

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C.P No. D-507 of 2025

**PRESENT: Mr. Justice Muhammad Saleem Jessar
Mr. Justice Nisar Ahmed Bhanbhro**

Petitioner : Through Mr. Muhammad Ali Pirzado
Abdul Ghaffar Khaskheli Advocate
son of Qadir Bux Khaskheli

Respondents : Through Mr. Liaquat Ali Shar,
The District & Sessions Judge Addl. Advocate General, Sindh and
Kamber-Shahdadkot & Others Mr. Aftab Ahmed Bhutto, Assistant
Advocate General, Sindh along with
Abdul Rauf Soomro, District
Accounts Officer, Kamber-
Shahdadkot

Date of hearing : 08.08.2025

Date of Order : 08.08.2025

ORDER

NISAR AHMED BHANBHRO, J. Through instant Petition, the Petitioner has claimed following relief(s):

“a) To direct the Respondent No.1 to immediately issue LPR / leave encashment as well as pension and other pensionary benefits to the petitioner, in accordance with the law.

b) To direct the Respondents No.2 that after receipt of pensionary document from Respondent No.1 issue LPR / leave encashment, pension and other pensionary benefits to the petitioner without further delay.”

2. The case of the petitioner as spelt out from the pleadings is that he was appointed as Peon in District Judiciary Larkana on 06.07.1982. He was

subsequently re-appointed as Bailiff on 04.01.1988. Petitioner performed his duties in District Judiciary Larkana and Kamber Shahdadkot Districts diligently, honestly and without any complaint. Petitioner was conveyed retirement with effect from 19.05.2025, on attaining the age of superannuation subject to verification of his appointment, Medical Fitness Certificate by the Learned District & Sessions Judge Kambar – Shahdadkot (Respondent No 1) vide order dated 17.05.2025. Petitioner filed representation for processing his pension case, which was declined by the Respondent No 1. Hence this Petition, seeking indulgence of this Court for release of pensionary benefits.

3. On notices, the respondent No.1/Learned District & Sessions Judge (Mr. Fareed Anwar Qazi), Kamber-Shahdadkot filed comments, wherein the retirement of the Petitioner was not disputed, but it was stressed that pensionary case of the Petitioner was withheld for want of verification of medical fitness certificate, domicile, PRC and educational testimonials. It was further stated that certain documents were missing from the office record of the Respondent No 1, therefore vide letter dated 23.04.2025 petitioner was directed to submit said documents. Petitioner submitted documents along with application duly forwarded by Learned Senior Civil Judge, Kamber dated 29.04.2025; however, it was matter of concern that both domicile and PRC certificates submitted by Petitioner were issued on 14.12.1996, long after the initial appointment date of Petitioner which is 06.07.1982. The domicile certificate described petitioner's occupation as "jobless" which contradicted his service record. It was further asserted that office of District & Sessions Judge may be allowed to complete the verification process and upon satisfactory verification of the documents, the pension case of the petitioner will be processed without undue delay strictly in accordance with applicable laws, rules, and notifications.

4. Mr. Muhammad Ali Pirzada, Learned Counsel for the Petitioner contended that the Petitioner served District judiciary for a period of 37 years. Petitioner was a bailiff and at the time of joining the service, he produced entire record which was duly verified and there was no complaint against him. He argued that withholding of the pensionary benefits of the Petitioner amounted to robbing his bread and butter. He contended that Petitioner was resident of District Kambar Shahdadkot (ex – District Larkana) since forefathers, if any anomaly as to the job status was reflected in the Domicile

Certificate, the same was a typographical error for which petitioner cannot be punished. He prayed for allowing this petition.

5. Mr. Liaqat Ali Shar Learned Additional Advocate General Sindh, contended that Petitioner has retired from service in the month of May 2025 and his service record was being verified, after proper verification his case for grant of pensionary benefits will be processed. He contended that Petition was filed at premature stage. He prayed for dismissal of the Petition.

6. Heard Arguments, perused material available on record with the able assistance of Learned Counsel for the parties.

7. Perusal of the material available on record revealed that Petitioner remained in service for more than 37 years, he was conveyed retirement on attaining the age of superannuation on 19.05.2025. The pensionary benefits of Petitioner were withheld for want of verification of the service record, which remained under the custody of Respondent No 1 and 2 for last more than 37 years. Petitioner was a member of Sindh Judicial Staff Service; his services were governed under the provisions of Sindh Civil Servants Act 1973 and Sindh Judicial Service Staff Rules 1994, which acknowledged the separation of judiciary from executive. Government of Sindh vide notification dated 16.01.1994 framed Sindh Judicial Staff Service Rules 1994 (SJSS Rules) in exercise of the powers conferred under section 26 of the Sindh Civil Servants Act, 1973 (SCS Act).

8. Under Rule 3 of the SJSS Rules, the judicial staff in District Judiciary was divided in different groups, service of Petitioner fell in group G which included Head Bailiff, Bailiff, Drivers, Book-Binders, Daftaries (District Courts), Havalgars Naik, Peons, Naib Qasid and Chowkidars, Malhis and Watermen. Under Rule 4 of the SJSS Rules, District Judge is the appointing authority of Judicial Staff in every Sessions Division. The provisions of Sindh Civil Servants (Appointment, Promotion and Transfer Rules) 1974 (APT Rules) were made applicable for appointment to the post in judicial service to the extent the same were not inconsistent to SJSS Rules. For the ease of reference Rule 4 is reproduced below:-

***"4. Appointing Authority.-** Appointments to the service in a Sessions Division shall be made by the District Judges for the Sessions Division: Provided that*

appointments to the service in the Small Causes Courts shall be made by the Judges, small Causes Court: Provided further that appointment shall be made in accordance with:- (a) The provisions of the Sindh Civil Servants (Appointment, promotion and transfer) Rules, 1974, so far as they are applicable to the posts in the service and are not inconsistent with these rules, and such other general rules as Government may frame from time to time; and (b) any instructions which the High Court may issue."

9. Under the provisions of SJSS Rules, the appointment in group G is made through direct recruitment. Though no specific qualification has been determined for appointment to the post of Bailiff but rule 8 lays down that "No person shall be appointed to a post in the service by initial recruitment unless he possesses a permanent Residence Certificate from the District where he is to be appointed, issued by the District Magistrate of that District", and "he is declared to be physically fit by a Board of Medical Officers, appointed by Government." Petitioner at the time of joining the job was permanent resident of District Larkana (now Kamber Shahdadkot) and he was physically fit, even today when he appeared before this Court, he was found physically fit. His appointment was not questioned during the period of service as admittedly Petitioner served District Judiciary for a period of more than 37 years, during the said period no any finding as to his ineligibility surfaced, he received salary regularly and any discrepancy was not pointed out in his service record.

10. For maintaining the service record of employees, the Government from time-to-time issues directions in the form of circulars, notifications and rules. Civil Service Rules (C.S.R) are in vogue in province of Sindh since pre partition. Chapter X (Rules 166 -180) of C.S.R are the relevant provisions for maintaining the service record. (The Rules as available in Combined Set of Civil Service Rules (C.S.R) Volume I & II). Rule 166 of C.S.R mandated the head of the office to prepare, maintain and retain in custody the service book of every non – gazetted employee. Rules 166 further burdens the head of the office to verify and attest the entries in service book, which included age, pay fixation, leave, transfer etc. Rule 177 of C.S.R binds the head of the office to take up for verification the service record of an employee in January every year. Moreover Rule 178 of C.S.R saddles a duty upon the shoulders of the officers inspecting the subordinate offices to inspect the service book and service rolls of non – gazetted employees maintained in the office. Rule 178 reads as under:

“178. It is the duty of officers inspecting subordinate offices to inspect the service books and service rolls maintained there. They should see that they are maintained up to date, that entries are properly made and attested, that verification has been properly carried out, and that the necessary statements and evidence secured and verification certificates have been properly recorded by the heads of the offices.”

11. The Provisions of rule 178 obligate the inspecting officers to verify the service record of employees maintained by the subordinate office. cursory glance at the photostat Copy of Service Book of the Petitioner (available at page 17) evidenced that his service book was verified by the Civil Judge Kamber, Civil Judge Shahdadkot, District and Sessions Judge Larkana and District Accounts Officer Larkana from his date of appointment until 23.05.2005. On creation of new District through bifurcation of Larkana in year 2005, services of Petitioner were transferred to new judicial district Kamber Shahdadkot. On transfer to District Kamber Shahdadkot, entries in the service book, are found verified by the Learned District and Sessions Judge Kamber – Shahdadkot and countersigned by District Accounts Office Kamber Shahdadkot.

12. It is quite surprising that in more than 37 years of Petitioner’s service no any ambiguity or anomaly was surfaced in the service record. It further reflected from record that Petitioner was given an upgradation in service from grade 01 to 05 by the Registrar Office of this Court in year 2014 with effect from 2002 and such upgradation also stands acknowledged by Mr Abdul Ghafoor Kalhoro the then District and Sessions Judge Kamber – Shahdadkot. Petitioner got salary for the period he served but after retirement, pension was withheld on the ground that Petitioner produced a domicile and permanent residence certificate (PRC) obtained in year 1996 which described the status of Petitioner as jobless. The reason so assigned baffled the wit and wisdom of a common man for the reasons that status of the Petitioner in the domicile and PRC might be a clerical mistake, particularly when there was no allegation against the Petitioner that his PRC was fake and he was not the original resident of the judicial district where he was appointed. This error in the Domicile recorded by Deputy Commissioner Office cannot render the employment of Petitioner nullity rather manifested the ill will of the authority to stop the pension benefits under unwarranted glitches.

13. Section 13 of the SCS Act provides stages for retirement from service, first on completing 20 years of qualifying length of service for pension and second on attaining the age of superannuation (sixty years). Petitioner retired from service on attaining the age of superannuation, under section 20 of the SCS Act he was entitled for the pension and gratuity as a matter of right. Section 20 reads as under:

“20. Pension and gratuity.- (1) On retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed. (2) In the event of the death of a civil servant, whether before or after retirement, his family shall be entitled to receive such pension, or gratuity, or both, as may be prescribed. (3) No pension shall be admissible to a civil servant who is dismissed or removed from service for reasons of discipline, but Government may sanction compassionate allowance to such a civil servant, not exceeding two-thirds of the pension or gratuity which would have been admissible to him, had he been invalidated from service on the date of such dismissal or removal. (4) If the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualifies for pension or gratuity; and any over payment consequent on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family.”

14. Legislature in its own wisdom incorporated word shall in above provision of law that on retirement, a civil servant “shall be entitled” to receive pension and gratuity, impliedly casting a duty upon the authority superintending the services of the retired employee to forthwith sanction pensionary benefits. **In case the department is of the view that the retired employee caused a loss through fraud, the department is competent under the law to initiate proceedings for such recovery but in no case the pensionary benefits be withheld.** West Pakistan Pension Rules, 1963 lay down the principles in that regard, per Rule 1.8(a) good conduct is an implied condition of every kind of pension and empowers the Government to withhold or withdraw a pension or any part of it if the pensioner is convicted of serious crime or found to have been guilty of grave misconduct either

during or after the completion of his service, provided that before any order to this effect is issued, the procedure regarding imposition of the penalty of removal from service shall be followed. In addition, thereto, under clause (b) to Rule 1.8, it is provided that the Government reserves the right of recovery from the pension on account of losses found to have been caused to the Government by the negligence, or fraud of such Government pensioner during his service, by instituting judicial or departmental proceedings. Provided that such judicial or departmental proceedings shall not be instituted after more than one year from the date of retirement of the Government pensioner, clause (c) of Rule 1.8 empowers the government to call upon a Government servant to refund such excess payments, if afterwards found to have been received by the pensioner.

15. The payment of pensionary benefits to a retired civil servant is protected under the law, rules and regulations. The payment of pensionary benefits is a vested right of an employee and was not a charity, alms or donation by the employer but a compensation of services rendered with due devotion by giving blood, sweat, toil, and tears. It is often seen, that the pension cases are withheld under unwarranted lame excuses particularly of the low-grade retired employees like Bailiffs, peons, chowkidars, malhis, clerks etc. Instead of helping them out the departmental hierarchy starts objections to delay the pensionary benefits resting on unmerited or trivial pretexts including financial crunch, which has nothing to do with a retired employee. Even the widows and orphans of retired employees are faced with such a terrible and disgraceful situation for the payment of family pension which is a right and not charity. This Court is burdened with such pension cases and do often the petitioners complain of the malpractices in the offices and insatiable demands of the heads of the concerned departments. Such a practice has never been accepted by the Courts and petitions are always disposed of with reprimanding remarks but to no avail.

16. Honorable Supreme Court of Pakistan, in the case of Haji Muhammad Ismail Memon reported as PLD 2007 SC 35 shown its dismay and anger over delay in pension payments and observed that it is a deplorable situation that Government servants, after having served for a considerable long period during which they give their blood and sweat to the department, had to die in a miserable condition on account of nonpayment of pension/pensionary

benefits, etc. Thus, everyone who is responsible in any manner in delaying the case of such retired officers/official or widows or orphan children for the recovery of pension/gratuity and G.P. Fund has to be penalized. Honorable Supreme Court issued strict directions that all the Government Departments, Agencies, and Officers deployed to serve the general public within the limit by the Constitution as well as by the law shall not cause unnecessary hurdle or delay in finalizing the payment of pensionary/retirement benefits cases in future and violation of these directions shall amount to criminal negligence and dereliction of the duty assigned to them.

17. In Pakistan, per census 2023, the life expectancy of a person is shown as about 68 years. Though the death is fixed and destined on the day ordained by Almighty Allah, but looking at the prevailing statistics, an employee in Pakistan retires in the last decade of life expectancy. He requires financial security to pass his life with ease in the second innings. After retirement, the timely payment of pension is considered as the main source of income for livelihood. Despite serving for a long time with sheer commitment, if the pensionary benefits are delayed or denied without any lawful justification or without assigning any reason, it would reflect a sad state of affairs, rather an appalling and deplorable situation for a person who performed his duties with utmost dedication and enthusiasm throughout his career but at the eve of his retirement, he is treated inhumanly and gets nothing. In the case of Petitioner, his pension was withheld on the pretext of totally misconceived objection of incorrect information in the domicile certificate, which in our view was never relevant for processing and grant of the pension benefits to the Petitioner, who served the department for about 37 years in grade 1-5, he needed compassion and all the sympathies but he was left helpless and ultimately knocked the door of this Court.

18. Every individual enjoys the protection of law and is subject to due process of law. The Petitioner was required by Respondent No 1 to submit certain documents at the time of retirement for processing his pension case. In our view it was not needed as under the provisions of C.S.R referred supra, head of the department is the custodian of service record of an employee and in the case of Petitioner his record was verified time and again as transpired from his service book and at no point of time while in service any discrepancy was traced out. Surprisingly at the end of first innings, he was informed that

he cannot be given pension rights for want of verifications. Period of more than two months has passed since the date of retirement of the Petitioner but office of the Respondent No 1 has failed to get the domicile verified, though in our view is not a requirement for grant of pension benefits. Purpose of Domicile and PRC was to identify the permanent place of residence of person. OLD NIC attached with service Book, new CNIC and information contained in service record evidenced that Petitioner was permanently residing in District Larkana (now Kamber), therefore, withholding the pension benefits on this score was not justified under the law and amounted to denial of the fundamental rights of the Petitioner as to bread and butter.

19. Honorable Supreme Court of Pakistan in the case of Muhammad Yousuf Versus Province of Sindh and others reported as 2024 S C M R 1689 has held as under:

"Under the exactitudes of pension rules and regulations, the concerned department is obligated to immediately process the pension papers without putting it on hold or throwing it in shelves for an unlimited period of time. At the same time, it is also the onerous duty and obligation of the head of the department/competent authority and all other persons in the department who are engaged in the completion process to keep a vigilant eye in order to ensure the swift payment of pensionary benefits without unreasonable delay for protecting and safeguarding the interest of the retired employees and their families. They should also remember that in the near future, they will also relish the flavor of retirement and file their own papers for pension and step into the shoes of retired employees. In the self-accountability process with the honest motto of not dragging the payment of pensionary benefits of others, the persons responsible in order to change the culture of making delays should maintain a clearheaded policy to complete the process for pension fairly within a sensible time. If a swift process really comes into fashion by means of their sincere efforts then hopefully, at the time of their retirement, they may not face the same problems and hindrances that their past colleagues faces. As the saying goes, "as you sow, so shall you reap."

20. In the case of Petitioner, Learned District and Sessions Judge has failed to assign cogent reasons, that warranted withholding the pension benefits of the petitioner, particularly when his service record was verified from year-to-year basis. The moment petitioner retired from service, Respondent No 1 being the head of the department was required to forward his case for grant of

pension benefits but the authority resorted to old fables and denied the pension claim of petitioner on pretext of certain discrepancies in the service record, which even to the consideration of an ordinary man were trivial in nature and did not suit to the caliber and prestige of the office of District and Sessions Judge.

21. For the reasons discussed herein above, we find no justification for withholding the pension benefits of the Petitioner, and such action on the part of Respondent No 1 tantamount to impinging the fundamental rights of the Petitioner. This Court being the custodian of the fundamental rights of the individual cannot turn a deaf ear to such actions on the part of Respondent No 1. The actions on the part of Respondent No 1 withholding the pension benefits of Petitioner are unwarranted, illegal, unjustified and without any lawful authority thus amenable to the judicial review of this Court in its powers conferred under article 199 of the Constitution. Consequently, this Petition is allowed, Respondent No 1 is directed to process the case of Petitioner for grant of pension benefits and finalize it within fifteen days' time from the date of this order and ensure payment of the pension benefits and monthly pension to the Petitioner within a period of 30 days from today and submit the compliance report to the Additional Register of this Court for our perusal in Chambers.

22. Office to send Copy of this Order to the Respondents by fax today and a copy of the order shall also be transmitted to the office of Learned Additional Advocate General Sindh who shall ensure compliance of the order.

The Petition stands disposed of accordingly.

JUDGE

JUDGE

Larkana
Dated. 08.08.2025
 Approved for Reporting