

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-1842 of 2015

Irshad Ahmed Petitioner

Versus

Port Qasim Authority and others Respondents

Date of hearing: 13.11.2017

Mr. M.M. Aqil Awan, Advocate for the Petitioner.
Mr. Munawar Ali Isani, Advocate for the Respondent/PQA along
with Amir Ibrahim, Director Accounts, Port Qasim Authority.
Shaikh Liaquat Hussain, Assistant Attorney General.

JUDGMENT

ADNAN-UL-KARIM MEMON,J:-Through the instant petition
petitioner has prayed for following relief(s):-

- i) That this Hon'ble Court would be pleased to pass an order directing the respondents to pay to the petitioner entire back benefits w.e.f. 07.11.2003 to 15.04.2007 and also pay pensionery benefits to the petitioner in the light of Judgment dated 05.03.2011 passed in C.P. No. D-574/2007 by this Court and set aside and quash the office order dated 25.07.2014 to the extent refusing back benefits for the intervening period.
- ii) To issue notice of contempt to the Chairman Port Qasim Authority i.e. Respondent No.1 namely Agha Jan Akhter and Secretary, Port Qasim Authority i.e. Respondent No.2 namely Muhammad Saqib, to show cause as to why they have not yet implemented the judgment dated 05.03.2011 passed by this Court in C.P. No. D-574/2007 and as to why they should not be punished in accordance with law for such violation.

2. Brief facts of the case are that the Petitioner was working as a Deputy General Manager (BPS-20) in Port Qasim Authority. During the service, show cause notice dated 22.03.2013 was issued to the petitioner charging him with the following allegations:-

- a) Responsible for defective monitoring of Bulk Water Supply Scheme of PQA, willfully ignoring the advice of the consultant, deviation from original drawings and defective construction work of the scheme.
- b) Responsible for negligence and gross violation of rules, with malafide intention in respect of payment of fabricated escalation charges amounting to Rs. 10.4 Million paid to the contractor of Dual Carriageway in Eastern Industrial Zone of PQA.
- c) Involved in a corruption case No. 1/98 FIA, Karachi and having a persistent reputation of being corrupt.

The Petitioner averred that he replied to the show cause notice. But, the respondents without holding any enquiry and proving the charges, removed him from the service vide notification dated 07.11.2003 issued by the Ministry of Communications, Government of Pakistan under section 3 (1) of the Removal from Service (Special Powers) Ordinance, 2000. The petitioner being aggrieved by and dissatisfied with the impugned notification regarding his removal from service assailed the same before the learned Federal Service Tribunal, Karachi by filing Service Appeal No. 96 (CE) of 2004. The petitioner added that during pendency of Appeal, the Hon'ble Supreme Court rendered Judgment on 27th June 2006 in the case of Mubin-ul-Islam and others Vs. Federation of Pakistan and others (PLD 2006 Supreme Court 602)

and declared section 2-A of Service Tribunal Act 1973, partially ultra vires of Article 240 and 260 of the Constitution. Consequently, the proceedings arising out of Appeal before learned Federal Service Tribunal stood abated. Therefore, the petitioner impugned the same notification dated 07.11.2003 regarding his dismissal from service before this Court by filing Constitution Petition No. D-574 of 2007. The petitioner contended that this Court vide judgment dated 5.03.2011 allowed the petition.

The petitioner further averred that the Respondents assailed the Judgment dated 05.03.2011 passed by this Court before the Hon'ble Supreme Court by filing Civil Petition for leave to appeal No. 478-K of 2011 and the leave was granted to them. But, the said Civil Petition was dismissed by the Hon'ble Supreme Court vide short order dated 02.05.2013, followed by detailed judgment reported in 2013 SCMR 1707, whereby the judgment dated 05.3.2011 was upheld.

The petitioner further averred that he continued to pursue the matter with the Respondents; but they were reluctant to implement the judgment dated 05.3.2011 of this Court, which constrained the petitioner to give them contempt notice dated 05.12.2013 and the same was forwarded to their Counsel. The petitioner continued and stated that the respondents ultimately issued office order dated 25.07.2014, whereby he was reinstated w.e.f 07.11. 2003, but the intervening period. (07.11.2003 to 15.4.2007) was treated as extraordinary leave without pay and allowances. The petitioner aggrieved by and dissatisfied with

denial of pay and allowances vide impugned reinstatement order, filed the instant petition on 07.04.2015.

3. Upon notice, para-wise comments were filed by the Respondent No. 1 & 2.

4. Mr. M.M. Aqil Awan, learned counsel for the petitioner, contended that this Court vide judgment dated 05.03.2011 passed in C.P. No.D-574/2007 ordered for reinstatement of the Petitioner. However, the Court allowed the Respondents to consider whether an enquiry is called for or not. Such enquiry, if any, must be completed within four months and if it is decided not to conduct enquiry the entire disciplinary action must be completed within a period of four months and if it is decided to conduct enquiry, final decision be communicated to the Petitioner; but it was not done by the Respondents. He further argued that upon reinstatement of the Petitioner, back benefits were linked with the result of such fresh notice/proceedings. Learned counsel added that no enquiry was conducted by the Respondents; therefore, Order of this Court, whereby termination order dated 07.11.2003 issued by the Respondents was set aside and the Petitioner was ordered to be reinstated in service, attained finality. Learned counsel argued that since the Respondents did not succeed in Civil Appeal No. 83-K of 2011 before the Hon'ble Supreme Court, they were bound to implement the Judgment dated 05.3.2011, passed by this Court, in its letter and spirit. Learned counsel added that the Respondents have circumvented the Judgments passed by this Court, as well as, Hon'ble Supreme Court of Pakistan by denying

the back benefits to the Petitioner w.e.f. 07.11.2003 till his retirement on 15.04.2007. Having explained the case as above, the Counsel for the Petitioner concluded that the Respondents Order dated 25.7.2014 be set aside to the extent of refusing back benefits for the intervening period to the Petitioner and also back benefits for the period w.e.f. 07.11.2003 till the date of retirement, allowed to him and pensionary benefits allowed in light of judgment dated 05.3.2011 by this Court in C.P. No. D-574/2007 and prayed for allowing the petition.

5. Mr. M.A. Isani, the learned counsel appearing on behalf of the Respondent No.1 and 2 argued that the Petition is not maintainable in law; that Petitioner was proceeded under Removal from Service (Special Powers) Ordinance, 2000 for disciplinary action by issuing a show cause notice dated 22.02.2003 for serious charges and losses caused to the National exchequer; that Petitioner did not submit reply to the show cause notice and hampered the disciplinary proceedings; that holding of the enquiry was dispensed with by the Competent Authority under section 5 (4) of the Removal from Service (Special Power) Ordinance, 2000; that Petitioner was found guilty, consequently removed from service in accordance with the rules; that the findings in para No.13 of the Judgment rendered by this Court in C.P. No. D-574 of 2017 is in the back drop of administrative lapses and not on the basis that dismissal action taken by the Respondents against the Petitioner was without holding the enquiry; that setting aside the dismissal Order of the Petitioner by this Court resulted in retrospective reinstatement of the Petitioner in service w.e.f. 07.11.2003 without

back benefits as per Judgment passed by this Court and retrospective retirement of the Petitioner from service w.e.f. 14.05.2007 on completion of sixty years of his age; that back benefits to the petitioner were dependent upon the result of the contemplated fresh notice / proceedings against the Petitioner which due to lack of jurisdiction of the Competent Authority, could not legally be taken as the Petitioner retired from the service; that the Judgment of this Court was assailed in Civil Appeal No. 83-K of 2011 before the Hon'ble Supreme Court and after its dismissal, the Respondent No. 1 & 2 reinstated the Petitioner vide office order dated 25.07.2014, which according to him is in conformity with the rules and not in any manner in contravention of the Judgment passed by this Court; that the Removal from Service (Special Powers) Repeal Act 2010 and / or Government Servant Efficiency and Disciplinary Rules, 1973 apply to a person while he is in service and not thereafter; that this Court has not exonerated the Petitioner from the charges leveled against him in the show-cause notice and not allowed the Petitioner back benefits on his retirement, therefore, fresh notice/ proceedings could not be legally initiated against the petitioner. The counsel for the Respondent No. 1 & 2 further argued that in view of the legal position that has emerged after passing of the Judgment passed by this Court that allowing the back benefits to the Petitioner for the intervening period, during which he rendered no service for the Respondent Authority would further compound the losses caused by the Petitioner to the Respondent Authority, which even otherwise are not payable to the Petitioner and whatever amount was due against the Respondent No. 1 & 2 was paid to the Petitioner, as per

statement filed before this Court, except the back benefits; that under Fundamental Rule 54, the Petitioner has not been honorably acquitted from the charges, therefore, the period of absence from duty was rightly treated as extra ordinary leave without pay and allowances. Learned counsel for the Respondents No.1 and 2 in support of his contention relied upon the case of Sardar Ali Bhatti vs. Pakistan through General Manager Lahore (PLD 1961 West Pakistan Lahore 664) and Abdul Wali Vs. Wapda & others (2004 SCMR 678).

6. We have considered the submissions of the parties along with case law and have also gone through the entire record carefully with their able assistance.

7. First and foremost, we would address the question of the jurisdiction of this Court to entertain the petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

8. We have noted that the Port Qasim Authority Employees Service Regulations, 2011 are statutory because, admittedly the same were framed by the Board of Directors of Port Qasim Authority with the prior approval of the Federal Government, pursuant to Section 51 of the Port Qasim Authority Act No. XLIII of 1973. In this regard, we are fully fortified by the view enunciated by the Hon'ble Supreme Court in para 50 of the judgment in the case of Pakistan Defence Housing Authority Vs Lt. Col. Javed Ahmed (2013 SCMR 1707) that an aggrieved person can invoke the Constitutional jurisdiction of this Court against a public authority. The same principle is also enunciated in the case of Muhammad

Rafi and another Vs. Federation of Pakistan and others (2016 SCMR 2146). As such, we are of the opinion that this petition can be heard and decided on merits by this Court exercising its Constitutional jurisdiction under Article 199.

9. As per record, the Judgment dated 05.03.2011 rendered by this Court in C.P. No.D-574 of 2007 has attained finality by the Order of Hon'ble Supreme Court passed in Civil Appeal No. 83-K/2011 vide order dated 02.05.2013.

10. We have noted that as per the Judgment dated 05.3.2011 passed by this Court an allegedly delinquent should not be allowed to go scot free and reap the benefit of administrative lapses on part of the departmental authorities. Therefore, this Court directed that if the departmental authority is allowed opportunity of issuing a show cause notice giving with it all the relevant documents and specifically stating in the show cause notice as to what were the defects and shortcoming in the work carried out for which the Petitioner is responsible and thereafter giving him opportunity to explain. The Competent Authority may also consider whether in the circumstances an inquiry is called for or not. Such inquiry, if any, must be completed within four months of the date of the judgment and if it is decided not to conduct inquiry, final decision be made and communicated to the Petitioner within a period of six months of date of the Order. Consequently, the Constitution Petition was disposed of and termination Order dated 07.11.2003 was set aside by this Court, the Petitioner was ordered to be reinstated in service and back benefits as stated above would depend upon results of fresh notice/proceedings.

11. Since, the Respondents assailed the Judgment dated 05.03.2011 passed by this Court before the Hon'ble Supreme Court by filing Civil Petition for leave to appeal No. 478-K of 2011 and leave was granted but subsequently the same was dismissed of vide short Order dated 02.05.2013 along with connected Appeals with the following observations:-

“For the reasons to be recorded later in the detailed judgment we are of the view that Removal from service (special powers) Ordinance 2000 had overriding effect and any violation or non-compliance of the said statute was amenable to writ jurisdiction. The impugned judgments rendered by the High Court on that score are not open to exception. In the afore-referred circumstances all these appeals are dismissed”

12. Perusal of record shows that the Respondent No.1 & 2 after dismissal of their Appeal by the Hon'ble Supreme Court, issued office order dated 25.07.2014 regarding reinstatement of the Petitioner, which order stipulates as under:-

- i) Mr. Irshad Shaikh, ex-DGM. BS-20 of PQA is reinstated in service w.e.f 07.11.2003.
- ii) He stands retied on attaining the age of superannuation i.e. sixty (60) years w.e.f. 15.04.2007.
- iii) The intervening period from removal of service of Mr. Irshad Ahmed Shaikh w.e.f. 07.11.2003 till his retirement w.e.f. 15.04.2007 shall be treated as extra ordinary leave without pay and allowances.

13. We are cognizant of the fact that this Court has set aside the termination order of the Petitioner from service and the Respondent No. 1 & 2 were required to reinstate the Petitioner in service w.e.f 07.11.2003 and in the meanwhile the Petitioner attained the age of superannuation on 15.4.2007 and his

retirement order was issued on 25.07.2014 with retrospective effect.

14. The issue before us is whether Petitioner is entitled to the back benefits for the intervening period from 07.11.2003 till his retirement on 15.04.2007, which has been treated by the Respondent No. 1 & 2 as extra ordinary leave without pay and allowances.

15. The plea raised by the learned counsel for the Respondents with respect to Fundamental Rule 54 that Petitioner has not honorably acquitted from the charges leveled against him, therefore, he is not entitled for back benefits, we are of the view that Honorable Supreme Court has already dealt with this proposition of law in the case of Superintendent Engineer GEPCO Sialkot Vs. Muhammad Yusuf vide Order dated 23.11.2006 passed in Civil Petition No. 1097-1 of 2004. In view of the dicta laid down by the Honorable Supreme Court in the case referred supra, we do not agree with the contention of the learned counsel for the Respondent No. 1 & 2. The Fundamental Rules 54-A is clear and does not support the case of the Respondents, which provides as under:-

“If a 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.”

16. We have observed that in pursuance of the Court's Order dated 05.3.2011; no inquiry has been conducted by the Respondents against the Petitioner in respect of his culpability. Per

judgment of this Court, the back benefits of the Petitioner were dependent on result of fresh notice and proceedings to be conducted by the Respondents into the allegations leveled against the Petitioner. But, the question arises as to whether an inquiry could be conducted against a retired Government employee. As per Fundamental Rule 54-A disciplinary proceedings cannot be continued or conducted as Petitioner ceased to be employee of the Respondent No. 1 & 2 on attaining the age of superannuation on 15.04.2007.

17. The plea taken by the Respondents that the back benefits cannot be awarded to the Petitioner upon his reinstatement is not tenable in law. Since, the Respondents could not conduct fresh proceedings/enquiry against the Petitioner in compliance with the order of this Court, they were left with no option but to award the back benefits in terms of the Order passed by this Court. Record shows that allegations could not be enquired and Petitioner was not heard on the allegations leveled against him, therefore, at this juncture no exception to that can be taken into consideration. The Respondent No. 1 & 2 admitted in the statement filed on 16.9.2017, before this Court that on the basis of qualifying service of Petitioner i.e. more than 32 years, they have calculated the pensionary benefits without pay and allowances on the premise that extra ordinary leave period does not count as service qualifying for pension under Article 407 Civil Service Regulation(CSR).

18. We are clear in our mind that Pension is not a bounty from the State / employer to the servant / employee, but is fashioned on the premise and the resolution that the employee serves his employer in the days of his ability and capacity and during the formers debility, the latter compensates him for the services so rendered. Therefore, the right to pension has to be earned and for the accomplishment thereof.

19. In the foregoing legal position of the case, we are not convinced with contention of the learned Counsel for the

Respondent-Authority that the Petitioner is not entitled to service benefits i.e. intervening period from removal of service of petitioner w.e.f. 07.11.2003 till his retirement w.e.f. 15.04.2007.

20. In view of forgoing discussion, this petition is disposed of with direction to the Respondent-Authority to re-calculate the pensionary benefits of the petitioner of the period w.e.f. 07.11.2003 till his retirement w.e.f. 15.04.2007 and other benefits as admissible under the law and make payment of the same to the petitioner within a period of 30 days from the date of this Order.

21. The petition is disposed of in the above terms.

JUDGE

JUDGE

Shafi/PA