

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No.D-5404 of 2023

[Ghulam Shabbir Shaikh versus Province of Sindh and others]

Before:

Justice Muhammad Karim Khan Agha
Justice Adnan-ul-Karim Memon

Date of hearing & Judgment: 15.10.2025

Mr. Talha Abbasi advocate for the petitioner

Mr. Imran Ahmed Khan Abro, Assistant AG

J U D G M E N T

Muhammad Karim Khan Agha, J. Petitioner has filed this Constitutional Petition with the following prayer(s): -

(a) Direct the respondents to pay non-practicing allowance to the petitioner w.e.f. 21.5.2018 forthwith.

2. The petitioner was initially a lawyer by profession and then became a permanent employee of the Land Utilization Department Government of Sindh. He claims entitlement to a non-practicing allowance, duly approved by the Chief Minister in 2016 and concurred by the relevant authorities. Despite this approval, the allowance has not been released due to inaction by the respondents.

3. The petitioner was initially appointed as Second Capacity Legal Assistant on 28.07.2010 (contract basis) and regularized on 15.12.2011. Throughout his service, he has represented the department effectively before the High Court and the Supreme Court. Recognizing his performance, the department repeatedly requested grant of the allowance through letters dated 05.01.2011, 27.01.2012, and 23.04.2014. The Finance Department responded on 29.05.2014, advising submission of a summary to the Chief Minister, which was duly approved on 31.01.2016. Subsequent correspondence between respondents No.2 and 3 in 2016 and 2018 reflects continuous follow-ups, yet the Finance Department failed to implement the Chief Minister's directions. Even after further orders by the Chief Minister on 21.05.2018, and several applications by the petitioner (including those dated August 2017 and 19.09.2019), no action has been taken. The petitioner submits that the denial of the non-practicing allowance is arbitrary and discriminatory, as similarly placed law officers of the Criminal Prosecution Department Government of Sindh have been granted the same benefit. He therefore seeks a writ of **mandamus** directing the respondents to implement the Chief Minister's approved decision and release the allowance as per law.

4. Learned counsel for the petitioner contends that the petitioner is entitled to the special/non-practicing allowance duly approved by the Chief Minister in 2016 and reaffirmed in 2018. Despite this, the respondents have unlawfully failed to

release the allowance. It is argued that similarly placed law officers in other departments are receiving the same benefit, and the denial to the petitioner is discriminatory and mala fide. The petitioner, being a competent law officer who has successfully represented respondent No.1 in numerous cases, is suffering financially and professionally due to the respondents' inaction. It is further submitted that such allowance is a standard entitlement for government-employed law officers to offset their inability to take private work. The counsel, therefore, prays that the petition be allowed.

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

6. A non-practicing allowance (NPA) or special allowance is a financial benefit granted to government-employed professionals, such as law officers, doctors, engineers, and other specialists, who, due to the nature of their public service, are barred from engaging in private practice. It serves as compensation for the loss of professional income they might otherwise earn privately, thereby maintaining parity with professionals in the private sector and promoting efficiency and integrity within public institutions. However, the grant of an NPA or special allowance is not automatic; it depends upon a specific government policy or notification issued under the Rules of Business or relevant service rules of the federation or province. Such an allowance requires, approval by the competent authority (e.g., Chief Minister, Cabinet, or Finance Department); and Budgetary provision or concurrence by the Finance Department, which regulates such allowances through circulars, summaries, or notifications under the Rules of Business, 1986. The allowance becomes admissible when the competent authority formally approves it for a defined category of employees (e.g., law officers, medical officers); Employees are prohibited from private practice under law, service rules, or departmental policy; Similarly placed employees within the same government or department are already receiving it, ensuring equality under Article 25 of the Constitution; and The approval is communicated or notified through an official memorandum, notification, or departmental order. Once validly approved, the allowance becomes a vested right of eligible employees and may be enforced through a writ of mandamus if unlawfully withheld. Conversely, the subject allowance is not admissible when no valid approval or notification exists authorizing its payment; The employee is allowed private practice and therefore not deprived of additional income; The approval is conditional (e.g., subject to budgetary allocation) and those conditions remain unmet; the competent authority has lawfully withdrawn or modified the allowance; or the post or service is not analogous to others receiving the benefit, lacking parity of duties or restrictions.

7. It is a settled principle that when a public authority makes a promise or decision such as approving an allowance, it creates a *legitimate expectation* for the beneficiary, unless there exists an overriding legal or public interest to deny it. Denial of such benefit to one employee while granting it to similarly placed officers amounts to *discrimination* in violation of Article 25 of the Constitution. Once a competent authority, such as the Chief Minister, duly approves an allowance, it becomes binding unless lawfully reversed, and failure to implement it can be challenged through a writ of *mandamus* under Article 199 of the Constitution. In **Kakakhel Law Associates (2019 PLC (CS) 238)**, this Court held that denying a judicial allowance to certain law officers was discriminatory and directed its payment. The Supreme Court in *Zeenat Bangash v. FBR* also ruled that withholding deputation allowance from some officers while granting it to others violates Article 25. Similarly, the doctrine of legitimate expectation was reaffirmed in *Uzma Manzoor v. Vice Chancellor, Khushal Khan Khattak University (2022 SCMR 694)*, and entitlement to health allowance upheld in *Federation of Pakistan v. Nusrat Tahir (2018 PLC (CS) 669)*. *Federation of Pakistan v. Nusrat Tahir (2018 PLC (CS) 669)*, Continuation of a health allowance upheld where government policy created a legitimate expectation.

8. In the present case, the non-practicing/special allowance was/is twice approved by the Chief Minister and concurred by relevant departments, while similarly placed law officers are also receiving the same benefit.

9. In view of the foregoing discussion and case law, this petition is disposed of by directing the competent authority of the respondents to reconsider the petitioner's case in accordance with law if he meets the criteria for the subject allowance. Besides, if the orders of the Chief Minister, Sindh approving the grant of special/non-practicing allowance to the petitioner, are still in field and have not been lawfully withdrawn or modified, the same shall be implemented in letter and spirit without further delay. This exercise shall be completed within a reasonable period, preferably within three months, in light of the principles enunciated by the Superior Courts regarding legitimate expectation, equality, and non-discrimination.

HEAD OF CONST. BENCHES

JUDGE