

# THE HIGH COURT OF SINDH, KARACHI

**Before:**

**Justice Mohammad Karim Khan Agha**

**Justice Adnan-ul-Karim Memon**

**CP No D-890 of 2020**

(Dr. Ashraf Sadique v. Federation of Pakistan & others)

Petitioner : through Mr. Shoukat Hayat, advocate.

Respondents No. 2 Mr. Wasiq Mirza, advocate

Respondent No. 1 &3 Mr. Ali Safdar Depar

Dates of hearing : 14-05-2025

Date of order : 14-05-2025

## **ORDER**

**Adnan-ul-Karim Memon, J.,** Petitioner requests this Court to invalidate the Governor's order issued on August 5, 2019. Furthermore, the petitioner requests a judicial pronouncement that the outstanding Orderly Allowance from the period following his retirement on 13.11.2012, does not constitute a "service matter" falling outside this Court's/Ombudsman's purview. The petitioner also seeks a declaration that the representation submitted to the Governor by the respondent Dow University of Health Sciences (DUHS) Karachi, along with the contested order, has become irrelevant due to the subsequent payment of the arrears to the petitioner by the respondent university vide letter dated 20.12.2017. Finally, the petitioner asks this Court to declare that the appeal presented to the Governor was submitted after the permissible time limit.

2. It is the case of the Petitioner, that having served as a Medical Officer since 1983 and retiring in 2012, found that while Dow University of Health Sciences (DUHS) acknowledged his entitlement to Orderly Allowance in his retirement documents, they failed to pay the accumulated arrears from his years of service. Seeking resolution, the petitioner approached the Provincial Ombudsman Sindh (POS), who, on March 16, 2016, directed DUHS to release the outstanding Orderly Allowance, along with a raise in his Senior Post Allowance. In response, DUHS lodged a representation with the Governor of Sindh, primarily citing financial limitations as the reason for non-compliance. Interestingly, while this representation was under consideration, DUHS proceeded to pay to the petitioner the overdue Orderly Allowance in 2017. However, this payment was seemingly disregarded when the Governor of Sindh, on August 5, 2019, overturned the Ombudsman's decision. The Governor's rationale was that the issue pertained to service-related dues, thus placing it outside the Ombudsman's authority. Furthermore, the Governor Sindh directed DUHS to reclaim the already disbursed amount and initiate disciplinary measures against the individuals responsible for

its release. Petitioner averred that the Governor's directive was/is unreasonable, unlawful, and exceeded his jurisdiction. He submitted that the unpaid orderly allowance accrued post-retirement benefit, does not qualify as a "service matter" that the Ombudsman cannot address. Moreover, he asserted that DUHS's act of paying the arrears rendered the representation to the Governor and the subsequent order without effect. Finally, the petitioner claimed that DUHS's appeal to the Governor was submitted after the allowed timeframe.

3. Learned counsel for the petitioner asserted that the Governor's decision was flawed due to a lack of due process in terms of Article 10-A of the Constitution, as no hearing was afforded to the petitioner, and the fact that DUHS had already disbursed the arrears in 2017 was ignored. Counsel further argued that the Governor's determination that the Ombudsman lacked the necessary authority was incorrect. The directive to reclaim the paid amount was also contested, given that DUHS itself made the payment. Moreover, it was contended that the impugned order infringed upon the petitioner's fundamental rights. This court was also informed that the Government of Sindh extended Orderly Allowance benefits to similarly situated retired officers in other departments. Despite repeated appeals from the petitioner to reconsider the recovery order, the Governor did not respond. Consequently, the learned counsel concluded by urging this Court to overturn the Governor's order in terms of principle locus poenitentiae and no recovery can be made from the pension of the petitioner after enjoining the benefit of the Orderly Allowance. In support of his contention, he relied upon the cases of PMLN v Federation of Pakistan **PLD 2007 SC 642**, Quetta Development Authority v Abdul Basit **2021 SCMR 1313**, Khalidi Bibi v Mst. Shabnum un Nisa **2020 CLC 47**, MH Abidi v State Life Insurance **1990 MLD 563**, CEO NPGCL v Khalid Umair Tariq **2024 SCMR 518**, Ch. Ghulam Nabi & others v Government of Sindh & others **2004 YLR 252**, Federation of Pakistan & others v M. Tariq Pirzada **1990 SCMR 2744**, Watan Party v Federation of Pakistan **PLD 2012SC 292**, Amjad Mustafa Malik v DG NAB **PLD 2021 2021(IsI) 266**, Muhammad Ejaz v The State **2021 SCMR 387**, Ishtiaq Ahmed v Hon'ble Competent Authority **2016 SCMR 943** and Muhammad Asghar Khan v Mirza Aslam Baig **PLD 2013 SC 1**. He prayed to allow the petition.

4. Learned counsel for the respondent-university argued that the Governor's challenged order stemmed from DUHS's representation dated April 18, 2016, against the Provincial Ombudsman's March 16, 2016, decision regarding petitioner's complaint about unpaid allowances. Counsel recounted that the Ombudsman had ruled in petitioner's favor, directing DUHS to pay the arrears and increased allowance. However, DUHS appealed, asserting compliance with its own regulations and financial constraints. The appeal was filed within the

statutory timeframe. The Governor, after reviewing the case details and relevant legal provisions, particularly Section 9(2) of the Sindh Ombudsman Act, 1991, concluded that the Ombudsman lacked jurisdiction over service-related matters. Consequently, the Governor overturned the Ombudsman's decision and directed DUHS to recover the payments made to the petitioner and held responsible officials accountable for such mishap, emphasizing that government finance directives are not binding on statutory bodies like DUHS as such the office memorandum issued can not be acted upon until unless Syndicate of the respondent university adopt such official policy of Government of Sindh in university affairs. He relied upon the cases of Lt. Commander (Retired) Naeem Javed v University of the Punjab & others **2014 PLC (CS) 29** & Rabia Khan v Province of Sindh & others **2012 YLR 1801**. He prayed for the dismissal of the petition.

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

6. The question before us is whether the petitioner, a retired Consultant Chest Specialist (BPS-20) from Dow University of Health Sciences (DUHS), had a rightful claim to the Orderly Allowance, and consequently, whether the present petition challenging the Governor of Sindh's order, which overturned the Provincial Ombudsman Sindh's decision in service issues, is legally sustainable and whether the Orderly Allowance already paid to the petitioner in 2017 can be recovered from his pension.

7. To address the first proposition, Orderly Allowance is a government-provided monetary benefit for certain grade officers (typically BPS-20 and above regular employees) to hire personal assistants for domestic tasks, allowing them to focus on official duties. Eligibility often requires a certificate confirming no use of official staff. Orderly Allowance was recognized in DUHS for BPS-20 officers; it was in the petitioner's LPC, the Ombudsman directed its payment, and the Governor's order did not dispute its existence within DUHS. Sindh government budget documents also indicate an allocation for it in Medical Education. However, the petitioner's case highlighted complexities regarding arrears for the service period and DUHS's adherence to Sindh government directives as a statutory body. In view of the above once the Syndicate of respondent university adopted the government policy with regard to paying Orderly Allowance to the eligible officers of DUHS, they cannot withdraw the decision and allow the benefit to certain officers and withdraw from others in a discriminatory matters, however it is for the Syndicate to take decision being a statutory body having its own rules of service and policy for such allowances.

8. Coming to the second proposition, the Supreme Court has consistently held that a Constitutional Petition challenging a Mohtasib's order is permissible even without prior Presidential Representation if the Mohtasib lacked jurisdiction (*PIA vs. Wafaqi Mohtasib* **1998 SCMR 841**, *PESCO vs. Wafaqi Mohtasib* **PLD 2016 SC 940**). Specifically, the Mohtasib lacks jurisdiction over service-related pension matters in terms of decision of the Supreme Court in the case of *Federation of Pakistan vs. Brig. (Rtd.) Zulfiqar Ahmed Khan* **2007 SCMR 1313** and personal service grievances against one's own agency. Therefore, if the Mohtasib exceeded this jurisdictional limit, the High Court can constitutionally intervene, and the alternative remedy of representation doesn't restrict this power. The Supreme Court in Sui Northern Gas Pipelines Limited reiterated this principle, stating the Mohtasib cannot entertain complaints about appointments or age relaxations in public sector companies.

9. DUHS initially granted a Rs. 3,000 monthly Orderly Allowance to BPS-21 Professors from 01.07.2009 (no arrears). This was later revised to Rs. 7,000 for BPS-20 and 21 officers from 01.08.2013 (no arrears), following a Sindh Finance Department directive. Retired BPS-20 and 21 officers who retired between 01.07.2012 and 31.07.2013 also had their LPCs revised to reflect the Rs. 7,000 allowance (previously Rs. 3,000), without arrears. Furthermore, retired BPS-20 and above officers were granted a Special Additional Pension equal to the serving officers' Orderly Allowance, effective 01.01.2013, with future revisions applicable.

10. Since the petitioner already received the Orderly Allowance, besides other officers also received such allowance as per the syndicate decision, recovery from the petitioner's pension based on the governors' findings is unwarranted. On the aforesaid proposition, we are guided by the decision of Supreme Court in the case of *Shams-ur-Rehman v Military Accountant General* **2020 SCMR 188**, whereby the Supreme Court by applying the principle of estoppel against the department from recovering the emoluments and benefits from the petitioner.

11. While pension law is not an absolute shield against recovery in cases of overpayment, losses, dues, or misconduct, in this specific case, as the Orderly Allowance had already been paid and acted upon, therefore, the Governor of Sindh's order regarding recovery is set aside, while the rest of the order is maintained.

12. In view of the above facts and circumstances of the case, this petition is partly allowed on these terms.

JUDGE

HEAD OF CONST. BENCHES

SHAFI