

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-1333 of 2025

Date	Order with signature of Judge(s)
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul_Karim Memon

Fresh Case

1. For order on CMA No.6740/2025 (Urgency)
2. For order on office objection No.8
3. For order on CMA No.6741/2025 (Exemption)
4. For hearing of main case

Date of hearing and order:-10.4.2025

Mr. Gulzar Bhutto advocate for the petitioner

ORDER

Adnan-ul-Karim Memon, J: The petitioner humbly requests this court to:

1. *Declare and issue the writ like mandamus directing the Respondents to allow the petitioner to join as Assistant (BS-16) in the Environment, Climate Change and Coastal Development Department, Government of Sindh, without further delay.*
2. *Declare and direct the act of respondents of not allowing the petitioner to resume his duty, in the absence of any disciplinary action against the petitioner, illegal, unlawful, without jurisdiction, and of no legal consequence.*
3. *Direct the respondents that service and other benefits of pay of the intervening period may also be given to the petitioner.*

2. The Petitioner was last employed as an Assistant (BS-16) at the Sindh Environmental Protection Agency (SEPA) Head Office in Karachi, which operates under the administrative control of the Environment, Climate Change and Coastal Development Department of the Government of Sindh. In 2010, the Petitioner requested Ex-Pakistan leave for study purposes in Australia, with half average pay, from June 1, 2010, to November 30, 2011. This request was approved by the administrative department through Order No. SO(E&AE)1-257/2010, dated May 24, 2010. (Copies of the appointment order, the order dated October 14, 2002, and the office order dated May 24, 2010, are attached as Annexure A-2, filed under A). Subsequently, the Petitioner submitted a written request to the relevant authority for an extension of the Ex-Pakistan leave without pay until June 30, 2013. This request was also approved by the administrative department via Order No. SO(E&AE) 1-257/10, dated November 29, 2012. (A copy of the office order dated November 29, 2012, is attached as Annexure 'B'). Finally, the Petitioner applied in writing on May 28, 2013, for a further extension of the Ex-Pakistan leave without pay from July 1, 2013, to December 30, 2014. This extension was sought because the Petitioner was enrolled in a diploma course in automotive management scheduled to conclude on December 30, 2014.

However, no action was taken on this application, and no communication was received. Consequently, the Petitioner assumed that the request for further extension had been approved. Upon returning from Australia, the Petitioner submitted a joining report dated November 3, 2020, to resume duties but was not allowed to join. Instead, the Petitioner was informed that the process for facilitating the resumption of duties was being initiated. (A copy of the application dated May 28, 2013, is attached as Annexure C). Following the submission of the joining report dated November 3, 2020, a note was prepared recommending a lenient view regarding the Petitioner's absence period, considering the pending application for further extension dated May 28, 2013, and the Petitioner's extensive 26 years of service. (Copies of the Joining Report and a letter dated January 26, 2021, are attached as Annexure D-1, filed under 'D'). Despite these developments, the Petitioner has not yet been allowed to resume duties. Furthermore, no adverse action has been taken against the Petitioner concerning the alleged period of absence. Therefore, preventing the Petitioner from resuming duties is not only unjustified but also highly objectionable. Despite the aforementioned circumstances, the Petitioner personally visited the offices of Respondents Nos. 2 and 3 to seek resumption of duties but received no positive response. As a result, the Petitioner, through legal counsel, sent a Legal Notice dated September 13, 2024, to Respondents Nos. 2 and 3 requesting to be allowed to join. (A copy of the Legal Notice dated September 13, 2024, is attached as Annexure 'E'). Subsequently, the Petitioner inquired with the respondents about the progress and was informed that upon receiving the Legal Notice by Respondent No. 2, directives had been issued to Respondent No. 3 to take the necessary action.

3. Learned counsel for the petitioner has contended that the petitioner has not been treated per the law, and the petitioner, being a lawful employee of the respondents, cannot be denied the right to join. He has further added that respondents have not conducted themselves, consequently on 26.01.2021 note sheet was prepared wherein it has been recommended that his absence period may be considered by taking a lenient view and despite that so far no action is taken and petitioner is left in the limbo despite visiting and writing the respondents many times. He has further contended that since no disciplinary action of dismissal, removal, and compulsory retirement has been taken against the petitioner, therefore petitioner cannot be denied the vested right to resume his duty. He lastly prayed for allowing the instant petition.

4. We have heard learned counsel for the petitioners on the maintainability of the petition and have perused the material available on record with his assistance.

5. The petitioner, having returned to duty on 03-11-2020 after approved Ex-Pakistan study leave (24-05-2010 to 30-06-2013) and an approved extension of leave without pay until 30-06-2013, has a pending request for further leave without pay (01-07-2013 to 30-12-2014). While the respondent department proposed considering the subsequent absence (01-07-2013 to 02-11-2020) leniently under Civil Servant Leave Rules, 1986, a final decision is still pending. The competent authority is directed to decide on this matter within three weeks after hearing both the petitioner and the respondent department, keeping in view the decision of the Supreme Court in Sakhib Zar vs. M/s K-Electric Limited & others (2024 SCMR 1722).

6. Given the legal limitations on arbitrary relief without constitutional or legal basis, the respondents should consider their observations as outlined in the Note Sheet dated 26.1.2021. While this Court generally lacks jurisdiction in such matters, it may, in exceptional circumstances, examine unauthorized long-term study leave. However, in this specific case, the petitioner's leave was initially granted and has since expired. Despite the petitioner's attempt to resume duty being initially denied, the respondent department has made a favorable recommendation that is currently pending. The final decision rests with the respondents, to be made in accordance with the applicable law and policy.

7. For the reasons stated, this petition is disposed of with the pending application(s).

JUDGE

Head of Constitutional Benches