

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-7544 of 2021
(Aziz Ahmed & others *Vs Province of Sindh and others*)

Date	Order with signature of Judge(s)
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Before:-

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order: **27.3.2025**

Afaq Ahmed advocate for the petitioner
Mr. Talha Abbasi advocate for Dow University
Mr. K. A Vaswani AAG
Ms. Wajiha Mehdi, Assistant Attorney General

ORDER

Adnan-ul-Karim Mmemon J. The petitioners are employees of various departments at Dow University of Health Sciences, appointed between 1984 and 2016 under the Dow University of Health Sciences Act 2004 and preceding legislation. Following the 18th Amendment and the abolition of the concurrent list, the University, a public medical institution in Karachi, Sindh, falls under the Provincial government, as per the Sindh Universities Laws (Amendment) Act 2013. This Act transferred the power to appoint Vice Chancellors and Finance Directors to the Chief Minister, while the Governor distributes degrees during convocations. The 2013 Act aimed to ensure uniformity in the organization, management, and control of public universities and degree-awarding institutions in Sindh. The petitioners assert their entitlement to benefits like House Ceiling, Risk Allowance, Medical Allowance, and Annual Leave Encashment, which are granted to employees of other health universities and hospitals in the region.

2. The petitioners' counsel argued that they are entitled to a Health Risk Allowance, particularly due to their service during the COVID-19 pandemic, which began in Pakistan in early 2020. This allowance was mandated by the Sindh Government's Ministry of Finance through a letter dated July 20, 2020, effective from July 1, 2020. The letter stipulated monthly allowances of Rs. 17,000 for employees in Grades 1-16 and Rs. 35,000 for those in Grade 17 and above. However, the petitioners have received no payment, except for employees at the Ojha Institute of Chest Diseases (OICD), part of Dow University of Health Sciences (DUHS), who received it for only three months. The Finance Director of DUHS requested the release of Rs. 263.83 million from the respondent to pay the employees' arrears, but the respondents have failed to ensure payment. The counsel emphasized that other hospitals and universities are providing this allowance to their employees. He also highlighted that the petitioners, who have

served DUHS for many years, are also being denied other allowances, including Mess Allowance, Uniform Allowance, Nursing Allowance, and Health Risk Allowance, all mandated by the Sindh Ministry of Health. The counsel further asserted that employees of other universities are receiving these benefits. He argued that Article 4 of the Constitution requires due process and equal treatment under the law, and that the respondents, as public officials, are obligated to act lawfully, not arbitrarily. He concluded by requesting that the petition be granted.

3. Mr. Talha Abbasi, representing Dow University, objected to the maintainability of the petition on the premise that this is a policy matter, out of the jurisdiction of this court under Article 199 of the Constitution, argued that the petition is based on fabricated information and therefore lacks merit, and should be dismissed. He asserted that the payment of allowances is a policy matter determined by the employer's financial situation, and according to established legal principles, courts should not interfere with such policies. He further stated that employees of one autonomous institution cannot claim discrimination by comparing their pay and allowances to those of another, as Article 25 of the Constitution only guarantees equal treatment for employees in identical circumstances. He also argued that the petitioners lack legal standing and a valid cause of action, making the petition dismissible. He contended that the petition is based on factual disputes, misrepresentations, and incorrect legal interpretations, intended to mislead the court, and thus falls outside the court's jurisdiction. He concluded by requesting the petition's dismissal.

4. Ms. Wajiha Mehdi, Assistant Attorney General, and Mr. K.A. Vaswani, learned Additional Advocate General, aligned themselves with the arguments presented by the respondents' counsel and requested the dismissal of the petition.

5. We have heard learned counsel for the parties and have perused the material available on record.

6. The principle of equal pay for equal work is legally enforceable. Article 25 of the Constitution permits reasonable employee classification, provided it aligns with intended objectives. In this instance, the petitioner seeks enforcement of Sindh Government policies dated July 9, 2020, February 20, 2021, and June 2, 2020. Under Article 199, the court possesses the authority to review government policies for reasonableness if applicable in respondent university and to safeguard aggrieved parties' rights. Consequently, this petition is admissible based on established court precedents, and the respondents' objections are overruled.

7. The petitioners' counsel pointed out that a similar petition concerning COVID-19 Health Risk Allowance for Shaheed Mohtarma Benazir Bhutto

Medical University (SMBBMU), employees, resulted in the Sindh Finance Department allocating and releasing Rs. 24.376 million. However, it is pointed out that the Sindh Government ceased the Health Risk Allowance for all Health Department employees on October 13, 2022. The Secretary of Health confirmed that Rs. 73.920 million had been released to DUHS for Health Risk Allowance, covering the period from July 1, 2020. Nonetheless, the allowance was discontinued by the Sindh Government on October 14, 2022, and subsequently abolished due to the decline in COVID-19 cases.

8. After thorough arguments from both sides, the court directs the respondents' competent authority to examine the petitioners' cases. This examination should determine if the petitioners and their colleagues, who performed comparable duties in wards/labs, emergency rooms, trauma centers, or their offices, are eligible for the Health Professional and Special Health Care Allowance, or any related allowances, according to existing laws and policies. Those who do not meet the legal requirements will be excluded. This review is to be completed within three months of this order. However, its implementation is contingent upon policy decisions by the Sindh government and the respondent university. If the university adopts such a policy, or has adopted it, the allowances may be granted. If the university disagrees with the petitioners' claims after consultation with the Sindh Government, it must issue a reasoned order after providing the petitioners with a hearing.

9. Consequently, the petition and related applications are disposed of as directed.

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