

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No.D-1983 of 2024

Present:

Mr. Justice Muhammad Saleem Jessar

Mr. Justice Nisar Ahmed Bhanbhro

Petitioner: Mst. Naseem Akhtar, *through* Mr. Abdul Naeem Pirzada, Advocate

Respondent No.3 & 4: Municipal Commissioner and Accounts Officer, Sukkur Municipal Corporation Sukkur *through* Mr. Ghulam Abbas Akhtar Awan, Advocate

Official Respondents: Province of Sindh and others *through* Mr. Ali Raza Baloch, Additional Advocate General

Date of hearing: 05.08.2025

Date of decision: 05.08.2025

O R D E R

Nisar Ahmed Bhanbhro, J: Through instant petition, the petitioner has prayed for the following relief:

- A. *To call report from Respondents, ascertain the actual drawn per monthly pension of petitioner, and immediately release increased pension with effect from 2019 update outstanding against the department, same without any further delay as per her entitlement and so also to continue her pension in future without any interruption or hindrance so that she may pass her remaining life with peace of mind.*
- B. *To direct the respondent No.3 to 6 to issue the payment of increased pension to up to date including arrears if any, and so also to continue her increased monthly family pension in future without interruption or hindrance, so that she may pass her remaining life with peace of mind.*

2. Learned Counsel for the Petitioner at the very outset was required to satisfy this Court as to the maintainability of instant petition in terms of the relief claimed.

3. Mr. Abdul Naeem Pirzada Learned Counsel for the Petitioner contended that the Petitioner was widow of deceased Pensioner Syed Mukhtiar

Hussain Shah. She has been receiving the monthly pension from Sukkur Municipal Corporation, but since 2019 supplementary bill of increased pension has not been passed. He contended that petition was maintainable as Petitioner claimed her pensionary rights. When confronted about the total figure of outstanding dues he pleaded inability, solicited to direct the Respondents to determine the amount of outstanding dues of the Petitioner.

4. Mr Ali Raza Baloch, Learned Additional Advocate General assisted by Mr. Ghulam Abbas Akhtar Awan, learned counsel for the Respondent-Sukkur Municipal Corporation, contended that the petitioner had filed CP No.587/2021, wherein the claim of the petitioner against difference of increased amount was worked out and settled as Rs.15,81,068/-. He contended that the Petitioner received an amount of Rs 20,81,068 , in excess to the settled claim, which Petitioner should refund. He prayed for dismissal of the Petition.

5. Perusal of the material on record reflected that Petitioner had filed petition No D 587 of 2021 on the same grounds, seeking same relief. The differential pension amount was adjudicated as Rs.15,81,068/, by the Sukkur Municipal Corporation in collaboration with Local Fund Audit Department. Petitioner did not object the said amount and sought disposal of the earlier petition on assurance of payment of outstanding pension dues. Record further evidenced that Petitioner received an amount of Rs. 15,81,068 in three instalments through Cheque Nos.3275278 dated 28.7.2021 amounting to Rs. 500,000/, Cheque No.3421727276 dated 20.10.2021 amounting to Rs. 500,000/- and Cheque No.34217336 dated 11.11.2021, amounting to Rs.5,81,068/ in compliance to the order dated 29.07.2021 passed by this Court in the earlier Petition. Learned counsel for the petitioner today placed on record the 4th cheque bearing No.51527127 dated 07.03.2025, amounting to Rs. 500,000/-, paid to the petitioner, this supported the stance of Sukkur Municipal Corporation that Petitioner was paid in excess against the amount determined and settled between the parties.

6. Review of the facts as jotted down in the Petition demonstrated that Petitioner has not claimed any specific amount outstanding against Respondent Sukkur Municipal Corporation but sought adjudication of the claim, which has been vehemently denied by the other side, resulting into a factual controversy. To thrash out the controversy, parties were required to establish respective claims through evidence, such an exercise cannot be undertaken by this Court under its writ jurisdiction.

7. The Petition not only suffered from laches, but was bad under the doctrine of Estoppel and Principle of Res Judicata. Petitioner seeks adjudication of the claim which accrued in year 2019 after six years. The Petitioner by his own conduct was precluded and debarred from filing instant Petition under the doctrine of Estoppel, and principle of Res judicata codified under section 11 of the Code of Civil Procedure. This is the second petition seeking same relief against the same parties on the same subject. The Petition from its face appeared to be a malicious attempt to recover undue amount under the garb of Court's intervention. Since Petitioner is an old aged widow, therefore, this Court while observing a reasonable restrain, dismisses the Petition without imposing cost with a warning to the Petitioner to remain careful in future.

8. As far as, the claim of excess payment of pension raised by Sukkur Municipal Corporation is concerned, needless to say that under the provisions of Rule 1.8 of the West Pakistan Pension Rules, 1963, government is empowered to call upon the Pensioner to refund the amount of pension if found received in excess. Sukkur Municipal Corporation may adopt the due course of law, as available under the law if so advised.

The Petition stands disposed in above terms.

JUDGE

JUDGE