

Query: What remedies are available to probationary employees on Termination from service?

Keywords: - Probationary Employees, Termination of Service, Probation Period, Performance Assessment, Balochistan Civil Servant Act, 1974, Natural Justice, Due Process, Arbitrary Dismissal, Constitution of Pakistan, Supreme Court of Pakistan, Service Tribunal, Misconduct Inquiry, Stigma in Termination, Constitutional Petition, Public Sector Employment, Employee Rights, Disciplinary Action, Legal Remedies, Government Employees and Job Security.

In order to answer the query, it is significant to note at the very outset that *probation period* of an employee is a well-known phrase in the field of public as well as private sector's employment, which refers to the period in which the performance of an employee is on the test during which the employer assesses the employee's performance, skills, and suitability for the job which is performed by the employee for his employer. Dictionary definition () Meaning and purpose of probationary period also echoes in judicial decisions. In case **Gohar Vs. M.D SNGPL 1998 PLC (CS) 828** it was held that very purpose of probationary period was to assess the performance of an employee during a specified period in which services of employee remained purely temporary".

Section 6 of The Balochistan Civil Servant At 1974, describes probation as a period that an initial appointment to a service or post, not being an ad hoc appointment, *shall* while an appointment by promotion *may* be on probation for such period as may be prescribed¹. it also outlines that where satisfactory completion of probation in respect of a post also includes passing prescribed *examinations, tests, or courses, or successful completion of any training*, a person appointed on probation to such service or post who, before the expiry of the original or extended period of his probation, *has failed to pass such examination or test or to successfully complete course or the training shall*, except as may be prescribed otherwise, if he was appointed to such service or post by initial recruitment, be *discharged* ; or if he was appointed to such service or post by promotion or transfer, be *reverted* to the service or post from which he was promoted or transferred and against which he holds alien or, if there be no such service or post, be discharged. As regard the *termination of service* of such a person during the probation period, it is addressed in Section 11 of the Act, which states that the service of a civil servant may be terminated without notice during the initial or extended period of his probation. However, if the civil servant is appointed by promotion on probation or transferred and promoted on probation from one service, cadre, or post to another, their service shall not be terminated as long as they hold a lien against their former post, service, or cadre.

The underlying purpose of the probation period is unequivocal, which is to give the employer an opportunity to evaluate whether the employment relationship should continue on a long-term basis or terminated in the initial

phase. Thus, upon successful completion of the probationary period, the employee's appointment is usually confirmed, and they are granted permanent status. This may come with

1- Balochistan Civil Servant (Appointment, promotion and transfers) Rules 2009 and the Balochistan Civil Servants (Confirmation) Rules, 2012 prescribe the period of probation.

Additional benefits and job security. In some cases, if an employee's performance is not satisfactory but shows potential for improvement, the probationary period may be extended to allow for further evaluation and development. If the employee's performance is deemed unsatisfactory during the probationary period, the employer has the right to terminate their employment without the same level of procedural requirements that apply to permanent employees. However, this process must still comply with laws and principle of natural justice.

Service laws have been designed to maintain an efficient, transparent, and accountable public service system, which is essential for the effective functioning of the state machinery as well as to protect the rights of public servants, ensuring that public servants perform their duties with integrity and dedication. The Constitution of Pakistan provides robust safeguards to protect government employees from arbitrary dismissal, removal, or reduction in rank. The relevant constitutional provisions are primarily encapsulated, in the Article 10-A, providing a safeguard to ensure their right to due process and in the Articles 240 to 242 of the Constitution of Pakistan.

Normally the termination of service of an employee during the probation period does not amount to either removal or dismissal from service unless the order terminating the service mentions that it was terminated because of misconduct of the employee. It is however settled legal position that whenever there are allegations of misconduct followed by termination, an inquiry must proceed, failing which such an action is bad in law. Moreover, whenever termination order is made with a *mala fide* intention writ petition is the only proper remedy. In such circumstances the petitioner's right under the common law stood violated as he has been deprived of the reasonable opportunity being heard and to defend his case against the allegations levelled, which indubitably cast stigma on him. If the services of probationer were terminated with stigma because of specific charge, an enquiry has to be necessarily held, affording sufficient opportunity to show that the charge is without any basis. In the absence of a statutory definition of the word 'stigma', it shall be beneficial to refer to its meaning as available in dictionaries, so as to get a fuller understand of stigma and its repurcation on such person.

The proposition of law, in nutshell, as laid down in all cited cases is that if there is termination of services without complying with the provisions of rules and is based on misconduct or casts stigma then such a termination would amount to dismissal for which opportunity of being heard should be afforded to the employee. In case if the termination is on allegation of misconduct without entailing inquiry or alleged to be arbitrary and without reason the employee may file a constitutional petition before the High Court under Article 199 of the Constitution of Pakistan. Howbeit, if the termination is alleged to be for unsatisfactory work or conduct, the employee may appeal to the Service Tribunal, as provided under the relevant service rules and in such scenario, the writ jurisdiction of High Court is not available to the terminated employee.

In conclusion, the termination of probationary employees must be handled with strict adherence to legal principles and procedural fairness. The probation period serves as a crucial phase for assessing an employee's performance and suitability for permanent employment. Under the Balochistan Civil Servant Act, 1974, and relevant rules, the termination of a probationary employee can be executed without notice during the probation period. However, this termination must align with the principles of natural justice and due process, especially in cases involving allegations of misconduct.

Judicial precedents underscore the necessity of conducting inquiries and providing opportunities for defense when misconduct is alleged. The Supreme Court of Pakistan has consistently emphasized that arbitrary dismissals without fair hearing violate constitutional rights. Employees facing termination due to unsatisfactory performance or conduct have specific remedies available: they may appeal to the Service Tribunal or file a constitutional petition if the termination is arbitrary or involves misconduct.

The legal framework, including constitutional protections, service laws, and judicial interpretations, ensures that the rights of probationary employees are safeguarded against unjust termination. This robust legal structure not only protects employees but also promotes a transparent and accountable public service system.