

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Bench-II:

Mr. Justice Syed Mansoor Ali Shah Mr.

Justice Aqeel Ahmed Abbasi

Civil Petitions No. 3453-L/2019 and 23-L/2022.

(Against the order dated 24.11.2021 and 13.09.2019 passed by the Punjab Service Tribunal, Lahore in Appeals No. 5717/2015 and 863/2019)

Tahir Kazmi (in C.P.L.A. No. 3453-L/2019) Ali Asghar (in C.P.L.A. No. 23-L/2022)

Versus

Inspector General of Police, Punjab, Lahore (in CPLA No. 3453-L/2019)

Director General Statistics Department, Lahore, etc. (in CPLA 23-L/2022)

For the petitioner(s): Mr. Muhammad Usman Arif, ASC.
a/w Mr. Rana Iqbal, AHC.
(In C.P.L.A. No. 3453-L/2019)
Malik Saleem Iqbal Awan, ASC. (In
C.P.L.A. No. 23-L/2022)

For the respondent(s): Mr. Khalid Masood Ghani, AAG, Pn.
Mr. Kashif Murtaza, Inspector (Legal).

Assisted by: Mr. Umer A. Ranjha, Judicial Law Clerk,
Supreme Court of Pakistan.

Date of hearing: 14.05.2025.

JUDGMENT

Syed Mansoor Ali Shah, J.— These petitions raise a recurring question in service jurisprudence: whether a civil servant is entitled to back benefits upon reinstatement following the setting aside of a penalty of dismissal, removal, or compulsory retirement. We are also called upon to determine how the intervening period between removal and reinstatement ought to be treated.

C.P.L.A. No. 3453-L/2019 (Tahir Kazmi)

2. The petitioner, a Head Constable in the Punjab Police, was compulsorily retired from service by the SP, Madina Town, Faisalabad, on 29.04.2011, following a

show-cause notice issued on 01.04.2011. His departmental appeal was rejected by the Capital Police Officer, Faisalabad,

on 15.12.2017. A subsequent review before the Inspector General of Police led to a partial modification of the penalty as it was reduced to forfeiture of two years of approved service, and the intervening period was ordered to be treated as leave without pay. Aggrieved by this, the petitioner filed an appeal before the Punjab Service Tribunal, Lahore which, *vide* its judgment dated 03.09.2019 (“impugned judgment”), reinstated the petitioner but treated the intervening period as special casual leave without pay. Through this petition for leave to appeal, the petitioner challenges the denial of back benefits for the intervening period and the imposition of the modified penalty.

C.P.L.A. No. 23-L/2022 (Ali Asghar)

3. The petitioner in this case was removed from service on 25.06.2014 following departmental proceedings under the Punjab Employees Efficiency, Discipline and Accountability Act 2006, for 46 days of unauthorized absence. His departmental appeal was dismissed on 09.06.2015. He then approached the Punjab Service Tribunal, Lahore which partially allowed the appeal by modifying the penalty to forfeiture of three years of approved service and ordered reinstatement. However, the Tribunal, in its judgment dated 24.11.2021 (“impugned judgment”), directed that the intervening period be treated as leave without pay. The petitioner now seeks to challenge both the denial of back benefits and the imposition of the modified penalty.

Concept of Back Benefits

4. The core issue is the entitlement to back benefits. Grant of back benefits while not expressly defined in the service laws of Pakistan is a well-established remedy in Pakistan as well as other jurisdictions. As defined in Black’s Law Dictionary, “back pay” refers to the salary an employee should have received but was denied due to unlawful employer action.¹ A “back pay award” restores the economic status quo ante, compensating for the loss incurred.² In our jurisdiction, the term “back benefits” typically includes arrears of salary and related service entitlements.³ Although broader meanings may exist, this discussion

¹ Bryan A Garner (ed), Black’s Law Dictionary (10th edn, Thomson Reuters 2014) 166.

² Ibid and *Aguinaga v. United Food & Commercial Workers Int’l Union* 993 F.2d 1463, 1473.

³ *Muhammad Sharif v. Inspector General of Police, Punjab* 2021 SCMR 962 and *Smith v. West*, 1999 US App Vet Claims LEXIS 475, 6.

confines “back benefits” to arrears of pay and other emoluments denied due to wrongful dismissal or removal.

5. This legal understanding of back benefits is closely tied to the effect of reinstatement, which in our jurisprudence, nullifies the dismissal or removal order, restoring the employee to their previous position as if the dismissal or removal had never occurred.⁴ Reinstatement thus presumes the restoration of all financial entitlements, unless specific exceptions apply. The logical corollary is that the reinstated civil servant is entitled to all benefits lost during the period of wrongful removal, unless it is shown that the civil servant was gainfully employed elsewhere or that reinstatement was conditional.⁵

Doctrine of Constructive Continuity

6. This presumption of full legal restoration finds resonance in the common law doctrine of *vanishing dismissal*, recognized particularly in the United Kingdom, where a successful appeal against dismissal causes the dismissal to “vanish” as though it never existed.⁶ Under this doctrine, when a civil servant’s removal or dismissal is declared unlawful, either on procedural grounds, violation of due process, or on the merits of the disciplinary action, the law sets aside that punitive action. The restorative power of *vanishing dismissal*, therefore, is not merely a remedial choice but flows from a deeper legal commitment to the rule of law that acts done without lawful authority cannot be allowed to produce lawful effects. The doctrine reaffirms that state power must be exercised within legal limits, and when those limits are transgressed, the consequence must be a full return to the pre-violation status. What follows, however, has remained a matter of practical adjustment: the civil servant is reinstated, the period of absence is regularized, and in many cases, salary and other emoluments are awarded. This sequence of reliefs rests on a juridical fiction: that the civil servant is deemed never to have been lawfully removed in the first place.

⁴ Muhammad Sharif v. Inspector General of Police, Punjab 2021 SCMR 962, Chairman State Life v. Siddiq Akbar 2013 SCMR 752 and Umer Said v. District Education Officer (Female) 2007 SCMR 296.

⁵ Inspector General of Police, Punjab v. Tariq Mahmood 2015 SCMR 77; Muhammad Bashir v. Government of the Punjab 1994 SCMR 1801 and Pakistan v. Mrs. A.V. Issacs PLD 1970 SC 415.

⁶ Marangakis v. Icelands Food Limited [2022] EAT 161; Folkestone Nursing Home v. Patel [2018] EWCA Civ 1843 and Roberts v. West Coast Trains Ltd [2004] IRLR 789.

7. What we now seek to formally recognize is that this fiction amounts to more than a technical adjustment, it is a constructive legal state that reconstructs the continuity of service and restores the civil servant to the position he or she would have occupied had the illegal order not been passed. We propose to refer to this idea as the doctrine of *constructive continuity*. Although no such doctrine under this name exists in the jurisprudence of Pakistan or comparative jurisdictions, its elements are implicit in the way courts grant relief after declaring a termination unlawful. *Constructive continuity*, as we conceive it, offers a principled and doctrinal framework for such relief. It rests on the notion that an unlawful act cannot be permitted to cause enduring disadvantage, and that the law must, to the extent possible, restore the person to the status quo ante. In this sense, the doctrine draws conceptual strength from the broader legal principle of restitution, which seeks to undo the unjust consequences of an unlawful act and re-establish the rightful position of the aggrieved party.

8. The doctrine of *constructive continuity*, therefore, proposes that once a dismissal or removal is declared unlawful, the civil servant shall be deemed to have remained in continuous service during the period of absence and shall be entitled, subject to lawful deductions or limitations, to all the salary, allowances, increments, and service-related benefits that would have accrued had the unlawful act not occurred. The purpose of this doctrine is not merely to provide compensation but to restore the legal and institutional integrity of the employment relationship.

9. We are conscious that this is the first time such a doctrine is being formally articulated in our jurisprudence. It is our considered view that adopting the language and structure of *constructive continuity* provides coherence, consistency, and clarity to future cases where civil servants are reinstated following wrongful termination. In the absence of a codified rule or settled precedent using this terminology, we believe this formulation will serve as a valuable guidepost for courts, tribunals, and administrative authorities, and will enhance the transparency and reasoning behind reliefs granted in reinstatement cases. It is a settled principle that when the foundational order is without lawful authority, the

superstructure built upon it collapses.⁷ The civil servant must be placed in the position they would have occupied had the unlawful action not occurred. The concept of *constructive continuity*, as articulated here, reinforces this consequence and gives expression to the broader principles of legal restoration and administrative fairness that underpin service jurisprudence.

10. This doctrine, while coined for the first time, is rooted in the constitutional promise of fairness, restitution, and institutional integrity. It ensures that a wrongfully removed public servant is treated, for all legal and financial purposes, as having continued in service, thereby entitling them to the salary, benefits, and emoluments that would have accrued but for the wrongful termination. *Constructive continuity* is, therefore, not only an administrative doctrine; it draws strength from constitutional protections. Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) enshrines the right to life, which includes the right to livelihood⁸, a right that is fundamentally impaired when a civil servant is deprived of his employment through an unlawful act. Article 10A secures the right to fair trial and due process⁹, which would be hollow if reinstatement does not lead to full restitution. Article 14 protects the dignity of man¹⁰, and Article 25 ensures equality before the law¹¹. Denying back benefits to a reinstated civil servant who has suffered procedural or substantive injustice infringes upon these constitutional guarantees. It amounts to continued punishment despite legal vindication. We, therefore, hold that such imaginative reconstruction, grounded in equity and justice, constitutes a legitimate and necessary doctrinal development in service jurisprudence.

11. This constitutional foundation finds affirmation in judicial precedent, most notably in *Tariq Mahmood*¹² and *Muhammad Sharif*¹³ where this Court reaffirmed that the grant of back benefits is the norm

⁷ Superintendent of Police v. Ijaz Aslam 2024 SCMR 1831; Vice Chancellor Agriculture University v. Muhammad Shafiq 2024 SMCR 527 and Pakistan Peoples Party Parliamentarians v. Federation of Pakistan PLD 2022 SC 574.

⁸ Aatika Hina Mushtaq v. Secretary Special Education, Government of Punjab 2025 SCP 158 (SC citation); Divisional Superintendent v. Umar Daraz 2023 SCMR 761; Province of Punjab v. Kanwal Rashid 2021 SCMR 730; Pir Imran Sajid Versus Managing Director 2015 SCMR 1257; Abdul Wahab v. HBL 2013 SCMR 1383 and Olga Tellis v. Bombay Municipal Corporation AIR 1986 SC 180.

⁹ Naveed Asghar v. The State PLD 2021 SC 600 and Altaf Ibrahim Qureshi v. Aam Logue Ittehad PLD 2019 SC 745.

¹⁰ Mubarik Ali Babar v. Punjab Public Service Commission 2023 SCMR 518; Uzma Naveed Chaudhary v. Federation of Pakistan PLD 2022 SC 783 and Malik Ubaidullah v. Government of Punjab 2021 PLC (C.S.) 65.

- ¹¹ Muhammad Yasin v. D.G. Pakistan Post Office 2023 SCMR 394 and National Commission on Status of Women v. Government of Punjab PLD 2019 SC 218.
- ¹² Inspector General of Police, Punjab v. Tariq Mahmood 2015 SCMR 77.
- ¹³ Muhammad Sharif v. Inspector General of Police, Punjab 2021 SCMR 962.

and denial of service benefits to such reinstated employee is an exception.¹⁴ Any deviation from this must be justified by clear evidence that the employee was gainfully employed elsewhere during the intervening period. The logic is straightforward - when a court declares an official action unlawful, it must undo not only the decision but the resulting harm. Restitution is therefore integral to corrective justice, not an exercise of discretion.

12. The legal obligation to restore service benefits upon reinstatement also finds expression in the statutory framework, where the second proviso to Section 16 of the Punjab Civil Servants Act, 1974 empowers the competent authority to determine arrears of pay when a dismissal, removal, or reduction in rank is set aside.¹⁵ However, this discretion is not absolute. It must be exercised in accordance with constitutional guarantees and judicial principles.¹⁶ In particular, if the foundational order is declared without lawful authority, then its consequences, including the denial of salary, must also be set aside.

13. That said, the basis for reinstatement influences the grant of back benefits. When reinstatement is granted on merits, for instance, where charges are disproved or found legally unsustainable, then full back benefits must follow as a matter of right.¹⁷ The civil servant, having been wrongfully excluded from service, is entitled to be made whole. However, where reinstatement is based on procedural infirmities such as denial of a hearing or non-compliance with mandatory inquiry procedures, the award of back benefits may be deferred, pending the outcome of a fresh disciplinary inquiry. The principle here is to balance legal restoration with procedural fairness to the employer. Where a dismissal is found disproportionate and a lesser penalty is substituted such as forfeiture of increments or censure, the substitution must be deemed to operate

¹⁴ Muhammad Sharif v. Inspector General of Police, Punjab 2021 SCMR 962; Inspector General of Police, Punjab v Tariq Mahmood 2015 SCMR 77; Sohail Ahmed Usmani v DG CAA 2014 SCMR 1843; Chairman State Life v Siddiq Akbar 2013 SCMR 752; Muhammad Hussain v E.D.O. (Education) 2007 SCMR 855; Umer Said v District Education Officer (Female) 2007 SCMR 296 and General Manager v Mehmood Ahmed Butt 2002 SCMR 1064.

¹⁵ **Section 16. Pay.**—A civil servant appointed to a post shall be entitled, in accordance with the rules, to the pay sanctioned for such post.

Provided that, when the appointment is made on a [current charge or acting charge basis in the manner prescribed] or by way of additional charge, his pay shall be fixed in the prescribed manner:
Provided further that where a civil servant has been dismissed or removed from service or reduced in rank, he shall, in the event of the order of dismissal, removal from service or reduction in rank being set aside, be entitled to such arrears of pay as the authority setting aside the order may determine.

¹⁶ Secretary, Government of Punjab v. Khalid Hussain Hamdani 2013 SCMR 817 and Brean v. Amalgamated Engineering Union (1971) 2 QB 175).

¹⁷ Muhammad Sharif v. Inspector General of Police, Punjab 2021 SCMR 962.

retrospectively, as if the lesser penalty had been imposed ab initio. The civil servant, in such cases, is entitled to the full range of service-related benefits (salary, allowances, increments, seniority, and pension rights) for the intervening period, subject only to such deductions or limitations as are consistent with the nature of the modified or substituted penalty. If the substituted or modified penalty has any bearing on the quantum of back benefits, then the financial entitlements shall be calibrated accordingly, in a manner that reflects the revised disciplinary outcome without undermining the continuity of service. To deny such back benefits, despite acknowledging that the original penalty was excessive, would perpetuate the very disproportionality the Court seeks to remedy. This would offend the principles of fairness, non-discrimination, and proportionality embedded in Articles 4 and 25 of the Constitution. The Court, therefore, holds that in all such cases, the doctrine of *constructive continuity* shall apply: the civil servant shall be deemed to have remained in service subject to the modified or substituted penalty, and shall accordingly be entitled to all back benefits that would have accrued under the corrected disciplinary outcome.

14. Regardless of the extent of financial benefits granted, the intervening period between a civil servant's removal and subsequent reinstatement must be regularized to maintain the continuity of service. This is, however, a separate theme from back benefits. The reason for grant of extraordinary leave without pay or "leave of the kind due" is to ensure that the service record of the civil servant remains unbroken¹⁸, thereby safeguarding eligibility for pension, promotion, seniority, and other ancillary service benefits. As held by this Court, any failure to recognize such intervening periods results in an unlawful forfeiture of rights already earned.¹⁹ It constitutes a constructive discontinuity in service and violates both constitutional guarantees and statutory protections.

15. In this respect, *constructive continuity* functions as a constitutional bridge. It ensures that reinstatement is not an empty gesture but a restorative act, fully aligned with Articles 9, 10A, 14, and 25 of the Constitution. It prevents wrongful state action from leaving lasting

¹⁸ Muhammad Sharif v. Inspector General of Police, Punjab 2021 SCMR 962; National Bank of Pakistan v Zahoor Ahmed Mengal 2021 SCMR 144; NAB v Muhammad Shafique 2020 SCMR 425; Federation of Pakistan v Mamoon Ahmed Malik 2020 SCMR 1154.

¹⁹ Muhammad Sharif v. Inspector General of Police, Punjab 2021 SCMR 962.

scars on an individual's career and livelihood. To reinstate a civil servant without restoring their status, entitlements, and dignity is to offer a remedy that fails to remedy and justice that falls short of being just.

16. Applying these principles to **C.P.L.A. No. 3453-L/2019 (Tahir Kazmi)**, the petitioner, a Head Constable in the Punjab Police, was compulsorily retired on account of an omission in the discharge of official duties. In departmental review, fault was indeed established, though not of a degree warranting compulsory retirement. Accordingly, the penalty was modified to forfeiture of two years of approved service. The Tribunal reinstated the petitioner but directed that the intervening period be treated as special casual leave without pay, thereby depriving him of all back benefits. No material was placed on record to suggest that the petitioner was gainfully employed during this period, nor was his reinstatement made conditional on any pending inquiry. In such circumstances, the denial of back benefits is both legally and constitutionally unsustainable. Once reinstated, the petitioner was entitled to be treated as if he had never left service. The impugned judgment fails to give effect to the doctrine of *constructive continuity* and ignores the petitioner's entitlement to full restitution. Denial of back benefits violate Articles 4, 9, 14, and 25 of the Constitution. As to the reduction of penalty from compulsory retirement to forfeiture of two years of approved service, we see no ground to interfere, and the petition is dismissed to that extent. Accordingly, the impugned judgment is modified to the extent that the petitioner is granted full back benefits, including arrears of pay, increments, and pensionary entitlements, subject to the effect of the modified penalty, with effect from 29.04.2011, the date on which the original penalty of compulsory retirement was imposed.

17. In **C.P.L.A. No. 23-L/2022 (Ali Asghar)**, the petitioner was removed from service on account of being absent without authorization for 46 days. The Tribunal, while acknowledging the disproportionality of the penalty, modified it to forfeiture of three years of approved service and reinstated the petitioner. However, it simultaneously directed that the intervening period be treated as leave without pay, thereby denying all back benefits. While the petitioner was not fully exonerated, and some fault was duly attributed, he remains entitled to back benefits calibrated in accordance with the modified penalty. Once reinstated with a lesser

punishment, the petitioner is to be treated as having remained in service, subject only to the consequences that lawfully flow from the substituted penalty. Denying all back benefits, despite setting aside the original penalty as excessive, amounts to a disproportionate outcome that undermines the principles of fairness and *constructive continuity*. As to the reduction of penalty from removal from service to forfeiture of three years of approved service, we see no ground to interfere, and the petition is dismissed to that extent. Accordingly, the petition is partially allowed. The impugned judgment is modified to the extent that the petitioner is granted back benefits, including arrears of pay, increments, and pensionary entitlements subject to the effect of the substituted penalty, with effect from 25.06.2014, the date on which the original penalty of removal from service was imposed.

18. These petitions are converted into appeals and partially allowed in the above terms.