

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-1617 of 2025

(*Mansoor-ul-Haq Solangi v Federation of Pakistan & others*)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul-Karim Memon

Date of hearing and Order: 24.06.2025

Mt. Imtiaz Ali Solangi advocate for the petitioner.

Mr. Javed Asghar Awan advocate for the Respondents.

Ms. Wajiha Mehdi, Assistant Attorney General

ORDER

Mohammad Karim Khan Agha, J: Through this constitutional petition, the petitioner challenges a decision by the respondent, Pakistan Industrial Development Corporation (PIDC), dated February 7, 2025, and seeks back benefits and salaries from January 13, 1993 to January 9, 2005, citing a judgment reported as **2021 SCMR 962**. He also demands arrears for a salary difference from June 30, 1986 to January 13, 1993, stemming from an alleged wrongful demotion, and requests proforma promotion and seniority based on a 2000 Service Tribunal judgment upheld in part by the Supreme Court in 2004 and a 1992 seniority list. For convenience's sake, an excerpt of the decision is reproduced below:-

Conclusion:

The committee after perusing the contents of representation of the petitioner dated 07.01.2025 and sifting through relevant available record as well as judgments of superior courts passed in the matter of petitioner's retirement dues has come to the conclusion that petitioner has been paid his full and final settlement/retirement dues in compliance of the judgment of the Hon'ble Sindh High Court passed C.P D 5608 of 2014 which judgment attained finality after dismissal of his review in year 2019. Petitioner's claim for payment of arrears of any back benefits in the form of salaries allowances, perks etc. have not been found to be legally valid as in view of the foregoing facts and understanding of the judgments/decisions of the superior courts, the Petitioner has failed to substantiate his legal right to the same and therefore, no arrears appear to be pending either on the ground of his length of service or on the ground of any alleged discrimination when compared with other retired officers of PACO, or on any other ground"

2. The committee constituted under the direction of this Court in C.P No. D-5608 of 2014, found the petitioner had been fully paid his retirement, i.e., salaries, allowances, perks, etc., and no arrears were/are due based on his service length, alleged discrimination.

3. The petitioner began employment with PIDC/Respondent No. 3 in October 1970 and was promoted to Assistant Manager (February 1974) and Deputy Manager (June 1980). In July 1986, he was appointed Senior Manager (Grade E-V/BPS-19) at PACO/Respondent No. 2. However, in September 1986, respondent No. 1 arbitrarily re-designated him as Deputy Manager (Grade E-III), a two-step reduction. Despite a directive from Respondent No. 1 (July 1989, reinforced March 1990) to honor his original Senior Manager appointment, the petitioner remained without financial effect. He was terminated by a private entity in September 1995. The Federal Service Tribunal (FST) reinstated him with all back benefits and costs on October 5, 2000. On appeal, the Supreme Court of Pakistan (May 6, 2004) upheld his reinstatement but disallowed back benefits for January 13, 1993, to October 4, 2000, citing a lack of evidence that he was not gainfully employed during that period. The petitioner rejoined service in January 2005 and reached the age of superannuation and has since repeatedly sought back benefits and arrears, submitting a misinterpretation of the Supreme Court's judgment, particularly when compared to a similar case where another employee received back benefits after providing an affidavit. His subsequent legal challenges, including a Constitution Petition (No. 5608/2014) in 2014, resulted in a directive to reassess his service benefits without discrimination, which he claims was not fully complied with. Another petition (No. 3613/2019) in December 2024 also directed non-discriminatory treatment. Despite a recent representation (January 7, 2025), his claim was rejected by Respondent No. 2 on February 7, 2025, leading to a new Constitution Petition (No. 1293/2025) concerning pensionary benefits and back benefits from January 13, 1993, to January 9, 2005, submitting that the Supreme Court's sole reason for disallowing back benefits (lack of affidavit) has since been addressed.

4. The Petitioner's counsel argues that the Respondents have consistently misconstrued court judgments, leading to the Petitioner being denied benefits that similarly situated employees received. When challenged about the 2004 Supreme Court decision in the case of *Mansoor-ul-Haq Solangi v Federation of Pakistan & others* **2004 SCMR 1308**, which specifically denied these benefits, the counsel attempted to differentiate the current case. The counsel contended that back benefits, while not a formal legal term, are widely understood as back pay or unpaid salary resulting from an employer's unlawful actions. A back pay award, he explained, aims to restore an employee's financial standing to what it would have been without the employer's wrongdoing. He further asserted that "back pay" often translates to "back benefits," which are essentially

retroactive payments. Citing *Muhammad Sharif v. Inspector General of Police* (2021 SCMR 962), the counsel argued that "back benefits" in this context refers to arrears of pay upon reinstatement. He emphasized that an employee reinstated on merit should receive full back benefits, as denying them would violate constitutional rights. However, he acknowledged that this principle is qualified if the reinstatement is conditional: If a dismissal was illegal due to a procedural defect but the employee's fault remains undetermined, a new inquiry can be conducted. In such cases, back benefits are withheld until a final decision on the employee's conduct. If the employee is found at fault, partial benefits may be denied. If a penalty is merely reduced rather than fully overturned, a portion of the back benefits may be withheld to reflect the reduced penalty. The counsel also referenced Fundamental Rule 54 (FR), which governs back pay for reinstated government servants. Under this rule, if an employee receives full pay and allowances for the period of absence, it's treated as duty. If only a portion is granted, it's not considered a duty unless specified otherwise. He reiterated that an employee reinstated on merit cannot be deprived of back benefits. Addressing the concept of "gainful employment/profitable business" as an exception to back benefits, the counsel argued that this exception was not applicable here because the Respondent failed to prove the Petitioner was gainfully employed elsewhere. He conceded that the Petitioner, in the intervening period, assisted indigent litigants by appearing in court as an advocate, but argued this cannot be considered "gainful employment" under service law.

5. The respondent's counsel argues that this petition is not maintainable and may be dismissed with punitive costs. The core arguments of the learned counsel for the respondents are that the respondent company has no Statutory Rules of service as Respondents 2 and 3 are private companies, not subject to statutory employment rules; thus, the law of master and servant applies. He next argued that Prior court rulings support this, making the constitutional petition inadmissible. He further submitted that the respondent company is not a "Person" under Article 199 of the Constitution, as the Respondents do not qualify as a "person" under Article 199 of the Constitution, as they perform no governmental functions. He argued that the subject case falls within the ambit of Res Judicata & Abuse of Process, as the petition is barred by Section 11 CPC because the Petitioner is re-litigating issues already decided by this Court in various petitions filed by the Petitioner. This includes a previously dismissed constitutional petition (No. 3613 of 2019) and a suppressed civil suit (No. 1166 of 2007) where the Petitioner was

awarded Rs. 255 million. Furthermore, the Supreme Court already disallowed back benefits in 2004, a decision the Petitioner keeps challenging despite critical remarks from the Apex Court. He added that other similar claims have also been dismissed and fully complied with by the respondent company. The Respondent's counsel contends the Petitioner is abusing the court process by repeatedly raising settled matters and has not approached this court with clean hands. He lastly prayed for the dismissal of the petition. Reliance is placed on the following judgments:

CP D-4844 of 2017: *Deedar Ali Kalhoro v. Federation of Pakistan*, decided on March 7, 2019, by the Divisional Bench of the Sindh High Court at Karachi.

Civil Petition No. 20-K & 22-K of 2012: *Mansoor ul Haq Solangi v. FOP etc.*, decided on December 16, 2013, by the Supreme Court of Pakistan. (A copy of the Supreme Court's Order regarding PACO and PIDC is enclosed as Annexure F-1 at page 211 of the Petition).

Civil Petition No. 842-K of 2011: *Fazal Hussain Bhatti & 3 others v. FOP etc.*, decided on March 30, 2012, by the Supreme Court of Pakistan. (A copy of the Supreme Court's Order in the case of PIDC is enclosed and marked as Annexure A).

6. We have heard learned counsel for the parties and have perused the material available on record with their assistance and case law cited at the bar.

7. The petitioner was terminated on September 26, 1995, and by filing his Service Appeal, the Federal Service Tribunal (FST) reinstated him with all back benefits and costs on October 5, 2000. However, the Supreme Court of Pakistan, on May 6, 2004, upheld his reinstatement but disallowed back benefits for January 13, 1993, to October 4, 2000, due to a lack of evidence of non-gainful employment.

8. A fundamental legal principle dictates that a reinstated government servant's absence is treated as a duty. The Supreme Court, in its May 6, 2004, judgment, upheld the petitioner's reinstatement but disallowed back benefits from January 13, 1993, to October 4, 2000, citing a lack of evidence of non-gainful employment. However, the period from October 5, 2000, to January 9, 2005, concerns salaries, and the petitioner submitted an affidavit on January 18, 2005, to substantiate his claim for this period. Despite a December 11, 2024, court order directing non-discriminatory consideration of his case, and the petitioner's subsequent detailed submissions in January 2025, Respondent No. 2 rejected his claims on February 7, 2025, without a speaking order or affidavit. Consequently, the petitioner filed a new Constitution Petition (No. 1293/2025) specifically

for these back benefits and salaries, asserting that the Supreme Court's disallowance was solely due to an evidence gap he has since filled.

9. The current petition, seeking substantially similar reliefs already adjudicated, in terms of Section 11 CPC and Order 2 Rule II CPC). Particularly given the petitioner's existing Rs. 255 million civil court decree. The petitioner has a history of re-litigating settled matters across various forums. This includes Constitution Petition No. 3613 of 2019, disposed of on December 11, 2024, with a subsequent compliance report (February 7, 2025) confirming all dues paid and the petitioner's contempt application dismissed (March 10, 2025). A Civil Suit No. 1166 of 2007 before this court resulted in a Rs. 255 million decree plus markup in his favor on March 8, 2022. Besides, the Supreme Court's final decision on May 6, 2004, categorically disallowed back benefits to the petitioner, previously awarded by the Federal Service Tribunal. Prior petitions (CP No. 688 of 2005 and CP No. 5608 of 2014) were dismissed by this Court (November 1, 2011, and April 2, 2018, respectively), with the Supreme Court affirming the finality of the former on December 16, 2013, stating the issue was "decided once and for all."

10. It is a settled principle that merit-based reinstatement entitles employees to full "back benefits" (retroactive pay), as established by the Supreme Court in the case of *Muhammad Sharif v. Inspector General of Police* (supra). Exceptions arise if reinstatement is due to procedural defects (pending fault determination) or reduced penalties. FR 54 treats periods of full paid absence as duty. The petitioner's counsel argues the 'gainful employment' exception does not apply, as the Respondent failed to prove it, and his pro bono legal work is not "gainful employment." However, given the Supreme Court's previous ruling disallowing the petitioner's back benefits due to insufficient evidence of non-gainful employment, this court cannot contradict that decision. The onus is on the petitioner to present new evidence in the proper forum to substantiate his non-employment during the intervening period.

11. For the reasons stated above, this petition is dismissed with pending application(s), if any.

Head of Const.Benches

JUDGE

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