

IN THE HIGH COURT OF SINDH AT KARACHI

Before:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-UL-Karim Memon

C.P No. D-1411 of 2018

Matloob Ahmed Shafiqui & 06 others
Versus
The President, Zarai Taraqiati Bank and 02 others

Date of hearing
& decision: 26.01.2021

Mr. Obaid-ur-Rahman Khan, advocate for the petitioners.
Mr. Sanaullah Noor Ghouri, advocate for respondent No.1.

ORDER

ADNAN-UL-KARIM MEMON, J. In principle, this petition is filed for revision and re-fixation of the pension of the petitioners and other ancillary benefits, who stood retired from their respective services from Zarai Taraqiati Bank Limited (formerly known as Agriculture Development Bank of Pakistan) on or before 30.06.2001. They claim annual increases on their restored commuted portion of pension, strictly under the Office Memorandums dated 21.01.2003, 29.02.2008, 16.05.2011 & 11.03.2013, and decisions rendered by the Hon'ble Supreme Court of Pakistan on the subject issue.

2. At the outset, Mr. Sanaullah Noor Ghouri, learned counsel for the respondent-bank has raised a preliminary legal objection with regard to the maintainability of the instant petition on the ground that respondent-bank has no statutory rules of service, therefore, the writ petition is not maintainable. In support of his contention, he relied upon the cases of Federation of Pakistan through Secretary v. Sultan Ahmed Shams and 17 others, unreported judgment dated 11.08.2010 passed by the Hon'ble Supreme Court in Civil Petition No.427/2010, unreported order dated 06.02.2015 passed by the learned Single Bench of Lahore High Court Rawalpindi Bench, Rawalpindi, the decision of learned Division Bench of this Court in the case of Pakistan Airline Pilots Association and others v. Pakistan International Airline Corporation, SBLR 2017 Sindh 31 and judgment of Honorable Supreme Court in the case of Pakistan International Airline Corporation and others v. Tanveer ur Rehman and others, PLD 2010 SC 676. He prayed for dismissal of this petition on the aforesaid proposition.

3. Mr. Obaid-ur-Rahman Khan, learned counsel for the petitioners, has refuted the stance of the learned counsel for the respondent-bank on the question of maintainability of this petition and argued that the aforesaid

question was raised by the respondent-bank before this Court in the earlier round of litigation i.e. in C.P. No. D-3200/2011 which was later on discarded by this Court vide order dated 09.04.2012. He continued to submit that the respondent-bank is a Government-owned and controlled Bank; therefore, the instant Petition is maintainable under the law. On merit, his stance is that during the period of commutation, increases in pension of the pensioners were allowed by all the Federal Government organization, institutions, and entities including the respondent-bank, especially keeping in view the Office Memorandums dated 21.01.2003, 29.02.2008, 16.05.2011 & 11.03.2013, and decision rendered by the Hon'ble Supreme Court of Pakistan on the subject issue. Per learned counsel restoration of pension means the pension inclusive of increments granted over the last 15 years from the date of retirement. He next pointed out that respondent-bank is a Government controlled bank, having its own rules of service; and, the financial directives contained in the aforesaid Office Memorandums issued by the Government of Pakistan from time to time are stricto-senso applicable in the petitioners' case; that respondent-bank adopted the same for providing pension to its pensioner employees; however the respondents are not making payment of such increases on a commuted portion of the pension according to the rates admissible to them in the light of decisions rendered by the Hon'ble Supreme Court of Pakistan regarding restoration of commuted portion of pension, compelling the petitioners to again approach this Court for redressal of their grievances. He added that the increase has been made in the "pension" and, therefore, the petitioners cannot be deprived of the said increments. He lastly prayed for the direction to the respondent-bank to clear such arrears of increases accrued during the aforesaid period in favour of the petitioners in accordance with the judgments passed by the honorable Supreme Court of Pakistan as well as office memorandums as discussed supra.

4. To commence, we would address the question of the jurisdiction of this Court about maintainability of the petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. In the light of judgment dated 15.2.2013 passed by the Honorable Supreme court in the case of Zarai Taraqiati Bank Limited etc vs. Said Rehman & others (2013 SCMR 642) and Muhammad Rafiullah & others vs. Zarai Taraqiati Bank Limited & another (2018 SCMR 598), the writ petition against respondent-bank is maintainable. Accordingly, we are of the view that this Petition could be heard and decided on merits by this Court while exercising its Constitutional jurisdiction.

5. The controversial points as agitated by the parties, so far as increases on commutation portion of pension is concerned, have already been set at rest by the Honorable Supreme Court in the cases of Federation of Pakistan V/S

Ghulam Mustafa and others, 2012 SCMR 1914, and Secretary Government of Punjab V/S M. Ismail Tayer and others, 2014 SCMR 1336. The Hon'ble Supreme Court of Pakistan has held as under:

“9. In the light of judgments of the Lahore High Court confirmed by the Apex Court and the judgment of the Punjab Services Tribunal, we accept the appeals. The respondents are directed to determine the pension of the appellants from the date of restoration of their commuted pension at the rate at which they were drawing 50% remaining pension. The arrears shall also be paid to them. It is also clarified that the appellants shall not be entitled to claim arrears from the period prior to restoration of their commuted pension.”

6. In the former case the Honorable Supreme Court has held as under:

“16. Thus, under section 18 of the Act of 1974, a retired Civil Servant is entitled to receive pension as may be prescribed. In case a portion of the pension is commuted for a particular period of time, he surrenders his right to receive full pension in lieu of lump-sum payment received by him and on expiry of the commuted period, his right and entitlement to receive a full pension, as prescribed, is restored and re-vested in him. The restoration of the right to receive a pension in terms of Rule 8.12 of the Rules of 1963, is without any rider and upon re-vesting of such right, the status of such retired Civil Servant in law is brought at par with the other retired Civil Servants, who had not exercised their option of seeking commutation of their pension. Such is the obvious effect of the term "restoration" as used in the Rules in question. In the circumstances, a retired Civil Servant, on expiry of the period of commutation, cannot be discriminated against by being paid less pension, than his colleagues, who had not sought commutation, as there was no valid classification available in law between the two. If the Government were to adopt such a course of action as has been attempted to be done, it would offend against Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. Such right in terms of section 18 of the Act of 1974 would obviously mean the pension, as prescribed by the Rules payable on the date of restoration and would obviously include any increase in pension granted by the Government during the intervening period of commutation, as such, increase is envisaged by the Rules.

17. The reliance attempted to be placed by the learned Additional Advocate General, Punjab, in the case, reported as Akram ul Haq Alvi (supra) is misconceived. By way of the said judgment, the law as laid down by this Court in Civil Appeals Nos. 1305 to 1327 of 2003, has been reiterated and reproduced in-extenso. The dictum, as laid down is merely that a retired Civil Servant is entitled to the pension as may be prescribed and a decision granting increase in pension has been interpreted by upholding the legal fiction of a net-pension created for the purpose of calculating the increase as granted by the decision under consideration.

18. With regards to Civil Servants in the service of the Federation, an attempt was made to press the judgment, reported as Akram ul Haq Alvi (supra) to deprive the said Civil Servants of the increases sanctioned during the commuted period of pension. Such argument was resoundingly repelled by this Court in its judgment, reported as Federation of Pakistan v. Ghulam Mustafa and others (2012 SCMR 1914).

19. The afore-said are the detailed reasons of our short Order dated. 31- 3-2014, which is reproduced hereunder: --

"For reasons to be recorded later in the detailed judgment; we are persuaded to hold that the interpretation being accorded to Rule 8.1 read with 8.12 of the Punjab Civil Services Pension Rules vide the office memorandum issued by the Government of Punjab dated 22-10-2001 is not only violative of those Rules but also of Article 25 of the Constitution of Islamic Republic of Pakistan. These appeals and petitions are, therefore, dismissed with no orders as to costs."

7. Per learned counsel for the petitioners, the petitioners stood retired from services of Agriculture Development Bank of Pakistan (ADBP) before the cut-off date i.e. 30.06.2001, and their commuted portion of pension was

restored after the required period of 15 years, without increases accrued thereon as per office memorandums issued by the Federal Government from time to time. He further pointed out that so far as completion of six months' service in the year of retirement as required under the policy is concerned, this issue has already been set at rest by the Hon'ble Supreme Court in Civil Appeal 580/2014; and, after the judgments of the Honorable Supreme Court, the petitioners became entitled to such increases as discussed supra; that this Court can enforce the fundamental rights of pensioners. He emphasized that the Hon'ble Supreme Court of Pakistan in the aforesaid judgments has categorically ordered to release commutation amount of pensioners, therefore, respondent-bank cannot be allowed to sit in appeal against the judgments passed by Hon'ble Supreme Court of Pakistan and withhold such increases accrued thereon. During arguments, we have been informed that out of 07 petitioners, 04 petitioners i.e. Petitioners No.3 to 6 rendered more than six months' service during the year of their respective retirement, but the said increment was not allowed in their favour for pension.

8. We have noticed that respondent-bank introduced the revised pay scales for executives and officers with effect from 01.07.2000 vide circular dated 05.12.2001, and allowed revision of pension of all pensioners who stood retired from service of ADBP in between 02.06.1995 and 30.06.2000. Per petitioners, they were/are entitled to claim revision of pay in their respective pensions with effect from the date of their retirement in the light of the office memorandum dated 16.05.2011.

9. Before dilating upon the merits of the case; and, since the issue of pensionary and allied benefits and its calculation and recalculation is involved in the present proceedings; and, even before taking cognizance of the matter for enforcing the judgments of the Honorable Supreme Court of Pakistan, we at the first instance deem it appropriate to direct the competent authority of respondent-bank to undertake the exercise of recalculation of the pensionary benefits of the petitioners including commutation of pension and interest accrued thereon as directed by the Hon'ble Supreme Court of Pakistan in the aforesaid judgments, under rules and regulations as well as office memorandums as discussed supra. The comprehensive report has to be submitted by the respondent-bank within one (01) month from the receipt of the order of this Court.

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

JUDGE

JUDGE