

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-2525 of 2018
(Wahid Bux Mallah versus Federation of Pakistan & others)

Date	Order with signature of Judge(s)
<u>Fresh Case</u>	Before: Mr. Justice Adnan-ul-Karim Memon Mr. Justice Abdul Mubeen Lakho

Date of hearing and order : 13.01.2026

Mr. Imtiaz Ali Solangi advocate for the petitioner
Mr. Furqan Ali advocate for respondent
Mr. Khaleeq Ahmed DAG

ORDER

Adnan-ul-Karim Memon, J. – The petitioner has filed the captioned Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

That this Honourable Court may direct the Respondent No.2 to restore the commutation portion of his pension w.e.f 04.06.2017 along with difference amount, in view of section 16(3) (iv) of NIC Pension Regulations, 1986 and pursuance of letter dated 13th June, 2009 issued by the respondent No.1/Ministry of Commerce.

2. The case of the petitioner is that he retired on 04.06.2002 from the respondent/NICL, after serving from 06.11.1986 to 03.06.2002 and initially received pension of Rs. 100,591 per month. On 31.05.2017, he requested respondent No. 2 for restoration of 50% commuted pension after completion of 15 years on 04.06.2017, when he was receiving Rs. 42,679 per month. After correspondence, he filed Constitutional Petition seeking restoration of surrendered pension in light of Finance Division letter dated 07.07.2015.
3. Petitioner’s counsel argued that NIC, established under the NIC Act, 1976, was converted into NICL on 11.08.2000, and sections 4(1) and 4(3) of the Reorganization Ordinance, 2000 protected service terms of transferred employees. Under Regulation 16(3)(iv) of Pension Regulations, 1986, pension is to be indexed as per Federal Government policy; therefore, petitioner is entitled to all pension increases granted by the Federal Government, as per decision of the Supreme Court.
4. Respondent’s counsel submitted that the present petition is not maintainable, as NICL has no statutory service rules and a constitutional petition does not lie, relying on the order dated 22.01.2021 passed in CP No. D-5833/2021. He stated that the petitioner, Mr. Wahid Baksh Mallah, Ex-Executive Director NICL, retired on 04-06-2002, and his 50% surrendered portion of pension was already restored effective 04-06-2017. The question of applying increases on the restored portion from the date of

retirement was considered by NICL's Board in its 102nd meeting on 24-12-2018 but was not approved, and the current management cannot revisit the resolution, as the decision of the Supreme Court is not applicable in the present case, which pertains the civil servants as NICL employees are not civil servants, and pension rules are governed by NICL's Human Resource Manual; federal notifications apply only if approved by the board. In these circumstances, the petition lacks merit and may be dismissed.

5. Learned DAG supported the respondent's arguments.

6. We have heard the learned counsel for the parties and perused the record with their assistances.

7. The petitioner, Wahid Baksh Mallah (Ex-ED), retired on 04-06-2002. Relying on Supreme Court judgments reported as 2012 SCMR 1914 and 2014 SCMR 1336, he challenges the pension calculation made by NICL. His pension was restored on 04-06-2017 after annual increases from 2002–2023, resulting in a monthly pension of Rs. 72,173. His total arrears/restoration from 04-06-2002 to 28-02-2023 amount to Rs. 3,198,997, whereas the respondent company asserts Rs. 8,523,053 is due.

8. The core issue is whether the above Supreme Court decisions apply to the petitioner's case and NICL is bound by the decision. NICL objects that he is not a civil servant; however, under the National Insurance Corporation (Reorganization) Ordinance, 2000, Sections 4(1) and 4(3) protect the terms and conditions of transferred employees, including pension rights, which cannot be altered adversely. NIC Staff Service Regulations, 1976 and NIC Pension Regulations, 1986 are statutory, and Regulation 16(3)(iv) requires pension to be indexed in the manner adopted by the Federal Government. A similar case of Mr. Inam-ul-Haq was decided by the Supreme Court, after which NICL implemented federal pension notifications, establishing that NICL is bound to follow federal practice. Despite this, increases on the restored commuted portion of petitioner's pension under Finance Division O.M. dated 09-02-2016 were not granted, although he retired on 04-06-2002 and falls within the eligible category. His pension was restored at Rs. 7,224 instead of Rs. 85,358. Court orders dated 27-04-2022 and 31-05-2022 directing recalculation were not complied with, and NICL later took a contradictory stance. The petitioner submits that NICL employees are entitled to pension increases in accordance with Federal Government notifications and that his service conditions cannot be adversely altered.

He prays for release of Rs. 3,198,997 as per Annexure “A” dated 02-03-2023, along with all lawful pensionary benefits.

9. It is the established legal position that the commuted portion of pension, after having been surrendered in exchange for a lump-sum payment for a specified period (15 years), is to be restored upon expiry of such period with all increases granted by the Federal Government during the intervening period. This position has been recognized and upheld in superior courts and tribunals. It is acknowledged that restoration of pension means restoration of the pension due at the time inclusive of all increments accumulated over the commuted period i.e., double pension plus all periodical increases at the time of restoration.

10. Federal Service Tribunal directed that upon restoration the pensioner is entitled to have his pension recalculated at the rate at which he was drawing 50% net pension and arrears be paid from the date of restoration, indicating that increases which should have applied during the commutation period must be given effect upon restoration.

11. These principles apply equally to all federal pensioners irrespective of their date of retirement, after the Finance Division’s O.M. dated 07-07-2015, which extended restoration and increase benefits to persons who retired on or after 1-12-2001 (i.e., including the petitioner here who retired in 2002).

12. The petitioner legitimately exercised his right to seek restoration of 50% commuted pension upon the completion of 15 years from retirement i.e., from 04-06-2017. Under federal pension policy and rules, upon such restoration, he is entitled to enjoy *all increases granted by the Federal Government* during the commuted period, just as other pensioners have been held entitled.

13. Respondent’s contention that restoration has already been granted but without appropriate increases is inconsistent with the legal position affirmed by supreme court as outlined above.

14. The learned counsel for the respondents argued that NICL has no statutory service rules and that the petition is not maintainable. However, where fundamental rights or vested pension benefits under federal policy are unlawfully denied, a constitutional petition is maintainable, particularly where there is no alternative efficacious remedy. This Court routinely entertains petitions to enforce pension rights when government policy or pension rules are misapplied or ignored. An excerpt of recalculation of the pensionary benefits of the petitioner is reproduced.

NATIONAL INSURANCE COMPAY LIMITED
NIC EMPLOYEES PENSION RUST FUND
DATE OF RETIREMENT ON 04.06.2002 OF MR. WAHID BAKSH MALLAH, EX-ED
RESTORATION DATE 04.06.2017 OF MR. WAHID BAKSH MALAH, EX-ED
AS PER COURT’S JUDGMENTS REPORTED IN 2012 SCMR 1914 AND 2014 SCMR 1336 (CIVIL SERVANTS)

S.NO	DURATION	INCREASE	CURRENT MONTHLY PENSION	RESTORATION	TOTAL	PRORATA BASIS (DAYS/mONTHS)A	DIFFERENCE BETWEEN (B-A)
1	Pension as on 04.06.2002		7,224		7,224	6,502	
2	01.07.2002 to 30.06.2003		7,224		7,224	86,688	
3	01.07.2003 to 30.06.2004	15%	8,308		8,308	99,691	
4	01.07.2004 to 30.06.2005	8%	8,972		8,972	107,666	
5	01.07.2005 to 30.06.2006	10%	9,869		9,869	118,433	
6	01.07.2006 to 30.06.2007	15%	11,350		11,350	136,198	
7	01.07.2007 to 30.06.2008	20%	13,620		13,620	163,438	
8	01.07.2008 to 30.06.2009	20%	16,344		16,344	196,125	
9	01.07.2009 to 30.06.2010	15%	18,795		18,795	225,544	
10	01.07.2010 to 30.06.2011	15%	21,615		21,615	259,376	
11	01.07.2011 to 30.06.2012	15%	24,857		24,857	298,282	
12	01.07.2012 to 30.06.2013	20%	29,828		29,828	357,938	
13	01.07.2013 to 30.06.2014	10%	32,811		32,811	393,732	
14	01.07.2014 to 30.06.2015	10%	36,092		36,092	433,106	
15	01.07.2015 to 30.06.2016	7.5%	38,799		38,799	465,588	
16	01.07.2016 to 30.06.2017	10%	42,679		42,679	512,147	
17	04.06.2017 to 30.06.2017		42,679	42,679	85,358	76,822	31,259
18	01.07.2017 to 30.06.2018	10%	46,947	46,947	93,894	1,126,728	458,478
19	01.07.2018 to 30.06.2019	10%	51,642	51,642	103,284	1,239,408	504,333
20	01.07.2019 to 30.06.2021	10%	56,806	56,806	113,612	2,726,688	1,109,523
21	01.07.2021 to 30.06.2022	10%	62,487	62,487	124,974	1,124,766	457,685
22	01.04.2022 to 30.06.2022	10%	68,736	68,736	137,472	4,12,416	167,820
23	01.07.2022 to 28.02.2023	5%	72,173	72,173	144,346	1,154,768	469,899
						11,722,050	3,198,997

As per Board of Directors resolution of 90th meeting held on 26.08.2016, vide Agenda item No.13 (b)

15. In view of the above, the petition is disposed of with direction to the competent authority of respondents to restore the commuted portion of pension with all periodical increases granted by the Federal Government from the date of retirement to the date of restoration and thereafter, in accordance with applicable pension policy and relevant pension law, more particularly in terms of decision of the Supreme Court as discussed supra.

JUDGE

JUDGE