

# IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-2307 of 2018

## Present.

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Muhammad Yaqoob Soomro ..... Petitioner

Versus

Federation of Pakistan and others ..... Respondents

Date of Hearing: 08.08.2019

Date of Decision: 08.08.2019

Mr. Ikhtiar Ali Channa, Advocate for the Petitioner.

Mr. Ahmed Ali Ghumro, Advocate for the Respondents No.4&5.

Mr. Muhammad Nishat Warsi, DAG.

-----

## ORDER

**ADNAN-UL-KARIM MEMON, J:-** Basically the Petitioner is seeking declaration to the effect that the impugned letter dated 14.12.2015 issued by Respondent-WAPDA, whereby they deducted excessive drawl of pension amount through difference and monthly bills from his pensionary benefits, being illegal and in violation of constitutional provisions. Petitioner further seeks declaration that he is entitled to all increases in pension accumulated for the last 15 years on restored commuted portion of his pension. He also seeks determination and calculation of his pensionary benefits w.e.f. 12.7.2012 in accordance with law.

2. Brief facts of the case as per pleadings of the parties are that Petitioner stood retired from the service of Respondent-WAPDA as LS1-1, Sukkur Electric Power Company, Larkana (SEPCO) vide Notification dated 12.7.1997. After completion of statutory period of 15 years i.e. on 12.7.2012, he approached Respondents for restoration of 50% commuted portion of his Pension inclusive of all increases accrued thereon. Petitioner claims that on 01.01.2012, he was regularly receiving monthly pension amount of Rs.12846.95, however, the Federal Government raised 20% increase of the net

pension vide O.M dated 2<sup>nd</sup> July, 2012. Petitioner being aggrieved by and dissatisfied with the aforesaid actions has filed the instant Petition on 21.3.2018.

3. Mr. Ikhtiar Ali Channa, learned Counsel for the Petitioner has referred the calculation made by the Petitioner available at page No.03 of the case file, which is reproduced as under:-

Amount of Pension as of <b>01.01.2012</b>	20% increase as per circular	Total a+b	Total after doubling
A	B	c	d
12,846.95	2,569.39	15,416.34	30,832.68

Learned Counsel has submitted that Respondent-WAPDA vide letter dated 30.08.2012 restored 50% commuted portion upon completion of his 15 years i.e. on 12.07.2012, which was revised vide Letter No.Dir/Pen/PPO No.34654/34948 SP, whereby his pension was restored for an amount of Rs.23,55.72 with effect from 01.07.2013, per learned Counsel, the same is not correct calculation on the premise that it was not effected from the date of completion of period of 15 years i.e. 12.7.2012 and it did not increase 20% as per O.M dated 02.7.2012. Learned Counsel has submitted that the Petitioner protested with the Respondents by lodging complain for correction in calculation of his pensionary benefits; that the Respondents in their abortive attempt stated that they have calculated the correct figure of the pensionary benefits of the Petitioner, however, the same is not in accordance with law; that his actual amount comes to Rs.30,832.68 as it stood on 12.7.2012; that Petitioner being aggrieved by and dissatisfied with the inaction on the part of Respondents approached the learned Wafaqi Mohtasib for actual restoration of commuted portion equal to 50% after completion of 15 years i.e. 12.7.2012 and stoppage of undue deduction of purported excessive amount from his pensionary benefits. Learned Wafaqi Mohtasib vide his finding dated 17.6.2016 opined that the Petitioner should approach the proper forum for redressal of his grievance. He preferred statutory appeal to the President of Pakistan, which was forwarded to SEPCO for re-examination and decision afresh within a period of two months. He next submitted that the Petitioner is seriously prejudiced by the

actions of the Respondent-WAPDA who wrongly calculated his pensionary benefits after his retirement on 12.7.1997.

4. Mr. Ahmed Ali Ghumro, learned counsel for the Respondent-WAPDA has raised the question of the maintainability of the petition and referred to para-wise comments filed by the Respondent-WAPDA and argued that pensionary dues of the Petitioner have been calculated by the Competent Authority in accordance with WAPDA pension rules and nothing is left on the part of WAPDA to be paid on account of pensionary benefits of the Petitioner, however, excessive payment has been made to the Petitioner which is being deducted from his pensionary benefits. In support of his contentions he relied upon the documents attached with comments filed by WAPDA. Learned Counsel emphasized that while scrutinizing the monthly pension of the Petitioner it was transpired that he had been drawing the pension excessively / beyond the sanctioned revised pension order issued by Director, Pension, WAPDA vide letter dated 24.02.2014 as Rs.23,553/- but he received excessive monthly pension of Rs.31,090/-, the details of which are as below:-

No	Description	Amount
01	Actual diff due for the period July-12 to Feb-14	145926
02	Already drawn (Rs.186505 vide chq: No-1379635 dated 07.04.2014 & Rs.101941 vide cheq: No.1379658 dated 07.05.2014	288446
<b>03</b>	<b>Difference (Excess drawn/recoverable)</b>	<b>1,42,520</b>
01	Actual due March -14 to March-15	375468
02	Drawn since March-14 to March-15	480247
<b>03</b>	<b>Difference (Excess drawn/ recoverable)</b>	<b>1,04,779</b>
<b>Total excess amount drawn/recoverable</b>		<b>2,47,299</b>

5. Mr. Muhammad Nishat Warsi, learned DAG has adopted the arguments of Mr. Ahmed Ali Ghumro, learned Counsel representing SEPCO (WAPDA).

6. At this stage, learned Counsel for the Petitioner has objected to the contentions of the learned counsel representing WAPDA and has submitted that the Respondents have wrongly been deducting the purported excessive payments from the pensionary benefits of the Petitioner, which have been shown in the impugned notices, which is

highly unjustified act on the part of Respondents. He next submitted that the Respondent-WAPDA has given lame excuses and delayed in releasing the dues of the Petitioner, however, he denied the contents of the statement and annexures attached thereto of the Respondents and stated that the same is based upon false assertions. He further stated that the main grievance of the Petitioner is release of 50% commutation amount and other pensionary benefits as per law, which have been stuck up due to lethargic conduct of the Responded-WAPDA for that he has suffered a lot in litigation, therefore, he is entitled for increase of payment as mentioned in the schedule of payment as discussed supra. Learned Counsel for the Petitioner has referred to the Office Memorandums issued from time to time by the Government of Pakistan, Ministry of Finance Division (available at Pages 31 and 65 of the case file) to substantiate his contentions.

7. Learned Counsel, in support of his further contentions, has relied upon the cases of Ghulam Yaseen vs. Accountant General Punjab and other (2014 PLC (C.S) 73) and Additional Accountant General Pakistan Revenue, Lahore vs. AA Zuberi (2011 PLC (C.S) 580) and argued that the restored pension would simply be doubled the amount of 50% pension which the Petitioner was already drawing at the time of his retirement and after completion of 15 years in the year 2012 this should have been doubled and ancillary benefits accrued thereon, which have been denied to the Petitioner rather deduction has been made by the Respondent-WAPDA from the pension of the Petitioner which cannot be allowed under the law. He added that the increase has been made in the "pension" and, therefore, the Petitioner cannot be deprived of the said increments. In support of his submissions, he referred to Section 19 of the Civil Servants Act, 1973 and the case of I.A. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041 (at 1096)). He lastly prayed for directions to the Respondent-WAPDA to clear pensionary benefits of the Petitioner in accordance with the judgment passed by Honourable Supreme Court of Pakistan as discussed supra.

8. We have heard the parties on the aforesaid issue and perused the material available on record and case law cited at the bar.

9. The precise question for determination before this Court is the quantum of 50% pension that is restored at the end of the commutation period.

10. To fully appreciate the contentions of the parties, we have noticed that the Petitioner commuted his 50% pension for a period of 15 years, which means that a lump sum payment of 50% of the pension on the basis of the pension as it stood in the year 1997 was worked out. Therefore, under the Rules, the pension stands RESTORED at the end of the commutation period i.e. 15 years. This means that the Petitioner is once again entitled to 100% pension as it stands on the day of his retirement as provided under Rule 3.29 of the Pension Rules.

11. We are cognizant of the fact that this Court can enforce the fundamental rights of the pensioner. We are not satisfied with the calculation made by the respective parties, for the simple reason that the judgment dated 05.01.2012 passed by the learned Federal Service Tribunal and upheld by the Honorable Supreme Court of Pakistan vide judgment dated 24.04.2012 in Civil Petition No.549 to 559 & 575 to 589 of 2012 has categorically ordered to release commutation amount of pensioners, therefore, Respondent-WAPDA cannot be allowed to sit in appeal against the judgment passed by Honorable Supreme Court of Pakistan and withhold the pensionary benefits of the pensioner. Apparently the payment of the pensionary benefits to the Petitioner has been delayed for which the Petitioner cannot be held responsible at this stage.

12. 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 Respondent-WAPDA that compliance of the judgment of Honorable Supreme Court of Pakistan has been made in its letter and 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 the Nazir of this Court to consult with the Accountant General Sindh,

who is directed to depute an Official to assist the Official of this Court to undertake the exercise of recalculation of the pensionary benefits of the Petitioner including commutation as directed by the Honorable Supreme Court of Pakistan in the aforesaid judgment, in accordance with rules and regulations. However, he may also undertake the exercise of excessive payment, if any, received by the Petitioner as alleged by the Respondent-WAPDA. Comprehensive report has to be submitted by the Nazir of this Court within a period of 01 month from the receipt of this order. The parties to file their claim and counter-claim before the Nazir of this Court within one week, who thereafter will transmit the same to the Accountant General Sindh for recalculation of the same. Such report shall be submitted within the stipulated period after receipt of this order.

13. The hearing of this matter is adjourned to be taken up after one month.

**JUDGE**

**JUDGE**

Nadir/-