

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

**Constitutional Petition No. D -3854 of 2011**

Mst. Farah Naz

*Versus*

Federation of Pakistan and 03 others

Date of hearing &  
Decision : 11.02.2021

Syed Ansar Hussain Zaidi, advocate for the petitioner.

Mr. Muhammad Nishat Warsi, DAG.

Mr. Khurram Rasheed, advocate for the respondent No.4.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** - Petitioner is a widow of late Sohail Uddin, Lineman of Pakistan Telecommunication Company Limited (PTCL) who during his tenure of service opted for Voluntarily Separation Scheme (VSS) in the year 2007-08, however, through the instant petition she seeks direction to the respondent-PTCL to pay the bonus for the year 2007-08 as per her entitlement along with farewell grant equal to one month pay, burial charges. She also claims benevolent grants to the extent of her entitlement with payment of Group Insurance under Benevolent and Group Insurance Act, 1969.

2. Per learned counsel for the petitioner forfeiture pensionable qualifying length of service of the petitioner's late husband was/is void and in violation of her fundamental rights, consequently, the respondents may be directed to restore her family pension and other ancillary benefits as admissible under the rules and. Learned counsel emphasized that the benevolent grant and group insurance cannot be withheld by the respondents under the VSS package introduced by the respondents. He further argued that petitioner's late husband had requisite more than 10 years qualifying service was/is entitled of benevolent and group insurance and other ancillary benefits under the law. Learned counsel referred to various grounds raised in the memo of the petition and argued that the petitioner is entitled to all the benefits as discussed supra.

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, reiterated the above submissions and further argued that the aforesaid decisions are distinguishable from the present case on the premise that she has not called in question the VSS issue in the present proceedings rather she claims the aforesaid benefits as admissible to her under the law.

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

6. 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. Prima facie, the petitioner has approached this Court after her late husband availed the benefits of Voluntarily Separation Scheme (VSS), during his lifetime, which issue was finally set at rest by the decision of Hon’ble Supreme Court as discussed supra. *Prima-facie* the case of the petitioner is akin to the case of Muhammad Usman and others v. PTCL and others vide common judgment dated 04.12.2019 passed by this Court. 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.”*

8. Besides the above, we do not concur with the 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 November 2011 whereas the alleged cause of action accrued to her in June 2008 when her late husband availed the benefits of VSS, i.e. approximately 04 years before the filing of the instant petition.

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

10. In view of the aforementioned facts and circumstances as well as the law referred to above, the instant petition stands dismissed along with listed application(s) with no order as to costs.

11. These are the reasons for our short order dated 11.02.2021 whereby we have dismissed the instant petition.