

Order Sheet

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. D- 165 of 2023
[Inamullah Shaikh v. Province of Sindh & others]

Before:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Riazat Ali Sahar

Petitioner : Through Mr. Ayatullah Khowaja, Advocate

Respondent-6 : Through M/s. Kamaluddin & Unaib Kamal, Advocate

Respondent-7 : Through Mr. Muhammad Irfan Rajput, Advocate

Mr. Muhammad Ismail Bhutto, Addl. A.G.,

Date of Hearing
& Decision: 09.12.2025

ORDER

ADNAN-UL-KARIM MEMON, J.- Through the listed Constitutional
Petition, the petitioner has prayed for the grant of following relief(s):-

- i. To declare that the acts of the respondents are illegal, unlawful, unconstitutional, and being taken in violation of Articles 9, 14, and 10-A of the Constitution of Pakistan 1973.
- ii. To declare that the petitioner is entitled to receive a PROPORTIONATE SHARE OF PENSION of Rs.. 6,213,419/-(Rupees Six Million, Two Hundred Thirteen Thousand Four Hundred and nineteen only) from the University of Sindh Jamshoro (Respondent No.05), on account of his service from 01.08.1997 to 25.09.2009 as Lecturer / Assistant Professor, International Relations Department.
- iii. To direct the Allama Iqbal Open University, Islamabad, to pay a PROPORTIONATE SHARE OF PENSION of Rs.. 6,213,419/- (Rupees Six Million, Two Hundred Thirteen Thousand Four Hundred and Nineteen only) to the petitioner, so that his troubles come to an end, and the above amount may be adjusted after receiving from the University of Sindh, Jamshoro.
- iv. Any other relief or relief as this Honourable Court may deem think, fit and proper in view of the circumstances of the case to secure the end of justice.

2. The petitioner's case is that he was initially appointed as Lecturer (BPS-17) in the Department of International Relations, University of Sindh, Jamshoro, on 25.06.1997. He was subsequently promoted to the post of Assistant Professor in the same department on 21.04.2002. While serving at University of Sindh, he applied through proper channel for the post of Regional Director (BPS-19), Regional Campus

of Allama Iqbal Open University at Karachi and he was appointed accordingly vide letter dated 17.09.2009. Consequent upon his appointment, he was relieved from the University of Sindh, Jamshoro, vide letter dated 25.09.2009. Thereafter, vide letter dated 07.10.2009, he was posted at Allama Iqbal Open University (AIOU), Hyderabad Campus, on probation for a period of two years, and upon successful completion of the probationary period, his services were duly regularized. During his service at AIOU, keeping in view his impending superannuation, the AIOU administration initiated correspondence with the University of Sindh regarding transfer of his pensionary benefits based on a proportionate rate. In this regard, vide letter dated 08.01.2018, a cheque amounting to Rs. 819,944/- was issued by the University of Sindh as pension contribution for the period from 01.08.1997 to 25.09.2009. However, the said cheque was returned by the Additional Registrar, AIOU, Islamabad, vide letter dated 02.02.2018, with a request that proportionate pensionary shares, instead of pension contribution, be transferred. The petitioner also submitted an application dated 22.03.2018 for transfer of service benefits/proportionate pensionary share, but no positive response was received. Thereafter, having found no resolution, the petitioner approached the Vice Chancellor, University of Sindh, Jamshoro, for redressal of his grievance; however, his efforts remained unsuccessful. Consequently, being aggrieved and having exhausted all available remedies before the competent authorities, the petitioner has been constrained to file the present petition, praying for its acceptance with direction to the respondents to release his pensionary benefits by both the respondent universities as per law.

6. Learned counsel for respondent No.6 submitted that, upon the petitioner's request, the Syndicate of the University of Sindh, Jamshoro, vide Resolution No.41 dated 27.08.2016, resolved to transfer the petitioner's pensionary benefits to Allama Iqbal Open University (AIOU). In pursuance thereof, a cheque amounting to Rs.819,944/- was issued towards the petitioner's pension contribution. Additionally, a cheque of Rs.832,200/- was issued in favour of the petitioner, representing the amount deposited by him during the period of his lien. However, a cheque issued towards pension contribution was returned by the AIOU administration on the ground that only the proportionate share of pension, and not pension contribution, was acceptable. It was further stated that the cheque of Rs. 832,200/- issued in favour of the petitioner was not returned by him. Learned counsel further contended that the University of Sindh, Jamshoro, never consented or agreed to pay the proportionate share of pension in terms of the petitioner's appointment orders issued by both universities. It was argued that through his applications, the petitioner persistently sought consent in respect of Term-V of his appointment order, which was never granted by the University of Sindh. It was also submitted that AIOU has no statutory rules having the force of law; therefore, such rules do not confer any enforceable right upon the petitioner and are not binding upon the University of Sindh. Moreover, there exists no privity of contract or agreement

between the two universities with regard to Term-V of the terms and conditions of the appointment order issued at the time of petitioner's appointment at AIOU. Lastly, learned counsel for the University of Sindh prayed for dismissal of the petition.

7. Learned counsel representing respondent No.7 submitted that the instant writ petition is not maintainable, as the rules governing the terms and conditions of service of Allama Iqbal Open University are non-statutory in nature. It was further submitted that the petitioner has no cause of action against respondent No.7. According to learned counsel, the petitioner's grievance lies solely against respondents Nos. 1 to 6, who have failed to finalize and remit the proportionate share of pension amounting to Rs.6,213,419.71 for the period during which the petitioner rendered service as Lecturer and Assistant Professor at the University of Sindh, Jamshoro, from 01.08.1997 to 25.09.2009. Learned counsel further drew attention to condition No. (V) of the petitioner's appointment letter issued by respondent No.7, which expressly provides that AIOU would assume responsibility for pension only from the date of the petitioner's joining the University, unless the parent department agrees to pay the proportionate share of pension for the period of service rendered therein. In terms of this condition, read with Rule 33 of AIOU Service Statutes, it was submitted that respondent No.7 has duly discharged its obligations by releasing the admissible commuted sum upon the petitioner's retirement and by making regular monthly pension payments in accordance with the petitioner's qualifying service at AIOU. Reference was also made to Section 33 of the AIOU Statutes, which provides that civil service regulations relating to pension and retirement benefits applicable to Federal Government servants shall apply to AIOU employees. It was emphasized that, for employees who previously served in a provincial government or autonomous organization, pension cases are to be settled under the Federal Government Pension Rules through receipt of the proportionate share from the concerned provincial department or organization. Learned counsel submitted that, under these provisions, respondents 1 to 6 are legally bound to remit the proportionate share of pension for the service rendered by the petitioner at the University of Sindh. In support of this contention, learned counsel also relied upon para 8(ii) of Part-IV of Appendix-3 to Rule 31 of the Account Code, Volume-I, which stipulates that where a government servant has served under more than one government prior to retirement, the pension is to be apportioned among the respective governments in proportion to the length of service rendered under each. It was argued that, in light of these provisions, the petitioner's pension liability is chargeable to both universities in proportion to his respective periods of service, as they are distinct institutions with separate sources of funding. It was submitted that AIOU has already paid the admissible pensionary benefits corresponding to the petitioner's service at AIOU; however, due to the reluctance of University of Sindh, Jamshoro respondent No.6 to remit its due proportionate share, the petitioner's earlier service has not been taken into account in the calculation of his pensionary benefits. Learned counsel clarified that the petitioner's

service at the University of Sindh would be duly counted upon receipt of the proportionate pension share from respondent No.6. Learned counsel further referred to the letter dated 05.01.2021 issued by the University of Sindh, Jamshoro, whereby it had given its assent to remit the petitioner's pensionary benefits for the period from 01.08.1997 to 25.09.2009 at the time of his retirement from AIOU service. Despite such assent, respondent No.6 has failed to release the amount of Rs. 6,213,419.71, thereby causing undue hardship to the petitioner. Reliance was also placed upon a similar matter decided by the Islamabad High Court in Writ Petition No. 2792/2019, wherein Pakistan Agricultural Research Council was directed to pay the proportionate share of pension to Quaid-e-Azam University in respect of a retired professor. It was pointed out that the said judgment was upheld by a Division Bench of Islamabad High Court through dismissal of Intra-Court Appeal No. 502/2021 vide order dated 28.02.2022, thereby affirming the legal obligation to pay proportionate pension rather than pension contribution. On the basis of this precedent, it was contended that the University of Sindh, Jamshoro is equally liable to remit the proportionate share of pension to AIOU. In conclusion, learned counsel for respondent No.7 prayed that respondent No.6 be directed to pay the proportionate share of pension amounting to Rs. 6,213,419.71 to respondent No.7, so that the petitioner's service rendered at the University of Sindh, Jamshoro may be duly included in his qualifying service for the purpose of pension and commutation, and his pensionary benefits be revised accordingly. He prayed to dismiss the petition against respondent No.7.

8. Learned Assistant Advocate General submitted that the petitioner was appointed through proper channel as Lecturer (BPS-17) in the Department of International Relations, University of Sindh, Jamshoro, on 01.08.1997. He was subsequently promoted to the post of Assistant Professor in the same department on 21.04.2001. During his service at the University of Sindh, Jamshoro, he was appointed as Regional Director (BPS-19) at the Karachi Regional Campus of Allama Iqbal Open University. The petitioner has sought release of the proportionate share of his pension from the University of Sindh, Jamshoro. Learned AAG submitted that since the petitioner was serving with the University of Sindh prior to joining Allama Iqbal Open University, Islamabad, the University of Sindh, being an autonomous body, is required to pay the proportionate share/capitalized value of pension. Accordingly, it was contended that it is the responsibility of the University of Sindh, Jamshoro, to address and redress the grievance of the petitioner.

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

10. From the pleadings of the contesting parties, the following undisputed facts emerge:

- (a) The petitioner remained in the service of the University of Sindh from 01.08.1997 to 25.09.2009.
- (b) While in service, the petitioner applied through proper channel and, upon selection, joined Allama Iqbal Open University (AIOU) after being duly relieved by the University of Sindh.
- (c) The petitioner's services were regularized at AIOU, where he ultimately superannuated.
- (d) AIOU repeatedly requested the University of Sindh to remit the petitioner's proportionate share of pension.
- (e) Instead of releasing the proportionate pensionary share, the University of Sindh issued a cheque towards pension contribution, which admittedly does not conform to the legally prescribed formula for proportionate pension, and has persistently declined to pay the proportionate share of pension.

11. In view of above undisputed facts, the central question requiring determination is whether, upon an employee's transfer from one public sector university to another through proper channel, the previous employer, namely the University of Sindh, is legally obligated to remit the proportionate share of the petitioner's pension and other service benefits to the subsequent employer, i.e., Allama Iqbal Open University for counting that service for pensionary benefits.

12. The pension of a retired employee/ public servant cannot be withheld, under any stretch of imagination. The public sector universities, being statutory bodies; their employees' service benefits are thus transferable if applied through proper channel, the Supreme Court has consistently held that, when service is transferred between public bodies, the previous employer must remit the pensionary liabilities corresponding to the service rendered, such obligation arises irrespective of fact, whether both institutions have identical rules or not, the receiving institution is bound to count past service, once the sending department remits its proportional liability share to the transferring university. The past service must be counted; therefore, the sending institution must remit the pension's proportional share, whatever share proportionately calculated in lieu of the services, which the petitioner rendered with the sending university.

13. The objection as put forward by the respondent/University of Sindh, that there is "no privity of contract" or that "AIOU has no statutory rules" is legally misconceived, and not tenable in the eyes of law, as even otherwise public rights and constitutional guarantees are never dependent on contractual arrangements between statutory bodies/institutions, especially when it comes to the payment of pension to the retired employees, who have given their blood and sweat to those institutions, throughout their service careers.

14. To resolve the controversy it appears that the Government of Pakistan, Finance Division's Civil Service Regulations 45, which embodies the rule of proportions. The

regulation provides that pension liability is to be apportioned among different accounts in proportion to the pay drawn by an employee during the period of qualifying service under each employer.

14. Apart from the mandatory provision contained in CSR-45, the respondent University of Sindh is also bound by its own Syndicate Resolution dated 27.08.2016, whereby the petitioner's pensionary benefits were approved to be transferred to AIOU. A decision taken by a competent statutory body of a public sector university is binding unless set aside by a competent forum. The University of Sindh cannot now adopt a self-contradictory stance to deny the petitioners lawful pensionary benefits. Consequently, the plea to pay only pension contribution, being substantially less than the legally determined proportionate pension, is not legally sustainable and is contrary to its own resolution.

15. Additionally, the statement submitted by respondent No.3, Finance Department, Government of Sindh, through the Additional Finance Secretary (SR/Admn), fully supports the petitioner's claim. The Finance Department has categorically stated that since the petitioner served the University of Sindh before joining AIOU, the University of Sindh, being an autonomous body, is legally obligated to remit the proportionate share or capitalized value of pension and to redress the petitioner's grievance. Likewise, the response filed by respondent No.7, AIOU, is in complete consonance with the stance taken by the Finance Department. AIOU has acknowledged that the petitioner's proportionate pension share for the period of service rendered at the University of Sindh has been worked out at Rs. 6,213,419.71 and is required to be paid by respondent No.6 in accordance with the rule of proportion, which is acceptable across the board as per its binding nature.

17. The proportionate pension is calculated by applying the settled formula. $\text{Last Drawn Emoluments} \times \text{Length of Service at the University of Sindh} \div \text{Total Qualifying Service}$. This formula is consistently applied in public sector institutions and has been recognized by superior courts. The amount of Rs. 6,213,419/- claimed by the petitioner is not disputed in law; rather, the University of Sindh has relied upon an erroneous notion of "pension contribution," which is unjustified and contrary to settled principles of natural justice.

18. The conduct of University of Sindh in the present matter is arbitrary and violative of Article 10-A of the Constitution. Despite the admitted fact that the petitioner's transfer to AIOU was lawful and made through proper channel, the University has persistently refused to release the proportionate pension share on the wrong notion that the syndicate approved its contributed share to be transferred to the account of AIOU. Such conduct, reflected through prolonged correspondence and repeated representations, amounts to an unreasonable and unwarranted exercise of

administrative power, infringing the petitioner's right to fair treatment. It is well settled that administrative authorities are required to act fairly, reasonably, and in accordance with law, failing which their actions become unconstitutional. The respondent University's refusal is unsupported by any rule or law and is therefore violative of Articles 4, 9, 14, and 10-A of the Constitution. The University of Sindh has failed to cite any law, rule or precedent to justify its refusal to transfer the petitioner's lawful proportionate pension share, although his service there is clearly countable for pension. The undue delay in finalizing his pension is deplorable and must be addressed in accordance with the law laid down by the apex court in PLD 2007 SC 35. It is undisputed that the petitioner held a permanent post at the University of Sindh and joined AIOU through proper channel; therefore, his service must be treated as continuous and included for pension purposes.

19. For the foregoing reasons, the petition is allowed in the following terms:

- i. The acts and omissions of the University of Sindh, Jamshoro in refusing to remit the petitioner's proportionate pension share are declared illegal, arbitrary, and violative of Articles 4, 9, 14, and 10-A of the Constitution.
- ii. The University of Sindh, Jamshoro is directed to compute and remit the proportionate pension share, the legally determined amount to Allama Iqbal Open University, Islamabad, within 45 days.
- iii. AIOU shall process and release the petitioner's pensionary benefits immediately upon receipt of the amount if not earlier released by counting his previous service rendered in the respondent university.

20. The petition stands disposed of in the above terms, along with pending application(s), if any; needless to mention that non-compliance with the directions entails penal consequences in terms of law laid down by the Supreme Court in **PLD 2007 SC 35**.

JUDGE

JUDGE