

## IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.6736 of 2020  
(*Imtiaz Ahmed Vs. Federation of Pakistan & others*)

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Agha Faisal

Date of hearing : 15.12.2021 .  
For the petitioner : Mr. Salman Aziz, Advocate. .  
For the respondent No.1 : Mr. Nishat Warsi, DAG. .  
For the respondents No.2 to 4: Mr. Khalid Mahmood Siddiqui, Advocate. .

### **J U D G M E N T**

**IRFAN SAADAT KHAN, J.** The instant petition has been filed on the ground to grant pension to the petitioner.

2. Briefly stated the facts of the case are that the petitioner was appointed as PFS Helper in Civil Aviation Authority (CAA) in the year 2006 on daily wages basis and subsequently was regularized on 26.02.2010. The petitioner stood retired after attaining the age of superannuation w.e.f. 27.05.2016, however pension was not granted to him on the ground that he has not completed ten years of service required for grant of pensionary benefits. It is then that the instant petition has been filed.

3. Mr. Salman Aziz Advocate has appeared on behalf of the petitioner and stated that though the petitioner was regularized on

26.02.2010 but the period in which he has worked on daily wages basis from 2006 to 2010 has to be counted towards his normal service and if this period is counted, he would become entitled for grant of pensionary benefits. The counsel thereafter has relied upon a decision given by this Court in C.P. No.D-3478 of 2018 and stated that under identical circumstances the petition filed by an employee of the CAA was allowed by observing that in case of a regular employee his service for the period in which he has worked on daily wages basis has to be counted. He, therefore, stated that since the instant petition is akin to the petition already decided by this Court hence similar judgment may be given in the present matter also.

4. Mr. Khalid Mahmood Siddiqui Advocate has appeared on behalf of the respondents No.2 to 4 /CAA and invited our attention to para-7 of the regularization letter dated 26.02.2010 and stated that it was made clear to the petitioner at the time of his regularization that seniority or financial benefits in respect of his daily wages tenure would not be given to him. The counsel stated that since the said letter was accepted by him hence the petitioner cannot now turn around and claim that his daily wages period from 2006 to 2010 should be counted as his regular service. He further stated that against the aforesaid judgment leave to appeal has been filed before the Hon'ble Supreme Court, however he admitted that he is not aware whether any leave has been granted or not or whether any order has been passed by the Hon'ble Apex Court with regard to suspension of the order of the High Court.

5. Mr. Nishat Warsi, DAG appearing on behalf of the respondent No.1, has adopted the arguments made by Mr. Siddiqui.

6. We have heard all the learned counsel at some length and have also perused the record.

7. We agree with the contention raised by the petitioner's counsel that exactly the same issue came up for hearing before the Divisional Bench of this Court which, after hearing the parties at considerable length, allowed the same by observing as under:

*9. The second issue is with regard to protection of previous service in the respondent-CAA on contingent basis for the purposes of fixation and counting of previous service for pension. This protection is provided under Fundamental Rule 22-A, which is fully applicable in the case of CAA in the light of CAA Service Regulations-2014.*

*10. To elaborate further on the proposition in hand, we have noticed that Regulation No.34 of Civil Aviation Authority Employees Pay and Pension Regulations – 2014 clearly spells out that qualifying service of an employee shall commence from the date he takes the charge of the post to which he is first appointed either substantively or in temporary capacity. Provided that temporary service is followed without interruption by substantive appointment in the same or other service cadre or post.*

*15. To add further, Article 371-A of Civil Service Regulations is clear in its terms that a government servant not employed in a substantive permanent capacity who has rendered more than five years continuous temporary service counts such service for the purpose of pension or gratuity excluding broken period of service, if any, rendered previously. Continuous temporary and officiating service of less than five service immediately followed by confirmation shall also count for gratuity or pension, as the case may be.*

*18. Adverting to the plea raised by learned counsel for the respondent-CAA that CAA is an autonomous body and thus Civil Service Regulations are not applicable in the service of CAA, we are not inclined to agree with the aforesaid proposition for the simple reason that under Regulation No. 3.38 of Civil Aviation Service Regulations – 2000 followed by CAA Service Regulations 2014 provide that the federal government rules relating to retirement from service and admissibility of terminal benefits including pension, gratuity, invalidation etc. as applicable to federal government employees shall mutatis mutandis apply to CAA employees. The next*

*point is that the service of petitioner had commenced from the date of regularization and not from the date of initial appointment on contingent basis. Be that as it may, the commencement of service under CAA shall commence from the working day on which an employee reports for duty in any appointment, even though on temporary post. Even the qualifying service for the aforesaid purpose is provided under Regulation 34 of Civil Aviation Authority Employees Pay and Pension Regulations-2014. Regulation 35 also provides service on probation against a post if followed by confirmation in the same or another post shall be counted in the qualifying service. Since the petitioner served with the respondents in the year 1990 and his service was regularized by the Hon'ble Supreme Court of Pakistan, the principle set forth by the Hon'ble Supreme Court of Pakistan in the case of Messrs State Oil Company Limited V/S Bakht Sidique and others, 2018 SCMR 1181, is providing guidance on the issue involved in the matter, excerpt whereof is as under:*

*“3..... However, at this stage, we would like to observe that the employment of the respondents shall be regularized with effect from the date when they approached the learned High Court through the Constitution petition but for their pensionary benefit and other long term benefits, if any, available under the law, they would be entitled from the date when they have joined the service of the petitioner. All the petitions are accordingly dismissed.” [Emphasis added]*

20. *In view of the above discussion, this petition is allowed with no order as to costs and the respondents are directed to include daily wages employment of petitioner as his substantive service in regular for the purpose of service dues and other allied pensionary benefits. Respondents are further directed to complete the entire exercise and settle the service dues of the petitioner within sixty (60) days from the date of this judgment.*

8. In view of the explicit findings of the learned Bench noted supra, we are of the view that the petitioner is also entitled for the relief as given in the aforesaid petition. We, therefore, allow the petition by directing that the service rendered by the petitioner from 2006 to 2010 on daily wages basis has to be considered as regular service and the due pensionary benefits would be available to the petitioner which may be granted to him within one month's time from today. Let a copy of the order be sent to the Director General, CAA, for information and compliance. So far as the aspect with regard to filing CPLA before the Hon'ble Supreme Court is concerned, since

neither any order with regard to suspension of the order of the High Court nor any leave granting order has been produced before us hence no deliberation is required on this aspect raised by the counsel for the respondents No.2 to 4/CAA. Petition stands allowed in the above terms.

Above are the reasons of our short order of even date.

JUDGE

JUDGE

Karachi:  
Dated: 15.12.2021.