

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

*Constitutional Petition No.D-1840 of 2024  
(Mst. Rehmat Mari v. Province of Sindh and others)*

**Before:-**

***Mr. Justice Amjad Ali Bohio,  
Mr. Justice Ali Haider 'Ada'.***

Petitioner : Mst. Rehmat Mari, *through*  
Mr. Achar Khan Gabol, Advocate.

Respondents : Province of Sindh and others,  
*through* Mr. Ali Raza Baloch,  
Additional Advocate General Sindh.

Date of Hearing : 25.02.2026

Date of Decision : 04.03.2026

**ORDER**

**Ali Haider 'Ada' J.** The husband of the petitioner, Abdul Fatah, served in the Health Department, Government of Sindh, as Naib Qasid BPS-1, initially appointed on 15-12-1988. During his service, he was last promoted to Attendant BPS-05 and subsequently retired upon attaining the age of superannuation of 60 years on 31-12-2023. However, approximately one year before his retirement, he was arrested in connection with a criminal case and has remained in custody as an Under-Trial Prisoner since then. Following his retirement, he applied for a pension and other pensionary benefits. While the necessary documents and codal formalities were completed, certain pensionary benefits were withheld on the ground that, being under suspension during the pendency of the criminal proceedings, he was not entitled to receive the pension. Aggrieved by the action of the Department in withholding the pension and other pensionary benefits of her husband, the Petitioner has invoked the jurisdiction of this Court. The Petitioner is the wife of the Government servant, who is presently in jail.

2. In pursuance of the notice issued by this Court, the District Accounts Officer (Respondent No.4) filed a written statement dated

26-11-2024, stating that the matter had been referred to the Section Officer/Pension Case Disposal Committee (PCDC) for necessary guidance regarding the payment of pension and pensionary benefits, and a response was awaited. The District Health Officer, Health Department, confirmed that a letter had been sent to the District Accounts Officer, and the matter was pending, as stated above. Thereafter, the Section Officer (SR-II), Finance Department, in response to the District Accounts Officer's letter, took the stance that Rule 1.8 of the West Pakistan Civil Servants Pensions Rules, 1963, was applicable, and the Finance Department could not issue any guidelines until the employee (husband of the petitioner) was either convicted or acquitted by the competent Court. This position was subsequently placed on record by the District Accounts Officer in his written statement dated 07-04-2025. On 11-02-2026, learned Additional Advocate General sought time to obtain comments from the Secretary, Health Department, in view of Fundamental Rule 53. The statement of the Secretary, Health Department, was later submitted, taking a position similar to that of the Finance Department, along with a letter addressed to the Secretary, Services, General Administration & Coordination Department, regarding the matter.

3. Learned counsel for the petitioner has argued that Fundamental Rule 54 is clear and provides that the period of suspension does not bar a retired employee from receiving pension or other pensionary benefits. He further contended that, given the petitioner's husband is behind bars, withholding the pension and benefits imposes extreme hardship on the family. He, therefore, prayed that the petition be allowed with directions for the immediate release of the pension and pensionary benefits.

4. On the other hand, learned Additional Advocate General submitted that Rule 1.8 of the West Pakistan Civil Servants Pensions Rules, 1963, bars the grant of pension during the period of suspension, and Rule 54 cannot be invoked to circumvent this restriction. He further submitted that the employee is under-trial and suspended pending criminal proceedings; therefore, releasing pension or benefits at this stage would amount to conferring an undue advantage on the employee.

5. Heard and perused the material available on record.

6. First and foremost, it is the principal duty of the concerned department to ensure that all matters provided under the law are strictly adhered to and implemented in their true letter and spirit, in the manner prescribed therein. Deviation from the statutory mandate not only undermines the rule of law but also loses public confidence in institutional integrity. This principle has been pronounced by the Honourable Supreme Court of Pakistan in the case of **Jeehand v. The State, 2025 SCMR 923**, wherein it was held that:

*4. It is a well-established principle of criminal jurisprudence of law arising out of maxim "Communiobservantia non est recedendum" that when law required a thing to be done in a particular manner, the same must be done accordingly and if the prescribed procedure was not followed, it would be presumed that the same had not been done in accordance with law, as held in the case of Noman Mansoor v. State (PLD 2024 SC 805). This principle becomes more inflexible in cases arising out of the special enactments like the Act of 1997, which carries stringent provisions for an accused. Where the sentence is severe very strong evidence is required to prove the charge; reliance can be placed on the cases of Ahmed Ali v. State (2023 SCMR 781), Ameer Zeb v. State (PLD 2012 SC 380) and Muhammad Hashim v. State (PLD 2004 SC 856), Similarly, the rules and regulations have the force and effect of law. The rules and regulations are the product of delegated power to create new or additional legal provisions that have the effect of law.*

7. The *ratio decidendi* of the said judgment reinforces the settled principle that where the law requires something to be done in a particular way, it must be done in that way alone, and all other modes are necessarily excluded. As per Part V of the Sindh Government Rules of Business, 1986, Rule 25 provides the mechanism and prescribes the process for consultation among departments. Subsequent rules specify the departments to be consulted in particular matters. In the present case, consultation took place between the Finance Department and the Services and General Administration Department. For ease of reference, Rules 26 and 28, which are relevant in this context, are reproduced as follows:

**26. Services and General Administration Department. -**

*(i) The Services & General Administration Department shall responsible for: -*

*(a) determining the principles of recruitment, conditions of service, discipline and control of Government servants*

*(b) co-coordinating the policies of all Departments with respect to the services under their control so as to secure consistency of treatment;*

*(c) securing to Government servants, the rights and privileges conferred on them by or under the Constitution or any other law for the time being in force;*

*(d) determining the strength and the terms and conditions of service of the personal staff of Ministers;*

*(e) disposing of the petitions of the members of all Pakistan Services addressed to the President; and*

*(f) selecting officers, other than those of the rank of Secretary and above, for appointment under the Federal Government.*

*(ii) No Department shall, without concurrence of the Services & General Administration Department, issue any order, other than an order in pursuance of any general or special delegation made by that Department involving :-*

*(a) change in the scope of functions of a Department as specified in Schedule II, or transfer of functions from one Department to another;*

*(b) re-organization or change in the status of Attached Departments or Regional or other offices directly administered by the Department;*

*(c) interpretation of rules and orders relating to service matters other than rules and orders issued by the Finance Department; and*

*(d) change in the terms and conditions of service statutory rights and privileges of or Government servants.*

*(iii) No order in respect of emoluments or terms and conditions of service of any person working in the Finance Department shall be passed and no proposal for expenditure relating to that Department shall be sanctioned without prior concurrence of the Services & General Administration Department and for these matters the Chief Secretary shall exercise the functions of the Secretary, Finance Department.*

## **28. Consultation with Finance Department -**

*(i) No Department shall, without prior concurrence of the Finance Department, issue any order, other than an order in pursuance of any general or special delegation made by the Finance Department, which directly or indirectly affects the finances of the Province or which involves -*

*(a) relinquishment, remission or assignment of revenue, actual or potential or grant of guarantee against it; or grant of land or lease or license of mineral, forest or water-power rights;*

*(b) expenditure for which no provision exists;*

*(c) change in the number or grading of posts or terms and conditions of service of Government servants, or their statutory rights and privileges having financial implication;*

*(d) levy of taxes, duties, fees, or cesses;*

*(e) floatation of loans;*

*(f) re-appropriations within budget grants;*

*(g) alteration in financial procedure or in the method of compilation of accounts or the budget estimates; and*

*(h) Interpretation of rules made by the Finance Department.*

*(ii) No amendment or interpretation of such rules of the Civil Services Rules, as have no financial implication shall be made by the Finance Department without the prior concurrence of the Services and General Administration Department.*

*(iii) Except to the extent of the power delegated under rules framed by the Finance Department, every order of a Department conveying sanction to be enforced in audit shall be communicated to the audit authorities through the Finance Department.*

8. Under the aforesaid Rules, it is manifest that the domain of the above-mentioned departments does not extend to rendering any conclusive determination on a legal issue. Their role is limited by the administrative and financial parameters defined under the Sindh Government Rules of Business, 1986. In the present matter, the learned Law Officer sought time to obtain instructions concerning Rule 53 of the Fundamental Rules (F.R.). Even otherwise, questions involving legal questions and interpretation of statutory provisions squarely fall within the consultative domain of the Law Department. In this respect, Rule 29 of the Rules of 1986 clearly prescribes the procedure for seeking legal advice from the Law Department in matters involving legal questions or interpretation. For ready reference, Rule 29 is reproduced as under:

***29. Consultation with Law Department.***

*(i) The Law Department shall be consulted by a Department on -*

*(a) legal questions arising out of a case;*

*(b) the interpretation of any law;*

*(c) feasibility of instituting or defending civil or criminal proceedings in which Government is involved; and*

*(d) every proposed legislation in accordance with these rules.*

*(ii) No Department shall issue any statutory rules, regulations, notifications or orders unless these are vetted by the Law Department.*

*(iii) The Law Department shall vet and give legal form to every proposed legislation sent by a Department:*

*Provided that legislation of purely formal character may be initiated by the Law Department in consultation with the Department concerned.*

*(iv) No Department shall consult the Advocate-General, except -*

*(a) through the Law Department;*

*(b) in accordance with the procedure laid down by the Law Department; and*

*(c) on specific points.*

*(v) In case of disagreement between the Advocate General and the Law Department. The views of both the Law Department and the Advocate General shall be conveyed verbatim to the Department concerned, which, if it does not accept the view of the Law Department, shall submit the case to the Law Minister for decision and, if necessary, the case shall be placed before the Chief Minister.*

9. In the present matter, it has come on record that since November, 2024, a letter was issued by the District Accounts Officer to the Finance Department seeking guidelines in the matter; however, despite the lapse of considerable time, no final decision has been conveyed. Consequently, the Petitioner as well her employee husband have been left at the mercy of the departmental process, awaiting resolution of his grievance, which situation is neither necessary nor in consonance with principles of good governance and administrative fairness. Instead of allowing the matter to linger indefinitely, it was incumbent upon the concerned principal department to promptly seek consultation on the legal issue, in accordance with the prescribed procedure. Indeed, Article 24-A of the General Clauses Act, 1897, obviously mandates that public functionaries must act reasonably, justly, and fairly while exercising statutory powers or performing official duties. For ready reference, the same is read as under:

*[24A. Exercise of power under enactments. – (1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.*

*(2) The authority, office or person making any order or issuing any*

*direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be for issuing the direction and shall provide a copy of the order or as the case may be, the direction to the person affected prejudicially.*

10. Section 24-A of the General Clauses Act, 1897, mandates that statutory powers be exercised reasonably, fairly, and justly, for the law, and requires the executive to provide reasons for its decisions. Any action contrary to these principles is liable to be struck down. Reliance is placed upon the case of **Muhammad Amin Muhmamad Bashir Limited v. Government of Pakistan through secretary ministry of finance and others 2015 SCMR 630 Muhammad Ashraf Tiwana and others 2013 SCMR 1159 and Habibullah Bhutto v. Collector Customs and another 2011 SCMR 1504.**

11. Now, as regards the material point, the employee was suspended merely on account of the pendency of a criminal case; however, his pensionary benefits were also withheld by the department solely on that basis. It is a settled principle of criminal jurisprudence that every accused person is presumed to be innocent until proven guilty. As stated in Section 177, Chapter 22, page 428 of *Salmond on Jurisprudence by Sir John Salmond (12th Edition)*, *“a person accused of any offence is presumed to be innocent.”* This doctrine forms the foundation of criminal justice and safeguards the accused from adverse consequences before lawful conviction. The Latin maxim *“Actor in criminibus filius legume faventissimusest”* means: *“The accused in criminal matters is the most favored child of the law.”* This maxim reflects the settled approach of criminal law that an accused is to be treated with utmost protection unless guilt is established through due process. It is equally well established by the dictum of the Superior Courts that the benefit of doubt must go to the accused, as the accused is the favorite child of the law. Support is drawn from the judgment of the Honourable Supreme Court of Pakistan in **Rajesh alias Rajoo v. The State, 2025 SCMR 1876.**

12. At the moment, having perused the relevant provisions of law, attention is drawn to **Chapter VIII of the Sindh Civil Services Rules, Volume I.** For clarity and proper appreciation, Rule 151 is reproduced below:

151. A Government servant under suspension is entitled to the following payments: -

*[(a) Pay as admissible before suspension.]*

*[(aa)] In the case of a military officer who is liable to revert to military duty, to the [\*\*\*\*] to which he would have been entitled had he been allowances suspended while in military employment.*

*(b) In any other case, such allowance as the Government may from time to time by general or special order sanction.]*

*Provided that the suspending authority may direct that the Government servant under suspension shall be granted in addition such compensatory allowance (e.g., Dearness allowance) as the Government of Sind may sanction by general or special order for issue under this proviso.*

13. Furthermore, Rule 156 is to be read in conjunction with the foregoing, as it prescribes the procedural framework to be followed. For ease of reference and proper appreciation, the said rule is reproduced as under:

*156. A Government servant committed to prison either for debt or on a criminal charge should be considered as under suspension from the date of his arrest and therefore entitled only to the payments specified in Rule 151 until the termination of the proceedings against him, when, if he is not removed or dismissed from service, an adjustment of his pay and allowances should be made according to the conditions and terms prescribed in Rule 152, the full amount being given only in the event of the Government servant being considered to be acquitted of blame, or, if the imprisonment was for debts, of its being proved that the Government servant's liability arose from circumstances beyond his control.*

14. A perusal of Rules 156 read with 151 makes it clear that a Government Servant, even if involved in a criminal charge or under imprisonment, is entitled to the payment specified in Rule 151. In particular, under Rule 151(a), a Government Servant under suspension is entitled to receive the payment admissible before suspension. Accordingly, once such a payment is recognized as admissible, the pensionary benefits cannot be withheld based on mere pendency of a criminal case.

15. Further, about pension, Rule 189 of the said rules clarifies that the Government may withhold pension only if the pensioner has been convicted of a serious crime or found guilty of grave misconduct. These provisions collectively establish that suspension or mere criminal

accusation does not routinely justify withholding pensionary benefits; only a lawful conviction for a serious offence or proven grave misconduct can warrant such action. For ready reference, Rule 189 is reproduced as under:

*189. Good conduct is an implied condition of every grant of pension. Government may withhold or withdraw a pension or any part of it if the pensioner be convicted of serious crime or be found to have been guilty of grave misconduct either during or after the completion of his service, provided that before any order to this effect is issued, the procedure referred to in Note 1 to Rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal Rules' shall be followed.*

16. Furthermore, in the **Civil Service Regulations**, Article 351 is of a similar nature to Rule 189. A combined reading of Rule 189 and Article 351 makes it evident that pensionary benefits cannot be withheld on the basis of mere suspension or pendency of criminal proceedings; they may be withheld only upon conviction for a serious offence or proven grave misconduct. For ready reference, Article 351 is reproduced as under:

*351. (1) Future good conduct is an implied condition of every grant of a pension. The Local Government, and the Government of Pakistan, reserve to themselves the right of withholding or with-drawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct.*

17. It is thus quite evident that the conditions for withholding pensionary benefits are limited in scope. **Rule 1.8(a) of the West Pakistan Civil Services Pension Rules, 1963**, aligns with the provisions of Rule 189 and operates on the same footing. For proper conclusion, the rule is reproduced as follows:

*1.8 (a) Good conduct is an implied condition of every kind of pension. Government may withhold or with-draw a pension or any part of it if the pensioner be convicted of serious crime or be found to have been guilty of grave misconduct either during or after the completion of his service, provided that before any order to this effect is issued, the procedure regarding imposition of the penalty of removal from service shall be followed.*

18. Additionally, Rule 9(41)(2A) of the Sindh Civil Services Rules, Volume I also prescribes a specific process in this regard. A perusal of the above demonstrates that the procedure for handling pensionary and other related benefits is clearly defined, and any divergence from the prescribed

process would be inconsistent with the legislative context. For ready reference and proper appreciation, the rule is reproduced as under:

*(2A) If the period of suspension of a Government servant, occurring during the last three year of service, has been treated as duty for pension, his pay during such period should be the pay which he would have drawn had he not been suspended. If the period of suspension has been converted into leave, other than extraordinary leave, his pay during such period should be calculated in accordance with clause (1). If the period of suspension is converted into extraordinary leave or is treated neither as duty nor as leave, it should be disregarded in the calculation of pensionable pay, an equal period immediately prior to the last three years being included.*

19. For further clarity, even if the employee is suspended during a pending enquiry, he shall be entitled to the benefit of abatement of disciplinary proceedings, as provided under **Civil Service Regulation, Article 417-A**, which reads as follows:

*[417-A. If an officer, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of the inquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.)*

20. Even under the **Fundamental Rules**, Rule 53 clearly provides that a Government Servant under suspension is entitled to the full amount of his salary, along with all other admissible benefits. **Rule 54-A** further stipulates that if a Government Servant is under suspension during a pending enquiry and attains the age of superannuation, the proceedings shall abate, and he shall retire with full pensionary benefits. For ready reference, Rules 53(b) and 54-A are reproduced as under:

*53 (b) In the case of a Government servant under suspension, other than that specified in clause (a), he shall be entitled to full amount of his salary and all other benefits and facilities provided to him under the contract of service, during the period of his suspension.]*

*[54-A. If a Government servant, who has been" suspended pending inquiry into his conduct attains the age of superannuation before the completion of inquiry, the disciplinary proceedings against him shall abate and such Government servant shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.]*

21. The issue involved is that, while the law provides a mechanism for the Government to recover losses from pensions in the event of a conviction, this principle have to be considered in context. In the instant

case, the petitioner is an under-trial prisoner (UTP) and has neither been convicted of a serious crime nor found guilty of grave misconduct. Consequently, the statutory mechanism for recovery of losses cannot be invoked against him at this stage. For the purpose of support and reliance on judgments, in case of **Syed Anwar Ali Shah v. Zarai Tarqiati Bank Limited through President and two others, 2021 PLC (CS) 662**, the Division Bench of this Court observed that Fundamental Rule 54-A does not permit authorities to withhold pensionary benefits; rather, it provides that a Government Servant who is suspended and attains the age of superannuation shall retire with full pensionary benefits. Similarly, in **BheruLal v. Pakistan Telecommunication Company Limited, C.P. No. 4039 of 2023, connected with C.P. No. D-6546 of 2016**, the Divisional Bench of this Court relied on Fundamental Rule 54-A and directed that the employee's retirement dues be finalized in full.

22. It is a well-settled principle that pension is a vested right and not a bounty, charity, or alms granted by the employer. It constitutes deferred compensation for services rendered diligently, with blood, sweat, and toil, and is legally protected as a property right. Reliance in this regard may be placed upon **Muhammad Yousaf v. Province of Sindh and others, 2024 SCMR 1689**, and **Haji Muhammad Ismail Memon, PLD 2007 Supreme Court 35**. Similarly, in India, the Supreme Court has consistently held that pension is a vested legal right of an employee, forming deferred compensation for past services, and cannot be treated as a matter of discretion. Pension is payable according to the rules, and a Government servant who comes within those rules is entitled to claim it. Illustrative judgments include **Deokinandan Prasad v. State of Bihar and others [AIR 1971 SC 1409]**, **State of Punjab v. K. R. Erry and SobhagRai Mehta [1973 SCR (2) 405]**, **D.S. Nakara and others v. Union of India [1983 SCR (2) 165]**, and **All India Reserve Bank Retired Officers v. Union of India and others [AIR 1992 SC 767]**.

23. For the foregoing reasons and after due consideration of the record, the instant petition is hereby allowed. The respondents are directed to immediately finalize the retirement, pension, and all pensionary benefits of the petitioner, without any prejudice on account of his status as an under-trial prisoner or being under suspension. All dues, in every form

and head of pensionary entitlement, shall be released to the petitioner forthwith, without any further delay. The respondents are further mandated to ensure strict compliance with this order, in both letter and spirit.

*JUDGE*

*JUDGE*