

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No.D-1035 of 2018.

Present:-

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Date of decision: 21. 03. 2019

Petitioner present in person.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

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ORDER

ADNAN-UL-KARIM MEMON, J. - Through the captioned petition, the Petitioner claims commutation/ pension and other allied benefits from Hyderabad Municipal Corporation (HMC) on account of his invalid pension.

2. Petitioner who is present in person has reiterated his submissions as discussed in the order dated 22.2.2018 with further assertion that he is entitled for the pensionary benefits as per law which the respondents have deprived him for considerable time. He lastly prays for allowing the instant petition.

4. Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh has referred the report submitted by the Additional registrar of this court and argued that the conclusion arrived by the neutral person is fair enough and he endorses the same view.

5. We heard the parties at length and perused the material available on record as well as report submitted by the Additional Registrar of this court.

6. To resolve the controversy between the parties. this Court vide order dated 12.02.2018 passed the following order:-

“10. In view of the facts and circumstances of the case and for the reasons alluded as above, we are not satisfied with the explanation offered by the respondents that compliance of the judgment of Hon’ble Supreme Court of Pakistan has been made in its letter & spirit, therefore, at this juncture, before taking cognizance of the matter for enforcing the judgment of the Honorable Supreme Court of Pakistan, we in the above circumstances, at the first instance direct Additional Registrar of this Court to consult with the Accountant General Sindh, who is directed to depute an Official to assist Official of this Court to undertake the exercise of recalculation of the pensionary benefits of the petitioner including commutation and increase thereon as directed by the Supreme Court of Pakistan in the aforesaid judgment, in accordance with rules and regulations. The comprehensive report has to be submitted by Learned Additional Registrar of this court within a period of 01 month from the receipt of order of this Court. The parties to file their claim before Additional Registrar of this Court within one week, who thereafter will transmit the same to the Accountant General Sindh for recalculation of the same. If petitioner fails to submit claim in time, Additional Registrar shall obtain papers from the aforesaid petition. Such report shall be submitted within the stipulated period after receipt of this order.”

7. In compliance of the said order, learned Additional Registrar of this Court has submitted the following report dated 19.03.2019:-

“Mr. Zulfiquar Ali Ansari, Accountant (Pension) of the District Accounts Office, Hyderabad was nominated by the office of the AG Sindh (Flag A) to assist this Honorable High Court regarding re-calculation of pension benefits including commutation and increases thereon of the petitioner in the above case. The calculation sheet submitted by the District Accounts Office, Hyderabad is attached as (Flag B).

The pensionary benefits of the said petitioner has also been re-calculated by accounts section of this Court (Flag C) and concluded that Mr. Syed Sabir Ali, petitioner in the above case, was entitled for an amount of Rs.5,284.24/- as pension plus Rs.1,100.88 as medical allowance of 2010 total amounting to Rs.6,385.13/- (Rupees Six Thousand Three Hundred Eighty Five and Thirteen Paisa only) per month as gross pension on the day of restoration (16.03.2012) of the commuted portion as per documents provided. The pensioner is also entitled for the difference, if any, of due pension as per recalculated sheet (Flag C) and the drawn amount of pension each month as per pension book of the petitioner. It is further respectfully submitted that as per indexation rules of 1985 (Flag L) the increase of Rs.21 in the FY 1987-88 is taken as round figure and was required not to be added with gross pension for calculated increase of FY1988-89. Hence the increase of Rs.37 was made in calculation. The same rule of indexation was applicable until the FY 1990-91 and resulting into an increase of Rs.59 in the pension of the petitioner. As a result of the aforementioned rule the gross pension of the petitioner to be counted on 30.06.1991 was reached to a gross amount to Rs.645.98 and then increases are calculated thereon as announced by the government of Sindh time by time.

Further it is submitted that there is a lot of ambiguity and confusion in the calculations provided in the documents. The actual calculation cannot be ascertained until the original papers are not provided. The ambiguity can be noticed from the calculations made on PPO II Page No.153 (Flag-D) against the same page PPO II Page No.153 (Flag-E) and the calculations listed on the letter No.TO(F)/452/2011 dated 20-10-2011 (Flag-F) issued by the Administrator, Taluka Municipal Administration City Hyderabad. Hence, the increases thereon on the gross pension amounting to Rs.528.98 of the petitioner Mr. Syed Sabir Ali, have been recalculated by the account section of this Court with the assistance of DAO, Hyderabad from the day 16.03.1987, which have been shown as the date of commencement of the commutation. Further, stated that as the commutation was made for a period of 25 years, the petitioner was eligible for restoration of the commuted portion of pension and increases thereon as announced by the government time by time, on dated 16.03.2012.

It will also be pertinent to state here that before the introduction of Revised Rules of Basic Pay Scales of 1994, a civil servant, retired on the basis of medical unfitness, was required to furnish 2nd medical certificate in order to get 50% commutation benefit. The said condition was withdrawn in the revised basic pay scales of 1994 (Flag G). Therefore, the delay (from 18.10.1986 to 15.03.1987) in the commutation might have been due to above stated rule and as per directions contained in the letter/memo dated 14.02.1987 by RAD it clearly states that the 50% commutation will be allowed only if the retired employee submits 2nd medical

certificate (Flag H). It is further stated that a government employee can also opt to draw full gross pension in the light of Section-4(a) of Sindh Liberalized Pension Rules 1977 (Flag I), which might have been observed in the case of above petitioner for the period from 18.10.1986 to 15.03.1987.

Further submitted that an amount of Rs.80,757.47/- is not a deduction but in fact it is the commutation amount that have been calculated by the Hyderabad Municipal Corporation (Sub Division City) as per office note sheet dated 22.02.2017 (Flag J) and is in accordance with the applicable laws (Flag K) and should have been paid to the petitioner at the time when he surrendered his 50% pension viz on 15.03.1987, if he had submitted 2nd medical certificate, but unfortunately the date of the note sheet is 22.02.2017 and the petitioner might have received that gratuity amount after a delay of 30 years.

Further it is very respectfully stated that this report of calculation of pensionary benefits is prepared on the basis of details enlisted in the documents provided by the parties. Hence, the result may differ if compared with the original documents.

Hence, the petitioner Mr. Syed Sabir Ali is entitled to draw the monthly pension plus increases thereon as detailed in the calculation sheet submitted by the account section of this Court (Flag C).”

8. We have perused the report submitted by the learned Additional Registrar of this Court, which prima-facie suggests that the petitioner is entitled to draw the monthly pension plus increases thereon as detailed in the calculation sheet as calculated by the neutral person i.e. District Accounts Office, Hyderabad.

9. In view of forgoing discussion, this petition is disposed of in the terms whereby the Respondent/HMC is hereby directed to re-calculate the pensionary benefits of the Petitioner and other benefits as calculated and fixed by the District Accounts Office, Hyderabad as mentioned in report of Additional Registrar of this Court as admissible under the law. Such amount must be paid to the petitioner within a period of 30 days from the date of receipt of this order on proper verification and confirmation. Accordingly, this petition stands finally decided.

JUDGE

JUDGE

Irfan Ali