

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-338 of 2023

[Rasool Bux Shar v. Federation of Pakistan and others]

Before;

Mr. Justice Yousuf Ali Sayeed;

Mr. Justice Abdul Hamid Bhurgri.

Petitioner : In person.

Respondent Nos.1&2 : Through Ms. Zehrah Sehar Veyani,
Assistant Attorney General.

Respondent No.3 : Through Mr. Muhammad Nishat Warsi,
Advocate

Respondent No.4 : Nemo

Date of Hearing : **18.09.2025**

Date of Decision : **10.10.2025**

J U D G M E N T

Abdul Hamid Bhurgri, J. Through this petition, the Petitioner has prayed for the following relief:-

1(a). To hold and direct Respondent Port Qasim Authority and Korangi Fisheries Harbours Authority to make payment of superannuation pension and related pensionary benefits Cumulatively from the date of superannuation retirement from the service of KFHA i.e.07-12-2008 based on last pay drawn Rs.35200/-PM in BPS-19

(b) To hold and direct respondents PQA and KFHA make payment of superannuation pension and allied pensionary benefits at proportionate rate independently and separately for the period of service the petitioner rendered in each Institution (PQA and KFHA) being his service as "Combined Appointment" in terms of CSR 467 as recorded under para 18 of the judgment of Honorable Sindh High Court as attached herewith.

(2) To hold and direct PQA pay proportionate share of pensionary benefits in compliance with the order of Apex Court in CA-56-K of 2019 dated 14-04-2020 on the basis of last pay drawn Rs.35200/- PM on his superannuation retirement from the service of KFHA from 07-12-2008, as PQA's claim that the petitioner was retired from the service of PQA in 1988 is unfounded and baseless.

(3) To hold and direct respondent No.4 KFHA to pay "Gratuity" in addition to pension on the same pattern as paid to rest of the selected retirees out of

the sanctioned amount of gratuity of all retirees of KFHA including the petitioner.

(4) To hold and direct all respondents arrange payment of monthly handsome relief as this Honorable Court may deem fit under the Circumstances of this case for maintenance and survival of dependents of the petitioner who are living in a state of distress deprivation, poverty and feeling abandoned especially when an old-age unhealthy, senior citizen of the Pakistan was forced to face endless litigation single handed "in person" with empty hands and suffering mental agony and financial hardship.

(5) To hold and take appropriate action against those respondents of PQA who presented unfounded and baseless "concise statement" before the Apex Court in CRL ORGL petition No.13-K of 2020 stating bare-faced lie with affidavit and willfully claimed that the petitioner was retired from the service of Port Qasim Authority in the year 1988 while they were fully aware of the fact that the petitioner was not retired from PQA in 1988 but was relieved through proper channel to join Korangi Fisheries Harbour Authority in 1988.

2. The case of the petitioner is that he was initially appointed as an Assistant in the Port Qasim Authority (hereinafter referred as PQA) through an appointment letter dated 16.11.1973. He was later confirmed in service and promoted to the post of Superintendent (BPS-16) with effect from 15.08.1984, and subsequently granted Move Over to BPS-17. He served in PQA for a total of 14 years, 2 months, and 20 days, from 20.11.1973 to 10.02.1988, which he claims qualifies him for pensionary benefits. On 11.02.1988, the petitioner joined Korangi Fisheries Harbour Authority (herein after referred as KFHA) as Deputy Director (Admn.), BPS-18 after being relieved by PQA through Board Resolution dated 09.02.1988.

He continued his service at KFHA without any interruption and ultimately retired on 07.12.2008, after more than 20 years of service with KFHA. Thus, he claims a total of 35 years of continuous government service.

Upon retirement, the petitioner was granted Contributory Provident Fund (CPF) by KFHA, but gratuity was denied on the basis that dual benefits (CPF and gratuity) were barred under Finance Division's O.Ms dated 16.10.1984 and 11.02.1985. Meanwhile, PQA refused to grant pension, on the ground that the petitioner did not

serve for 25 years with PQA and that his service ended upon joining KFHA. PQA also claimed that his lien was not finally approved by the Board and that its rules are distinct from federal government pension regulations. The petitioner challenged this denial of pension by filing C.P. No.D-628/2014, which was allowed by the High Court on 17.01.2019, directing PQA to recompute and pay his pensionary dues. PQA then filed Civil Appeal No.56-K/2019 before the Supreme Court, which upheld the petitioner's right to receive pension for his 14 years of confirmed service with PQA. Despite this, PQA offered a one-time gratuity of Rs.71,000, which led the petitioner to file Criminal Original Petition No.13-K of 2020 for contempt of court. This petition was dismissed on 10.02.2021, but the petitioner maintains that the Supreme Court judgment on merits remains binding.

3. KFHA, in its reply, stated that the petitioner had already received CPF, and therefore was not entitled to gratuity under the applicable policies. It relied on Finance Division O.Ms of 1984 and 1985, later reiterated in 2015, which barred dual payment of CPF and gratuity. KFHA argued that only employees appointed before 16.10.1984 were eligible for both benefits and referred to the sanctioned Rs.23.5 million gratuity fund, which did not include the petitioner. It also distinguished the petitioner's case from that of Imtiaz Mohsin (C.P. No.D-4622/2016), where different service conditions applied.

4. The Petitioner contends that the denial of both pensionary benefits from the Port Qasim Authority (PQA) and gratuity from the Korangi Fisheries Harbour Authority (KFHA) is arbitrary, discriminatory, and in violation of Articles 4 and 25 of the Constitution. He asserts that he has rendered a total of 35 years of continuous service in two government organizations operating under the same Ministry-14 years with the PQA and 21 years with the KFHA-and is therefore entitled to pension from the PQA and gratuity from the KFHA.

5. Learned counsel for Respondent No.3 (PQA) submits that under the applicable rules, an employee becomes eligible for pensionary benefits only after completing 25 years of qualifying service. Since the Petitioner admittedly served in PQA for 14 years and 2 months, he does not meet the threshold required for pension. However, it is submitted that the Petitioner was entitled to and has

already received gratuity from PQA, without any recorded protest at the time. On these grounds, learned counsel prays for dismissal of the Petition.

6. Learned Assistant Attorney General, representing the Federation, supports the arguments advanced by the counsel for PQA and further submits that according to the comments filed by KFHA, the Office Memorandums issued by the Finance Division in 1984 and 1985-subsequently reaffirmed in 2015-govern the entitlement to service benefits. These memorandums specifically apply to employees appointed prior to 16.10.1984. She further argues that the matter is barred by the principle of res judicata, as a Petition raising identical grounds has already been dismissed by the Hon'ble Supreme Court. Therefore, the present Petition is not maintainable and is liable to be dismissed.

7. This Court has heard the Petitioner, who appeared in person, as well as the learned counsel for Respondent No.3 and the learned Assistant Attorney General. The Court has also examined the documents and judicial precedents placed on record.

8. Upon examination of the record, it is evident that the Petitioner has previously agitated the same grievance regarding pensionary benefits in Constitution Petition No. D-628 of 2014, which was allowed to the extent that the Petitioner was found entitled to pension for the period of 14 years and 3 months rendered with the Port Qasim Authority (PQA). The said judgment was subsequently challenged in Civil Appeal No. 56-K of 2019 before the Hon'ble Supreme Court, which upheld the finding to the extent of proportionate pension rights for the PQA service only. Thereafter, a contempt petition bearing Criminal Original Petition No.13-K of 2020 was filed for alleged non-compliance, which too was dismissed by the Supreme Court following PQA's submission that gratuity had already been offered to the Petitioner, and which was ultimately received by him. As such, the matter stands concluded and the original order has attained finality. Reliance is placed on the case of **Muhammad Raqeeb v. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others, 2023 SCMR 992**, wherein the Honourable Supreme Court has held as under:-

“12. In the earlier round of litigation this Court has already held that all the employees were performing duties on contract basis as project employees, thus the continuity of their services with the Board will by itself

furnish no ground for grant of relief of regularization of their services and the Review Petition was also dismissed. The doctrine of finality is primarily focused on a long-lasting and time honored philosophy enshrined in the legal maxim "Interest reipublicae ut sit finis litium" which recapitulates that "in the interest of the society as a whole, the litigation must come to an end" or "it is in the interest of the State that there should be an end to litigation". Finality of judgments culminates the judicial process, proscribing and barring successive appeals or challenging or questioning the judicial decision keeping in view the rigors of the renowned doctrine of res judicata explicated under section 11 of the Code of Civil Procedure, 1908. The Latin maxim "Re judicata pro veritate occipitur" expounds that a judicial decision must be accepted as correct. This doctrine lays down the principle that the controversy flanked by the parties should come to an end and the judgment of the Court should attain finality with sacrosanctity and imperativeness which is necessary to avoid opening the floodgates of litigation. Once a judgment attains finality between the parties it cannot be reopened unless some fraud, mistake or lack of jurisdiction is pleaded and established. The foremost rationale of this doctrine is to uphold the administration of justice and to prevent abuse of process with regard to the litigation turn out to be final and it also nips in the bud the multiplicity of proceedings on the same cause of action. In the case in hand, for all practical purposes, the controversy attained finality and even under the doctrine of past and closed transaction, the controversy cannot be reopened by this Court in the second round of litigation which on the face of it is an abuse of process of the Court".

9. As regards the Petitioner's reliance on the Office Memorandum (O.M.) issued by the Finance Division in 1986, the record demonstrates that this argument was neither raised nor claimed in the earlier constitutional petition. It is a settled principle of procedural law that a party cannot split causes of action across multiple proceedings. Under Order II Rule 2 of the Code of Civil Procedure, any relief which was available at the time of filing the earlier petition and not claimed therein is deemed to have been relinquished. The Petitioner, by failing to seek such relief earlier, has effectively waived any right to now rely upon the same. Furthermore, the doctrine of estoppel precludes the Petitioner from re-agitating the matter after having accepted gratuity in pursuance of the earlier proceedings. Reliance is placed on the case of **Province of Punjab through Secretary, Population Welfare Department, Lahore and others v. Shehzad Anjum and others, 2024 SCMR 766**, wherein the Honourable Supreme Court has observed as under:-

“6. Though this is not the respondents' case, if for the sake of argument it is assumed that in W.P. No.13784/2010 the respondents had only sought their regularization, and after they were regularized they wanted the regularization to take effect from the date of their initial appointment on contract basis, they could not seek this relief subsequently (in W.P. No.292/2017) because of the restriction in Order II, Rule 2 of the Civil Procedure Code, 1908, which stipulates that:

'2. Suit to include the whole claim.--(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim - Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs - A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

10. We are also persuaded by the official stance taken by Respondents PQA and KFHA. PQA has asserted that the minimum qualifying period for regular pension is 25 years, and the Petitioner, having rendered only 14 years of service with them, was therefore rightly extended gratuity, which he ultimately accepted.

Reliance is placed on the case of Chairman Pakistan Ordinance Factories Board, Wah Cantt. v. Shahzad Amin reported in 2021 SCMR 1055 wherein the Supreme Court has held as under:-

7. It is clear and obvious from a plain reading of the Regulation in question that it neither provides for payment of pensionary benefits to a person who has rendered service for 13 years nor does it contain any provision that a person who has rendered less than the qualifying service may be entitled to receive pension. We are at a loss to understand how the Tribunal came to the conclusion that the Respondent's case fell within the parameters of Regulation No.371-A of CSR having more than 10 years of service and was therefore entitled to pension. The said conclusion is not only unsupported by the record but also by the Regulation that the Tribunal relied upon to grant relief to the Respondent. Having come to the conclusion that the minimum qualifying service for receipt of retirement benefits is 25 years and Regulation No.371-A of CSR was not attracted to the case of the Respondent. We are in no manner of doubt that the impugned order of the Tribunal is unsustainable on facts as well as law. We have, therefore, no hesitation to set aside the same.

As to KFHA, the Office Memorandum relied upon by the Petitioner was clarified in 2015 by the Finance Division, expressly stating that it applies only to those employees appointed prior to

1986. Since the Petitioner joined KFHA in 1988, no vested right accrues to him under said policy.

11. In light of the above, this Court finds that the present petition is barred by the principle of res judicata as the issues raised have already been adjudicated upon in earlier proceedings between the same parties. The attempt to now seek additional reliefs which could and should have been raised earlier falls afoul of established procedural law. Accordingly, this petition is held to be not maintainable and is hereby dismissed.

JUDGE

JUDGE

Ayaz Gul