IN THE HIGH COURT OF SINDH AT KARACHI
CP. No. D-5227 of 2020
(Noor Muhammad Sahito v Province of Sindh & others)

Date	Order with signature of Judge

Before:
Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul_Karim Memon

Date of hearing and Order: 27.05.2025

Mr. Ali Assadulah Bullo advocate for the petitioners.
Mr. Ali Safdar Assistant Advocate General.

O R D E R

Adnan-ul-Karim Memon, J: The petitioner seeks this court's intervention for the following:

> Invalidation of the repatriation Notification dated July 3, 2013: The petitioner requests that this notification be declared unlawful and set aside, arguing it contravenes established principles from the Supreme Court of Pakistan.
>
> Appointment as Superintendent (BS-17): The court is requested to compel the respondents to issue an order for the petitioner's transfer and posting to the position of Superintendent (BS-17) within the Enquiries & Anti-corruption Establishment, with the effective date being that of their repatriation from the Services General Administration & Coordination Department.
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> Release of Dues and Benefits: The petitioner asks for a directive to the respondents to disburse all pending salaries and associated benefits for the Superintendent (BS-17) post, covering the period from August 2015 to the current date, along with accrued interest.
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> Protection from Retaliation: A final request is made to direct the respondents to avoid any punitive actions against the petitioner and to conduct themselves in strict accordance with the law.

2. It is the case of the petitioner that his career began in 1983 with the Ghee Corporation of Pakistan (GCP). In 1993, he was deputed to the Enquiries & Anti-corruption Establishment, Government of Sindh, and was permanently absorbed there in 2004, with his seniority protected. Notably, his original employer, the Ghee Corporation, officially became defunct in 2011. Following his absorption, the petitioner was promoted to Superintendent BS-16 (now BS-17) in 2012. However, in the 2013 Supreme Court decision (**2013 SCMR 1752**) ordered the reversal of various deputations and absorptions. While the Supreme Court specifically exempted cases where the parent department was defunct, the

petitioner was still improperly repatriated to the Services, General Administration & Coordination Department on July 3, 2013. This action overlooked the Ghee Corporation's defunct status and had resulted in the petitioner receiving no salary or benefits since his repatriation, despite his gratuity being transferred for pension purposes. This situation constitutes a clear violation of his fundamental rights. Finally, he reached the age of superannuation without retirement notification, compelling him to approach this Court on 10.10.2020 with the aforesaid request.

3. The petitioner's counsel strongly argued that the respondents disregarded a key exception within the Supreme Court's judgment concerning employees from defunct parent departments. He contended that their malicious actions and misconduct have inflicted severe financial, social, and psychological distress upon the petitioner. Counsel elaborated that the respondents effectively condemned the petitioner without a hearing, leaving him without an organizational home and pensionary benefits. He further submitted that their bad faith exercise of power has resulted in the petitioner being deprived of his Superintendent BS-17 salary since August 2015 and left unposted. The counsel emphasized that these actions were arbitrary and lacked lawful authority, particularly given the petitioner's two decades of diligent service with the Sindh Government. Moreover, he asserted that the respondent Sindh Government violated the petitioner's fundamental rights enshrined in Articles 4, 18, and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, which included the rights to legal protection, equality, and a dignified profession. Finally, counsel highlighted that the respondents abused their discretionary power, defying established Supreme Court precedents (**1995 SCMR 650, 2005 SCMR 25, 1990 SCMR 999, 2001 SCMR 256**) which mandated its fair and just application, free from whim or discrimination. He prayed to allow the petition.

4. The Assistant Advocate General of Sindh sought dismissal of the petitioner's constitutional petition, arguing that this court lacked jurisdiction. Citing the Supreme Court's ruling in *Ali Azhar Khan Baloch vs Province of Sindh* (**2015 SCMR 456**). The AAG explained that the petitioner, was employee of the defunct Ghee Corporation, was relieved from the Anti-Corruption Establishment (ACE) vide office order dated 3.7.2013 and directed to the Services, General Administration & Coordination Department (SGA&CD) in strict compliance with a Supreme Court judgment (Criminal Original Petition No. 89/2011, dated June 12, 2013). Further, the AAG detailed that the petitioner's initial requisition by ACE in May 1993 and subsequent absorption in July 2004 were done without consultation with SGA&CD. The AAG stressed that the petitioner's services were neither requisitioned by the Sindh Government nor absorbed through proper channels by the order of the competent authority. Moreover, the petitioner never joined SGA&CD after order dated 3.7.2013 and was not on the list of non-civil servants who could not rejoin their parent federal government departments and he

continued to retain the position without intimation and reached the age of superannuation without retirement notification as such his conduct disentitled him to request for pension or retirement notification. The petitioner's seven-year delay in approaching this court, despite Supreme Court directives in (**2015 SCMR 456**), para 165, is also highlighted. Based on these points, the AAG requested the petition's dismissal with costs.

5. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. The petitioner's career began in 1983 as an Assistant BS-11 with the Ghee Corporation of Pakistan (GCP). In May 1993, he was deputed to the Provincial Anti-Corruption Establishment (ACE) and relieved from GCP. He continued on deputation, eventually receiving a no-objection certificate in 1997, and was permanently absorbed into ACE in 2004 with his seniority protected. GCP settled his Provident Fund dues in 2008, and his Gratuity dues were paid to the Directorate of Anti-Corruption Establishment, Karachi, in 2010. Notably, his original employer, GCP, became defunct in 2011. Following his absorption, the petitioner was promoted to Superintendent BS-16 (now BS-17) in February 2012.

7. A pivotal development occurred with the 2013 Supreme Court decision (**2013 SCMR 1752**), which mandated the reversal of numerous deputations and absorptions. Despite the Supreme Court specifically exempting cases where the parent department was defunct, the petitioner was improperly repatriated to the Services, General Administration & Coordination Department on July 3, 2013. It is critical to understand that the Sindh Government had not authorized the petitioner's retention in ACE, and the chairman had no power and authority to appoint him by way of transfer or deputation. His initial deputation to ACE was solely based on the ACE Chairman's directive, and his subsequent absorption was also carried out by the ACE Chairman without the Sindh Government's approval. The petitioner continued serving in ACE without informing the Services, General Administration & Coordination Department, or seeking the Sindh Government's approval under Rule 9 (I) and 9-A of the Civil Servants (Appointment, Promotion & Transfer) Rules, 1974. Paragraph 116 of the Supreme Court judgment clarifies that Rule 9-A permits the transfer and appointment of individuals declared surplus due to the abolition of posts in Sindh Government offices, departments, or provincial autonomous bodies, or due to the government's takeover of such entities, this rule, however, does not apply to federal government departments. Such appointments are subject to several conditions: the individual must possess the qualifications required for the new post under Rule 3(2); they will be appointed to a lower scale; their seniority will be calculated from the date of appointment in the new cadre; and any non-pensionable previous service will not count towards pension or gratuity.

8. The aforementioned method is the *exclusive* means for adjusting surplus employees of the Sindh Government and its autonomous bodies resulting from departmental closures or administrative restructuring. The Supreme Court affirmed that the Sindh Government could only effect absorptions under Rule 9-A. Employees properly absorbed under this rule could not be repatriated, as their absorption was justified by the provincial government's takeover or closure of their organizations during administrative restructuring. Therefore, surplus employees from various Sindh Government departments or autonomous bodies, if absorbed strictly under Rule 9-A, were not to be impacted by the Supreme Court's judgment. However, the Supreme Court explicitly stated that any employee absorbed contrary to the prescribed procedure and posted against cadre posts violated the rules. The case of *Azhar Khan Baloch and others v. Province of Sindh and others* (**2015 SCMR 456**) further reaffirmed that the issue of absorption had already been settled by previous Supreme Court judgments. Furthermore, employees repatriated to their parent departments were entitled to salaries from the date of their repatriation notification, provided they joined those departments.

9. The petitioner's act of merely sending a letter to the Services, General Administration & Coordination Department without acknowledgment strongly suggests his awareness that his entry into the Sindh Government was irregular.

10. Before parting with this order it is observed that the petitioner reached superannuation without formal retirement notification, as ACE had already repatriated him to the Services, General Administration & Coordination Department (which he failed to join in due course), and the Chief Secretary of Sindh is directed to conduct an inquiry into this matter. The inquiry should aim to determine responsibility for these actions after hearing from all involved individuals. Additionally, the Chief Secretary of Sindh is to investigate whether the petitioner is entitled to a retirement notification and associated service benefits, considering his continuous service with ACE until his superannuation. A speaking order on this aspect is to be issued within three months after hearing the petitioner.

11. For these reasons, this petition is disposed of.

JUDGE

Head of the Const. Benches

Shafi