

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-2845 of 2021
(Major ® Dr. Syeda Qurrat-ul-Ain versus Federation of Pakistan & others)

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

Date of hearing and order: 30.3.2026

Mr. Ovais Ali Shah advocate for the petitioner
Mr. Zaheer Hussain advocate for KPT
Ms. Wajiha Mehdi Assistant Attorney General

ORDER

Adnan-ul-Karim Memon, J. Petitioner has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer (s): -

a. To declare that the inaction/refusal of the Respondents to calculate and allow the petitioner's pension after inclusion of years of her service in the military, as well as years of service in KPT commencing from her initial appointment, is unlawful and based on malafide;

b. To declare that the exclusion of a period of 2 months from the length of service for calculation of pension is unlawful, as the petitioner had resigned from her post to apply for a higher post with KPT, and as such, the said period does not constitute a discontinuance in service;

c. To direct the respondents to calculate and allow the petitioner's pension after inclusion of years of her service in the military, as well as years of service in KPT commencing from her initial appointment as per Civil Service Regulations and ESTA code Notifications bearing No. O.M No. F.591) Reg.(6)/77 dated 24.02.1977 and CSR 418;

d. Direct the Respondents to release the full pension of the petitioner along with all service and retirement benefits;

e. Direct the Respondents to allot a plot in DHA City, measuring 400 square yards, to the petitioner and thereafter take all steps necessary for the transfer of the said plot to the petitioner;

f. Direct the Respondents to issue monetary compensation or an alternate plot to the petitioner with respect to the Staff Plot at KPT Officers Cooperative Housing Society for which she was entitled to be a KPT Officer and having served from the year 2007 onwards.

2. The petitioner claims to be a highly qualified pediatrician, filed the instant petition under Article 199 of the Constitution, challenging the deliberate inaction and refusal of the respondents to calculate and allow her pension after including her military service, as well as her service at the Karachi Port Trust (KPT) from her initial appointment. It is the case of the petitioner that she was initially appointed in KPT on a contract basis in BPS-18 in 2007, subsequently absorbed permanently in 2009, and promoted to BPS-19 in 2011 following a brief resignation to reapply for the higher post. The petitioner claims that her resignation did not constitute a break in qualifying service for pension purposes

under the ESTA Code and Civil Service Regulations, and that a deficiency of up to six months in qualifying service, if any, could be deemed condoned under the law.

3. The learned counsel for the petitioner submitted that the petitioner has been subjected to discrimination and unequal treatment by the respondents. He added that despite having served in both the Pakistan Army and the Karachi Port Trust (KPT) for significant periods, the petitioner has been denied pensionary benefits that were granted to other officers with similar or even lesser service, including those who had already been receiving pensions from the military. The counsel emphasized that such differential treatment reflects malicious intent and amounts to victimization. He further contended that the petitioner is entitled to allotment of plots both in DHA City and the KPT Officers Cooperative Housing Society, having duly registered and made payments for the same. However, the respondents either unlawfully allotted these plots to other individuals or denied the petitioner compensation that she was lawfully entitled to, thereby further demonstrating arbitrary conduct and abuse of authority on the part of KPT. The counsel also highlighted the deliberate concealment of the petitioner's personal file by certain officers in KPT, which indicates a calculated attempt to frustrate her legitimate claims. In support of the petitioner's entitlement to pension and other retirement benefits, the learned counsel elaborated on the relevant legal framework. He submitted that the Civil Service Regulations (CSR) and the ESTA Code Notifications govern the calculation of qualifying service for pension purposes, and these provisions are fully applicable to employees of statutory bodies such as KPT. The counsel explained that Section 356(a) of the CSR allows for prior service rendered in the military or other pensionable organizations to be counted towards civil service pension, provided it is followed by service that qualifies for civil pension. He submitted that the regulations also permit any bonus or gratuity received in lieu of a military pension to be refunded in installments, to include such prior service in the calculation of a civil pension. He further submitted that CSR 418 provides that when an officer resigns from one post to take up another in which service counts for pension, such resignation does not interrupt the continuity of service. This provision is directly applicable to the petitioner, who resigned from her BPS-18 post to apply for a higher post in BPS-19 in the same department without a break-in service. Additionally, CSR 423 provides that any deficiency in qualifying service not exceeding six months shall be deemed automatically condoned, ensuring that minor gaps, such as short resignations or administrative delays, cannot unjustly deprive an officer of pension benefits. The learned counsel also referred to the ESTA Code Notifications, specifically O.M. No. F.5(1) Reg. (6)/77 dated 24.02.1977 and CSR 417-A notified under Finance Division Notification No. 12(8)-Reg.(6)/79 dated

10.11.1980. He submitted that these notifications regulate service conditions and pension matters for employees under organizations like KPT; that reinforce service for pension purposes must be calculated from the date of initial appointment, and any resignation taken to assume a higher post or short administrative gaps should not disrupt the continuity of service. These provisions are intended to prevent arbitrary denial of pension benefits and to ensure equitable treatment of employees moving between posts or grades. Applying these principles to the petitioner's case, the counsel submitted that the petitioner's military service from 1986 to 1997 qualifies to be counted towards civil pension under CSR 356(a), as it was followed by pensionable service at KPT. Her service at KPT from 2007 to 2011, followed by resignation and reappointment in the same year, i.e., 2011 to BPS-19, constitutes a continuous period of service under CSR 418 and the ESTA Notifications as she applied through the proper channel. The 65-day interval between her resignation and rejoining in BS-19 cannot be treated as a break in service. Even if a minor deficiency exists in the total qualifying period, CSR 423 allows for automatic condonation of up to six months, ensuring her full entitlement to pension. The counsel argued that the respondents' failure to apply these established regulations and notifications in calculating the petitioner's pension reflects malafide, arbitrary, and discriminatory conduct. Such actions violate both statutory rules and the constitutional principles of equality, fairness, and protection against victimization. Consequently, the petitioner is entitled to directions from this Court to the respondent KPT to calculate/recalculate and release her full pension, allot the plot she is entitled to, and provide monetary compensation where applicable. He prayed to allow this Petition.

4. In response, the learned counsel for KPT raised preliminary legal objections, arguing that the petition is not maintainable as no fundamental or constitutional right has been violated. He contended that the petitioner's claims regarding assurances of promotion are unsubstantiated, and the brief resignation between her two KPT appointments constitutes a gap in service that cannot be counted for pension. He further submitted that pensionary benefits are governed by strict service rules, and the petitioner's total service in BPS-19 is 8 years and 10 months, which is insufficient for pension entitlement. Regarding plot allotments, the respondents' counsel relied on the Supreme Court's declaration that KPT-managed housing societies are illegal and cannot be used for allotments, denying any discrimination. He requested that the petition be dismissed, with costs, asserting that the petitioner has no legal or factual basis for the relief sought and that allowing the petition would prejudice the interests of KPT.

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

6. It is a settled principle of law that a pension is not a concession or bounty but a vested right earned by an employee through years of service in the public sector. This position has recently been reaffirmed by the Supreme Court of Pakistan in the landmark case of Muhammad Usman v. Federation of Pakistan, wherein the Court held that pension is a constitutional and legal right that cannot be denied merely due to resignation or delayed application; the right accrues immediately upon retirement or acceptance of resignation and is not extinguished by procedural technicalities such as delay or resignation alone. The Supreme Court further clarified that CSR Regulation 418 relates to the counting of service and does not provide for the forfeiture of pension due to resignation. Declaring the decisions of the Tribunal and the department to be based on a misinterpretation of law, the Supreme Court allowed the appeal and directed the authorities to grant full pensionary benefits to the petitioner in accordance with law, reiterating that pension is a vested right which cannot be taken away on administrative or technical grounds.

7. Under the Civil Service Regulations (CSR), particularly Articles 355, 356, and 423, the legal framework clearly contemplates the counting of service rendered in different capacities. CSR 356(a) expressly allows service rendered in military or other pensionable organizations, which terminates before a pension is earned, to be counted for civil pension, provided it is followed by service qualifying for pension under civil rules.

8. However, in the present case, we have been informed that the petitioner served in the Pakistan Army from 1986 to 1997 and voluntarily resigned without claiming pension; her military service was therefore subject to counting under this provision upon continuation in qualifying civil service. CSR 418 makes it clear that a resignation taken for the purpose of taking up another pensionable appointment does not interrupt continuity of service for pension purposes. This statutory provision squarely applies where an officer resigns to seek a higher grade within the same organization or statutory body, as in the petitioner's case, from BPS-18 to BPS-19. CSR 423(1) expressly provides that a deficiency of up to six months in qualifying service shall be deemed automatically condoned. This statutory deeming provision ensures that minor gaps, such as the two-month period between resignation and reappointment, cannot be used as a basis to deny pension.

09. These statutory provisions demonstrate that the entitlement to pension is anchored in objective criteria of service and continuity, not discretionary administrative preferences. Moreover, the ESTA Code Notifications, particularly O.M No. F.5(1) Reg.(6)/77 dated 24.02.1977 and CSR 417-A (Finance Division Notification No. 12(8)-Reg. (6)/79 dated 10.11.1980), reiterate that pensionable

service must be calculated from the date of initial *appointment*, and that administrative formalities or short resignations should not disrupt the continuity of service for pension purposes as discussed *supra*. These instruments intend to prevent arbitrary denial of pension benefits and to ensure that employees who move between posts or grades within the same statutory framework receive fair treatment.

10. In the petitioner's case, the cumulative length of qualifying service, military service followed by continuous service, in BS 19, in KPT clearly exceeds the minimum qualifying criteria. Even if a perceived deficiency were argued, CSR 423 provides for automatic condonation up to six months. The 65-day gap between the petitioner's resignation and reappointment in BS 19 in the same KPT, which is higher position, through proper channel, therefore does not disentitle her from pensionary benefits, and the respondents' refusal to count that period as continuous qualifying service is contrary to the clear statutory scheme as held by the Supreme Court in the case of *Muhammad Usman as discussed supra*.

11. Furthermore, the disparate treatment of the petitioner compared to other officers, including those with lesser service or even those already drawing military pensions, underscores a pattern of discrimination and arbitrariness that is antithetical to constitutional guarantees of equality and fairness under Article 25 of the Constitution. The respondents' conduct, including the alleged concealment of the petitioner's personal file, if proved, could be gauged as mala fide intent and abuse of authority conduct, which constitutional adjudication is designed to cure.

12. In view of the above facts and circumstances of the case, we are of the considered view that the respondents' refusal to count the petitioner's military service and resignation period for pension purposes is unlawful and arbitrary, and that decision is erroneous and is set aside. She is therefore entitled to directions to the competent authority of the respondents for calculation and release of her full pension in accordance with CSR and ESTA Notifications as well as in terms of the ratio of the judgment rendered by the Supreme court in the case Muhammad Usman as discussed in the preceding paragraphs, while her claims regarding housing plot may be pursued before a court of plenary jurisdiction subject to all just exceptions as provided under the law.

13. This petition, along with pending application(s), is disposed of in the above terms.

JUDGE

JUDGE