

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

**C.P No.D-2191 of 2015**

Muhammad Waseem Akhtar.....Petitioner

Versus

Federation of Pakistan and others.....Respondents

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**Date of hearing: 11.10.2018**

Petitioner present in person.

Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

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

**ADNAN-UL-KARIM MEMON, J:-** Through the instant Petition, the Petitioner has sought following relief(s).

- i) ***To Declare that service of the petitioner since 07.08.1965 to 24.12.2002 order of the Government Agency-PIDC vide the letter dated 20.01.2003 and 21.01.2003 for entitlement of the petitioner to service dues on retirement from 15.04.1989 to 24.12.2002 as basically incorrect, from the date of his joining after reinstatement temporary posting at LSM, Naudero w.e.f. 15.04.1989 and against decision of the Competent Authority of the Government conveyed by the Ministry vide letter dated 17.06.1998.***
- ii) ***To declare the order of the Government agency-PIDC vide the letters dated 20.01.2003 and 21.01.2003 as also void on the basis of void order of PIDC vide letter dated 09.05.1991 for treatment of his joining after reinstatement temporary posting at LSM, Naudero as fresh entry with retrospective effect i.e. 15.04.1989 as employee of LSM, Naudero already “nullity in law” as consequence of the decision of the Competent Authority of the Government vide letter dated 08.08.2000 issued by the Ministry.***
- iii) ***To declare decision of the Government-PIDC for not allowing claim of the Petitioner being in service from date of joining service w.e.f. 07.08.1965 till retirement on 24.12.2002 and not allowing payment of balance arrears of pay and allowances and balance service dues against decision of the Government vide letters dated 27.06.1998, 08.08.2000, 24.05.2001 and 16.03.2011 issued by the Ministry.”***

2. Brief facts of the case as per pleadings of the parties are that on 24.07.1965 Petitioner was appointed as Assistant Manager (Planning) in Pakistan Industrial Development Corporation Limited (PIDC). Petitioner has submitted upon dissolution of PIDC through Ordinance No. L-II of 1984, promulgated on 07.11.1984 his service was transferred to PIDC (Pvt) Ltd. and continued to be governed by the service Rules of PIDC. Petitioner has submitted that he stood retired from service of PIDC (Pvt) Ltd. on 22.11.2002 on attaining the age of superannuation. Petitioner has submitted that he has not been paid his retirement dues/benefits as per his entitlement in accordance with the terms of Ordinance No. L-II of 1984, which has been declined by the Respondent-Company. Petitioner further added that the issue of pension is an issue of fundamental right as enshrined under the Constitution; that the Respondents cannot deny the rights, which accrued in his favour; that the Respondents have deprived his right of actual pension, which is violation of Article 9, 23, 24 and 25 of the Constitution of the Islamic Republic of Pakistan 1973; that Petitioner has submitted his calculation as per his right but the same had not been taken into consideration by the Respondent-Company; that colleagues of the Petitioner, who retired from service of the Respondents have been given retirement benefits, whereas Petitioner has been deprived without any rhyme and reason; that the Petitioner claims similar treatment; that the Petitioner on retirement from service was entitled to receive such pension or gratuity as prescribed under the law.

During the course of arguments, Petitioner sought permission to highlight the background of the case which is as under:-

“That after serving the respondent-company, he in the year 1983 he had applied for voluntary retirement from PIDC which was not accepted vide letter dated 15.08.1985; that his service was transferred to PIDC-Printing press ( subsidiary of PIDC); that he was promoted as Deputy General Manager w.e.f. 21.02.1984; that as per PIDC Dissolution Ordinance 1984 PIDC-Printing Press continued to remain a part of PIDC till 29.10.1985 when PIDC-Printing Press was registered as subsidiary private limited company under the Companies Ordinance 1984; that he was permanent employee of PIDC Pvt Ltd and served in PIDC-Printing Press as per the provision of PIDC Memorandum dated 03.03.1986; that in the meanwhile the post of Deputy General manager was abolished w.e.f. 02.03.1986 and consequently his service was terminated vide Notification dated 02.03.1986. Petitioner being aggrieved by and dissatisfied with the termination Notification, impugned the same before the competent-authority/Chairman PIDC requested for considering his case as voluntary retired from service with effect from 30.10.1985 or in alternative reinstatement of his service as DGM in PIDC-Printing Press w.e.f. 02.03.1986 from the date of his termination; that PIDC vide letter dated 26.06.1986 decided to convert his termination of service into voluntary retirement with retrospective effect; that in the meanwhile Respondent-Deputy Secretary Ministry of Production Islamabad vide letter dated 29.06.1988 opined that the request of the Petitioner for considering him voluntary retired as well as decision of PIDC contained in the letter dated 26.06.1986 irregular on the premise that PIDC voluntary retirement scheme was valid up to 10.08.1983 which was extended vide PIDC Memorandum dated 01.08.1983 and it was not effective on 26.06.1986 whereas the Petitioner remained in actual and regular service of PIDC up to 02.03.1986; that the Respondent Ministry recommended the case of the Petitioner for reinstatement in service w.e.f. 02.03.1986 with all back benefits in Grade E-V; that the Respondent-company vide letter dated 27.2.1990 upon reinstatement of the petitioner w.e.f. 15.4.1989 directed the petitioner to refund all the service dues already drawn by him in lump sum. Petitioner being aggrieved by and dissatisfied with the purported recovery of service dues received under protest under voluntary retirement scheme of PIDC submitted an application to the General Manager of Respondent-PIDC vide following applications dated 13.5.1990, 18.8.1990, 09.12.1990, 03.1.1991, 26.12.1991, 13.2.1992, 13.7.1992, 17.8.1992, 21.9.1992, 04.1.1994, 01.3.1997, 24.10.1997, 20.3.1998, 18.3.1999, 19.5.1999 & 21.6.1999; that the Respondent-company vide letter dated 2.10.1999 again terminated the service of the Petitioner without assigning any reason. Petitioner being aggrieved by and dissatisfied with the aforesaid termination letter submitted an Appeal under Section 29 of PIDC Service Rules; that the Competent Authority vide letter dated 08.8.2000 reinstated his service and upon reinstatement, his service was transferred to Petroman under PERAC, Karachi vide letter dated 1.11.2000 on permanent basis. Petitioner being aggrieved by and dissatisfied with the aforesaid permanent transfer order submitted an Appeal to the Appellate Authority on 30.11.2000; that the Respondent-company vide letter dated 29.1.2002 opined that the Petitioner was entitled to payment of the arrears of difference of the prerequisite of Senior Manager E-IV of Petroman and directed for payment in accordance with the PIDC Memorandum dated 03.03.1986; that he is entitled to benefits as per PIDC Service Rules being permanent employee of PIDC since 1965; that he retired from service of PIDC on 22.11.2002 on attaining age of superannuation; that he filed various applications to the Competent Authority for implementation of decision dated 27.6.1998 passed by the respondent-ministry for all back benefits, proforma promotion with retrospective effect and payment of service dues for service from 7.8.1965 to 24.12.2002; that Respondent-company vide payment advice dated 23.5.2003 paid him an amount of Rs.412039/- which was received under protest and in the meanwhile he also filed an Appeal against the injustice being made to him by the Respondent-company vide Application dated 05.6.2003; that the Respondent-company vide letter dated 28.8.2003 rejected the claim of the Petitioner. Petitioner being aggrieved by and dissatisfied with filed an Appeal to the Competent Authority on 26.2.2004 and issued various reminders with effect from 2003 to 08.10.2011 for decision on his Appeal/Applications.”

Petitioner being aggrieved by and dissatisfied with the aforesaid actions of the Respondents has filed the instant petition on 03.4.2015.

3. Upon notice to the Respondents, the Respondent No. 2 filed para wise comments.

4. Mr. Shaikh Liaquat Hussain, Assistant Attorney General raised the question of maintainability of the instant petition and has supported the stance taken by the Respondent-Company vide letter dated 28.8.2003 and argued that the service of the Petitioner was transferred to PIDC Printing Press in the year 1983 which was a separate entity and thereafter Petitioner became a Permanent employee with no lien on PIDC; that the service of the Petitioner was terminated due to abolition of post of DGM (E-V); that the claim of the Petitioner was based on assumption and not supported by any law; that the claim of the Petitioner was also time barred; that the Petitioner was paid his full and final dues in the year 2004 and he has approached this Court after lapse of 12 years thus he is not entitled for any relief; that no fundamental rights of the Petitioner were ever infringed. He lastly prayed for dismissal of the instant petition being meritless.

5. We have considered the submissions of the parties and have also gone through the entire record carefully.

6. In the first place, we examine the issue of maintainability of the instant petition under Article 199 of the Constitution. From the perusal of the pleadings and arguments advanced by learned counsel for both the Parties, it is noted that Pakistan Industrial Development Corporation (PIDC), which is a Public Sector

Company, as defined under Section 2(g) of Public Sector Companies, (Corporate Governance) Rules, 2013, as follows:-

***“Public Sector Company” means a company, whether public or private which is directly or indirectly controlled, beneficially owned or not less than fifty percent of the voting securities or voting power of which are held by the Government or any instrumentality or agency of the Government or a statutory body, or in respect of which the Government or any instrumentality or agency of the Government or a statutory body, has Otherwise power to elect, nominates or appoint majority of its directors, and includes a public sector association not for profit, licensed under Section 42 of the Ordinance.”***

A reference may also be made in this regard to the decision of the Honorable Supreme Court rendered in the case of Ramna Pipe and General Mills (Pvt.) Ltd v. Sui Northern Gas Pipe Lines (Pvt.) (2004 SCMR 1274), in which it is settled that a Constitutional Petition against a Public Limited Company is maintainable.

7. In view of the facts stated above, the status of PIDC can ordinarily be regarded as a “Person” performing functions in connection with the affairs of the Federation under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution. Thus, High Court has the jurisdiction to entertain a Constitutional Petition against PIDC since it is a Body Corporate performing functions in connection with the affairs of the State. In our view the functions of PIDC have the element of Public Authority, as such the same will be amenable to Writ Jurisdiction. Guidance has also been taken from the decision of the Hon’ble Supreme Court in the case of Abdul Wahab and others Vs. HBL and others (2013 SCMR 1383). In this case, the Honorable Supreme Court has held that two factors are most relevant i.e. the extent of financial interest of the State/Federation in an Institution and the dominance in the controlling affairs thereof. Reference may also be made to the decision of Hon’ble Supreme Court in the case of Salahuddin Vs.

Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244). We are of the considered view that an aggrieved person can invoke 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). In view of the above findings of the Honorable Supreme Court, this petition can be heard and decided on merits by this Court while exercising its Constitutional jurisdiction under Article 199 of the Constitution.

8. On merits, in pith and substance, prima facie the case of the Petitioner revolves around the issue of retirement benefits. Petitioner present in person has referred to his statement dated 23.09.2015 and rejoinder filed by him on 23.10.2015 and submitted that the Respondent-Company owed certain amount on account of following charges, for which the Respondent-Company is required to recalculate the same, which are as follows:-

- i. **Normal gratuity for the period of over 37 years' service @ 60 days basic pay last drawn for each completed year of service with profit as paid to other officers as per PIDC Employees Gratuity Fund Rules.**
- ii. **Provident fund benefits for the period of service with profit as per PIDC Employees Provident Fund Rules.**
- iii. **Benefit of PIDC Employees Benevolent and Retirement Fund.**
- iv. **Benefit of long service award on completion of 25 years' service of PIDC.**
- v. **Benefit of adhoc increase of 10% of basic pay w.e.f. 01-07-1990 allowed to officers of PIDC.**
- vi. **Balance arrears of pay and allowances for the period treated on duty.**
- vii. **Encashment of balance earned leaves according to his entitlement of earned leaves for the period treated as duty.**
- viii. **Proforma promotion wit consequential benefits.**

9. As per the Petitioner the aforesaid retirement benefits have been declined by the Respondent-Company vide letter dated 28.08.2003 on the following premise:-

***a) It is on record that your so-called grievance relating to para-5 of Ministry of Industries & Production letter No.1(5)/86-P.III dated 27<sup>th</sup> June, 1998 was reiterated in your appeal dated 30.11.2000 to the Ministry. The Ministry had disposed of your said appeal dated 30.11.2000 vide its letter No. 2(26)/2000/Pr-III (PIDC) dated 24<sup>th</sup> May, 2001 to the extent of allowing retention your lien in PIDC.***

***b) As to the contents of para-5 of MOI&P letter No. 1(5)/86-P,III(PIDC) dated 27<sup>th</sup> June, 1998, it contained no "decision" as conceived by you. The concluding para-6 of the MOI&P said letter had only desired that justice may be dispensed to you. The Ministry was informed in reply that whatever was actually accrued, was duly allowed to you and no injustice was done and the matter stood resolved as no further communication was made to PIDC by the Ministry.***

***c) Upon you appeal against termination of your services from former PIDC Printing Press previously on 20.03.1986, the MOI&P vide its letter No. Per.II/5/86-II dated 22.03.1989 had ordered your reinstatement under PIDC. The MOI&P subsequently decided vide its letter No. PER-II/5/86-II dated 08.08.1990 that continuity of your service would be subject to your depositing all service dues received by you on termination of services immediately. However, you failed to comply with the said condition on one pretext or the other despite our written advice, repeated reminders and final notice. As a consequence, your appointment was treated as fresh entry from the date of your joining upon reinstatement, i.e. 15.04.1989, which was perfectly legal.***

***Upon your retirement from service on 24.12.2002 on attaining the age of superannuating, you have been correctly paid your service dues since 15.04.1989 amounting to Rs. 412,039/- in full and final settlement."***

10. The only point left in the present matter is whether Petitioner is entitled to receive further amount on account of pension from Respondent-Company in view of letter dated 28.08.2003?

11. We are of the view that right to Pension is a fundamental right as provided under Article 9 and 14 of the Constitution, as observed by the Honorable Supreme Court of Pakistan in the case of Haji Muhammad Ismail Memon reported in (PLD 2007 SC 35).

12. Reverting to the claim of the Petitioner, that some officials of the Respondent-Company, who were junior to the Petitioner, were given all service benefits, whereas Petitioner was denied the same. This claim of the Petitioner is refuted by the learned AAG that the

Respondent-Company has declined the claim of the Petitioner vide letter 28.08.2003, through valid reason therefore he cannot be given the same benefits as given to other employees referred to hereinabove. We are of the considered view that this is a discriminatory attitude to refuse the claim of the Petitioner. In our view Petitioner is entitled to receive his pensionary dues under the law, which the Respondent-Company was under legal obligation to consider. Reliance in this regard can be placed on the dicta laid down by the Honorable Supreme Court in the case of I.A. Sharwani and others v. Government of Pakistan through Secretary Finance Division, Islamabad and others (1991 SCMR 1041). A larger Bench of five learned members of the bench of the Honorable Supreme Court made exhaustive scrutiny with respect to granting of pensionary benefits to a class of retired employees of Executive Branch, who had retired within a particular period, while the same was denied to another class of similarly placed employees, who had retired in another period. Accordingly, while following the principle of the law enunciated in I.A. Sherwani's case (ibid), and in view of the peculiar facts and circumstances of the present case, we conclude that the Respondent-Company cannot fix two separate categories for paying the service benefits, to its employees.

13. 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. The employer is under legal obligation to the needful in accordance with law.

14. Upon perusal of the pleadings of the parties and arguments extended by them, we are of the considered view that this is a matter of re-calculation of retirement dues and this Court cannot make calculation in this regard and leave it for the Respondent-Company to take a decision afresh in the matter of the Petitioner. We have noticed that the Petitioner has retired from the service of the Respondent-Company vide letter dated 22.11.2002 which prima facie suggest that the Petitioner had been in service of the Respondent-Company since his initial appointment and retired after attaining the age of superannuation i.e. 60 years, thus the question of remained out of job for certain period, posted in the subsidiary units of the Respondent-Company is of no consequence, therefore the case of the Petitioner needs to be looked into by the Respondent-Company afresh for grant of outstanding retirement dues in accordance with law.

15. In the foregoing legal position of the case, we are not convinced with the contention of the learned AAG that the Petitioner is not entitled to retiring benefits, specially in view of Fundamental Rule 54 which is quite clear and in our view does not support the case of Respondent-Company. Fundamental Rule 54 provides as under:-

***“54—Where a Government servant has been dismissed or removed is reinstated, he revising or appellate authority may grant to him for the period of his absence from duty--***

***a) If he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal removal; or***

***b) If otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe.***

***In a case falling under clause (a), the period of absence from duty will be treated as a period spent on duty.***

***In a case falling under clause (b), it will not be treated as a period spent on duty unless the revising appellate authority so directs.”***

16. In view of the facts and circumstances of the case and for the reasons alluded as above, the instant Petition is hereby disposed of in the following terms:-

***a) The Competent Authority of the Respondent-Company is directed to take afresh decision on the issue of inclusion/calculation of the service benefits of the Petitioner in accordance with law and award post-retirement benefits/dues if any outstanding, to the Petitioner (strictly adjusting the dues already received by the Petitioner) without discrimination within a period of two months, from the date of receipt of the Judgment of this Court.***

17. The petition stands disposed of in the above terms.

JUDGE

JUDGE