

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-6025 of 2024

(Dr. Pritam Das Jesrani v Province of Sindh & others)

Date	Order with signature of Judge(s)
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Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:-15.01.2025

Mr. Jehangir advocate for the petitioners.

Mr. Ali Safdar Depar AAG along with Shafique Ahmed Ujjan Section officer

ORDER

Adnan-ul Karim Memon, J; Petitioner Dr. Pritam Das Jesrani prayed this court to declare FIR No. GO-10/2024 registered of P.S ACE Korangi, Karachi lodged against him illegally, quash the proceedings; and set aside the letter dated 22nd July 2024, where his pension has been withheld.

2. Dr. Pritam Das, former Medical Superintendent at Sindh Government Hospital, Korangi, was transferred without the Chief Secretary's approval, allegedly due to the influence of favored individuals. Despite serving his last 7 months at Civil Hospital Karachi, he received no show-cause notice or explanation from the Health Department or SG&AD. Petitioner claims that he has an impeccable service record and has dedicatedly served the health sector, however during his service one FIR No. GO-10/2024 was registered against him with the allegations that the Petitioner embezzled Rs. 13,802,487 of government funds through fraudulent bills, in collusion with M. Kamran Khan and Afaq Ahmed Khan, which trigger caused the respondents to stop his pensionary benefits after his retirement by the respondent department as well as Accountant General Sindh with effect from July 2024 vide endorsement letter dated 10.01.2025.

3. It is averred by the counsel for the petitioner that the petitioner was falsely accused in the FIR of financial irregularities, including preparing bogus bills and embezzling Rs. 13,802,487 during his six-month tenure as Medical Superintendent. However, the Anti-Corruption Department, after a thorough investigation and with ACE approval, issued a clean chit to the Petitioner, finding no misconduct or financial irregularities. The current FIR, filed three years later, constitutes a violation of the principle of double jeopardy, which prohibits prosecution for the same offense twice. The FIR appears to be a concerted effort by officials from SGA&CD, the Health Department, and the Anti-Corruption Department to wrongfully target the Petitioner. The FIR itself contains contradictions, such as alleging the Petitioner's involvement in activities before

his posting, which demonstrates the respondents' malafides and bias. As per counsel the Petitioner fully cooperated with the Anti-Corruption Department's inquiry, producing all relevant records as requested. The inquiry concluded on March 18, 2022, and resulted in a clean chit for the Petitioner, with the Chairman of E&ACE agreeing with the inquiry officer's recommendation to close the matter. He further submitted that the Petitioner retired on December 31, 2021. After retirement, all formalities were completed with approvals from the Health Department, Civil Hospital Karachi, and the SGA&CD. The Petitioner after 35 years of service, received No-Dues certificates from the Health Department and SGA&CD. Following the completion of all codal formalities, the Petitioner received pension, gratuity, and GP Funds. The Health Department and SGA&CD issued official letters to this effect on April 18, 2022. Per learned counsel, the pensionary benefits cannot be withheld on account of the pendency of a criminal case and/or departmental proceedings after the lapse of 02 years from the date of retirement. Learned counsel further submitted that if the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement, he shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualifies for pension or gratuity. Learned counsel further submitted that under the law if a government servant, who has been suspended pending an inquiry into his conduct attains the age of superannuation before the completion of the inquiry, the disciplinary proceedings against him shall abate and the government servant shall retire with full pensionary benefits and the period of suspension shall be treated as a period spent on duty. Learned counsel relied upon the cases of *Nasir Kamal v Federation of Pakistan & others* **2021 PLC (C.S) 1226**, *Abdul Wali v Wapda through its Chairman and others* **2004 SCMR 678** and *Province of Punjab & others v Jawed Iqbal* **2021 SCMR 328**. He prayed for allowing the instant petition.

4. Mr. Ali Safdar Depar, AAG, opposed the petition by referring the statement filed by the Health Department Government of Sindh. He argued that the petitioner's pension is withheld due to pending disciplinary proceedings related to illegal payments, resulting in a loss of Rs. 13,802,487/- to the government. The AAG stated that despite reaching superannuation in 2021, the petitioner's retirement benefits were withheld. He cited the West Pakistan Civil Service Pension Rules, which allow the government to recover losses from a pensioner's pension if caused by negligence or fraud during service. However, he agreed to the extent that departmental proceedings must be initiated within a year of retirement. Per learned AAG the government reserves the right to recover losses from his pension, on the premise that his pension was stopped under West Pakistan Civil Services Pension Rules 1964 read with Sindh Civil Servant (E&D)

Rules 1973, citing relevant case law (*Government of NWFP v. Muhammad Said Khan*, **PLD 1973 SC 514**) and pension rules. He requested the court to dismiss the petition, allowing the government to proceed with disciplinary action and subsequent pension recovery if warranted. Learned AAG has also opposed the petition on the ground that the petitioner is facing criminal proceedings and till its conclusion the pension of the petitioner cannot be released, as Accountant General Officer was requested to stop his pension, however he added that the petitioner was accorded hearing on 20.09.2024 and further hearing is scheduled by the SGA&CD. As per learned AAG 15% monthly pension of the petitioner has been allowed as the financial laws amounting to Rs. 7.760 million has been calculated which result of inquiry is awaited.

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

6. Prima facie this is a hardly a ground to stop the pension after completion of two years of his retirement as petitioner ceased to be a civil servant after his retirement and disciplinary proceeding can only be initiated against the civil servant, so far as his pension is concerned the clog of one/two years has been set forth for initiation of inquiry, if initiated before the retirement of civil servant, however in the present case the petitioner was retired in the year 2021 and after considerable period of time the respondent initiated disciplinary proceeding in the year 2024 based on the inquiry report dated 28.04.2022, therefore the department is well within its right to initiate the recovery proceeding if the petitioner is found indulged but no decision can be taken under disciplinary rules after his retirement as discussed supra.

7. This matter pertains to the pensionary benefits of the petitioner, who retired in 2021 and his pensionary benefits have been withheld by the respondents, on the ground that the Petitioner embezzled Rs. 13,802,487 of government funds through fraudulent bills, in collusion with M. Kamran Khan and Afaq Ahmed Khan, which is of paramount consideration. However, it is well-settled law that no pension granted or continued to the pensioner is liable to seizure by the department under the Pension Act, of 1871, and the rules, framed thereunder.

8. So far as the stance of the respondents that pensionary benefits could be withheld on account of the allegations leveled against the petitioner, in our view, section 20 of the Sindh Civil Servants Act of 1973 deals with the pension and gratuity that civil servants are entitled to. However, the act does provide for certain circumstances under which a civil servant's pension may be withheld or reduced. These include if a civil servant is found guilty of misconduct or negligence during their service, their pension may be withheld or reduced. If a

civil servant is convicted of a serious crime, their pension may be withheld or reduced. In some cases, a civil servant's pension may be withheld or reduced if he/she fails to comply with certain conditions set by the government. In other circumstances as discussed supra pensionary benefits cannot be stopped on account of criminal charges after the retirement of two years; and, is violative of the law laid down by the Supreme Court in the case of Haji Muhammad Ismail Memon, **PLD 2007 SC 35**. Thus, the competent authority of the parent department of the petitioner and the Chief Secretary, Sindh, are liable to release the pensionary amount of the petitioner and pay the pension amount and other ancillary benefits to the petitioner to which he is entitled under the law within two months from the date of receipt of this order. The competent authority of the respondent is also directed to recalculate the pensionary benefits of the petitioner and increases accrued thereon the withheld pensionary benefits with effect from stopping to date.

9. The petitioner's retirement preceded the initiation of departmental proceedings by three years. The delayed issuance of a show-cause notice and the subsequent lack of action constitute negligence on the part of the respondent department. Since no disciplinary proceedings were finalized before his retirement, they cannot legally bar the petitioner's pensionary benefits based on criminal charges as the department's allegations remain unsubstantiated and unproven in a court of law. Therefore, this Court cannot presume the petitioner's guilt based on mere allegations. As such the petition is dismissed in terms of paragraph 8 of this order.

JUDGE

JUDGE