

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-5696 of 2023
(Fasihuddin Khan v Federation of Pakistan & others)

Date	Order with signature of Judge
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Before:-
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:- 10.02.2026

Mr. Ali Asadullah Bullo advocate for the petitioner.
Mr. Shumail Cheema, legal consultant, PCSIR/ Respondent No. 2.
Ms. Wajiha Mehdi AAG

ORDER

Adnan-ul-Karim Memon, J. – The petitioner has filed the captioned Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- a) To declare the act of Respondents regarding non-release of full pension and pensionary benefits as illegal and in contravention of the dicta laid down by the Hon'ble Supreme Court of Pakistan, reported as 2007 SCMR 34;*
- b) Direct the Respondents to count and calculate past service for the petitioner rendered in defunct PETROMAN from 1990 till 2010 in the pension and pensionary benefits and release forthwith;*
- c) Grant any other relief deemed just and proper in the circumstances.*

2. It is the case of the petitioner that he was initially appointed as a Laboratory Assistant in the year 1990 with the defunct organization PETROMAN, which was working under the Federal Government. Due to satisfactory performance, he was promoted and later regularized in the year 2000. Upon the closure of PETROMAN in 2006, although most employees opted for the Voluntary Separation Scheme, the Petitioner did not. Subsequently, he was absorbed in the Pakistan Council of Scientific and Industrial Research (PCSIR) in 2010 under the directives of the Government. It is submitted that the absorption was not a fresh appointment and, therefore, the past service rendered by the Petitioner from 1990 to 2010 ought to have been counted towards pension and pensionary benefits.

3. Learned counsel for the petitioner argues that a pension is a vested right, protected under the Constitution, and cannot be denied through executive instructions. Reliance has been placed on various judgments of the Hon'ble Supreme Court, particularly *Haji Muhammad Ismail Memon v. Federation of Pakistan* (2007 SCMR 34), to contend that denial or delay in pension is unlawful, arbitrary, and

violative of Articles 4 and 25 of the Constitution. It is prayed that the Respondents be directed to count the Petitioner's past service and release full pensionary benefits. He prayed to allow this petition.

4. Conversely, the learned Assistant Attorney General, assisted by the counsel for the Respondents, raises a preliminary objection regarding the maintainability of the petition, contending that PCSIR has no statutory service rules and, therefore, a constitutional petition is not competent. Reliance has been placed upon several judgments of the Supreme Court and High Courts, including **PLD 2010 SC 676** and **2022 SCMR 991**, wherein writ petitions were held to be non-maintainable in the absence of statutory rules.

5. On merits, it is submitted that the Petitioner was absorbed in PCSIR through an Office Memorandum dated 08.09.2010, which was duly accepted by him, clearly stipulating that his seniority and pension would be reckoned from the date of joining PCSIR only. Learned counsel argues that the Petitioner served in PCSIR for more than twelve years without challenging the said terms and has now raised objections after retirement, which is barred by laches. It is further contended that service rendered in PETROMAN was neither pensionable nor rendered under PCSIR, and therefore cannot be counted. The Respondents submit that the Petitioner has already been granted a pension from the date of absorption as a lenient measure, and no illegality has been committed. Accordingly, learned counsel for the Respondents prays for dismissal of the petition as not maintainable, barred by laches, and devoid of merit.

6. Upon careful consideration of the pleadings, arguments advanced by the learned counsel for the parties, and the case law cited at the bar, at the outset, the preliminary objection raised by the Respondents carries substantial force. It is a settled principle of law that a constitutional petition under Article 199 of the Constitution is not maintainable in service matters where the organization does not have statutory service rules. The Supreme Court, in **PLD 2010 SC 676** and reaffirmed in **2022 SCMR 991**, has categorically held that in the absence of statutory rules, rights and obligations flowing from contractual terms cannot be enforced through constitutional jurisdiction. Admittedly, PCSIR does not operate under statutory service rules; therefore, the petition suffers from a fundamental jurisdictional defect.

7. Even otherwise, on merits, the claim of the Petitioner is untenable. The record reflects that the Petitioner was absorbed in PCSIR vide Office Memorandum dated 08.09.2010, which was expressly accepted by him without protest. The said memorandum clearly stipulated that his seniority and pensionary benefits would be

reckoned from the date of joining PCSIR. Having voluntarily accepted these terms and continued in service for over twelve years without raising any objection, the Petitioner is estopped by his conduct from challenging the same after retirement. The law is well settled that a person who accepts service conditions with open eyes cannot later recede from them when the outcome is not to his liking.

8. The plea that absorption was not a fresh appointment and that past service in PETROMAN ought to be counted cannot be accepted in the absence of any statutory provision, rule, or policy providing for carry-forward of pensionable service from PETROMAN to PCSIR. Pension is indeed a vested right, as held in Haji Muhammad Ismail Memon v. Federation of Pakistan (2007 SCMR 34); however, such a right accrues strictly in accordance with the governing rules and terms of service. The said judgment does not lay down that a pension can be claimed in terms of the applicable service structure or in contravention of expressly accepted conditions.

9. Furthermore, the Petitioner’s claim is hit by the doctrine of laches. Having remained silent throughout his service tenure and having availed pensionary benefits as calculated by the Respondents, the Petitioner cannot be permitted to reopen settled matters after retirement. The courts have consistently discouraged such belated claims, particularly where third-party rights and administrative finality are involved.

10. In view of the above discussion, this Court finds that the petition is not maintainable due to the absence of statutory service rules. The Petitioner is bound by the terms of absorption accepted by him. The claim for counting past service rendered in PETROMAN lacks legal foundation, and the petition is barred by laches.

11. Accordingly, the petition is dismissed, being not maintainable and without merit. No order as to costs.

JUDGE

JUDGE