HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-1195 of 2026
[Gulsher vs. Federation of Pakistan and others]

Before:
JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE MUHAMMAD JAFFER RAZA

Petitioner:	Through Mr. Ghulam Mohiuddin advocate
Respondent No.1	Through Mr. Shamsudin Rajper Deputy Attorney General
Date of hearing	04.11.2026
Date of Decision	04.11.2026

O R D E R

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ADNAN-UL-KARIM MEMON J The petitioner has filed the instant Constitutional Petition under Article 199 of the Constitution, seeking directions for release of his pension, gratuity and General Provident Fund (GP Fund), along with a declaration that the subsequent order of removal from service dated 19.05.2025 is illegal and without lawful authority, while maintaining the earlier order of compulsory retirement dated 03.07.2024.

2. Learned counsel for the petitioner submits that the petitioner was appointed as Points Man in Pakistan Railways on 31.03.2008 and was subsequently promoted/transferred as Shunting Porter in 2017; that due to serious illness of his daughter, he remained absent from duty, resulting in disciplinary proceedings and an order of compulsory retirement dated 03.07.2024. Subsequently, the respondents issued another order of removal from service dated 19.05.2025 on the same allegations, which amounts to double punishment. The petitioner maintains that the earlier compulsory-retirement order was never challenged and, therefore, he is entitled to pensionary and other retirement benefits for his 17 years of service.

3. In comments, the respondents have raised a preliminary objection regarding maintainability of the petition in view of Article 212 of the Constitution, contending that the petitioner has an adequate alternate remedy before the competent Service Tribunal. On merits, they submit that the petitioner had a history of unauthorized absence and previous disciplinary penalties, and despite issuance of show-cause notice and three reminders, he failed to submit any reply or participate in the proceedings. It is further contended that the earlier order of compulsory retirement dated 03.07.2024 was subsequently withdrawn and,

thereafter, the petitioner was proceeded against afresh and awarded the major penalty of removal from service through Form-C dated 23.04.2025. Thus, no question of double punishment arises, nor is the petitioner entitled to pensionary benefits on the basis of withdrawal order. The respondents have accordingly prayed for dismissal of the petition as being not maintainable.

4. We have heard learned counsel for the parties and examined the available record.

5. The controversy primarily revolves around the legal effect of the order dated 03.07.2024, whereby the petitioner was awarded major penalty of compulsory retirement, and the subsequent order of removal from service, allegedly passed on the same charge of unauthorized absence.

6. At the outset, it is pertinent to observe that the right to pension is not a bounty or concession granted at the discretion of the employer; rather, it is a valuable statutory right accruing to an employee in accordance with the applicable pension rules. The Courts of law have consistently recognized that pensionary benefits, once earned through qualifying service, cannot be withheld arbitrarily or without lawful justification.

7. Article 4 of the Constitution guarantees that every citizen shall be dealt with in accordance with law, while Article 25 protects against discriminatory treatment.

8. In the present case, the respondents themselves acknowledge that an order of compulsory retirement dated 03.07.2024 was initially issued against the petitioner. The petitioner asserts that the said order was never challenged by him and remained operative, whereas the respondents contend that it was subsequently withdrawn. Therefore, the legality and effect of the alleged withdrawal assume central importance. It is settled that once the earlier order was validly withdrawn by a competent authority in accordance with law, the petitioner cannot claim pensionary benefits merely on its basis. However, if no lawful withdrawal or cancellation order was passed or communicated to the petitioner, the respondents could not simply disregard the earlier order and substitute another major penalty without establishing lawful authority and compliance with the prescribed procedure as required under the law, as both punishments are different in nature.

9. The respondents have placed reliance upon the alleged withdrawal of the earlier compulsory-retirement order; however, such withdrawal must be established through a formal order passed by the competent authority, supported by reasons and communicated to the petitioner.

10. Mere assertion in the comments cannot substitute a lawful departmental order. It is also a settled principle that an administrative authority, having exercised

its jurisdiction and passed a final order, cannot subsequently alter or review the same to the prejudice of an employee except in accordance with the authority conferred upon it by law. Thus, the respondents are required to demonstrate the legal basis, competent authority and procedure adopted for withdrawal of the earlier penalty.

11. Furthermore, if the order dated 03.07.2024 had remained operative, the respondents could not impose another major penalty of removal from service on the very same charge of unauthorized absence without first lawfully setting aside or withdrawing the earlier order. Such an action would amount to an arbitrary exercise of administrative authority and offend the settled principles of fairness, certainty and due process. The principle against double punishment, though its constitutional application under Article 13 of the Constitution must be distinguished from departmental proceedings, reinforces the requirement that an employee should not be subjected to successive major penalties for the same misconduct without lawful authority.

12. We are also conscious of the respondents' contention that the petitioner failed to respond to the show-cause notice and reminders. Nevertheless, the failure of an employee to submit a reply does not absolve the competent authority from complying with the mandatory requirements of the Civil Servants (Efficiency and Discipline) Rules, 2020. Even in ex-parte proceedings, the authority is required to establish the charge on the basis of available record, follow the prescribed procedure and pass a reasoned order. The petitioner's explanation regarding the serious illness of his daughter, although not submitted during the departmental proceedings, is also a relevant circumstance which ought to be considered by the competent authority while examining the proportionality of the penalty.

13. As regards pensionary benefits, the petitioner's claim cannot be rejected merely on the ground that he was removed from service without first determining the legal effect of the earlier compulsory-retirement order. Compulsory retirement and removal from service carry different legal consequences under the applicable service and pension rules. Compulsory retirement does not, by itself, entail forfeiture of pensionary benefits, whereas removal from service may attract different consequences depending upon the applicable rules. Therefore, if the earlier order of compulsory retirement is found to have remained valid and operative, the petitioner's entitlement to pension, gratuity and other admissible retirement benefits must be determined accordingly, subject to completion of the qualifying service and applicable rules.

14. So far as the objection under Article 212 of the Constitution is concerned, it is settled that matters relating to the terms and conditions of service of only civil servants ordinarily fall within the exclusive jurisdiction of the competent Service

Tribunal. The constitutional jurisdiction of this Court cannot be invoked merely because an employee alleges that a departmental order is illegal. However, where a case genuinely involves an order passed without jurisdiction, a patent violation of mandatory statutory provisions or a recognized constitutional exception, the availability and scope of judicial review could be examined in light of the established principles governing Article 212. In such circumstances, the objection is overruled.

15. In view of the foregoing discussion, we are of the considered opinion that the respondents cannot defeat the petitioner's claim for retirement benefits merely by asserting that the earlier compulsory-retirement order was withdrawn. They failed to establish such withdrawal through a lawful order of the competent authority. The discrepancy between the date of subsequent removal order mentioned in the petition dated 19.05.2025 and the date of Form-C referred to in the comments dated 23.04.2025 also requires clarification from the original departmental record, which they failed to explain.

16. Consequently, the respondents failed to establish a lawful withdrawal of the compulsory-retirement order dated 03.07.2024, the subsequent removal order, insofar as it imposes a second major penalty for the same charge, cannot be sustained. In such circumstances, the petitioner is entitled to have his retirement benefits determined in accordance with the applicable pension rules, in terms of earlier compulsory retirement notification, subject to verification of his qualifying service and other admissible deductions.

JUDGE

JUDGE

Karar_Hussain/PS*