

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

C.P No. D-2298 of 2018

Syed Shah Mumtaz Alam *versus* Federation of Pakistan and 03 others.

Date of hearing

& decision: **23.01.2020**

Petitioner, Syed Shah Mumtaz Alam, present in person.

Mr. Qadeer Ahmed Chaudhary, Assistant Director, Law, EOBI.

ORDER

Adnan-ul-Karim Memon, J. Petitioner had worked in a Private Limited Company, DYNEA Pakistan Limited (**'Company'**) with effect from 13.02.1991 to 06.08.2004 and his monthly contribution was duly paid by the aforesaid company to Employees' Old-Age Benefits Institution (**'EOBI'**), which period comes to approximately thirteen (13) years, as a result, monthly pension was sanctioned in his favour and he drew the same up to October, 2015. However, his pension was stopped by the respondent/institution without disclosing any reasonable cause. Aggrieved by the stoppage of his pension, petitioner lodged complaint under Section 33 of EOB Act, 1976, inter alia, on the ground that he acquired vested rights to claim pension which right cannot be taken away. The adjudicating authority vide order dated 08.9.2016 dismissed his complaint on the premise that the Self Employed Scheme (**'SES'**) introduced by the government had not carried any legal authenticity and EOB Act, 1976, was not amended accordingly so the Self Employed Scheme was stopped by the management and the contribution deposited for the period is not being taken as insurable employment period, thus the claimant does not qualify without insurable employment period covered under the scheme. Petitioner being aggrieved by and dissatisfied with the aforesaid order preferred appeal under Section 35 of the EOB Act, 1976, which was remanded to the respondent-institution for calculation of old age grant payable under Section 22-A of the Act and the SES amount received.

2. Petitioner, who is present in person, has relied upon Circular No.3 of 2010 and submitted that he was entitled to pension, but the impugned orders have been passed against the spirit of aforesaid policy. In support of his submissions,

he relied upon the cases of (1) Sadiq Hussain V/S Lahore Development Authority, Lahore through Director-General and 2 others, **PLD 1995 Lahore 339**, (2) Muhammad Hussain, etc V/S L.D.A, **NLR 1996 UC 45**, (3) Pakistan, through the Secretary, Ministry of Finance V.S Muhammad Himayatullah Rafukh, **PLD 1969 Supreme Court 407**, and (4) Chief Secretary, Government of Sindh and another V/S Sher Muhammad Makhdoom and 2 others, **PLD 1991 Supreme Court 973**.

3. Conversely, learned counsel for the respondent while defending the impugned decisions submits that according to Section 22(b) of the EOB Act, 1976, the case of petitioner does not qualify to be entitled to a monthly old age pension on the premise that he served in the company for about 13 years, which period is less than 15 years, thus his case does not fall within the ambit of the Act, 1976, as well as under Labour Policy-2010. He adds that a policy announced by the Prime Minister cannot be given precedence over the parent statute. In support of his contention, he relied upon the case of Muhammad Mohsin Ghuman and others V/S Government of Punjab and others, **2013 SCMR 85**, and further argued that the petitioner has been paid in excess which is required to be refunded by the petitioner in the light of order dated 16.10.2017. In support of his submissions, he relied upon statement dated 01.10.2019 filed on behalf of the respondents.

4. We have heard the petitioner who is present in person as well as learned counsel for the respondents and have also gone through the documents, annexed with this petition, as well as the case law cited at the bar.

5. Prime object of Employees Old-Age Benefits Scheme, administered by the Employees' Old-Age Benefits Institution, is to provide subsistence pension to workers, employees/insured persons from the private sector who retire after completing a minimum period fifteen years of insurable employment. The petitioner is claiming the pensionary benefits under the EOB Act, 1976. Prima-facie the EOB Act, 1976, is not applicable to Civil Servants, Agriculture sector, persons in the service of statutory bodies, self-employed persons, and members of employers' family. Petitioner has admitted in his pleadings that he served the Private Company from 13.02.1991 to 06.8.2004 which period of service is less than qualifying service for pension under Section 22(b) of the Act.

6. The Petitioner has heavily relied upon Circular No.3 of 2010 and claimed benefit of 02 years' exemption under the Labor Policy-2010 that has been adopted by the respondent-institution. Petitioner has repeatedly submitted that

under the aforesaid labor policy petitioner contributed the amount in the account of EOBI, therefore, is entitled to pension which has been stopped after acting upon the policy which cannot be rescinded unilaterally.

7. We do not agree with the submissions of the Petitioner that he having service tenure of 13 years with the private company as discussed supra and two years exemption under SES is/was entitled to full pensionary benefits, which were only admissible to the pensioners, who qualify conditions as prescribed under section 22(b) of the Act. We are of the firm view that the petitioner did not qualify the minimum years of service as laid down under Section 22(b) of the Act, whereby the qualifying service for being entitled to pensionary benefits is 15 years, whereas, it is an admitted fact that the petitioner was an employee of the private company and had served it only for a period of 13 years. Petitioner does not meet the requisite criteria stipulated in the said Section to claim old age pension.

8. Adverting to the next contention that the Labor Policy-2010 was fully applicable in the case of parties, in our view, Circular No.3 of 2010 (Policy) cannot override the Act, 1976, therefore, no benefit can be obtained arising out of it.

9. The case law cited by the Petitioner is quite distinguishable from the facts and circumstances of the present case.

10. In the light of the above facts and circumstances of the case, the instant Petition, being devoid of any legal standing, is hereby dismissed along with pending application with no order as to costs.

JUDGE

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