ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-3411 of 2022
(Dr. Muhammad Sualeh Vs. The Federal Urdu University & Others)

Date	Order with signature of Judge

Present:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing and judgment: 06.08.2026.

Mr. Muhammad Ilyas, Advocate a/w Petitioner.
Mr. Muhammad Akbar Khan, Assistant Attorney General.
Mr. Abdul Jalil Zubedi, Assistant Advocate General Sindh.
Mr. Abdul Mutalib, Advocate for Respondent.
Dr. Zibta K. Shinwari, Vice Chancellor (Respondent No. 1).

J U D G M E N T

Adnan-ul-Karim Memon, J. The Petitioner, Dr. Muhammad Sualeh, has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the following reliefs: -

a. "Declare that the act of Respondents of withholding pensionary benefits and the legitimate dues of the petitioner is illegal, unlawful, arbitrary, void ab initio in the eyes of law and in gross violation of the fundamental rights of the petitioner guaranteed under the Constitution of the Islamic Republic of Pakistan 1973.

b. Direct the respondents to process the case of the petitioner and release his pensionary benefits/legitimate dues without further delay.

c. Any other relief which the Honorable Court deems appropriate may also be awarded in the interest of justice.

2. Learned counsel for the petitioner submitted that the petitioner initially served as a Drug Inspector in the Health Department, Government of Sindh, and was later sent on deputation to the Federal Urdu University (FUUAST), where he was subsequently appointed through the prescribed selection process as Assistant Professor (BPS-19) and later promoted to Associate Professor (BPS-20). After attaining the age of superannuation, he retired from the University vide office order dated 02.03.2016. It was argued that throughout his service, the petitioner duly completed all required formalities, while his G.P. Fund and pension contribution were transferred from the Health Department, Government of Sindh to the Respondent-University after prolonged correspondence between the two departments. Counsel contended that despite the Health Department, Government

of Sindh sanctioning and transferring the petitioner's pension contribution amount of Rs.576,848/- to the University, and despite the University's Syndicate approving release of his pensionary benefits, the respondent University failed to process and release his pension, leave encashment and other retirement benefits as admissible under the law. It was submitted that the petitioner repeatedly approached the Registrar, Vice Chancellor and other authorities through various representations. Still, respondent No.2 deliberately failed to deposit the cheque received from the Health Department and unnecessarily delayed the processing of his case. According to the petitioner, the respondents intentionally withheld his lawful dues without any legal justification, causing severe financial hardship after retirement. Learned counsel further argued that pension is a vested, constitutional right and not a bounty or given out of generosity by the employer. He added that the employee earns these benefits through his/her long, continuous, faithful and unblemished service, therefore the respondents are under a legal obligation to release the petitioner's pensionary and other retirement benefits without delay and that their failure to do so amounts to arbitrary, mala fide and unlawful conduct, violative of the petitioner's fundamental rights guaranteed under the Constitution. He therefore prayed that the respondents be directed to process the petitioner's pension case and release all pensionary benefits and other legitimate dues forthwith.

3. Learned AAG submitted that no liability survives against the Government of Sindh. It was argued that the petitioner's G.P. Fund amounting to Rs.761,949/- had already been finalized and paid, while the pension contribution of Rs.576,848/- was duly sanctioned by the Health Department and transferred in favour of the Federal Urdu University after obtaining approval from the Finance Department. According to the official record, all claims relating to the petitioner's service in the Health Department, Government of Sindh, had been fully settled, and nothing remained outstanding against these respondents. He, therefore, prayed that Respondents No.4 and 5 be deleted from the array of parties.

4. We have considered the comments submitted by Respondent No.4, Accountant General Sindh. The contention that the petitioner’s claims stood settled merely because the G.P. Fund was paid on 15.01.2021 and the Pension Contribution was sanctioned on 14.05.2019 does not, by itself, absolve the said respondent of responsibility. Admittedly, the petitioner had retired from service in 2016, whereas the Pension Contribution was sanctioned only in 2019 and the G.P. Fund was finalized and paid in 2021. No satisfactory explanation has been furnished for such inordinate delay.

5. The record further reflects that the Pension Contribution of Rs.576,848/- was required to be placed at the disposal of the Federal Urdu University for further disbursement in terms of deputation and final absorption of the petitioner in Respondent University in time. Thus, mere issuance of the sanction order in 2019 cannot be treated as complete compliance when the amount was not timely deposited/processed with the University. The delay occurring between the petitioner's retirement in 2016 and the eventual processing and payment of his legitimate retirement benefits cannot be attributed to the petitioner.

6. In these circumstances, Respondent No.4, along with the concerned department/authority, must bear responsibility for the delayed processing and release of the petitioner's legitimate retirement benefits. The fact that the amounts were ultimately paid or sanctioned at a much later stage does not cure the administrative lapse or absolve the authorities from the consequences of the delay. Both the Accountant General Sindh and the concerned department are equally responsible for ensuring timely processing, sanction and transfer of the petitioner's pensionary benefits, and cannot shift the burden of their administrative delay upon the retired employee.

7. Learned Vice Chancellor of the Respondent University put his appearance before this court and opposed the petition on the grounds of both maintainability and merits. At the outset, he submitted that the petition is not maintainable under Article 199 of the Constitution as the service of University employees is not governed by statutory service rules and the relationship is governed by the principle of master and servant. Reliance was placed upon various judgments of the Hon'ble Supreme Court and this Court holding that constitutional jurisdiction is not available in matters involving non-statutory service conditions. It was further argued that under Sections 34 and 43 of the Federal Urdu University Ordinance, 2002, service disputes fall within the jurisdiction of the Service Tribunal under Article 212 of the Constitution and the jurisdiction of this Court is expressly barred. On merits, he submitted that although the petitioner served in the University after he was appointed Assistant Professor, he remained in the University's service for only about six years and, therefore, did not fulfill the minimum qualifying service prescribed under the applicable pension rules. It was further submitted that although the petitioner was temporarily promoted to BPS-20, the relevant Selection Board proceedings were subsequently revoked by the Senate and the petitioner ultimately retired as Assistant Professor (BPS-19). He further submitted that the University had mistakenly sought transfer of the petitioner's pension contribution from the Health Department, whereas the petitioner had already indicated that his pension was to be processed through his parent department. It was argued that although the University received the pension contribution after considerable delay, it could not release pension in favour of the petitioner because he did not possess the minimum qualifying 10 years' service required under the applicable rules. The University, however, expressed its willingness to return the pension contribution together with the petitioner's service record to the Health Department for processing of pension in accordance with law. It was also submitted that the petitioner has already received his G.P. Fund and other admissible service dues from the University, while no pensionary benefits have been unlawfully withheld. According to the Vice Chancellor, any dispute regarding qualifying service or pension entitlement involves disputed questions of fact requiring evidence and cannot be adjudicated in constitutional jurisdiction. He therefore prayed that the petition, being not maintainable and devoid of merit, be dismissed with costs.

8. We have heard the learned counsel for the parties as well as learned Vice Chancellor of the respondent university and upon careful consideration of the respective submissions and the available record, the principal question requiring our determination is whether the petitioner, having retired from service on 02.03.2016 after rendering substantial service under the Government of Sindh and thereafter under the Federal Urdu University of Arts, Science & Technology (FUUAST), can be denied his pensionary benefits and other retirement dues on the pretext of inter-departmental correspondence, alleged lack of qualifying service, or internal administrative difficulties of the University.

9. Under the Federal Urdu University of Arts, Sciences and Technology, Ordinance, 2002, the terms and conditions of service of University employees are to be regulated through the prescribed Statutes. Section 26 specifically authorizes the framing of Statutes relating to pension, insurance, gratuity, provident fund and benevolent fund for University employees. Furthermore, Section 35 provides that the University shall constitute prescribed schemes for post-employment benefits for its officers, teachers and other employees. The Ordinance therefore recognizes post-retirement benefits as part of the service framework of University employees, subject to the applicable Statutes and prescribed schemes. Accordingly, any claim concerning pension or other retirement benefits of a University employee has to be examined in the light of the applicable University Statutes and service rules governing such benefits. The Ordinance itself establishes the legal framework for pension and post-employment benefits, while the detailed entitlement and procedure are to be determined under the prescribed Statutes.

10. Under Section 45(1)(b), the Senate, on the advice of the Syndicate, has the power to direct that any post in the University may be filled by appointing an

employee of the Government or of another university or an educational or research institution. Thus, the provision expressly permits the University to bring in an outsider/employee from another public institution to fill a University post. Conversely, Section 45(1)(a) empowers the Senate, after consultation with the Syndicate and in the public interest, to direct a University officer, teacher or employee to serve in a post under the Government or another university, educational or research institution. Importantly, Section 45(2) protects the terms and conditions of the person appointed or transferred under this provision, providing that they shall not be less favorable than those applicable immediately before the appointment or transfer, and the person remains entitled to the benefits of the post or service.

11. The Ordinance does not itself prescribe the minimum qualifying service for pension, nor does Section 45 expressly provide for automatic counting of previous Government or institutional service toward FUUAST pension. The entitlement and qualifying service must therefore be determined under the applicable University Statutes/service rules. Section 45, however, protects the benefits and terms of service of a person appointed or transferred under that provision and therefore provides a statutory basis for examining continuity and preservation of service benefits.

12. The second legal point is that whether the petitioner's previous service in the Health Department, Government of Sindh, can be counted towards his qualifying service for pension after his absorption/transfer to the Federal Urdu University (FUUAST).

13. The objection of the University that the petitioner served FUUAST for only about six years and, therefore, did not complete the prescribed ten years' qualifying service, cannot be considered in isolation. The material question is whether his previous service was legally preserved and carried forward upon his absorption into the University.

14. The record, as asserted by the petitioner, shows that his services were initially requisitioned/deputed by FUUAST, followed by his appointment/absorption by way of transfer; his service record was transferred, and the Health Department sanctioned and transferred an amount of Rs.576,848/- towards pension contribution to FUUAST, which was received by the University. The Syndicate also approved release of his pensionary benefits. These circumstances prima facie indicate continuity of service and transfer of pension liability rather than a wholly fresh and independent appointment. Section 45 of

the FUUAST Ordinance, 2002 also recognizes appointment/transfer of Government employees and protects the terms and benefits of such service.

15. This view finds substantial support from the decision of this Court in the case of *Arif Waheed Ghaznavi v. Federation of Pakistan & others*, wherein FUUAST itself had contended that the petitioner lacked the requisite qualifying service because he had served the University for only about five years. This Court, however, taking into consideration his previous service, absorption into FUUAST, continuity of service and transfer/acceptance of service benefits, directed that his entire qualifying service be taken into account for pensionary purposes.

16. Accordingly, the University's contention that only the petitioner's six years of service with FUUAST can be counted is not sustainable unless it is established from the applicable pension rules and, particularly, the absorption/transfer order that his previous service was expressly excluded from pensionary benefits. Prima facie the previous service of the petitioner was preserved and pension liability was transferred to and accepted by FUUAST, the said service cannot ordinarily be ignored merely because the petitioner physically served the University for less than ten years as pointed out by the learned Vice Chancellor.

17. At the same time, the question of maintainability under Article 199 and the applicability of Article 212 remains a separate issue.however the petitioner was/is not civil servent so he caanot approach the Feseral Service Tribunal after his retirement in 2016. Thus, the petitioner cannot be denied pension merely on the ground that he served FUUAST for approximately six years, as his earlier Health Department service was lawfully carried forward upon absorption/transfer and the corresponding pension liability was transferred to and accepted by the University. The decisive documents would be the petitioner’s absorption/transfer order, service record, pension contribution transfer documents, Syndicate decision and the applicable FUUAST Pension Rules.

18. It is a settled principle of law that pension is not a bounty, concession or a matter of grace dependent upon the discretion of the employer; rather, it constitutes a valuable statutory right earned by an employee after rendering service. The Hon’ble Supreme Court of Pakistan in **PLD 2007 SC 35** has authoritatively held that pensionary benefits are a deferred portion of remuneration for the services rendered by an employee and cannot be withheld by the employer through arbitrary, unreasonable or technical objections. The State and its instrumentalities are under a constitutional and legal obligation to ensure timely payment of pension and retirement benefits, as such benefits constitute a measure of social security and are protected against unlawful deprivation.

19. In the present case, the petitioner retired almost a decade ago; however, despite completion of all necessary formalities, his pensionary benefits and other legitimate retirement dues have not been released till date. Such prolonged withholding of pension after retirement is not merely an administrative lapse but amounts to a denial of a vested legal right. The petitioner cannot be made to suffer due to the failure of the University or its functionaries to complete internal procedures or resolve correspondence between the University and the Health Department.

20. The contention of the learned Vice Chancellor that the petition is not maintainable on account of the relationship of master and servant is misconceived and legally untenable. The instant controversy does not relate to a private service dispute regarding appointment, promotion or disciplinary action; rather, it concerns the enforcement of a statutory and constitutional obligation of a public sector university to release retirement benefits of an employee who has already superannuated. The Federal Urdu University is a public institution established under the Federal Urdu University Ordinance, 2002, performing public functions and managing public funds. Therefore, its failure to discharge a legal obligation relating to pensionary benefits is amenable to constitutional scrutiny under Article 199 of the Constitution.

21. The reliance upon Article 212 of the Constitution and Sections 34 and 43 of the Federal Urdu University Ordinance, 2002, is also misplaced. The jurisdiction of the Service Tribunal cannot be invoked to defeat a retired employee's fundamental right to receive admitted pensionary dues as discussed in the preceding paragraph. Where the grievance relates to arbitrary withholding of pension, failure to perform a statutory duty and violation of constitutional guarantees, the jurisdiction of this Court under Article 199 remains available. The constitutional jurisdiction cannot be ousted merely by raising a technical objection regarding an alternative remedy, particularly when the action complained of is manifestly arbitrary and results in continued deprivation of a subsistence allowance earned through years of service.

22. The further objection that the petitioner did not complete ten years' qualifying service in the University is also without legal substance. The respondents cannot selectively calculate the petitioner's service by ignoring his earlier Government service and the fact that his pension contribution amounting to Rs.576,848/- was specifically sanctioned by the Health Department and transferred to the University after approval of the competent authorities. Once the competent department accepted liability and transferred the pension contribution, and the University itself processed the matter before its Syndicate, the

respondents cannot subsequently resile from their own administrative acts and deny the petitioner his lawful entitlement as discussed in the preceding paragraph.

23. The record further demonstrates that the petitioner continuously pursued his pension claim through representations addressed to the Registrar, Vice Chancellor and other competent authorities since his retirement in 2016. The respondents, instead of resolving the matter, kept the petitioner entangled in unnecessary administrative delays. The failure of the respondent University to deposit, utilize or appropriately return the pension contribution received from the Health Department, and its failure to process the pension case in accordance with law, reflects gross negligence and administrative inefficiency. A retired employee cannot be compelled to suffer indefinitely because of institutional disagreements between two public bodies. It is well settled that the pensionary benefits after retirement devolved upon a civil servant soon after his/her retirement, followed by its acceptance, and the formal application was only required to keep the record streamlined. The delay of any kind in claiming pensionary benefits should not be counted as one of the disentitlements, especially for pensionary claims. Neither the principle of laches would apply here as indeed no one else has any claim over the money nor any provision of the Limitation Act and /or laches would come as an obstacle to decline the claim of pensionary benefits.

24. The argument that the University received the pension contribution by mistake and that the same should now be returned to the parent department is also unacceptable after lapse of several years. The respondents were required to act promptly and determine the pension liability at the time of retirement. The University cannot take advantage of its own failure and use its internal administrative confusion as a justification for withholding the petitioner's pensionary benefits for an unreasonable period. Such conduct is contrary to the principles of fairness, legitimate expectation and good governance.

25. The assertion that disputed questions of fact are involved and, therefore, the matter cannot be examined under Article 199 is also rejected. The material facts regarding the petitioner's appointment, retirement, transfer of pension contribution, sanction by the competent authorities and non-payment of pension are not disputed. The controversy is essentially regarding implementation of an admitted entitlement, which falls within the constitutional obligation of public authorities to act fairly, transparently and in accordance with law.

26. The conduct of the respondents is further aggravated by the fact that pension is meant to provide financial security to a retired employee during the post-retirement period. Keeping such benefits withheld for approximately ten

years defeats the very purpose of pension law and causes grave hardship to the petitioner. The State and its institutions are expected to act as model employers and cannot deprive retired employees of their lawful dues through bureaucratic delays and procedural technicalities.

27. In view of the principles laid down by the Hon'ble Supreme Court in **PLD 2007 SC 35**, the respondents were legally bound to finalize and release the petitioner's pensionary benefits without unnecessary delay. The failure to do so constitutes an arbitrary exercise of authority, violation of the petitioner's legitimate rights and failure to perform a mandatory public duty.

28. Accordingly, the objection raised by the Vice Chancellor regarding maintainability and alleged lack of qualifying service is devoid of merit and is hereby rejected. The respondents are directed to undertake a fresh exercise in accordance with law, taking into account the petitioner's entire qualifying service, the pension contribution already sanctioned and transferred, and the settled legal position regarding pensionary rights. The competent authority of the University shall finalize the pension case and release all admissible pensionary benefits, arrears, leave encashment and other retirement dues within a reasonable period, preferably within eight weeks from the receipt of this order.

29. We are of the considered view that the respondent Health Department as well as Accountant General Sindh are also equally responsible, and cannot be absolved from their of responsibility, for the reasons that the petitioner retired in 2016, whereas the Pension Contribution of Rs.576,848/- was sanctioned only on 14.05.2019 and the G.P. Fund of Rs.761,949/- was paid on 15.01.2021, without any satisfactory explanation for such inordinate delay. Mere sanction or eventual payment of the amounts does not constitute timely compliance, particularly when the Pension Contribution was required to be transferred to the Federal Urdu University in terms of the petitioner's deputation and final absorption. The record, therefore, establishes that the delay in processing, transferring and disbursing the petitioner's legitimate retirement dues was attributable to the concerned authorities and not to the petitioner. Accordingly, Respondent No.4 and the concerned university and department/authority are held equally responsible for the delayed disbursement of the petitioner's lawful dues and are liable to ensure payment thereof, together with interest/markup, if admissible under the applicable law and rules, for the period of unjustified delay.

30. The respondents shall also be liable to explain the prolonged and unjustified delay in disbursement of retirement benefits and competent authority shall take appropriate administrative action against the officials responsible for

such negligence, in accordance with the law and the principles laid down by the Hon'ble Supreme Court in **PLD 2007 SC 35**, so that retired employees are not subjected to similar hardship in future.

31. The captioned petition stands allowed in the above terms along with pending applications.

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