

ORDER SHEET

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
C. P No. D – 406 of 2024**

Date of hearing	Order with signature of Judge
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For directions

For hearing of CMA No.4346/2024 (C/A)

03.10.2024

Mr. Mansoor Ali Panhwar associate of Mr. Muzafar Ali Dahraj, Advocate for the petitioner

Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh along with Hassan Jan Changezi, District Accounts Officer, Naushahro Feroze on behalf of Accountant General Sindh

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Learned AAG has filed statements of respondents No.2 and 4, taken on record, copy supplied to counsel for the petitioner.

This Court vide its order dated 18.09.2024 posed a query to the officer present to provide the legal mechanism in terms of which excessive pensionary amount once credited in the family pension can be recovered. He has filed statement relying upon the Para 1.8(c) of the West Pakistan Civil Servants Pension Rules, 1963, which is reproduced hereunder;-

"In the case the amount of pension granted to a Government servant be afterwards found to be in excess of that to which he is entitled under the rule, he shall be called upon to refund such excess."

And as well as Paragraph 215, which is also reproduced hereunder;-

"Recoveries may not ordinarily be made at a rate exceeding one third of pay unless the Government servant affected has in receiving or drawing the excess, acted contrarily to orders without due justification."

The Officer present in person states that since the pensionary amount is excessively credited in favour of the petitioner, therefore, she is responsible to clear the debt.

To the contrary, that the civil servant had two wives, the petitioner is the only surviving widow, whereas the other wife has since died, both wives were given 100% pension of the deceased, whereas each of them was to be paid 50%. The fact is that one of the wives has died who admittedly may have obtained 50% of the additional sums. No monetary claim of such can be made against that person, now the sum payable by the petitioner these cannot exceed 50% of the additional sum paid by the department.

Learned counsel for the petitioner has relied upon the case of Abdul Hayee Ex.SST(G) vs. Accountant General Balochistan and others reported as 2024 P L C (C.S) 393, where the petition was disposed of with the following orders;-

“3. Heard. Perused the record. The perusal of record reveals that the predecessor of petitioners was granted time scale of (BPS-19). After retirement the respondent No.1 issued notice for recovery of an amount of Rs.1552068/- w.e.from 01.11.2015 to 28.02.2021. The respondent No.1 issued pay-slip to the predecessor of petitioners, whereupon he received the amount. There is no allegation that the predecessor of the petitioners had obtained the fake pay-slip and received the amount fraudulently. The respondents have paid the salary, which creates vested right which cannot subsequently be taken away on mere assumption and supposition or on the whim of executive authority. Such right once vests cannot be withdrawn as legal bar would come into play under the doctrine of locus poenitentiae. The predecessor of the petitioners was being paid the salary of BPS-19 for six years, which is not his fault rather mistake of the department. As per principle of locus poenitentiae respondents cannot recover the salary and benefit received by the predecessor of the petitioners. Reliance is placed on the case of Shams-ur-Rehman v. Military Accountant General, Rawalpindi 2020 SCMR 188, whereby it has been held as under:

“4. Be that as it may, we have noted that in the judgment of the Tribunal this very aspect of the matter has been dealt with in para-10, where it was observed that the principle of locus poenitentiae does not mean that the benefit once accrued illegally in favour of any person would stand protected for all times to come. Learned counsel for the petitioner states that this very part of the judgment was sought to be reviewed but the Tribunal incidentally did not appreciate the same. For almost 9 years the petitioner has served in selection grade BPS-I5 and has received the emoluments and benefits of such post. It is not in dispute that the selection grade BPS-15 was granted to the petitioner by the department itself and the petitioner apparently had no role in obtaining the post of selection grade BPS-I5 for that no such allegation

whatsoever is made against him. The respondents have merely pleaded mistake, as only 25% of posts from BPS-11 were required to be filled in the selection grade BPS-15 and it was subsequently realized by the department itself that the petitioner did not fall within the 25% quota and thus was recalled from the post of selection grade BPS-15 and reverted him back to the post of BPS-11. For 9 years the petitioner performed the work of a higher post of selection grade BPS-15 and thus on the principle of locus poenitentiae the benefits paid to him, could not be recovered from him for that such principle would not apply. Further, in our view the principle of estoppel will also be applicable as against the department from recovering the emoluments and benefits of BPS-15 from the petitioner. In the case cited by the learned counsel for the petitioner, this Court has observed as follows:

"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 past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order. The appellants when came to know that on the basis of incorrect letter, the respondent was granted Grade-11, they withdrew the said letter. The principle of locus poenitentiae would not apply in this case. However, as the respondent had received the amount on the bona fide belief the appellant is not entitled to recover the amount drawn by the respondent during the period when the latter remained in the field."

Further in a similar case of Mst. Sajida Javed v. Director of Secondary Education, Lahore Division and others (2007 PLC (C.S.) 364), this Court held as follows:

"Appointment of the petitioner to the post of Senior School Teacher in BS-16 vide office order dated 11.03.1996 is not disputed. It is also not disputed that she actually served against this post in different Girls Middle Schools wherever posted. The fact that the department realized its mistake after about four years would show that petitioner herself was not at fault in procuring the appointment or her posting in different schools in Sheikhpura District by unfair means. By accepting the offer validly made to her by the Department on the basis of her qualification and training in the relevant field, a valuable right had accrued to the petitioner and she could not be made to suffer for the mistake or error of the officials of respondent-Department. Indeed, the offer had been accepted and actually acted upon for almost four years. The case would, thus, be governed by the principle of locus poenitentiae and, in our view, the Department cannot retrace the steps already taken and lawfully acted upon by the petitioner."

In view of above, the petition is allowed. The recovery of Rs.15,52,068/- imposed by the respondent No.1 on 08.04.2021 as mentioned in the Revised Last Pay

Certificate is ab-initio, illegal, void and as such is of no legal effect.”

Coming back to the question posed by this Court that is there legal mechanism for recovery of the excessive amount paid in terms of pension by the authority, the reliance is rightly placed on para 1.8(c) of the West Pakistan Civil Servants Pension Rules, 1963, where the maximum exemption to a pensioner is that he is called upon to refund such excessive amount and no penal or recovery mechanism is available under the law, probably, purposefully to restrict department to coercively recover such amounts.

In the circumstances at hand, where the rules has not made any provision for recovery of such excessive amount Rs.188,642/- against the present petitioner, the listed application is allowed and the respondents are directed not to make any recovery from the pension of the petitioner, which even is a meager amount of Rs.14301/- per month, so also direct them to release the blocked pensionary amount as well as arrears of the petitioner since 2021 within fifteen days hereof.

Judge

Judge