

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**  
**Constitutional Petition No. D –6499 of 2018**

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Dr. Mashhood-uz-Zafar Farooq

*Versus*

Province of Sindh and 03 others

Date of hearing & order : 11.11.2020

Mr. Abdul Salam Memon, advocate for the petitioner.

Mr. Ali Safdar Depar, Assistant A.G Sindh.

Mr. Iqbal Khurram, advocate for respondents / KMC.

Mr. Wasiq Mirza, advocate for respondent No.4.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Petitioner has impugned the office order dated 12.10.2017 issued by respondent-Karachi Medical and Dental College Karachi Metropolitan Corporation Karachi (KMNDK), whereby he was relieved to report his parent department i.e. Dow University of Health and Science, Karachi.

2. At the outset, learned counsel for the petitioner states that the petitioner is satisfied with the decision of the Syndicate of Dow University to the extent of issuance of his retirement notification dated 22.8.2020 from service of the said University with effect from 26.10.2019, however, he disagrees with the decision of the Syndicate to the extent of the decision in respect of the intervening period from 13.10.2017 to 26.10.2019 which has been treated as leave without pay. Per learned counsel the said decision was / is erroneous. He cited various reasons on the subject.

3. Mr. Wasiq Mirza, learned counsel for the respondent-University has briefed the case of the petitioner and submitted that petitioner was initially appointed as Medical Officer (BS-17). Subsequently, he was selected as Ophthalmologist BPS-18 in Special Cadre in the year 1995. On 16.12.2002 he was posted against the vacant post of Senior Registrar Ophthalmology BS-18 at Dow Medical College, Karachi vide notification dated 16.12.2002 issued by Government of Sindh. On upgradation of Dow Medical College as Dow University of Health Sciences, he opted with respondent-University on 17.12.2002. His

pension contribution from the period 31.05.1988 to 28.02.2005 was settled by the Sindh Government vide order dated 03.06.2013 during which he rendered his services in Health Department. His absorption as Officiating Assistant Professor Ophthalmology Department at Karachi Medical and Dental College was cancelled vide impugned order dated 12.10.2017 to report to his parent department i.e. Dow University of Health Sciences, Karachi. He further argued that petitioner submitted an application dated 16.07.2020 to the Registrar of respondent-university for settlement of repatriation issue with an undertaking that he will not claim the salary of the intervening period from his date of joining till date of superannuation; that the respondent-university issued office memorandum whereby petitioner was allowed to join to respondent-university w.e.f. 13.10.2017 and the intervening period from 13.10.2017 to 26.10.2019 was treated as leave without pay. He lastly argued that the respondent –university issued his retirement notification dated 22.08.2020 w.e.f. 26.10.2019, therefore, he is not entitled for the benefits of intervening period as discussed supra.

4. Mr. Abdul Salam Memon, learned counsel for the petitioner objected to the submission of the learned counsel for the respondent-university and argued that the intervening period was erroneously decided as the petitioner is entitled with the service benefits under the law. He further pointed out that the application of the petitioner was moved much after his retirement due to compelling circumstances which cannot be cited as estoppel. He lastly prayed for direction for directing the respondent-university to pay the service benefits of the petitioner for the intervening period i.e. 13.10.2017 to 26.10.2019. In support of his contention he relied upon the case of Ali Azhar Khan Baloch versus Province of Sindh and others (2015 SCMR 456).

5. We have heard learned counsel for the parties on the aforesaid issue, perused the material available on the record, and the decision dated 22.8.2020 of Respondent-university.

6. The short question that arises for consideration, in the present petition is whether the decision of respondent-university to treat the period between 13.10.2017 to 26.10.2019 as leave without pay, during which the petitioner remained absent from service, as "non-duty", is legally sustainable or not?

7. On the aforesaid proposition, Fundamental Rule 54 is clear in its terms. Therefore, the petitioner would not only be entitled to all his salaries from the date of impugned action till the date of his superannuation i.e. 26.10.2019, on the

premise that the competent authority of respondent-university allowed the petitioner to join his duty with effect from 13.10.2017 just after one day from his repatriation order dated 12.10.2017, but he is also entitled to the increments and other benefits which were granted to other similarly placed colleagues from time to time including annual grade increments. Learned counsel for the Petitioner has categorically stated that in the intervening period he did not accept or join any other job / assignment. In view of the above, Petitioner's absence from duty, which in any event was forced, could neither be converted into extraordinary leave without pay nor could he be denied annual grade increments for the year during which he was not in service.

8. The plea taken by the Respondent-university that the back benefits of the intervening period cannot be awarded to the Petitioner due to his application dated 16.7.2020 whereby he undertook not to claim the salary of the intervening period from the date of joining respondent-university till the superannuation date i.e. 26.10.2019 is not tenable in law. Since the Respondents allowed him to join duty, thus could not decide against him merely on the basis of his application as they were required to decide such issue in accordance with law. The record shows that Petitioner was not heard on the aforesaid issue, therefore, at this juncture, no exception to that can be taken into consideration. Prima-facie the petitioner has qualifying length of service of approximately 32 years with effect from his initial appointment till his superannuation 26.10.2019. The competent authority of the respondents has to calculate service benefits in his pay under the law.

9. In the light of the above facts and circumstances of the case, we are of the considered view that denial by respondent-university to allow back benefits to the petitioner is patently violative of the 'right to equality' enshrined in Article 25 of the Constitution of Pakistan, 1973. Therefore, the instant petition filed by the petitioner to the extent of the issue of service benefits of the intervening period is allowed with the direction to respondent-university to calculate and include his service benefits in his pay for the aforesaid period under the law and award service benefits / dues to him including back benefits within one month from the date of receipt of this order. The petition stands disposed of in the above terms with no order as to costs.

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