

**HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

**CP No. D- 960 of 2024**

[ Patras Masih and others v. Province of Sindh & Others]

**BEFORE:**

**MR. JUSTICE MUHAMMAD SALEEM JESSAR**

**MR. JUSTICE NISAR AHMED BHANBHRO**

Petitioner:

Patris Masih

Through Mr. Yasir Ali Khoso, Advocate

Respondents 4, 5 & 7 :

Hyderabad Municipal

Corporation

Through Syed Shahzad Ali Shah, Advocate

Respondent No 6

Town Municipal

Corporation Hyderabad

Through Mr. Tanzeel Akhund Advocate

Province of Sindh:

Through Mr. Muhammad Ismail Bhutto,  
Addl. Advocate General

Date of hearing:

& Decision:

31.10.2025

**ORDER**

**NISAR AHMED BHANBHRO, J** - Through instant Constitutional Petition, the Petitioner has claimed following relief:

- A) *Direct the Respondents to release pending pensionary viz. gratuity, pension Difference, LPC 365 days encashment of Petitioner forthwith.*
- B) *Cost of Petition may very kindly be awarded to Petitioner.*
- C) *Any other Relief(s) which this Honorable Court deems fit, just and proper in favour of the Petitioner may be granted.*

2. Learned counsel for the petitioner made submissions that the Petitioner was an employee of Hyderabad Municipal Corporation (HMC). He was transferred to Town Municipal Corporation Pretabad (TMCP) in year 2023 wherefrom he retired on attaining the age of superannuation on 31.12.2023. He argued that both the HMC and TMCP were responsible to pay pension benefits to the petitioner but until now he was not paid a single penny by the Respondent No 4 to 7. He prayed to allow this petition.

3. Learned counsel for HMC (Respondents No 4, 5 & 7) controverted the submissions of the Petitioner Counsel and contended that the Petitioner was entitled to receive pension benefits from TMCP, as the Petitioner retired from service as an employee of TMCP. He further argued that HMC was not responsible to pay pension benefits of the Petitioner, as HMC was facing death of funds. He prayed to dismiss the petition to the extent of HMC.

4. Learned counsel for TMCP contended that TMCP was a newly established Council and had no sufficient sources to disburse the pension. He argued that both HMC and TMCP were responsible to pay pensionary benefits to the Petitioner. He further argued that TMCP was paying monthly pension to the Petitioner regularly, however for the pension benefits HMC is responsible to pay.

5. Learned A.A.G. submits that the petitioner will receive the pension from the Council where from he was retired. He prayed to dismiss the petition.

6. Heard arguments, perused the material made available before us on record.

7. Admittedly the Petitioner was conveyed retirement w.e.f. 31.12.2023 in the month of March 2024 from TMCP. Since his retirement Petitioner was treated as shuttlecock by HMC and TMCP by re-shifting the burden upon each other's shoulders. It is pertinent to mention that local councils receive plenty of funds each month in terms of OZT share for the development, payment of salaries and disbursement of pension amount. In order to secure the interest of employees the legislature in its own wisdom has obligated

each Council to establish a preventive fund for the benefit of its employees in terms of Section 125 of the Sindh Local Government Act, 2013. For the ease of reference it will be conducive to reproduce Section 125 of Sindh Local Government Act, 2013.

***“125. PROVIDENT FUND AND SOCIAL INSURANCE.- (1) A Council may, establish and maintain –***

*(a) provident fund for the benefit of its employees, who shall contribute to such fund in such manner and proportion as may be prescribed;*

*(b) pension d from which pension, shall, in the prescribed manner, be paid to the employees of the Council;*

*(c) benevolent fund, in the prescribed manner from which any special pension or gratuity, shall, in the prescribed manner be paid to the family of an employee of the Council, who dies of disease or injury contracted or suffered by him in the discharge of his official duties.*

*(2) A Council may operate a scheme of social insurance for its employees and require such employees to subscribe to such scheme in such manner and proportion, as may be prescribed.”*

8. Since the OZT share is not being utilized properly by the Local Councils as envisaged under Section 125; therefore, the employees were running from Pillar to post to get pensionary benefits. Unless each Council does establish its own pension fund for disbursing the pension of its own employees, the same situation will arise time and again as has occurred on this occasion where Petitioner is not being disbursed pension with a lame excuse of scarcity of funds and playing gamesmanship of shifting the burden to each other. This Court has time and again emphasized that Local Government Department must ensure that each Council established its pension funds in compliance to the provisions of Section 125 of Sindh Local Government Act, 2013 so that in future responsibility of paying pensions could be fulfilled accordingly.

9. The claim of respondent No. 4 that the Petitioner has retired from TMCP, therefore he will get pensionary benefits from the same TMC is not correct. Law provides in clear terms that the expenditure charged on the council shall also include the payment of sum of any Government employee

who is either working or has worked in the Council. Payment of amount of employees was kept as a charged expenditure in the budget of each council. The Legislature being live to such situations where employees performed job in more than one council resolved coined section 108 embodied in Sindh Local Government Act, 2013. Section 108 reads as under:

**108. Charged expenditure.-** (1) *The following expenditure shall be charged on the Local Fund, that is to say –*

- (a) *the money required for repayment of loans;*
- (b) *the money required to satisfy any judgment, decree or award against the council;*
- (c) *all sums to be paid to, or in connection with the employment of any Government employee who is or has been in the service of the Council;*
- (d) *any expenditure declared by Government to be so charged.*

(2) *If any expenditure charged on the Local Fund is not paid, Government may, by order, direct the person having the custody of the Local Fund to pay such amount, or so much thereof as may, from time to time, be possible from the balance of the Local Fund."*

10. From the perusal of above provisions of law, it is quite clear that a council is required to pay all sums to be paid to or in connection with the employment of any Government Employee who is or has been in the service of the Council. Since the Petitioner has been in service of HMC for a major portion of service and TMC Pretabad is recently established, therefore, HMC is responsible to pay pensionary benefits to the Petitioner. TMC Pretabad is only liable to pay monthly pension to the Petitioner.

11. The pension is not a charity but is an obligation on the part of employer/department to disburse the same without any delay. Honorable Supreme Court of Pakistan, in the case of Haji Muhammad Ismail Memon reported as PLD 2007 SC 35 shown its dismay and anger over delay in pension payments and observed that it is a deplorable condition that Government servants, after having served for a considerable long period during which they give their blood and sweat to the department, had to die in a miserable condition on account of nonpayment of pension/ pensionary benefits, etc. Thus, everyone who is responsible in any manner in delaying

the case of such retired officers/official or widows or orphan children for the recovery of pension/gratuity and G.P. Fund has to be penalized. Honorable Supreme Court issued strict directions that all the Government Departments, Agencies, and Officers deployed to serve the general public within the limit by the Constitution as well as by the law shall not cause unnecessary hurdle or delay in finalizing the payment of pensionary /retirement benefits cases in future and violation of these directions shall amount to criminal negligence and dereliction of the duty assigned to them.

12. Honorable Supreme Court of Pakistan in the case of Muhammad Yousuf Versus Province of Sindh and others reported as 2024 S C M R 1689 has held as under:

*Under the exactitudes of pension rules and regulations, the concerned department is obligated to immediately process the pension papers without putting it on hold or throwing it in shelves for an unlimited period of time. At the same time, it is also the onerous duty and obligation of the head of the department/competent authority and all other persons in the department who are engaged in the completion process to keep a vigilant eye in order to ensure the swift payment of pensionary benefits without unreasonable 5 delay for protecting and safeguarding the interest of the retired employees and their families. They should also remember that in the near future, they will also relish the flavor of retirement and file their own papers for pension and step into the shoes of retired employees. In the self-accountability process with the honest motto of not dragging the payment of pensionary benefits of others, the persons responsible in order to change the culture of making delays should maintain a clearheaded policy to complete the process for pension fairly within a sensible time. If a swift process really comes into fashion by means of their sincere efforts then hopefully, at the time of their retirement, they may not face the same problems and hindrances that their past colleagues faces. As the saying goes, "as you sow, so shall you reap".*

13. Petitioner has not been dealt with in accordance with law by the respondents. Denial of pensionary rights to the petitioner was tantamount to impinging fundamental rights of the petitioner, which could not be given a clean chit to perpetuate.

14. In the wake of above discussion, We found no justification for withholding pensionary benefits of the petitioner and such action on the part of respondents No. 4 to 7 calls for indulgence of this Court to exercise its powers of judicial review conferred under Article 199 of the Constitution, Islamic Republic of Pakistan, 1973. Consequently, this Petition is allowed. The Respondents No 4, 5 and 7 (HMC) are directed to pay pensionary benefits to the Petitioner within a period of ten (10) days from today and submit such compliance report through Additional Registrar of this Court. Petitioner shall draw his monthly pension from the account of Respondent No 6 (TMCP).

15. Petition stands disposed of in the above terms. Office to send copy of this order to Respondents HMC, TMCP, Secretary Local Government and Deputy Director Local Government for compliance.

JUDGE

JUDGE

Karar\_Hussain/PS\*

Approved for reporting

Hyderabad

31.10.2025