

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Syed Mansoor Ali Shah Mr. Justice Naeem Akhter

Afghan Mr. Justice Aqeel Ahmed Abbasi

Civil Petitions No.41-Q and 42-Q of 2022

(Against the judgment dated 30.01.2018 of the Punjab Service Tribunal, Lahore in Appeal No.3989 of 2016)

Allah Diwaya

(in CPLA No.41-Q of 2022)

Waseem Ahmed and others

(in CPLA No.42-Q of 2022)

... Petitioners

versus

Director Education Quetta and another

(in CPLA No.41-Q of 2022)

Chief Secretary, Govt. of Balochistan & others

(in CPLA No.42-Q of 2022)

... Respondents

For the Petitioners: Mr. Manzoor Ahmed Rahmani, ASC
(in both cases / via video link from Branch Registry Quetta)

For the Respondents: Mr. Muhammad Ayaz Swati, AAG Balochistan
(in both cases)

Date of Hearing: 24.10.2025

JUDGMENT

Syed Mansoor Ali Shah, J.-

The question before us is whether the status of an absconder or fugitive in a criminal case, by itself, bars a person from pursuing civil or service remedies ?

Brief facts are that the petitioners were initially appointed as Junior Venacular Teachers (JVTs) by the Education Officer, Dera Bugti, and continued to serve for nearly twenty-five years until their appointment, alongwith those of twenty-two other teachers, was declared fake/bogus by the Director Education (S) through letter dated 11-02-2015. This was reaffirmed through the subsequent letter dated 09-11-2015 alleging that the petitioners had entered the Education Department through forged appointment orders, leading to the stoppage of salaries. The petitioner's first appeal was disposed of with consent for initiation of proper inquiry. Till date no removal order has been passed; yet their respective salaries remain withheld. Their subsequent appeal seeking release of salaries was dismissed as non-maintainable solely on the ground that the petitioners are fugitives from law/absconder in a criminal case. Hence this petition for leave to appeal.

2. Learned counsel for the petitioners submits that the concept of being a fugitive from law or being an absconder is a concept under the criminal law and cannot be applied on the civil side. Therefore, service appeal of the petitioners ought to have been heard on merits and the case decided accordingly. While the learned AAG argued that in the absence of lawful induction, no vested right to pay or continuation in service arises, and that his fugitive/absconder status disentitles him to seek discretionary relief until he submits to the lawful process.

3. The principle that a fugitive or absconder cannot invoke the court's appellate jurisdiction in a criminal matter traces its origin to the *Fugitive Disentitlement Doctrine* developed in the United States. Evolving in the late nineteenth century as an equitable rule of criminal appellate procedure¹. The doctrine rests on the premise that one who deliberately evades the authority of the court disentitles himself to its relief. It treats flight from justice as a constructive waiver of appellate rights, justified on three interlocking rationales: first, that a court should not pronounce judgments it cannot enforce; second, that flight directly frustrates the appellate process by placing the appellant beyond judicial control; and third, that denial of hearing deters evasion of justice.

4. In the United Kingdom, the same consequence follows in criminal appeals not by way of doctrine but through procedural rule and practical necessity. Under the *Criminal Appeal Act 1968*, an appellant who has not surrendered to custody may have his appeal dismissed, since enforcement of any judgment—whether affirming or overturning conviction—would be impossible while he remains at large. Pakistan law has followed the

same procedural course: appellate courts have repeatedly declined to hear the criminal appeals of fugitives until they surrender or are apprehended, treating submission to jurisdiction as a precondition for hearing.

¹ See Roberto Iraola, 'The Fugitive Disentitlement Doctrine' *WASH. L. REV* 427 (1950) 430 & *Smith v. United States*, 94 U.S. 97 (1876); *Molinaro v. New Jersey*, 396 U.S. 365 (1970)

5. The rationale, shared across these jurisdictions, is one of *enforceability and procedural discipline*, not punitive forfeiture of rights. This principle, however, is strictly confined to criminal proceedings. Its extension into civil, family, or service-law contexts finds no support in either doctrine or policy. Civil and service adjudications determine rights over property, employment, or entitlements that are enforceable irrespective of the claimant's physical custody, and the litigant's absence seldom frustrates the process or its execution². In the United Kingdom and other common-law jurisdictions, blanket disentitlement of fugitives from civil justice is unknown, being incompatible with the right to a fair hearing under Article 6 of the *European Convention on Human Rights*. Within our own constitutional framework, founded upon Articles 4, 9, 10A and 25 of the Constitution of Pakistan, the right of access to justice cannot be curtailed merely because a person stands accused, or has absconded, in another domain of law. Unless a statute expressly provides otherwise or the fugitivity demonstrably obstructs adjudication, abscondence in a criminal matter cannot extinguish or suspend independent civil or service rights.

6. This Court has already affirmed that any disadvantage arising from the status of a proclaimed offender ordinarily attaches only to the very case in which the proclamation is issued and does not extend to other matters lacking nexus to that proceeding.³ Accordingly, a proclaimed offender is not, merely by virtue of that status, barred from instituting or defending a civil suit or prosecuting an appeal concerning his civil rights and obligations.⁴ Moreover, declaring a person proclaimed offender carries certain statutory consequences within that criminal sphere unless a specific statute governing civil employment expressly stipulates that such criminal status disables pursuit of civil remedies, the disqualification cannot be read into the service jurisprudence by implication. It would be impermissible to import a penal consequence into service jurisprudence in the absence of a clear legislative mandate.

² Even in the United States, attempts to transplant the doctrine into civil contexts have been rejected as disproportionate and inconsistent with due process.

³ *Tahir Sadiq v. Faisal Ali and others* 2024 SCMR 775.

⁴ *Malik Ahmad Usman Nawaz v. The Appellate Tribunal (Elections Act, 2017)* 2024 SCMR 1202; *Umar Farooq v. Sajjad Ahmad Qamar and others* PLD 2024 Supreme Court 688; *Tahir Sadiq v. Faisal Ali and others* 2024 SCMR 775.

7. Application of the disentitlement doctrine within the domain of civil adjudication is fundamentally inconsistent with the constitutional architecture. Articles 4 and 10-A enshrine the right to fair treatment, due process, and equality before law, ensuring that every person is afforded a meaningful opportunity to vindicate civil, service, and proprietary rights. The continuation of criminal liability or the status of a proclaimed offender, howsoever serious, does not operate to forfeit these indispensable civil entitlements unless the legislature has expressly imposed such a disability. To read a bar by implication would undermine the integrity of the justice system and would, in effect, operate as a double-edged weapon. One edge to deprive a citizen of the right of appeal or statutory remedy in matters affecting livelihood, service tenure, pension, contractual obligations or financial liabilities amounts to a denial of access to justice, a core constitutional guarantee woven into Articles 4, 9, 10-A and 25. Such exclusion would not only subvert the principle that no person shall be dealt with except in accordance with law, but would also distort the court's function from an instrument of justice into a mechanism of oppression. It would erode the very safeguards that protect citizens against arbitrary action, weaken public confidence in judicial institutions, and compromise the constitutional promise that justice shall be administered fairly, transparently, and without discrimination. The second edge would invite deliberate exploitation by shrewd and unscrupulous litigants. Such persons could weaponized a separate criminal label as a tactical device to preclude judicial review, insulating their conduct from scrutiny and avoiding accountability for contested actions. The practical effect would be to vest opportunistic litigants with a license to oppress; by invoking disentitlement they could extinguish an aggrieved person's access to remedies affecting livelihood, service, property or contractual rights, and thereby deny them the procedural protections of notice, hearing and appeal. Misapplied in this manner, the doctrine would cease to serve equity or orderly procedure and instead become a cloak for bad-faith litigation tactics that subvert the rule of law and strip citizens of constitutionally guaranteed due process.

8. The present matter is a service dispute, raising factual and legal issues that fall squarely within the ambit of departmental

and administrative law. These include whether the appointments were in fact irregular or fabricated; whether the disciplinary proceedings conformed to mandatory procedural requirements; and whether salaries may lawfully be withheld while the employee's service has not yet been formally terminated. None of these questions bear any nexus to the criminal proceedings or the status of the petitioner in that separate sphere. Criminal liability carries its own evidentiary thresholds and procedural safeguards, which are neither applicable to nor are determinative of service matters. To dismiss the petitioners solely based on their alleged abscondence is, therefore, a clear misapplication of law, as it conflates two distinct jurisdictions and deprives the petitioners of adjudication on issues squarely within their civil and service rights.

9. In this view of the matter, the impugned judgment is set aside with the direction that the appeal of the petitioners would be deemed to be pending before the Tribunal who will decide the matter on merits in accordance with law. Considering that the matter is pending since 2015, we are sanguine that the Tribunal will decide the matter within three months from the receipt of this order. These petitions are converted into appeal and allowed.

Judge

Judge

Judge

Islamabad:

24.10.2025

APPROVED FOR REPORTING

(Uzma Zahoor/MMM LC)

²³ *Muhammad Sharif v. Inspector General of Police, Punjab* 2021 SCMR 962.