

# IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

**Constitutional Petition No. D –416 of 2019**

Majid Hussain Khokhar

*Versus*

Federation of Pakistan and another

**Constitutional Petition No. D – 6169 of 2016**

Muhammad Adil

*Versus*

Federation of Pakistan and 10 others

**Constitutional Petition No. D – 7125 of 2016**

Inayatullah

*Versus*

Federation of Pakistan and another

**Constitutional Petition No. D – 7126 of 2016**

Tehseen Shahzad

*Versus*

Federation of Pakistan and another

**Constitutional Petition No. D – 7127 of 2016**

Syed Ashiq Ali Shah

*Versus*

Federation of Pakistan and another

**Constitutional Petition No. D – 7128 of 2016**

Manzoor Ali Jamali

*Versus*

Federation of Pakistan and another

**Constitutional Petition No. D – 7129 of 2016**

Muhammad Javed

*Versus*

Federation of Pakistan and another

**Constitutional Petition No. D – 7130 of 2016**

Inayatullah Gabol

*Versus*

Federation of Pakistan and another

**Constitutional Petition No. D – 7131 of 2016**

Naseer Ahmed

*Versus*

Federation of Pakistan and another

**Constitutional Petition No. D – 7132 of 2016**

Tariq Mateen

*Versus*

Federation of Pakistan and another

Date of hearing  
& order : 17.03.2021

Mr. Zakir Laghari, advocate for the petitioner in CP No.D-416 of 2019.

Mr. Muhammad Sadiq Tanoli, advocate for respondent.

Mr. Muhammad Nishat Warsi, DAG.

Mr. Jehangir Rahujo, advocate for PCSIR.

**ORDER**

**Adnan-ul-Karim Memon, J.** – By this single judgment, we intend to dispose of all captioned petitions, having the common question of law and facts involved therein.

2. Through the instant Constitutional petitions under Article 199 of Constitution of Islamic Republic of Pakistan 1973, the petitioners have approached this Court for the relief that they received Project Allowance while working on the project “Up-gradation and modernization of Building of Pakistan Council of Scientific and Industrial Research (‘**PCSIR**’) Laboratories Complex, Karachi” administered by PCSIR, which is now claimed to be unlawfully received by the petitioners on the ground that petitioners were not entitled to the said allowance, in terms of Office Memorandum dated 12.8.2008. For convenience sake, an excerpt whereof is as under:

“No.F.16 (1) R-14/2003

Islamabad, the 12th August, 2008

**Office Memorandum**

Subject: Grant of Project Allowance to the Officers / Staff appointed in PSDP Funded Development Projects.

The undersigned is directed to refer to Finance Division’s O.M No.F.11(1) R-13/91-1196, dated 15-10-1992 and No.F.16(1)R-14/2003, dated 6-7-2005 on the above subject (copies enclosed) and to say that under the existing government policy/rules Project Allowance is applicable only to the staff of foreign funded and social sector projects, whereas the staff of the non-social sector as well as locally funded projects are not entitled to Project Allowance. In order to ensure smooth implementation of development projects, the matter was reviewed by CDWP in its meeting held on 1st March, 2008.

2. On the recommendations of CDWP made in the aforesaid meeting, it has been decided with the approval of competent authority that the Project Allowance shall be admissible to the project staff as under;

- a) For projects costing above Rs.100 million (both new and on-going), appointment of Project Director on full time basis is mandatory in accordance with ECNEC decision dated 24-04-2005. Therefore, the employees appointed through transfer (deputation) on full time basis will get pay in their own pay scales and allowance plus deputation allowance @ 20% of the basic pay subject to a maximum of Rs.6, 000/- per month or as revised from time to time along with the Project Allowance at the following rates, subject to its provision in the PC-I and approval by the competent forum: -

<u>Project Staff in BPS</u>		<u>Amount of Project Allowance</u>
BPS 20-22	=	Rs.50,000/- per month
BPS 19	=	Rs.40,000/- per month
BPS 17-18	=	Rs.30,000/- per month
BPS 16	=	Rs.15,000/- per month
BPS 11-15	=	Rs.8,000/- per month
BPS 05-10	=	Rs.4,000/- per month
BPS 01-04	=	Rs.2,000/- per month

- b) Project allowance would be admissible in the case of all types of projects (i.e. both locally funded and foreign funded) as well as projects of all sectors.
- c) Additional charge Allowance at the rate of 20% of the basic pay scale subject to a maximum of Rs.6, 000/- per month or as revised from time to time will be allowed to the government servants who are assigned additional charge of posts of the project costing up to Rs.100.00 million. They will, however, not be entitled to the project Allowance.
3. This aforesaid project allowance for project staff in the new as well as for the on-going PSDP projects will be admissible with effect from 1 st July, 2008.
4. The earlier instructions contained in Finance Division's O.Ms dated 15-10-1992 and dated 6-7-2005, as referred to in para-1 above, stand superseded and replaced by this Office Memorandum."

3. On the aforesaid issue, Mr. Zakir Laghari, learned counsel for the petitioner in CP No.D-416 of 2019 briefed us on factual as well as the legal aspect of the case and argued that the petitioners have voiced their grievance through these petitions, against the recovery of the project allowance allowed to them, while working in the project, "Up-gradation and modernization of Building of PCSIR Laboratories Complex, Karachi". He further argued that the father of the petitioner namely Ghulam Hussain Khokhar was appointed as Acting Project Director for the subject project vide letter dated 29.7.2008 and submitted that his appointment letter dated 29.7.2008 is self-explanatory to suggest that he was directly appointed on the subject post and was rightly allowed to claim benefits of project allowance, to this we have to see the contents of such appointment letter, an excerpt whereof is reproduced as under:

"Subject: Appointment of Acting Project Director for the Project "Up-gradation & Modernization of Building of PCSIR Labs. Karachi

I am directed to convey you the Chairman PCSIR, has been approved the nomination of Eng. Ghulam Hussain Khokhar, P.E, PCSIR Labs. Complex.

Karachi as a Acting Project Director (in his own pay and scale) for the project "Up-gradation & Modernization of Building of PCSIR Labs. Karachi", till the appointment of Project Director.

This is issued with the approval of Chairman, PCSIR."

Learned counsel asserted that during service, he passed away in the year 2018; and, while in service he was paid project allowance being head of the project, in terms of PC-1, however, after his death the said project allowance is being deducted from the family pension, which is against the law. He also assisted about the rest of the cases of petitioners and argued that their cases are on the same line as some of them stood retired from service; and, some of them are still working in PCSIR. He next argued that petitioners' case fell in the category of "staff of the project" in terms of Office Memorandum dated 12.8.2008 as discussed supra; and, for that reason, they were entitled to receive the project allowance per month. Per learned counsel, the project allowance, which had already been sanctioned vide P.C.-I, ought not to be recovered/ deducted, after the death of the father of petitioner in CP No.D-416 of 2019; and/or from the family pension as well as from the pension of retired petitioners and/or from the salary of serving petitioners, merely on the pretext that petitioners were not entitled to such allowance as per office memorandum dated 12.8.2008. Per learned counsel, the stance of the respondents appears to be illogical and liable to be discarded under the law for the reason that their case fell within the category of project staff as disclosed in the said office memorandum. He further submitted that it is a settled principle of law that equal pay for equal work and an allowance is admissible to an employee, vesting to the duties, which such employee performs. The person performing duties in a project was/is entitled to project allowance and there could be no discrimination. Learned counsel in his support relied upon the letter dated 13.4.2010, issued by Ministry of Science and Technology, office memorandum dated 12.8.2008 issued by Government of Pakistan Financed Division, P.C.-I Form and argued that Planning Commission of Pakistan had regularized all the payments with effect from 1.7.2008 to 15.3.2015 of the project allowance under the revised P.C.-I, therefore the question of any recovery did not arise. He lastly prayed for allowing the instant petitions.

4. We have gone through the contents of the letter dated 12.8.2008, which explicitly show that the pay package was admissible to the officers/staff including Project Directors, Advisors, Specialists, Consultants, etc., in the PSDP funded development projects as reflected in the PC-I/ PCII, duly approved by the

competent forum in terms of the aforesaid letter. For convenience sake, an excerpt of the letter dated 12.8.2008 is reproduced as under:

"No.F.4 (9) R-3/2008-499

Islamabad, the 12th August, 2008

**OFFICE MEMORANDUM**

Subject: STANDARD PAY PACKAGE FOR THE PROJECT STAFF DIRECTLY RECRUITED FOR DEVELOPMENT PROJECTS FUNDED FROM PSDP.

The undersigned is directed to convey the approval of the President of Pakistan to the following standard pay package for officers/staff directly recruited for the execution of Development Projects funded from PSDP from open market on contract basis: -

S.No.	BPS/Equivalent	Pay package in rupees
1	22	150,000 to 200, 000 (5% annual increment Up to maximum)
2	21	125,000 to 150, 000 (5% annual increment Up to maximum)
3	20	100,000 to 118, 000 (5% annual increment Up to maximum)
4	19	75,000 to 90, 000 (5% annual increment Up to maximum)
5	18	50,000 to 75, 000 (5% annual increment Up to maximum)
6	17	45,000 to 50, 000 (5% annual increment Up to maximum)
7	16	30,000 to 35, 000 (5% annual increment Up to maximum)
8	11-15	15,000 to 25, 000 (5% annual increment Up to maximum)
9	5-10	10,000 to 15, 000 (5% annual increment Up to maximum)
10	1-4	7,000 to 10, 000 (5% annual increment Up to maximum)

2. The aforesaid pay package will be effective with effect from 1st July, 2008 for the new as well as for the on-going/old PSDP projects and shall be admissible subject to following conditions:-

- (i) This pay package will followed for the appointments of officers / staff including Project Directors, Advisors, Specialists, Consultants etc, in the PSDP founded development projects as reflected in the PC-I/ PCII, duly approved by the competent forum.
- (ii) The above lump sum pay package will be admissible for fresh/direct appointees. The Projects employees will be appointed on contract basis in PDSP project for an initial period not exceeding two years which will be extendable further till the completion period of the project on yearly basis after evaluation of their performance.
- (iii) This pay package shall not be admissible to those who are reemployed/appointed on contract after their retirement. They may be allowed pay and allowances, as per provisions of the contract policy of the Establishment Division issued vide their O.M. No.F.10/52/95-R-2, dated 18th July, 1996 and as amended from time to time.
- (iv) The project employees appointed through transfer (deputation) on full time basis will get pay in their own pay scales and allowances plus deputation allowance as admissible under the deputation policy contained in Establishment Division's O.M. No. 1/13/87/R-I, date 03.12.1990 as amended from time to time, at the rate of 20% of the basic pay subject to maximum Rs.6, 000/- per month, in addition to project allowance.
- (v) The government servants who are assigned additional charge of the posts of projects costing up to Rs.100.00 million will be allowed Additional Charge Allowance at the rate of 20% of the basic pay subject to maximum Rs. 6,000/- per month, in addition to their normal pay and allowances of their regular posts. They will not be entitled to the Project Allowance.
- (vi) This pay package will not be admissible to those project employees whose services/ posts are transferred to the non-development side after completion of project, from the date of their transfer.

- (vii) The payment of pay package of project staff will be stopped from the date of transfer of their service/posts to any other establishment.
- (viii) On transfer of project posts to the non-development side, such posts shall be filled in the prescribed manner in regular Basic Pay Scale and incumbents of such posts shall be treated as fresh employees of the Ministries /Divisions/Departments and not for the project.
- (ix) If as employee of the project is selected on a post on the non-development side, he will be appointed at the initial stage of the relevant Basic Pay Scale, and his pay and service rendered in the project shall not be protected/counts for any purpose i.e. pay, pension and seniority etc.”

5. The stance of learned counsel representing the petitioners has been snubbed by the learned counsel representing PCSIR on the ground that the project allowance was neither admissible to the petitioners under the rules, nor allowed by the competent authority, therefore, no benefit could be claimed based on ill-gotten gains. Learned counsel emphasized that the father of petitioner in C.P. No.D-416/2019 was not directly appointed as Project Director, nor he was on deputation, but appointed as Acting Project Director, being a regular employee of PCSIR working as Principal Engineer (BS-19) and only assigned to work on the project for which he was only entitled to an allowance equal to 20% of his basic pay or Rs.6000/- per month whichever is less, however, he continued as Principal Engineer, drawing his salaries from the non-development budget during the currency of the project; and, on the other hand, he was working as Acting Project Director U&B Project, later on as Principal Engineer he was transferred to PCSIR Head Office on 29.2.2016 to join as Director (Works) PCSIR. It is urged that the payment of the amount of Rs.1, 8, 22,666/- had been unlawfully approved and sanctioned by him as being the Project Director (Acting) of the PSDP by referencing the letter of respondent No.2 dated 13.4.2010; even, the said case was referred to Technology Wing for their comments, who disagreed due to non-provision of such allowance in the PC-1, the subject case was referred as closed. Per learned counsel, such project allowance was declared inappropriate and illegal by Special Audit and Monitoring Report, Ministry of Science, as well as Inquiry Committee, report dated 4.6.2016. He emphasized that the payment of the amount had been unlawfully approved and sanctioned by the deceased Project Director. He lastly prayed for the dismissal of these petitions being not maintainable under the law.

6. Before going ahead with the propositions as put forward by learned counsel for the parties, it is expedient to have a look at the recommendations of the Monitoring and Evaluation Committee, which prima facie show that the subject project was approved on 30.4.2007 at the cost of Rs.434.502 million over 24 months. The report further reveals that the project could not be completed in

its original time frame because of the less and inadequate release of funds and the extension was granted for the implementation of the project up to June 2014. Finally, the Committee recommended as under:

“6. Recommendations:

- i. Almost all civil works were awarded in year 2010 and from that date PCSIR approving authority and the Project Director were clear that they are crossing the approved limits given in the PC-I. Therefore, the PCSIR approving authority and the Project Director had committed irregularity against the rules and discipline in all the works. Enquiry should have been conducted by PCSIR Headquarter to avoid serious audit observation and report be submitted to MoST for perusal of Secretary, MoST.
- ii. Excess Expenditure made by PD needs to be regularized in accordance with the rules & procedure to avoid serious audit observation. Hence PC-1 may be revised on priority. No new civil work be awarded till the approval of revised PC-1.
- iii. Project authorities need to prioritize existing work in hand, develop a strategy for future works, rationalize those activities that are least required, strengthen those areas that are future oriented etc. and Revise PC-1 accordingly as early as possible with full justification.
- iv. An allocation of Rs.150.00 million has been made by the Finance Division in the financial year 2013-14. For effective utilization, a detail work plan be prepared.
- v. Only necessary posts be filled in accordance with the government rules and procedures.
- vi. In future, all Engineers estimates be made on PPWD schedule of rates.
- vii. It appears that some unauthorized project allowance was being paid. Thus DG, KLC/PDs may be advised to scrutinize all the payment record generally and payment of project/Additional Charge allowance particularly of all development projects including this BMR, KLC and necessary recoveries, if any may be made under intimation to Chief (P&O) MoST.”

7. In view of the above report, the stance of the respondent- PCSIR is that since Competent Authority had approved 20% of the basic pay as project allowance maximum up to Rs.6000/- whichever was less for the employees of PCSIR working PSDP project on a part-time basis, in addition to their regular assignment, with strict compliance to following conditions.

- i. The employee must spend additional time (At least 2 hours) for the project assignments.
- ii. Recommendation of Head of the Unit regarding the assignment.
- iii. Certification of the Project Director regarding his/her assignment.

Moreover one employee could get allowance from only one project at a time and the payment of allowance is subject to the availability of funds and provision in approved PC-I.”

8. Per learned counsel, the petitioners were regular employees of PCSIR as such they were not entitled to the project allowance, however, they were only entitled to 20% of the basic pay as project allowance. If this is the stance of the respondents, the questions which arise in the present proceedings are as to whether the Petitioners were entitled to the Project Allowance being the Staff of the Project as per the Government Policy? And whether the benefits of Project Allowance paid to the petitioners could be recovered by way of deduction from their pension; and in case of serving petitioners, from their salary?

9. As per record, petitioners were working as staff of the subject project in terms of the P.C-I Form. The competent authority vide letter dated 13.4.2010 accorded the approval of a standard pay package for the project staff directly recruited for development projects funded from PSDP. An excerpt of the letter dated 13.4.2010 is as under:-

“Dated 13.04.2010

Subject: Standard Pay Package for Project Staff Directly Recruited for Development Projects Funded From PSDP.

Sir/Madam,

I am directed to inform you that the competent authority has been pleased to accord the approval of following in respect of subject matter:-

- i. The Standard pay package for project staff issued by Finance Division (Reg Wing) vide letter No.F.4 (9) R-3/2008-499 dated 12-08-2008 is required to be implemented in letter and spirit subject to provision of funds under the relevant head in PC-1. If there is no provision, the case for necessary re-appropriation and revision of PC-1 may be forwarded to Technology Wing for further action.
- ii. In order to ensure uniformity throughout PCSIR the rates of daily wage/contingent employees of projects as approved by the competent authority and communicated to all concerned vide Finance Wing No.PCSIR/1(10)/2008-B dated 24-03-2010 are to be implemented in letter and spirit.
- iii. In accordance with the provision contained in clause-iv & v of the aforesaid notification of Finance Division, regular employees of PCSIR may be posted against project posts either on Deputation, Additional Charge of Current Charge Basis subject to existence of these posts in the PC-1, provision of funds and proper approval/orders of the competent authority and may be paid the prescribed incentives accordingly.

A formal implementation report in respect of the above may please be sent to Finance Wing accordingly. This issues with the approval of Chairman, PCSIR.”

10. It appears from the record that for a sufficient period, the petitioners served in the project and received the emoluments and benefits of such project post. Prima facie, the same was granted to the petitioners by the competent



authority of respondent-PCSIR itself, during the subsistence of the project by according the approval of the project and released the funds to the project director for implementation, however, subsequently sanctioned the same without any objection in time; and, prima facie the petitioners had no role in obtaining such project posts. However, the Inquiry Committee was constituted to probe the financial and technical irregularities vide letter dated 27.10.2015 with the following mandate:

- a) To establish the cause/causes of irregularities.
- b) To ascertain the rule/rules violated by the project authorities/directors,
- c) To identify and fix responsibility of persons at fault
- d) To calculate the recoverable amount (if any) drawn from each project account as well as concerned person/employee
- e) To find out the defects (if any) in the system of working and suggest means & measures to prevent recurrence of similar irregularities

11. The Inquiry Committee lastly opined that the Project Allowance drawn by the Project Directors namely Engr. M. Adil (Rtd), Engr. M. Rauf, Engr. Ghulam Hussain Khokhar, and other project staff/ associates drawing regular salaries from the non-development budget of KLC held to be irregular and liable to be recovered under the affidavits provided by them and concluded as under:

“After examination of relevant record, discussions with all the Project Directors and some of their associates indicated in the report and perusal of written statements of respective P.Ds and Member Technology, the committee is of the view that:

1. Unless otherwise regularized by the competent forum i.e. MoST/Planning & Development Division, the Project Allowance drawn by the Project Directors namely Engr. M. Adil (Rtd), Engr. M. Rauf, Engr. Ghulam Hussain Khokhar and other project staff/ associates drawing regular salaries from the non-development budget of KLC stands irregular and liable to be recovered in accordance with the affidavits provided by them. However, before initiating the recovery process, Technology Wing PCSIR head office may approach the MoST for confirmation of the following.
  - a) The status of project allowance in respect of P.D Pilot referred to F&A Wing of MoST by the Secretary in the meeting held on 09-09-2015.
  - b) Status of Project allowance drawn by Engr. Ghulam Hussain Khokhar (P.D.BMR KLC) after the approval of revised PC-1 of the project wherein the provisions of Project Allowance have been revised upwards from Rs.01.00 to 18.14 million.
2. The project allowance drawn by Mr. Afsar Javed from BMR KLC project stands irregular and recoverable even if this attachment with the project is justified.
3. The Additional Charge Allowance of Rs.5,200/- drawn by Ms. Zohra Yaqeen P.D. as well as the benefits availed by Mr. Fareed Ahmed as pointed out under S.No.(viii) of the findings is irregular and liable to recovery.

4. The Additional Charge allowance drawn by Mr. Fareed Ahmed Superintendent and 10% Project Allowance by Dr. Bina Naqvi P.D from "Tissue Culture" Project as mentioned S.No.(ix)&(x) of the findings stands irregular and liable to recovery."

12. This was the state of affairs when the respondent-PCSIR vide letter dated 06.4.2016 started recovery proceedings against the petitioners. It appears from the record that the appointment of Project Director is the full-time job, whereas the respondent-PCSIR was not bothered to hold a regular inquiry into the affairs of the subject project and confronted the allegations to the petitioners through regular inquiry, however, they continued to allow some of them to retire from service without initiating the disciplinary proceedings which factum is quite silent in the matter.

13. This Court has not been apprised of the real facts whether the petitioners were appointed on the project by way of transfer/deputation on a full-time basis so that the deputation allowance @ 20% of the pay per month could be admissible to them. Prima facie, the project allowance was subject to the provision in the PC-1 and approval by the competent authority, however, the petitioners were allowed to continue to serve in the project and they were not snubbed at the relevant time not to receive the project allowance and they continued to serve and some of them stood retired and one of the Project Director passed away during service. Now the respondents when confronted with the audit objections they raised hue and cry and conducted an inquiry to probe the financial and technical irregularities in 2015 at the belated stage. Merely filing statement dated 13.12.2017 to show that the personnel was posted on Additional Charge they had to perform their regular duty in PCSIR with their pay and salary from the regular budget of PCSIR and look after the project affairs additionally in place of additional charge payment of 20% of basic pay per month could not absolve them from the lethargic attitude and to be considered a valid defence at this stage.

14. Prima facie, when the petitioners performed the work of the project post for a considerable period, then on the principle of locus poenitentiae, as raised by the respondent- PCSIR, the benefits paid to them, could not be recovered as said principle would not apply. Further, the principle of estoppel would be applicable in the present case against the respondent- PCSIR from recovering the emoluments and benefits of project posts from the petitioners/beneficiaries from their pension; and/or salary. On the aforesaid proposition, we are fortified with the decisions of the Honorable Supreme Court in the cases of The

Engineer-in-Chief Branch through Ministry of Defence Rawalpindi and another v. Jalaluddin, PLD 1992 SC 207 and Mst. Sajida Javed v. Director of Secondary Education, Lahore Division and others, 2007 PLC (C.S.) 364.

15. On the issue of deduction of amount from the pensionary benefits, in our view, in any event, the pensionary/commutation amount could not be withheld on the above-ground nor could any deductions be made from the amount payable to the retiring petitioners on account of their pension. The law on this point is well-settled.

16. Adverting to the stance of the petitioners that project allowance was discontinued in the light of Office Memorandum dated 18.04.2012 issued by the Government of Pakistan, Ministry of Finance Division, however, the respondent-PCSIR continued with the project by extending its tenure up to 2014 and the question whether after 2012 they made any attempt to stop the petitioners from availing the benefit of project allowance, the record is silent to that extent.

17. In the above circumstances, these petitions are disposed of in the following terms:

- i. The Competent Authority of respondents is directed to hold the regular inquiry into the allegations leveled against the serving petitioners by providing a meaningful hearing to them and conclude the proceedings.
- ii. The benefits of the project allowance availed by the deceased Project Director shall not be deducted from his family pension.
- iii. The benefits of the project allowance availed by the retired petitioners shall not be deducted from their pension.
- iv. The above exercise shall be completed without fail within sixty (60) days and the compliance report in terms of this order shall be filed by the competent authority of respondents within ten (10) days thereafter, through MIT-II of this Court.

18. The petitions are disposed of in the above terms with no order as to costs.

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