

## IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

MR.JUSTICE AQEEL AHMED ABBASI, CJ  
MR.JUSTICE ABDUL MOBEEN LAKHO

**C.P. Nos.D-125 & 403 of 2018 a/w**  
**C.P. No.D-4711 of 2018**

- Petitioners in C.P. No.D-125 of 2018 : Muhammad Nusrat Ali & others through Mr. Zia-ul-Haq Makhdoom, Advocate alongwith M/s. Azhar Mahmood, Abdullah Nizamani, Faisal Aziz, Hira Agha, Fatima Ashfaq, Amna, Antash, Fouzia Murad and Kanza Usman, Advocates.
- Petitioners in C.P. No.D-403 of 2018 : Ali Raza and another through Mr. Saleem Khaskheli, Advocate alongwith petitioners.
- Respondents in both Petitions : Province of Sindh through Secretary, Finance Department, Government of Sindh & others through Mr. M. Hassan Akbar, Advocate-General, Sindh, Mr.Miran Muhammad Shah, Addl. A.G., Mr. Saifullah, AAG, Mr. Abdul Jalile Zubedi, AAG, Mr. Ali Safdar Deepar, AAG & Mr. Saulat Hussain Rizvi, AAG alongwith Mr. Sajid Jamal Abro, Secretary Finance, Mr. Shahmir Khan Bhutto, Spl. Secretary Finance, Mr.Ghulam Ali Soomro, Addl. Secretary, Finance Department, Government of Sindh and Mr. Nadeem Ahmed Qureshi, Law Officer, Law Department, Govt. of Sindh.
- Dates of hearings : 14.12.2022, 19.12.2022, 23.01.2023, 21.02.2023, 13.03.2023, 17.04.2023, 16.05.2023, 22.05.2023, 01.06.2023, 08.08.2023, 22.08.2023, 02.10.2023, 06.11.2023, 06.12.2023 & 18.12.2023.
- Date of Announcement of Decision : 21.06.2024.

C.P. No.D-125/2018 : 1. Misc.No.19349/2022 (U/S.151 CPC)  
For hearing of 2. Misc.No.19350/2022 (Contempt)

## ORDER

**ABDUL MOBEEN LAKHO, J : --** In the above Constitutional Petitions filed by the petitioners/judicial staff of this Court as well as of District & Subordinate Courts have sought a common declaration to the following effect: -

“a) That the Respondent No.2 and 3 may be directed to notify the directions of the then Hon'ble Chief Justice regarding de-freezing of Special Judicial Allowance for all the cadres of the officers & staff of Sindh High Court, Judicial Officers and staff of District & Civil Courts in Sindh with effect from 01st July. 2016 without any delay;

b) Any other relief(s) as may be deemed appropriate, just and necessary in the given circumstances;

c) Costs of the proceedings;”

2. Since the above matters were fixed in Court on several dates, when contention of the learned counsel for the parties was recorded in the various orders passed in these petitions, therefore, in order to avoid the repetition of the contention of the parties it will be advantageous to reproduce hereunder the relevant orders to encompass the proceedings and the instance of the petitioners as well as of the respondents, which reads as follows: -

25.05.2018:

*Syed Mehmood Alam Rizvi, Advocate for the Petitioners in C.P. No.D-125/2018 along with Petitioners No.1 to 3.*

*Mr. K. A. Wahab, Advocate for Petitioners in C.P. No.D- 403/2018 along with Petitioners No.1 and 2.*

*Mr. Miran Muhammad Shah, Additional Advocate General, Sindh along with Mr. Asadullah Lashari, State Counsel, Mr. Asif Jahangir, Finance Secretary, Mr. Shakeel Ahmed, Deputy Secretary Finance and Mr. M. Saleem Soomro, Focal Person, Law Department, Govt. of Sindh.*

*Per direction of this Court passed on 10.05.2018, a meeting was held in the office of Director General Finance, High Court of Sindh, Karachi, along with all the stake holders on 19.05.2018. The meeting was attended by following Officers & stake holders:-*

1. Mr. Kamran Ahmed Hamidi, Director General (Finance & Accounts) High Court of Sindh.
2. Mr. Mujeeb-ur-Rehman, Assistant Registrar, Budget, High Court of Sindh.
3. Mr. Nisar Ahmed Sheikh, Additional Secretary, Finance Department.
4. Mr. Shakeel Ahmed, Deputy Secretary (Legal) Finance Department.
5. Mr. Habibul Islam, Section Officer, Finance Department.
6. Mr. Nusrat Ali, Petitioner No.1 in C.P. No.D-125/2018.
7. Mr. Muhammad Sarfraz, Petitioner No.2 in C.P. No.D-125/2018.
8. Mr. Aneel Mehmood, Petitioner No.3 in C.P. No.D-125/2018.
9. Mr. Ali Raza, Petitioner No.1 in C.P. No.D-430/2018.
10. Mr. Khurram Faizan Ali, Petitioner No.2 in C.P. No.D-403/2018.

*In compliance of the above order, minutes of the meeting has been submitted on 22.5.2018, which are available on record. The Additional Secretary, Finance Department, presented formula for enhancement of Special Judicial Allowance in the following manner-*

***"Special Judicial Allowance of one (01) initial basic pay of running/current pay scale) + 50% of running pay scale of current/running pay scale."***

*In the meeting, it was unanimously decided by all the stake holders that the above formula for enhancement of Special Judicial Allowance of one (01) initial basic pay (of running/current pay scale) + 50% of running basic pay of current/running pay scale is accepted. The Additional Secretary Finance informed that the aforesaid Special Judicial Allowance will be implemented from 1 July, 2018 for all the cadres of Officers and staff of Sindh High Court and its Benches and Circuit Courts, Judicial Officer and Staff of District and Civil Courts of Sindh It was also assured t that the said Special Judicial Allowance has a cumulative/recurring effect and will not be frozen at any stage in future. With regard to the request of the petitioners for the payment of arrears, the Additional Secretary Finance did not agree at this stage due to financial constraints, however, it was unanimously decided by all the stake holders that decision of arrears may be deferred for the time being. It was further stated in the minutes of the meeting that the Additional Secretary Finance informed in the meeting that the summary for implementation of the Special Judicial Allowance according to the aforesaid formula will be submitted for approval before the Hon'ble Chief Minister Sindh.*

*Report/Minutes of the meeting as agreed, settled and arrived at between all the stake holders are accepted and taken on record. It is expected that a summary should be placed by the Finance Department immediately before the Worthy Chief Minister, Sindh, who shall pass appropriate order on the same in accordance with law preferably within three (3) days from today and/or prior to completion of tenure of present Sindh Government and make compliance report.*

*To come-up on 28.05.2018 at 11.00 a.m. Office to facsimile this order just now to the Principal Secretary to the Chief Minister, Sindh for his information and compliance. Copies of this order be delivered to Mr. Miran Muhammad Shah, Additional Advocate General, Sindh, Secretary Finance and*

Focal person of Law Department, Govt. of Sindh under cover-in-hand for their information and compliance.

07.06.2018.

M/s. Mehmood Alam Rizvi Zakir Leghari, advocates for the Petitioners in C.P. No. 125 of 2018.

Petitioners Ali Raza and Khurram Faizan in C. P. No. D-403 of 2018 are present in person.

Mr. Sharyar Meher, AAG alongwith Faizullah Tunio, Section Officer, Finance Department, Government of Sindh.

Pursuant to the order dated 25.05.2018 passed in this matter, learned AAG has filed a statement duly signed by the Additional Finance Secretary (SR/ADMN), Finance Department, Government of Sindh alongwith copy of Office Memorandum dated 01.06.2018, which is reproduced as under for the sake of brevity:-

"REVISION OF SPECIAL JUDICIAL ALLOWANCE FROM THREE TIMES INITIAL OF RESPECTIVE BASIC PAY SCALE OF 2008 TO ONE INITIAL OF CURRENT BASIC PAY SCALE PLUS 50% OF RUNNING BASIC PAY OF CURRENT BASIC PAY SCALES TO THE EMPLOYEES AND OFFICERS OF JUDICIARY IN PROVINCE OF SINDH.

With the approval of Competent Authority and in view of the orders of Honourable High Court of Sindh, in C. P. No. D-125 of 2018 dated 25.5.2018, Government of Sindh has been pleased to revise the Special Judicial Allowance from three times initial of respective Basic Pay Scale of 2008 to One initial of current Basic Pay Scale Plus 50% of running Basic pay of current Basic Pay Scales to the employees and Officers of Judiciary with effect from 1st July 2018.

2. Moreover, allowing above revision of Special Judicial Allowance in respect of employees/officers of Judiciary from three times initial of respective Basic Pay Scales of 2008 to One Initial of current Basic Pay Scale Plus 50% of running Basic pay of current Basic Pay Scales, shall not bar the Government of Sindh from taking actions as per order of the Apex Court on the subject matter, whenever, its pending appeal against the Special Judicial Allowance is decided by the Honourable Supreme Court of Pakistan."

Learned AAG submits that needful has been done with regard to the Special Judicial Allowance in respect of the Petitioners/Employees and Officers of Judiciary from Three Times initial of respective Basic Pay Scale of 2008 to One Initial of Current Basic Pay Scale Plus 50% of Running Basic Pay of Current Basic Pay Scales to be implemented with effect from 01.07.2018. As regards the arrears, he submits that due to paucity of funds and completion of tenure of the present Government, such request of disbursement of arrears will be taken up soon after formation of new Government after forthcoming Elections. It is expected that needful will be done at an early date.

Learned counsel for the Petitioners submits that the matter may be fixed soon after Summer Vacations, 2018 and the Respondents may be directed

to ensure that the matter may be taken up on priority basis and further instructions shall be obtained for release of arrears towards such judicial allowance.

By consent, to come up on 16.08.2018. The Registrar of this Court is directed to intimate all the concerned quarters to ensure compliance.

C.P. No.D-403/2018:  
23.09.2020

Mr. Faizan Hussain Memon, Advocate for the petitioners along with petitioners Ali Raza and Khurram Faizan.

Kamran Ahmed Hamidi, Director General (Finance & Accounts), High Court of Sindh.

Mr. Ali Safdar Depar, Assistant A.G. along with Sikandar Hassan, Deputy Secretary (Legal) Finance Department, Government of Sindh.

In compliance of order dated 01.07.2020, a meeting was held which was attended by the Director General (Finance & Accounts) of this Court, Assistant Advocate General Sindh, Deputy Secretary (Legal) Finance Department, Government of Sindh, and petitioners 1 and 2. The report / minutes of the above meeting, duly signed by all the above participants, was filed on 21.08.2020. The above report / minutes show that all the stakeholders had agreed that arrears of Special Judicial Allowance for the period 01.07.2016 to 30.06.2018 shall be paid on monthly basis to the employees and officers of High Court of Sindh and the district and subordinate Courts in Sindh (BPS-1 to BPS-22) within 24 months starting from July 2020. It was further agreed that the funds for the above purpose shall be arranged partially from the savings of the High Court of Sindh and the district judiciary budget provision for the year 2020-2021, and the remaining from the funds to be provided by the Finance Department, Government of Sindh.

Kamran Ahmed Hamidi, Director General (Finance & Accounts) of this Court and Sikandar Hassan, Deputy Secretary (Legal) Finance Department, Government of Sindh, have filed their separate undertakings dated 23.09.2020, which are taken on record. According to the undertaking filed by the Director General (Finance & Accounts) of this Court, Finance Department of the Government of Sindh has allocated budget grant of Rs.605,277,000.00 to this Court during the current financial year i.e. 2020-2021, and after the expected expenditure of Rs.128,339,052.00 during the current year, an amount of Rs.476,937,948.00 will still be available in the relevant head of saving which will be sufficient to satisfy the payment in respect of employees of this Court during the current financial year.

In his undertaking, the above named Deputy Secretary (Legal), Finance Department, Government of Sindh, has submitted that the Special Judicial Allowance for the subject period of two years is not reflected in the budget for the current financial year 2020-2021, and the Finance Department will have to seek permission from the Government for allocation of this amount. He, however, does not dispute any of the figures / amounts mentioned in the

*undertaking submitted today by Director General (Finance & Accounts) of this Court. As far as seeking permission of the Government for allocation of funds is concerned, we are of the view that no such permission is required in view of the orders passed by this Court and the order being passed today. Needless to say Government of Sindh is duty-bound to comply with the said orders and absence of departmental or other approvals / permissions cannot be made the basis of non-compliance of an order passed by this Court.*

*In view of the above mentioned unanimous decision of all the stakeholders and with their consent, Finance Department of Government of Sindh is directed to pay / disburse the Special Judicial Allowance to all the employees and officers of this Court and the district and subordinate Courts in Sindh (BPS-1 to BPS-22) for the months of July, August and September 2020 latest by 30.09.2020, and to ensure the provision / payment / disbursement of the said allowance to them for the remaining twenty one (21) months / installments with effect from October 2020 strictly on monthly basis.*

*Issue notice to the Secretary Finance, Government of Sindh, for compliance of this order in letter and spirit and to submit compliance report to this Court latest by 07.10.2020.*

C.P. No.D-403/2018:  
29.10.2020:

*Mr. Faizan Hussain Memon, advocate for the petitioners.*

*Mr. Ali Safdar Depar, Asstt. AG, Sindh, a/w Sikandar Hussain, Deputy Secretary Finance Department, Government of Sindh*

*In compliance of order dated 23.09.2020, compliance report has been submitted by the Secretary Finance Government of Sindh. Director General (Finance & Accounts) of this Court has also filed a compliance report, according to which the Accountant General Sindh has complied with the aforesaid order to the extent of paying the arrears of Special Judicial Allowance for three (03) months i.e. July, August and September 2016, which was payable in July, August and September 2020, to all the employees and officers of this Court and those of the District and subordinate Courts in Sindh. This fact has been confirmed by learned counsel for the petitioners, who also confirms that the installment in respect of the subject allowance for the month of October 2016, payable in October 2020, has also been received by the said employees and officers. Regarding payment of the subject allowance to the said employees and officers for the remaining twenty one (21) months i.e. from October 2016 to June 2018, Sikandar Hussain, Deputy Secretary Finance Department, Government of Sindh, undertakes on behalf of respondents 1 and 2 that the same shall be paid to them on regular / monthly basis with effect from November 2020 in terms of order dated 23.09.2020.*

*It has been pointed out on behalf of the petitioners that many employees and officers have retired after 30.06.2018 to whom the benefit of order dated 23.09.2020 is not being extended by respondents 1 to 3. The said*

*respondents are directed to ensure that same treatment should be given to the said retired employees and officers as well. Issue notice to Chief Secretary Sindh, Secretary Finance and Accountant General Sindh for compliance.*

*By consent, the petition and listed application stand disposed of in the above terms with no order as to costs.*

14.12.2022

*Mr. Ziaul Haq Makhdoom, Advocate for the petitioner.*

*Mr. Ziauddin Ahmed Junejo, Assistant Advocate General Sindh.*

*Pursuant to Court's Notice on the contempt application today learned Assistant Advocate General Sindh has filed a statement along with comments on behalf of respondent No.2 duly signed by the Finance Secretary, Government of Sindh along with annexures, same is taken on record and copy supplied to the learned counsel for the petitioner. From a tentative perusal of the comments filed on behalf of the respondent No.3 it prima facie appears that the orders passed by this Court on 25.05.2018 and 07.06.2018 keeping in view undertaking by the Additional Secretary, Finance Department, Government of Sindh, to the effect that special judicial allowance will not be freezed in future, has been totally ignored, whereas, the recent flood in the province of Sindh has been made basis and justification for issuance of impugned Office Memorandum dated 13th July, 2022, whereby the special judicial allowance of the petitioners has been frozen, when there was no flood situation in the province of Sindh.*

*Let the Secretary, Finance Department, Government of Sindh shall be in attendance on the next date of hearing to explain as to how, the undertaking given in Court can be recalled without permission of the Court, whereas, nature of the special judicial allowance is as such which creates a valuable right and entitlement of the judicial staff/employees, who cannot be denied such right on flimsy grounds.*

*To come up on 19.12.2022 at 11:00 a.m. Office is directed to fix C.P. No.D-403 of 2018 along with instant petition on the next date of hearing.*

19.12.2022

*Mr. Ziaul Haq Makhdoom, advocate for petitioners.*

*Mr. Ali Safdar Deepar, AAG along with Sajid Jamal Abro, Secretary Finance Department and Nadeem Ahmed Qureshi, Law Officer, Law Department, Govt. of Sindh.*

*Pursuant to this Court's directions, Sajid Jamal Abro, Secretary Finance Department and Nadeem Ahmed Qureshi, Law Officer, Law Department, Govt. of Sindh have shown appearance and have filed comments alongwith annexures and submits that the Special Judicial Allowance along with arrears has been paid to the Staff of Sindh High Court and its Benches and Circuit Court, Judicial Officers and Staff of Subordinate Judiciary of Sindh including the Employees of the Provincial Tribunals working under the*

*administrative control of Sindh High Court as per orders of the Honourable Court on the basis of one initial basic pay (of running/current pay scale) 50% of running basic pay of current/running pay scale including the arrears and there has been no violation of Court's order. However, keeping in view the current flood situation and financial constraints being faced by the Province of Sindh, as an interim measure, the amount of Special Judicial Allowance to be calculated on the basis of enhanced basic pay scale for the current year 2022-2023 has been frozen as per decision of the Cabinet dated 11.10.2022, and there is no malafide on the part of respondents. It has been further contended that Cabinet after detailed discussion has been pleased to approve the sanction as per Item-7, vide its meeting held on 11.10.2022 in order to meet the huge expenses required to rehabilitate the large number of flood affectees and to build infrastructure. It has been further stated that this matter is already adjudged before the Hon'ble Supreme Court, wherein the petitioners have given undertaking that the amount towards the Special Judicial Allowance will be refunded/returned in case the Hon'ble Supreme Court decides the issue involved.*

*Such contention of the Secretary Finance is vehemently opposed by the learned counsel for the petitioners, who submits that in view of the orders already passed in the instant petition and in the other petitions, wherein, it has been held that the Staff of Sindh High Court and its Benches and Circuit Court, Judicial Officers and Staff of Subordinate Judiciary of Sindh including the Employees of the Provincial Tribunals working under the administrative control of Sindh High Court are entitled to the Special Judicial Allowance, whereas, there has been an undertaking given by the Government of Sindh before this Court in the instant petition that Special Judicial Allowance will not be de-frozen and the impugned Notification is totally illegal and has been issued in violation of the Court's orders.*

*We are also not persuaded with the explanation given by the Secretary Finance, attempting to justify the impugned Notification. Contention of learned counsel for the petitioners appears to be correct, as the respondents are bound to follow the Court's orders and to abide by the undertaking given in Court which is part of the Court's order. However, keeping in view the fact that such decision has been approved by the Cabinet, the Advocate General Sindh is directed to place the matter before the worthy Chief Minister Sindh to call the meeting of the Cabinet to review its decision to the extent of Staff/employees of Sindh High Court and its Benches and Circuit Court, Judicial Officers and Staff of Subordinate Judiciary of Sindh including the Employees of the Provincial Tribunals working under the administrative control of Sindh High Court within thirty (30) days and to take a decision in view of Court's orders, and to submit compliance on the next date of hearing.*

*To come up on 23.01.2023 at 11:00 a.m. along with C.P. No.D-403 of 2018. Let copy of this order be provided cover-in-hand to learned AAG and the Secretary Finance, who shall transmit the same to the concerned quarters to ensure compliance.*



13.03.2023.

*Mr. Ziaul Haq Makhdoom advocate for petitioners a/w petitioners Ali Raza Memon and Khurram Faizan.*

*Malik Naeem Iqbal, advocate for petitioner.*

*Mr. Ali Safdar Depar, Assistant A.G. a/w Sikander Hassan, Law Officer, Finance Department, Govt. of Sindh, Liaqat Ali Abro, Consultant Law, Chief Secretary, Govt. of Sindh, Nadeem Ahmed Qureshi, Law Officer, Law Department, Govt. of Sindh.*

*Learned AAG has submitted a copy of order dated 07.03.2023 passed by the Honourable Supreme Court in CA 343-L/2013 and others and submit that issue of allowances to the employees of Federal courts, Tribunals, subordinate judiciary i.e. Judges of Sindh, employees of subordinate judiciary is pending before Honourable Supreme Court and vide order dated 07.03.2023 the Honourable Supreme Court has given one month's time to the authorities to sort the issue out and submit compliance report. He further submits that in the light of such directions of Supreme Court, a cabinet meeting of Sindh Government has been proposed to be held not only for discussing issue of allowances to the employees of judiciary as stated above but matter of de-freezing of spl. Judicial allowance will also be taken up for discussion and decided. To that effect he has filed undertaking as under, which is taken on record.*

*"It is submitted that Finance Department has already submitted the matter of de-freezing of Special Judicial Allowance before the Provincial Cabinet and it is further submitted that same will again be submitted before Provincial Cabinet after next hearing of the case before the Honourable Supreme Court of Pakistan in the light of order dated 07.03.2023 passed by the Honourable Supreme Court of Pakistan*

*In view of above are the facts and reasons of the matter, it is humbly prayed that the sufficient time may kindly be granted for compliance of the Court order"*

*As a last chance one month's time is granted for submitting compliance of Court's order.*

*Adjourned to 17.04.2023 at 11.00 a.m.*

16.05.2023

*Mr. Zia-ul-Haq Makhdoom, Advocate for the petitioners in C.P No.D125/2018 alongwith Ms. Hira Agha, Advocate alongwith Petitioner No.1 Ali Raza.*

*Malik Naeem Iqbal, Advocate for the petitioners in C.P No. D-403/2018*

*Mr. Miran Muhammad Shah, Addl. Advocate General, Sindh alongwith Mr. Sikandar Hassan, Chief Law Officer, Govt. of Sindh.*

*Dr. Liaquat Ali Abro, Law Officer, Law Department, Govt. of Sindh.*

*Learned AAG submits that in view of the order dated 07.03.2023 passed by the Hon'ble Supreme Court in C.A No.343-L/2023 alongwith other connected matters, and directions as contained in Para-3 of the said order, the Federal Government has convened a meeting today, wherein, all Provinces will participate and try to resolve the matter regarding allowances, including Special Judicial Allowance to the employees of Federal Courts / Tribunals, subordinate judiciary i.e. Judges of Sindh and employees of subordinate judiciary, and thereafter, respondents will be in a better position to proceed further with regard to defreezing of such allowances of aforesaid category of persons. Learned counsel for the petitioners submits that order of the Hon'ble Supreme Court, as referred to hereinabove, is not relating to the subject controversy i.e. defreezing of special judicial allowance of the petitioners, whereas, such decision of freezing the special judicial allowance was taken by the Provincial Cabinet and, therefore, has to be reviewed / rectified accordingly as per Court's order, irrespective to the outcome of the aforesaid meeting, which fact, according to learned counsel for the petitioners, has already been noted by the learned Divisional Bench of this Court in its order dated 13.03.2023.*

*While confronted with hereinabove submissions of learned counsel for the petitioners, learned AAG submits that meeting of the Federal Government with all the Provinces as per the directions of Hon'ble Supreme Court is in substance relatable to the allowances, including special judicial allowance, which is subject controversy of instant petitions, however, learned AAG seeks time to obtain instructions in this regard, and also to intimate outcome of the aforesaid meeting to the Court on the next date of hearing, therefore, requests that before passing any further order in the instant petitions, above factors may be taken into consideration.*

*As an indulgence, we are adjourning these matters to 22.05.2023, however, with directions to the respondents to ensure that the undertaking already given by the Provincial Government relating to special judicial allowance and the order already passed in the instant matters, be complied with, unless there is some legal impediment or restraining order by the Hon'ble Supreme Court in this regard, failing which, appropriate orders will be passed on the next date of hearing.*

*To come up on 22.05.2023 at 11:00 A.M.*

22.05.2023

*Mr. Zia-ul-Haq Makhdoom, advocate for the petitioners in C.P No. D-125/2018 alongwith Ms. Hira Agha & Ms. Fatima Ashfaque, advocates.*

*Petitioners Ali Raza & Khurram Faizan in C.P No. D-403/2018 present in person.*

*Mr. Miran Muhammad Shah, Addl. Advocate General, Sindh*

*Dr. Liaquat Ali Abro, Law Officer, Law Department, Government of Sindh.*

*Sikandar Hassan, Chief Law Officer, Finance Department, Govt. of Sindh.*

*Learned counsel for the petitioners seeks urgency on the ground that on 22.05.2023 when the matter was fixed as date by Court, which was discharged. Urgency granted.*

*Learned Additional Advocate General Sindh has filed Statement dated 22.05.2023 on behalf of the Secretary to Government of Sindh, Finance Department alongwith copy of Minutes of Meeting of Provincial Cabinet held on 09.03.2023, which is taken on record, copy has been supplied to the learned counsel for the petitioners.*

*Learned Additional Advocate General Sindh submits that in view of the decision taken in the meeting convened as per order of Hon'ble Supreme Court, on the subject issue involved in the instant matters, the issue regarding de-freezing of special judicial allowance has been deferred to be taken up after decision by the Hon'ble Supreme Court in the pending cases.*

*Learned counsel for the petitioners submits that the Statement filed on behalf of the Finance Secretary is of no relevance, as after the meeting of the Provincial Cabinet held on 09.03.2023, this Court has been pleased to pass order on 16.05.2023 requiring the respondents to place the matter before the Provincial Cabinet for the purposes of seeking review with regard to de-freezing of the subject Judicial Allowance of the petitioners as according to learned counsel, it was neither the subject matter before the Hon'ble Supreme Court, nor it the mandate of the Federal and Provincial Governments to decide the same in their meeting which is meant for resolution of the dispute relating to distribution of judicial/special judicial allowance to above categories of employees of Sindh Judiciary while treating them at par with other provinces. Moreover, it was the part of the agenda of the aforesaid meeting, which was held in the month of March 2023, therefore, matter is required to be placed before the cabinet only for the purposes of recalling/review of their decision relating to de-freezing of Special Judicial Allowance as per this Court's order. According to the learned counsel, since all the employees of the Federal Courts/Tribunals as well the Courts of other Provinces are being regularly paid Judicial and Special Judicial Allowances, and it was only on account of freezing the same by the Sindh Government, the petitioners had approached this Court with a prayer that they may be treated at par in respect of the employees of the aforesaid same category, whereas, there have been orders already passed by this Court in these petitions as well as undertaking given by the Sindh Government that they will not stop, such allowances, therefore, unless the said order is set-aside or modified by the Hon'ble Supreme Court the respondents are bound to abide by such orders and the undertaking given to this effect.*

*Contention of the learned counsel for the petitioners appears to be reasonable. While confronted with hereinabove factual and legal position, learned Additional Advocate General could not submit any plausible explanation for not complying with the orders earlier passed by this Court requiring the Sindh Government to place the matter before Provincial Cabinet.*

*As an indulgence, one week's further time is granted to the respondents to ensure compliance of the Court's orders already passed in these constitutional petitions and to obtain appropriate decision, falling which, appropriate orders will be passed for defiance of Court's order, and consequently, delinquent officials will be proceeded in accordance with law for defiance of the Court's orders.*

*To come up on 01.06.2023 at 11.00 a.m., when the Finance Secretary to Government of Sindh and Principal Secretary to Chief Minister Sindh shall be in attendance alongwith compliance report.*

*Let copy of this order be supplied to the learned Additional Advocate General Sindh cover-in-hand for onward transmission to the concerned quarters to ensure compliance of the Court's orders.*

08-08-2023

*Mr. Zia-Ul-Haq Makhdoom, Advocate for the Petitioner in C.P. No.D-125 of 2018 along with M/s.Hira Agha, Ayaan Qureshi, Asad Khan, Fatima Ashfaque and Kanza Usman, Advocates.*

*Mr. Naeem Malik, Advocate for the Petitioner in C.P. No.D-403 and 4711 of 2018 along with Petitioner Ali Raza and Khurram Faizan.*

*Mr. Meeran Muhammad Shah, Additional A.G, Sindh along with Mr.Sikandar Hassan, Chief Law Officer, Finance Department, Government of Sindh and Mr. Nadeem Ahmed Qureshi, Law Officer, Law Department, Government of Sindh.*

*Learned counsel for the petitioner has drawn the attention of this Court towards the Minutes of the meeting of the Provincial Cabinet dated 05.06.2023 placed on record on the previous date of hearing and has referred to the decisions taken by the Cabinet which reads as follows:*

*“ In view of the Order of Honorable Supreme Court of Pakistan in C.P. Nos. 1141- K to 1146-K, 1160-K and 1176-K of 2018 in the hearing dated 03.04.2019, the Cabinet decided that Special Judicial Allowance shall remain frozen keeping in view of the financial constraints and the existence of the enormous disparity in salaries of civil servants and judicial officers/officials in BPS-01 to BPS- 22 with judicial officers/officials already drawing 1.63 to 1.79 times higher salaries. than civil servants.”*

*The learned counsel for the Petitioner submits that though a clear undertaking was given by the Provincial Government through various Officers, including Additional Secretary/ Deputy Secretary, Finance Department, Government of Sindh, and Deputy Secretary (Legal) of Finance Department to the effect that Special Judicial Allowance being paid to the employees of*

*Sindh High Court, its Benches, Circuits Courts, Judicial Staffs of Subordinate Judiciary including the employees of Federal / Provincial Tribunals working under the Administrative Control of A Sindh High Court shall not be freezed in future, whereas, such undertaking was duly approved by the Chief Minister, Sindh, which fact is duly incorporated in various orders of this Court, including order dated 01.06.2018, 07.06.2018 and 17.10.2018 in C.P. No. D-125 of 2018, however, despite such clear and unambiguous undertaking and the orders of this Court, Special Judicial Allowance has been freezed pursuant to Notification dated 13.07.2022. Per learned counsel, keeping in view of various Orders already passed in this Petition as well as the fact that in all other Provinces, such allowance is being paid to the employees of High Court and their Benches and Circuits Courts, Judicial Staffs of Subordinate Judiciary, including High Court, freezing such allowance by Sindh Government was totally unjustified and discriminatory. However, keeping in view the fact that such freezing was pursuant to Provincial Cabinet decision, the matter was referred to the Provincial Cabinet to review its decision. However, inspite of earlier Orders passed by this Court and undertaking given to this effect on behalf of the Provincial Government, the Provincial Cabinet has declined to review its decisions. It has been prayed that since there is no restraining Order passed by the Hon'ble Supreme Court of Pakistan in Civil Appeals filed against earlier decisions of Division Bench of this Court as well as similar Orders passed by various Provincial High Courts, are paying Special Judicial Allowances to the various categories of Judicial Officers/Judicial staff of High Courts and Subordinate Courts/Tribunals, therefore, directions may be issued to the Secretary to Government of Sindh, Finance Department to release the Special Judicial Allowances to the petitioners and all the judicial officers/staff of High Court and sub-ordinate Courts, which has been illegally freezed vide their Notification dated 13.07.2022.*

*Learned Additional Advocate General while confronted with hereinabove submissions of the learned counsel for the petitioner, could not dispute the factual positions as stated by the learned counsel for the Petitioner, however, submits that since the matter is pending before the Hon'ble Supreme Court of Pakistan wherein certain directions have been issued to all Provincial Governments, whereas, on account of financial constraints the Special Judicial Allowances has been freezed for the time being, therefore, it has been prayed that matter may be adjourned to be fixed after decision by the Hon'ble Supreme Court of Pakistan in the Civil Appeals, so that once for all this controversy may be set at rest.*

*Learned counsel for the Petitioners has vehemently opposed this request of the learned AAG and submits that all the Provinces are making payment of the Special Judicial Allowances to the Judicial Officer/Judicial Staff/employees, therefore, the stance of the Government of Sindh in this regard is not only discriminatory but also contrary to the undertaking given and the Orders passed by this Court in the matter.*

*Prima Facie the contention of the learned counsel for the Petitioners appears to be correct, however, as an indulgence and as a final chance, we would direct the Advocate General Sindh to assist this Court on the next date of hearing after seeking instructions from the worthy Chief Minister. Learned counsel for the parties are also directed to come prepared and to assist the Court as to whether under the facts and circumstances of the instant case, decision taken by the Provincial Cabinet with regard to the freezing of Special Judicial Allowance inspite of undertaking given and the orders passed by this Court for the release of such allowances, such decision could have been taken and as to whether, this Court can still issue directions for release of such amount by ignoring the Cabinet decision to this effect. For such purpose this matter is adjourned to 22.08.2023 at 11:00 a.m.*

*Copy of this order shall be provided cover in hand to learned Additional Advocate General Sindh for onward transmission to relevant authorities.*

*Mr. Naeem Malik, Advocate submits that another connected Petition No.D-4711 of 2018 may also be taken up along with the instant Petition as the controversy involved in these Petitions is similar. In this regard he has referred to Order passed by this Court on 17.04.2023 for taking up the same matter along with C.P. No. D-125 of 2018.*

3. On 06.12.2023, when the matter was fixed in Court following order was passed:

06.12.2023

*Mr. Zia-ul-Haq Makhdoom, advocate for the petitioners in C.P No. D-125/2018.*

*Mr. Muhammad Nasir, advocate for the petitioners In C.P.No.D-4711/2018.*

*Petitioner All Raza in C.P No. D-403/2018 present in person.*

*Mr. Ali Safdar Depar, Assistant Advocate General Sindh Ghulam Ali Soomro, Additional Secretary, Finance Department, Government of Sindh.*

*Manzoor Gopang, Law Officer, Law Department, Government of Sindh.*

*Learned Assistant Advocate General Sindh has filed Statement dated 05.12.2023 on behalf of respondent No. 3/Finance Department, Government of Sindh alongwith copy of Meeting Notice of the Provincial Caretaker Cabinet, wherein, Agenda No. 21 "De- freezing of Special / Pay Special Allowance / Allowance of Different Departments (C. P. No. D-125 of 2018)" was placed before the Provincial Caretaker Cabinet pursuant to Court's directions, however, requests for further time to place on record the result and the minutes of the aforesaid Meeting alongwith decision on the subject Agenda, on the next date of hearing. Further time is granted.*

*For such purpose, we are adjourning the instant matters for 18.12.2023 to be taken up at 11.00 a.m.*

4. It is pertinent to note that during course of proceedings, comments alongwith annexures were filed on 05.12.2022 by the Secretary Finance, Government of Sindh, wherein, it was submitted that in view of the decision at Item No.7.10(i), as reflected in the Minutes of the Provincial Cabinet Meeting held on 11.10.2022, whereby, it was decided to freeze subject allowance in the following terms: -

7.10. **DECISION:**

*The Cabinet decided as following:*

- i. *The revision of pay and allowances is prerogative of the Provincial Government and policy of Provincial Government of freezing Special Pay / Special Allowances / Allowances at the level of admissibility as on 30.06.2022 on the pattern of Federal Government shall continue to remain intact.*

5. Learned AAG attempted to argue that since the impugned Office Memorandum has been issued pursuant to the aforesaid Cabinet decision, therefore, respondents have not violated the Court's orders. However, such contention of the learned AAG is misconceived, as in respect of judicial orders passed relating to release of Special Judicial Allowance and the undertaking already given on behalf of the Government of Sindh through Additional Secretary Finance, cannot otherwise be subject matter of any Cabinet decision, hence any decision taken by the Cabinet in violation of Court's orders and the undertaking given by the Government of Sindh is otherwise of no legal consequences.

6. On 18.12.2023, when the matter was again fixed in Court learned AAG has filed a statement on behalf of respondent No.3/Finance Department, Government of Sindh alongwith copy of the Minutes of Cabinet, wherein, Agenda / Item 21 regarding defreezing of Special / Pay Special Allowance / Allowance of Different Departments (C.P. No.D-125 of 2018), which reproduced hereunder: -

**21. AGENDA ITEM-21: DE-FREEZING OF SPECIAL PAY SPECIAL ALLOWANCE / ALLOWANCE OF DIFFERENT DEPARTMENTS (C.P NO.D- 125 OF 2018).**

21.1 The Secretary Finance apprised the Cabinet that all Special Pays, Special Allowances or the Allowances admissible as percentage of pay including the Allowances/Special Allowances equal to one month basic pay, granted to Sindh Government employees irrespective of his/her posting in Department / Attached Department, etc. including civil employees in BPS-01 to 22 of Judiciary, were frozen at the level of its admissibility as on 30.06.2022.

21.2 Accordingly, the matter was placed before the Provincial Cabinet in its meetings dated 11.10.2022, 09.02.2023, 09.03.2023, 25.05.2023 and 05.06.2023, upon the orders of the High Court in Contempt of the Court Proceedings in C.P Nos.D-125 of 2018, D-403 of 2018 and D 4711 of 2018. However, the provincial Cabinet decided to keep the Allowances frozen at the level of their admissibility as on 30.06.2022 in all its meetings, owing to a huge and recurrent financial implication and the fact that any change in the remuneration in respect of its employees is the prerogative of the Government, being their employer.

21.3 The Finance Department has submitted comments in the aforementioned Contempt of Court Proceedings from time to time vide statements dated 05.12.2022, 16.12.2022 19.01.2023, 20.02.2023, 10.03.2023, 13.04.2023, 29.05.2023, 14.06.2023 and 21.08.2023. thoroughly highlighting therein the reasons why the said allowance was kept frozen. Moreover, it was also apprised to the Honorable Court that the matter is sub-judice in the Honorable Supreme Court of Pakistan in Civil Appeal Nos 35 to 41/2015 and 167-K/2015. It is very important to mention that Government of Sindh is the only province where not only the Judicial Officers but also the staff of High Court and the subordinate Judiciary alongwith the staff of Advocate General are in receipt of the said allowance, whereas in the sister provinces i.e. Punjab, KPK and Baluchistan. only the Judicial Officers have been allowed Special Judicial Allowance. The Honorable High Court of Sindh was also apprised that the Honourable Supreme Court of Pakistan in Constitutional Petition Nos1141-K to 1146-K, 1160-K and 1176-K of 2018, in the hearing dated 03.04.2019 has passed an order, the operating para of which is re-produced below:

*"the points that also need to be considered are whether the courts in general and also in particular can justifiably create huge liability upon the government of making immediate payments to the employees for which it has made no budgetary provision and whether fixing of salaries and emoluments of government servants falls directly within the realm of government policy, which ought not to be disturbed by the courts by creating liability and burden upon exchequer, which the government is not prepared to bear."*



21.4 The Honorable Sindh High Court has now passed order dated 02.10.2023 directing therein that the matter may again be placed before the Caretaker Provincial Cabinet for reviewing the earlier decisions and deciding afresh keeping in view the factual and legal position in the light of the Court's Orders in the instant matter.

21.5 A meeting in this regard was convened by the Caretaker Law Minister, held in the Office of the Secretary Law, attended by the Advocate General Sindh and his legal team, Secretary Finance and Special Secretary, Finance Department, where all the participants after due deliberation opined as under:

- (i) Section 230(2)(a) and (b) places an embargo on a Caretaker Government to undertake major policy decisions as well as "to take any decision or make a policy that may have effect or pre-empt the exercise of authority by the future elected Government"

The de-freezing of Judicial Allowance would therefore have manifest long- term financial consequences and tantamount to pre-empting the exercise of authority by a future elected Government.

- (ii) The above quoted provision is of particular significance in light of the fact that an elected Government has on five previous Cabinet meetings rejected the proposal for de-freezing the subject Judicial Allowance. In fact, the previous Government has on each such occasion categorically decided to continue with its policy of keeping the Judicial Allowance frozen.

- (iii) Furthermore, the de-freezing of Judicial Allowance by a Caretaker may likely have an irreversible effect (as vested rights would be created) and this would violate the letter and spirit of section 230(1)(c) of Election Act, 2017.

21.6 The Honorable Caretaker Chief Minister, Sindh has been pleased to place the matter before the Provincial Caretaker Cabinet in its next meeting vide Chief Minister's Secretariat letter dated 04.11.2023.

21.7 The Minister for Health opined that allowing allowance to judicial officials will create precedent for other employees as well. The Government of Sindh cannot afford provision of such allowances. The Cabinet was informed that the matter is sub-judice in Supreme Court and committee at the federal level has been constituted to work-out its recommendation over the issue. There was consensus among Cabinet members that caretaker government has no legal authority to provide such allowances.

21.8 **Decision:**

*The Cabinet decided to hold the matter till committee constituted for the said purpose submits its recommendation and the matter is adjudicated by the Honorable Supreme Court of Pakistan.”*

7. Purpose of reproducing the detailed proceedings in the above Constitutional Petitions as reflected in the various orders passed by this Court from time to time in the above terms is to demonstrate the admitted factual and legal position relating to entitlement of the petitioners in respect of Special Judicial Allowance for all the cadres of officers and staff of the Sindh High Court, its Bench and its Circuit Courts, Judicial Officers of District Judiciary Sindh and staff of District and Civil Courts of Sindh w.e.f.01.07.2016 pursuant to the orders dated 25.05.2018 and 23.09.2020 passed by this Court in Constitutional Petition Nos.D-125 & 403 of 2018, whereby, all the stakeholders, including Government of Sindh represented through their various officers/officials from Finance and Law Departments, including Secretary, Additional Secretary and Special Secretary, Finance Department, Govt. of Sindh, formula of enhancement of Special Judicial Allowance in the following manner was agreed:-

*“Special Judicial Allowance of one (01) initial basic pay of running/current pay scale) + 50% of running pay scale of current/running pay scale.”*

8. Vide order dated 25.05.2018, Additional Secretary, Finance Department, appearing on behalf of Government of Sindh, informed that the aforesaid Special Judicial Allowance will be implemented w.e.f. 01.07.2018 for all the cadres of officers and staff of the Sindh High Court, its Benches and its Circuit Courts, Judicial Officers of District Judiciary Sindh and staff of District and Civil Courts of Sindh, whereas, it was also assured that such Special Judicial Allowance has a cumulative/recurring effect and will not be frozen at any stage in future. However, it was unanimously decided by all the stakeholders

that decision of arrears may be deferred for the time being, whereas, assurance was given by the Additional Secretary, Finance Department that summary for implementation of Special Judicial Allowance, according to aforesaid formula, will be submitted for approval before the Hon'ble Chief Minister Sindh. In view of such undertaking given on behalf of the respondents, this Court was pleased to direct the Finance Department to place the summary immediately before the Worthy Chief Minister Sindh, who shall pass appropriate order on the same in accordance with law, preferably, within three (03) days from the date of aforesaid order and/or prior to completion of tenure of the then Sindh Government and submit compliance report. However, instead of ensuring compliance, matter kept lingering on and adjournments were sought on behalf of the respondents on one pretext or the other, therefore, contempt of Court application was filed by the petitioners seeking compliance of Court's orders. It is pertinent to note that admittedly Special Judicial Allowance is being paid to all the cadres of officers and staff of the High Court(s), its Benches and its Circuit Courts, Judicial Officers of District Judiciary and staff of District and Civil Courts in all over the Provinces of Pakistan by their respective Government(s) except by the Government of Sindh, who has been totally ignored for the reason of flood in Province of Sindh has been made basis for issuance of impugned Office Memorandum dated 13<sup>th</sup> July, 2022, whereby, the Special Judicial Allowance of the petitioners has been frozen, when there was no flood situation in the Province of Sindh, and also in view of the decision of the Divisional Benches of various High Court(s) against which, according to the respondents, appeal has been filed before the Hon'ble Supreme Court, however, no order has been produced, whereby, the operation of decisions to this effect has been suspended, nor any stay appears to have been granted or produced, whereby, respondents has been allowed to withhold the release of Special Judicial

Allowance to the petitioners, including all the cadres of officers and staff of the Sindh High Court, its Benches and its Circuit Courts, Judicial Officers of District Judiciary Sindh and staff of District and Civil Courts of Sindh.

9. It is regretted to observe that all the cadres of Officers and staff of Sindh High Court, its Benches and Circuit Courts, Judicial Officers and staff of District and Civil Courts of Sindh are being discriminated by the respondents, who have frozen Special Judicial Allowance malafidely on a false pretext while misinterpreting the leave grant order passed by the Hon'ble Supreme of Pakistan in Civil Appeal Nos.1141-K to 1146-K, 1160-K and 1176-K of 2018, which reflects that neither the decision of the High Court has been suspended to this effect, nor any stay has been granted against release of such allowance by the Hon'ble Supreme Court. However, while issuing impugned Office Memorandum dated 13.07.2022 available at page 293 to 303 as Annexure P/5 in C.P.No.D-403/2018, whereas, as per decision of the Provincial Cabinet Sindh meeting held on 05.06.2023 on Agenda Item No.5 available at page 513 as Annexure "I" relevant at pages 521 to 527 in C.P.No.D-125/2018, whereas, further decision taken by the Cabinet of Caretaker Government as per Agenda Item-21 in its meeting held on 01.12.2023, whereby, Government has decided to hold the matter till committee constituted for the said purpose and send its recommendation and the matter is adjudicated by the Hon'ble Supreme Court of Pakistan.

10. In view of hereinabove factual and legal position, common relief sought in above petitions against freezing of Special Judicial Allowance to all the cadres of officers and staff of the Sindh High Court, its Benches and its Circuit Courts, Judicial Officers of District Judiciary Sindh and staff of District & Civil Courts of Sindh as well as applications in disposed of petition i.e. C.P. No.D-403/2018 vide order dated

29.10.2020, are allowed and impugned Office Memorandum dated 13.07.2022 is hereby set aside to the extent of Para 9 of Special Pay and Allowance, including civil employees in BPS-1 to 22 of Judiciary shall stand frozen at the level of its admissibility as on 30.06.2022 as well as decision at Item No.7.10(i), as reflected in the Minutes of the Provincial Cabinet Meeting held on 11.10.2022 and the decision at Item No.21.8, as reflected in the Minutes of the Provincial Cabinet Meeting held on 01.12.2023 to this effect are hereby declared to be illegal and without lawful authority for having no factual and legal basis and having been issued/decided in complete violation of the decision of judicial pronouncement on the subject and the directives issued by the Hon'ble Chief Justice of this Court pursuant to such decision as well as contrary to the orders passed in the aforesaid petitions on the basis of undertaking given on behalf of the Government of Sindh, as reflected in order dated 25.05.2018. Since the decision(s) taken by the Provincial Cabinet, Government of Sindh relating to Special Judicial Allowance, besides being arbitrary, has no factual or legal basis, whereas, all the cadres of Officers and staff of Sindh High Court, its Bench and Circuit Courts, Judicial Officers and staff of District and Civil Courts of Sindh judiciary have been deprived of Special Judicial Allowance while given different treatment from the Judicial Officers/Staff of the Judiciary in other Provinces of Pakistan, performing the same judicial function, therefore, such decision is otherwise discriminatory, besides being in violation of judicial pronouncement, and also against the undertaking given before this Court on behalf of Government of Sindh in the above petitions, therefore, not sustainable in law. Reliance in this regard can be placed in the following cases:

1. GOVERNMENT OF PAKISTAN AND OTHERS v. MESSRS SAIF TEXTILE MILLS LTD. & 6 OTHERS [2003 SCMR 265];

2. FEDERATION OF PAKISTAN THROUGH SECRETARY MINISTRY OF COMMUNICATION ISLAMABAD AND ANOTHER v. SHUJA SHARIF AND OTHERS [2023 SCMR 129];
3. GOVERNMENT OF PUNJAB THROUGH SECRETARY, FINANCE DEPARTMENT, LAHORE v. MUBARIK ALI KHAN [PLD 1993 SUPREME COURT 375];
4. MUHAMMAD ISHAQ AND OTHERS v. ZEAL PAK CEMENT FACTORY LTD. [2024 SCMR 628]; and
5. MST. YASMEEN AKHTAR AND OTHERS v. THE GOVERNMENT OF SINDH THROUGH CHIEF SECRETARY AND 3 OTHERS [2020 PLC (C.S) 1249,

11. The Registrar of this Court is directed to intimate all the concerned quarters to ensure compliance, whereas, respondents are directed to defreeze and release the amount of Special Judicial Allowance to the petitioners and all the cadres of Officers and staff of Sindh High Court, its Benches and Circuit Courts, Judicial Officers and staff of District and Civil Courts of Sindh within two months from the date of receipt of this order.

**JUDGE**

**CHIEF JUSTICE**