FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory/Review Jurisdiction)

PRESENT:
Justice Ali Baqar Najafi
Justice Syed Arshad Hussain Shah

CPLA No.749-P of 2023
[against the impugned judgment dated 06.09.2023 passed by the Peshawar High Court, Peshawar in Writ Petition No.1344-P of 2023]

The Director General
Peshawar Development Authority & another .... Petitioner (s)

Versus

Aziz-ur-Rehman & another .... Respondent

For the Petitioner(s) : Mr. Intikhab Khan Chamkani, ASC

For the Respondent(s) : N.R.

Date of Hearing : 21.10.2026

JUDGMENT

ALI BAQAR NAJAFI, J. Through this Petition under Article 185(3) now 175-F(1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973, the impugned judgment dated 6th of September, 2023 passed by the Peshawar High Court, Peshawar has been assailed, whereby, the Writ Petition filed by the Aziz-ur-Rehman **[respondent No.1],** to claim his back benefits consequent to his reinstatement, was allowed.

2. **Brief facts** giving rise to the filing of this petition are that the respondent No.1 was appointed as Laboratory Helper [BPS-2] in the year 1989 and was also promoted to the post of Laboratory Technician [BPS-9] in the year 2009 and then the post itself was upgraded to BPS-10. However, on 01.06.2020, his retirement orders were issued on account of his early date of birth. But later, on ascertaining the actual date of birth as 13.03.1965, his

retirement notification was withdrawn but he stood retired on 12.03.2025 on his age of superannuation. An inquiry was initiated to find out as to why an incorrect notification for retirement was issued for respondent No.1. During the inquiry, it was concluded that the respondent was not at fault and the retirement order was withdrawn yet recommended that the difference of salary between Laboratory Helper [BPS-2] and Laboratory Technician [BPS-9] for the period between 23.05.2008 to 01.12.2009 was to be recovered from the respondent No.1, who therefore, filed Writ Petition No.1344-P of 2023 before the Peshawar High Court which was allowed vide impugned judgment. Hence, this petition.

3. **After hearing** the learned counsel for the petitioners, it is straightaway observed that the respondent No.1 was not found to have committed any fraud or made any forgery or presented any tampered documents so as to earn his appointment against the facts. It is the case of the petitioners that although after the issuance of illegal notification for retirement, it was recalled but, since in between respondent No.1 did not perform any work, he is not entitled to any salary on the principle of "no work no pay".

4. However, we have not been able to understand as to what was the fault of the respondent No.1 for which he was initially retired and then the retirement notification itself was recalled and then he retired on his actual date of superannuation on the basis of date of birth i.e. 13.03.1965. In such like situation, grant of back benefits to an employee, who had been illegally kept away from employment, is the rule, whereas, the denial of such benefit is an exception on the proof that he remained gainfully employed during such a period[1]. Undoubtedly, salary cannot be withheld when the employee remained out of service due to whimsical and arbitrary action of the functionaries, therefore, he has every right to recover it. The court has also declared that as the respondent was in service he must be given a consequential relief. The respondent No.1 was prevented wrongfully from the service he was to give and during this period he was not engaged in any gainful employment or in profit of business. Of course, in that case he

[1] Muhammad Hussain and others Vs. E.D.O. (Education) and others [2007 SCMR 855]

could not be allowed to reap a double advantage[2]. Uptill now the legal position is that an unconditional reinstatement in service was to be followed by all back benefits and the only exception, of course, is that such employee was gain-fully employed/engaged in a profitable business during the intervening period[3]. The learned counsel for the petitioners has not been able to point out any illegality warranting interference into the finding given by the High Court,

5. In this view of the matter, the leave is **refused** and this petition is **dismissed.**

JUDGE

JUDGE

Islamabad
21.10.2026
'Not Approved for Reporting'
Adeel

[2] Pakistan through General Manager, P.W.R., Lahore Vs. Mrs. A.V ISSACS [PLD 1970 SC 415]
[3] Muhammad Sharif and others Vs. Inspector General of Police, Punjab, Lahore and others [2021 SCMR 962]