

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Before;
Adnan-ul-Karim Memon, J;
Muhammad Abdur Rahman, J;

Constitution Petition No. D- 1157 of 2022
(Ghulam Sarwar Chang vs. Province of Sindh & others)

Constitution Petition No. D- 48 of 2023
(Asadullah Jamro vs. Province of Sindh & others)

Constitution Petition No. D- 234 of 2023
(Abdul Qudoos vs. Province of Sindh & others)

Constitution Petition No. D- 543 of 2023
(Syeda Shamim Raza vs. Province of Sindh & others)

Constitution Petition No. D- 1191 of 2023
(Muhammad Ayoob vs. Province of Sindh & others)

Constitution Petition No. D- 1226 of 2023
(Abdul Latif vs. Province of Sindh & others)

Constitution Petition No. D- 1244 of 2023
(Mst. Qablan vs. Province of Sindh & others)

Constitution Petition No. D- 1264 of 2023
(Liaquat Ali alias Gago vs. Province of Sindh & others)

Constitution Petition No. D- 1391 of 2023
(Raheem Bux vs. Province of Sindh & others)

Constitution Petition No. D- 1455 of 2023
(Mst. Malook Khatoon vs. Province of Sindh & others)

Constitution Petition No. D- 1631 of 2023
(Mst. Iram vs. Province of Sindh & others)

Constitution Petition No. D- 1656 of 2023
(Mst. Shahul vs. Province of Sindh & others)

Constitution Petition No. D- 1718 of 2023
(Muhammad Shafique vs. Province of Sindh & others)

Constitution Petition No. D- 32 of 2024
(Umair Qazi and others v. Province of Sindh & others)

Constitution Petition No. D- 146 of 2024
(Mst. Gulabi Khatoon Shar vs. Province of Sindh & others)

Constitution Petition No. D- 157 of 2024
(Bushra Bibi vs. Province of Sindh & others)

Constitution Petition No. D- 165 of 2024
(Mst. Husna Soomro vs. Province of Sindh & others)

Constitution Petition No. D- 174 of 2024

(Bashir Ahmed Siyal v. Province of Sindh & others)

Date of hearing and Order: 15.05.2024.

M/s Sarfraz Ali Akhund, Syed Mujahid Ali Shah, Sikandar Ali Junejo, Ziaul Haq Kamboh, Muhammad Nasir, Saifullah Soomro, Yaseen Ali Ghunio, Abdul Naeem Pirzada, Athar Hussain Abro, Faiz Muhammad Brohi, Yameen Ali Khoso and Daim Hussain.

M/s Liaquat Ali Shar, Ali Raza Balouch, Ghulam Mustafa Abro Addl. A.G and Assistant A.G Sindh along with Rashid Hussain Chachar, Secretary Market Committree Mirpur Mathelo, Ravi Kumar Chairman Market Committee Mirpur Mathelo.

O R D E R

Adnan-ul-Karim Memon J:- These matters pertain to the pensionary / service benefits of the petitioners and /or family pension, which are of paramount consideration and this is the reason that all the pension matters are being taken up together for disposal, as the common question of law is involved in these matters.

2. The case of the petitioners is that they / their husbands/family members were government employees and working in deferent departments of Government of Sindh and stood retired from their respective services and after retirement, they are roaming from pillar to post for the release of their pensionary / service benefits up to date, on the premise that the aforesaid service benefits have not been released to them due to which 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 some of the petitioners as well as learned counsel(s) representing the respective departments 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 them leaving this court to decide the issue on merits in terms of ratio of the decisions of Supreme Court, howecver they have raised the issue of lack of funds. So far as the issue of pension of Market Committees are concerned, learned Addl.A.G has submitted that market committee is corporate body i.e

supposed to generate its funds in terms of Section 16 of Agriculture produce Markets Act, 1939 and the Government of Sindh is not supposed to allocate the funds to the employees who had been appointed by the said committee and their employees were/are under their control. Officials present in Court representing Market Committee submit that they have to generate their funds for meeting their day to day expenses including disbursement of salaries. Learned Add. A.G Sindh have added that the pensioners were governed under Sindh Service Rules 1983 vide notification dated 04.06.2012 wherein the payment of monthly pension and outstanding amount are required to be paid by the market committee concerned where a member of service retires or the case may be passed away, therefore, Chairman Market Committee and Secretary Market Committee concerned are legally authorized to make payment of pensioner benefits to the employees of Market Committee.

4. Be that as it may it is for the competent authority to see this aspect of the case as the pension issue is implemented to be resolved as early as possible by the competent authority. 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 the term “pension” and the nature of the right in respect thereof were examined in depth by the 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 a civil/public 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 the 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 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 the 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 the pendency of the departmental proceeding or criminal proceeding if any. Even it does not give any power to withhold Leave Encashment at any stage either before the proceeding or after the conclusion of the proceeding.

10. Prima facie, the pensioners have a qualifying length of service to their credit and they gave various reasons to claim the interest on the 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 in some of the cases arrears which has triggered the cause and hardship to the petitioners to approach this court.

10. Learned counsels for the petitioners have pointed out that the pension of the pensioners has been withheld/ are not being paid regularly without assigning any cogent reason. In our view, pensionary benefits cannot be stopped and/or withhold and, is violative of the law laid down by the Supreme Court in the case *of Haji Muhammad Ismail Memon, PLD 2007 SC 35*, the issue needs to be resolved.

11. In the light of the foregoing, we direct the Chief Secretary Sindh, to constitute a committee headed by him; and, the head of the concerned departments/Market committees 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 the Chief Secretary, on the date and time so fixed by him, to resolve the issue of pension and service benefits of the pensioners, 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 the 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 the 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 a meaningful hearing to them.

12. 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.

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