

In the Federal Constitutional Court of Pakistan
(Appellate Jurisdiction)

Present:

Justice Aamer Farooq
Justice Muhammad Karim Khan Agha
Justice Syed Arshad Hussain Shah

C.P.L.A. No.392-L of 2025

(On appeal from Judgment of the Lahore High Court, Lahore
dated 10.01.2025 passed in Writ Petition No. 28112 of 2022)

Province of Punjab through Finance Secretary & another

Petitioners

Versus

Dr. Munir Ahmad Malik

Respondent

For the petitioners:

Dr. Yaser Aman Khan, Addl. A.G. Punjab
Dr. Shahzad, Project Director, AIDS
Control Programme.
Mr. Humayun Akhtar Sahi,
Director (Legal) Finance Deptt., Punjab
Mr. Khurram Abbas, Law Officer, Health &
Population Department, Punjab

Respondent:

N.R.

Date of hearing:

20.08.2026

Judgment

Syed Arshad Hussain Shah, J. – Through the titled petition, the petitioners have called into question judgment dated 10.01.2025, rendered by the Lahore High Court, Lahore allowing Writ Petition No.28112 of 2022, instituted by the respondent, impugning the order dated 19.04.2021, passed by the Project Director, Punjab AIDS Control Programme (PACP), whereby respondent's application seeking grant/ payment of Incentive Allowance was declined.

2. Learned Additional Advocate General, placing reliance upon a number of judgments rendered by the superior Courts, vehemently contended that the impugned judgment is *coram non judice*, without lawful jurisdiction, and, therefore, liable to be set aside. He further submitted

that the learned High Court fell into error in assuming jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution), despite the availability of an adequate and efficacious alternate remedy to the respondent. According to the learned Additional Advocate General, in the presence of such alternate statutory remedy, the constitutional jurisdiction of the High Court ought not to have been invoked, nor could the matter have been entertained directly under Article 199 of the Constitution. He further contended that the grant of Incentive Allowance was not an automatic or vested right but was expressly subject to the fulfillment of the conditions stipulated in the relevant Notification dated 31.12.2019. In particular, he referred to Clause 'c' of Paragraph No.2 of the said Notification and submitted that the grant of the allowance was conditional upon the approval of the Selection Board. He argued that, as approval was granted by the Selection Board in its meeting held on 19.3.2021, while the respondent was transferred from the post vide order dated 22.2.2021, therefore, the respondent could not legitimately claim entitlement to the Incentive Allowance as a matter of right. On the strength of the foregoing submissions, the learned Law Officer maintained that the learned High Court had misdirected itself both on the question of jurisdiction and on the merits of the controversy. Consequently, he contended that the impugned judgment, being contrary to the settled principles of law and the governing Notification dated 31.12.2019, is not sustainable in law and is liable to be set aside.

3. We have heard the learned Additional Advocate General at considerable length and have also carefully examined the available record with his able assistance. The controversy requiring determination in the instant matter revolves around the respondent's claim for the grant/ payment of Incentive Allowance at the rate of Rs.150,000/- per month for

the period during which he remained posted and performed his duties as Project Director, PACP, i.e., from 15.07.2019 to 22.02.2021. The principal question for consideration is whether, under the applicable rules, policies, and notifications governing the grant of such allowance, the respondent was/is legally entitled to claim and receive the Incentive Allowance for the aforesaid period.

4. The question that requires determination at the outset concerns the jurisdiction of the High Court to entertain and adjudicate upon the writ petition. Before dilating upon the merits of the controversy, it would, therefore, be appropriate to address this foundational issue. In this regard, reference may usefully be made to the judgment of this Court rendered in F.C.P.L.A. No.300 of 2025 titled *Senior Member Board of Revenue, Khyber Pakhtunkhwa & others Habib-ur-Rehman & others*, wherein the scope of the constitutional jurisdiction of the High Court under Article 199 of the Constitution, particularly, in matters involving statutory functionaries and the bar contained in Article 212 of the Constitution, was decided in the following terms:

“It may be observed that where a dispute involves substantial questions relating to the enforcement of mandatory statutory rules or the legality and validity of executive action undertaken in disregard of such statutory provisions and in excess of or contrary to the powers conferred by law, the High Court is competent to exercise its constitutional jurisdiction under Article 199 of the Constitution, and the bar contained in Article 212 of the Constitution is not attracted.”.

In the light of the above authoritative pronouncement, it is evident that the jurisdiction of the High Court under Article 199 of the Constitution is not excluded merely because the controversy may have some nexus with the terms and conditions of service. Where the grievance raised before the High Court involves substantial questions regarding the enforcement of mandatory statutory provisions, or challenges the legality, validity, and lawfulness of executive or administrative action taken in disregard of such

provisions or in excess of the authority conferred by law, the constitutional jurisdiction of the High Court remains available.

5. Applying the aforesaid principle to the facts and circumstances of the present case, we are satisfied that the controversy raised in the writ petition squarely falls within the ambit of the constitutional jurisdiction of the High Court. The matter involves questions concerning the legality and validity of the impugned action and its conformity with the applicable statutory framework. Consequently, the bar contained in Article 212 of the Constitution is not attracted. Accordingly, it is held that the High Court rightly assumed jurisdiction under Article 199 of the Constitution, took cognizance of the matter, and proceeded to adjudicate upon the *lis*. No jurisdictional infirmity, therefore, can be attributed to the impugned judgment on this account.

6. Undisputedly, the Government of the Punjab, vide Notification dated 31.12.2019, sanctioned the grant of Incentive Allowance to in-service regular Government servants appointed or posted in Projects, Programmes, Policy Units/Policy Cells, Companies, Authorities, Foundations and Funds, in addition to their admissible salary, including substantive pay and other admissible allowances, in the respective pay scale, with effect from 23.09.2019. The grant and payment of the said Incentive Allowance, however, was subject to the approval of the Selection Board. The record reveals that a meeting of the Selection Board was eventually held on 19.03.2021, wherein the grant of Incentive Allowance to the respondent at the rate of Rs.150,000/- per month was approved at Item No.3 under the heading "Primary & Secondary Healthcare Department (Incentive Allowance – Punjab AIDS Control Programme (PACP))". Notwithstanding the aforesaid approval by the Selection Board, the respondent was subsequently denied payment of the Incentive

Allowance by the Project Director, PACP through order dated 19.04.2021, primarily on the ground that the Incentive Allowance could not be granted retrospective ely. The relevant reasoning recorded in the said order reads as follows:

“Incentive Allowance cannot be granted retrospectively. Decision of the Selection Board taken on 10.03.2021 [19.03.2021] and Dr. Munir was relieved from PACP on 22.02.2021.”.

Thus, the principal basis for denying the respondent the approved Incentive Allowance was that, by the time the Selection Board accorded its approval on 19.03.2021, the respondent had already been relieved from his assignment as Project Director, PACP, on 22.02.2021, and, therefore, according to the departmental authorities, the allowance could not be extended to him for the period during which he had actually served in that capacity.

7. As regards plea of the learned Additional Advocate General to the effect that Incentive Allowance cannot be granted retrospectively, suffice it to observe that, upon his transfer and posting as Project Director, PACP, with effect from 15.07.2019, the respondent became eligible for grant/payment of Incentive Allowance attached to the said position. It is not disputed that the formal grant of the said allowance was contingent upon the approval of the Selection Board. However, if the meeting of the Selection Board was not convened until 19.03.2021, the respondent cannot be held responsible for such administrative delay, nor can he be deprived of the benefit of the allowance on account of circumstances wholly beyond his control. The record further reflects that, when the Selection Board eventually convened its meeting on 19.03.2021, it approved the grant of Incentive Allowance to the respondent, commensurate with the period during which he had actually served and discharged his duties as Project Director, PACP. The subsequent approval

of the Selection Board thus relates to and recognizes the period for which the respondent had effectively performed the duties of the relevant post. Once the competent forum itself approved the grant of the Incentive Allowance in respect of the period during which the respondent remained posted and worked as Project Director, PACP, there appears to be no lawful justification for withholding the said benefit merely because the requisite meeting of the Selection Board was convened at a later date. Accordingly, the respondent cannot be penalized for an administrative omission or delay attributable to the authorities concerned. Having admittedly performed the duties of Project Director, PACP, during the relevant period, and the grant of Incentive Allowance having subsequently been approved by the Selection Board, the respondent is legally entitled to the payment of the said allowance for the period for which he actually remained posted and served in the aforesaid capacity. This Court in a recent order passed in F.C.P.L.A. Nos.508 of 2025 etc. *The Province of Sindh versus Muhammad Rizwan Khan & others* **per Aamer Farooq, J**, has held that once a right accrues, it cannot be taken away/extinguished. Paragraph No.4 of the order is reproduced below for ready reference:-

“4. As noted above, petitioner is aggrieved of acceptance of writ petitions of the respondents by learned Sindh High Court. The controversy pertains to the fact that respondents are spouse/children of the deceased Sindh civil servants and sought appointments on the basis of Rule 11-A of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974 (the Rules). The Supreme Court of Pakistan vide judgment passed in case reported as General Post Office, Islamabad and others Vs. Muhammad Jalal (PLD 2024 SC 1276) struck down Rule 11-A ibid and petitioner now seeks benefit thereof on the basis that since the Rule is no longer in the field, no appointment can be made. The nub of the controversy is that at the time when the judgment of the Supreme Court of Pakistan supra was handed down, had the right accrued in favour of the respondents? In this regard, the relevant event, which resulted in the accrual of the right, was the death of the civil servant. As and when the death of a civil servant takes place, one of the children and/or spouse acquires the right to be appointed in the civil service. The process of application and/or a formal appointment letter are administrative acts. Since right had accrued in favour of private respondents, hence judgment of the Supreme Court does not come in their way for appointment on deceased employee children/spouse quota. It is trite law that judgments of the Supreme Court operate

prospectively and not retrospectively. Even-otherwise, the Supreme Court in a subsequent decision, clarified that the judgment reported as PLD 2024 SC 1276 supra does not take away the accrued rights and/or set aside the past and closed transactions. In view of above position of law, we do not find any legal infirmity in the reasoning handed down by the learned Sindh High Court, in the impugned judgment, warranting interference.”.

8. Adverting to the contention advanced by the learned Additional Advocate General that the respondent had been transferred from the post of Project Director, PACP, prior to the formal approval of the Incentive Allowance by the Selection Board, we are of the considered view that such a plea is devoid of legal substance. An employee cannot be penalized, nor can he be deprived of a benefit otherwise lawfully available to him, on account of an event or administrative delay that was wholly beyond his control. The convening of the Selection Board meeting and the timing of its decision were matters exclusively within the domain and control of the competent departmental authorities. Therefore, the respondent cannot be made to suffer merely because the Selection Board did not convene or accord its approval during the period of his posting as Project Director, PACP. To hold otherwise would amount to permitting the departmental authorities to take advantage of their own wrong/omission or delay and would result in manifest injustice to the employee. This Court in a judgment rendered in C.P.L.A. No. 491-P of 2022 *Khyber Pakhtunkhwa Police Service Commission through its Secretary & others versus Gohar Rehman* has held as under:-

“where the employee is otherwise entitled, and the denial, delay or deferment of the service benefit occurs not because of any fault on his part but because of departmental omission, inaction, error or illegality, the department cannot be allowed to gain a legal advantage upon its own wrong, nor can the employee be made to suffer the continuing prejudice of that wrong.”.

9. In view of the foregoing discussion, the irresistible conclusion is that the impugned judgment is based on a proper appreciation of the facts and the applicable law and does not suffer from any illegality,

infirmity, misreading or non-reading of record, or jurisdictional defect warranting interference by this Court. Consequently, no ground is made out for the exercise of this Court's jurisdiction to disturb the well-reasoned findings recorded therein.

10. In view of the foregoing discussion and for the reasons recorded hereinabove, we find no merit, whatsoever, in the instant petition, which is accordingly dismissed. Consequently, the prayer for grant of leave to appeal is declined and leave to appeal is refused.

Judge

Judge

Judge

Islamabad

20th August, 2026

Approved for reporting

Riaz