

THE HIGH COURT OF SINDH, KARACHI

Present:

Justice Mohammad Karim Khan Agha

Justice Adnan-ul-Karim Memon

CP No.D-138 of 2017

[Syed Zeeshan Ali v. Federation of Pakistan and others]

Petitioner : Syed Zeeshan Ali through Mr. Talha Abbasi advocate

Respondents : Ms. Wajiha M. Mehdi, Assistant Attorney General

Dates of hearing : 17.04.2025

Date of judgment : 17.04.2025

J U D G M E N T

Mohammad Karim Khan Agha, J. – Through this petition, the petitioner Syed Zeeshan Ali prays for the following reliefs:

i. Declare that the impugned orders of removal from service without formal procedure of inquiry, without any show cause notice and without affording personal hearing, is illegal, unlawful, unconstitutional, mala fide, arbitrary, discriminatory and in violation of principles of natural justice, equity and fairness.

ii. Re-instate the petitioner with all back benefits and direct the Respondents No.2 & 3 to allow him to avail benefits of VSS2016.

iii. Direct the respondent to sanction "foreign deputation", accept his pension contribution and GPF contribution and count his deputation period as on duty for the purpose of pensionary benefits as per rules.

iv. Any other relief which this Honourable Court deems fit in the interest of justice.

2. Briefly, the facts of the case necessary for disposal of instant petition are that petitioner was inducted as Assistant Division Engineer (BS-17) on 01.06.2001 in Pakistan Telecommunication Company Limited (PTCL) and was promoted as Senior Engineer in BS-18 with effect from 15.03.2011. However, according to the petitioner, after taking management control by M/s Etisalat International (Pakistan), from 2005 onward, salaries and allowances were not increased, as such, the

petitioner, who was suffering from financial crises, availed an opportunity to try his luck at Saudi Arabia. According to the petitioner, the respondents also unlawfully changed Revised Leave Rules, 1980 and were not allowing foreign deputation, as such, the petitioner, who had more than 500 earned leaves in his credit, applied for earned leave w.e.f 07.04.2016 to 04.07.2016 which were allowed. Thereafter, the petitioner applied for two years' extraordinary leave without pay but the same was rejected and he was duly informed by email. It is further stated that respondents launched Voluntary Separation Scheme w.e.f 28.11.2016, and the petitioner was offered such scheme on phone. It was prerequisite to rejoin the duties, therefore, petitioner informed the respondents through email dated 06.12.2016 about his joining. However, the respondents on the same day i.e. 06.12.2016 through email addressed impugned orders of removal from service without charge sheet/ show cause notice or even affording an opportunity of personal hearing. Hence this petition.

3. Learned counsel for the petitioner mainly argued that petitioner who was having 15 years of unblemished service was removed from service through impugned order without adopting proper procedure i.e. issuance of show cause notice/ holding of inquiry proceedings, hence such act of the respondents is against the principles of natural justice; that the petitioner even was not afforded an opportunity of personal hearing by the respondents; that the act of respondents is against the fundamental right as enshrined under Articles 4, 10A, 17, 18 and 27 of the Constitution of Pakistan as well as in violation of Section 24-A of General Clauses Act. Lastly, he argued that the petitioner may be reinstated with all back benefits and to allow him to avail benefits of VSS 2016.

4. On the other hand, learned counsel appearing on behalf of the respondents argued that the petitioner was doing job at Saudi Arabia which fact was concealed by him from the respondents; that Pakistan Telecommunication Limited Service Regulations 1996 are non-statutory rules, hence under Article 199 of the Constitution, this Court has no jurisdiction to adjudicate the same; that the petitioner has an alternate remedy of filing a departmental appeal which remedy he has not availed and directly approached this Court. It is further submitted that petitioner was first directed to join service after leave vide letter dated 10.08.2016 and email dated 11.08.2016 which was not responded to by the petitioner;

that the petitioner was served with a show cause notice dated 30.09.2016 which was also not replied by the petitioner, as such, he was removed from service. Lastly, it is submitted that proper procedure was adopted by the respondents before removal of petitioner from service, hence, the instant petition is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the record.

6. Without averring to the question of maintainability of this petition we would at the very out set like to make clear that an employee is subject to the terms and conditions of service as laid down by his employer and he is expected to abide by them failing which disciplinary proceedings might be initiated against him. It is the obligation of the employee to abide by his terms and conditions of service to enable the smooth functioning of his employers Organization and discourage others from not complying with their terms and conditions of service. Without such compliance by all employees the employers business is likely to be adversely effected and loss might even be caused to the business.

7. Whilst hearing a number of service related petitions we have noted a rising trend among employees to seek substantial time off work (leave of various kinds) from their employers to pursue higher education, or acquire further experience in their relevant fields, etc which their employers very often allow under the employees terms and conditions of service for fixed periods with the expectation that the employee will return prior to the expiry of his allowed leave and continue with his employment as a more experienced employee with the expectation that he would both be an asset to the business and enhance his own chances of promotion within the organization through his enhanced qualifications and/or experience.

8. By allowing fixed terms of leave this also allows the employer to work out and adjust his man power requirements to enable him to run his business to the optimum level with his available human resources. Unfortunately, despite the graciousness of the employer allowing elongated leave to his employee to pursue courses, often overseas, in order to further his/her career there has been an increasing trend of such leaves being misused by those employees who were allowed such leave

by their employer either by not returning at all to their place of work after their leave expired or seeking unjustified extensions in their leave and remaining abroad even when their leave extension is declined by their employers and deciding for themselves when they will return to work in complete violation of their terms and conditions of service as though such extension in leave was their right and they were not subject to any regulation whilst paying no heed to the requirements of their employees and their terms and conditions of service which they were bound by and which they accepted when they joined their employer. This is one such case.

9. Admittedly, the respondent at the request of the petitioner granted the petitioner 89 days leave starting from 7th April 2016 in order to visit Saudi Arabia due to some unspecified family obligations which the petitioner claimed he had to attend to.

10. After the expiry of his approved leave the petitioner sent an e-mail to the respondents on 08.07.2016 for extension of his leave for a further two years as he had found a job in Saudi Arabia in the following terms;

"Sir,

With due respect it is to state that I would like to extend my apology for not being able to return and join my duties as planned after 89 days' of earned leave starting from April 7th, 2016.

It is intimated that recently I have being offered a contract for two years in Integrated Telecommunication Company limited Saudi Arabia for expansion of Internet Gateway which is related to my job experience in PTCL and it appears to be a great opportunity which would be beneficial for my career growth through international work exposure as well as monetary benefits.

This letter my kindly be considered as a formal request for Two Years leave of absence on Extraordinary leave without pay from 9th of July 2016, so that I may be able to grab this opportunity and I would return to PTCL as I believe my definitive carrier is in PTCL

I have also placed a formal request of leave on LMS (snapshot appended below) for approval." (bold added) (sic)

11. Apart from dealing with his unspecified family obligations it is quite apparent from the content of the above e-mail (and later as admitted by the petitioner in his petition) requesting a further 2 years leave that he had been job hunting in Saudi Arabia and had now found a better, albeit contract job for two years, which in his own words would "benefit his

career" and "benefit him financially". In short the petitioner wanted to have both his cake and eat it.

12. The Respondent through its human resources department rejected the petitioners request to extend his leave by 2 years and vide e-mail dated 22nd July and advised the petitioner to resume his duties immediately to avoid disciplinary action.

13. Then on 06.12.2016 (5 months after being told to resume duty immediately failing which he would face disciplinary proceedings) the petitioner sent an e-mail to the respondent in the following terms;

"Subject: Joining PTCL as Manager IP Network South

Dear Sir,

I have some circumstance due to which I was unable to join.

But now the things are settled and I am willing to join PTCL by next week.

Looking forward to serve PTCL with more dedication."(bold added)

14. It is significant to note that **5 months after** being told to resume duty immediately or else face disciplinary proceedings **without giving any explanation for this 5 months delay** the petitioner was again willing to join the respondents despite his request for 2 years extension in leave being refused 5 months earlier. **There was no explanation for this 5 months delay.** Did the petitioner not take up his new job in Saudi Arabia, was he dismissed from such job or was there in fact no job at all. The answers to these questions we do not know because the petitioner did **not** offer any explanation.

15. In this 5 month period the respondents were left without the service of the petitioner which they might have vitally needed and his absence might have adversely effected their business as they might have had to find a suitable replacement from the market or from within their own organization. After not hearing from the petitioner for over 5 months after his request for extended leave was declined the respondents had every reason to believe that the petitioner would not be returning to work for them as the he had informed them through his e-mail when requesting a two year extension in his leave that he had found a job in Saudi Arabia which would benefit his career as well as financially. In fact

the petitioner by his conduct and attitude over this 5 month period does not appear to have cared less about the situation which he had left his employer in what to speak about deliberately and willfully violating his terms and conditions of service.

16. In fact it appears that only after the petitioner got wind of the takeover of the respondent and the possibility of a VSS pay out did he express any interest in returning to his job with the respondent which appears to be completely malafide and would exclude the petitioner from even approaching this court in its Constitutional jurisdiction as he has not come to this court with clean hands. The petitioner was served a show cause notice which he failed to reply to and was thereafter lawfully removed from service.

17. The Supreme Court in recent times has held that willful and deliberate absence from service without explanation is sufficient grounds for removal from service. In this respect reliance is placed on the case of **Chairman Pakistan Ordinance Factories, POF Board, Wah Cantt. versus Akhtar Tanveer and others** passed in Civil Petition No.1017 Of 2022 dated 27.11.2024 (approved for reporting) which held as under:

"5.....This Court has held that habitual or wilful absence involves an element of indiscipline which may sometime constitute gross misconduct and also ruled in the case of Secretary Education that on account of wilful absence from duty major penalty of dismissal from service can be imposed.

6. In this case, it is an admitted fact that the Respondent was absent from duty and the department has laid out sufficient reasons to show why they did not want the Respondent to continue with his service, considering that he wilfully absented himself, did not obtain clearance before traveling, and started looking for jobs after traveling abroad, all of which the Respondent was unable to sufficiently rebut. While due process has been observed and followed in the instant case, this Court has gone as far ahead as to hold that where the absence from duty is admitted, there is no need to hold regular inquiry. Under the circumstances, we see no justifiable reason for the Tribunal to reduce the punishment from major penalty of removal from service into compulsory retirement on the pretext that the punishment was harsh given that the Respondent had studied abroad and was an asset for Pakistan. Hence, we find that the Tribunal has exceeded its jurisdiction by arbitrary exercise of discretion which is illegal and without lawful authority."

18. Likewise the Supreme Court in the case of **Muzammal Khan versus Inspector General of Police, Lahore and others in Civil Petition No.1354 of 2023** dated 04.02.2025 (approved for reporting) has held as under:

"7. With respect to the issue of absence from duty, it goes without saying that any responsible member of any disciplinary force or any other government officer in the service of the government should be conscious of the rules and regulations particularly with respect to leave and absence from duty. They are required to follow the procedure and the rules for obtaining leave failing which they are responsible for the consequences. Willful absence is when a person intentionally fails to show up for duty and does not attempt to even inform the department/competent authority of the reasons for the absence. There may be different eventualities due to which a person is compelled to be absent from duty, being circumstances beyond his control like illness, accident, hospitalization, but even in such circumstances, they are required to inform the department and seek permission for their continued absence. One can't disappear from work without any information or contact and then suddenly re-appear and suggest that this act was not deliberate. A legitimate absence is one where the reasons are known and duly communicated, whereas willful absence is when the absence lacks a reasonable explanation and cannot be justified. In this case, the alleged absence cannot be justified, as the Petitioner never contacted the police force to inform them of his issue, there is no documentary evidence to support his stance and most importantly, he never raised this stance before the relevant forum, even while filing the appeal and revision." (bold added).

19. We are aware that a careful balance must be maintained between the rights of the employee and the employer under the terms and conditions of service so that employees are treated fairly and in accordance with the relevant law and terms and conditions of service but in the instant case we find that the employee was at fault. As mentioned earlier he wanted to both have his cake and eat it.

20. In the instant case the petitioner provided no evidence that he was ever working in Saudi Arabia despite claiming so in his e-mail to the respondents and gave no explanation as to why he refused to rejoin service despite the lapse of 5 months of being directed to immediately resume duties or else he would face disciplinary proceedings. Rather it appears that he only wanted to return to his service once he got wind of the VVS and wanted to take advantage of the same.

21. Disciplinary proceedings were taken by the respondent against the petitioner on account of his unexplained absenteeism which was a violation of his terms and conditions of service which lead to his removal from service on 06.12.2016 following a show cause notice.

22. Based on the particular facts and circumstances of the case we uphold the petitioner's removal from service as we also find the petitioners prolonged absence without explanation to be both willful and deliberate and as such dismiss the petition.