

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-4428 of 2014

Ahmed Ali Bhambro.....Petitioner

Versus

Federation of Pakistan and others.....Respondents

Date of hearing: 10.05.2017

Mr. Imtiaz Mansoor Solangi, Advocate for the Petitioner.
Mr. Furqan Ali, Advocate for Respondent No. 2 and 3.
Shaikh Liaquat Hussain, Deputy Attorney General.

JUDGMENT

ADNAN-UL-KARIM MEMON,J:- Through the instant Petition,
Petitioner has sought the following relief(s):-

- (a) To declare that the impugned order dated 22.10.2013 is arbitrary, unilateral and without jurisdiction and it is liable to be set aside.
- (b) To declare that petitioner has a fundamental rights for the protection of his basis pay of Rs.6272/- w.e.f. 1.1.1997.the date of his services were acquired and absorbed by the Respondent No. No.2 NICL and the consequential benefits accrued thereon.
- (c) To declare that NICL/Respondent No.2 is bound and obliged to treat the petitioner in continuous employment w.e.f 15.6.1976 to his date of retirement on 24.2.2013 and make full, and total and final payment of pension/retirement benefits to the petitioner being his final employment agency for all the legal purposes within 15 days of the order of this Hon'ble Court in pursuance of PLD 2007 SC 35 as a declared law of the country.
- (d) To declare that petitioner is entitled for the grant of 22% interest and markup on his accrued service benefits/arrears of service allowances and proforma promotions from the date of accrual till satisfaction of the decree.

2. Case of the Petitioner as set forth in the Memo of Petition is that on 15.6.1976 Petitioner was appointed as Accounts Officer in Pakistan National Produce Company (hereinafter referred to as "PNPCL"), which was a Subsidiary of Rice Export Corporation of Pakistan (hereinafter referred to as "RECP") under the control of Ministry of Commerce (Respondent No.1). The Rice Export Corporation of Pakistan (RECP) was privatized with effect from June 1996. At that point of time, Petitioner was declared surplus employee and was directed to be absorbed in any other Government Establishment, as a result whereof, Petitioner was absorbed in National Insurance Corporation Limited (Respondent No.2) with effect from 01.01.1997, but, due to non-availability of post of same scale in NICL (Respondent No. 2) Petitioner was absorbed as Junior Assistant vide Letter bearing No. Estt (Absorb) 21/96 dated 01.01.1997. Feeling aggrieved, Petitioner made Representation before the Respondent No.2/Management of NICL for consideration of his case for absorption and posting as Assistant Departmental Officer. The said request of Petitioner was allowed to the extent of re-designating him as Assistant Departmental Officer vide Office Order No. 159 dated 28.10.1997. Consequently, another Office Order No. 262 dated 18.5.1998 was issued and re-fixed the pay of the Petitioner in the scale of Assistant Departmental Officer w.e.f. 28.10.1997. Petitioner moved Appeal for reconsideration of re-fixation of salary as an Assistant Departmental Officer and Respondent No.1 was pleased to recommend the case of Petitioner to the Management of NICL but it was rejected vide impugned Order dated 22.10.2013, on the ground that the same cannot be allowed at this stage and closed his case. As per Petitioner his many Representations on the subject were referred to the Board of NICL but

the same was not decided and in the meanwhile Petitioner reached the age of superannuation on 25.02.2013. The Petitioner is claiming protection of his basic pay from the date of absorption, seniority and promotion and allowances along with interest and mark up and counting of his previous service in PNPCL. It is asserted by the Petitioner that his previous service of 20 years with PNPCL is not counted by NICL for the purpose of pensionary benefits on the ground that under the Service Regulation No. 6 (3) of 1986 Petitioner cannot be paid the pensionary benefits of his previous period of service with PNPCL.

3. Mr. Imtiaz Mansoor Solangi, learned counsel for Petitioner has argued that Petitioner was appointed in the month of June 1976 in PNPCL (Shikarpur Rice Mills). He next contended that due to privatization of RECP all the officers of RECP were recommended by the Ministry of Commerce for absorption in various Departments working under the administrative control of Ministry of Commerce. Consequently, all the surplus employees were adjusted in the month of June, 1996 in NICL and State Life Insurance Corporation of Pakistan in same grade and pay scale except the Petitioner. He next contended that Petitioner moved Representation to the Respondent No.1 and he was absorbed as Junior Assistant with effect from 1.1.1997 on pay scale of Junior Assistant which was contrary to the terms and condition of his previous service in RECP. He next contended that NICL Management did not consider the promotion of Petitioner with effect from 1.8.2006 whereas juniors of Petitioner were given seniority and promotion. He has relied upon the order dated 11.4.2017 passed by the Hon'ble Supreme Court in Civil Appeal No. 1297 of 2016 and argued that the colleague of Petitioner

namely Mr. Roshan Ali Siddiqui filed Constitutional Petition bearing No. 5218 of 2014 before this Court which was allowed vide order dated 12.11.2015 and the same was upheld by the Hon'ble Supreme Court the above referred case. He next contended that the Petitioner was promised at the time of absorption that he would be given allowances and benefits as per Corporation Rules and Regulations and Petitioner's past service in PNPCL would be taken into account for the purpose of pension. He further added that on 31.03.2000 the Corporation was incorporated as a Public Limited Company through National Insurance Corporation (Re-organization) Ordinance, 2000. Subsequently, at the time of retirement of Petitioner on 24.2.2013, he was declined pensionary benefits of his previous service in PNPCL. He next contended that Hon'ble Supreme Court in the above referred order was pleased to consider the provision of Regulation 6(3) of National Insurance Corporation Employees (Pension) Regulation, 1986 and upheld the decision of this Court rendered in the case of Roshan Ali Siddiqui (supra) and the Petitioner is also entitled the same benefit.

4. Mr. Furqan Ali, learned counsel for Respondent-Company by relying upon the Regulation No. 6(3) NIC Employee's Pension Fund, Regulations 1986 has emphatically argued that the Petitioner would only be entitled to receive pension if he had been previously receiving such pension or it was permissible in PNPCL. Therefore, Petitioner is not entitled to receive pension in the Respondent-Company and the Petition is not maintainable. He next contended that Petitioner was absorbed on 1.1.1997 subject to the Rules and Regulations of the Respondent-Company. He next contended that the terms and conditions of

employment were accepted by Petitioner vide Letter dated 01.01.1997. Therefore, the salary which the Petitioner was drawing in his previous Organization is entirely irrelevant for consideration. He next contended that Respondent-Company reconsidered the absorption of Petitioner against the post of Assistant Departmental Officer with effect from 28.10.1997 vide Office Order No. 262 dated 18.5.1998. He next contended that so far as fixation of substantive pay of Petitioner is concerned, it was rejected on 17.9.2013. He next contended that Petitioner was employee of PNPCL, a subsidiary of Rice Export Corporation of Pakistan, and he was absorbed on 1.1.1997 in NICL subject to Rules and Regulation No. 6(3) of National Insurance Corporation Employees' Pension Funds Regulation, 1986, wherein no pension scheme existed in PNPCL. Therefore, Petitioner was not eligible for counting of past service for the purpose of calculation of pension. He next contended that the appeal of the Petitioner for counting of past service in PNPCL was decided by NICL vide Letter dated 29.7.2013. He next contended that Respondent-Company vide Letter dated 12.2.2014, requested Privatization Commission to release the benefits of previous service of Petitioner in PNPCL. He next contended that Petitioner was only entitled to receive pensionary benefits with effect from 01.01.1997 when the Petitioner was absorbed in NICL and per learned counsel the same have been paid to the Petitioner. He next contended that Petitioner is not eligible for receiving pensionary and retirement benefits for the entire length of service from the Respondent No.2 under Regulation No. 6(3) of National Insurance Corporation Employees' Pension Funds Regulation, 1986 as the pension scheme did not exist in the Petitioner's former Organization. He next contended that the case of Roshan Ali

Siddiqui (supra) is distinguishable from the facts and circumstances of the present case, thus no benefit can be given to the Petitioner.

5. We have heard learned counsel for both the Parties, perused the material available on record and case law cited at the bar.

6. First of all, we examine the issue of maintainability under Article 199 of the Constitution. As per Section 3 of National Insurance Corporation (Re-Organization) Ordinance, 2000 Respondent-Company got status of Public Limited Company from the date of incorporation of the Company with the Securities and Exchange Commission of Pakistan, under the Companies Ordinance, 1984 (XLVII of 1984). As per Section 2 (g) of Public Sector Companies (Corporate Governance) Rules, 2013 define the Company as under:-

- (g) *“Public Sector Company” means a company, whether public or private which is directly or indirectly controlled, beneficially owned or not less than fifty percent of the voting securities or voting power of which are held by the Government or any instrumentality or agency of the Government or a statutory body, or in respect of which the Government or any instrumentality or agency of the Government or a statutory body, has otherwise power to elect, nominate or appoint majority of its directors, and includes a public sector association not for profit, licensed under Section 42 of the Ordinance.”*

7. The Honorable Supreme Court in the case of Ramna Pipe and General Mills (Pvt.) Ltd v. Sui Northern Gas Pipe Lines (Pvt.) reported in 2004 SCMR 1274 has maintained that a Constitutional Petition against a Public Limited Company is maintainable.

8. The case of Petitioner is that he was appointed in the year 1976 in Pakistan National Produce Company Limited (PNPCL) which was closed and its entire staff including the Petitioner was absorbed in National

Insurance Corporation vide Letter dated 01.01.1997 at that juncture. Petitioner was assured by NICL that he would be given allowances and benefits as per Corporation Rules and Regulations. It is admitted by the NICL in Paragraph No. 7 and 8 of the Memo of Petition that as per Regulation No. 6(3) of National Insurance Corporation Employees' Pension Funds Regulation, 1986 requested Respondent No.4 to release past service benefit to the Petitioner but till date the Petitioner has not been paid the benefits of his past service in PNPCL which could have been taken into account earlier for the purpose of his pension. As per Section 4(3) of National Insurance Corporation (Re-organization) Ordinance, 2000, Petitioner's previous service benefits are protected. The contents of relevant Section are reproduced below:

“Transfer of employees from the Corporation to the Company (i) All whole time employees of the Corporation who had continuously served for a period of not less than 6 months before the effective date shall transferred to and become the employees of the Company, herein referred to as the “Transferred Employees” on the same terms and conditions, including remuneration, tenure of office, rights, perquisites, privileges, pension benefits, gratuity, provident fund, group insurance and other matters as were applicable to them immediately before the effective date”.

(2) No person transferred to the Company pursuant to sub-section (i) shall be entitled to any compensation as a consequence of transfer to the Company.”

(3) The terms and conditions of Service of any Transferred Employee shall not be altered adversely by the Company except in accordance with the laws of Pakistan or with the consent of the Transferred Employees and the award of appropriate Compensation.”

9. The learned counsel for Petitioner has heavily relied upon the case of Roshan Ali Siddiqui (supra) passed by this Court, which was

challenged before the Hon'ble Apex Court and the same was upheld vide Order dated 11.04.2017 in Civil Appeal No.1297/2016.

10. Let us first highlight the case of M/s National Insurance Company Limited Vs. Roshan Ali Siddiqui and others (supra), in which the Hon'ble Supreme Court has minutely discussed the effect of the provision of Regulation No. 6(3) of National Insurance Corporation Employees' Pension Funds Regulation, 1986. The order dated 11.4.2017 is reproduced as under:-

“This appeal with the leave of the Court dated 26.4.2016 entails the facts that Respondent No.1 (*respondent*) was appointed in Pakistan National Produce Company Limited (*PNPCL*), a subsidiary of the Rice Export Corporation of Pakistan (*RECP*). Subsequently PNPCL was abandoned and its entire staff, including the respondent, was transferred to the National Insurance Corporation (the Corporation). Vide letter dated 01.07.1996, the respondent was promised that he would be entitled to allowances and benefits as per the Corporation's Rules and Regulations. According to the office order dated 11.01.1998 the respondent's past services in PNPCL and RECP would be taken into account for the purposes of pension. In the meantime, on 31.03.2000, the Corporation (*hereinafter referred to as the Company*) was incorporated as a public limited company through the National Insurance Corporation (Re-organization) Ordinance, 2000 (*the Ordinance*). Subsequently vide letter dated 31.8.2000, such pensionery benefits promised to the respondent were withdrawn and subsequently at the time of his retirement on 04.05.2014, he was declined pensionery benefits of his service in PNPCL. Such action was challenged successfully by the respondent through a constitution petition before the learned High Court.

Leave in this case was granted primarily to consider the effect of the provisions of Regulation 6(3) of the National Insurance Corporation Employees (Pension) Regulations, 1986 (*the Regulations*).

2. Learned counsel for the appellant by relying upon the said regulation has strenuously argued that the respondent would only be entitled to receive the pension if he had been previously receiving such

pension or it was permissible in PNPCL, in the absence of which, he was not entitled to receive pension in the Company, therefore, the interpretation placed by the learned High Court on Regulation 6(3) is inapt and cannot sustain.

3. Heard. We find that the appellant, once having made a promise to the respondent vide office order dated 11.01.1998, was barred by the rule of locus poenitentiae from withdrawing such offer made to him; beside the learned High Court has appropriately interpreted Regulation 6(3) that it was an option available with the appellant either at the time of absorption of the Respondent to give him the pensionary benefits for the previous service in PNPCL or otherwise. This option once having been exercised could not be whimsically or unilaterally withdrawn. Obviously the time the respondent retired from service is when he attained the cause of action to challenge the refusal of pensionary benefits on the basis of his previous service as promised. We are not convinced with the argument that the respondent was estopped from claiming such pensionary benefits by his own conduct of withdrawing the amount on the basis of the withdrawal order dated 31.8.2000. This withdrawal was made by the respondent under protest and his claim remained alive which he appropriately agitated at the time when he was refused pensionary benefits. Moreover, vide office order dated 11.01.1998 the Corporation had promised pensionary benefits to the respondent as envisaged in the order. Subsequently vide the Ordinance promulgated on 31.03.2000, the corporation was converted into the Company and according to Section 4 thereof, it was mandated that the employees of the corporation (*as the respondent was at that time*) shall be entitled to the same terms and conditions (*as they had while employed in the Corporation*). The order of withdrawal dated 31.08.2000 was issued after promulgation of the Ordinance however this was impermissible in view of Section 4 *ibid* as the entitlement of the respondent to receive the pension had already been accepted, acknowledged and promised by the Corporation. Therefore a vested right in the above context stood created in favour of the respondent which was protected under Section 4 *ibid* and could not be subsequently circumvented by the Company. In the light whereof, we do not find any merit in this appeal which is hereby dismissed.”

11. We are of the view that Case of Petitioner is of similar nature to that of the petitioner qua of above to the extent of pensionary benefits in

his previous Organization. Regulation No. 6(3) of National Insurance Corporation Employees' Pension Funds Regulation, 1986 clearly protects the pensionary benefits of the Petitioner in PNPCL, which is reproduced as under:-

“6(3) In case an employee of any other organization is permanently absorbed in the service of the Corporation. The Corporation may accept the pensioner liability in respect of such an employee subject to the condition that pension scheme exist in the former organization from where the employee has been transferred and that organization pays the proportionate liability for the period the employee remained in their service. Such pension contribution will be recovered from the concerned organization at the rate approved by the Corporation. Emphasis added.”

12. So far as arguments made by learned counsel for Respondent-Company that Petitioner would only be entitled to receive the pension if he had been previously receiving such pension or if it was permissible in PNPCL is concerned, the learned Division Bench of this Court in the case of Roshan Ali Siddiqui (supra) has interpreted Regulations 6 (3) that it was an option available with Respondent-Company either at the time of absorption of Petitioner to give him pensionary benefits in previous service in PNPCL or otherwise. This option once having been exercised could not be whimsically or unilaterally withdrawn, so this assertion of the learned counsel for the Respondent-Company is not tenable in the eyes of law hence discarded.

13. In the light of judgment passed by the Hon'ble Supreme Court vide order dated 11.4.2017 in Civil Appeal No. 1297 of 2016 (M/s National Insurance Company Limited Vs. Roshan Ali Siddiqui and others), which was implemented by the Respondent-Company in letter and spirit, we are not convinced with the argument of learned counsel for the

Respondent-Company that the Petitioner is not entitled to pensionary benefits with effect from the date of his initial induction in the PNPCL (former Organization of the Petitioner) on 15.06.1976, rather from the date of his absorption i.e. 01.01.1997 in NICL. We are of the view that Petitioner was absorbed in the Respondent-Company along with all liabilities including service benefits accrued to him in his previous Organization and that cannot be denied.

14. In view of forgoing discussion, this petition is allowed in the terms whereby the Respondent-Company is hereby directed to re-calculate the pensionary benefits of previous period of service of the Petitioner and other benefits as admissible under the law. Such amount must be deposited with the Nazir of this Court within a period of 30 days from the date of receipt of this Judgment and paid the same to the Petitioner on proper verification and confirmation.

JUDGE

JUDGE

Karachi
Dated: 01.06.2017
S.Soomro/PA