

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.

Constitutional Petition No.D- 104 of 2024.
(Re. Muhammad Saleem v. Chief Secretary & Ors)

DATE OF HEARING ORDER WITH SIGNATURE OF HON'BLE JUDGE

BEFORE

Mr. Justice Muhammad Saleem Jessar.
Mr. Justice Adnan-ul-Karim Memon.

Date of hearing & Order: 20.02.2025.

Petitioner is present in person.

Mr. Liaquat Ali Shar, Addl. A.G. a/w Asif Ali Memon, A.XEN on
behalf of Project Director Scarp Sukkur.

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ORDER

ADNAN-UL-KARIM MEMON-J.: Petitioner Muhammad Saleem states that his posting issue as Executive Engineer (BS-18) at the Rice Canal Division in Larkana has been resolved as of January 22, 2025. However, he has not yet received his outstanding salaries for the intervening period, causing him significant hardship.

2. The learned Assistant Advocate General (A.A.G.) explained the petitioner's employment history. Initially, the petitioner was appointed as Assistant Executive Engineer (BS-17) at Lakhi Sub-Division, Shikarpur, and was promoted and transferred to Executive Engineer (BS-18) at Shikarpur Drainage Division on January 23, 2023, replacing Syed Ali Shah. The petitioner was then transferred to the Irrigation Department on March 29, 2023. While awaiting a new posting, the petitioner was assigned to the Executive Engineer Diploma & B.Tech Holder (BS-10) position at Sukkur Barrage Left Bank Region, Sukkur, on December 8, 2023. The Chief Engineer (Irrigation) at Sukkur Barrage Left Bank Region reported that the petitioner failed to report for duty, leading to an explanation memo issued on January 15, 2024. The petitioner responded to this memo, subsequently, in a letter dated January 29, 2024, the Chief Engineer reiterated that the petitioner had neither joined duty nor was his

whereabouts known. Consequently, disciplinary proceedings under the Sindh Civil Servants (E&D) Rules, 1973, were initiated against him, and a show cause notice was issued on February 6, 2024, to which the petitioner replied. However, on January 22, 2025, the petitioner was transferred to the Rice Canal Division, Larkana, as an Executive Engineer (BS-18). The petitioner received a salary from February to July 2023 but, according to records, has not since requested any further salary payments. The Chief Engineer (Irrigation), in another letter dated February 4, 2025, stated that the petitioner still had not joined duty and his whereabouts remained unknown. The petitioner allegedly failed to assume the charge at Sukkur Barrage Left Bank Region and has been absent since December 8, 2023. The period when the petitioner was awaiting posting (August to November 2023) has been designated as duty time, and the petitioner has been authorized to receive salary for this period against a vacant Executive Engineer Diploma & B.Tech Holder (BS-18) position related to lining distributaries and minors in Sindh, Hyderabad (Notification dated February 18, 2025, Annexure-XI). However, the petitioner's failure to join duty at Sukkur Barrage Left Bank Region from December 8, 2023, to December 31, 2024, as reported by the Chief Engineer, requires this period to be treated as leave without pay. The A.A.G. requests a decision on this issue needs to be made within two weeks. The request so made seems to be reasonable.

3. It is well-settled law that when an employee is reinstated after a period of absence, he/she is generally entitled to full back pay for the time he/she was absent, especially if the reinstatement is due to wrongful dismissal or suspension from service. This principle is often referred to as "back benefits." This general principle is reflected in Fundamental Rule (F.R.) 54 (as amended in 1993), which governs the pay and allowances of reinstated government servants. F.R. 54 specifically addresses situations where a government servant is dismissed or removed and subsequently reinstated. It outlines how his/her absence is treated concerning pay and allowances, distinguishing between two scenarios: (a) Honorable Acquittal: If the reinstatement follows an honorable acquittal, the employee is entitled to full pay for the entire period of absence

as if he/she had never been dismissed or removed. Any allowances he/she was receiving before the dismissal or removal (this must be documented separately). The period of absence is considered time spent on duty. (b) Other Reinstatement: If the reinstatement is for reasons other than an honorable acquittal (e.g., a technicality or procedural error), the revising or appellate authority has discretion regarding pay and allowances. They can award some, all, or none of the employee's potential earnings during the absence. Crucially, the period of absence is not considered time spent on duty unless the revising or appellate authority specifically directs it.

4. Furthermore, Article 417-A of the Civil Service Regulations (CSR) is crucial to understanding the situation at hand. This regulation specifically addresses what happens when a civil servant is suspended pending an inquiry into his/her conduct, and he/she is reinstated in service *before* that inquiry is concluded. In such cases, Article 417-A dictates that the disciplinary proceedings automatically cease (abate). The officer is then reinstated and is entitled to his/her full-service benefits for the intervening period. Importantly, the time he/she spent suspended is counted as time served on duty to calculate his/her service benefits.

5. The petitioner was reinstated on January 22, 2025, and received salary for the period from February to July 2023. However, a letter was issued withholding his salary for the period from December 8, 2023, to December 31, 2024. This raises concerns. Given that Article 417-A of the Civil Service Regulations (CSR) stipulates that disciplinary proceedings automatically cease upon an officer's restoration of service, the propriety of withholding salary *after* his posting on January 22, 2025, needs to be examined in light of this regulation so far as Sindh Civil Services Regulations are concerned.

6. The question is whether the period of absence from December 8, 2023, to December 31, 2024, should be treated differently given the subsequent reinstatement order, and if so, on what legal basis.

7. This issue at the first instance needs to be decided within one month by the competent authority of the respondents in terms of the ratio of the judgment passed by the Supreme Court in the case of Rahimullah Khan Vs Deputy Postmaster General, Southern Postal Region, Khyber Pakhtunkhwa, and others 2024 SCMR 541.

8. The instant petition stands disposed of in the above terms.