

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

**C.P. No. D-1746 of 2023**

*[Shahid Ghani V. Province of Sindh and others]*

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

Before:  
Mr. Justice Adnan-ul-Karim Memon  
Mr. Justice Zulfiqar Ali Sangi

**Date of hearing and Order: 13.05.2026**

Mr. Ali Asadullah Bullo, Advocate for the Petitioner.

M/s. Waseem Saif Khoso, Jahangir Kalhoro, Fahad Farooq, Mir Muhammad Pannah and Sundar Lal, Advocates for Respondent No.4-TMC South.

Mr. Ali Safdar Depar, A.A.G.

Mr. Abdul Sattar Solangi, Admin Officer, Sindh Local Govt. Board.

\*\*\*\*\*

**ORDER**

**Adnan-ul-Karim Memon, J.** – Petitioner Shahid Ghani has filed this Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, seeking the following relief:-

- i. *Declare the act of the Respondents regarding non-payment of salaries of the intervening period, difference of pay and allowance as illegal, in violation of the fundamental rights as guaranteed under the Constitution of the Islamic Republic of Pakistan, 1973.*
- ii. *Direct the Respondents to release the salaries and difference of pay and allowances to the Petitioner w.e.f 04-01-2016 to 05-03-2020 alongwith interest.*
- iii) *Direct the Respondents not to take any adverse action against the Petitioner and conduct themselves strictly in accordance with the law.*
- iv) *Any other relief(s) this Hon'ble Court may deem fit in the given circumstances and in the great interest of justice.*

2. The petitioner, a BPS-17 officer of Sindh Councils Unified Grades (SCUG) Service (Accounts Branch), has filed the present Constitutional Petition seeking payment of salary and allied benefits for the intervening/awaiting period from 04.01.2016 to 05.03.2020, which remained unpaid despite sanction by the competent authority. It is stated that the petitioner was initially appointed as Accounts Assistant BPS-11 on a regular basis vide order dated 31.10.1990 and was subsequently promoted as Assistant Accounts Officer BPS-16 on 10.09.2009 and later as Accounts Officer BPS-17 on 17.11.2021.

3. According to the petitioner's counsel, although the petitioner served with the respondents, he remained without posting during the aforesaid period and, due to the prevailing practice in the department, could not draw salary and allowances despite no fault attributable to him. Thereafter, vide order dated 19.10.2020, the competent authority treated the said period as duty and sanctioned payment of salary, followed by a reminder dated 15.10.2021; however, the amount was still not released. The petitioner has, therefore, challenged the inaction of the respondents as arbitrary, discriminatory, and violative of Articles 4, 18, and 25 of the Constitution, seeking directions for the release of his salary with consequential benefits and markup. He prayed to allow this petition.

4. Learned AAG, assisted by Admin Officer, Sindh Local Government Board, while filing comments on behalf of the respondents, submitted that the petitioner had proceeded on two years' leave while serving as Assistant Accounts Officer BPS-16 vide order dated 23.05.2014 and, after expiry of leave, did not resume duty but instead applied for voluntary retirement, which was later withdrawn. It was further stated that the petitioner subsequently appeared before the department and submitted an application for posting along with the requisite documents, including an NOC from DMC South Karachi, whereafter he was posted as Assistant Accounts Officer, DMC South Karachi on 06.03.2020. The respondents, however, admitted that the period from 04.01.2016 to 05.03.2020 had already been treated as duty and salary for the said period was sanctioned vide order dated 19.10.2020. It was further submitted that due to bifurcation of DMC South Karachi into TMC Saddar and TMC Lyari, the issue regarding payment liability has arisen; therefore, appropriate directions may be issued to the concerned Town Municipal Corporations for release of the petitioner's awaiting period salary.

5. Learned counsel for Respondent No.4/TMC South submitted that the petitioner has no lawful claim against Respondent No.4 as he was never formally posted, assigned duty, or placed on the establishment strength of TMC/DMC South during the period from 04.01.2016 to 05.03.2020. It was contended that mere submission of a joining report or subsequent correspondence does not create any vested right to claim salary in the absence of an actual posting order issued by the competent authority. Learned counsel further argued that under settled principles of service jurisprudence, salary is admissible against performance of duty on a sanctioned post and after lawful assumption of charge, whereas admittedly the petitioner remained without effective posting during the relevant period. It was submitted that no work was ever extracted from the petitioner by Respondent No.4, nor was he borne on its payroll during the intervening period; therefore, no financial liability can legally be fastened upon Respondent No.4. It was further contended that the subsequent order dated 19.10.2020 treating the

intervening period as duty was issued by the Sindh Local Government Board independently and without allocating corresponding budgetary provision or determining the authority responsible for payment. Learned counsel maintained that Respondent No.4 was already facing acute financial constraints and, in the absence of lawful posting as well as budget allocation, the petitioner cannot compel payment from TMC/DMC South. It was lastly argued that after the bifurcation of DMC South into different Town Municipal Corporations, Respondent No.4 ceased to exist in its previous form and, therefore, no enforceable direction can now be sought against it for alleged liabilities for a period when the petitioner was never validly posted with the said establishment. He prayed to dismiss the petition.

6. After hearing the learned counsel for the parties and examining the material available on record, it transpires that certain facts are admitted and undisputed.

7. It is not denied that the petitioner is a regular employee of Sindh Councils Unified Grades (SCUG) Service (Accounts Branch), who was promoted from time to time and ultimately promoted as Accounts Officer BPS-17. It is further an admitted position that vide order dated 19.10.2020 issued by the competent authority, i.e., Sindh Local Government Board, the intervening period from 04.01.2016 to 05.03.2020 was expressly treated as duty and sanction for payment of salary for the said period was accorded. The subsequent communication dated 15.10.2021 also confirms that the competent authority consistently maintained the petitioner's entitlement to the salary during the waiting period. Once the competent authority has regularized the period and declared the same as duty, the respondents cannot legally refuse payment of the salary attached thereto.

8. The principal objection raised by Respondent No.4 that the petitioner was never formally posted with DMC South and therefore not entitled to a salary is devoid of legal substance. The record reflects that the petitioner remained an employee of the respondents throughout and was not subjected to any disciplinary proceedings, removal, dismissal, compulsory retirement, or declaration of unauthorized absence. No order has been placed on record showing that the petitioner's service was terminated or that the intervening period was ever treated as leave without pay. On the contrary, the competent authority itself regularized the said period as duty, which necessarily carries all consequential service benefits, including salary and allowances. It is settled law that an employee cannot be deprived of salary and service benefits for administrative lapses or departmental inaction when no misconduct is attributable to him.

9. The plea that no work was extracted from the petitioner during the relevant period also carries no force in the peculiar facts of the case. The record

suggests that the petitioner remained awaiting posting due to administrative circumstances within the department itself. An employee, who is willing to serve and whose status as a government servant remains intact, cannot be penalized merely because the department failed to assign him duties or issue timely posting orders. The doctrine of “no work, no pay” is not applicable where the employee is kept away from work for no fault attributable to him. In the present matter, the respondents themselves subsequently condoned and regularized the period by treating it as a duty; therefore, they are estopped from taking a contradictory stance to defeat the lawful claim of the petitioner.

10. Likewise, the objection regarding the bifurcation of DMC South into Town Municipal Corporations is merely an administrative arrangement that cannot defeat accrued and vested service rights of the petitioner. Liability of a public institution toward its employee does not extinguish merely because of restructuring, bifurcation, or a change in nomenclature of the department.

11. It is for the Government and concerned local bodies to internally determine adjustment of financial liability, but such inter se administrative complications cannot be allowed to prejudice the lawful entitlement of an employee whose claim already stands recognized and sanctioned by the competent authority.

12. The contention regarding the shortage of funds is also legally unsustainable. Financial constraints or the absence of budget allocation cannot justify withholding the admitted salary of a serving public servant, particularly when the claim has already been sanctioned by the competent authority. Salary is not a bounty but a vested statutory right attached to service, and withholding the same without lawful justification offends the principles embodied under Articles 4 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973, which guarantee fair treatment in accordance with law and equal protection of law.

13. In view of the above discussion, this Court is of the considered opinion that the petitioner has successfully established his lawful entitlement to salary and consequential benefits for the period from 04.01.2016 to 05.03.2020, whereas the respondents have failed to provide any lawful justification for withholding the same despite express sanction and regularization by the competent authority.

14. Accordingly, the instant petition is allowed. The respondents, jointly, particularly the successor authorities of erstwhile DMC South/TMC concerned along with Sindh Local Government Board, are directed to ensure release of the petitioner’s outstanding salary, difference of pay, and admissible allowances for the aforesaid period within a period of sixty (60) days from receipt of this order.

However, in the circumstances of the case, the claim of markup/interest is declined.

15. Needless to observe that inter se adjustment of liability amongst the respondents shall be resolved by the Government independently and shall not impede compliance with this order. All pending application(s) stand disposed of in the above terms. However, it is made clear that if in the intervening period the subject benefits are not disbursed by the respondent, appropriate action in terms of section 17 of the Contempt of Court Ordinance shall follow by the office.

JUDGE

JUDGE

Ayaz Gul