

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Constitutional Petition No.D-503 of 2024

Present:

**Mr. Justice Muhammad Saleem Jessar
Mr. Justice Zulfiqar Ali Sangi**

Petitioner Aijaz Ali son of Ali Hassan Kandhro (Retired SIP)	:	through Mr. Noor Hassan Malik, Advocate
Province of Sindh, through Secretary, Home Department Government of Sindh and others Respondents No.1 to 4	:	through Mr. Ali Raza Baloch, Addl. Advocate General, Sindh, along with Inspector Mir Hashmat on behalf of SP Naushero Feroze, Shafi Muhammad Khaskheli DSP (Legal) on behalf of SSP Sukkur, Inspector Muhammad Akram DSP (Legal) on behalf of DIGP Sukkur and Inspector Sabir Hussain on behalf of DIGP Sukkur Range
Date of Hearing	:	11.12.2024
Date of Judgment	:	03.01.2025

JUDGMENT

MUHAMMAD SALEEM JESSAR. J- Through this constitutional petition, the petitioner has sought following reliefs:

- a) To direct the respondents allow / pay the pensionary benefits Gratuity, GP Funds, and other benefits including monthly pension to the petitioner in the interest of justice.
- b) To award costs of this petition.
- c) To award any other relief as deemed fit and proper.

2. Brief facts, relevant for disposal of instant Constitutional Petition, are; that the petitioner stood retired from Government service as SIP in Police Department w. e. f. 31.12.2023 vide Order No.EI/18688-94 dated 31.12.2023 passed by respondent No. 3. However, in said order respondent No.3, Deputy Inspector General of Police, Sukkur Range, directed respondent No. 4 (Senior Superintendent of Police, Khairpur), to stop pensionary benefits of the petitioner due to pendency of Special Case (Re: State Versus Aijaz Ali Kandhro) under Section 161, 343,34 PPC read with Section 5(2) of Act II of 1947 vide Crime No. 16 of 2002 ACE Khairpur and Direct Complaint No. 31 of 2017 under Section 166(2) PPC wherein the petitioner is facing trial in the Court of Special Judge, Anti-corruption, Sukkur. Being aggrieved by said direction of respondent No.3 regarding stoppage of pensionary benefits, the petitioner has filed instant constitutional petition seeking above reliefs.

3. We have heard arguments advanced by learned counsel for the petitioner as well as by learned Additional Advocate General Sindh.

4. Learned counsel for the petitioner submitted that respondent No.3 had directed respondent No.4 to stop petitioner's pensionary benefits without any legal justification and in total disregard of the directions issued by the Government to the effect that enquiries/cases against a government employee should be completed within one year of his retirement and in case it is not done, his pension and gratuity should be released in full and retiring government servant should, on no account, be penalized for the slackness of others. It was further submitted that the petitioner is sole bread winner of his family and due to stoppage of pensionary benefits, he as well as his family members are facing severe hardship and agony and are at the verge of starvation. Learned counsel submitted that in such situation, Superior Courts have held that if an employee has attained superannuation and the enquiries and/or cases pending against him are not concluded, then he shall be entitled to receive full pensionary benefits. Reliance has been placed on unreported orders passed in CP No.D-5613 of 2021, CP No.D-3842 of 2021 and CP No.D-5666 of 2021, copies whereof have been annexed with the petition.

5. Learned Additional Advocate General Sindh submitted that as two cases mentioned in the retirement order were still pending and were not concluded, therefore, till the disposal of said cases in favour of the petitioner,

he was not entitled to receive pensionary benefits. He further submitted that during the tenure of his service, the petitioner was awarded 17 major penalties of forfeiture of approved service with the result at the time of his retirement on attaining superannuation, only a period of two years eight months and twenty one days of approved service was at his credit, thus he was not entitled to receive pensionary benefits.

6. It appears that so far as the first ground for stoppage of pensionary benefits of the petitioner regarding pendency of two cases against him is concerned, it seems that such legal point has already been decided by the Superior Courts.

7. In this connection, reference may be made to the case of **MUHAMMAD ANWAR BAJWA, EXECUTIVE DIRECTOR, AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN, Vs. CHAIRMAN, AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN**, reported in **2001 P L C (C.S.) 336**, it was held as under:

"Pending disciplinary proceedings against civil servant abated if the latter had attained the age of superannuation---Such civil servant was entitled under Fundamental Rule, 54-A to retire with full pensionary benefits and period of suspension was bound to be treated as period spent on duty.

The petitioner's learned counsel lastly contended that consequent upon the retirement of the petitioner, the disciplinary action initiated against the petitioner on the basis of the impugned show-cause notices afore-mentioned has abated. This contention of learned counsel for the petitioner is not without force either. Petitioner's learned counsel in support of his last mentioned plea placed reliance on Rule 54-A of the Fundamental Rules. For facility of reference, the said Rule is reproduced hereunder:-

"54-A.If a Government servant, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of inquiry, the disciplinary proceedings against him shall abate and such Government servant shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty."

A perusal of Rule 54-A of Fundamental Rules would show 'that if a disciplinary action is initiated against the Government servant and the said action remains inconclusive during the course of his service and he retires on attaining the age of superannuation in the meanwhile, not only the uncompleted disciplinary action shall abate against such a Government servant but that he shall also be entitled to full pensionary benefits."

8. In the case of **MUHAMMAD ZAHEER KHAN Vs. GOVERNMENT OF PAKISAN** through Secretary, Establishment and others, reported in

2010 SCMR 1554, it was held that pending disciplinary proceedings against civil servant abate if the latter had attained the age of superannuation and that such civil servant was entitled under Fundamental Rule, 54-A to retire with full pensionary benefits and the period of suspension was bound to be treated as period spent on duty.

9. In an unreported Order passed in CP D-5613/2021 on 14.02.2022, a Division Bench of this Court held as under:

“For this reason, we take exception to the impugned action of the respondent- department and are of the considered view that the respondents are fully at fault for not culminating the disciplinary proceeding into its logical conclusion within time and allowing the petitioner to retire in 2019; and, prima facie, continued to perpetuate the illegalities, despite knowing the fact that petitioner has committed massive corruption and now at this stage in point in time they are raising hue and cry that the petitioner is not entitled to pensionary benefits. In this background of the case, the Hon’ble Supreme Court of Pakistan in the case of Province of Punjab through Conservator of Forests, Faislabad, etc. v. Javed Iqbal vide judgment dated 26.11.2020 passed in CP No.1554-L to 1573-L of 2020 has held that the government must ensure that the cases of retired employees are fast tracked so that they are concluded within the statutory time frame i.e. 02 years of his retirement, allowing the retired employees to enjoy their retired life and the government to save unnecessary expense and time in pursuing matters against retired employees.”

10. In view of above legal position, it can safely be held that payment of pensionary benefits to the petitioner could not be stopped due to pendency of two cases mentioned in the retirement order.

11. Now, we advert to the second ground for non-payment of pensionary benefits to the petitioner i.e. forfeiture of his 27 years’ approved service. Regardless the fact that the manner in which 17 major penalties of forfeiture of approved service were imposed upon the petitioner which, *prima facie*, shows violation of relevant law, rules and procedure, it appears that the legal position is that where an employee has less than 25 years of qualifying service at his credit at the time of superannuation, then he shall not be entitled to receive pensionary benefits. Reference in this respect can be made to the case of *Syeda Sakina Riaz Vs. Federation of Pakistan*, reported in **2018 SCMR 1272** and the decision of Service Tribunal Punjab, reported in 1981 PLC (CS) 597.

12. The plea taken by the respondents is that the petitioner did not file any appeal or revision against imposition of above said major penalties, thus such

orders attained finality. Notwithstanding above, as stated above, we cannot escape and close our eyes from the reality that while inflicting such major punishments upon the petitioner, the respondents have not strictly followed the law, relevant rules and the procedure. However, before highlighting such violations and transgressions of the law / rules, it may be pointed out that even in the Retirement Order dated 31.12.2023 not a single word has been uttered which could show that the stoppage / non-payment of pensionary benefits to the petitioner has been ordered on account of imposition of such major penalties of forfeiture of approved service. For the sake of convenience, the contents of the retirement order are reproduced hereunder:

“ORDER

RETIREMENT FROM SERVICE

*On attaining the age of 60 years, SIP Aijaz Ali S/o Ali Hassan Kandhro (CNIC NO.45204-3506753-2, personal No.10288646) of District Khairpur is hereby allowed to proceed on retirement from service on superannuation **pension**, with effect from 31.12.2023.*

Encashment

In pursuance of government of Sindh Finance Department letter No.FD(SR-IV)15-26/2012_dated 3rd October, 2012, he is granted (365) days lump sum pay as encashment in lieu of Leave Preparatory to Retirement (LPR).

Sd/-

(Abdul Hameed Khoso) PSP
Deputy Inspector General of Police,
Sukkur Range

CC to:-

1. The Inspector General of Sindh, Karachi.
2. The Senior Superintendent of Police, Khairpur w/r to his letter No.E.I/2485 dated 18.09.2023. He is requested to stop his pensionary benefits **due to pendency of ACE 16/2012, 02/2019 of ACE Khairpur** as per rules and follow other rules. No undue benefits nor undue damage may be given to him and take further action on the merit under existing rules. His service Book received under his letter number quoted above is returned herewith. Receipts of the same may be acknowledged.”

13. From above, it is crystal clear in the retirement order the sole reason / ground for stoppage of pensionary benefits of the petitioner was; **pendency of ACE 16/2012, 02/2019 of ACE Khairpur**. Needless to reiterate the legal proposition that on account of pendency of any enquiry and / or case against an employee at the time of his retirement on attaining superannuation, he cannot be deprived of payment of his pensionary benefits.

14. Now coming to the imposition of alleged 17 major penalties of forfeiture of service upon the petitioner, it seems that while inflicting such punishments, the respondents have not strictly followed the law and relevant rules. From perusal of comments of the respondents, it seems that mostly such major penalties were imposed due to alleged absence of the petitioner from the duty.

15. The provisions of Sind Police (Efficiency and Discipline) Rules, 1988 under which the major penalties were imposed, provides three types of disciplinary proceedings viz. (i) Summary Proceedings, (ii) General Proceedings and (iii) Special Proceedings. In instant case, the respondents initiated Summary Proceedings instead of General Proceedings although where a serious allegation like **misconduct** is made against a civil servant, then General Proceedings is/are to be initiated and a full-fledged inquiry is to be conducted. In instant case no regular enquiry was held and merely a Show Cause Notice was issued in all the cases in which either due to absence of the petitioner *ex parte* order of imposition of major penalty was imposed or where the petitioner had submitted reply to the Show Cause Notice, order for inflicting major punishment of forfeiture of approved service was passed holding that his reply was not satisfactory.

16. Sub-Section (3)(a)(ii) to Section 6 of the Rules, 1988 provides that the accused shall be apprised by the Authority, orally, of the nature of the allegations against him and the substance of the allegation, if any, explanation/reply offered by the accused shall be recorded and if the explanation is found unsatisfactory, he may be awarded one of the **minor** punishments. Very strangely, on the one hand, the respondents initiated Summary Proceedings instead of General Proceedings and, on the other hand, even on the conclusion of such Summary Proceedings allegedly against the petitioner, major penalties of forfeiture of approved service were imposed, although on the conclusion of Summary Proceedings against the accused employee, only a **minor penalty** could be imposed but instead of imposing minor penalty, as provided in above provision of law, the petitioner was awarded major penalties of forfeiture of approved service for 17 times. This is sheer violation of the relevant law and rules, thus, making such 17 orders as void *ab initio*.

17. It may be observed that Summary Proceedings can be initiated for minor breaches of discipline and not for serious offenses, including misconduct. Needless to reiterate that where there is allegation of **misconduct**, such allegation cannot be termed as 'minor breaches of discipline'. Likewise, **General Proceedings** must be initiated for **serious offenses** and that the proceedings must be conducted in a fair and transparent manner after holding proper regular inquiry in the matter.

18. It may be observed that in normal routine, a regular enquiry through an Enquiry Officer should be conducted and in case it is deemed proper that regular enquiry should be dispensed with, then reasons for such dispensation are to be assigned which lacks in instant case. Instead of initiating General Proceedings, the respondents initiated Summary Proceedings by withholding regular inquiry without assigning any reasons which was a mandatory requirement for dispensation of regular inquiry.

19. In order to fortify above, reference may be made to the case of **CHIEF POSTMASTER FAISALABAD, GPO VS MUHAMMAD AFZAL**, reported in **2020 PLC(CS) 979 SUPREME-COURT**, wherein the Apex Court held that *where there were serious allegations against an employee which were denied by him, the department was under an obligation to conduct a regular inquiry in all circumstances and in case the departmental authorities came to the conclusion that there was sufficient documentary evidence available on record which was enough to establish the charge, it could, after recording reasons, which were of course justiciable, dispense with the inquiry in the interest of expeditious conclusion of departmental proceedings. It was further held that Courts can always re-examine the reasons assigned by the departmental authority for dispensing with the requirement of regular inquiry and if such reasons were not found cogent and legally sustainable, the Court had all requisite powers and was not debarred from sending the matter back to the department to hold a regular inquiry.*

20. In case of **ABDUL GHAFFAR Vs. SUPERINTENDENT OF POLICE, SOUTH ZONE, KARACHI and another**, reported in 2011 PLC (C.S.) 387, Sindh Service Tribunal, held as under:

"The respondent No. 1 dispensed with the regular enquiry for which he was bound to record reasons in writing showing his satisfaction as to absence of need for holding an inquiry but admittedly no reason for dispensing with the requirement of an inquiry had been recorded. Per law in case of major penalty proposed to be imposed on an accused civil servant for serious allegations which are denied by

the employee, regular inquiry is mandatory providing such employee an opportunity of cross-examining the witnesses against him as also allowing him to put up his defence. It is obvious that the respondents had not done so and major penalty was imposed on the appellant without holding any regular inquiry into the allegations levelled against him."

21. At this juncture, we may observe that the pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer. It creates a vested right subject to the statutory rules framed in exercise of powers conferred by the Constitution. It is an indefeasible right to property. The pension cannot be termed as an ex-gratia payment, instead it is a payment for the past service rendered by an employee at the disposal of employer. It is a part and parcel of the conditions of service. The right to get a pension does not depend on the discretion or sweet will or pleasure of the Government, though it is subject to the relevant rules. The pension cannot be equated with a doll and the quantum of pension is correlated to the average emoluments drawn and availability of the resources with the State. The pension is granted with the object of setting up a political society and a welfare state in consonance with directive principles of the Constitution.

22. In fact, it is a settled principle of law that government is duty bound to fulfill its commitment with the citizen in accordance with the provisions of Article 4 of the constitution since every right of an individual is protected by law and everyone has to be dealt with in accordance with law. In the case of Prof. Ghazi Khan Jakhrani, reported in PLD 2007 SC 35, Hon'ble Supreme Court held as under:

"7. It is pathetic condition that Government servants, after having served for a considerable long period during which they give their blood and sweat to the department had to die in a miserable condition on account of non-payment of pension/pensionary benefits etc. The responsibility, of course, can be fixed upon the persons who were directly responsible for the same but at the same time we are of the opinion that it is an overall problem mostly in every department, where public functionaries failed to play their due role even in accordance with law. Resultantly, good governance is suffering badly. Thus, everyone who is responsible in any manner in delaying the case of such retired officers/official or widows or orphan children for the recovery of pension/gratuity and G.P. Fund has to be penalized. As their such lethargic action is in violation of Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973. Admittedly, it is against the dignity of a human being that he has to die in miserable condition and for about three years no action has been taken by the concerned quarters in finalizing the pension case and now when the matter came up before the Court, for the first time, they are moving in different directions just to show their efficiency and to clear their

position before the Court. Such conduct on their behalf is highly condemnable and cannot be encouraged in any manner."

23. It has been pleaded on behalf of the respondents that the petitioner did not file any appeal or revision against the orders whereby he was imposed 17 major penalties of forfeiture of approved service.

24. In this connection, we would reiterate the above discussion regarding violation, illegalities and irregularities committed by the respondents while proceeding against the petitioner under the Disciplinary Rules and consequently imposing major penalties upon him, so also the importance of pension and pensionary benefits for a retired employee as well as his family members and the same being an indefeasible right for them.

25. Having said so much, it may be observed that it is also a reality that the Courts are required to act in aid of justice in order to do complete justice and to ensure that justice is not only done but also seen to have been done. It is a settled law that rules of procedure are enacted for fostering the ends of justice and preserving the rights rather than to stifle the dispensation of justice and that legal formalities and technicalities are intended to safeguard the paramount interest of justice. The object of a Superior Court, while exercising its discretionary jurisdiction, is to foster the ends of justice, preserve the rights of parties and to right a wrong.

26. Honourable Supreme Court in the case of *JAMEELA PIR BUKHSH and others Vs. APPELLATE AUTHORITY and others*, reported in **2003 SCMR 1524**, held as under:

"The Courts must not shatter the trust reposed by general public in them by involving themselves in procedural technicalities. Their prime duty is to administer substantial justice which should not only be done but also seen to have been done at the earliest"

27. In another case reported as *MUHAMMAD BASHIR and another Vs. PROVINCE OF PUNJAB through Collector of District Gujrat and others*, (**2003 S C M R 83**), a Full Bench of learned Apex Court held as under:

"No hard and fast rule can be laid down to tie down the hands of a superior Court. Superior Courts always act in aid of justice other than to it, subject however, to the law and the Constitution. Technicalities of law are always avoided and discouraged in order to do complete justice and to ensure that justice is not only done but also seen to have been done. Rules of procedure are enacted for fostering the ends of justice and preserving the rights rather than to stifle the dispensation of justice and, unless they are unsurmountable, ends of justice always outweigh the manner of practice and procedure. There

can be no cavil with the proposition that the High Court, in the exercise of its revisional jurisdiction, is empowered to deal with the question of limitation before it. It cannot, thus, be said that while condoning the delay in entertaining the revision petition, High Court acted without jurisdiction. Once it is conceded that High Court had the jurisdiction to exercise its discretion for condonation of delay, this Court would not interfere with the exercise of discretion unless it is made to appear on the face of the record that the discretion was exercised illegally or arbitrarily. Legal formalities and technicalities are intended to safeguard the paramount interest of justice and devised with a view to impart certainty, consistency and uniformity to administration of justice and to secure the same against arbitrariness, errors of individual judgment and mala fides. Generally speaking the object of a superior Court, while exercising its discretionary jurisdiction, is to foster the ends of justice, preserve the rights of parties and to right a wrong and, keeping this object in view, it may in equity, set aside or annul a void judgment or decline to enforce it by refusing to intervene in the circumstances of the case."

28. We may also observe that in exceptional hardship cases, in order to redress the grievance of a deserving person, even sometime strict compliance of procedural law could be ignored. In this connection, reference may be made to the case of **NIAZ MUHAMMAD MANN and others Vs. Sh. MUHAMMAD AHMAD and another**, reported in **1988 SCMR 1016**, wherein a Full Bench of Honourable Supreme Court held as under:

"In holding inquiry into hardship cases as -provided in para. 29 of the Rehabilitation Settlement; Scheme or under the deleted paragraph 52 of the Rehabilitation Settlement Scheme, the settlement authorities are not engaged in a judicial function strictly speaking and as such the approach of the Additional Settlement Commissioner in looking to the totality of the material before the authority and looking to the cumulative effect, was the correct approach to the problem."

29. In another case reported as **HIMESH KHAN Vs. The NATIONAL ACCOUNTABILITY BUREAU (NAB), LAHORE and others (2015 S C M R 1092)**, a Full Bench of Honourable Supreme Court held as under:

"12. Pakistan is a welfare State where liberty of individual has been guaranteed by the Constitution beside the fact that speedy trial is inalienable right of every accused person, therefore, even if the provision of section 497, Cr.P.C. in ordinary course is not applicable, the broader principle of the same can be pressed into service in hardship cases to provide relief to a deserving accused person incarcerated in jail for a shockingly long period. This principle may be vigorously pressed into service in cases of this nature."

30. The upshot of above discussion is that instant petition is disposed of in the following terms:

- i) The petition is partly allowed by declaring that the act of the respondents for stoppage of pensionary benefits of the petitioner due to pendency of two cases mentioned in the Retirement Order is without lawful authority and of no legal effect;

- ii) In view of the guidelines provided by Honourable Supreme Court to deal with a difficult situation in exceptional and hardship cases, we deem it fit and proper to order that the petitioner shall be at liberty to file appeals and/or revisions as provided in The Sindh Police (Efficiency and Discipline) Rules, 1988 against the 17 major penalties of *forfeiture of approved service* imposed upon him; however, the hurdle of limitation in filing such appeals / revisions shall not come in his way and the authority concerned shall entertain such appeals and / or revisions treating the same as having been filed within time. Such appeals and / or revisions shall be decided positively within a period of three months from the date of filing such appeals / revisions. Failure to decide such appeals / revisions within the above stipulated period of three months shall set the petitioner at liberty to approach this Court again for redressal of his grievance.

31. Before parting with the judgment, it may be observed that the order dated 21.8.2024 shows that respondent No.5 had stated that an amount of Rs.467,558/- through a Cheque bearing No.5504204 was being released in the name of the petitioner and it was assured that the same would be deposited in to account of the petitioner on the next day i.e. 22.8.2024 and the copy of said cheque was handed over to the petitioner. It appears that said amount relates to G.P. Fund etc. which has no bearing with the pensionary benefit, therefore, if the amount has been deposited in petitioner's account, he shall be at liberty to withdraw the same and in case still the said amount has not been deposited, then the respondents shall deposit the same within three days from the date of this judgment and the petitioner shall be entitled to withdraw the same.

JUDGE

JUDGE

Sukkur

Approved for reporting

Dated: 03rd January, 2025