

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
High Court Appeal No.253 of 2019

Before:
Mr. Justice Nadeem Akhtar
Mr. Justice Adnan-ul-Karim Memon

K-Electric Limited,
appellant through : Mr. Aimal Khan Kanshi, advocate.

Syed Anwar Ali & others,
respondents 1 to 20 through : Mr. Salman J. Mirza, advocate.

Federation of Pakistan,
respondent No.21 through : Mr. Muhammad Nishat Warsi, DAG.

Dates of hearing : 10.02.2020, 05.09.2020, 19.09.2020, 03.10.2020,
12.10.2020, 20.10.2020 and 28.10.2020.

Date of Judgment : 16.11.2020.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. – Appellant K-Electric Limited has impugned judgment dated 23.05.2019 and decree dated 14.06.2019 passed by the learned Single Judge (Original Side) of this Court in Suit No.194 of 2012 (re : Syed Anwar Ali and 19 others vs. Karachi Electric Supply Company) whereby the said Suit filed by the private respondents for post-retirement medical benefits as provided under Clause 7.5(c) of the KESC Officers Service Rules, 2002, and free electricity facilities as provided under the 2003 Memorandum (Memo 2003) was decreed with costs to the extent and in terms of following prayers A, B, C :

- “A. Declare that the plaintiffs are entitled to the medical and electricity benefits in terms of the KESC Officers Service Rules 2002 and inter departmental memo dated 19.04.2003 and that the KESC Officers Policy 2010 is unlawful and of no legal effect insofar as it purports to amend any of the KESC Officers Service Rules 2002 to the detriment of the plaintiffs.*
- B. Direct the Defendant No.2 to provide the plaintiffs with free electricity benefits for a period of 5 years from the date of initiating the same.*
- C. Direct the Defendant No.2 to provide, free of cost, full medical benefits to the plaintiffs and their spouses for a period of 10 years and for a period of 5 years to their dependent children from the date of initiating the same.”*

2. The case of the private respondents as pleaded in the plaint was that in the year 2002, Clause 7.5(c) of the KESC Officers Service Rules, 2002, provided full medical facilities to employees and their spouses for a period of ten (10) years, as well as dependent children for a period of five (05) years, on retirement ; subsequently, the KESC management was requested by the KESC Officers Association, which included the private respondents / plaintiffs, to provide free

electricity benefits to retired employees for a period of five (05) years on retirement as was already being provided to non-officers ; after deliberation with the employees, KESC agreed to the request and formulated the policy vide the 2003 Memo ; however, when the private respondents / plaintiffs on retirement applied for the aforesaid benefits, they were informed that the retirement policy under the 2002 Rules had been amended by the 2010 Policy ; and, the amended policy has withdrawn the medical benefits in terms of Clause 7.5(c) to retiring employees, besides the amended policy also decline to extend free electricity. Accordingly, the respondents invoked the jurisdiction of this Court under its Original Civil Jurisdiction by filing a Suit under Section 9 of CPC seeking the above relief.

3. Notices were issued and written statement was filed by the appellant. On 05.11.2013 parties suggested that issues raised in the pleadings did not require recording of evidence as only legal issues were involved in the mater, therefore, learned single judge framed the following issues :

- “1. *Whether suit is maintainable by the retired employee of the KESC in the present form?*
2. *Whether through the KESC Officers Policy 2010, certain benefits to the Plaintiff under the previous policy, can be withdrawn by the Defendant ?”*

4. However no findings were recorded by the learned Single Judge on the issue of damages apparently due to the fact that none of the parties had advanced arguments in respect thereof.

5. The learned Single Judge, after hearing the parties on the aforesaid issues, decreed the Suit in favour of the private respondents. The appellant has challenged the aforesaid decree and judgment in this appeal.

6. Mr. Aimal Khan Kansj, learned counsel for the appellant, has mainly argued that the learned Single Judge failed to take into account that the appellant was previously a state-owned corporation that was privatized in the year 2005 and was taken over by the present management in the year 2008. Subsequently, the appellant's Board of Directors decided to amend the Officers' Rules of Service and legitimately introduced the 2010 Policy for its management framework, including the respondents, in April 2010. Thus, at the time of their retirement during the years 2010 and 2011, the said respondents were governed by the 2010 Policy and not the 2002 Rules ; the learned Single Judge fell into grave error of law while deciding the issue relating to the maintainability of the Suit in favour of the said respondents ; the learned Single Judge did not appreciate that the relationship of the appellant and the said respondents was contractual in nature and was governed by the principle

of master and servant, and as such the plaint was liable to be rejected or the Suit was liable to be dismissed ; the learned Single Judge failed to appreciate that the introduction of the revised policy has been provided for in terms of Clause 1.2 of the 2002 Rules, which conferred the power and discretion to the appellant to unilaterally undertake such an exercise despite having observed in paragraph 20 of the impugned order that *“attention was invited to Clause 1.2 of the 2010 Policy which reflected that the same had been introduced in supersession of the 2002 Rules in exercise of the provision”*. The learned Single Judge also wrongly held that the *“thus, the contractual power conferred on KESC by Clause 1.2 is not untrammelled, nor can this power be exerted in such manner as KESC deems fit in its rank i.e. subjective discretion. It is pertinent to note that clause 1.2 itself does not contain any such language”*. In that, it did not appeal to the learned Single Judge that the powers, per the 2002 Rules, rested with the Board of a private corporation and that the relationship was that of contractual employment and therefore the Board could competently take decisions in the larger interest of the corporation as the Board is otherwise bound to ensure smooth working of the corporation; that the learned Single Judge failed to note that the respective contracts of service / appointment letters of the said respondents reflect and spell out the nature of the relationship that was being created between the appellant and the said respondents. The appointment letters relied upon by the said respondents set out that conditions of service will be the same as applying to other officers corresponding to their status, as amended from time to time. The appointment letters also specified that various benefits during the employment would be “as per K.E.S.C. Rules”. The 2010 Policy is based on the same relationship as was initially created between the appellant and the said respondents. The respondents could, therefore, neither seek for enforcing better treatment than that was / is available to the employees of privatized entities under the law ; that the learned Single Judge failed to give due weight to the fact that the 2010 Policy has already been considered by a Division Bench of this Court in High Court Appeals No.57 of 2012, 127 of 2011, 128 of 2011, 129 of 2011 and 137 of 2011 and in the said appeals none of the clauses of the 2010 Policy were found to be violative of any law or public policy. The learned Division Bench of its common judgment dated 08.12.2012 passed in the said appeals set aside the order granting injunctive relief to the former employees of the appellant who had challenged the 2010 Policy. Further, the learned Single Judge failed to take into account that since the nature of employment of the said respondents with the appellant was contractual that provided for treatment of service under the rules of the appellant as amended from time to time, therefore, the 2010 Policy is fully applicable and binding in respect of all matters covered by it. The Government had introduced the policy of privatization as a means for improving the efficiency of the crumbling state-owned enterprises providing better services to the public at large

and reducing its fiscal deficit. Taking into account the economic realities even the judicial precedents have endorsed the privatization and laid down that private enterprise could form their policies for improving profitability, administration, and governance; that the learned Single Judge erroneously held by the post-retirement policy notified and amended by the appellant an essential part of the employment contract. He concluded his arguments by saying that the learned Single Judge failed to appreciate that even though the respondents have alleged that before 2002 Rules, the Officers Policy was contained in various orders and circulars that governed the terms and conditions of service of its officers, they have failed to produce any such orders/circulars in support of their Suit. Reliance has been placed upon the cases of Anwar Hussain vs. Agricultural Development Bank of Pakistan and others, **PLD 1984 SC 194**, Qazi Munir Ahmed vs. Rawalpindi Medical College and Allied Hospital and others, **2019 SCMR 648**, Suit Southern Gas Company Limited vs. Imdad Ali Pathan and others, **2020 SCMR 1259**, Aurangzeb vs. Gool Bano Dr. Burjor Ankalseeria, **2001 SCMR 909**, Irrudiyandan Francis vs. Deutsche Bank A.G., **2009 PLC (C.S) 1028**, Zahher Ahmed Chaudhry vs. City District Government Karachi and others, **2006 YLR 2537**, and C.I.T. Group / Capital Equipment Financing Inc. vs. M.T. Eastern Navigator and others, **2007 MLD 1135**.

7. Mr. Salman J. Mirza, learned counsel for the private respondents, has supported the impugned judgment and decree passed by the learned Single Judge by submitting that the learned Single Judge has taken into consideration every aspect of the case and the impugned judgment and decree are well-reasoned and are based on proper appreciation of the material available on record and proper application of mind.

8. We have heard learned counsel for the parties and perused the material available on record and the law cited at the bar. The issue raised is whether the private respondents could seek a declaration under Section 42 of the Specific Relief Act, 1877, regarding their post-retirement benefits withdrawn unilaterally, and whether the retiring employees of the appellant could be deprived of the benefits under the Policy of 2002, which were withdrawn by the appellant without notice to them ?

9. It is an admitted position that the policy 2002 was made applicable to retiring employees of the appellant granting them the benefits specifically mentioned therein. Thus, the benefits mentioned in the said policy were to be treated as part and parcel of the terms and conditions of their service, and the benefits accrued to them during service became their vested right. The said right was/is conferred by the policy decision of the appellant which could not be arbitrarily or unilaterally abridged or withdrawn. On the aforesaid proposition, we are fortified by the decision

of Honorable Supreme Court in the cases of Ghulam Sadiq v. Government of Pakistan (2005 PLC (CS) 1114), Pakistan Telecommunication Employees Trust (PTET) v. Muhammad Arif (2015 SCMR 1472), Secretary, Government of Punjab, Finance Department v. M. Ismail Tayer (2015 PLC (CS) 296) and Federation of Pakistan v. I.A. Sherwani (2005 SCMR 292).

10. In our view, the private respondents could legitimately claim to have legal character within the meaning of Section 42 of the Specific Relief Act and they could lodge claim for enforcement of a previous policy which was unilaterally withdrawn to favour certain class of employees. Our view is supported by the decisions rendered by the Hon'ble Supreme Court and the High Courts in the cases of Muhammad Yousuf Shah vs. Pakistan International Airline Corporation, **PLD 1981 SC 224**, Pakistan International Airline Corporation & others vs. Tanveer ur Rehman and others, **PLD 2010 SC 676**, Abdul Wahab & others vs. HBL & others, **2013 SCMR 1383**, Raziuddin vs. Chairman Pakistan International Airline Corporation & others, **PLD 1992 SC 531**, A George vs. Pakistan International Airline Corporation, **PLD 1971 Lah. 748**, UBL vs. Ahsan Akhter (1998 SCMR 68) & Abdul Majeed Khan Vs Tasveen Abdul Haleem, **2012 PLC (C.S) 574**.

11. The contention of the appellant that its Board decided to amend the Officers' Service Rules, 2002, and introduced the 2010 Policy for its management cadre in April 2010 by withdrawing 2002 facility, is without justification. Normally policies can be reviewed or modified by the competent authority, but the review or modification must be reasonable and rational. However, in the case at hand the action of the appellant's Board to review the policy withholding the benefits of the respondents, ex-facie appears to be arbitrary, unreasonable and illogical.

12. Reverting to the appellant's KESC Officers Service Policy 2010, which was kept confidential from all and sundry, infers adversely that the appellant intended to deprive the retiring employees of the aforesaid benefits, in such a way to deprive them of approaching the appropriate forum. In the present case, the Suit of the private respondents was decreed as discussed supra on the analogy that Rules 2002 could not be unilaterally withdrawn by the appellant through the issuance of the 2010 Rules. We concur with the findings of the learned Single Judge as the same are based on sound reasoning.

13. Adverting to the arguments of the appellant's learned counsel that the Suit of the respondents was barred, we are not inclined to accept this contention. Section 9 of CPC confers right to a party to institute a Suit and seek any relief from the court of civil jurisdiction which is not barred under any law. In the present proceedings nothing has been placed before us to substantiate the arguments, we, therefore, hold that the Suit was maintainable. The claim of damages in the Suit was not

relevant as the respondents were claiming post-retirement benefits which are independent and denial of such benefit will not allow the party to claim damages.

14. The learned Single Judge has already dealt with all the aspects of the case in depth. We do not find any illegality, infirmity, or material irregularity in the same to intervene. The case law cited by the learned counsel for the appellant is distinguishable on the facts.

15. In view of what has been discussed above, the impugned judgment and decree passed by the learned Single Judge of this Court in Suit No.194 of 2012 (re : Syed Anwar Ali and 19 others vs. Karachi Electric Supply Company) are maintained. Consequently, the appeal is dismissed with the costs along with the pending application(s).

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