

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-2616 of 2014
(Gulsher Siyal v Federation of Pakistan & others)

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

Date of hearing and order: 11.4.2025

Mr. Waqar Muhammad Khan Lodhi advocate for the petitioner along with the petitioner.

Ms. Wajiha Mehdi, Assistant Attorney General

Mr. Ali Safdar AAG

ORDER

Adnan-ul-Karim Memon, J: Gulsher Siyal, a Private Secretary of Sindh High Court Establishment, is seeking two primary directives: first, Respondent No. 1 recognizes his past service as an Instructor (BPS-16) in the Staff Welfare Organization (from October 24, 1991, to August 18, 2004) for pension benefits, including the protection/fixation of his pay, payment of arrears, and a revised pay slip, based on his proper channel application evidenced by a SASO permission certificate dated August 25, 2023. Second, he requests that Respondent No. 2/SASO be ordered to permit him to repay the Golden Handshake funds he received under duress for his service with SASO (February 28, 1998 - July 28, 2004) before he joined the Staff Welfare Organization as an Instructor (BPS-16) on August 18, 2004, and his subsequent appointment / promotions as Personal Assistant to Judge (BPS-17) on May 26, 2009, and his current role as Private Secretary (BPS-19).

2. The learned counsel for the petitioner contends that his client maintained continuous employment with the Sindh Government, i.e, Sindh Ombudsman Secretariat and SASO, from 1991 to 2004, and the temporary cessation due to SASO's dissolution should not disrupt the continuity of his service, as an Instructor (BPS-16) in the Staff Welfare Organization, for pension calculations. He highlights the petitioner's unwilling acceptance of the Golden Handshake, which he was/is prepared to return. To bridge the gap in the employment record caused by SASO's closure, the counsel points to court decisions that awarded salary to other similarly affected former SASO employees. Furthermore, the fact that the petitioner applied for his current federal government position through the "proper channel" implies that his previous service should be acknowledged. Counsel strongly emphasizes that SASO's issuance of a "Through Proper Channel" NOC and Experience Certificate prevents the Staff Welfare

Organization from now hindering his current employment or denying him service benefits based on his past service. He explains that the employees' termination upon SASO's dissolution was improper, and their dues were only paid belatedly in May 2005 following a Supreme Court order. Consequently, the Sindh High Court and Supreme Court's decisions to grant salary and allowances for the intervening period (February 2004 - May 2005) legally cover the 6-month and 17-day gap before the petitioner joined the Staff Welfare Organization, which shall not be treated as the gap in the next appointment. Referring to the precedent set in CP. No.D-1478/2014, which mandated the payment of 15 months' salary (February 2004 - April 2005), the petitioner's counsel argues that this service gap is legally and lawfully accounted for. Therefore, he concludes that his client's 12 years, 3 months, and 8 days of prior pensionable service must be counted and his pay protected/fixed in the current position, as the existing denial constitutes a violation of his fundamental rights under the Constitution of the Islamic Republic of Pakistan, 1973. He prayed that this petition may be allowed as prayed.

4. However, the Director General of SWO, through comments, submitted that the petitioner was not a government employee upon joining SWO because he had already received the Golden Handshake. As a federal organization, SWO is not bound by Sindh government rules regarding pension and pay protection. SWO lacked the power to grant pay protection or recognize services rendered under a different government. However, they asserted that the Federal Services Tribunal, not the High Court, is the appropriate forum for this legal matter. They prayed for the dismissal of the petition. Learned AAG Sindh and Assistant Attorney General are of the same view.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The key questions for the determination of this court are:

- (i) **Can previous service in a provincial government be considered for pension eligibility in a federal government job, particularly after a break and the receipt of a Golden Handshake by SASO?**
- (ii) **Is the petitioner entitled to have his former Sindh government salary level maintained in his federal government role?**
- (iii) **What are the legal consequences of accepting the Golden Handshake on the continuity of his service and his pension rights?**
- (iv) **Does the High Court or the Federal Services Tribunal have the correct legal authority (jurisdiction) to hear this case against a federal entity?**

(v) **Does the fact that other former SASO employees were absorbed while the petitioner was not constituted unfair discrimination?**

7. Before addressing the merits of this petition, the crucial issue of its maintainability must be determined. Given that the petitioner is an employee of the Sindh High Court Establishment and, significantly, not classified as a Civil Servant, he is precluded from seeking redress for his grievances through either the Federal Service Tribunal or the Service Tribunal specifically established for the employees of subordinate judiciary Tribunal. However, it is significant to mention that this Court vide order dated 22.01.2015 directed the matter to be placed before the Service Tribunal of subordinate judiciary but later on the Chairman and Member of the Subordinate Judiciary vide order dated 26.11.2016 converted the service Appeal No. 04/2015 into Constitution Petition. So far as the latches are concerned, since the petitioner is seeking simple prayer of counting of his past service for pensionary benefits as such this issue can be considered keeping in view his fundamental rights. Consequently, this petition is appropriately placed before this court and can proceed to be heard and decided on its merits.

8. The petitioner is seeking recognition of his past Sindh government service for pension and pay protection in his subsequent federal government employee role. He initially served as a Steno typist (BPS-12) in the Secretariat Provincial Ombudsman Sindh from October 24, 1991, to June 14, 1995. He was then appointed as a Stenographer (BPS-15) in the same organization from June 14, 1995, to March 3, 1998. Subsequently, he became Private Secretary (BPS-16) at the Sindh Agricultural Supplies Organization (SASO) on March 3, 1998, and in 1999, applied for pension continuity, with SASO forwarding contributions. Later, in 2003, he applied for an English Shorthand Instructor (BPS-16) position at the Federal Public Service Commission (FPSC) through the proper channel. In the interim, SASO was dissolved on January 30, 2004, leading to the termination of its employees' services. He was then appointed as an English Shorthand Instructor at the Staff Welfare Organization (SWO) on August 12, 2004, and joined on August 18, 2004. His request to SWO for pay protection and continuation of his previous service for pension was denied on the premise that he received a Golden Handshake of Rs.495,114/- from SASO, which he claims was under duress, which is a gap in service. While still at SWO, he was appointed as a Personal Assistant to a Judge (BPS-17) in 2009. He now claims entitlement to the continuation of his pensionable service from October 24, 1991, to August 17, 2004, and the protection/fixation of his current pay and then pension after reaching the age of superannuation. He submits that the period

between SASO's closure and his joining SWO is covered by the Supreme Court decision whereby it was ordered that SASO pay the salary of the intervening period, February 2004 - April 2005, to former SASO employees. He commits to depositing the Golden Handshake amount to have his prior service considered for pension benefits upon reaching the age of superannuation in the Sindh High Court Establishment.

9. Records indicate that the office of the Provincial Ombudsman Sindh deposited Cheque No.9030609, dated the 16th of July, 2002, in the amount of Rs.95,757/-, with SASO. This deposit constituted the proportionate contribution pertaining to the petitioner's tenure as an Ex-Stenographer (B-15) within the Secretariat of the Provincial Ombudsman Sindh, covering the period from October 24, 1991 to March 3, 1998.

10. Following the Sindh Cabinet's decision on January 20, 2004, and subsequent orders from this Bench at Sukkur dated February 10, 2004, the Supreme Court allowed the Sindh Government's appeal vide order dated 08.08.2012 in Civil Appeal No.28-K of 2011, overturning this court's judgment of September 2, 2010 with the exception that three employees would receive their regular salaries and allowances from February 2004 to April 2005. Consequently, with the approval of the Competent Authority, a Golden Handshake Scheme, along with standard retirement benefits, was implemented for all employees of the defunct Sindh Agricultural Supplies Organization (SASO). Against this backdrop, the petitioner states that his employment with SASO was terminated via the Government of Sindh Notification No.SO(A-IV)1(17)/2003/SASO, dated March 15, 2004. He further notes that his monthly salary for August, September, and October 2004, inclusive of all allowances, was only Rs.6,131/-, significantly less (by Rs.8,546/-) than his previous SASO salary. However, in the intervening period, the petitioner's application for his federal position via "proper channel" indicates his prior service should be recognized as SASO's "Through Proper Channel" NOC and Experience Certificate, barring the Staff Welfare Organization from denying him benefits based on that service.

11. Established principles prevent pay cuts for civil/public servants who move to autonomous bodies, considering prior service and salary for initial pay, and sometimes for pension. Civil Service Regulation (CSR) Article 371-A(i) requires over five years of uninterrupted temporary service for pension, excluding breaks. However, the petitioner's continuous Sindh Government service (1991-2004) with a temporary break due to SASO's dissolution should not disrupt pension continuity in the current Sindh High Court Establishment upon the retirement of the petitioner in the year 2031, if any, as the service appears continuous.

While Civil Service Regulation Article 371-A(ii) allows counting shorter temporary service if followed by regularization, the petitioners' 6-month, 17-day gap before joining the Staff Welfare Organization is argued as a break. However, precedent (**2021 SCMR 1546**) suggests a 6-month break does not automatically forfeit prior service followed by regular service for pension. This protection is also provided under Fundamental Rule 22-A.

12. CSR Article 420 states that a break in an officer's service typically forfeits their previous service, except in these situations: (a) Approved leave. (b) Unauthorized absence directly following approved leave, as long as their position isn't permanently filled. If it is, the prior service is lost. (c) Suspension is immediately followed by reinstatement (in the same or a different role), or if the officer dies, retires, or is retired while suspended. (d) Abolition of their position or job loss due to staff reduction. (e) Transfer by a competent authority to non-pensionable service within government control (voluntary resignation from pensionable service forfeits this). Transferring to a grant-in-aid school also leads to forfeiture. (f) Transfer to the President's household staff. (g) Time spent traveling between appointments when transferred by a competent authority or, for non-gazetted officers, with their previous head of office's consent. (h) Any other reason provided the break wasn't due to the government servant's fault or intentional action (like unauthorized absence, resignation, or removal). Besides CSR Regulation 423 provides automatic relaxation of six months in case of short service, if he or she, is entitled for pensionary benefits as such the question of latches are of no significance at this stage as the petitioner is requesting for continuation of his past service in different government departments.

13. In light of the above, this petition is allowed. Therefore, the Staff Welfare Organization's order of December 14, 2004, is canceled. The petitioner's service from October 24, 1991, to August 18, 2004, will be counted as continuous for pension benefits upon retirement, subject to the adjustment of any funds already received from SASO during the pension finalization process in terms of the Supreme Court judgment as discussed supra, meanwhile, respondent No.2 to facilitate in this regard. The implications for pay fixation will also be applied accordingly.

JUDGE

HEAD OF CONSTITUTIONAL BENCHES