

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –4941 of 2020

Jameel Ahmed

Versus

Pakistan Telecommunication Company Limited and 03 others

Date of hearing
& order : 13.10.2020

Syed Ansar Hussain Zaidi, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. – - Through this petition, the petitioner is seeking implementation of appellate order dated 20.6.2008 passed by the competent authority of Pakistan Telecommunication Company Limited (PTCL) Voluntarily Separation Scheme (VSS), whereby his appeal was decided in his favour. Now he has filed this petition for the implementation of the aforesaid decision.

2. Petitioner, having 29 years' length of service in his credit, voluntarily opted VSS introduced by PTCL, resultantly, petitioner was given severance pay, separation bonus, and medical benefits, leave encashment, and housing allowance depending upon his length of service, as computed under the offered scheme.

3. We asked the learned counsel for the petitioner as to how this petition is maintainable in light of the decision of the Hon'ble Supreme Court in terms of the judgment rendered in Civil Appeal No.2506 of 2016 and others as well as common judgment dated 04.12.2019 passed by this Court in C.P.No.D-141 of 2017 along with connected petitions.

4. Syed Ansar Hussain Zaidi, learned counsel for the petitioner, has mainly contended that his training period ought to have been included while computing the length of service under VSS. Thus, his qualifying length of service in between joining to training period was forfeited and was highly prejudiced by this scheme

of separation, whereby he was deprived of his due pension and commutation amount at the time of his retirement. He relied upon Sections 35 and 36 of the Pakistan Telecommunication (Reorganization) Act, 1996, and submitted that since the Federal Government stood as guarantor in safeguarding the terms and conditions of service and rights including the pensionary benefits of the transferred employees, these rights cannot be undermined or ignored by introducing the VSS ; that the calculation of the emoluments based on the formula, provided under the separation scheme was not considered. He lastly prayed for direction to the respondent-company to implement the appellate order dated 20.6.2008 passed by the respondent-PTCL.

5. We have heard the learned counsel on the point of maintainability of this petition and perused the material available on record.

6. The petitioner claimed uninterrupted continuity of his service as this severance ended up in adversely affecting his terms of service as discussed supra, in our view, this issue of the petitioner has already been dealt with by the Hon'ble Supreme Court in the case in Civil Appeal No.2506 of 2016, therefore, no further deliberation is required on our part. An excerpt of the order is reproduced as under:-

“6.... The appellants had instead projected themselves to have been wronged and embarked upon unnecessary litigation with a view to obtaining a benefit to which they were not entitled to. The fora below however mostly considered whether or not the appellants could have filed grievance petitions without considering whether they had a grievance. In our opinion the appellants did not have a grievance as they had voluntarily served their relationship with the Company by availing of the VSS, which included a substantial amount received on account of Separation Bonus which only an employee who had less than twenty years of service could receive. The case of P.T.C.L. v Masood Ahmed Bhatti, which has been relied upon by the learned counsel for the appellants, stipulates that where an organization is governed by statutory rules then any action taken by such organization in derogation of or in violation of such rules would, if it is prejudicial to any employee, may be set aside. However, in the present case the Company did not take any action prejudicial to the appellants. On the contrary the appellants had voluntarily availed of the VSS, received payments thereunder, including the Separation Bonus which was only payable to those employees who had less than twenty years of Qualifying Length of Service.

7. If the appellants genuinely believed that their training period should have been counted towards their length of service, and consequently, they were entitled to pension then they were not entitled to receive the Separation Bonus amount. And, even if we presume that the Separation Bonus was paid to them by mistake it was incumbent upon them to have stated this and to have returned/refunded it to the Company before proceeding to claim a pension on the ground that they had served the Company for twenty years or more. Significantly, the appellants at no stage, including before us, have submitted that they were not entitled to receive the Separation Bonus, let alone offering to return it. The appellants' actions are destructive of their claim to pension, because if they had twenty years

or more service they should not have received the Separation Bonus. Therefore, leaving aside the jurisdictional point which forms the basis of the judgments of the learned judge of the High Court and of the learned Judge of the Labour Court the appellants had by their own actions demonstrated that they had no grievance and that they were not entitled to pension.”

7. Coming to the second issue raised by the petitioner that the respondent-company has failed to implement the appellate order dated 20.6.2008, suffice it to say that this purported order was passed in the year 2008 and the petitioner has approached this Court after 12 years, even after availing the benefits of Voluntarily Separation Scheme (VSS), which was finally set at rest by the decision of Hon’ble Supreme Court as discussed supra.

8. *Prima-facie* this abortive attempt on the part of the petitioner is not appreciated on the strength of common judgment dated 04.12.2019 passed by this Court for the simple reason that the grievance of the present petitioner who was party in the proceedings was dealt with and decided against him and on the same cause of action, he has filed the instant petition. For convenience sake, an excerpt of the judgment is reproduced as under:-

“18. Thus, no distinction, as compared to those who were dealt with earlier in the aforesaid judgments, is available to the petitioners and their case is identical to those who were considered in the aforesaid judgment of Hon’ble Supreme Court in the case of Civil Appeal No.2506 of 2016 and others i.e. the case of Mst. Tasneem Farima & others v. Pakistan Telecommunication Company Limited. 19. These petitioners have consciously opted for VSS and were promptly benefited. They cannot have a cake and eat it. The claim is to be seen from the lens of judgments of Hon’ble Supreme Court discussed above which filtered the claim of these petitioners. 20. VSS is a binding contract and nothing about its unconstitutionality was established nor is there any substance to render it as void under the Contract Act. In the entire scheme of Pension Act and rules there is nothing to prevent the employees from entering into a contract in bargain with their post retirement or pensionary benefits which they could have availed, for any prompt gain. 21. Insofar as those petitioners who claim that despite excluding the period of training their length of service was more than what was declared/calculated by the employer, firstly they have not agitated their grievance at the relevant time and it is now past and closed transaction. Even otherwise these being disputed questions of fact as to how much service was rendered by each of employees cannot be dealt with in terms of Article 199 of the Constitution of Islamic Pakistan 1973. 11 22. Thus, in view of above, we are of the view that the petitioners have failed to make out a case for interference and consequently the petitions are dismissed along with pending applications.”

9. We are of the view that the petitioner approached this Court through C.P. No. D-7054/2019 which was dismissed vide common judgment dated 04.12.2019. His review application was also dismissed vide order dated 05.10.2020, therefore, similar relief cannot be claimed by filing subsequent legal proceedings as it would fall within the mischief of constructive res-judicata. Reliance is placed on the case of State Bank of Pakistan through Governor and others vs. Imtiaz Ali Khan and others , **2012 SCMR 280**. Besides above, we do

not concur with this assertion of the learned counsel for the petitioner with his explanation of laches and we are of the considered view that the instant petition falls within the doctrine of laches as the petitioner filed the instant petition in October 2020 whereas the alleged cause of action accrued to him in June 2008, i.e. approximately 12 years before filing of the instant petition.

10. For the above reasons, we are of the view that the petitioner has not been deprived of his fundamental rights as alleged by the learned counsel for the petitioner.

11. In view of the aforementioned facts and circumstances as well as the law referred to above, the instant petition stands dismissed in *limine* along with listed applications with no order as to costs.

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