

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Dr. Allauddin Abro CP No.D-1837 of 2022
----- Province of Sindh and others

Syed Sarosh Husnain CP No.D-3062 of 2022
----- Province of Sindh and others

Mst. Sanobar CP No.D-3063 of 2022
----- The Province of Sindh and others

Dabir-ul-Hasnain Larik CP No.D-3261 of 2022
----- Province of Sindh and another

Lazar Masih CP No.D-3317 of 2022
----- Province of Sindh and others

M/s. Muhammad Humayoon Khan, Altaf Sachal Awan, Haji Ali Asghar Laghari, Ghulam Murtaza Daudani, and Gohar Latif Larik, Advocate for petitioners.

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

Date of hearing and order: 24.11.2022

ORDER

ADNAN-UL-KARIM MEMON, J-. These constitutional petitions pertain to pensionary / service benefits of the petitioners and /or family pension, which are of paramount consideration and this is the reason that all the above petitions are being taken up together for disposal, as common question of law is involved in these matters.

2. Learned counsel submit that the petitioners in all the petitions and mother of petitioner in CP No. D- 3063 of 2022 were working in different departments of Government of Sindh and stood retired from their respective services; that after retirement, they are roaming from pillar to post for release of pensionary / service benefits up to date, on the premise that the aforesaid service benefits have not been released to them; hence they along with their families are passing the lives of starvation, hence in the dismal circumstances they finding no other way have filed the instant petitions.

3. We have heard learned counsel for the petitioners as well as learned A.A.G. on the subject issue and perused the record with their assistance. However, no serious objection has been raised by learned AAG leaving this court to decide the issue on merits in terms of the ratio of decisions of Honourable Supreme Court.

4. To understand the concept and connotation of the term "pension", the rights / privileges and obligations attached thereto, the importance thereof and the law laid down in respect thereof by the Hon'ble Supreme Court. The definition of word "pension" and the nature of right in respect thereof were examined in depth by Hon'ble Supreme Court of Pakistan in the case of *I. A. Sherwani and others V/S Government of Pakistan through Secretary, Finance Division, Islamabad and others*, **1991 SCMR 1041**.

5. It is well-settled that a person who enters Government service has also something to look forward to after his retirement, to what is called retirement benefits, a grant of pension being the most valuable of such benefits. It is equally well-settled that the pension-like salary of civil servant is no longer a bounty but is a right acquired after putting in satisfactory service for the prescribed minimum period. It cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules. In the case reported as *Re: Pensionary Benefits of the Judges of Superior Courts*, **PLD 2013 SC 829**, it was held, inter alia, by the Hon'ble Supreme Court that pension is a right which the Government servants or employees in different positions and different capacities earn in terms of the relevant statutory provisions applicable to their case, mostly depending upon their length of service; and, in any case, it is not a State bounty which could be awarded as a favor to any individual outside the scope of applicable statute.

6. It is well-settled that pension is a measure of socio-economic justice that inheres economic security in the fall of life; a person who enters the Government / public service has also something to look forward to after his retirement viz. his retirement benefits, the grant of pension being the most valuable of such benefits; pension is like a salary and is no longer a bounty, but is a right acquired after putting in satisfactory service for the prescribed minimum period; pension cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules; and, pension becomes the property of the retiring employee or civil/public servant as a matter of right upon the termination of his service.

7. From the above principles settled by the Hon'ble Supreme Court, it is clear that pension, like salary, is a regular source of livelihood, and thus is protected by the right to life enshrined in and guaranteed by Article 9 of the Constitution. In principle, there seems no room to disagree with the plea / legal position that the right to life of a person/citizen shall include the right to livelihood and such right, therefore, cannot hang on to the fancies of individuals in authority; and, the

employment is not a bounty from them i.e. individuals in authority, nor can its survival be at their mercy.

8. This is a matter of grave concern that for several years, the long and unjustified delay in payment of pensions has been a source of tremendous hardship and humiliation to retiring officials and their families. Despite strictures and orders passed by Honorable Supreme Court of Pakistan In its various pronouncements and simplified guidelines laid down by the Government, petitions on account of delay persist.

9. It is well-settled law that no pension granted or continued to the pensioner is liable to seizure by the department under Pension Act, 1871, and the rules, framed thereunder. Besides, there is no power for the Government to withhold Gratuity and Pension during pendency of departmental proceeding or criminal proceeding if any. Even it does not give any power to withhold Leave Encashment at any stage either before proceeding or after the conclusion of proceeding.

10. Prima facie, the petitioners / mother of petitioner have qualifying length of service to their credit and they gave various reasons to claim the interest on delayed payments on the premise that they stood retired from services in their respective years, however, in violation of law, they have been denied the pensionary benefits, which has triggered the cause and hardship to the petitioners to approach this court.

11. Learned counsels have pointed out that the pension of petitioners has been withheld without assigning any cogent reason. In our view, pensionary benefits cannot be stopped; and, is violative of the law laid down by Honorable Supreme Court in the case of Haji Muhammad Ismail Memon, **PLD 2007 SC 35**.

12. In the light of foregoing, we direct Chief Secretary Sindh, to constitute a committee headed by him; and, the head of concerned departments, where the petitioners/their families have served and retired from service. The representative of Accountant General Sindh's office and other Accounts Officers of the concerned departments shall attend the office of Chief Secretary, on the date and time so fixed by him, to resolve the issue of pension and service benefits of petitioners, including family pension and other ancillary matters including arrears if any outstanding, in its true perspective, within one month; and if they are entitled under the law, their pensions /service benefits must be released, if not already paid, strictly in terms of the ratio of judgment passed by Honorable Supreme Court in the case of Haji Muhammad Ismail Memon, **PLD 2007 SC 35**. They are also directed to recalculate the pensionary benefits of petitioners and increases accrued on the withheld pensionary benefits with effect from the date of their retirement to date and take prompt disciplinary action against all delinquent officials who in their lethargic attitude failed and neglected to release the service benefits of the

petitioners. Such disciplinary proceedings shall be initiated against them forthwith and culminate into its logical conclusion within a reasonable time after providing meaningful hearing to them.

13. These petitions stand disposed of in the above terms. Let notice be issued to the Chief Secretary, Government, Sindh, the competent authority of respondents, Accountant General Sindh; and, the Accounts officers concerned, for compliance. Such compliance report be submitted through the Additional Registrar of this Court.

Kharar_hussain/PS*

JUDGE

JUDGE

24/11/2022