

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. D-5438 of 2025

[Mst. Kubra Khatoon v. Secretary Industries of Commerce Department and others]

Date	Order with signature of Judge(s)
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Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and Order: 18.03.2026

Mr. Imtiaz Ali Solangi advocate for the petitioner
Mr. Ahmed Ali Ghumro advocate for respondent
Mr. Abdul Jalil Zebedi, AAG

ORDER

Adnan-ul-Karim Memon, J. – Petitioner has filed this Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, seeking the following relief:-

- i) *To direct the respondents to release the amount of Rs. 29,00,000/-, which was illegally withheld by the respondents vide order dated 22.05.2025;*
- ii) *To direct the respondent No.1 to recalculate the pensionary benefits as per the benefits given to other similarly placed employees/batch mates.*

2. Learned counsel for the petitioner submits that the petitioner is the widow of late Zahoor Ahmed Solangi, who served as an Accounts Officer in SITE Ltd. Karachi since 1989. He contends that during service, the deceased was falsely implicated in a corruption case, from which he was ultimately acquitted by the learned Anti-Corruption Court after a full trial. Despite such acquittal and subsequent reinstatement in service pursuant to orders of the superior courts, the department failed to grant her full service benefits of her deceased husband, including arrears of salary, promotions, and pensionary entitlements. It is further argued that although the deceased was reinstated with continuity of service and original seniority, he was unlawfully deprived of arrears for the period he remained out of service, in violation of earlier directions of the High Court. After his retirement, the respondents calculated his pensionary benefits but illegally withheld a substantial amount of Rs. 2,900,000 without lawful justification. Counsel submits that even the civil suit filed by the department for alleged recovery was dismissed for non-prosecution, and no liability remains against the deceased. Thus, the withholding of pensionary dues vide office order dated 22.05.2025 is arbitrary, unlawful, and liable to be set aside. He prayed to allow this petition.

3. Conversely, learned counsel for respondents No. 2 and 3/SITE Ltd. raises a preliminary objection regarding maintainability, contending that SITE Ltd. is not governed by statutory rules and, therefore, a constitutional petition under Article 199 is not maintainable against it. On merits, he submits that the deceased was involved in serious misconduct, including fraudulent withdrawal of funds from the organization through forged cheques, and had allegedly confessed to such acts during departmental proceedings. Counsel further contends that the department complied with court directions regarding payment of certain dues and that the reinstatement order clearly stipulated that the deceased would not be entitled to arrears for the period he remained out of service. It is also argued that the withheld amount pertains to misappropriated funds recoverable from the deceased, and despite dismissal of the civil suit for non-prosecution, the liability subsists. Therefore, the respondents maintain that the petition is based on misrepresentation, is not maintainable, and is liable to be dismissed.

4. After hearing learned counsel for the parties and examining the record, the controversy revolves around (i) maintainability of the petition under Article 199 of the Constitution, and (ii) legality of withholding pensionary benefits on account of alleged misconduct despite acquittal and dismissal of recovery proceedings.

5. As per facts brought on record by the parties, the husband of the petitioner, Zahoor Ahmed Solangi, Accounts Officer, SITE Ltd., was dismissed from service by the Managing Director on 26.09.2005. He filed a departmental appeal on 24.10.2005, and subsequently approached the Sindh Services Tribunal, which dismissed his appeal as time-barred. Thereafter, he filed Civil Appeal No. 2359 of 2006 before the Supreme Court of Pakistan, which set aside the Tribunal's judgment and directed the Secretary, Industries & Commerce Department, to decide his appeal. Upon review of the record and after affording him an opportunity for a personal hearing, the Competent Authority of SITE found serious procedural irregularities in the disciplinary proceedings, including a lack of proper inquiry, non-compliance with relevant rules, and denial of a hearing. Consequently, his appeal was allowed, the dismissal order was set aside, and he was reinstated in service with restoration of seniority, though without back benefits for the period he remained out of service. Subsequently, upon his retirement on 31.08.2024, SITE Ltd. sanctioned his service benefits under the applicable pension rules, including pension commutation, provident fund, leave encashment, and monthly pension, after necessary adjustments and deductions, and in the intervening period, he died, compelling his wife to approach this Court

6. The objection of the respondents regarding non-maintainability is misconceived. It is now a settled principle that even if an entity is incorporated as a company, it falls within the ambit of a "person" performing public duties under Article 199 of the Constitution, where it is owned, controlled, and functions for

public purposes. SITE Ltd., being a Government-owned organization managing public assets, is thus amenable to constitutional jurisdiction, as recognized in authoritative pronouncements of the Supreme Court, including *Pakistan Defence Officers Housing Authority v. Lt. Col. Syed Jawaid Ahmed* (PLD 2013 SC 170). As regards the locus standi of the widow, the law is equally well-settled that a legal heir can institute proceedings after the death of an employee, but only to the extent of survivable rights, such as pension, gratuity, provident fund, leave encashment, and other vested monetary benefits. In contrast, personal service claims, including promotion, seniority, or reinstatement, do not survive and cannot be agitated by legal heirs. The superior courts have consistently held that while a widow cannot revive stale or disputed service claims which the deceased did not pursue during his lifetime, she is competent to claim statutory and continuing benefits, particularly pensionary dues, which constitute a recurring cause of action. At the same time, relief may be declined on the grounds of delay and laches where the claim pertains to past and closed transactions.

7. In the present case, although the deceased retired in 2004 and did not assert his claim during his lifetime, the widow's petition remains maintainable only insofar as it relates to lawfully due pensionary or other vested monetary benefits, and not where it requires re-opening or re-determination of service matters. Her right is thus derivative and limited, confined to accrued financial entitlements, and does not extend to revival of personal or time-barred service claims. It appears that the petitioner has called in question the order dated 22.05.2025, whereby the pensionary amount of Rs. 2900,000/- has been withheld on account of recovery from the pensionary benefits which was/is not called for after his retirement from service in 2024, as he was honorably acquitted from the charges and suit for recovery filed by the respondents was also dismissed.

8. It is an admitted position that the deceased employee was acquitted by the competent Anti-Corruption Court; The civil suit for recovery filed by the respondents was dismissed for non-prosecution; The petitioner was reinstated with continuity of service and seniority pursuant to directions of the Hon'ble Supreme Court; No departmental proceedings have culminated in any final penalty after reinstatement. Under the settled service jurisprudence, a pension is not a bounty but a vested right, protected under law. Any deduction or withholding from pensionary benefits must be supported by lawful authority, proven misconduct, and due process. Reference may be made to *Government of Punjab v. Muhammad Munir* (PLD 2016 SC 456) pension is a vested right and cannot be withheld except in accordance with law; *Chairman WAPDA v. Ghulam Mustafa* (2011 SCMR 1041) acquittal in criminal proceedings, in absence of independent departmental findings, disentitles the department from imposing

financial liability; *Province of Punjab v. Ijaz Ahmad (2017 SCMR 130)* recovery from pension without lawful adjudication and opportunity of hearing is illegal.

9. In the present case, the respondents have failed to demonstrate any final adjudication fixing liability upon the deceased after his retirement in service, which normally followed by back benefits, which have been wrongly denied without lawful justification. Mere allegations, even coupled with an alleged confession during inquiry, lose their legal force when the criminal case ended in acquittal; and the civil recovery suit was dismissed; and no fresh or conclusive departmental proceedings established guilt post-reinstatement. Thus, withholding of Rs. 2,900,000/- as claimed in prayer from pensionary benefits is without lawful authority, violative of due process, and contrary to settled law; the impugned order dated 22.05.2025 to the extent of recovery is set aside.

10. Although the reinstatement order denied arrears for the period of absence, such denial does not extend to pensionary benefits lawfully accrued after retirement, nor does it authorize indefinite withholding of dues without adjudicated liability as discussed in the preceding paragraph. Pension is calculated on qualifying service and cannot be curtailed on unproven allegations.

11. In view of the above, the petition is disposed of with directions to the competent authority of respondents to release the withheld amount forthwith, recalculate pensionary benefits in accordance with rules and parity, and ensure compliance within 30 days, failing which the amount shall carry markup/interest as per law.

JUDGE

JUDGE

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