

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 17945 of 2025.

Baber Masih

Versus

Cantonment Executive Officer, Sargodha & another

JUDGMENT

Date of hearing: 03.09.2026.

Petitioner by: Syed Hamid Raza Bukhari, Advocate.

Respondents by: Mian Asghar Ali, Advocate.

SHIREEN IMRAN, J: Through this petition, petitioner has called in question order dated 13.12.2024 passed by respondent No.2, whereby the departmental appeal filed by him was partly accepted and consequently vide order dated 10.01.2025, he was reinstated in service w.e.f. 26.11.2012, the date when he was dismissed from service, however, his claim qua back benefits was declined while treating his period of absence from duty as Extra Ordinary Leave (EOL).

2. Learned counsel for the petitioner contends that the petitioner was appointed as a Sanitary Worker on 06.10.2011 and his services were regularized on 30.12.2011; that, being implicated in a baseless criminal case bearing FIR No.655/2012, he remained in judicial

custody, due to which he remained absent from duty and consequently, the department stuck off him from service vide order dated 12.02.2014 and that after his acquittal from the aforesaid criminal case by this Court vide judgment dated 11.11.2021 passed in Criminal Appeal No.166-J/2017 though the departmental appeal filed by the petitioner for his reinstatement into service was accepted and he was reinstated in service w.e.f. 26.11.2012 but his claim qua back benefits was declined without considering the fact that all acquittals are honourable. Reliance has been placed upon the judgments reported as Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary, Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others (1998 SCMR 1993), Attaullah Sheikh v. WAPDA and others [2001 PLC (C.S.) 316], Tahir Kazmi and another v. Inspector General of Police, Punjab, Lahore and others [2026 PLC (C.S.) 510], The Province of Sindh through Chief Secretary Government of Sindh and others v. Raj Kumar Lohana and others [2026 PLC (C.S.) 404] and Ghulam Murtaza v. District Police Officer, Gujrat & others (2026 SCMR 843).

3. Conversely, learned counsel appearing on behalf of the respondents submits that the instant petition is misconceived and has been filed to secure an undue benefit. It is contended that no fundamental right of the petitioner has been infringed and as the petitioner remained absent from duty and did not perform any work, no *mala fide* or ill-will can be attributed to the departmental authorities while declining his request for grant of back benefits.

Reliance has been placed upon the judgment of the Hon'ble Supreme Court of Pakistan in Civil Petition Nos.1935 to 1938 of 2018 and connected matters, titled *Shafique Ahmed & three others v. Provincial Police Officer, KP & others*, dated 03.12.2025.

4. Arguments heard. Record perused.

5. Firstly, taking up the objection raised by the learned counsel for the respondents against maintainability of this petition in absence of infringement of any fundamental right, this Court is of the view that the petitioner seeks enforcement of his fundamental rights guaranteed under Articles 10-A of the Constitution of the Islamic Republic of Pakistan (the Constitution) and service rights, arising from orders of the competent authorities, and the impugned orders are amenable to judicial review where they are alleged to be without lawful justification. Likewise, absence of any specific finding against an authority does not preclude this Court from examining whether the impugned action is lawful, particularly where the challenge concerns the denial of consequential service benefits following reinstatement. Thus, instant petition cannot be dismissed on the point of maintainability, resultantly the objection under discussion is hereby spurned.

6. Now reverting to merits of the case, it is observed that the controversy essentially relates to the petitioner's entitlement to back benefits for the period intervening his removal and reinstatement. The petitioner was appointed as Sanitary Worker on 06.10.2011 and his services were regularized on 30.12.2011. During service, he was

implicated in a criminal case and remained in judicial custody, owing to which he could not attend his duties. He was ultimately acquitted by this Court vide judgment dated 11.11.2021. Though the petitioner has been reinstated in service by treating the period of his absence as EOL but his request for grant of back benefits has been declined despite the fact that the authority, while reinstating him in service, itself admitted that his absence was due to the circumstances beyond his control. Once the authority itself admitted that the absence of the petitioner was not intentional rather it was due to circumstances beyond his control, his request for grant of back benefits was to be considered leniently. It is trite law that discretion vested in an authority should be exercised justly and fairly. Dealing with somewhat similar situation, the Hon'ble Supreme Court of Pakistan in the case of Shafique Ahmed & three others (supra) has, inter alia, concluded as under: -

*“5.***** The core requirement for any legitimate and legal administration of power now hinges on its justification. Sound justification for government actions involves establishing the cogency and persuasiveness of the rationale behind government actions and requires such actions to be scrutinised for their rationality and reasonableness. Thus, if Article 10-A of the Constitution serves as a decisive departure from the restrictive culture of authority, it becomes evident what it aims to transition towards: a culture of justification. In this new model, every exertion of power must stand on its own merits, compelling authorities to substantiate their decisions through sound reasoning rather than relying on the fear associated with the force they command...*

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7. It is crucial to emphasise that similar provisions are prevalent across nearly all Civil Servants Acts applicable at both the Federal and

provincial levels. The pivotal focus of our discussion lies in the second proviso to Section 17. The straightforward language of the second proviso clearly indicates that discretion to determine back pay is conferred upon the authority responsible for reinstating a civil servant into service. Notably, the command of the law is unequivocal; the granting of such arrears is not an automatic consequence but rather a decision for which the authority possesses discretion, emphasising the equitable nature of such power. However, it must be recognised that this legislation that bestows these discretionary powers lacks a clearly defined set of conditions, circumstances, and standards to guide the authority in exercising its powers. This absence of specificity is deliberate and serves a distinct purpose as the discretion is inherently tied to the latitude granted by the legislative enactment and allows the designated official or authority to make determinations within a defined spectrum. The decisionmaker is not confined to the belief that there exists only one correct resolution. Instead, while the authority's choices should align with established legal principles of reason and justice, its judgment must be rooted in careful consideration and not arbitrary preferences. Exercising discretion is a grave responsibility, a sacred trust that demands utmost diligence, vigilance, and fairness. This power should be wielded with precision, rationality, and an unwavering commitment to the principles underpinning natural justice. Any deviation from this meticulous duty threatens to compromise the integrity of the decision-making process and jeopardises the foundational elements of governance. The authority, serving as the custodian of this discretion, is mandated by both the Constitution and service laws to act with impartiality, fairness, and transparency. It must consciously avoid actions that appear arbitrary or whimsical and instead embrace a thoughtful approach that acknowledges and balances the diverse interests and rights of all parties involved. The decision-making process must be guided by relevant factors, with precise articulation and disclosure of the reasons for decisions. At its core, the principle of fairness— central to administrative law- compels the authority to act without bias, prejudice, or ulterior motives, to guarantee that all civil servants receive equitable treatment. Any failure to adhere to this principle constitutes a breach of the duty of fairness and invites judicial scrutiny.

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12. After it is determined whether the civil servant was employed anywhere during the intervening period or not, the next stage is to determine how back pay should be granted. The question of awarding back pay in cases where a civil servant has been unfairly dismissed is guided by a general principle: such pay should ordinarily be granted to those civil servants who have been unlawfully deprived of their positions. However, this principle is not absolute and is subject to various conditions. The decision could grant back pay in full or in part, or it could deny back pay altogether. There is no rigid formula that dictates under what specific circumstances back pay should be authorised. The determination depends heavily on the unique facts and circumstances of each case. It would be erroneous to assume that entitlement to back pay is warranted solely based on technical legalities that invalidate a dismissal order. Instead, the awarding of back pay—whether in whole or in part, or none at all—requires a nuanced evaluation of several factors. These factors may include the nature of the civil servant’s appointment, the length and quality of his service, any proven misconduct, his financial situation, and other relevant considerations. This careful analysis seeks to balance the competing interests at play. Due to the diverse nature of such cases, there is no one-size-fits-all approach for providing relief in the form of back pay. Each situation must be assessed on its own merits, and this evaluation is often entrusted to the discretion of the relevant authority. However, it needs to be emphasised that while granting full back pay is generally the standard, it falls upon the authority to demonstrate compelling reasons that would justify a deviation from this norm. At this stage, the authority is tasked with exercising its discretion judiciously and consistently with established legal standards. This discretion must be exercised thoughtfully, based on a clear and convincing rationale that is evident from the official record. The exercise of discretion should adhere to the principles of reason and justice—based on law rather than whim—and must avoid arbitrary or capricious decisions.”

14.***** This deprivation connects directly to Article 9 of the Constitution, which guarantees the right to life. The term ‘life’ encompasses a broader interpretation, encapsulating not only mere existence but also the means to sustain it.”

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(emphasis provided)

7. The question of reinstatement of an employee came under consideration before the Hon'ble Supreme Court of Pakistan in the case of The Province of Sindh through Chief Secretary, Government of Sindh and others (supra). The Hon'ble Supreme Court, while considering the said question, settled the matter by, inter alia, observing as follows: -

*“10. In unison, a quick look to the glossary of the expression Reinstatement communicates the meaning of restoring something to a former, original, normal, or unimpaired condition. If we gaze it into the framework of employment, it characteristically ensues when a terminated, dismissed or laid off employee is sent back to his former occupation status which includes the reestablishing and protection of his seniority rights, privileges or other benefits that were previously lost. The doctrine of reinstatement also affirms a legal precept that allows a party to bring back a contract or agreement to its original terms after it has been terminated or breached. For all intent and purposes, this doctrine applies with diversity and miscellany that includes different situations including the reinstatement of an employee in the labour and/or civil service laws to his job after an unjust/wrongful termination or dismissal from service and also the renaissance or reactivation of a contract/agreement etc. Furthermore, this also facilitates to rectify errors, settle disputes, and make sure **that person concerned is not unjustifiably penalized which is in fact a fundamental perception of guaranteeing justice and upholding unprejudiced relationship in the legal and contractual agreements or terms and conditions of employment/service.**”*

8. Moreover, the question of grant of back benefits upon reinstatement of an employee has been elaborately considered and settled by the Hon'ble Supreme Court of Pakistan in Tahir Kazmi and another (supra), wherein the Hon'ble Court, inter alia, observed as follows: -

“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. A "back pay award" restores the economic status quo ante, compensating for the loss incurred. In our jurisdiction, the term "back benefits" typically includes arrears of salary and related service entitlements. Although broader meanings may exist, this discussion confines "back benefits" to arrears of pay and other emoluments denied due to wrongful dismissal or removal.

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 11. **This constitutional foundation finds affirmation in judicial precedent, most notably in Tariq Mahmood and Muhammad Sharif where this Court reaffirmed that the grant of back benefits is the norm and denial of service benefits to such reinstated employee is an exception. 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.”

9. In the present case, petitioner’s absence was occasioned by his incarceration in a criminal case in which he was ultimately acquitted. More importantly, the departmental appellate authority expressly found his absence to be beyond his control and did not find any misconduct surviving against him. The respondents have also not produced any material showing that the petitioner was gainfully employed elsewhere or earned any income during the intervening period. In these peculiar circumstances, mere fact that the petitioner did not physically perform his duties cannot constitute sufficient justification for denying him the back benefits upon reinstatement.

10. That 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 unbroken, thereby safeguarding eligibility for pension, promotion, seniority, and other ancillary service benefits. As held by the Hon'ble Supreme Court, any failure to recognize such intervening periods, results in an unlawful forfeiture of rights.

11. The direction to treat the intervening period as EOL does not answer the question of back benefits. EOL may regulate the manner in which an absence is accounted for in the service record but it cannot, without lawful basis, be used to defeat the consequences of reinstatement where the competent authority has itself recognized that the absence was beyond the employee's control and that no misconduct remained against him.

12. The judgment relied upon by the respondents in Shafique Ahmed & three others (supra), instead of lending support to the respondents, goes otherwise, as in the said judgment it has been held that grant of back benefits be determined justly and fairly in light of the circumstances attending the employee's absence, nature and basis of reinstatement, findings recorded by the competent authority and the guidelines provided by the superior courts on the subject.

13. For the foregoing reasons, it is held that the question regarding grant of back benefits has not been dealt with in accordance with the guidelines provided by the superior courts and law on the subject. Consequently, I deem it appropriate to remit the matter back for decision afresh on the point of back benefits.

14. Accordingly, this petition is **allowed**. The impugned orders dated 13.12.2024 and 10.01.2025, to the extent of denial of back benefits, are set aside and the matter is remitted to respondent No.2 for decision afresh, in view of the observations made hereinabove, especially the observations of the Hon'ble Supreme Court of Pakistan, contained in paragraphs No.5, 7, 8, 11, 12 and 14 of Shafique Ahmed & three others (supra), The Province of Sindh through Chief Secretary, Government of Sindh and others (supra) and Tahir Kazmi and another (supra). This shall be done within a period of **two (02) months**, from the date of receipt of a certified copy of this judgment.

(SHIREEN IMRAN)
JUDGE

Approved for reporting.

JUDGE

Umar