

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No. D- 1179 of 2017

Present:-

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Date of hearing: 31. 01. 2019
Date of decision: 06. 02. 2019
Petitioner: Through Mr. Irfan Ahmed Qureshi, Advocate
Respondent No.3: Through M. Arshad S. Pathan, Advocate
Respondents No.2 & 4: Through Mr. Fayaz Ahmed Leghari, Advocate

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the captioned petition, the Petitioner claims commutation/pensionary benefits from GENECO-1 Jamshoro Power Company (JPC) on account of his attaining the age of superannuation i.e. 60 years.

2. Brief facts of the case as per pleadings of the parties are that the Petitioner was appointed as Junior Engineer vide appointment order dated 17.01.1978. During tenure of his service, he was promoted to the post of Senior Engineer in the year 1989, Resident Engineer in the year 2005, Chief Engineer in the year 2010 and Chief Executive Officer of GENECO-1/ Respondent No.4, in May, 2013. Due to certain allegations, Petitioner was implicated in NAB Reference No.08/2014 by the National Accountability Bureau and was arrested on 04.05.2014, against which he filed Writ Petition No.2368/2014 before the learned Islamabad High Court, for seeking his pre-arrest bail and the same was

disposed of with direction to the learned Trial Court to conclude the matter as mandated by Section 16(1) of NAB Ordinance, 1999 followed by another Writ Petition bearing No.3219/2015, which was dismissed thus he availed remedy before the Hon'ble Supreme Court of Pakistan through Civil Petition for Leave to Appeal No.11 of 2016. Petitioner has submitted that the Hon'ble Supreme Court vide order dated 02.03.2016 granted post arrest to him in the aforesaid NAB Reference. Petitioner has also averred in the petition that during his incarceration in prison he attained the age of superannuation, which was notified on 31.10.2014. The Petitioner was not departmentally proceeded on the charges leveled in the aforesaid NAB reference and nothing was done against him. However, Respondent-company without any rhyme and reason withheld his pensionary benefits and he being aggrieved by and dissatisfied with the aforesaid action, approached the learned Federal Ombudsman through complaint, in which proceedings Respondent-WAPDA filed their para-wise comments, admitted claim of the Petitioner regarding pensionary benefits, however, learned Federal Ombudsman vide order dated 20.02.2017, closed the complaint as being related to service matter. Petitioner next averred that finding no response, he filed an Appeal to Managing Director PEPCO/Respondent No.3, on 29.09.2016; followed by successive reminders dated 04.01.2019 & 20.01.2017, but to no avail.

3. Mr. Irfan Ahmed Qureshi learned counsel for the Petitioner has contended that since the Petitioner is retired officer of Respondent-company, who was not proceeded departmentally is not liable to be denied the pensionary benefits, on any ground whatsoever; that denial of NOC by Respondent No.3 is sheer malafide and colourful exercise of powers, which do not find support from the law related to the subject; that the criminal liability is distinct from the civil liability as held by superior Courts, as such nobody can be denied civil benefits

merely on the basis of any criminal liability; that even WAPDA E&D Rules 1977 do not provide any action against the retired officers; that the Hon'ble Supreme Court has held that the proceedings under E&D Rules cannot be continued beyond the age of superannuation and the same stood abated after superannuation. Learned counsel lastly contended that even the Office Memorandum issued by Government of Pakistan on 13.01.2017 clearly provides that no pension case should be withheld for completion of documents etc. and the anticipatory pension may be sanctioned under Article 922-926 of Civil Service Regulations; that Section 19(4) of Civil Servant Act, 1973 states as under:-

“If the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualifies for pension or gratuity; and any over payment consequent on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family.”

He further added that pension cannot be retained to recover Government dues if any. Learned counsel for the Petitioner argued that Government has no right to withhold or postpone the pensionary benefits. Once a person has retired his pension cannot be withheld on a finding of misconduct or negligence during the period of service; that the finding of misconduct has to precede the order adversely affecting the pension in any manner. The enquiry proceedings if any cannot continue indefinitely. Delay is enough to quash the proceedings. It has been vehemently argued that there is no right with the Government to withhold pension in anticipation of the exercise of its right to withhold or withdraw the pension. In the same strain the learned counsel argued that any amount due from the pensioner to the Government or any liability of the pensioner towards the

Government would not adversely affect the retiree in his entitlement for pension. State could exercise its right to recover its dues or enforces the liability of the pensioner or recover the pecuniary loss caused by the pensioner to the State in accordance with law, without affecting the pension.

4. M. Arshad S. Pathan, Learned counsel for Respondent No.3 has argued that administrative powers relating to retirement and encashment were devolved by Respondent No.3 to companies/Respondents No.2 & 4, by way of Office Memorandum dated 07.01.2013, therefore, Respondent No.3 has nothing to do with the subject matter.

5. Mr. Fayaz Ahmed Leghari, learned counsel for Respondents No.2 & 4 mainly resisted on the ground that denial of NOC for pensionary benefits to Petitioner by Respondents No.2 & 4 is due to pendency of NAB reference against him before the learned Trial Court. The learned counsel for the Respondents refuted the submissions made on behalf of the Petitioner. It was argued that the Government has retained the power to impose cut in pension both at the time of retirement i.e. before granting pension as well as after it has been granted i.e. after retirement. There is no limit provided for imposing cut in pension. The pension can be withheld or withdrawn in its entirety. It was vehemently contended that good conduct during service and after the service is a pre-requisite for granting pension or its continuity. Good conduct during the service is a pre-condition to earn pension for assessing pension and impliedly good conduct after granting of pension is a condition precedent for its continuance.

6. We have heard the learned counsel for the parties at length and have gone through material available on record.

7. The primordial questions in the subject petition are under:-

- i) Whether pensionary benefits of any civil/public servant can be withheld on account of pendency of disciplinary proceedings/ criminal case against him?
- ii) Whether the Respondents could continue with the departmental enquiry proceedings initiated prior to the retirement of the Petitioner?

8. To answer the first issue which we have framed for our consideration. Primarily, we may observe here that providing pension on retirement is one of the steps for implementation of the principles as set-forth in the Constitution. The Constitution expects the State to provide adequate means of livelihood when the health and strength for strenuous work starts failing. It is one of the safeguards against exploitation of elderly people of the society. The concept of pension is in conformity and in consonance with the concept of social justice and is an essential feature in a welfare state. It is one of the steps by which State attempts to secure living with dignity at the fag and of life. In a welfare State it is normal expectation that the State would provide the mechanism to protect the individuals against forced working unsuitable to one's health.

9. As to plea raised by the learned counsel for the Respondents with respect to withholding of pensionary benefits of the Petitioner due to pendency of NAB reference against him on the premise that Petitioner has not honorably been acquitted from the charges leveled against him, therefore, he is not entitled for pensionary benefits, we are of the considered 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.

10. 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-company.

11. The Fundamental Rule 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.”

12. As per Fundamental Rule 54-A read with Article 417-A of Civil Service Regulations, disciplinary proceedings cannot be continued or conducted as Petitioner ceased to be employee of the Respondent-company on attaining the age of superannuation on 31.10.2014. Law provides that the period of suspension followed by reinstatement or superannuation count towards qualifying service for pension.

13. Reverting to the right of the Government to withhold pension in certain cases. The Government reserves to itself right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, within the time limit i.e. one year before his retirement under Pakistan Water and Power Development Authority Pension Rules 1977, under Article 417-A of Civil Service Regulations and other circulars issued by the Federal Government from time to time in this regard. Notes No.1 & 2 of Rule-7 of Pakistan Water and Power Development Authority Pension Rules, 1977 are reproduced as under:-

1. All enquiries are to be initiated/ finalized within one year of the retirement of Wapda employee failing which full pension/ gratuity has to be sanctioned in favour of the retired wapda employee.

2. *If an officer, who has been suspended pending inquiry into his conduct, attains the age of superannuation or dies during service before the completion of the inquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.”*

An excerpt of Article 417-A of the Civil Service Regulations is also reproduced as under:-

“If an officer, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of the inquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated as period spend on duty.”

14. In our view the pension is neither bounty nor a matter of grace depending upon the sweet will of the employer. It creates a vested right subject to the statutory rules framed in exercise of powers conferred by the Constitution. It is indefeasible right to property. Pension cannot be termed as an ex-gratia payment instead it is a payment for the past service rendered. It is a part and parcel of the conditions of service. The right to get pension does not depend on the discretion or sweet will or pleasure of the Government, though it is subject to the statutory rules. The pension cannot be equated with a doll and quantum of pension is correlated to the average emoluments drawn and availability of the resources with the State. It is further observed that this right to property is granted with an object of setting up of political society with a goal to set up a welfare state in consonance with directive principles of the Constitution. The pension can be affected for the reasons provided by statutory rules. The pensionary or retiring benefits could not be refused solely on the ground of initiation or intending initiation of disciplinary proceedings. Thus we are of the view that the pension or commutation of it cannot be withheld, or postponed before a finding is returned

that retiree is guilty of causing loss to the state during tenure of his service. Mere pendency of enquiry or probability of the State exercising its power of withholding or withdrawing of pension by itself is not sufficient to withhold pension.

15. It may be observed here that the authorities dealing with applications for pensions under the rules should bear in mind that delay in the payment of pensions involves peculiar hardship. It is essential to ensure, therefore, that a Government servant begins to receive his pension on the date on which it becomes due. The responsibility for initiation and completion of pension papers is that of the Head of Department. The action should be initiated one year before a Government servant is due to retire so that pension may be sanctioned a month before the date of his/her retirement.

16. In cases in which the date of retirement cannot be foreseen, 6 months in advance, the Government servant may be asked to submit his pension application immediately after the date of his retirement is known; and a Government servant proceeding on leave preparatory to retirement in excess of 6 months may be asked to submit his/her application at the time of proceeding on such leave.

17. As a result of the above discussion, we would conclude that the Respondent-company has no right to withhold or postpone pension or the payment on account of commutation of pension. The Respondent-company is bound to release pension to the Petitioner at the time of superannuation i.e.31.10.2014.

18. In view of forgoing discussion, this petition is allowed in the terms whereby the competent authority of the Respondent-Company is hereby directed to calculate the pensionary benefits of the service of the Petitioner and other benefits as admissible under the law and delay in payment to the Petitioner if any

accrued on the withholding of the pensionery benefits, in accordance with rules and regulations. Such amount must be deposited with the additional registrar of this Court within a period of two months from the date of receipt of this Judgment and paid to the Petitioner on proper verification and confirmation.

JUDGE

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