

# IN THE HIGH COURT OF SINDH KARACHI

## **Before:**

Mr. Justice Aftab Ahmed Gorar  
Mr. Justice Adnan-ul-Karim Memon

## **C.P. No. D-7663 of 2019**

Shafqat Mirza and  
05 others

Petitioners through

: Mr. Muhammad Hanif, advocate alongwith  
petitioners.

Respondents

Through

: Mr. Ali Safdar Depar, AAG along with Capt. (R) Asim  
Khan, the then DIGP/Admin Karachi now DIGP SRP  
and Mr. Muhammad Amin Yousuf Zai, the then DIGP  
CIA Karachi now retired and Mr. Raza Mian, DSP  
(Legal).

Date of hearing  
& order

: **10.02.2022**

## **ORDER**

Through this petition, the petitioners are seeking direction to the respondent-police department for the release of their salaries, which have not been paid to them for long. Petitioners have based their case, inter alia, on the ground that they were lawfully re-enrolled as Assistant Sub Inspectors (ASI) and Police Constable in the Police department after they voluntarily retired from police service by completing 25 years; that they were re-enrolled under Rule 12.25 of the Police Rules, 1934 read with Articles 511 to 519, of Sindh Civil Service Regulations, an excerpt of Rule 12.25 of Police Rules, 1934 is reproduced as under:

***“12.25. Re-enrolment of Police Pension. – (1) Under the rule orders contained in Articles 511 to 519, Civil Service Regulations, a police officer who has been discharged with compensation or invalid gratuity or pension may be re-employed in the police service up to the age of 55 subject to the following conditions.***

***(a) He may either refunds the gratuity or cases to draw a pension, in which case he may count his former service for future pension, or he may retain his gratuity or pension in which case he cannot count his former service towards a future pension.***

***(b) He shall be re-examined by the Civil Surgeon of the District in which he has been re-employed and certified as medically fit for service and shall produce a discharge certificate showing that his previous service was classed as not lower than “good”.***

***(2) The order re-enrolling such officer shall specify state the amount of any gratuity, bonus or pension received by him on discharge, and a copy of such order shall be communicated to the Accountant-General. Directions shall also be given, if necessary, for proper deduction to be made from his pay.”***

2. It is contended by the learned counsel for the petitioners that petitioners applied for voluntary retirement from the service of the Sindh Police, which was allowed. Per learned counsel, the Competent Authority of the Sindh Police is empowered to re-enroll the Police Pensioners under Articles 511 to 519, Civil Service Regulations and Police Rules 12.25 of Police Rules of 1934 up to the age of 55 years, if they present themselves for re-enrolment and are found medically fit within two years of voluntarily taking their discharge. He has further submitted that re-employment in the Police up to the age of 55 years, is admissible under the law subject to the conditions enumerated in the aforesaid Police Rules. Learned counsel drew our attention to the applications submitted by the petitioners to the Competent Authority of Sindh Police for allowing them to serve the Sindh Police

under the aforesaid Police Rules on companionate and humanitarian ground as well to lead a normal life in pursuing day to day affairs.

3. We asked the learned AAG, whether re-employment of a retired police officer is permissible under the law. Learned AAG further submitted that the petitioners were re-employed under rule 12.25 of Police Rules, 1934 read with Articles 511 to 519, of Sindh Civil Service Regulations as discussed supra. Per learned AAG, the Accountant General's office objected concerning their re-employment in the police department, after completion of twenty-five years of service, they stood retired, thus their salary could not be disbursed.

4. The stance of the learned AAG has been supported by the Deputy Inspector General of Police, Sindh Reserve Police, present in Court.

5. We have heard the learned Counsel for the petitioners and learned AAG assisted by Capt. (R) Asim Khan, DIGP SRP, and perused the record.

6. The Honorable Supreme Court in *Suo Motu Case No.24 of 2010 (PLD 2011 SC 277)*, has held that re-employment of such persons in services on their retirement must be made in the public interest because re-employment against a sanctioned post is likely to affect the junior officers, who are waiting for promotion to the next higher rank as their right of promotion is blocked. And they have to wait till such a re-employed officer completes his contract. In the meanwhile, they have to face difficulties in maintaining their seniority, etc. It is a settled principle of law that the promotion of an employee is not to be blocked to accommodate a retired officer, however, if the right of promotion is not blocked by re-employment, then such powers can be exercised, that too in an exceptional case. Surprisingly, the Government of Sindh has supported the re-employment of the petitioner-police officers and it is stated that they have been re-employed under the law. It is to be noted that it is the prerogative of the Government to look into all such cases, applying relevant provisions of law noted hereinabove and the observations made by the Honorable Supreme Court from time to time. For ready reference, reliance can be placed on *Suo Motu Case No.24 of 2010 (ibid)*, a judgment, which has been delivered by an 8-Member Bench of the Honorable Supreme Court. Relevant para therefrom is reproduced herein below:--

"5. Learned Attorney General has also placed on record summary of some of the Police Officers who are re-employed on contract basis. A perusal whereof indicates that prima facie while they were re-employed, the provisions of law i.e. section 14 of the Civil Servants Act, 1973 as well as instructions contained in Esta Code in Volume-1, Edition 2007 under the heading "Re-Employment" and the judgments of the superior courts on the subject were not considered/adhered to. It is to be noted that for establishing rule of law and Constitutionalism, it is necessary that the relevant provisions should be followed strictly in letter and spirit otherwise it would not be possible to provide effective machinery in law particularly in Police Department to ensure law and order, so the peace in the country, at the same time to avoid violation of the relevant provisions of law noted hereinbefore, which is tantamount to blocking the promotion of the Officers who have also served in the Forces and are waiting for their promotion but they are not getting chance because of the re-employment/contract awarded to the retired Officers. This is not only in the Police Department but for the purpose of achieving good governance; the same principle should be followed and strictly applied in other Departments as well. Be that as it may, we are adjourning this case and in the meanwhile learned Attorney-General shall take up the matter with the Government/Competent Authority so it may take necessary steps to rectify if any omission has been committed, before the next date of hearing. Similarly, the learned Attorney-General shall convey this order to the Secretary, Establishment Division, and the Chief Secretaries of the Provinces to ensure that if any Civil Servant or other person who has been re-employed, his case be also examined in terms of the provisions of law and both Federal and Provincial Governments should take necessary steps to ensure that re-employment or employment on contract basis are not made in violation of the relevant law."

7. The Honorable Supreme Court in the case of *Watan Party & others V/S Federation of Pakistan and others, PLD 2012 SC 292* has held that the appointments are to be made in exercise of discretionary powers, such discretion must be employed in a structured and reasonable manner and

the public interest, prima-facie we do not see any public interest involved in the matter when they were re-enrolled in police service.

8. Primarily, under the Sindh Government, Rules of Business 1986, the Police Department is attached department of Home Department, Government of Sindh; and, under the Police Act 1861, the Police Department is bound to get permission from the Government of Sindh concerning the issuance of any order of policy decision. Prima facie, the orders of re-enrollment of the petitioners issued by the DIGs, Police Department, do not align with section 12 of the Police Act, 1861 as they appointed them without the approval of Provincial Government and the law laid down by the Hon'ble Supreme Court of Pakistan in the case of Gul Hassan Jatoi & others Vs. Faqeer Muhammad Jatoi & others (2016 SCMR 1254). Therefore, no sanctity can be attached to their appointment orders. The relevant portion of Section 12 of Police Act, 1861 is reproduced as follows:

"12. Power of Inspector-General to make Rules:

*"The Inspector-General of Police may, from time to time, subject to the approval of the [Provincial Government], frame such orders and rules as he shall deem expedient relative to the organization, classification and distribution of the police force, the places at which the members of the force shall reside, and the particular services to be formed by them; their inspection, the description of arms, accouterments and other necessities to be furnished to them; the collecting and communicating by them of intelligence and information, and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties."*

9. We are fortified, on the aforesaid issue by the judgment rendered in the case of Gul Hassan Jatoi (supra) and Mohammad Nadeem Arif & others vs. IGP Punjab, Lahore & others, 2011 SCMR 408, in which Hon'ble Supreme Court has held that the Standing Orders issued by Inspector General of Police have to be approved by the Provincial Government.

10. Besides that the Finance department had already issued instructions to the Home Department not to re-enroll the police officials after retirement from service, however, the respondents ignored the instructions and continued to en-roll them without lawful authority, for that purpose, this matter is remitted to the Competent authority of the Government of Sindh to look into the state of affairs and fix responsibility upon the delinquent officers who re-enrolled the petitioners after retirement from service in violation of the judgment of Honorable Supreme Court in the aforesaid cases. A copy of the extract of the letter dated 06<sup>th</sup> May 2019 issued by the Finance Department, Government of Sindh is reproduced as under:

"Subject: **SUBMISSION OF APPLICATION BY GOVERNMENT SERVANTS FOR VOLUNTARY RETIREMENT AFTER COMPLETION OF 25 YEARS QUALIFYING SERVICE PENSION.**

The Secretary to Government of Sindh, Home Department, Karachi may kindly find enclosed herewith copy of letter No.DAD/DAD/Police/1696 dated 25<sup>th</sup> March, 2019 alongwith its enclosures, received from District Accounts Officer, Sukkur on the subject cited above.

2. It is informed that despite dear instructions of Government, that Government Servant who retired from government service on completion of 25 years qualifying service cannot be allowed to re-enroll in Government Service. But Police Department, working under jurisdiction of Home Department, reportedly not complying with the orders of Government of Sindh and re-enrolling/re-employing the retired employees of Police Department in government service even the amount of Pension/Commutation has been paid by the concerned Accounts Officer.

3. It is, therefore, requested to look into the matter personally and issue instructions once again to your subordinate offices i.e. IG Sindh and other Police Officers for compliance the instructions of Government Sindh vide Notification dated 16<sup>th</sup> July, 1981."

11. It is also conducive to look into the extract of letter dated 16.07.1981 which is reproduced as under:

“Subject: **SUBMISSION OF APPLICATION BY GOVERNMENT SERVANT FOR VOLUNTARY RETIREMENT AFTER COMPLETING 25 YEARS QUALIFYING SERVICE PENSION.**”

I am directed to refer the subject noted above and to state that pension has raised whether a Government Servant who intends to retire after completing 25 years services qualifying for pension, can submit a written intimation of his intention to retire even before completing 25 years qualifying services.

The matter has been examined in consultation with the Finance Department and the law department and it has been decided that the right to retire from service to a Govt. servant only accrues after he has completed 25 years service qualifying for pension. Such a Government Servant can exercise the said option of voluntary retirement and submit a written intimation of his intention to retire only after the date of completion of his 25 years service qualifying for pension. The application for L.P.R. if due, shall also be submitted after that date.

If a Govt. Servant desire to leave service before completion of 25 years service qualifying for pension, he may do so by tendering resignation from service. In that case he will not be entitled to any pensionary benefits.

It has further been decided that a written intimation once submitted by Govt. Servant, who intends to retire after completing 25 years services qualifying for pension shall be final & shall not be allowed to be modified or withdrawn except that if a Govt. servant withdrawn his application for premature retirement or modifies the date of retirement before its acceptance by the competent authority, the application or the date of retirement shall be deemed to have been withdrawn or modified as the case may be.

The above position may please be brought to the notice of all concerned.”

12. Coming to the main theme of the case, primarily, the petitioners are retired police officials, and admittedly they had completed the 25 years of service and were relieved from the police department, Government of Sindh, however, they were subsequently re-enrolled on the same position after obtaining pensionary benefits. Pension is admissible only in the following cases:-

- (i) To those who have taken voluntary retirement.
- (ii) To those who have been compulsorily retired under Fundamental Rule.
- (iii) To those who have availed of invalid pension.
- (iv) To those who have attained the age of superannuation.

13. Prima-facie, the case of the petitioners was erroneously considered for re-enrollment under Rule-12.25 of Police Rules, 1934 under the garb of 12.25. police rules, for the simple reason that police officers could not be considered for re-enrolment in police service after compulsorily/ voluntary/ superannuation retirement, from service, even, after completion of 25 years of qualifying length of service. Voluntary retirement is effected when a person is discharged from the performance of his duties.

14. In the light of the above facts and circumstances of the case, we do not force in the submission of learned counsel for the petitioners, therefore, this petition is dismissed along with the pending application(s) with no order as to costs.

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