

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Aqeel Ahmed Abbasi, JJ

MUHAMMAD NASIR ISMAIL ---Petitioner

Versus

GOVERNMENT OF PUNJAB through Secretary Law and Parliamentary Affairs Division, Lahore
and others ---Respondents

C.P.L.A. No. 3062 of 2022, decided on 25th February, 2025.

(Against the judgment dated 30.05.2022 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in
W.P. No. 1806 of 2013).**(a) Constitution of Pakistan---**

---Art. 10A---Civil service---Disciplinary proceedings---Due process---Affected civil servants must be granted a fair hearing, and disciplinary proceedings must adhere to legal requirements---Due process ensures that no officer is unjustly penalized without being given an opportunity to present their defense---Courts must exercise judicial restraint and avoid undue interference with executive discretion---Judicial review is necessary to prevent abuse of power---Courts must respect autonomy of Executive branch in managing its employees---Judicial intervention should be limited to cases involving clear illegality, arbitrariness, or mala fide intent---Courts must balance individual rights with the larger public interest.

(b) Punjab Employees Efficiency, Discipline and Accountability Act (XII of 2006)---

---Ss. 5 & 13(5)(ii), second proviso---Disciplinary proceedings---Major penalty, imposing of---Absence without leave---Principle of proportionality---Applicability---Punishment of compulsory retirement was imposed upon civil servant who remained absent from service for 48 days, without leave---Validity---Authority of competent authority in imposing any of the three major penalties is not restricted under second proviso to section 13(5)(ii) of Punjab Employees Efficiency, Discipline and Accountability Act, 2006, even where period of absence from duty is less than one year---Where competent authority elects to impose a major penalty in cases of absence from duty for less than a year, it must do so in accordance with the principle of proportionality---Civil servant remained absent from duty for a total of 48 days and imposition of major penalty of compulsory retirement failed to meet test of proportionality---Neither the punishment established rational nexus between misconduct and severity of penalty nor it considered less restrictive alternatives---Supreme Court set aside judgment passed by High Court to the extent of the penalty imposed---Supreme Court directed that reinstatement of civil servant would be subject to a fresh determination by competent authority---Supreme Court directed competent authority to revisit case of civil servant and impose a penalty commensurate with the gravity of misconduct---Appeal was allowed.

Sunni Ittehad Council v. Election Commission of Pakistan PLD 2025 SC 67; East and West Steamship v. Pakistan PLD 1958 SC 41; Pramath Nath v. Kamir Mondal PLD 1965 SC 434; Hamdard Dawakhana v. C.I.T PLD 1980 SC 84; Kadir Bux v. Province of Sindh 1982 SCMR 582; K.E.S.C. Progressive Workers' Union v. K.E.S.C Labour Union 1991 SCMR 888; Nawaz Bibi v. Allah Ditta 1998 SCMR 2381; N S Bindra, Interpretation of Statutes Lexis Nexis, 13th Edition, 2022; De Smith's Judicial Review Sweet and Maxwell, 8th Edition, 2018; Sabir Iqbal v. Cantonment Board PLD 2019 SC 189; Muhammad Iqbal Khan Noori v. NAB PLD 2021 SC 916 and Divisional Superintendent, Postal Services v. Nadeem Raza 2023 SCMR 803 rel.

Haseeb Shakoor Paracha, Advocate Supreme Court for Petitioner.

Haroon Irshad, Advocate Supreme Court for Respondents.

Date of hearing: 25th February, 2025.

ORDER

SYED MANSOOR ALI SHAH, J.---Disciplinary proceedings were initiated against Muhammad Nasir Ismail ("petitioner"), employed as an Assistant at the Board of Intermediate and Secondary Education, Rawalpindi ("Respondent No. 3"), under Section 5 of the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 ("PEEDA Act") vide order dated 27.02.2013. The charges framed against the petitioner pertained to wilful absence from duty, inefficiency, and misconduct. Pursuant to a regular inquiry, a recommendation was made

for his removal from service; however, he was instead awarded the major penalty of compulsory retirement by the competent authority vide order dated 29.04.2013. Aggrieved, the petitioner preferred an appeal before the appellate authority¹, which was dismissed vide order dated 19.06.2013 ("impugned order"). Thereafter, the petitioner assailed the impugned order by invoking the constitutional jurisdiction of the Lahore High Court, Lahore, through a writ petition, which was dismissed vide judgment dated 30.05.2022 ("impugned judgment"). Hence, the instant petition for leave to appeal.

2. Learned counsel for the petitioner pressed into service a singular ground, contending that the interpretation of the second proviso to Section 13(5)(ii) of the PEEDA Act was misapplied. He argued that the said provision mandates the imposition of a major penalty-compulsory retirement, removal, or dismissal from service-only when the charge of absence from duty extends beyond one year. He submitted that, in the present case, the petitioner's absence from duty was for a period significantly shorter than one year (48 days in particular); therefore, the imposition of any of the aforementioned major penalties was legally untenable. Conversely, learned counsel for the respondent supported the impugned judgment, asserting that the second proviso to Section 13(5)(ii) of the PEEDA Act does not curtail the discretion of the competent authority to award one of the prescribed major penalties, even in cases where the absence from duty is less than one year.

3. We have heard the learned counsel for the parties at some length and gone through the impugned judgment of the High Court and the record of the case.

4. The civil service is the backbone of any government, ensuring continuity, stability, and efficiency in governance. It plays a crucial role in the implementation of policies, service delivery, and maintaining the institutional framework of the state. Unlike political leadership, which changes periodically, the civil service ensures uninterrupted functioning of government, providing institutional memory and stability. Civil servants are responsible for executing policies and programs formulated by elected representatives, ensuring that governance reaches the grassroots level. They also play a central role in public service delivery, providing essential services such as law enforcement, healthcare, and infrastructure development--all of which are critical to societal well-being. Moreover, the civil service contributes to institutional stability by preserving knowledge and expertise within the government, preventing abrupt policy reversals, and maintaining continuity in governance despite shifts in political leadership. A fundamental characteristic of an effective civil service is impartiality and meritocracy. A professional bureaucracy operates independently of political influence, ensuring that decisions are made based on merit rather than favoritism. This independence fosters efficiency, fairness, and public trust in government institutions.

5. Given these crucial functions, maintaining discipline, integrity, and accountability within the civil service is essential. This is where service laws and penalties play a significant role in upholding professional standards and deterring misconduct. Penalties under service laws serve multiple purposes in ensuring that civil servants adhere to ethical and professional standards. One of their primary functions is maintaining discipline and accountability. Civil servants hold positions of public trust, and disciplinary measures deter misconduct while reinforcing the importance of ethical conduct. Without accountability, the credibility and efficiency of the civil service could be severely compromised. Another key objective of enforcing penalties is to prevent the abuse of power. In the absence of strict disciplinary mechanisms, bureaucrats may misuse their authority, leading to corruption, inefficiency, and injustice. Such misconduct not only erodes public trust in institutions but also disrupts governance and service delivery.

6. Penalties also play a key role in ensuring efficiency and performance. The knowledge that disciplinary action may be taken in cases of negligence or misconduct incentivizes civil servants to fulfill their responsibilities diligently. Additionally, when the public sees that civil servants are held accountable for their actions, it helps in protecting public confidence in government institutions. A transparent and fair disciplinary system assures citizens that government officials are working in their best interest.

7. Courts play a critical role in ensuring that penalties imposed on civil servants are just, proportionate, and lawful. Judicial review of disciplinary actions is essential in preventing arbitrary or excessive punishments while maintaining the integrity of the civil service. A key principle in judicial review is proportionality--the penalty must not be excessively harsh in relation to the offense. Courts frequently set aside penalties that are

disproportionately severe, ensuring fairness in disciplinary actions. Similarly, courts apply the principle of rationality and reasonableness, which requires that disciplinary decisions be based on objective evidence and not be arbitrary or politically motivated. Another essential principle is procedural fairness (due process). Affected civil servants must be granted a fair hearing, and disciplinary proceedings must adhere to legal requirements. Due process ensures that no officer is unjustly penalized without being given an opportunity to present their defense. At the same time, courts must exercise judicial restraint and avoid undue interference with executive discretion. While judicial review is necessary to prevent abuse of power, courts must respect the autonomy of the executive branch in managing its employees. Judicial intervention should be limited to cases involving clear illegality, arbitrariness, or mala fide intent. Finally, courts must balance individual rights with the larger public interest. While it is imperative to protect employees from unfair treatment, judicial decisions should not undermine the broader objectives of maintaining an efficient and disciplined civil service. A well-functioning disciplinary system is essential for governance, and courts must ensure that their rulings do not compromise the effectiveness of administrative oversight. With this background we approach the present case.

8. The petitioner was proceeded against under the PEEDA Act, which aims to regulate the efficiency, discipline, and accountability of employees serving in government and semi-governmental institutions. It provides mechanisms for initiating disciplinary proceedings, conducting inquiries, and imposing penalties on employees for misconduct, inefficiency, or corruption. The relevant provision for our purposes is Section 13 of the PEEDA Act, which is reproduced below for ready reference:

Section 13². Order to be passed by the competent authority on receipt of report from the inquiry officer or inquiry committee. -

(1) ...

(2) ...

(3) ...

(4) ...

(5) After affording personal hearing to the accused or on receipt of the report of the hearing officer, the competent authority shall, keeping in view the findings and recommendations of the inquiry officer or inquiry committee, as the case may be, facts of the case and defence offered by the accused during personal hearing, by an order in writing-

(i)

(ii) Impose any one or more of the penalties specified in Section 4:

Provided that-

(i)

(ii) Where charge of absence from duty for a period of more than one year is proved against the accused, the penalty of compulsory retirement or removal or dismissal from service shall be imposed upon the accused. (emphasis supplied)

A plain reading of the aforementioned provisions establishes that the competent authority, under Section 13(5)(ii) of the PEEDA Act, has the discretion to choose from a spectrum of penalties and impose any one or more of the penalties enumerated in Section 4. The said provision prescribes both major and minor penalties in the manner, as outlined below:

4. Penalties.- (1) The competent authority may, notwithstanding anything contained in any law or the terms and conditions of service of the accused, by an order in writing, impose one or more of the following penalties, namely:-

a) Minor penalties-

(i) censure;

(ii) withholding of increment or increments, for a specific period, subject to a maximum of five years;

(iii) fine not exceeding basic pay of one month;

(iv) reduction to a lower stage or stages in pay scale, subject to a maximum of five stages; and

(v) withholding of promotion for a specific period, subject to a maximum of five years; provided that this period shall be counted from the date when a person junior to the accused is considered for promotion and is promoted on regular basis for the first time;

(b) Major penalties-

(i) recovery from pay, pension or any other amount payable to the accused, the whole or a part of any pecuniary loss caused to the Government or the organization in which he was employed, and if the amount due from any such person cannot be wholly recovered from the pay, pension or any other amount payable to him, such amount shall be recovered under the law for the time being in force;

(ii) reduction to a lower post and pay scale from the substantive or regular post for a specific period subject to a maximum of five years;

(iii) forfeiture of past service for a specific period subject to a maximum of five years;

(iv) compulsory retirement;

(v) removal from service; and

(vi) dismissal from service; and

(c) ...

(2) ...

(3) ...

(emphasis supplied)

While the competent authority is generally free to impose any one or more of the penalties enumerated in Section 4, the second proviso to Section 13(5)(ii) provides that, where the charge of absence from a duty for a period exceeding one year is proved against the officer, the competent authority shall impose either of the three major penalties: compulsory retirement or removal or dismissal from service. This establishes that unauthorized absence from duty is a serious lapse in civil service, as it disrupts public service delivery, weakens institutional discipline, and undermines government efficiency. Civil servants hold positions of responsibility, and prolonged absence without authorization delays decision-making, burdens administrative resources, and erodes public confidence in governance. Hence the proviso classifies absence of more than one year as a major penalty, often leading to dismissal or compulsory retirement, as it is considered akin to abandonment of service.

9. What is therefore the effect of the "proviso" on the general discretion of the competent authority to impose any one or more of penalties under Section 4, including in cases of absence from duty for less than a year? A "proviso" serves to qualify, restrict, or except a particular case from the generality of the main provision.³ Ordinarily, a proviso limits the scope of the principal provision.⁴ The second proviso to Section 13(5)(ii) restricts discretion of the competent authority when imposing a penalty in cases of prolonged absence (exceeding one year). In such cases, the competent authority must impose one of the three major penalties i.e., compulsory retirement or removal or dismissal from service--whichever it deems fit--if the charge stands proved against the officer. The proviso restricts and limits the general discretion of the competent authority under Section 13(5)(ii) only in case where there is a charge of absence from duty for a period of more than one year. The proviso has no application in other cases including cases of absence from duty for a period of less than one year, where the competent authority continues to enjoy its general discretion under Section 13(5)(ii) to impose any one or more of the penalties under Section 4 of PEEDA Act. Nonetheless, the exercise of such discretion must be structured, reasoned, and supported by cogent justification in accordance with the principles of proportionality and administrative fairness.

10. We, therefore, concur with the interpretation rendered by the High Court that the second proviso to Section 13(5)(ii) does not restrict the authority of the competent authority in imposing any of the three major penalties, even where the period of absence from duty is less than one year. However, where the competent authority elects to impose a major penalty in cases of absence from duty for less than a year, it must do so in accordance with the principle of proportionality.

11. The principle of proportionality, in the context of structured discretion, mandates that the exercise of discretionary power must be reasonable, balanced, and commensurate with the objectives sought to be achieved. It serves as a check against arbitrariness and excess, ensuring that disciplinary action remains fair, just, and

legally sustainable. Proportionality is assessed through a structured three-pronged test⁵: First, whether the measure in question is suitable and bears a rational connection to the legitimate objective it seeks to achieve. Second, whether the measure is necessary, meaning no less restrictive or less onerous alternative exists to accomplish the same purpose. Third, whether the measure maintains a fair balance between the public interest and the rights of the individual, ensuring that the burden imposed is neither excessive nor oppressive in relation to the intended benefit.⁶ Also see: Sabir Iqbal v. Cantonment Board PLD 2019 SC 189; Muhammad Iqbal Khan Noori v. NAB PLD 2021 SC 916 and Divisional Superintendent, Postal Services v. Nadeem Raza 2023 SCMR 803.

12. Applying the principle of proportionality to the present case, we note that the petitioner remained absent from duty for a total of 48 days. The imposition of a major penalty of compulsory retirement, in our considered view, fails to meet the test of proportionality, as it neither establishes a rational nexus between the misconduct and the severity of the penalty nor considers less restrictive alternatives. Accordingly, we set aside the impugned judgment to the extent of the penalty imposed. However, the petitioner's reinstatement shall be subject to a fresh determination by the competent authority. We, therefore, direct the competent authority i.e., Chairman BISE, Rawalpindi, to revisit the petitioner's case in light of the principles outlined above and impose a penalty commensurate with the gravity of the misconduct. To facilitate the expeditious disposal of this matter, let the petitioner appear before the competent authority at 11 am on 19.03.2025, who, after affording the petitioner an opportunity of hearing, shall decide the matter through a speaking order within a period of 07 days. A compliance report shall be submitted for the information of this Court. Office shall dispatch a copy of this order to the Competent Authority.

13. This petition is converted into appeal and allowed in the above terms.

MH/M-18/SC Case remanded.