

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
**Constitution Petition No. D-1417 of 2022**

*(Abdul Samad Jatoi Vs. Province of Sindh & others)*

|                 |                               |
|-----------------|-------------------------------|
| DATE OF HEARING | ORDER WITH SIGNATURE OF JUDGE |
|-----------------|-------------------------------|

**Before;**

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

**Date of hearing and order: 29-05-2024.**

Mr. Yaseen Ali Khoso, advocate for the petitioner.  
 Mr. Touqeer Ahmed Domki advocate for respondents/WAPDA.  
 Mr. Shehryar Imdad Awan, Assistant A.G, Sindh.

\*\*\*\*\*

**ORDER.**

**Adnan-ul-Karim Memon J:-**Petitioner Abdul Samad has approached this Court for enforcement of the judgments passed by the Supreme Court in the cases of *I.A. Sherwani Vs. Government of Pakistan through Secretary Finance Division Islamabad (1991 SCMR 1041)*, *Re. Pensionary Benefits of Judges of Superior Courts (PLD 2013 SC 829)* and *Haji Muhammad Ismail Memon (PLD 2007 SC 35)* on the premise that he was serving as Head Dispenser in respondent-WAPDA Hospital Sukkur, and retired from service on 07-05-2019, however, the respondent-WAPDA has refused to release/re-reimburse the deducted amount of Rs.1,18,197 and erroneously issued the letter dated 26-04-2019 whereby the respondent-WAPDA reviewed the fixation of his pay with effect from 01-12-1993. An excerpt of the order is reproduced as under:-

*“On scrutiny of service book Part-II Page No. 14, it has been observed that the official granted move over from BPS-06 to BPS-07 w.e.f 01-12-1993 which is not under the rule because at least one year stay at the maximum of pay scale is essential for move over in higher scale.*

*It is requested to please look into the matter and review the pay fixation w.e.f 01-12-1993. Service book (all parts) returned herewith for necessary action at your end. After doing the needful, same alongwith revised LPC may also be returned to this office to proceed further in the matter”.*

Learned counsel for the petitioner has submitted that pensionary benefits cannot be withheld under the law and his arrears/commutation amount Rs.1,18,197/- needs to be released to him, which has been erroneously deducted from the pension of the petitioner. Learned counsel contended that the petitioner had received the moreover benefit bona fide and that once paid to him in the year 1993 the same could not be recovered from pensionary benefits. He added that the application of the principle of locus poenitentiae is that once the Government employee has received payment bona fide such payment is not recoverable from him even if it has been paid by the Government on account of some mistake. He prayed for allowing the petition.

The aforesaid stance has been refuted by respondents No. 2 to 6 by filing comments with the narration that two advance increments were granted to the petitioner on account of possessing higher qualification; that as per Rule-8 (2) of the Pakistan WAPDA Subordinate Employees (pay revision) Rules 1972, when any employee reached the maximum of the pay scale, he shall be brought to the next higher pay scale with effect from 1<sup>st</sup> December of the year which he completes one year of such service; and, upon scrutiny of the service book of the petitioner, which explicitly show that he was granted move over from BPS-06 to PBS-07 with effect from 01-12-1993, which was not under the rules because at least one year stay at the maximum pay scale was/is essential for the move over in the higher scale; since he did not complete his maximum period, he was held to be not entitled to move over of such period, as such recovery of excess amount was ordered by the competent authority and such order was issued before his retirement. He prayed for the dismissal of this petition.

We have heard the learned counsel for the parties present in Court and perused the material available on record.

The question is whether the benefits of move over granted to the petitioner during the service can be recalled/recovered once it was acted upon. It is settled now that locus poenitentiae is the power of receding till a decisive step is taken. But it is not a principle of law that order once passed becomes irrevocable and it is a past and closed transaction. If the order is illegal, then perpetual rights cannot be

gained based on an illegal order. The respondents when came to know that based on the incorrect approach, the petitioner was granted move over, they withdrew the benefit just before his retirement. Be that as it may, the respondents took conscious decision at the relevant point and time and granted two advance increments to the petitioner on account of his higher qualification in the year 1995; and, before that the petitioner was granted move over from BPS-06 to BPS-07 with effect from 01-12-1993. Then the question arises as to how the respondents remained mum for longer period and waited for the retirement of the petition and realized their mistake on the premise that petitioner failed to complete one year of his service when he reached the maximum of pay scale under officer memorandum dated 21-02-1993. Since the move over is not promotion and is just an incentive and the office memorandum clarifies that the concession of move over BPS-15 to BPS-16 is based on certain conditions and at the relevant time petitioner claims that he fulfilled the conditions. Be that as it may, these are intricate questions needs to be resolved by the competent authority of respondents within reasonable time for the reason that locus poenitentiae conceptually connotes, that authority which has the jurisdiction to pass an order and take an action has the due authority to set aside, modify and vary such order/action, however, there is an exception to this rule i.e. if such order/action has been acted upon, it creates a right in favour of the beneficiary of that order, etc. and the order/action cannot thereafter be set aside/modified, etc. to deprive the person of the said right and to his disadvantage. However, it may be pertinent to mention here, that as pointed out in the preceding part, no valid and vested right can be founded upon an order, which by itself is against the law.

We are therefore clear in our minds that only where lawful orders have been passed by an authority having the power to do so under the relevant law and a person bona fide receives a benefit under the said law without any positive action on his part, such beneficiary can claim a right under the exception to the principle of locus poenitentiae and claim that the benefit bonafide received by him under a lawful order passed by the competent authority cannot subsequently be recovered under the protection available under the exception to the

aforesaid rule, therefore the recovery of such an amount from the pensionary benefits is hereby halted till decision on the subject issue by the competent authority as discussed in the preceding paragraph.

For reasons recorded above, we dispose of this petition with a direction to the competent authority of the respondents to reconsider the decision of recovery of the benefit of move over granted to the petitioner. The aforesaid exercise shall be completed within two weeks.

This petition stands disposed of in the above terms.

**Judge**

**Judge**

Nasim/P.A