

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D – 2341 of 2010

Muhammad Anwar V/S the Federation of Pakistan & 03 others

Constitutional Petition No. D – 2342 of 2010

Feroz Ahmed V/S the Federation of Pakistan & 03 others

Constitutional Petition No. D – 2343 of 2010

Muhammad Sarwar V/S the Federation of Pakistan & 03 others

Constitutional Petition No. D – 3597 of 2011

Muhammad Ashfaq Khan Lodhi V/S the Federation of Pakistan & 03 others

Constitutional Petition No. D – 3598 of 2011

Muhammad Fareed V/S the Federation of Pakistan & 03 others

Date of hearing : 23.01.2020.

Date of judgment : 18.02.2020.

Syed Shoa-un-Nabi, advocate for petitioners in C.P No.D-2342 of 2010 and C.P No.D-2343 of 2010.

Mr. Abdul Rauf, advocate for the petitioner alongwith petitioner Muhammad Ashfaq Khan Lodhi (CNIC No.42101-6474112-9) in C.P No.D-3597 of 2011.

Petitioners Muhammad Fareed (CNIC No.42501-1471972-7) in C.P. No.D-3598 of 2011 and Muhammad Anwar in C.P No.D-2341 of 2010 are present in person.

Mr. Muhammad Nishat Warsi, DAG.

Mr. Sanaullah Noor Ghouri, advocate for respondent No.2.

Mr. Dilawar Hussain, advocate for respondent No.3 along with Mr. Abdul Waheed Khan, Company Secretary, PSFCL (CNIC No.41204-6572511-5) and Mr. M. Sharif Bughio, AM/ Incharge Admin, PSFCL (CNIC No.42501-1608419-3).

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. – Through this common judgment, we intend to decide the present petitions as the controversy and questions raised, on behalf of the petitioners, are common.

2. Basically, the matter pertains to minor penalties which were imposed on the petitioners under the Removal from Service (Special Powers) Ordinance,

2000, (now repealed), they challenged their reduction into lower grade in the Federal Service Tribunal (FST) but their appeals were abated and thereafter they filed these petitions before this Court. This Court vide common order dated 03.04.2013 dismissed the petitions on the ground of laches. Order of this Court was assailed before the Hon'ble Supreme Court of Pakistan in Civil Appeals No.202-K to 205-K of 2013 and the same were allowed and remanded to decide on merits. However, during the course of proceedings, the petitioners have reached the age of superannuation.

3. Syed Shoa-un-Nabi, learned counsel for petitioners in C.P No.D-2342 of 2010 and C.P No.D-2343 of 2010, has confined his arguments to the extent of granting financial benefits to the petitioners that they were receiving prior to the impugned actions taken against them; that during the course of proceedings, the petitioners have reached the age of superannuation in the years 2013 to 2017. He lastly prayed for setting aside the demotion orders inflicted upon them in year 2003.

4. Mr. Dilawar Hussain, learned counsel for the respondent No.3 has filed status of petitioners and submitted that the petitioner in C.P No.D-3598 of 2011 was not demoted but only his increments were reduced, however, he was allowed next higher grade of Junior Officer (PSE-I B) with effect from 06.9.2012 and his salary into next higher grade was fixed accordingly; that petitioner in C.P No.D-2341 of 2010 was demoted from the post of Junior Officer (PSE-I B) to Junior Officer (PSE-IA), however, he was allowed grade pre-demotion Junior Officer (PSE-I B) with effect from 06.9.2012; that petitioner in C.P No.D-2342 of 2010 was demoted from the post of Junior Officer (PSE-I B) to Junior Officer (PSE-I A), however, he was allowed grade pre-demotion Junior Officer (PSE-I B) with effect from 06.09.2012; that petitioner in C.P No.D-2343 of 2010 was demoted from the post of Assistant Manager to Junior Officer (PSE-I B), but his pre-demotion post did not restore till retirement; that petitioner in C.P No.D-3597 of 2011 was demoted from his position on 01.12.2003, however, management had already restored his pre-demotion grade (J.O) (PSE-1B) with effect from 06.9.2012. As such no further grievance is remained to be redressed. Learned counsel further added that all the legal dues of the petitioners have been paid to them and there is nothing left on their part to be paid to them. However, he agreed to pay the differential amount to the petitioners with effect from 2003 to 06.09.2012.

5. We have heard learned counsel for the parties at length and with their valuable assistance have also examined the material available on record.

6. *Prima facie*, the matter is simple one. The only question which remains to be answered is whether their demotion and reduction of increments can be set-aside and benefits of the same can be awarded to them in the light of common judgment dated 11.06.2009 passed by learned Federal Service Tribunal in Appeal No.626 (K) (CE)/2003 and other connected appeals which merged into common order of the Hon'ble Supreme Court of Pakistan dated 24.3.2010 passed in Civil Appeals No. 253-k to 267-k of 2009. The answer is in affirmative on the ground that the colleagues of the petitioners were charged with the same allegations which were later on set-aside by learned FST and the same was endorsed by the Hon'ble Supreme Court of Pakistan. An excerpt of the common judgment dated 11.06.2009 is as under:-

“24. We have reproduced hereinabove the charges that have been levelled against the appellants. Plain reading of the allegations would reveal that the respondents have scratched the files to come up with some charge, however, weak, in order to prepare the case against the appellants. In one case, late comings in 1980's and 1990's has been used as the reason for demoting the appellant and in another case non-production of school leaving certificate of class VIII has been made to the cause of action although he has been in service for many years others have been elevated on the ground that the ACR contained the observation "Not recommended for promotion". Despite infirmities in the disciplinary proceedings pointed out earlier, we are inclined to accept all the appeals because the charges levelled against the appellants are absolutely weak and remain unproved. The fact that the organization is running into losses has absolutely no connection with the conduct of disciplinary proceedings under RSO, 2000. There are many other options available to the respondents to improve the financial health of the Company and action under the RSO, 2000, in our view, is not amongst the preferred options.

25. We also find that the penalty of reduction in time scale by more than one step is in stark violation of the dictum laid down by the Hon'ble Supreme Court in the case reported in 2004 SCMR 74 and also in our view judgment in appeal No.389(R) CS/2004 in the case of Rana Muhammad Sarwar vs. D.S. Railways, Multan.

26. In view of the foregoing discussion, we accept the appeals and set aside the impugned orders and restore financial benefits to the appellants that they were receiving prior to the impugned action but without cumulative back benefits.

27. Parties may be informed in accordance with rule 21 of the Service Tribunals (Procedure) Rules, 1974.”

7. The aforesaid common judgment was assailed before the Hon'ble Supreme Court of Pakistan in Civil Appeals No.253-k to 267-k of 2009 which

were dismissed vide order dated 24.3.2010 and review petitions were also dismissed vide order dated 20.05.2010. An excerpt of the order dated 24.3.2010 is reproduced as under:-

“4. We have considered the submissions of the learned counsel and seen that to address the grievance of the appellants the language of paragraph No.26 of the impugned judgment is relevant, which reads as under:-

“26. In view of the foregoing discussion, we accept the appeals and set aside the impugned orders and restore financial benefits to the appellants that they were receiving prior to the impugned action but without cumulative back benefits.”

A plain reading of above reproduced concluding paragraph of the impugned judgment reveals that no one hand appeals, preferred by the appellants before the Tribunal, were accepted; impugned departmental action was set aside, the financial benefits were restored to all the appellants, but at the same time words “but without cumulative back benefits” were added, without any reason given therefor, which has caused unnecessary confusion in the impugned order, to the disadvantage of the appellants.

5. Nobody has appeared on behalf of the respondents to dispute that upon appellants’ reinstatement in service in terms of the impugned judgment, they are entitled to receive financial back benefits in the manner as if the action earlier taken by the respondents, which was set aside in appeals, was never taken.

6. This being the legal position, these appeals are allowed with the clarification that all the above named appellants, besides their reinstatement in service in terms of the impugned judgment of the Tribunal dated 11.6.2009, are also held entitled for their outstanding financial back benefits, which have been withheld/denied to them by the respondents for no lawful justification. Copy of this order be sent to respondents for its immediate compliance.”

8. When confronted the aforesaid position to the learned counsel for the respondents, he reluctantly agreed to the extent of awarding financial benefits to the petitioners up to year 2012.

9. In the light of judgment passed by the Hon’ble Supreme Court as discussed supra which was implemented by the respondents in letter and spirit, we are not convinced with the argument of learned counsel for the respondents that the petitioners are not entitled to the financial benefits with effect from the date of their demotion in year 2003, rather from year 2012.

10. In the light of findings of the Hon’ble Supreme Court of Pakistan vide orders dated 24.3.2010 and 20.5.2010 in the aforesaid proceedings, these petitions are allowed with no order as to costs by directing the competent

authority of respondents to re-calculate the pensionary benefits of the petitioners and other benefits as admissible under the law with effect from their demotion and reduction in increment. Such amount must be deposited with the Nazir of this Court within a period of one (01) month which shall be paid to the petitioners on proper verification and confirmation.