

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.D-3474 of 2024

(Shoukat Ali Khawaja & others v Federation of Pakistan & others)

Date Order with signature of Judge

Before:-

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:- 19.02.2026

Mr. Ghulam Umar, advocate for the petitioners along with Petitioner Nos. 1, 2, and 19 are present in person.

Ms. Zehra Sehar Vayani assisted by Ms. Wajiha Mehdi DAG

ORDER

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

- a) *To direct the Respondent No.4 SEC Management Pension Fund (SECMPF), NOT to disburse pension Commutation as per Revised Pay Scale-2017 and 2022. However, the pension and Commutation disbursement process should continue to all the pensioners of SECMPF based on the pay scale-2016, as is applicable to PMTF pensioners.*
- b) *To direct the Respondent NO.2 to grant and pay all the eligible PMTF officers, the revised pay scale-2017 & 2022, and all Adhoc Relief Allowance (ARA) i.e., (ARA 2017 @ 10% of basic pay, ARA @10% of basic pay, and @ 05% of Basic pay) as per the Notifications issued by the Government of Pakistan No. F.No. 3(7)/2017-LED-III SEC) dated October 7, 2022, and NO. F. No. 1(2) Imp/2022-283 dated July 1, 2022.*

2. The case of the Petitioners is that they are retired Officers/Assistant Managers of Pakistan Machine Tool Factory (PMTF) who served the organization for over three decades after their appointments between 1989 and 1992 and retired upon attaining the age of superannuation during the years 2019 to 2022. It is submitted that PMTF was operating under the administrative control of the Ministry of Industries & Production until July 2020, when it was transferred to the Strategic Plans Division (SPD) pursuant to a Federal Government decision. The Petitioners submitted that such a transfer of PMTF to SPD was carried out without obtaining the consent of employees and without notifying any revised terms and conditions of service. They further submit that despite repeated representations made to

PMTF management, the Ministry of Industries & Production, and the Chairman of State Engineering Corporation (SEC), the Petitioners were denied the benefit of Revised Pay Scales 2017 and 2022, along with Adhoc Relief Allowances announced by the Federal Government.

3. The learned counsel for the petitioners submitted that although similarly placed employees of other units of State Engineering Corporation, including Heavy Mechanical Complex (HMC) and Heavy Electrical Complex (HEC), were granted pension and commutation benefits based on revised pay scales, the Petitioners continue to receive pension calculated on Pay Scale-2016, thereby suffering discriminatory treatment at the hands of the SEC Management Pension Fund. The Petitioners' counsel assert that such denial of revised pensionary benefits is illegal, arbitrary, and violative of Articles 9 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, as it deprives them of equal protection of law and fair financial entitlements. They therefore seek directions for the grant of Revised Pay Scales 2017 and 2022, along with applicable Adhoc Relief Allowances and corresponding revision of pension and commutation benefits.

4. The learned Deputy and Attorney General raises a preliminary objection regarding maintainability of the instant petition on the ground that PMTF is a private limited company incorporated under the Companies Act and governed by non-statutory service rules. It is contended that disputes arising out of employment contracts fall within the domain of master-servant relationship and are not amenable to constitutional jurisdiction under Article 199 of the Constitution. It is further submitted that the Petitioners approached this Court after retirement and with considerable delay, even though the pay scale revisions in question were introduced as early as 2017. Accordingly, the petition is barred by the principle of laches. Learned DAG maintains that implementation of Revised Pay Scales and Adhoc Relief Allowances in autonomous or semi-autonomous bodies is subject to their financial viability, and PMTF has been facing severe financial constraints since before 2017. Consequently, PMTF did not approve the revised pay scales of 2017 and 2022 for its employees. It is also submitted that following the transfer of PMTF to the Strategic Plans Division in August 2020 under the policy framework of the National Command Authority, PMTF ceased to function as a subsidiary of State Engineering Corporation, and its employees were no longer governed by SEC or the Ministry of Industries & Production.

Therefore, pensionary benefits of PMTF retirees continue to be calculated on the basis of Pay Scale-2016, as no revision in basic pay has been approved by PMTF management. She further submits that the SEC Management Pension Fund operates as an independent trust responsible for the disbursement of pensionary benefits based on the basic pay last drawn by employees, as communicated by their respective member organizations. It is stated that revised pension benefits were extended to employees of SEC and HMC only after their respective organizations revised pay scales and assumed financial liability by contributing increased amounts to the Pension Fund. However, PMTF has not revised the pay scales of its employees for the years 2017 or 2022; therefore, pension payable to PMTF retirees continues to be calculated on the basis of Pay Scale-2016. She further submit that pension revision is contingent upon approval and financial recognition by the member organization concerned, and in the absence of such approval from PMTF, no direction can be issued to the Pension Fund for revision of pensionary benefits of PMTF retirees. Learned DAG prayed to dismiss the petition.

5. We have heard the learned counsel for the parties present in Court and perused the record with their assistance.

6. Although Respondent No.1, i.e., Pakistan Machine Tool Factory (PMTF), has been described as a government owned and controlled company incorporated under the Companies Act, the factual matrix on record unmistakably reflects that PMTF was admittedly functioning under the administrative control of the Federal Government through the Ministry of Industries and Production before July 2020; It was subsequently transferred to the Strategic Plans Division pursuant to a policy decision of the Federal Government under the umbrella of the National Command Authority; It was also operating as a subsidiary of State Engineering Corporation (SEC), which is itself a public sector holding entity wholly owned and controlled by the Federal Government. Thus, PMTF squarely falls within the definition of a body performing public functions and operating under pervasive governmental control, thereby attracting the ambit of "person performing functions in connection with the affairs of the Federation" within the contemplation of Article 199 (5) of the Constitution. The Supreme Court of Pakistan in *Pakistan Defence Officers Housing Authority v Lt. Col Syed Jawaid Ahmed* has held that where an entity is substantially owned or controlled by the Government and performs public

functions, its actions are amenable to constitutional jurisdiction notwithstanding its corporate form. Likewise, in *Sui Northern Gas Pipelines Ltd v Federation of Pakistan*, it was reiterated that public sector corporations cannot defeat constitutional remedies merely on the ground of incorporation under company law. Therefore, the objection of the learned DAG regarding non-maintainability of the petition on the premise of a master-servant relationship is misconceived and untenable.

7. It is an admitted position that PMTF was transferred from the administrative control of the Ministry of Industries & Production to SPD in August 2020 without obtaining the consent of the employees, and notifying revised terms and conditions of service governing pensionary or retirement benefits. The law is well settled that vested or accrued service rights, particularly pensionary benefits, constitute a civil and legal right and cannot be altered to the detriment of employees through an executive policy decision. The Supreme Court categorically held that a pension is not a bounty but a vested statutory right which cannot be withheld or reduced arbitrarily. It is also well settled that retirement benefits crystallize upon superannuation and are protected from executive interference. Consequently, the transfer of PMTF to SPD could not lawfully deprive the Petitioners of financial benefits that had accrued or were otherwise admissible under Federal Government notifications regarding Revised Pay Scales and Adhoc Relief Allowances, under such policy, which is applicable in the government entities.

8. The record further reveals that similarly placed employees of Heavy Mechanical Complex (HMC) and Heavy Electrical Complex (HEC) were granted the benefit of Revised Pay Scales 2017 and 2022 and corresponding pension recalculations through the same SEC Management Pension Fund. The denial of identical treatment to PMTF retirees, who were admittedly part of the same holding structure before 2020, constitutes hostile discrimination in violation of Article 25 of the Constitution. In *I.A. Sherwani v Government of Pakistan*, the Supreme Court held that equals must be treated equally and any classification lacking a reasonable nexus with the object sought to be achieved is violative of the equality clause. Furthermore, financial constraints cannot be invoked as a valid justification to deny constitutionally guaranteed equality.

9. The contention of Respondent SEC that pension revision is contingent upon contribution by member organizations does not absolve PMTF or SEC from ensuring compliance with Federal Government pay revision notifications, particularly when the Petitioners served for over three decades, retired during the period when Revised Pay Scales were in force, as informed and similarly placed retirees within the SEC umbrella were extended the same benefits. It is well settled that financial hardship or administrative inconvenience cannot override fundamental rights guaranteed by the Constitution.

10. The objection regarding delay is equally without substance, as denial of pensionary benefits constitutes a recurring cause of action. It is well settled that matters relating to pension give rise to a continuous wrong and cannot be defeated on the ground of limitation or laches, therefore the point of view is erroneous and discarded .

11. Pensionary benefits are vested/legal rights and cannot be curtailed through executive transfer or financial constraints. The denial of Revised Pay Scales 2017 and 2022 to PMTF retirees, while granting the same to employees of Heavy Mechanical Complex and Heavy Electrical Complex under State Engineering Corporation, amounts to discrimination in violation of Articles 9 and 25 of the Constitution. Accordingly, this petition is disposed of in the following terms:

i) The competent authority of PMTF is directed to grant the benefit of Revised Pay Scales 2017 and 2022, along with all admissible Adhoc Relief Allowances, to the Petitioners notionally from the respective dates of their enforcement by the Federal Government, policy decision.

ii) Upon such notional fixation, competent authority, Respondents PMTF and SEC shall recalculate the pension and commutation benefits of the Petitioners based on the revised last pay drawn.

iii) The State Engineering Corporation Management Pension Fund is also directed to release revised pensionary benefits, including arrears, to the Petitioners within a period of three (03) months from the date of receipt of this order, if not earlier paid.

iv) Any outstanding arrears accruing on account of such revision shall also be paid to the Petitioners within the aforesaid period.

12. The compliance report shall be submitted to the Nazir of this Court within four (04) weeks thereafter.

JUDGE

JUDGE