

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

BEFORE:
Justice Arbab Ali Hakro
Justice Muhammad Osman Ali Hadi

Const. Petition No. D-424 of 2025
[Niaz Hussain Tunio Vs. Government of Sindh & others]

Petitioner : Through Mr. Rafique Ahmed K. Abro, Advocate

Respondents No.1 to 4 : Through Mr. Abdul Waris Bhutto, Assistant Advocate General, Sindh Noorullah Khan, Additional Director, Local Government, Larkana.

Respondent No.5 : Through Mr. Sadam Hussain Kalhoro, Advocate

Date of Hearing : **28-10-2026**

Date of Order : **28-10-2026**

ORDER

ARBAB ALI HAKRO, J. - The petitioner, a Secretary in the Sindh Councils Unified Grades (BPS-11), has invoked Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, praying that the respondents be directed to pay his salary from 01.07.2023 to date, to ensure its regular payment in future, and to award costs.

2. The petitioner was Secretary, Union Committee No.9, City Larkana (hereinafter referred to as "**UC-9**"), which was declared defunct after new Union Committees were notified on 27.04.2022. On 09.08.2023, the Regional Director, Local Government, Larkana, permitted him to serve as Secretary, Union Committee No.3, Zulfiqarabad (hereinafter referred to as "**UC-3**"), in addition to his duties, and on 08.11.2024, the Sindh Local Government Board (hereinafter referred to as "**the Board**") posted him as Secretary, Union Committee No.5, Shaikh Zaid (hereinafter referred to as "**UC-5**").¹ He pleads

¹ Order of the Sindh Local Government Board dated 13.04.2021; notification dated 27.04.2022 creating new Union Committees; order No.553 dated 09.08.2023 of the Regional Director, Local Government, Larkana; and order No.3412 dated 08.11.2024 of the Board.

that he is discharging his duties at UC-5, that his monthly salary is Rs.105,000/-, that, except for November and December 2024, he has received no salary since 01.07.2023 despite repeated approaches to the Chairmen and the Local Government officers, that the withholding is arbitrary and discriminatory under Articles 3, 4, 9 and 25 of the Constitution, and that he has no other remedy.

3. Mr. Sadam Hussain Kalhoro, Advocate, has filed Vakalatnama on behalf of Respondent No. 5, which is taken on record. In his reply, the Chairman, UC-5/Respondent No.5, has stated that the petitioner was posted at UC-5 on 08.11.2024, attended irregularly, hindered the public, and demanded gratification, and was relieved on 14.02.2025 by letter directing him to report to the Secretary of the Board; that he took away three FBR and three SRB cheques without depositing them, leading to an FBR notice dated 18.09.2025; that he served there only from November 2024 to February 2025 and was paid for November 2024 to January 2025, and that the claim from July 2023 does not concern him.²

4. Respondent No. 4, the Chairman, UC-3, stated on 27.10.2025 that the petitioner, though posted at UC-3, actually worked at and drew salary from UC-9, held UC-3 only as a stop-gap arrangement for opening the Council's account vide order No. 553 dated 09.08.2023, and has no claim against UC-3; he prayed for exemption.³ Neither respondent has produced a pay or bank record.

5. Respondent No.2, through the Additional Director, Local Government, Larkana, filed a statement on 13.10.2026 pursuant to the order dated 01.10.2026. The report of the Chairman, UC-5, dated 08.10.2026, states that the petitioner was relieved on 14.02.2025, was paid up to 31.01.2025, and that the remaining fourteen days are being paid by cheque No.59410293 for Rs.52,503/-. After that, no dues remain as per the office record, and complaints of misconduct, demands for money, and poor performance had

² Statement/reply of respondent No.5 with Annexures A to D and affidavit sworn on 30.09.2025, presented on 08.10.2025. The letter dated 14.02.2025 is also at page 27 of the petition file, annexed to the petition itself, which was filed on 13.05.2025. The complaints are the handwritten ones of January and February 2025 (Annexure B) and the show-cause notice is dated 18.09.2025.

³ Statement of the Chairman, UC-3 dated 27.10.2025 with order No.553 dated 09.08.2023 and an authority letter, taken on record on 29.10.2025. He describes himself as respondent No.3, and the order sheet of 29.10.2025 follows him, though he is respondent No.4 in the memo of petition. No comments of respondents No.1 and 3 are traceable on the file.

been received. It adds that under section 121(5) of the Sindh Local Government Act, 2013, the Chairman, UC-5, cannot relieve a member of the Sindh Councils Unified Grades, and prays for a direction to respondent No.5 to release the salary from 15.02.2025 to 23.04.2026.⁴

6. Learned counsel for the petitioner contended that the petitioner has been working as Secretary but has not been paid since 01.07.2023, except for two months; that salary for work done is a vested right; that its withholding is discriminatory and offends Articles 3, 4, 9 and 25; and that he has no other adequate remedy. As recorded on 13.10.2026, he further submitted that respondent No.5 must release the salary for the period from 15.02.2025 to 23.04.2026.

7. Learned Assistant Advocate General, assisted by the Additional Director, appearing for respondents Nos. 1 to 3, submitted, as recorded on 13.10.2026, that, according to the report of the Chairman, UC-5, the petitioner was relieved on 14.02.2025 and paid up to 31.01.2025, with the remaining fourteen days' salary remitted by the cheque filed, and, in line with the statement of respondent No.2, that the Chairman could not relieve a member of the service and should be directed to release the remaining salary.

8. We have heard learned counsel for the parties and, with their assistance, have perused the material on record.

9. (i) Whether the petition is maintainable under Article 199; (ii) whether entitlement to salary can be determined on this record and, if so, for which periods; and (iii) what relief can be granted.

10. The Sindh Local Government Act, 2013 (hereinafter referred to as "**the Act, 2013**") constitutes the Sindh Councils Unified Grades and, under section 121(3), continues the Sindh Councils Unified Grades Service Rules, 1982 (hereinafter referred to as "**the Rules, 1982**"), which were framed under the repealed Sindh Local Government Ordinance, 1979 and are statutory. The petitioner is therefore not a civil servant, and Article 212 is not

⁴ Statement of the Additional Director, Local Government, Larkana dated 13.10.2026, with his letter of 06.10.2026, the reply of the Chairman, UC-5 dated 08.10.2026, cheque No.59410293 and an extract of section 121 of the Act, 2013; order sheet dated 13.10.2026.

attracted.⁵ Violations of statutory service rules can be enforced under Article 199 where no adequate remedy exists; the writ jurisdiction is unavailable only where service rests on internal instructions.⁶ The respondents are the Government, the Board, and local authorities performing functions within Article 199(1)(a)(ii), and none has pleaded any bar. The petition is maintainable.

11. The claim falls into four periods. First, from 01.07.2023 to 07.11.2024, the petitioner had no regular posting: UC-9 was defunct; he held the stop-gap charge of UC-3, and his request for a posting went unattended. Whether he is entitled to pay for that period, from which Council or fund, and whether UC-9 paid him, as respondent No.4 asserts, cannot be answered without payroll, bank, and posting records, none of which are before us. Second, from 08.11.2024 to 14.02.2025, he served at UC-5 on the Board's posting; respondent No.5 states that he was paid up to 31.01.2025 and has tendered the balance by cheque, which the petitioner has not controverted, and his counsel's submission of 13.10.2026 starts from 15.02.2025. This period stands substantially met, subject to the cheque being honoured. Third, from 15.02.2025 to 23.04.2026, nothing is shown to have been paid, and respondent No.2 says the salary is due; neither statement explains 23.04.2026. The petition, filed on 13.05.2025, does not mention the letter of 14.02.2025, though it is annexed, and still pleads that he is working at UC-5; nothing shows whether he reported to the Board as directed. Fourth, nothing is known for the period after 23.04.2026

12. This Court cannot record evidence within its constitutional jurisdiction, but it need not decline relief merely because facts are contested when they turn on documents the authority itself holds. The proper course is for the competent authority to verify the record, hear the parties and decide, rather than dismiss the petition or allow the claim on one party's version.⁷ Directing payment for sixteen months now would be to do so without knowing who owes it or whether it was paid; dismissing would leave unpaid what is lawfully due. Authorities must satisfy a due salary claim without driving the employee from

⁵ Constitutional Petition No.D-721 of 2009, decided by a Division Bench of this Court, where the Rules, 1982 were examined and a member of the service was held not to be a civil servant.

⁶ *Pakistan Defence Officers Housing Authority v. Lt. Col. Syed Jawaid Ahmed* 2013 SCMR 1707 (para 50); *Chief Executive Officer SEPCO v. Riaz Hussain* C.P.L.A. No.4687 of 2025 (Federal Constitutional Court, judgment dated 10.09.2026).

⁷ *Arab v. Province of Sindh* 2026 SCMR 300; *Province of Sindh v. Amanullah* 2025 SCMR 2062.

pillar to post, and the cheque tendered for February 2025 is in discharge of that obligation.⁸

13. Under section 121(5) of the Act, 2013, it is the Government that may transfer a member of the Sindh Councils Unified Grades from one Council to another, and the proviso to section 80(1)(c) requires that his service matters be referred to the Government. The petitioner was posted to UC-5 by the Board, whereas the letter dated 14.02.2025 was issued by the Chairman alone; no order of the Government or the Board giving effect to it is shown. Respondent No.2 itself says the Chairman had no such competence, and respondent No.5 has filed nothing to the contrary. The letter, standing by itself, therefore cannot be taken to have ended the posting made by the Board. That does not settle entitlement for the third period, which depends on facts the record does not reveal: whether he reported to the Board, was kept out of office, or was posted or paid elsewhere, and what happened on 23.04.2026. Section 106(2) gives salaries first charge on the Local Fund, and section 129 prescribes the Board's functions, so the Secretary, Local Government Department, with the Secretary of the Board, is the competent authority to determine these questions. An employee who stayed on the strength of a Council and was kept from duty by an authority without power to do so cannot be denied salary for that reason, but how far that applies here must be found on the records.

14. We express no opinion on the complaints and the show-cause notice. The competent authority remains free to proceed under the Rules, 1982, and section 121(6) of the Act, 2013, after notice and hearing. No recovery can be made from the petitioner except under a lawful order passed after hearing him.⁹ Regular payment in future cannot be directed in the abstract, since salary follows lawful posting and service, and his present posting is not known.

15. For the foregoing reasons, the petition is **disposed of** as follows:

- (a) The letter dated 14.02.2025 of the Chairman, UC-5, did not, in the absence of an order of the Government or the Board, by itself terminate the posting of the petitioner made by the

⁸ *Munawar Sanni v. Director, Army Education* 1991 SCMR 135.

⁹ *Jawaid Ahmed* (n.6 above), para 50.

Board. No finding is recorded as to whether, by whom, or for which months the petitioner was otherwise paid.

- (b) The Additional Registrar shall, if not already done, deliver cheque No. 59410293 to the petitioner as directed on 13.10.2026.
- (c) The Secretary, Local Government Department, Government of Sindh, with the Secretary, Sindh Local Government Board, shall, within sixty days of receipt of this order, hear the petitioner and respondents Nos. 2 to 5; obtain the pay and bank records of UC-9, UC-3 and UC-5 from 01.07.2023, and the Board's posting record; determine, under the Rules, 1982, the periods from 01.07.2023 to 07.11.2024 and from 15.02.2025 to date during which the petitioner was posted, serving, reporting, awaiting posting, or kept from duty, and the pay due for each, and pass a reasoned order.
- (d) Whatever is found due and unpaid shall be paid within thirty days of that order, by the Council concerned for its own period and otherwise from the proper head. Respondents No. 4 and 5 shall produce their records before the competent authority within fifteen days of notice.
- (e) The Board shall decide the petitioner's present posting within the same period and communicate it to him. Salary shall follow lawful posting and service.
- (f) Nothing in this order prevents action against the petitioner in respect of the complaints or the show-cause notice in accordance with law, and no opinion is expressed on them.

16. The petition stands **disposed of** along with pending application (s), if any. The office shall send copies of this order to the Secretary, Local Government Department, the Secretary of the Board and the Regional Director, Local Government, Larkana, for compliance.

JUDGE

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