

IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Constitution Petition No.D-1001 of 2024
(old C.P No.D-218/2020/Hyderabad)
(*Iftikhar Ahmed Vs. Province of Sindh & others*)

Constitution Petition No.D-1126 of 2024
(old C.P No.D-385/2021/Hyderabad)
(*Muhammad Khan & others Vs. Province of Sindh & others*)

Constitution Petition No.D-1127 of 2024
(old C.P No.D-499/2020/Hyderabad)
(*Kheemon Vs. Province of Sindh & others*)

Constitution Petition No.D-1130 of 2024
(old C.P No.D-815/2021/Hyderabad)
(*Mst. Murk through her attorney Vs. Province of Sindh & others*)

Constitution Petition No.D-1136 of 2024
(old C.P No.D-3158/2022/Hyderabad)
(*Mst. Shehnaz Vs. Province of Sindh & others*)

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

Mr. Wishan Das, advocate for petitioners
Mr. Ayaz Ali Rajpur, Additional A.G Sindh a/w Shahid Iqbal,
Assistant Executive Engineer, Public Health Department, Sindhri,
Mirpurkhas

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ORDER

Adnan-ul-Karim Memon, J. The petitioners have filed Constitutional Petitions against respondent departments i.e. Education & Literacy Department, Public Health Engineer, and Rural Development, Local Government Department, Health Department, and Sindh Education Foundation, demanding payment of withheld salaries and arrears on the premise that they were appointed on various posts in the respondents departments and since then, their salary issue has not yet been resolved by the heads of the concerned department.

2. Common issues of law and fact exist among these petitions. It is urged that the respondent departments have defaulted in payments of salaries to the petitioners on one and other unconvincing reasons.

3. Learned counsel for petitioners relied upon the common order dated 02.09.2024 passed by the Division Bench of this court in Constitution

Petition No.D-358 of 2024, which along with similar other petitions was disposed of in the following terms.

“9. The competent authority should determine document authenticity and conduct a separate inquiry if necessary. Aggrieved parties can file separate applications after the compliance report. The Additional Advocate General should provide information to the competent authority and submit a report to this court.”

4. Learned counsel seeks similar treatment in these matters.
5. Learned Assistant A.G Sindh has resisted these petitions on the premise that there are disputed questions of facts involved in the matters, as such these petitions cannot be entertained. At this stage, we confronted him with the proposition that the issue of the salary of the petitioners, if any needs to be resolved at the end of the respondents' departments and this Court cannot decide the subject issue under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. However, at the same time, if the petitioners are working with the Government Departments, their salary issue must be resolved within a reasonable time, as this issue cannot be left unattended for an indefinite period. Learned A.A.G without filing comments, though notices have been issued to the respondents to put their defense, they failed to do so for the reason best known to him, submit that these matters are required to be resolved by the competent authority of the respondents if the cause of the petitioners still subsists. The proposal seems to be reasonable.
6. The cases from years are pending resolution by department heads. However, reluctance has led to a backlog of the cases at the dock of this court.
7. The Chief Secretary Sindh should address this issue in co-ordinations with the concerned departments and resolve the same at their end first, for the reasons that this Court cannot determine the veracity of documents presented by the parties due to disputed facts on the issue of salaries based on the documents.
8. In such circumstances Constitutional jurisdiction of this court is not suitable for resolving such factual disputes as this court cannot validate the documents and leaves their genuineness to the competent authority to see.

9. In principle, salary and arrears should of the petitioners if any, be determined by departmental heads as discussed supra.

10. On the aforesaid proposition, this Court seeks guidance from a Supreme Court judgment in the case of the Government of Punjab through Chief Secretary and others vs. Aamir Junaid and others [2015 SCMR 74], regarding departmental determinations. The judgment states that departments should fairly determine employees' eligibility and take appropriate action, including the issue of the salary if they are validly appointed to the subject posts as pointed out by the petitioners in their pleadings.

11. In the light of dicta laid down by the Supreme Court in the case of the Government of the Punjab supra this Court directs the Chief Secretary of Sindh to form a committee to investigate the withholding of salaries of the petitioners, if any. The committee should conduct a hearing and identify responsible officials. Action should be taken against delinquent officials based on law and Supreme Court guidelines. Salaries must be released promptly if the appointments of the petitioners are found to be genuine and if they are working on the respective posts. The aforesaid exercise shall be undertaken within three weeks.

12. The competent authority of the respondents should also determine document authenticity and conduct a separate inquiry if necessary. Aggrieved parties can file separate applications after the compliance report. The Additional Advocate General should provide information to the competent authority of the respondents and submit a report to this court.

13. All these petitions stand disposed of in terms of the preceding paragraphs.

JUDGE

JUDGE