

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah, Athar Minallah and Malik Shahzad Ahmad Khan, JJ
SUPERINTENDENT OF POLICE, HEADQUARTERS, LAHORE and others---Petitioners

Versus

IJAZ ASLAM and others---Respondents

Civil Petitions Nos. 3105-L to 3114-L and 3119-L to 3122-L of 2023, decided on 7th August, 2024.

(On appeal against the judgment dated 16.05.2023 passed by the Punjab Service Tribunal, Lahore in Appeals Nos. 3482 to 3488, 4259, 4571 of 2022 and 435 to 439 of 2023).

(a) Civil service---

---Service matters---Punishment, award of---Institutional autonomy---Concept of institutional autonomy in matters relating to award of punishment and limited circumstances in which courts/tribunals can interfere in the same.

Courts are tasked with a delicate balancing act: respecting the institutional autonomy of public sector institutions, while ensuring these institutions operate within the bounds of the law and do not infringe upon individual rights or the public interest. The imposition of punishment under the law is primarily the function of the competent authority and the role of the Tribunal or Court is rather secondary unless it is found to be against the law or is unreasonable. This is because the department/ competent authority, being the fact-finding authority, is best suited to decide the particular penalty to be imposed keeping in view a host of factors such as the nature and gravity of the misconduct, past conduct, the nature and the responsibility of the duty assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in the department, as well as any extenuating circumstances. The underlying rationale is based on the concept of institutional autonomy which provides for a degree of self-governance and independence by a public sector institution. This autonomy is essential for ensuring that such institutions can function effectively, impartially, and according to their legal mandates. The autonomy of public institutions is not just a matter of administrative convenience, but a fundamental requirement for the effective functioning of a democratic society, as public sector organizations are guardians of the public interest. The role of the courts is not to second-guess institutions as certain matters are the province of institutions themselves. Thus, as long as the institutions pursue their institutional purpose and function, and as long as they abide by law, professional norms and best practices, they are largely entitled to regulate themselves. Institutional decisions are, however, subject to judicial oversight and can be corrected if they suffer from any illegality, irrationality or procedural impropriety. Other than that, the courts must give deference to the institutional decisions and desist from second guessing them on the basis of their own subjective standards of leniency, compassion or fairness. Such decisions are best left to the institutions owing to their policy-making prerogatives and expertise.

Divisional Superintendent v. Nadeem Raza 2023 SCMR 803; Secretary Government of Punjab v. Khalid Hussain 2013 SCMR 817; Vice Chancellor Agriculture University v. Muhammad Shafiq 2024 SCMR 527 and Randy J. Kozel, 'Institutional Autonomy and Constitutional Structure' 112 Michigan Law Review 957 (2014)<<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1014&context=mlr>> accessed 21 August, 2024 ref.

(b) Punjab Police (Efficiency and Discipline) Rules, 1975---

---R. 4(1)(b)(iv)---Driver constables in police department---Appointments made on basis of fake and bogus driving licenses---Dismissal from service---“Doctrine of unclean hands”---Scope and applicability---

Admittedly the respondents were dismissed from service based on an established charge of misconduct after a proper regular departmental inquiry was conducted by the competent authority---Findings in the inquiry report were not only accepted by the competent authority but had also been affirmed by the appellate authority of the same department---In the instant case, the major penalty of dismissal from service was imposed by the competent authority in accordance with law and the relevant rules---Fact that the respondents procured their appointment based on bogus and fake driving licenses could not be condoned---Reasoning

given in the impugned judgment justifying their reinstatement on the ground that the respondents worked for 14 years and had subsequently obtained new licenses was not sufficient and did not wash away their act of submitting fake and bogus licenses and thus managing their appointments fraudulently---Once the appointment was sought on the basis of bogus licenses, such appointment could not be legitimized---This was based on the principle referred to as the “doctrine of unclean hands.”---This legal doctrine holds that a person who has acted unethically, deceitfully, or with dishonesty should not be entitled to the benefits derived from such actions---When applied to employment, particularly in sensitive roles like the police service, this principle asserts that someone who gains their position through fraudulent means—such as by falsifying documents—cannot be trusted to uphold the integrity and responsibilities of that position---Furthermore, discovering the fraud, even several years after the fact, could still be ground for disciplinary action because the initial appointment was obtained illegitimately---The rationale was that trust and integrity are foundational to public service roles, and a breach of this nature undermined the trust necessary for the role and could potentially have legal and institutional consequences---Said principle maintains that the integrity of the institution and the trust placed in its officials are paramount, and therefore, any breach, regardless of when discovered, must be addressed decisively---Respondents knew that they had submitted fake and bogus licenses during the recruitment process---Thus, the Tribunal had failed to take into consideration the fact that the basic qualification/eligibility to the post of driver constable was a genuine license which the respondents did not meet---In the absence of the same, the Tribunal acted in an arbitrary and whimsical manner overlooking the specific facts and circumstances by granting relief to the respondents in violation of the law---Petition was converted into an appeal and allowed; the impugned judgment was set aside and the dismissal orders of the respondents passed by the department were upheld.

Secretary Education v. Noor-Ul-Amin 2022 PLC (C.S.) 132 and Anwar Ali v. Chief Executive Officer HESCO 2009 PLC (C.S.) 963 ref.

(c) Void order---

---When the basic order is without lawful authority, then the entire superstructure raised thereon falls to the ground automatically.

Vice Chancellor Agriculture University v. Muhammad Shafiq 2024 SCMR 527; Pakistan Peoples Party Parliamentarians v. Federation of Pakistan PLD 2022 SC 574 and Atta-ur-Rehman v. Umar Farooq PLD 2008 SC 663 ref.

(d) Punjab Service Tribunals Act (IX of 1974)---

---S. 5---Service Tribunal---Relief, grant of---Parameters---Grounds of leniency and compassion---No court has the jurisdiction to grant arbitrary relief without the support of any power granted by the Constitution or the law---Any relief granted on the touchstone of subjective standards of leniency and compassion, rather than the law, cannot be sustained---Any such subjective decision disregards the importance of institutional autonomy; which rests on well-thought out values, ethos, policies and internal discipline of the institution.

Divisional Superintendent, Postal Services v. Zafarullah 2021 SCMR 400; Government of Pakistan v. Nawaz Ali Sheikh 2020 SCMR 656; Chief Postmaster v. Muhammad Afzal 2020 SCMR 1029 and Dr. A.Q. Khan Research Laboratories v. Hamid Ullah 2010 SCMR 302 ref.

(e) Constitution of Pakistan---

---Art. 25---Civil service---Discrimination---Relief sought on plea of discrimination---Scope---Article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities---It only comes into operation when some persons are granted a benefit in accordance with law but others, similarly placed and in similar circumstances are denied that benefit---But where a person gains, or is granted, a benefit illegally, other persons cannot plead, nor can the courts accept such a plea, that the same benefit must be allowed to them also in violation of law.

Muhammad Yasin v. D.G. Pakistan Post Office 2023 SCMR 394 ref.

Baleegh-uz-Zaman, Addl. A.G. and Riasat Ali, D.S.P. for the Petitioners.

Muhammad Arshad Bhatti, Advocate Supreme Court for Respondents (via video link from Lahore).

Date of hearing: 7th August, 2024.

ORDER

SYED MANSOOR ALI SHAH, J.---The brief facts giving rise to the instant petition are that driver constables ("respondents") were appointed by the District Police, Lahore in the year 2007. Subsequently, on the basis of a complaint, an investigation into the genuineness of their LTV driving licenses ("licenses") was carried out and after necessary verification, it was found that the traffic police had no record of their driving licenses and the same were found fake and bogus. Upon receiving the said information, show cause notices were issued to the respondents in the year 2015. Thereafter, regular departmental inquiry proceedings were initiated under the Punjab Police (E & D) Rules, 1975 ("Rules") during which the respondents admitted that they had not participated in any visual or physical test to get the licenses and that the same were obtained through an agent.¹ Upon receipt of the inquiry report, the respondents were dismissed from service under Rule 3 of the Rules vide orders dated 21.09.2021. Subsequently, the respondents filed departmental appeals which were dismissed vide orders dated 04.03.2022. Instead of approaching the Tribunal, they first preferred revision petitions, which were dismissed in the year 2022, respectively. Feeling aggrieved, they filed service appeals before the Punjab Service Tribunal, Lahore ("Tribunal") which were allowed vide judgment dated 16.05.2023 ("impugned judgment") and the respondents stood reinstated into service. Hence, the present petitions.

2. Learned counsel for the petitioners submits that the respondents' appointments were made on the basis of fake and bogus licenses and despite being given an opportunity to provide a defense, they failed to rebut the allegations levelled against them. On the contrary, learned counsel for the respondents submits that they were unaware of the fake and bogus nature of their licenses and applied for new licenses as soon as they were made aware of the same.

3. The two reasons given by the Tribunal for reinstating the respondents in service were that (i) the disciplinary proceedings instituted against the respondents were based on vague allegations and the same could not sustain and, (ii) the disciplinary action was taken against the respondents after they had served the department for more than 14 years, after having subsequently obtained new licenses.

4. We have heard the learned counsel at length and have gone through the impugned judgment, examined the law on the subject and the record of the case.

5. At the outset, it is significant to underline that courts are tasked with a delicate balancing act: respecting the institutional autonomy of public sector institutions, while ensuring these institutions operate within the bounds of the law and do not infringe upon individual rights or the public interest. The imposition of punishment under the law is primarily the function of the competent authority i.e., Police department in this case, and the role of the Tribunal or Court is rather secondary unless it is found to be against the law or is unreasonable.² This is because the department/ competent authority, being the fact-finding authority, is best suited to decide the particular penalty to be imposed keeping in view a host of factors such as the nature and gravity of the misconduct, past conduct, the nature and the responsibility of the duty assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in the department, as well as any extenuating circumstances.³ The underlying rationale is based on the concept of institutional autonomy which provides for a degree of self-governance and independence by a public sector institution. This autonomy is essential for ensuring that such institutions can function effectively, impartially, and according to their legal mandates. The autonomy of public institutions is not just a matter of administrative convenience, but a fundamental requirement for the effective functioning of a democratic society, as public sector organizations are guardians of the public interest.⁴ The role of the courts is not to second-guess institutions as certain matters are the province of institutions themselves.⁵ Thus, as long as the institutions pursue their institutional purpose and function, and as long as they abide by law, professional norms and best practices, they are largely entitled to regulate themselves.⁶ Institutional decisions are, however, subject to judicial oversight and can be corrected if they suffer from any illegality, irrationality or procedural impropriety. Other than that, the courts must give deference to the institutional decisions and desist from second-guessing them

on the basis of their own subjective standards of leniency, compassion or fairness. Such decisions are best left to the institutions owing to their policy-making prerogatives and expertise.

6. It is an admitted position that the respondents were dismissed from service based on an established charge of misconduct⁷ after a proper regular departmental inquiry was conducted by the competent authority. The findings in the inquiry report were not only accepted by the competent authority but have also been affirmed by the appellate authority of the same department. In the instant case, the major penalty of dismissal from service was imposed by the competent authority in accordance with law and the relevant rules. The fact that the respondents procured their appointment based on bogus and fake driving licenses cannot be condoned. The reasoning given in the impugned judgment justifying their reinstatement on the ground that the respondents worked for 14 years and had subsequently obtained new licenses is not sufficient and does not wash away their act of submitting fake and bogus licenses and thus managing their appointments fraudulently.⁸ It is well settled law that when the basic order is without lawful authority, then the entire superstructure raised thereon falls to the ground automatically.⁹ Once the appointment was sought on the basis of bogus licenses, such appointment cannot be legitimized. The principle at work here is often referred to as the "doctrine of unclean hands." This legal doctrine holds that a person who has acted unethically, deceitfully, or with dishonesty should not be entitled to the benefits derived from such actions. When applied to employment, particularly in sensitive roles like the police service, this principle asserts that someone who gains their position through fraudulent means-such as by falsifying documents-cannot be trusted to uphold the integrity and responsibilities of that position. Furthermore, discovering the fraud, even several years after the fact, can still be ground for disciplinary action because the initial appointment was obtained illegitimately. The rationale is that trust and integrity are foundational to public service roles, and a breach of this nature undermines the trust necessary for the role and could potentially have legal and institutional consequences. The principle maintains that the integrity of the institution and the trust placed in its officials are paramount, and therefore, any breach, regardless of when discovered, must be addressed decisively.

7. It is also pertinent to note that there is no cavil to the proposition that under Section 5 of the Punjab Service Tribunal Act, 1974 ("Act"), the Tribunal enjoys powers to set aside, confirm, vary or modify any order passed by the departmental authorities. However, such power is required to be exercised carefully, judiciously and after recording cogent reasons for the same keeping in view and considering the specific facts and circumstances of each case.¹⁰ All Courts and Tribunals seized of matters before them are required to pass orders strictly in accordance with the parameters of the Constitution, the law and the rules and regulations lawfully framed under the law. No court has the jurisdiction to grant arbitrary relief without the support of any power granted by the Constitution or the law.¹¹ Any relief granted on the touchstone of subjective standards of leniency and compassion, rather than the law, cannot be sustained. Any such subjective decision disregards the importance of institutional autonomy; which rests on well-thought out values, ethos, policies and internal discipline of the institution. The impugned judgment has also erred in law by failing to take into account the entire evidence available on record which revealed that the respondents knew that they had submitted fake and bogus licenses during the time of the recruitment process and admitted that they had not participated in any visual or physical test to get the licenses during the regular departmental inquiry proceedings. It is admitted that the respondents knew that they had submitted fake and bogus licenses during the recruitment process.¹² Thus, the Tribunal has failed to take into consideration the fact that the basic qualification/

eligibility to the post of driver constable was a genuine license which the respondents did not meet. In the absence of the same, the Tribunal acted in an arbitrary and whimsical manner overlooking the specific facts and circumstances by granting relief to the respondents in violation of the law.

8. Moreover, the ground of discrimination as alleged¹³ by the respondents is also untenable in law as Article 25 of the Constitution has no application to a claim based upon other unlawful acts and illegalities. It only comes into operation when some persons are granted a benefit in accordance with law but others, similarly placed and in similar circumstances are denied that benefit. But where a person gains, or is granted, a benefit illegally, other persons cannot plead, nor can the courts accept such a plea, that the same benefit must be allowed to them also in violation of law.¹⁴ Therefore, in the given circumstances, when it has been established on record that the respondents were guilty of misconduct, there lies no basis to show leniency in their favour, hence the reasoning given by the Tribunal in the impugned judgment is misplaced.

9. In view of the aforesaid, the impugned judgment is set aside and the dismissal orders of the respondents dated 21.09.2021 passed by the department are upheld. The present petition is, therefore, converted into an appeal and allowed.

MWA/S-27/SC

Appeal allowed.

¹ Order of the Deputy Inspector General (Operations), Lahore dated 04.03.2022, para 4(v).

² Divisional Superintendent v. Nadeem Raza 2023 SCMR 803; Secretary Government of Punjab v. Khalid Hussain 2013 SCMR 817.

³ Divisional Superintendent v. Nadeem Raza 2023 SCMR 803.

⁴ Vice Chancellor Agriculture University v. Muhammad Shafiq 2024 SCMR 527.

⁵ Randy J. Kozel, 'Institutional Autonomy and Constitutional Structure' 112 Michigan Law Review 957 (2014) < <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1014&context=mlr> > accessed 21 August, 2024.

⁶ Ibid.

⁷ Rule 2(iii) of the Rules define "misconduct" as "a conduct prejudicial to good order or discipline in the Police Force, or contrary to Government Servants (Conduct) Rules or unbecoming of a Police Officer and a gentleman, any commission or omission which violates any of the provisions of law and rules regulating, the function and duty of a Police Officer to bring to attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government Officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Police Officer."

⁸ Secretary Education v. Noor-Ul-Amin 2022 PLC (C.S.) 132; Anwar Ali v. Chief Executive Officer HESCO 2009 PLC (C.S.) 963.

⁹ Vice Chancellor Agriculture University v. Muhammad Shafiq 2024 SCMR 527; Pakistan Peoples Party Parliamentarians v. Federation of Pakistan PLD 2022 SC 574 and Atta-ur-Rehman v. Umar Farooq PLD 2008 SC 663.

¹⁰ Divisional Superintendent, Postal Services v. Zafarullah, 2021 SCMR 400; Deputy Postmaster v. Habib Ahmed, 2021 SCMR 584; Government of Pakistan v. Nawaz Ali Sheikh, 2020 SCMR 656; Chief Postmaster v. Muhammad Afzal, 2020 SCMR 1029; Dr. A.Q Khan Research Laboratories v. Hamid Ullah, 2010 SCMR 302.

¹¹ Divisional Superintendent, Postal Services v. Zafarullah, 2021 SCMR 400; Government of Pakistan v. Nawaz Ali Sheikh, 2020 SCMR 656; Chief Postmaster v. Muhammad Afzal, 2020 SCMR 1029; Dr. A.Q Khan Research Laboratories v. Hamid Ullah, 2010 SCMR 302.

¹² Order of the Deputy Inspector General (Operations), Lahore dated 04.03.2022, para 4(iii).

¹³ Taken by the respondents in their grounds of appeal before the Tribunal dated 05.08.2022 and the revision petition before the Capital City Police Officer, Lahore.

¹⁴ Muhammad Yasin v. D.G. Pakistan. Post Office 2023 SCMR 394.