

IN THE HIGH COURT OF SINDH KARACHI

**Constitutional Petition No. D – 7948 of 2018**

Date	Order with Signature of Judge(s)
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Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Ali Azhar Khan Baloch,  
Petitioner, through

:

Mr. Zamir Hussain Ghumro, advocate.

Federation of Pakistan  
& 05 others, respondents  
through

:

Mr. Nishat Warsi, Deputy Attorney  
General.

Date of hearing

:

26.05.2021

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** – Through this petition, the Petitioner is seeking direction to the Respondents to issue notification of his post-retirement benefits and release his monthly pension as well as the commutation amount sanctioned at the time of his retirement, which has been illegally withheld by them in violation of paragraph 165 of the Judgment passed by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch v. Federation of Pakistan and others (2015 SCMR 456). An excerpt of paragraph 165 is reproduced as under:

“165. We, in the peculiar circumstances of the matter, direct the aforesaid officers to report to the Secretary Establishment Division, Islamabad, within 15 days from the date of this judgment. The Secretary Establishment shall create a Devolution Cell in the respective parent Departments and, on availability of the vacancy in the parent Departments, they will be posted. In case, the Department of the Federal Government and or the Organization to which the officer belongs has been devolved, the Secretary Establishment shall post them in terms of section 11-A of the Civil Servants Act to another Department in conformity with the scheme of the Civil Servants Act. All these officers shall be entitled to their salaries and other perks from the date they were relieved from Sindh Government. They will also be entitled to their inter-se

seniority and promotion, subject to the Rules, with their batch mates as if they were never relieved from their parent Departments.”

2. Mr. Zamir Hussain Ghumro learned counsel for the petitioner has briefed us about the status of the petitioner and argued that initially the petitioner was appointed as Deputy Manager, in the year 1989 in Pakistan Steel Mills (PSM), under the control of the Ministry of Industries & Production. He asserted that on 16-9-1992, upon the directives of the then Chief Minister Sindh, his services were placed at the disposal of the Government of Sindh for two years, he performed his duties at various departments in the Government of Sindh, i.e. on 6.3.1993, he was posted as Project Director, Lines Area, Redevelopment Project KDA in BS-18. Finally, on 25-7-1994, permission was granted for his absorption by the Establishment Division into the Government of Sindh. On 28-5-1994, he was finally absorbed as Deputy Secretary in Provincial Secretariat Service (PSS) and was placed at the bottom of the seniority list. His lien with the PSM was terminated in 1994. He earned promotions from time to time; and, finally, he was promoted as Secretary (BS-21) in the Sindh Government, by Notification dated 28-9-2012. By notification dated 25.4.13, issued by the Cabinet Secretariat, Establishment Division, Government of Pakistan, he was appointed by transfer as Senior Joint Secretary (BS-21) in Secretariat Group and his services were placed at the disposal of the various department's Government of Pakistan, however, in pursuance of orders of the Honourable Supreme Court of Pakistan passed in Criminal Original Petition No.89 of 2011, his absorption in the Provincial Secretariat Service was withdrawn/cancelled vide Services General Administration & Coordination Department's (SGA&CD) Notification dated 02.7.2013 and he stood relieved to report the Secretary Establishment Division, Islamabad. Finally, he was directed to report the respondent-PSM, who in turn relieved him from the service of Pakistan Steel vide office order dated 13.8.2013, having reached the age of superannuation. Learned counsel emphasized that the petitioner was directed to report to the Secretary Establishment Division, Islamabad, for further posting in terms of section 11-A of the Civil Servants Act to another Department in conformity with the scheme of the Civil Servants Act. He further asserted that the petitioner was also held entitled to his salary and other perks from the date he was relieved from the Sindh Government in pursuance of the judgment passed by the Honorable Supreme Court. He averred that the petitioner was held to be entitled to his inter-se seniority

and promotion with his batch mates as if he was never relieved from his parent Department. Per learned counsel, after he reached the age of superannuation on 13.8.2018, the respondents are not releasing his salary for the intervening period, pensionary benefits and other perks and privileges as directed by the Honorable Supreme Court in the aforesaid proceedings. He further argued that the learned Attorney General for Pakistan was directed to ensure to enforce paragraph 165 of the judgment in the above terms. He lastly prayed for allowing the instant petition as per paragraph 165 of the judgment rendered in the case of Ali Azhar Khan Baloch supra.

3. Mr. Sanaullah Noor Ghouri learned counsel for the respondent-PSM is called absent without any intimation, thus we opted to decide this lis in his absence and in presence of Mr. Muhammad Nishat Warsi, learned DAG, who has agreed for disposal of the instant petition in terms of the direction of the Hon'ble Supreme Court as discussed supra.

4. Mr. Ali Safdar Debar, Assistant Advocate General, in principle has accepted the stance of the petitioner, however, he emphasized that though the petitioner was absorbed in Sindh Government long ago, due to the directions of the Honorable Supreme Court, the Government of Sindh had decided to repatriate him to his parent department. He also conceded that the petitioner rendered his services more than twenty-one (21) years in the Sindh Government with effect from 1992 to 2013, however, due to the directions of the Honorable Supreme Court; the Government of Sindh had repatriated him to his parent department vide Notification dated 22.7.2013 (page 171). He also conceded that the colleague of the petitioner namely Rasool Bux phulpoto has already been granted pensionary benefits from the Government of Sindh, however, he added that this petition can be disposed of in terms of the judgment dated 04.03.2021 passed by this Court in C.P. No. D-1661 of 2019 and other connected petitions. He lastly prayed for an appropriate direction for the disposal of the instant petition.

5. We have heard learned counsel for the petitioners, learned DAG and learned AAG and perused the material available on record as well as the stance of the respondent-PSM vide preliminary legal objections and parawise comments filed by them.

6. This is a matter of grave concern that for several years, the long and unjustified delay in the payment of pension has been a source of

tremendous hardship and humiliation to the retiring officials and their families. Despite the strictures and orders passed by the Honorable Supreme Court of Pakistan in its various pronouncements and simplified guidelines laid down by the Government, petitions on account of delay persist, which act on the part of the respondents cannot be appreciated at all, even otherwise the same act is in disregard of the Judgment passed by the Hon'ble Supreme Court in the case of Haji Muhammad Ismail Memon (PLD 2007 SC 35).

7. In our view, once the Hon'ble Supreme Court has passed the judgment in the terms that the petitioner absorbed in the Sindh Government and was directed to immediately report back to his parent department, this Court cannot take a contrary view of the same; as such the question of maintainability as raised by the respondent-PSM could not be stretched furthermore; and, the aforesaid judgment/order of the Hon'ble Supreme Court of Pakistan can be enforced under Article 187(2) of the Constitution.

8. In the given circumstances, since the petitioner has been retired from the service of respondents No.2 and 4 and is entitled to the retirement benefits along with the salary of the intervening period if not paid to him earlier and all perks and privileges as admissible under the law; and the respondent-Sindh Government is also accounted for to release his service dues with effect from the date of his absorption in Sindh Government, and subsequent repatriation/report to respondent No.1 in pursuance of the judgment of the Honorable Supreme Court as discussed supra.

9 We in the circumstances are constrained to hold that the respondents jointly and severally are responsible to pay all his perks and privileges to which he was entitled by the issuance of notification of his retirement, inclusive of his entire pensionary benefits.

10. In view of the foregoing discussion, the competent authority of respondents is directed to issue his retirement notification in the same pay and scale under the law from the date of his attaining the age of superannuation i.e. 13.8.2018; and, pay all his retirement benefits along with the salary of the intervening period, if not paid to him earlier; and perks and privileges to which he was entitled on the issuance of notification of his repatriation, in terms of paragraph 165 of the Judgment of the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch supra, within two months from the date of this order. In the meanwhile, the respondent-Sindh Government is

directed to return all his service benefits, earned by him during the intervening period, to respondent No.2/Ministry of Industries & Production, Government of Pakistan forthwith so that his retirement dues could be disbursed to him, under the law and report compliance through MIT-II of this Court.

11. Petition and pending applications are allowed in the above terms with no order as to costs.

JUDGE

JUDGE

Shahzad/