

## **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-3415 of 2017**

Dr. Uzma Shaheen Pirzada .....Petitioner

Versus

Province of Sindh & others ..... Respondents

### **Date of hearings: 30.08.2017 & 13.09.2017**

Mr. Ziaul Haq Makhdoom along with  
Mr. Moeen Qamar, Advocate for Petitioner.  
Mr.Abdul Jalil Zubaidi,AAG along with  
Mr. Khadim Hussain Mirani, Deputy  
Accountant General,Sindh and  
Mr. Zubair Aleem, Assistant Accounts Officer.

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

**ADNAN-UL-KARIM MEMON,J:-** Through the instant Petition,  
the Petitioner has prayed as follows:

- i. Declare that in terms of Section 13 (i) of Sindh Civil Servants Act, 1973 as amended through the Sindh Civil Servants (Second Amendment) Ordinance, 2001, the Petitioner having completed twenty two (22) years of Service with Respondent No.2, is entitled to the award of Pension and other Retirement Benefits.
- ii. Declare that the Impugned Refusal Letter dated March 14, 2017 by the Respondent No.3 is illegal and void ab-initio.

- iii. Set aside the Impugned Refusal Letter dated March 14, 2017 by the Respondent No.3.
- iv. Declare the Respondent No.3 to accept the Petitioner's Pension Case as forwarded by Respondent No.2 to the Respondent No.3 to the effect that requisite pension and Retirement Benefits are awarded by the Respondent No.3 to the Petitioner on the basis of Retirement Notification dated January 06, 2017 issued by the Respondent No.2.

2. Brief facts of the case are that Petitioner was appointed on 24.01.1993 as Woman Medical Officer (BPS-17) on regular basis in Health Department, Government of Sindh. Petitioner has averred that she was promoted from BPS-17 to BPS-18 vide Notification dated 25.09.2006. It is further added by her that she applied for Voluntary Retirement from service on completion of 22 years' service which was allowed by the Government of Sindh vide Notification dated 06.01.2017. Per Petitioner papers relating to her pension / gratuity and final payment of GP Fund Papers were referred to the Accountant General, Sindh, Karachi vide letter dated 08.02.2017; that same was declined vide Notification dated 14.03.2017 by the office of the Accountant General, Sindh on the premise that Department has submitted pension papers of the Petitioner before completion of 25 years of qualifying period of service of the Petitioner. Petitioner further averred that on the basis of opinion of Regulation Wing of Services, General Administration & Coordination Department, Government of Sindh Respondent No. 2 vide Notification dated 15.03.2017 again referred the matter to the Respondent No. 3 for decision afresh in the light of Sindh Civil Servant (Second Amendment) Ordinance, 2001.

Petitioner further added that no action was taken by the Respondents hence; the Petitioner approached this Court on 22.05.2017.

3. Para-wise comments were filed on behalf of Respondent No.1 and 3.

4. Mr. Ziaul Haq Makhdoom, learned counsel for Petitioner has argued that Respondent No.3 has failed to appreciate the true concept of Section 13(i) of Sindh Civil Servants Act, 1973 as amended upto 8<sup>th</sup> December 2001 through Sindh Ordinance No. XXXVIII of 2001. Per learned counsel, a Civil Servant can opt to retire from service after he has completed 20 years' service qualifying for pension. He further argued that the Respondents have failed to award pension benefits to the Petitioner, who was allowed to retire from Government service on voluntary basis w.e.f. 16.12.2016 on completion of 22 years' service vide Notification dated 6<sup>th</sup> Jan 2017; that Petitioner is entitled to benefit from the Sindh Ordinance No. XXXVIII of 2001, whereby Section 13(i) of Sindh Civil Servant, 1973 had been amended and the word twenty five (25) has been substituted by the word twenty (20), therefore, Petitioner cannot be denied pension benefits by the Respondents; that the impugned letter dated 14<sup>th</sup> March 2017 issued by the Respondent No.3 is illegal and void ab-initio on the ground that Civil Service Regulations are subservient to the Sindh Civil Servants Act, 1973, therefore, Act will prevail and not Rules; that the Sindh Civil Servants Act, 1973 provides retirement pension

after completion of twenty years of qualifying service. He lastly prayed for directions to the Respondent No.3 to accept the Petitioner's pension case for grant of pension.

5. Mr. Abdul Jalil Zubaidi, learned AAG, representing the Respondents No.1 to 3 has raised preliminary objection of maintainability of the instant Petition. He argued that a Civil Servant can opt to retire from service voluntarily under Rule 3.5 of West Pakistan Civil Services Pension Rules, 1963; that a retiring pension is granted to a Government Servant, who is not eligible for superannuation pension; that a Civil Servant may retire voluntarily only after completion of 25 years which is a qualifying period of service for pension benefits; that Petitioner has not completed 25 years qualifying service, therefore she is not entitled to superannuation pension and benefits accrued thereon. Per learned AAG, the Respondent No.3 has rightly opined that voluntarily retirement is allowed after completion of 25 years' service and returned the pension papers of the Petitioner to the department concerned, which act is in accordance with law. Learned AAG, in support of his contention referred to Article 254 of Civil Service Regulations (CSR) and Rule 3.5 of West Pakistan Civil Services Pension Rules, 1963 and argued that a Government Servant is permitted to retire from pensionable service after completing 25 years duty and 30 years of total service reckoned from the date of first appointment. He lastly prayed for dismissal of the instant petition.

6. We have heard the learned counsel for the parties and perused the material available on record.

7. We are of the considered view that there is no cavil to the proposition that a Civil Servant is allowed to retire from service after completion of 20 years under Section 13(i) of Sindh Civil Servant Act, 1973; an excerpt of the same is reproduced as follows for the sake of convenience:

**“(13). Retirement from service:** A civil servant shall retire from service.

(i) On such date after he has completed (twenty) years of service qualifying for pension or other retirement benefits as the competent authority may, in the public interest, direct:

Provided that no civil servant shall be retired unless he has been informed in writing of the grounds of the action proposed to be taken against him and has been given reasonable opportunity of showing cause against that action.”

“(ii) Where no direction is given under clause (i) on the completion of the (sixty years) of his age.”

8. The moot point in the present proceedings is whether a Government Servant can be granted retiring pension after completion of 20 years or 25 years of service and 30 years of total service from the date of first appointment?

9. Article 251 of Sindh Civil Service Regulations (CSR) stipulates classes of the pension, which are as follows:-

*“1) **Superannuation pension**, which is a pension granted to a Government Servant who retires from Government service at an age which he is by rule entitled or required to retire.*

2) **Retiring pension**, which is a pension granted to a Government servant who retires voluntarily, or is required by Government to retire, from Government service after completing a prescribed period of duty and service or duty alone but before reaching the age of superannuation.

3) **Invalid pension**, which is a pension granted to a Government servant who retires from Government service, before reaching the age of superannuation, on account of mental or bodily infirmity.

4) **Special additional pension**, which is a pension granted to a Government servant in addition to a superannuation, retiring, or invalid pension, in consideration of the nature of the duties which he has performed.

5) **Compensation pension**, which is a pension granted to a Government servant who is discharged from Government service, otherwise than on medical certificate and for no fault of his own, before earning a retiring or superannuation pension.

6) **Wound or injury pension**, which is a pension granted to a Government servant wounded or injured while in Government service.

7) **Compassionate pension**, which is a pension granted to a Government servant who is removed from the Government service for misconduct, insolvency, or inefficiency.

8) **Family pension**, which is a pension granted to the family of a deceased Government servant.”

10. Record reflects that Petitioner has opted to retire from Government service on voluntary basis w.e.f 16.12.2016 on completion of 22 years' service. Per learned counsel, the Petitioner is entitled to pension and other retiring benefits.

11. We are of the view that the pensionable service means service which qualifies the Government Servant to receive pension from General Revenues. The definition of Sub-Article (2) of Article 251 of Sindh Civil Service Regulations provides that a pension

granted to a Government Servant who retires voluntarily or is required by Government to retire after completing a prescribed period of duty and service or duty alone but, before reaching the age of superannuation.

12. In the present case, service of the Petitioner is less than qualifying period of service for pension benefits under Article 254 of Civil Service Regulations. An excerpt of the same is reproduced as follows:-

**Sub-section (ii) – Retiring Pensions**

**254.** Unless in any case it be otherwise distinctly provided in this sub-section, a Government servant shall be granted a retiring pension, if not being eligible for a superannuation pension, he is –

- (1) permitted to retire from pensionable service after completing 25 years duty and 30 years to total service reckoned from the date of first appointment; or
- (2) required on the ground of inefficiency under Rule 165-A to retire from pensionable service after completing 21 years of duty and 25 years of total service reckoned from the date of first appointment.

13. During the course of arguments much emphasis has been made by learned counsel for the Petitioner on Section 13(i) of Sindh Civil Servant Act, 1973 according to which (twenty) years of service is qualifying service for pension and other retirement benefits. In this regard, relevant Article 161 of Civil Service Regulations is reproduced as follows:

“161- (a) Except as otherwise provided in this rule the date of compulsory retirement of a Government servant is the date on which he attains the age (55 years). He may be retained in service after the date of

compulsory retirement with the previous sanction of Government on public grounds, which must be recorded in writing”

(b) A Government servant in inferior service should be required to retire at the age of 60 years. He may not be retained in service after that age except with the sanction of Government”

14. Similarly, Article 254 of Civil Service Regulations provides that:-

“Unless in any case it be otherwise distinctly provided in this sub section, a Government servant shall be granted a retiring pension, if not being eligible for a superannuation pension, he is ---

- (1) permitted to retire from pensionable service after completing 25 years duty and 30 years to total service reckoned from the date of first appointment; or
- (2) required on the ground of inefficiency under Rule 165-A to retire from pensionable service after completing 21 years of duty and 25 years of total service reckoned from the date of first appointment.

15. We have also gone through Rule 3.5 of the West Pakistan Civil Services Pension Rules, 1963 which provides that Retiring Pension granted to a Government servant who is not eligible for superannuation pension. The relevant Provision is reproduced as under:-

- (i) Opts to retire after 25 years qualifying service or such less time as may for any special class of Government servant be prescribed; or
  - (b) Is compulsory retired, by the competent authority after 25 years qualifying service;
- (ii) Is compulsorily retired from service by the authority competent to remove him from service on grounds of inefficiency, misconduct or corruption;



16. It is well settled law that a Civil Servant shall retire from service on completion of twenty years of service qualifying for pension or other benefits as the competent authority may, in the public interest, direct. And, where no such direction is given under Clause (i) of Section 13 of Sindh Civil Servants Act, 1973 the eventuality is service till sixty years of age. Sub-Section (ii) of Section 13 ibid lays down that no direction under Clause (i) shall be made until the Civil Servant has been informed in writing of the grounds on which it is proposed to make the direction and has been given a reasonable opportunity of showing cause against the said direction.

17. Section 13(i) of Sindh Civil Servant Act, 1973 deals with the term 'compulsory retirement' and not 'voluntarily retirement'. Both terms are different in meaning and scope. Compulsory retirement is a punishment unlike Voluntary Retirement.

18. We are clear in our mind that there is no relevance of Petitioner's voluntarily retirement with compulsory retirement under Section 13(i) of Sindh Civil Service Act, 1973. Voluntarily retirement is covered under Rule 254(1) of Sindh Civil Services Regulations (CSR) and Rule 3.5 of West Pakistan Civil Services Pension Rules, 1963 which stipulate that 25 years is the qualifying service for pension benefits, whereas, in respect of compulsory retirement, 20 years' service is the requirement of law. In view of

the above provision of law, the Government has clear option to retain or not to retain a Civil Servant in service after twenty years' of service. The Government is competent to curtail the service period to above extent, which otherwise would have gone to sixty years of age (superannuation).

19. The main object of Section 13 of the Sindh Civil Servant Act, 1973 is to improve the efficiency and discipline in the Civil Service. It is significant to note that the Legislature in its wisdom has not fixed any period for retirement but, has left it to the discretion of the Competent Authority.

20. We are of the view that 'retiring pension' is granted to a Government servant who retires voluntarily after completing 25 years prescribed period of service before reaching the age of superannuation and not 20 years which even otherwise applies to the case of compulsory retirement of a civil servant. Thus, it is clear that amendment has been brought in law to the extent of Civil Servant, who is ordered to retire from service compulsorily.

21. In view of the above legal position, the contentions of the learned counsel for the Petitioner have no force therefore, the same are discarded accordingly. Resultantly, the instant Petition is dismissed along with listed application(s).

JUDGE

JUDGE