

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 2467 of 2016

(Muhammad Ali Halepoto & others v. Province of Sindh & others)

Present:

Mr. Muhammad Saleem Jessar, J.

Mr. Nisar Ahmed Bhanbhro, J.

Petitioners: Muhammad Ali Halepoto and 3 others
Through Mr. Farooq Ali Halepoto, Advocate
Respondents : Province of Sindh & others
Mr. Shahryar Imdad Awan,
Assistant Advocate General Sindh along with
Mr. Ali Gohar Chang,
Principal, IBA-Public School, Sukkur.

Date of hearing : **20.08.2025**

Date of Order : **27.08.2025**

ORDER

Nisar Ahmed Bhanbhro, J. – Through instant petition, the petitioners have claimed the following reliefs:

- i. *To direct the respondents to provide pay protection and counting of their previous services for pension benefits since their initial appointment at Public School Sukkur, till 2011.*
- ii. *To direct the respondent No.4 to transfer the pension of the petitioners whatever calculated at Public School Sukkur to Accountant General through Treasury.*
- iii. *To direct the respondents to enhance the salary as the petitioners were receiving / withdrawing from Public School Sukkur.*
- iv. *To restrain the respondent No.3 from deduction of any amount from the salary of the petitioners till final disposal of the above petition.*

2. Mr Farooq Ali Halepoto Learned Counsel for the Petitioners contended that petitioners were previously employed in Public School Sukkur. Petitioner No.1 was appointed as Junior Teacher and later on upgraded as Lecturer (BPS-17); Petitioner No.2 was appointed as Teacher and then promoted as Lecturer; and, petitioners No.3 and 4 were directly appointed as Lecturers. He argued that the Petitioners applied for the job of

Lecturer through proper channel in College Education Department. They appeared in the competitive examination conducted by the Sindh Public Service Commission, which they passed, and recommended for appointment. Petitioners were appointed Lecturer by Government of Sindh as Lecturer. He argued that Petitioners moved application for pay protection and counting of previous service for pensionary benefits. He argued that Cadet Colleges and Public Schools fell under the administrative control of the Government, of Sindh, therefore benefit of pay protection was permissible under the law. He contended that under the similar circumstances Muhammad Ibrahim Channa, and several other employees were extended the benefit of pay protection and counting of previous service for pension purposes after joining the Government Service. He placed reliance upon the case of Nafees Ahmed Versus Government of Pakistan and others (2000 SCMR 1864), Amjad Hussain Versus Secretary Finance Division Ministry of Finance Islamabad and 2 others (1998 SCMR 1442), Syed Abdul Sammad Pirzada Versus Government of Punjab through Secretary Finance, Finance Department, Punjab Secretariat Lahore and another (2008 SCMR), and case of Kh. Ghulam Sarwar versus Director, Auqaf Department Azad Jammu and Kashmir Muzaffarabad and 6 others 2016 PLC (CS) 556 He prayed for allowing the petition.

3. Mr. Shahryar Imdad Awan, Learned Assistant Advocate General Sindh contended that the Cadet Colleges and Public Schools were independent entities and had their own regulations of service. He argued that the employees of Public School Sukkur were not Government Servants, thus benefit of Pay Protection was not available to the employees of Public School Sukkur when they join government service. He contended that the Petition was misconceived and not maintainable. He placed reliance upon the case of Government of Pakistan through Secretary Establishment Division, Islamabad Versus Muhammad Ismail and another (2021 SCMR 1246) He prayed for the dismissal of Petition.

4. Heard Arguments. Perused material available on record.

5. Crux of the controversy involved in the present lis is that Petitioners claim pay protection and counting of the service period rendered by them as the employees in teaching faculty of Sukkur Public School towards pension benefits. The Petitioners who were employees of Public School Sukkur joined Government of Sindh College Education Department on recommendations of the Sindh Public Service Commission. The Petitioners on joining as Lecturers in Government of Sindh, filed representations before the Competent Authority for pay protection and grant of benefits of previous service towards pension but remained unheeded.

6. Pay, Allowance, and pension benefits fall under the financial discipline of an employee. The perks and privileges are the part of service career and fall within the definition of the terms and conditions of service. The service of a government servant is continued on joining another job or department. This continuity in service renders pay protection and pension benefits. The Fundamental Rules and Supplementary Rules (FR&SR) define and determine the financial terms and conditions of government employees such as pay, allowances, leave and travelling allowances etc. For pay protection, Fundamental Rule (F.R) 22 has got relevancy, therefore for the sake of convenience, it is set out below:

"F.R.22. The initial substantive pay of a Government servant who is appointed substantively to a post on a time-scale of pay is regulated as follows:

(a) If he holds a lien on a permanent post, other than a tenure post, or would hold a lien on such a post had his lien not been suspended;

(i) When appointment to the new post involves the assumption of duties or responsibilities of greater importance (as interpreted for the purposes of rule 30) than those attaching to such permanent post, he will draw as initial pay the stage of the time-scale next above his substantive pay in respect of the old post;

(ii) *when appointment to the new post does not involve such assumption, he will draw as initial pay the stage of the time-scale which is equal to his substantive pay in respect of the old post, or, if there is no such stage the stage next below that pay plus personal pay equal to the difference, and in either case will continue to draw that pay until such time as he would have received an increment in the time-scale of the old post or for the period after which an Increment is earned in the time-scale of the new post, whichever is less. But if the minimum pay of the time- scale of the new post is higher than his substantive pay in respect of the old post, he will draw that minimum as initial pay; [Emphasis applied]*

(iii) *when appointment to the new post is made on his own request under rule 15(a) and the maximum pay in the timescale of that post is less than his substantive pay in respect of the old post, he will draw that maximum as initial pay.*

Exception.-Telegraph Masters and Telegraphists of the Pakistan Posts and Telegraphs Department who are at their own request transferred from "General Service" to "Station Service" and whose substantive pay in the General Service Scale is higher than the maximum pay of the time scale of the Station Service sanctioned for the Station to which they are transferred will, in addition to the maximum pay in the time-scale of such Station Service, draw personal pay equal to the difference between the two.

(b) If the conditions prescribed in clause (a) are not fulfilled he will draw as initial pay the minimum of the time-scale. Provided, both in cases covered by clause (a) and in cases, other than cases of re employment after resignation from the public service 29(or after removal from the public service for inefficiency, misconduct or as a disciplinary measure,) covered by clause (b), that if he either-

(1) has previously held substantively or officiated in-

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post other than a tenure post, on an identical time - scale, or a temporary post on an identical time-scale, such post being on the same time-scale as a permanent post, or

(2) is appointed substantively to a tenure post on a time-scale identical with that of another tenure post which he has previously held substantively or in which he has previously officiated, then the initial pay shall not be less than the pay, other than special pay, personal pay or emoluments classed as pay by the President under rule 9(21) (a) (iii), which he drew on the last such occasion, and he shall count for increments the period during which he drew that pay on such last and any previous occasions. If, however, the pay last drawn by the Government servant in a temporary post has been inflated by the grant of premature increments the pay which he would have drawn but for the grant of those increments shall, unless otherwise ordered by the authority competent to create the new post, be taken for the purposes of this proviso to be the pay which he last drew in the temporary post.

Exception.-The condition in paragraph (iii) of the first proviso that the temporary post should be on the same time-scale as a permanent post shall not be enforced when a temporary post is (i) created by one Government or Department for the purpose of work of the same nature as the ordinary work for which permanent posts exist in a cadre under a different Government or Department and (ii) sanctioned on a time-scale identical with the time-scale applicable to the permanent posts in the cadre under the different Government or Department".

7. In fact, as per policy, the employees of such autonomous organizations, are extended the benefit of fixation of pay in the manner set out in FR 22 on their subsequent appointment in the government service, if they have adopted government pay scale

scheme in totality. The Sukkur Public School was established by the Government of Sindh, it is managed and controlled by the Government of Sindh through Board of Governors. On joining the government service subsequently, the benefit of pay protection and counting of service towards pension will be available to the employees of that autonomous bodies/ entities/ organization under the control and management of the government, which adopted the pay scales policy of Government.

8. This view finds support from the dicta laid down by Honorable Supreme Court of Pakistan in the case of FEDERATION OF PAKISTAN through Secretary Finance, Islamabad Versus MUHAMMAD ATIQ-UR-REHMAN and others reported as 2025 S C M R 790, it has been held that

9. In fact, as per policy, the employees of such autonomous organizations, established through a resolution are extended the benefit of fixation of pay in the manner set out in FR 22 on their subsequent appointment in the government service if they have adopted government pay scale scheme in totality. Furthermore, the employees of Atomic Energy Commission of Pakistan have SPS, therefore, they were not entitled for protection of pay in terms of policy guidelines issued vide Finance Division's O.M.No.4(2)R-2/96 dated 12-08-2002. Neither any such critical aspect was discussed by the FST in the impugned judgment nor was any such assistance provided by the learned counsel for the respondent No.1 to advert to this essential facet of the case.

9. The Sukkur Public School has its own policy of appointment and pays scales. Albeit, employees of Sukkur Public School, in case of misconduct were subject to the disciplinary proceedings under the provisions of Sindh Civil Servants (Efficiency & Discipline) Rules 1973 but the method and criteria of the appointment of the employees of Sukkur Public School was at variance to Sindh Civil Servants (Appointment, Promotion & Transfer) Rules 1974. Sukkur Public School has not adopted the government pay scale scheme in totality therefore its employees were not the employees of Government of Sindh. The Public School Sukkur through its Board of Governors framed pension rules copy of the same is attached as Annexure B page 51 of the petition,

per definition clause, the “service” has been defined as Service of Public School Sukkur. Clause 4 of the Appointment Letters of the Petitioners clearly lays down that the employment of the Petitioners shall be governed by Sindh Civil Servants (Efficiency & Discipline) Rules 1973 and bye laws of Sukkur Public School. The service of the Petitioners has not been declared a Government Service.

10. We have examined the case of Petitioners, no doubt they were appointed in a set up under the control and management of the Government of Sindh. Sukkur public School was an independent entity, having its own service regulations. The Petitioners were appointed under the pay scale policy of Sukkur Public School, the provisions of Sindh Civil Servants Act, 1973 and the rules framed thereunder were not applicable in the recruitment process of employees of Sukkur Public School, therefore benefit of the pay protection was not available to them on joining the government service subsequently.

11. As far as the question of discrimination meted out to the Petitioners is concerned, Petitioners claim that similarly placed employees were granted benefit of pay protection, they were also entitled for the same benefit under the doctrine of equality enshrined in article 25 of the Constitution. Such right can only be claimed when decision is taken in accordance with law. A wrong concession in favour of one person does not entitle any other person to claim benefit of a wrong decision. Since the benefit of pay protection was granted to other employees of Sukkur Public Schools beyond the bounds of law therefore the right of equality in terms of article 25 of the constitution cannot be claimed or granted to the Petitioners.

12. This view is fortified from the judgment of Honorable [Supreme Court of Pakistan in the case of CHIEF SECRETARY, GOVERNMENT OF BALOCHISTAN, CIVIL SECRETARIAT, QUETTA and others Versus ADEEL-UR-REHMAN and others reported as 2024 S C M R 145, wherein it has been held that:

6. As far as the question of regularization of similarly placed persons by the Department vide Notifications dated 26th July, 2007 and 22nd

February, 2011 is concerned, suffice it to say that Article 25 of the Constitution does not envisage negative equality. Such right can only be claimed when decision is taken in accordance with law. A wrong concession in favour of one person does not entitle any other person to claim benefit of a wrong decision.

13. The case laws relied upon by the Learned Counsel for the parties, with due reverence were at variance to the issue in the present lis, thus distinguishable.

14. For what has been discussed herein above, We have arrived at the conclusion that the Petitioners are not entitled for the relief claimed. This petition therefore fails and accordingly dismissed with pending applications if any.

J U D G E

J U D G E

Abdul Basit
Approved for reporting
Sukkur
Dated 27.08.2025