

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP. No. D- 3751 of 2021
(Naz Parveen v. Government of Sindh and 03 others)

Date _____ Order with Signature(s) of Judge(s) _____

Priority:

1. For the hearing of CMA No.15615/2021
2. For the hearing of the main case

21.02.2022

Mr. Muneer Ahmed, advocate for the petitioner
Mr. Ali Safdar Depar, AAG

ORDER

This matter pertains to the pensionary benefits of the petitioner, who stood retired in 2020 and her pensionary benefits have been withheld on the ground that NAB reference No.19/2020 is pending against her and others before the learned Accountability Court, Sindh at Karachi, on the allegations that she added, abated and in collusion with ex-Secretary, Special Education Department, Government of Sindh, issued illegal offer letters and orders for the said illegal appointment and also added to prepare a forged order of the same date for the preparation of the purported list of 294 + favorite appointee and misplaced the original record to cover up the illegal appointments, which is of paramount consideration.

We have heard learned counsel for the parties on the issue. This is a matter of grave concern that for several years, the long and unjustified delay in the payment of pension has been a source of tremendous hardship and humiliation to retiring officials and their families. Despite the strictures and orders passed by the Honorable Supreme Court of Pakistan in its various pronouncements and simplified guidelines laid down by the Government, petitions on account of delay persist.

Mr. Ali Safdar Depar, learned AAG, has submitted that the petitioner is facing the NAB proceedings before the learned Accountability Court on account of illegal appointments in the Education Department, Government of Sindh, which amounts to misuse of authority. Per learned AAG that under the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, the petitioner is liable to be proceeded who is accused of subversion, corruption, and misconduct. Learned AAG pointed out that though the petitioner reached the age of superannuation on 3.12.2020, however, her retirement benefits have been kept in abeyance till the finalization of NAB reference pending against her before the competent court of law. Learned AAG referred to the West Pakistan Civil Service Pension Rules and submitted that Government reserves the right of recovery from the pension of the government pensioner on account of losses found in judicial or departmental proceedings to have been caused to government by the negligence, or fraud of such government

pensioner during his/her service, provided that such departmental proceedings shall not be instituted after more than a year from the date of retirement of government pensioner. He also relied upon the case of Government of NWFP v. Muhammad Said Khan, **PLD 1973 SC 514**. He also referred to various clauses of pension rules and submitted that the government also reserves to itself the right to recover from the pension, any sum, which it had suffered by way of flaws while the pensioner remained in service. Learned AAG referred to the para-wise comments and submitted that the petitioner has been issued show-cause notice dated 20.10.2021 and she has submitted her reply to the show cause notice on 3.11.2021 and the same has been forwarded to the Secretary/respondent No.2. He prayed for the dismissal of the instant petition, leaving the respondents to take disciplinary action against the petitioner and culminate it to its logical conclusion, even after, she retires from service under the pension rules and initiates the recovery proceedings against her for the losses caused to the government exchequer.

Per learned counsel, the pensionary benefits cannot be withheld on account of the pendency of a criminal case and/or departmental proceedings after the lapse of 02 years from the date of retirement. Learned counsel further submitted that if the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of her retirement, she shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualifies for pension or gratuity. Learned counsel further submitted that under the law if a government servant, who has been suspended pending an inquiry into his conduct attains the age of superannuation before the completion of the inquiry, the disciplinary proceedings against him shall abate and government servant shall retire with full pensionary benefits and the period of suspension shall be treated as a period spent on duty. He prayed for allowing the instant petition.

Prima facie, the petitioner has a qualifying length of service to her credit i.e. 39 years 05 months and 02 days and she stood retired on 03.12.2020, however, not a single penny has been paid to the petitioner, which has triggered the cause and hardship to the petitioner to approach this court.

In the instant case, the departmental proceedings against the petitioner have not yet been initiated and finalized even after 03 years of her retirement. The respondents have just issued her show cause notice dated 03.11.2021 and the fate of that show cause notice is shrouded in the mystery which is a negligent part of the respondent department. Primarily, the departmental proceedings, therefore, have no legal consequence and the subsequent departmental orders could not come in the way of the petitioner to claim pensionary benefits and prima facie it is the fault and negligence of the respondent-department, who failed to initiate the disciplinary proceedings against the petitioner in time and allowed her to retire from government service in 2020; and thereafter waited for the unknown reasons

and withheld the pensionary benefits on account of alleged illegal appointments made in the respondent department. Prima facie, these are mere allegations against the petitioner and there is no conviction against the petitioner by the competent court of law, therefore, this court cannot presume that she is guilty or otherwise of the charges leveled against her which are yet to come on record.

For this reason, we take exception to the impugned action of the respondent department and are of the considered view that the respondents are fully at fault for not culminating the disciplinary proceeding into its logical conclusion within time and allowing the petitioner to retire in 2020; and, prima facie continued to perpetuate the illegalities, despite knowing the fact that petitioner has misused her power and authority being a competent authority for appointments in the department and now at this stage in point in time they are raising hue and cry that the petitioner is not entitled to pensionary benefits. In this background of the case, the Hon'ble Supreme Court of Pakistan in the case of *Province of Punjab through Conservator of Forests, Faislabad, etc. v. Javed Iqbal* vide judgment dated 26.11.2020 passed in **CP No.1554-L to 1573-L of 2020** has held that the government must ensure that the cases of retired employees are fast-tracked so that they are concluded within the statutory time frame i.e. 02 years of his retirement, allowing the retired employees to enjoy their retired life and the government to save unnecessary expense and time in pursuing matters against retired employees.

It is well-settled law that no pension granted or continued to the pensioner is liable to seizure by the department under Pension Act, 1871, and the rules, framed thereunder. Learned counsel for the petitioner has pointed out that the pension of the petitioner has been withheld without assigning any cogent reason. We cannot dilate upon the conduct of the petitioner so far as her service tenure is concerned, prima facie, the allegations are severe that could be looked into by the competent authority of respondents at their end.

So far as the stance of the respondents that pensionary benefits could be withheld on account of the allegations leveled against the petitioner, in our view, pensionary benefits cannot be stopped on account of any charges; and, is violative to the law laid down by the Honorable Supreme Court in the case of *Haji Muhammad Ismail Memon, PLD 2007 SC 35*. Thus, the competent authority of the parent department of the petitioner and the Chief Secretary, Sindh, are liable to release the pensionary amount of the petitioner and pay the pension amount and other ancillary benefits to the petitioner to which she is entitled under the law within two weeks from the date of receipt of this order. The competent authority of the respondent is also directed to recalculate the pensionary benefits of the petitioner and increases accrued thereon the withheld pensionary benefits with effect from 03.12.2020 to date.

In view of the above, this petition stands disposed of with no order as to costs with direction to the competent authority of respondents to look into the matter of the petitioner and take prompt disciplinary action against all delinquent officials who in their lethargic attitude failed and neglected to take disciplinary action against the petitioner within the stipulated time and allowed the petitioner to retire from service in 2020. Such disciplinary proceedings shall be initiated against them forthwith and culminate into its logical conclusion within a reasonable time after providing a meaningful hearing to them.

Let a copy of this order be sent to the Chief Secretary, Government of Sindh, for compliance. Such compliance report be submitted through MIT-II of this court, just after two months from the date of receipt of this order.

JUDGE

JUDGE

Nadir/PA