

# IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitution Petition No.D-1114 of 2024  
(Khan Muhammad Vs. Province of Sindh & others)

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**DATE**      **ORDER WITH SIGNATURE OF JUDGE**

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Before:

Adnan-ul-Karim Memon, J.

Amjad Ali Bohio, J.

Date of hearing & Order 23.09.2024

Petitioner along with his advocate Mr. Zulfiqar Ali Laghari  
Mr. Ayaz Ali Rajpar, Additional A.G Sindh a/w Executive Director,  
Horticulture Research Center Mirpurkhas

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## ORDER

Adnan-ul-Karim Memon, J.      The      Petitioner      Khan  
Muhammad, Field Beldar in Horticulture Research Center Mirpurkhas,  
through this petition under Article 199 of the Constitution, Islamic  
Republic of Pakistan, 1973 seeks directions to respondents to release  
arrears of his salary and annual increments, withheld on account of his  
detention in a murder trial, arising out of crime No.49/2019 of P.S Khan,  
District Mirpurkhas, wherein he has been acquitted of the charge.

2.      Learned AAG has submitted that the petitioner, Field Beldar, was  
initially employed at the Horticulture Research Centre, Mirpurkhas on  
27-04-2011, and during his tenure, he was transferred to the Oil Seed  
Botanist Research Institute, Tandojam, and subsequently returned to the  
Horticulture Research Centre on 03-02-2017. On 14-10-2019, the petitioner  
was reported to be absent from duty without notice and the department  
issued multiple letters and eventually initiated departmental proceedings  
to stop his salary.

3.      Petitioner claims that his absence was due to a wrongful arrest on  
14-10-2019. He asserts that he was unable to inform the department of his  
situation due to his imprisonment in a Sessions case No.45/2020 arising  
out of FIR No.49/2019 of P.S Khhan, under section 302, 324, 337-A(i), 337-  
A(ii), 337-A(vi), 337-F(i), 337-F(v), 337-F(iv), 337-L(ii), 114, 504, 147, 148,  
149 PPC; however, on 25-02-2022, he was acquitted by the trial court,  
proving his innocence, and following his release, he returned to work and

his salary was reinstated. Petitioner is now seeking full salary and allowances for the entire period of his absence, from 14-10-2019 to 25-02-2022. However, the respondent department has partially paid the petitioner's salary based on a calculation that included periods of full pay, half pay, and leave without pay, but the petitioner disagrees with this calculation and insists on full payment, based on the analogy that he was not at fault, but was prevented to perform his duties due to incarceration in jail and ultimately found innocent; as such, his full salary was/is required to be paid off.

4. We have heard the learned counsel for the parties at length and have perused the record with their assistance.

5. The Fundamental Rules came into effect from 1st January 1922, and the said Rules are applicable in the present case, subject to the provisions contained in its Rule 3, to all government servants who are subject to the rulemaking powers of the president and whose pay is debitable to the civil estimates, and to any other class of government servants to which the president may, by general or special order, declare to be applicable. For ease of convenience, F.R. 54, substituted by S.R.O 718 (I)/1993, dated 02.08.1993, made effective from 30.06.1993, is replicated as under:-

“F.R. 54- Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty-

(a) if he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or

(b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.

In a case falling under clause

(a), the period of absence from duty will be treated as a period spent on duty. In a case falling under clause

(b), it will not be treated as a period spent on duty unless the revising appellate authority so directs. Explanation.- In this rule, "revising authority" means the "authority" or "authorized Officer" as defined in the Government Servants (Efficiency and Discipline) Rules, 1973, who passes the final order on the case and not the authority who passes an order on appeal”.

6. The details of F.R. 54 elucidate that in the situation where a dismissed government servant is reinstated, the revising or appellate authority may grant his pay to him for the period of his absence from duty. Seemingly, the letter in question refers to F.R. 54 (a), which emphasizes that if such a government servant is honorably acquitted, he shall be granted the full pay to which he would have been entitled if he

had not been dismissed or removed, and, by an order to be separately recorded, any allowance of which he was in receipt before his dismissal or removal. In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty. According to the explanation attached to this Rule, the "revising authority" means the "authority" or "authorized Officer" as defined in the Government Servants (Efficiency and Discipline) Rules, 1973, who passes the final order on the case and not the authority who passes an order on appeal.

7. Even otherwise, the details of F.R. 54 clarify that in the case of reinstatement of a dismissed or removed employee, only the revising or appellate authority may grant him his pay for the period of his absence from duty, and if he is honorably acquitted then, the full pay to which he would have been entitled to, and his period of absence from duty will be treated as a period spent on duty.

8. The petitioner was deprived of his pay for the intervening period, from 14-10-2019 to 25-02-2022, because of F.R. 54 (a) merely on the ground that he remained absent for the period of his detention. Still, the department is ignoring it on the analogy that in pursuance of Rule No.156 of the Sindh Civil Services Rules, Manual (Volume)-I Rules based on the benefit of the doubt. As such, the period of imprisonment in jail custody was decided i.e 15.10.2019 to 13.10.2020 (120) days, full pay, 14.02.2020 to 13.07.2021 (528) days, half average pay and 14.07.2021 to 25.02.2022 (221) days leave without pay, which is subject to availability of earned leave of the petitioner. If this is a position of the case, in the present set of circumstances, the question of honorable acquittal or conviction does not arise. Furthermore, when the department passed the reinstatement order dated 09-05-2022 with certain consequential back benefits, then, withheld his pay for the period he remained inside jail ought to have been considered as a period spent on duty as he was forcibly prevented from performing his duties. Besides, no departmental action was taken so far as the period he remained absent, and the actions taken after the approach are of no effect at this stage in terms of F.R 54(a). The principle of "no work, no pay" is not applicable in the present case, when consequential back benefits for a certain period with full and half average pay have been accorded by the department vide letter dated 09-05-2022.

9. The Civil Service Regulations are intended to define the conditions under which salaries, leaves, pensions, and other allowances are earned by the employees in the service of the Civil Departments and how the perks are calculated. But at the same time, these regulations do not deal otherwise than indirectly and incidentally with matters relating to recruitment, promotion, official duties, and discipline.

10. As a result of the above discussion, this petition is allowed. The impugned action for withholding the full pay of the petitioner and treating it as half-average pay and leave without pay is set aside, and he is entitled to be paid for the period mentioned above accordingly.

**JUDGE**

**JUDGE**

*"Ali Sher"*