

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**Constitution Petition No. D- 193 of 2023***(Abid Hussain Talpur vs. Province of Sindh & others)***Constitution Petition No. D- 831 of 2023***(Irshad Begum Korai vs. Province of Sindh & others)***Constitution Petition No. D- 1544 of 2023***(Shabbir Ahmed vs. Province of Sindh & others)***Constitution Petition No. D- 1822 of 2023***(Sadaruddin Mirani vs. Province of Sindh & others)***Constitution Petition No. D- 1823 of 2023***(Khan Muhammad Mirani vs. Province of Sindh & others)***Constitution Petition No. D- 134 of 2024***(Mst. Zakia Chachar vs. Province of Sindh & others)***Constitution Petition No. D- 268 of 2024***(Rajib Ali Jogi vs. Province of Sindh & others)***Constitution Petition No. D- 272 of 2024***(Mst. Haseena vs. Province of Sindh & others)***Constitution Petition No. D- 285 of 2024***(Qurban Ali Soomro vs. Province of Sindh & others)***Constitution Petition No. D- 315 of 2024***(Mst. Sadaf Naz vs. Province of Sindh & others)***Constitution Petition No. D- 608 of 2024***(Hussain Bux vs. Province of Sindh & others)***Before;**

Adnan-ul-Karim Memon, J;
Muhammad Abdur Rahman, J;

Date of hearing and Order: 22.05.2024.

M/s Sohail Ahmed Khoso, Alam Sher Bozdar, Rashid Khan Durrani, Abdul Naeem Pirzada, Muhammad Qayoom Arain, Abdul Qadeer Khoso, Mir Ali Nawaz Khan Jagirani, Irshad Hussain Dharejo, Seenghar Ali Shar, Syed Mujahid Ali Shah, Farhan Ali Dayo Advocates for the petitioners.

M/s Liaquat Ali Shar, Ali Raza Balouch, Ghulam Mustafa Abro Addl. A.G and Assistant A.G Sindh along with Hazoor

Bux Memon, District Accounts Officer, Sukkur, Nisar Ahmed Oadho and Secretary Market Committee Pano Akil.

ORDER

Adnan-ul-Karim Memon J:- These matters pertain to the pensionary / service benefits of the petitioners and /or family pension, which are of paramount consideration and this is the reason that all the pension matters are being taken up together for disposal, as the common question of law is involved in these matters.

2. The case of the petitioners is that they/ their husbands/family members were government employees and working in deferent departments of Government of Sindh and stood retired from their respective services and after retirement, they are roaming from pillar to post for the release of their pensionary / service benefits up to date, on the premise that the aforesaid service benefits have not been released to them due to which they along with their families are passing the lives of starvation, hence in the dismal circumstances they finding no other way have filed the instant petitions.

3. Learned AAG along with officers of respective departments has submitted that so far as the issue of pension of Market Committees is concerned, is corporate body i.e. supposed to generate its funds in terms of Section 16 of Agriculture produce Markets Act, 1939 and the Government of Sindh is not supposed to allocate the funds to the employees who had been appointed by the said committee and their employees were/are under their control. Officials present in Court representing Market Committee submit that they have to generate their funds for meeting their day to day expenses including disbursement of salaries. Learned Additional A.G Sindh have added that the pensioners of Market Committees were governed under Sindh Service Rules 1983 vide notification dated 04.06.2012 wherein the payment of monthly pension and outstanding amount are required to be paid by the market

committee concerned where a member of service retires or the case may be passed away, therefore, Chairman Market Committee and Secretary Market Committee concerned are legally authorized to make payment of pensioner benefits to the employees of Market Committee. Be that as it may it is for the competent authority to see this aspect of the case as the pension issues of market committees and Local Government Departments are piling up before this Court for releasing of their pensionary benefits and the official of both the departments simply state that they have merger funds to pay pensions to the pensioners of Market Committees as well as respective Town Committees, respective Union Councils, District Councils and Municipal Corporation Sukkur. Learned AAG further pointed out that so far as the issue of pension case of petitioner Shabbir Ahmed is concerned, there are certain requirements to be made at the end of petitioner. Be that as it may, the intricate issues need to be resolved by the respective Heads of the departments.

4. In view of the above, we are constrained to observe that pension, like salary, is a regular source of livelihood, and thus is protected by the right to life enshrined in and guaranteed by Article 9 of the Constitution. In principle, there seems no room to disagree with the plea / legal position that the right to life of a person/citizen shall include the right to livelihood and such right, therefore, cannot hang on to the fancies of individuals in authority; and, the pension is not a bounty from them i.e. individuals in authority, nor can its survival be at their mercy. This is a matter of grave concern that for several years, the long and unjustified delay in payment of pensions has been a source of tremendous hardship and humiliation to retiring officials and their families. Despite strictures and orders passed by the Supreme Court of Pakistan in its various pronouncements and simplified guidelines laid down by the Government, petitions on account of delay persist, merely saying lack of funds is not sufficient to deny the rights of the pensioners. Prima facie, the pensioners have a qualifying length of service to their credit and they gave various reasons to claim the interest on

the delayed payments on the premise that they stood retired from services in their respective years, however, in violation of law, they have been denied the pensionary benefits in some of the cases arrears which has triggered the cause and hardship to the petitioners to approach this Court.

5. We have heard learned counsel for some of the petitioners as well as learned counsel(s) representing the respective departments as well as learned A.A.G on the subject issue and perused the record with their assistance. However, no serious objection has been raised by them leaving this court to refer the matters to the competent authority to see all the aspect of the case as the pension issue is to be resolved as early as possible for the reason that no pension granted or continued to the pensioner is liable to seizure by the department under Pension Act, 1871, and the rules, framed thereunder. Besides, there is no power for the Government to withhold Gratuity and Pension. Even it does not give any power to withhold any service benefits at any stage either before the proceeding or after the conclusion of the proceeding, if any.

6. Learned counsels for the petitioners have pointed out that the pension of the pensioners has been withheld/ are not being paid regularly without assigning any cogent reason. In our view, pensionary benefits cannot be stopped and/or withhold and, is violative of the law laid down by the Supreme Court in the case of *Haji Muhammad Ismail Memon*, **PLD 2007 SC 35**, the issue needs to be resolved firstly at the end of Heads of their respective departments.

7. In the light of the foregoing, we direct the Chief Secretary Sindh, to constitute a committee headed by him; and, the head of the concerned departments where the petitioners/their families have served and retired from service. The representative of Accountant General Sindh's office and other accounts officers of the concerned departments/heads of Market/Municipal Committees shall attend the office of the Chief Secretary, on the date and time so fixed by him, to resolve the issue of pension and service benefits of the

pensioners, including family pension and other ancillary matters including arrears if any outstanding, in its true perspective, within one month; and if they are entitled under the law, their pensions /service benefits must be released, if not already paid, strictly in terms of the ratio of the judgment passed by Supreme Court in the case of Haji Muhammad Ismail Memon, supra. They are also directed to recalculate the pensionary benefits of the petitioners and increases accrued on the withheld pensionary benefits/arrears with effect from the date of their retirement to date and take prompt disciplinary action against all delinquent officials who in their lethargic attitude failed and neglected to release the service benefits of the petitioners. Such disciplinary proceedings shall be initiated against them forthwith and culminate into its logical conclusion within a reasonable time after providing a meaningful hearing to them.

8. These petitions stand disposed of in the above terms. Let notice be issued to the Chief Secretary, Government, Sindh, the competent authority of respondents, Accountant General Sindh; and, the Accounts officers concerned/ heads of Market/Town Committees concerned, for compliance. Such compliance report be submitted through the Additional Registrar of this Court.

JUDGE

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