"Protection against Arbitrary Withdrawal of Government Employees' Allowances: A Legal Perspective on Vested Rights and Locus Poenitentiae"

RCBHC

RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

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COURT: **HON'BLE CHIEF JUSTICE ABDULLAH BALOCH**
SUBJECT: SERVICE LAW
DATE: 12TH MARCH 2025
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QUERY: *"Can the government lawfully withdraw an allowance once granted to its employees, and how does the doctrine of locus poenitentiae protect vested financial rights?"*

Respected sir!

In response to the query, it is submitted that based on the following precedents, it is established that once an allowance has been ***lawfully granted and acted upon***, it creates a **vested right** in favor of its recipients, which the government **cannot arbitrarily withdraw**. The principle of *locus poenitentiae* bars the executive from rescinding a benefit once it has been availed, unless there is a **clear legal basis** for such withdrawal.

The Supreme Court of Pakistan, in ***Federation of Pakistan v. Nusrat Tahir & Others*** **(2018 SCMR 691)**, affirmed the principle that ***once a financial benefit is granted and acted upon, it creates a vested right*** in favor of the recipients, and the government **c*annot arbitrarily withdraw it***. It emphasized that the ***doctrine of locus poenitentiae*** bars the government from unilaterally rescinding the allowance once payments had been made. The Relevant paragraph is as follows:

> *"11. As a secondary and also tenuous argument, learned Deputy Attorney General contended that the* ***Health Allowance is granted under executive fiat without any statutory backing therefore the same can be withdrawn by the Federal Government at any time****.* ***That is clearly a flawed contention.*** *It is admitted that grant of the Health Allowance and the terms of eligibility to receive the same were determined by the competent authority, Ministry of Finance in accordance with Rules of Business of the Federal Government. The original terms of the said lawful grant still hold the field. These were acted upon and payment of the Health Allowance to the respondents has conferred a vested right upon them.* ***In such circumstances, the executive is barred by the rule of locus poenitentiae from unilaterally rescinding and retrieving the benefit availed by its recipients****. Reference is made to Pakistan, through the Secretary, Ministry of Finance v. Muhammad Himayatullah Farukhi (PLD 1969 SC 407) and The Engineer-in-Chief Branch v. Jalaluddin (PLD 1992 SC 207). Therefore without a change of the terms of eligibility for the Health Allowance even the prospective exclusion of the respondents from receipt of the benefit shall constitute arbitrary and unlawful action."*

In case ***Syed Farooq Ahmad Shah v. Government of the Punjab & Others*** **(2020 PLC (C.S.) 1378)** the Lahore High Court applied the ***doctrine of locus poenitentiae***, holding that a government benefit, once granted and acted upon, cannot be rescinded unless done through proper legal justification**.** The withdrawal of salary and allowances granted to the legal heirs of a Shaheed police officer was declared unlawful**,** as it impaired an already conferred right. The Court noted that"

> *"Law is well-settled that once a right is created by extending benefit after complying with all codal formalities, the same cannot be destroyed or withdrawn as legal bar would come into play under the doctrine of locus poenitentiae. Reliance is placed upon Federation of Pakistan through Secretary Capital Administration and Development Division, Islamabad and others v. Nusrat Tahir and others [2018 PLC (C.S.) 669] and Muhammad Saeed and others v. Secretary Finance and others [2019 PLC (C.S.) 893]."*

In case of *Qazi Nazam-ud-Din v. Secretary Finance & Others (2011 PLC (C.S.)* **49),** the Lahore High Court affirmed the principle that **a financial benefit, once granted and acted upon, cannot be arbitrarily withdrawn by the government**. Citing the **principle of vested rights**, the court ruled that the government's action violated **constitutional guarantees of equality and due process**. The relevant paragraph from this case is:

> *"7. Earlier the petitioners were granted Big City Allowance with effect from April, 1992, which they received upto June, 1992 and later on it was refused on the ground that the Institution of the petitioner is situated outside the Municipal Limits of D.G. Khan and started deduction of the allowance already paid to the petitioners. It is held that the F Institution of the petitioners is not beyond the limits of the Municipality of D.G. Khan. Further,* ***it is established law that the benefit once granted to the civil servants cannot be withdrawn.*** *The petitioners are entitled to receive the Big City Allowance, and its payment to the petitioners have illegally been stopped. Relying on the authoritative judgment of this Court passed in Writ Petition No.20237 of 1997 on 15-1-1999, both these writ petitions are allowed with costs of Rs.50,000. The petitioners are granted Big City Allowance to be paid to them from July, 1992 when it was discontinued to be paid to them. The cost will be deposited in the Account of the Dispensary of High Court Bar Association, Multan. The petitioners or their counsel has not disagreed with it."*

In case ***Pakistan v. Muhammad Himayatullah Farukhi*** **(PLD 1969 SC 407)** the Supreme Court of Pakistan held that ***once an executive order has taken legal effect and created enforceable rights in favor of an individual, it cannot be arbitrarily withdrawn***. The Court applied the principle of *locus poenitentiae*, holding that a government authority cannot rescind an order once it has been acted upon and conferred a vested right**.** The Court further held that since the benefit had been formally approved, communicated, and implemented**,** its subsequent withdrawal was declared without lawful authority**.** The Court observed that:

> *"The authority that has the power to make an order has also the power to undo it. But this is subject to the exception that where the order has taken legal effect, and in pursuance thereof certain rights have been created in favour of any individual, such an order cannot be withdrawn or rescinded to the detriment of those rights."*

Conclusion

The judicial precedents discussed establish a consistent legal principle: once a financial benefit is lawfully granted and acted upon, it creates a vested right in favor of its recipients, which the government cannot arbitrarily withdraw. The doctrine of *locus poenitentiae* prevents the executive from rescinding such benefits unless supported by a clear legal basis. The Supreme Court and High Courts of Pakistan have repeatedly upheld this principle, emphasizing that any unilateral withdrawal of conferred rights without legal justification violates constitutional guarantees of fairness and due process.

The End