

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**Present:**

Mr. Justice Syed Hassan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

**C.P No.D-5798 of 2014**

Anwery Begum.....Petitioner

Versus

The Federation of Pakistan & others .....Respondents

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**Date of hearing: 23.08.2017**

Mr. Abdul Salam Memon, Advocate along with Petitioner.

Mr. Muhammad Aslam Butt, DAG along with

Mr. Ahmed Noor, Deputy Director Legal, Headquarter ASF.

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:** Petitioner is seeking the following

relief(s) in the instant Petition:

- i) Declare that the letter dated 08.05.2013 as well as letter dated 02.07.2014 issued by the incompetent are illegal.
- ii) Set aside the Impugned Order dated 02.07.2014 including the MOD UO No. 4-14/2013-ASF dated 08.05.2013 and direct the respondents to implement the letter No. 60/A/57/SO/98-99/DF/ (O&D) dated 24<sup>th</sup> November, 1998.

2. Brief facts of the case are that Petitioner was initially appointed as Sub-Inspector in the Airport Security Force (ASF), Department of Civil Aviation vide Order dated 17.05.1976. Petitioner has averred that on 1.11.1981 she was promoted to the post of Inspector (BPS-16) and posted as Assistant Security Officer with effect from 01.11.1986 vide Notification dated 26.11.1986. It is further added by Petitioner that she was transferred from Karachi Airport to Islamabad Airport on directives of the Competent Authority vide order dated 24.08.1987; that Petitioner moved an application for resignation from her service due to domestic/family circumstances. Per Petitioner the said resignation was accepted by the Competent Authority and she was discharged from service vide Memorandum dated 05.05.1988. Per Petitioner, on 26.10.1991 she applied for the post of Security Officer (BPS-17) in the Airport Security Force, Civil Aviation Division through Federal Public Service Commission (FPSC) and was selected and appointed against the said post by the Respondent No.2 vide Memorandum dated 02.02.1993. Petitioner added that she rendered about 12 years of service in the Civil Aviation Authority against the permanent post. Petitioner further added that after break in the past service as Assistant Security Officer (BPS-16) with effect from 01.07.1976 to 05.05.1988 was regularized by the competent authority towards qualifying service for the purpose of pension under Article 361 of Civil Servant Regulations (CSR). As per averments in the memo of Petition, the period of regularized service was included and added in the form of calculation of qualifying service of a Gazetted Government servant, by issuing a qualifying certificate/letter No.60/A/57/SO/98-99/DF/(C&D)

dated 24<sup>th</sup> November, 1998 for the purpose of sanction of pension. It is further added by her that since the period of past regularized service in the same organization has been included and added at Col No.8 (ii) in the form of calculation of qualifying service for the purpose of grant of pension the Petitioner is entitled to get all pensioner benefits of Government Service on reaching the age of superannuation/retirement that is, 16.03.2015. It is further averred by the Petitioner that she was granted Leave Preparatory Retirement (LPR) for 365 days with effect from 16.03.2014 to 15.03.2015 vide Memorandum dated 14.03.2014. Petitioner asserted that while preparing retirement documents for clearance of legal dues she was provided a photocopy of impugned order/MoD u.o No.4-4/2013-ASF dated 08.05.2013, whereby past service of the Petitioner towards qualifying service for pension was revised and forfeited under Article-420 (G) CSR. Petitioner added that the said impugned Letter dated 08.05.2013 was never served upon her but was kept secret in the office to deprive the Petitioner from pensioner benefits. Per Petitioner she filed grievance application to Respondent No.3, which was declined in the same terms. Petitioner filed Appeal before Secretary Defence, Government of Pakistan, Islamabad on 06.06.2013 for review of order dated 08.05.2013; the said Appeal was referred to the Cabinet Secretariat, Aviation Division Rawalpindi on 26.09.2013. Petitioner further added that on 14.3.2014 she was informed about her retirement date that is, 16.03.2015 by the Respondent No.5. Petitioner asserted that she filed another Appeal on 03.06.2014 but, the Cabinet Secretariat, Aviation Division, rejected the said Appeal vide impugned letter No. 4-14/2013-ASF dated 02.07.2014.

Per Petitioner, she filed Appeal for review of order dated 02.07.2014 to the Joint Secretary, Finance Division, Regulation Wing, Islamabad but no response received by the Petitioner till 22.07.2014. Petitioner's assertion is that she attempted several times for redressal of her grievance, but no positive reply was given to her by the Authority concerned. Petitioner being aggrieved by and dissatisfied with the impugned order/MoD u.o No.4-4/2013-ASF dated 08.05.2013 and 02.07.2014 respectively preferred this Petition on 14.11.2014.

3. Upon notice, Respondents filed comments and denied allegations leveled by the Petitioner.

4. Mr. Abdul Salam Memon, learned counsel for the Petitioner has argued that the decision taken by the Respondents vide Letter dated 08.05.2013 after about 15 years without any notice and opportunity of hearing to the Petitioner is against the principle of locus poenitentiae embodied in section 20 and 21 of General Clause Act 1897. The said action is void ab-initio. That the decision taken by the Respondents under the prevailing rule that is, Article 361 of Civil Service Regulations is past and closed transaction which cannot be reopened at this belated stage; that the Petitioner's past service with effect from 01.07.1976 to 05.05.1988 had been included towards qualifying service for the purpose of pension under Article 361 of Civil Service Regulations, therefore, Petitioner is entitled to get pensioner benefits as qualifying services of a Gazetted Government Servant with effect from 01.07.1976 till the date of retirement from the concerned department/Respondents; that Petitioner has rendered about 12 years of valuable service with the previous department of the Respondents and had

tendered resignation from service; that Petitioner subsequently applied for the post of Airport Security Officer through Federal Public Service Commission in the year 1992 and interruption in the service with effect from 01.07.1976 to 05.05.1988 was condoned and treated as leave for purpose of grant of pension, which is even otherwise protected under Article 418 (b) of CSR. Per learned counsel subsequently rescinding the order without hearing the petitioner is illegal and unlawful. He next contended that pension is a part of Civil Servant's Retirement Benefits which is not a bounty or an ex-gratia payment but a right acquired in consideration of past services that cannot be denied. He added that pension is a vested right and legitimate expectation of a retiring civil servant. He further argued that right to pension is conferred by law and could not be arbitrarily abridged or reduced except in accordance with law. He lastly prayed for allowing the Petition by directing the Respondents to include the past service of the Petitioner for the purpose of pensioner benefits. In support of his contentions learned counsel for the Petitioner has relied upon the case of Ikram Elahi Sheikh Vs. Director General, National Institute of Science and others (PLJ 2007 SC 697), Inayatullah Khan Vs. Secretary Food and others (2006 YLR 656), Adreshir Cowasjee Karachi Vs. Messrs Multiline Associate Karachi, (PLD 1993 Karachi 237), Manzoor Hussain Khan versus Lahore and other (1992 SCMR 441), Additional Accountant General Vs. M.M. Malik (2012 P L C (C.S) 1370), Chairman Selection Committee & others Vs. Wasif Zamir Ahmed and another (1997 SCMR 15), Akhtar Hussain Vs. The Superintendent of Police (PLJ 1981 Lahore 660), Rakhshinda Habib Vs. Federation of Pakistan (2014 P L C

(C.S) 247), Secretary Government of Punjab and others Vs. M. Ismail Tayer and 269 others (2015 P L C C.S 296), Pakistan Telecommunication Employees Trust through M.D Islamabad and others Vs. Muhammad Arif and others (2015 SCMR 1472) and Mian Tariq Javed Vs. Province of Punjab (2008 SCMR 598).

5. Mr. Muhammad Aslam Butt, Deputy Attorney General representing the Respondent No. 1 to 5 has contended that the instant Petition is not maintainable under Article 199 of the Constitution; that Petitioner voluntarily resigned from service and was discharged on 05.05.1988 after approval from the Competent Authority therefore, her past service stood terminated; that Petitioners re-appointment as Airport Security Officer(BPS-17) in Airport Security Force through Federal Public Service Commission took place after more than four years; the said period of 4 years cannot be counted towards qualifying service for the purpose of pensioner benefits; that petitioner prior to reaching the age of superannuation opted to avail 365 days LPR and consequently the same was granted from 16.03.2014 to 15.03.2015 i.e. age of superannuation; that Petitioner during her service manipulated and succeeded in getting certificate of qualifying service for the period 01.07.1976 to 05.05.1988 which was subsequently rescinded in accordance with law; that in accordance with the provision of Article 420 of CSR interruption in the service of an officer entails forfeiture of her past service except in certain exceptions; that the Accountant General Pakistan Revenues (AGPR) re-examined the case of the Petitioner and re-issued correct certificate; that verification of service of the Petitioner for the

purpose of pensioner benefits is duty of AGPR and the department has no direct concern with the matter in question; that the application submitted by the Petitioner against the impugned revised service verification and for counting formal service from 01.07.1976 to 05.05.1988 was forwarded to Ministry of Defence for opinion; that after consultation with Finance & Accounts Office it was resolved that due to Petitioner's willful resignation from service, the period of service before resignation has been forfeited under Article 420 of Civil Service Regulation; that claim of the Petitioner to include her service from 01.07.1976 to 05.05.1988 is already surrendered by tendering resignation; that Petitioner has filed the instant Petition with malafide intention to gain undue and illegitimate pensioner benefits which if allowed will result into a considerable loss to government exchequer.

6. We have heard learned counsel for the parties and perused the material available on record and case law cited at the bar.

7. Perusal of record reveals that Petitioner after serving 11 years, 10 months and 4 days in the office of Respondent No. 05, resigned from service at her own accord on 02.05.1988, which was accepted by the Competent Authority and she was discharged from service on 05.05.1988. The word resignation has been defined in Corpus Juris Scandium, Volume LXXVII at page 77 as follows:-

**“Resignation:** ---It has been said that “resignation” is a term of legal on, having legal connotations which describe certain legal results. It is characteristically the voluntary surrender of a position by the one resigning, made freely and not under duress, and the work is defined generally.

8. It is well settled law that when a civil servant / public servant submits a letter of resignation, his service/employment stands terminated from the date on which the letter of resignation is accepted by the Competent Authority.

9. The claim of the Petitioner is that her service as a Security Officer in the office of Respondent No. 05 from 01.07.1976 (date of appointment) till 05.05.1988 (date of voluntary resignation) may be counted for the purpose of pensioner benefits.

10. We have gone through the impugned Order bearing No. MoD u.o No.4-4/2013-ASF dated 08.05.2013 and 02.07.2014 respectively issued by the Respondents. We have noted that the matter is decided against the Petitioner in the light of Article 418 (b) and 420 of Civil Service Regulation and an excerpt of the same is reproduced as follows for the sake of convenience:

**418. (a) Resignation of the public service, [or dismissal] or removal from it for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.**

*(b) Resignation of an appointment to take up another appointment, service in which counts, is not a resignation of the public service.*

**“420. An interruption in the service of an officer entails of his past service, except in the following cases:-**

*(a) Authorized leave of absence.*

*(b) Unauthorized absence in continuation of authorized leave of absence so long as the office of the absentee is not substantively filled; if his office is substantively filled, the post service of the absentee is forfeited.*

*(c) Suspension where it is immediately followed by re-instatement, whether to the same or a different office or*



*where the officer dies or is permitted to retire or is retired while under suspension.*

- (d) Abolition of office or loss of appointment owing to reduction of establishment.*
- (e) Transfer to non-qualifying service in an establishment under Government control. The transfer must be made by competent authority; an officer who voluntarily resigns qualifying service cannot claim the benefit of this exception. Transfer to a grant in aid school entail forfeiture.*
- (f) Transfer to service on the house hold establishment of the President.*
- (g) Time occupied in transit from one appointment to another provided that the office is transferred under the orders of competent authority, or, if he is a non-gazette officer, with the consent of the head of his old office.*
- (h) Due to any other reason, provided the interruption is not due to any fault or willful act of a Government servant, such as, un-authorized absence, resignation or removal from service.”*

11. Prima-facie the claim of the Petitioner is not covered by any law, rules and/or regulations including Article 418 (b) of Civil Service Regulations as the Petitioner remained out of service for 4 years, 7 months and 15 days after her resignation from the service. In our view the said period is interruption in the service in the light of Article 420 of Civil Service Regulations and cannot be counted for pensioner benefits. Thus, the Respondents on the basis of opinion of Accountant General of Pakistan, Revenues (AGPR) have rightly declined the claim of the Petitioner.

12. As a result of forgoing discussion, we have reached the conclusion that the period of 4 years starting from the date of acceptance of resignation till fresh appointment of the Petitioner as Airport Security Officer (BPS-17) in Airport Security Force cannot be counted towards qualifying service for the purpose of pensioner

benefits. Besides, the resignation of the Petitioner entails forfeiture of past service under Article 420 of Civil Service Regulations.

13. The case law relied upon by the learned counsel for the Petitioner is distinguished from the facts of the case in hand.

14. In the light of above facts and circumstances of the case, the instant petition is meritless and is dismissed accordingly along with all the pending application(s).

Karachi  
Dated:

JUDGE

JUDGE

Shafi P.A