

Constitution Petition No. D-4484 of 2023

Abdul Latif

Vs.

The State

HIGH COURT OF SINDH

Composition of Bench.

D/B.

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Adnan Karim Memon

Dates of hearing : 18-12-2024

Decided on : 26 -12-2024

(a) Judgment approved for Reporting

Yes

15/12/24

CERTIFICATE.

Certified that the judgment */Order is based upon or enunciates a principle of law
*/decides a question of law which is of first impression/distinguishes/. Over-rules/
reverses/explains a previous decision.

* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

IN THE HIGH COURT OF SINDH AT KARACHI

4484

Constitutional Petition No. D-_____ of 2023

Abdul Lateef
S/o Abdul Aziz
Muslim, Adult, resident of
Flat No. C-4, on Plot No. FL-16/17,
Safari Terrace,
Karachi.

Petitioner

VERSUS

1. **Services, General Administration & Co-ordination Department**
Province of Sindh
Through its Secretary
Having office at Sindh Secretariat
Karachi.
2. **Province of Sindh**
Through its Chief Secretary
Government of Sindh
Having office at Sindh Secretariat
Karachi.
3. **Finance Department**
Through its Secretary
Government of Sindh
A.K Lodhi Block Finance Complex,
New Sindh Secretariat No. 6,
Kamal-Atta-Turk Road
Karachi.
4. **Board of Revenue**
Through its Senior Member
Government of Sindh,
Shahrah-e-Kamal Ataturk,
Near Passport office, Saddar,
Karachi.
5. **Accountant General Sindh**
Having office at University Road,
Near Nipa Chowrangi,
Karachi.

Respondents

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IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Adnan-ul-Karim Memon

Const. Petition No. D-4484 of 2023

Petitioner: Abdul Latif s/o Abdul Aziz through Mr. Raj Ali Wahid Kunwar, Advocate

Respondent: The State through Mr. Ali Safdar Depar, Assistant Advocate General, Sindh

Date of Hearing: 18.12.2024

Date of Announcement: 26.12.2024

ORDER

Muhammad Karim Khan Agha, J. Through the instant petition the petitioner has challenged the impugned letter dated 08.09.2023 whereby he was called for a personal hearing in disciplinary matter.

1. The brief facts of the case are that the petitioner is an Ex-PCS Officer of BPS-17 of the Revenue Department, Government of Sindh and at the time of retirement he was serving as Section Officer, Home Department. The petitioner's name according to the petitioner was put in a National Accountability Bureau (NAB) Reference No.15 of 2017 and NAB Reference 23 of 2017 on the fake and baseless accusations. Thereafter Departmental proceedings were initiated against the petitioner. According to the petitioner the Accountability Court has not passed any adverse order/judgment against him. The petitioner on attaining the age of superannuation i.e. 60 years retired from service on 21.08.2023 but the respondents with malafide intention and having ill will withheld all the emoluments of the petitioner including pensionary benefits, Gratuity, G.P. Fund, Leave Encashment due to the pending Departmental proceedings against him. Hence petitioner has approached before this Court for redressal of his grievance.

2. Learned counsel for the petitioner has contended that simply because departmental disciplinary proceedings were pending against him the Respondent had no right to withhold his pensionary benefits on his superannuation and prayed that the impugned letter concerning his inquiry be set aside as being unlawful and he be paid his full pensionary benefits from the date of his superannuation which he was entitled to under the law. In support of his contentions he placed reliance of the cases of **Mrs. Riffat Sattar V. Government of the Punjab through Secretary and 6 others** (2016 PLC (C.S.) 472), orders dated 08.09.2020,

08.10.2020 and 27.10.2020 passed by Divisional Bench of this Court in C.P No.D-1014 of 2019 **Abdul Karim Daudpota V. Trade Development Authority of Pakistan and others, Haji Muhammad Ismail Memon, Advocate** (PLD 2007 Supreme Court 35), judgment dated 06.02.2019 passed by Divisional Bench of this Court in C.P No.D-1179 of 2017, **Irshad Ahmed V. Port Qasim Authority through Chairman and 2 others** (2019 PLC (C.S.) 557), **Abdul Hameed V. General Manager (Operation), Pakistan Railway Headquarter Office, Lahore and another** (2012 PLC (C.S.) 209), order dated 07.03.2022 passed by Divisional Bench of this Court in C.P No. D-7072 of 2018, **Muhammad Zaheer Khan V. Government of Pakistan through Secretary, Establishment and others** (2010 SCMR 1554), **Abdul Wali V. Wapda through its Chairman and others** (2004 SCMR 678), **Parveen Javaid V. Chairman Wapda and 5 others** (2011 PLC (C.S.) 1527), **Irfan Naseer Baig and another V. Province of Punjab through Secretary, S&GAD and 2 others** (2011 PLC (C.S.) 1537), **Roshan Dani and 11 others V. Wapda through Chairman and 3 others** (2015 PLC (C.S.) 263), **Ghulam Nabi V. Federation of Pakistan through Secretary Ministry of Finance, Islamabad and 5 others** (2018 PLC (C.S.) Note 69).

3. On the other hand learned AAG contended that the impugned letter which in essence concerned departmental inquiry proceedings which had been initiated against the petitioner was lawfully passed as well as the consequences which followed namely the non payment of the petitioner's pensionary benefits after his superannuation.

4. We have heard learned counsel for the parties and perused the record and considered the case law cited at the bar.

5. As per the record vide notification dated 15.02.2013 issued by the Government of Sindh (GOS), Services, General Administration and Co-ordination Department the petitioner an officer of Ex PCS (BS 17), section officer of the home department on reaching the age of 60 attained the age of superannuation and stood retired from Government service w.e.f 21.08.2023. At the time of his superannuation the petitioner was facing departmental disciplinary proceeding which commenced in 2017 and his personal hearing was fixed on 21.09.23 as per letter dated 08.09.2023 issued by GOS, Services, General Administration and Co-ordination Department after his superannuation.

6. The question therefore emerges whether the departmental disciplinary proceedings could continue **after** the superannuation of the petitioner and whether on account of such proceedings the petitioners pensionary benefits could be withheld after his superannuation.

7. It has long been held that a pension is not a bounty or an ex-gratia payment but a right acquired in consideration of past services. It was a vested right and a legitimate expectation of a retiring civil servant, the same being a right conferred by law, could not be arbitrarily abridged or reduced except in accordance with law. In this respect, reliance is placed on the case of **Secretary, Government of Punjab, Finance Department and 269 others V. M. Ismail Tayer and 269 others** (2015 PLC (C.S.) 296).

8. The starting point in the instant case is FR 54A of Fundamental Rules 1922, which is set out below for ease of reference;

FR 54A of Fundamental Rules of Service 1922. *If Government servant, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of inquiry, the disciplinary proceedings against him shall abate and such Government servant shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.*

9. **The rule makes it absolutely clear** that after the superannuation of the petitioner the disciplinary proceeding against him will abate. Since the petitioner has superannuated we find that the disciplinary proceedings against him have abated and as such the impugned letter is of no legal effect.

10. **The rule also makes it absolutely clear** that once the disciplinary proceedings against the petitioner have abated (which we have found above in this case) the petitioner shall retire with full pensionary benefits.

11. The same position was upheld by the Supreme Court in the case of **Muhammed Zaheer Khan** (Supra) in the following terms;

*"10. From the plain reading of the above Rule (FR 54A) it becomes abundantly clear that what to talk of sending the case back to the department, even the pending disciplinary proceedings against an officer abate if the latter attains the age of superannuation. The Rule entitles such officer to retire with full pensionary benefits and period of suspension is bound to be treated as period spent on duty. In the circumstances, the question of now sending the matter back to the department for holding de*novo inquiry stands out of question. It may be stated at this juncture that the appellant has stated at the Bar that he is not interested in claiming any back benefits and that he is only interested in getting the stigma removed." (bold added)*

12. Like wise in the case of **Shahid Ahmed** (Supra) it was held as under;

"9. Rule 54-A of Fundamental Rules, 1922 says that if disciplinary action was initiated against civil servants and the action remained inconclusive during course of his service and he retired on attaining the age of superannuation in the meanwhile, not only unconcluded action would abate but civil servant would also be entitled to full pension/pensionary benefits, but here in this case no inquiry was pending when the petitioner was in service and the action has been taken by the respondents after his retirement and without hearing him.(bold added)

13. Again in the case of **Parveen Javiad v Chairman WAPDA** (2011 PLC (CS) it was held as under;

9. The main question that requires determination is whether the respondents are justified in withholding pensionary benefits of the husband of the petitioner despite the fact that at the time of his retirement and many years thereafter no disciplinary proceedings had been finalized that may have furnished some legal basis for the department to withhold his benefits. I have gone through the notification dated 17-4-1967 which provides that if there are any allegations against an employee relating to misappropriation or otherwise, such proceedings must be initiated at least one year before his retirement and finalized one year thereafter. If such proceedings are not finalized within the aforesaid time, the right of the department to withhold pensionary benefits stands abated.

10. It is settled law that an employee cannot be penalized for any action which is subject-matter of an inquiry which was not completed before his retirement. Reference in this regard may also be made to rule 54-A of the Fundamental Rules of Service which provides that on attaining the age of superannuation disciplinary proceedings which have not been completed, automatically abate and the civil servant is entitled to receive all pensionary benefits. In this regard reference may usefully be made to the cases of Muhammad Anwar Bajwa, Executive Director, Agricultural Development Bank of Pakistan, 1-Faisal Avenue, Zero Point, Islamabad v. Chairman, Agricultural Development Bank of Pakistan, Faisal Avenue, Zero Point, Islamabad [2001 PLC (C.S.) 336], Bilquis Nargis v. Secretary to Government of the Punjab, Education Department (1983 PLC (C.S.) 1141), Syed Abdus Salam Kazmi v. Managing Director WASA, Multan and another [2005 PLC (C.S.) 244], Haji Muhammad Ismail Memon Advocate Complainant's case (PLD 2007 SC 35) and Muhammad Zaheer Khan v. Government of Pakistan through Secretary, Establishment and others [2010 PLC (C.S.) 559], in which it has been held that the disciplinary proceedings against an employee must be completed before his date of retirement. An

employee cannot be penalized for any action which was subject matter of an inquiry and was not completed before his retirement. Reference may also be usefully made to Muhammad Zaheer Khan v. Government of Pakistan, through Secretary Establishment and others [2010 PLC (C.S.) 559].

14. Thus, based on the above discussion we set aside the impugned letter and hold that the subject inquiry against the petitioner as alluded to in the impugned letter has abated and that the petitioner is entitled to all pensionary benefits including pension, gratuity, GP fund, leave encashment w.e.f from the date of his superannuation which shall be paid to him by the Respondents within 6 months of the date of this order a copy of which shall be sent to the Chief Secretary Government of Sindh for compliance.

15. The petition stands disposed of in the above terms.