been resolved by the Personnel Department, not used against the petitioner. He argued that cross-examination of Mr. Talreja further supports the petitioner's case; that a review of documents P-23 to P-30 suggests the Personnel Department did not maintain proper leave records for the petitioner; that the management's reliance on photocopies of attendance sheets (P-2 to P-12) is problematic, as the originals were not produced, raising concerns about potential manipulation; that the findings regarding misbehavior with superiors and avoiding orders are also vague, lacking specifics about the individuals, events, and nature of the alleged misbehavior. He argued that Muhammad Saeed Khan's sworn statement did not mention any misbehavior on the part of the petitioner. His later allegations during cross-examination lacked specific details. He argued that the committee's reliance on adverse ACR remarks from 2004 is misplaced. Such remarks have a limited impact (three years) and cannot be used indefinitely; no adverse remarks were communicated to the petitioner after 2004, indicating no behavioral issues. He submitted that using ACR reports in the inquiry breaches confidentiality. He emphasized that the committee ignored documents demonstrating the petitioner's contributions and positive feedback, including the HJZ Green Prize (D-9). He added that

both authorities wrongly found the petitioner guilty of misconduct related to leave and attendance, despite the lack of specific details regarding the alleged infractions consequently this renders the orders vague and flawed. He next argued that this court previously declared the petitioner's dismissal (October 11, 2012) illegal in CP No. D-4377 of 2012 due to procedural irregularities in the inquiry under Regulation 31(2)(ii) of the State Life Employees (Service) Regulation, 1973. He prayed that this court quash the orders dated November 19, 2019, and May 9, 2019, and direct the respondents to grant all consequential relief, including back benefits and continued service, by this court's order dated May 29, 2018, passed in the previous CP No. D-4377 of 2012. In support of his contentions he relied upon the cases of *M.Sharif Vs IG Punjab* **2021 SCMR 962** and *Khalid Mehmood Vs State Life Insurance Corporation* **2008 SCMR 376** and argued that if a civil/public servant is cleared of charges against them, they should be reinstated to their position as if they had never been removed. This reinstatement includes the right to all back benefits. This principle is supported by legal precedents. He emphasized that it is well settled that employees might be reinstated to their position for several reasons: (a) based on the merits of their case, (b) due to technicalities without addressing the core issues, or (c) as an act of leniency, where the original punishment is reduced or completely revoked. He next argued that the general rule of awarding back benefits upon reinstatement has an important exception: it doesn't always apply when the reinstatement is conditional. This occurs when the employee's dismissal is deemed illegal due to procedural errors in the disciplinary process, or when the original penalty is reduced, leading to reinstatement. In these cases, while the employee is reinstated, the actual question of their guilt or innocence remains unresolved.

4. Mr. Assadullah Shaikh the respondent's counsel supported the impugned penalty imposed against the petitioner and raised the question of maintainability of the petition and argued that reinstating the petitioner after converting dismissal to censure does not require regularizing the absence period, which does not negate the petitioner's guilt. He argued that while a minor penalty involves a reprimand or a temporary withholding of increments, treating the absence period as "without pay" is already considered a form of disciplinary action, especially if the absence is deemed to be misconduct. He emphasized that when a public servant is absent without authorization and fails to provide a satisfactory explanation, disciplinary action is required. The resulting penalty can vary widely, from major punishments like dismissal or removal from service to minor ones such as a reprimand or withholding an increment for a set

time. The severity of the penalty depends on factors like the nature of the job, the employee's position, the length of the absence, and the reason behind it. He next submitted that if the penalty is dismissal or removal, additional orders regarding the absence period are usually unnecessary, unless there's a need to recover any pay or benefits received during that time. However, if a lesser penalty is imposed, it's crucial to issue an order explaining how the absence will be recorded. He added that unaccounted-for absence creates a break in service, potentially jeopardizing the employee's seniority, pension, and other benefits. This administrative order clarifying the status of the absence doesn't change the original penalty; it simply clarifies its consequences for the employee's service record. He argued that when disciplinary proceedings are restarted (*de novo*) due to a flaw in the original process, back benefits are typically deferred until the employee's conduct is fully reassessed. If found guilty, some or all back benefits may be denied. Similarly, if the original penalty was merely reduced, some back benefits may also be withheld to reflect the revised, lesser punishment. He also emphasized the point that even if a reinstated public servant isn't automatically entitled to full-back benefits and receives a new penalty, the time between dismissal and reinstatement still counts towards their service. Otherwise, it would create a break in service, potentially forfeiting past service and benefits. This period is usually regularized as extraordinary leave without pay, leave due, or leave without pay. This regularization is separate from the imposed penalty. While the authority can excuse service interruptions not caused by the employee's fault, and often uses extraordinary leave without pay for this purpose, this treatment of the absence isn't a punishment itself. Granting such leave doesn't negate any other penalties imposed. In support of this contention, he relied upon the cases of *Muhammad Arif Khan v Dy. ENC, EIN-C's Branch GHQ, Rawalpindi*, **1991 SCMR 1904**, *Muhammad Sharif v IGP & others* **2021 SCMR 962**, *Lahore Development Authority & others v Muhammad Nadeem Kachloo & another* **2006 SCMR 434**, *Qadeer Ahmed v Punjab Labour Appellate Tribunal Laroe and another* **PLD 1990 SC 787**, *Maqbool Ahmed Qureshi v Government of Pakistan through Secretary Law and Justice and others* **PLD 2019 SC 37**, *Messrs Arshad & Company v Capital Development Authority, Islamabad* **2000 SCMR 1557**, *DIG, NH & MP, Karachi v Ghulsam Mustafa Mahar and another* **2019 SCMR 95**, *Ijaz Akbar v The Director General L&DD, Punjab Lahore and others* **2024 PLC (C.S) 129**. He lastly prayed for the dismissal of the instant petition.

5. Ms Wajeeha Mehdi Assistant Attorney General for Pakistan has adopted the arguments of Mr. Assadullah Shaikh advocate and prayed for the dismissal of the petition.

6. We have considered the contention of the learned counsel for both parties and have minutely gone through the material available on record with their assistance and the case law cited at the bar. The relevant excerpt of the Order rendered by the SLIC imposing the minor penalty of censure upon the petitioner is quite significant which, for ease of convenience is reproduced as under:-

Subject: Outcome of Enquiry and Penalty for Misconduct

Following the High Court of Sindh's judgment (dated 29-05-2018) in CP No. 4377 of 2012, you were reinstated to your original position on 13-06-2018. As directed by the court, State Life conducted an impartial inquiry into the allegations from the charge sheet dated 12-04-2012.

An Enquiry Committee, formed under Regulation 31(2)(11) of the State Life Employees (Service) Regulations, 1973 (vide Order of Enquiry dated 26-06-2018), reviewed your defense and submitted a report. This report was shared with you along with a Final Show Cause Notice dated 13-08-2018. You were subsequently given a hearing on 14-09-2018.

After reviewing the record, the Enquiry Report, your response to the Final Show Cause Notice, and your statements during the hearing, the Executive Director (P&GS), acting as the Competent Authority, has found you guilty of habitual absence without leave and habitual late attendance. These actions constitute misconduct under Regulation 30 (v) and (vi) of the State Life Employees (Service) Regulations, 1973. However, the Competent Authority has chosen to impose a minor penalty of Censure under Regulation 30(1)(g)(1) of the same regulations. Your dismissal period (11-10-2012 to 13-06-2018) will be considered leave without pay.

You have the right to appeal this decision under Regulation 33 of the State Life Employees (Service) Regulations, 1973.

This notice is issued with the approval of the Competent Authority, the Executive Director (P&GS) of the State Life Insurance Corporation of Pakistan.

7. First, we address the maintainability of this Petition under Article 199 of the Constitution.

8. To answer the proposition, the profile of the Respondent/SLIC was examined which reveals that it is a Statutory Body established under section 11 of the Life Insurance (Nationalization) Order, 1972 (President's Order No.10 of 1972), now repealed under State Life Insurance Corporation (Re-organization and Conversion) Ordinance, 2016. The background of the Respondent Company is that it is a State Enterprise and the status of a Public Sector Company under the State Life Insurance Corporation (Re-Organization and Conversion) Ordinance, 2016. Section 2(g) of the Public Sector Companies, (Corporate Governance) Rules, 2013 defines the company. The Respondent-Company (SLIC) is 100% government-owned and controlled, making it a Public Sector Company and a "Person" performing functions related to federal affairs under

Article 199(1)(a)(ii) read with Article 199(5) of the Constitution, giving this Court jurisdiction. This aligns with the Supreme Court's rulings in *Pakistan Defense Housing Authority* (2013 SCMR 1707), *Abdul Wahab* (2013 SCMR 1383) regarding state financial interest and control, and *Ramna Pipe* (2004 SCMR 1274) regarding maintainability against Public Limited Companies. Therefore, this Constitutional Petition is maintainable.

9. The question for our determination in this petition is whether back benefits can be denied, with the absence period (11-10-2012 to 13-06-2018) treated as leave without pay, after the petitioner's reinstatement; and, a minor penalty of censure for habitual absence and late attendance is misconduct under Regulation 30 (v) and (vi) of the State Life Employees (Service) Regulations, 1973.

10. Regulations 30 and 31 of the State Life Employees (Service) Regulations, 1973, amended up to 31.12.1991, define "Misconduct" and outline minor/major penalties. It empowers authorized officers to direct inquiries or, if satisfied, dispense with them. If an inquiry is chosen, Regulation 31 mandates a specific procedure: framing charges, employee's reply, witness examination (including cross-examination), and allowing the employee to present their witnesses. The Respondent-Company's reinstatement of the petitioner implies she was not found guilty of misconduct warranting her dismissal from service as the petitioner's dismissal period (11-10-2012 to 13-06-2018) had already been designated as leave without pay.

11. Censure is generally considered a minor disciplinary action, often a formal reprimand or expression of disapproval for misconduct or poor performance. The proposed penalty against the petitioner required a proper inquiry under Regulation 31. The Respondent Company failed to conduct such an inquiry before issuing the minor penalty of censure. The inquiry officer's attempts to find the petitioner guilty on all charges led to her reinstatement by the competent authority without looking into the factum of misconduct. Therefore, the censure order of May 9, 2019, is unsustainable because the inquiry was not conducted according to the State Life Employees (Service) Regulations, 1973. Even under Article 199 of the constitution, this court cannot now convert this flawed penalty into a different one.

12. In our view disciplinary actions should be fair and proportionate to the offense. While not explicitly defined in Pakistan's service laws, back benefits is a widely used term in service jurisprudence. Black's Law Dictionary defines back pay as salary owed due to unlawful employer

action, aiming to restore the employee's economic standing. Back benefits in this context refer to arrears of pay or back pay, essentially retroactive payments. Withholding back benefits for a minor infraction, especially after reinstatement, is excessive, as the petitioner was involuntarily out of service during that period.

13. Taking advantage of the subject proposition, the issue of reinstatement in service needs to be addressed, reinstatement means restoring someone to a previous position. It is effective from the dismissal date, with back pay owed from that point. A reinstated employee is treated as if never dismissed and is entitled to lost benefits, including back pay. However, payments like notice pay, ex gratia, or unemployment benefits received during the dismissal period will also be considered. Additionally, an employee whose wrongful dismissal or penalty is overturned is restored to service as if it never happened. This means no service gap, entitling him/her to back pay for the period he/she was wrongly kept out of work. This principle of restitution upholds constitutional rights to fair trial, due process, life (including livelihood), and equality, while also protecting employee dignity. Reinstatement without full restoration of terms and benefits is held to be discriminatory.

14. The Supreme Court in recent judgment has held that reinstatement with original seniority and back benefits rests on the principle that overturning an illegal action requires preventing undue harm to the individual. If a court declares a civil/public servant to be still in service, he/she should receive back benefits (including salary) as if he/she had been working. Exoneration from the charges restores a civil/public servant as if never out of service, entitling him/her to back benefits.

15. It is well settled that unconditional setting aside of dismissal or demotion necessitates back benefits. Granting back benefits to illegally removed employees is the rule, and denial is the exception. Reinstatement after illegal dismissal means continuous service, entitling the employee to back pay. An exception is when the employee had other employment or profitable business during the dismissal period; such earnings may be offset against back pay.

16. Fundamental Rule 54 (FR) provides that reinstated employees on merit deserve full-back benefits; deprivation violates his/ her constitutional rights. Reinstatement on merit means no service break, thus no "intervening period" issue. The principle of back benefits is qualified when reinstatement is conditional. If a dismissal is deemed illegal due to procedural defects, the employee is reinstated, but his/her conduct may

still be investigated. Back benefits are deferred pending this determination; if found at fault, some benefits may be denied. Similarly, if a penalty is reduced, some back benefits may be denied due to the implications of the reduced penalty. However, if a reinstated civil/public servant is not awarded back benefits as a right and receives another penalty, the intervening period must be accounted for to avoid service forfeiture. This period is usually regularized as extraordinary leave without pay or other due leave. This regularization is separate from any imposed penalty. Competent authorities may condone service interruptions not due to employee fault. Prima facie, while classifying absence as extraordinary leave without pay regularizes the period, simultaneously imposing censure *and* withholding back benefits for that forced absence is unduly harsh. Imposing a minor penalty alongside a decision to treat the period of absence as "without pay" is generally considered to be awarding two punishments for the same offense, which is not allowed under most disciplinary procedures; essentially, treating the absence without pay itself acts as a form of penalty, negating the need for a separate minor punishment for the same misconduct. These powers must be exercised thoughtfully and contextually. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the cases of LDA v. Nadeem Kachloo (2006 SCMR 434), Director-General, I.B. v. Muhammad Javed, and Sharif Abbasi v. WAPDA (2013 SCMR 903).

17. Major penalties aim to not only punish the offender but also deter others. Minor punishment may be preferred when the offense is less severe, and circumstances suggest no bad faith or willfulness. This view is supported by the Supreme Court of Pakistan's observations in Secretary, Government of Punjab, and others versus Khalid Hussain Hamdani and 2 others 2013 SCMR 817.

18. As a result of the above discussion, this Petition is allowed. The impugned orders dated 09.05.2019 and 19.11.2019, and the directions issued by the SLIC for withholding the service benefits of the petitioner and appellate order are set aside, and she is entitled to be paid for the period mentioned in the impugned orders, accordingly within two (02) months from the date of receipt of this order.

JUDGE

JUDGE