

# HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

## C.P No.S-362 of 2023

[Pakistan Telecommunication Company Ltd v. Islamuddin and 03 others]

Petitioner by : M/S Shukat Ali Chaudhry and Barrister  
Mujtaba Bajwa, Advocates

Respondent No.1 by : Syed Sardar Hussain Shah, Advocate

Mr.Muhammad Ismail Bhutto,  
Additional Advocate General, Sindh

Dates of Hearing : **26.01.2026 & 02.02.2026**

Date of Decision : **20.02.2026**

### **ORDER**

**ARBAB ALI HAKRO, J:-** The petitioner, Pakistan Telecommunication Company Limited (PTCL), has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution, calling into question the legality of the order dated 01.03.2021 and the consequential warrant dated 19.05.2023, issued by the Authority under the Payment of Wages Act.

2. The case of the petitioner, as set out in the memo of petition, is that Respondent No.1 was engaged by PTCL as a Cleaner with effect from 01.04.1988. In 2007, the Company introduced a Voluntary Separation Scheme (VSS), under which certain categories of regular employees were offered early retirement and pensionary benefits in accordance with the PTCL Service Regulations. Respondent No.1 opted for the Scheme; his option was accepted, and he was relieved from service on 29.01.2008. The petitioner asserts that Respondent No.1 did not complete the qualifying service of twenty years and was therefore not entitled to a pension under the Scheme. The Respondent No.1 thereafter approached the Authority under the Payment of Wages Act, seeking release of pensionary dues. The Authority, by order dated 29.06.2010, directed PTCL to pay arrears of

pension amounting to Rs.142,428 and to commence monthly pension from July 2010, with a 15% increase, as per the Government's policy for the financial year 2010-2011. The petitioner challenged the said order before the Labour Court, the Labour Appellate Tribunal and subsequently through C.P. No.D-2024 of 2013, before this Court. All challenges failed, and the writ petition was dismissed for non-prosecution on 11.10.2017. The petitioner maintains that, although the order of 29.06.2010 attained finality, the Authority lacked jurisdiction ab initio because pension does not fall within the definition of "wages" and PTCL is a trans-provincial organization. It is further claimed that the Authority, while executing the earlier order, exceeded its jurisdiction by granting increases beyond the year 2010, contrary to the original directive. After dismissal of the earlier writ petition, Respondent No.1 initiated execution proceedings under Rule 18-A of the Sindh Payment of Wages Rules, 1960. The petitioner filed objections, but the Authority proceeded to pass the impugned order dated 01.03.2021, calculating pensionary benefits up to March 2022, and subsequently issued a recovery warrant on 19.05.2023. Aggrieved, the petitioner has instituted the present proceedings.

3. Respondent No.1 has filed detailed preliminary objections and para-wise comments. His foremost objection is that the present petition is barred by the doctrine of res judicata, as the petitioner had earlier challenged the same foundational order dated 29.06.2010 through C.P. No.D-2024 of 2013, which was dismissed for non-prosecution on 11.10.2017. The subsequent application for restoration under Order IX Rule 9 CPC was also dismissed on 21.10.2020. It is asserted that the petitioner has deliberately concealed these material facts. Respondent No.1 further objects to the maintainability of the petition on the ground that it has been filed through a counsel who, according to him, is barred from appearing before this Court under Article 207(3)(b) of the Constitution; on this basis, he contends that the petition is incompetent. It is also averred that the petition suffers from gross laches, as the petitioner has attempted to indirectly assail the original order of 29.06.2010 more than a decade later, despite having exhausted all available remedies. Respondent

No.1 maintains that the Authority lawfully resumed execution proceedings after dismissal of the earlier writ petition and that the impugned order dated 01.03.2021 merely reflects a calculation of pensionary benefits already adjudicated in his favour. Respondent No.1 denies the factual assertions of the petitioner regarding length of service and entitlement, stating that he served PTCL for approximately twenty-nine years and that similarly placed employees, including one Syed Amir Hussain, were granted a pension under the same Scheme. He alleges discriminatory treatment and asserts that the petitioner is attempting to frustrate execution of a lawful and final order. Respondent No.1, therefore, prays for dismissal of the petition.

4. Learned counsel for the petitioner opened his submissions by contending that the entire proceedings before the Authority under the Payment of Wages Act were without jurisdiction from their inception. He argued that pension does not fall within the definition of "wages" under Section 2(vi) of the Payment of Wages Act, 1936, and therefore the Authority could not have entertained the claim of Respondent No.1. Reliance was placed on **PLD 2004 SC 416** to submit that pension is a vested right but not a component of "wages" for the purposes of the 1936 Act. It was further argued that the Authority, while passing the original order dated 29.06.2010, had confined itself to directing payment of arrears of pension and a 15% increase as per the Government's policy for the financial year 2010-2011. Learned counsel submitted that no direction existed for the grant of any future increases, nor could the Authority, in execution, enlarge or vary the original order. He argued that the statute does not contemplate the adjudication of future pensionary increments. Learned counsel submitted that the impugned order dated 01.03.2021, passed under Rule 18-A of the Sindh Payment of Wages Rules, 1960, travelled far beyond the scope of execution by calculating pensionary benefits up to March 2022 and issuing a recovery warrant. According to him, Rule 18-A does not empower the Authority to undertake fresh adjudication or to assume appellate or supervisory jurisdiction over its earlier order. Reliance was placed on **1999 MLD 2825**

and **2001 SCMR 396** to argue that an executing forum cannot enlarge the decree. Learned counsel further submitted that Respondent No.1 was not entitled to a pension under the Voluntary Separation Scheme, as he had not completed the minimum qualifying service of twenty years. He argued that Respondent No.1 joined regular service in 1988 and was relieved on 29.01.2008, falling short of the qualifying period. It was contended that the Authority failed to appreciate this foundational fact. Learned counsel also argued that after the Eighteenth Amendment, the Sindh Payment of Wages Act, 2015, repealed Section 29 of the 1936 Act. Therefore, the execution proceedings initiated in 2021 could not be sustained under a repealed law. He submitted that the Sindh Payment of Wages Rules, 1960, continued only as procedural rules until 2020, when new procedural rules were notified and that the Authority misapplied the repealed framework. Lastly, it was argued that the petitioner is a trans-provincial organisation and therefore the Authority under the provincial legislation lacked jurisdiction altogether. Learned counsel submitted that the impugned orders are liable to be set aside as *coram non judice*.

5. Learned counsel for Respondent No.1, on the other hand, vehemently opposed the petition and submitted that the present proceedings are barred by the doctrine of res judicata. He pointed out that the petitioner had earlier challenged the same foundational order dated 29.06.2010 through C.P. No.D-2024 of 2013, which was dismissed for non-prosecution on 11.10.2017. The subsequent application for restoration under Order IX Rule 9 CPC was also dismissed on 21.10.2020. He submitted that the petitioner has deliberately concealed these orders, thereby disentitling itself to any discretionary relief. Learned counsel submitted that the Authority's order dated 29.06.2010 attained finality after dismissal of the appeal, revision and writ petition and that the petitioner cannot now reopen issues that stood conclusively determined. He argued that the execution proceedings initiated under Rule 18-A of the Sindh Payment of Wages Rules, 1960 were lawful and that the impugned order dated 01.03.2021 merely quantified the pensionary benefits

already adjudicated in favour of Respondent No.1. Learned counsel further submitted that Respondent No.1 had served the petitioner for more than twenty-nine years, including his earlier service in the T&T Department and that similarly placed employees, including Syed Amir Hussain, were granted pension under the same Scheme. He argued that the petitioner has subjected Respondent No.1 to discriminatory treatment. Reliance was placed on **PLD 1991 SC 385** and **1994 PLC 525** to argue that the Authority under the Payment of Wages Act is competent to entertain claims relating to retirement benefits, even of civil servants. Learned counsel also referred to the recent judgment of the Hon'ble Supreme Court dated 11.02.2025, passed in Civil Appeal No.1509 of 2021, etc, which, according to him, recognises employees of the erstwhile T&T Department absorbed in PTCL as civil servants for purposes of pension. Learned counsel submitted that the petition suffers from gross laches, as the petitioner seeks to challenge the original order after more than a decade indirectly. He argued that the petitioner has repeatedly attempted to frustrate execution of a lawful and final order and that the present petition is another attempt to delay payment of pensionary benefits. Learned counsel also relied upon **2000 SCMR 1000, 1969 SCMR 141, 2018 CLC 641, 2016 CLC 896, 2013 CLC 454 and 2025 PLC (C.S.) 36**, to argue that concealment of material facts alone is sufficient to non-suit the petitioner. Lastly, he prayed for dismissal of the petition and for directions to the petitioner to deposit the outstanding pensionary amount as calculated by the Authority.

6. Learned A.A.G. Sindh supported the submissions advanced on behalf of Respondent No.1. He submitted that the Authority acted strictly within its jurisdiction and that the impugned order merely operationalises the earlier order, which had attained finality.

7. I have heard the learned counsel for the petitioner, the learned counsel appearing on behalf of respondent No.1, as well as the learned A.A.G. Sindh, and have minutely examined the entire record.

8. The petitioner, Pakistan Telecommunication Company Limited, had admittedly contested the original proceedings initiated by respondent No.1 before the Authority under the Payment of Wages Act, culminating in the order dated 29.06.2010, whereby the Authority directed payment of arrears of pension and future monthly pension with the increase announced by the Government for the financial year 2010-2011. That order was carried in appeal before the Labour Court, which dismissed the appeal on 28.10.2011. A revision was thereafter filed before the Sindh Labour Appellate Tribunal, which was also dismissed on 30.08.2013. The petitioner then invoked the constitutional jurisdiction of this Court in C.P. No.D-2024 of 2013, wherein interim relief was granted on 12.02.2014, but the petition was ultimately dismissed for non-prosecution on 11.10.2017. Thereafter, the petitioner filed an application under Order IX Rule 9 CPC seeking restoration of the dismissed petition, which was dismissed by a Division Bench of this Court on 21.10.2020. That order attained finality, as no further proceedings were initiated before the Supreme Court.

9. It is in this backdrop that the execution proceedings were resumed by the Authority, culminating in the impugned order dated 01.03.2021, which essentially computed the pensionary benefits payable to respondent No.1 in continuation of the original direction issued in 2010. The petitioner, instead of complying with the execution proceedings, has once again approached this Court by way of the present petition.

10. The first contention advanced by learned counsel for the petitioner is that the Authority under the Payment of Wages Act lacked jurisdiction to entertain the original claim, as pension does not fall within the definition of “wages” and further that PTCL, being a trans-provincial organization, does not fall within the regulatory domain of the provincial Authority. This argument, though presented with emphasis, stands entirely eroded by the authoritative pronouncements of the superior Courts. In the case of

**Muhammad Hussain**<sup>1</sup>The Supreme Court held that the Labour Appellate Tribunal was competent to revise orders passed by the Labour Court under the Payment of Wages Act and that the Authority under the Act has jurisdiction to adjudicate claims relating to the payment of wages, including retirement benefits, of employees of government departments.

11. The petitioner's reliance upon **PLD 2004 SC 416** is equally misplaced. In that case, the Supreme Court held that the Authority under the Payment of Wages Act is not a Court in the strict sense and that its procedural powers are limited. However, the Court did not hold that the Authority lacks jurisdiction over pensionary claims; rather, it reaffirmed that the Authority is competent to adjudicate claims arising out of deductions or delays in payment of wages, which, as judicially recognized, include pensionary entitlements. The petitioner's attempt to read into the judgment a limitation which the Supreme Court did not impose is wholly untenable.

12. The petitioner's further reliance upon **1999 MLD 2825 and 2001 SCMR 396** is equally misconceived. Both judgments deal with the well-settled principle that an executing Court cannot go behind the decree and cannot enlarge or vary the terms of the original adjudication. That principle is unexceptionable, but it has no application to the present case. The Authority, in its order dated 01.03.2021, has not varied, amended or enlarged the original direction dated 29.06.2010; it has merely computed the amount payable in execution of that direction. The original order required payment of arrears of pension and future monthly pension with the increase announced by the Government for the financial year 2010-2011. The computation of arrears and ongoing pension is a ministerial act, not a judicial enlargement of the decree. The petitioner's argument that the Authority has granted "future pension" beyond the scope of the original order is factually incorrect, for the original order itself directed payment of future pension. The execution proceedings merely quantified what was already adjudicated.

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<sup>1</sup> Muhammad Hussain and others v. Islamic Republic of Pakistan through Chairman, Railway Board, Lahore and others (P L D 1991 S.C 385)

13. The petitioner's argument that respondent No.1 did not complete 20 years of service and was therefore not entitled to a pension is equally barred by the doctrine of res judicata. This issue was raised before the Authority in 2010, rejected; raised again before the Labour Court, rejected; raised again before the Labour Appellate Tribunal, rejected; and then raised before this Court in C.P. No. D 2024 of 2013, which was dismissed. The petitioner cannot, after more than a decade, seek to reopen an issue that has been conclusively adjudicated. The principle laid down in the celebrated judgment of the Supreme Court in Pir Bakhsh<sup>2</sup> squarely applies: once a matter has been finally decided between the parties, it cannot be reopened in subsequent proceedings, even if the earlier decision is alleged to be erroneous.

14. The petitioner's conduct in the present proceedings also warrants comment. The petitioner has approached this Court without disclosing that its earlier constitutional petition and restoration application were dismissed. This concealment of material facts disentitles the petitioner to discretionary relief under Article 199 of the Constitution. It is a settled principle that a litigant who approaches the Court with unclean hands is not entitled to any relief. The petitioner's attempt to re-litigate issues that have been conclusively decided and to obstruct the execution of a lawful order for more than a decade constitutes an abuse of the process of law.

15. The argument that the petition is within limitation because it challenges the 2021 order and not the 2010 order is equally untenable. The 2021 order is merely an execution order; the petitioner cannot challenge the execution without challenging the decree, and the decree cannot be challenged at this belated stage. The petition is hopelessly barred by laches and by the statutory finality of the orders passed under the Payment of Wages Act.

16. In view of the foregoing discussion, it is manifest that the present petition is devoid of merit, is barred by res judicata, suffers from gross

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<sup>2</sup> Pir Bakhsh represented by his legal heirs and others v. The Chairman, Allotment Committee and others (PLD 1987 S.C 145)

laches, is tainted by concealment of material facts and constitutes an impermissible collateral attack upon orders which have long attained finality.

No case for interference under Article 199 of the Constitution is made out.

17. Accordingly and for all the reasons recorded hereinabove, the petition stands **dismissed**.

**JUDGE**

AHSAN K. ABRO