

IN THE HIGH COURT OF SINDH AT KARACHI

**Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon**

C.P. No. D-139 of 2017

Nadeem Zuberi
Versus
Civil Aviation Authority



Date of Hearing: 01.02.2021

Petitioner: Through M/s. Muhammad Ali Lakhani and Ghulam Mujtaba Sohail Rana Advocates.

Respondent: Through Mr. Khalid Mehmood Siddiqui Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Through this petition, the petitioner is seeking directions to the respondent-Civil Aviation Authority (CAA) for disbursement of his retirement benefits as admissible under the law, which has been withheld from the date of his superannuation on 17.10.2016. Petitioner also seeks annulment of disciplinary proceedings initiated against him during his tenure of service with respondent-CAA in the shape of show-cause notice dated 16.7.2014 and charge sheet dated 29.11.2016 on the allegations that petitioner procured his appointment with CAA based on Fake Degree of Bachelor of Commerce (B. Com) from University of Karachi; that amounts misconduct on his part under Paras- 5.02(e) (v) (viii) (ix) &(x) of CAA Service Regulations, 2000.

2. Brief facts of the case are that the petitioner was appointed on 15.03.1984 and reached the age of superannuation on 16.10.2016 after completing service of 32 years, seven months, and 12 days. While the petitioner was in service he was issued a show-cause notice which led to the filing of the suit bearing No.1231 of 2014. In the said suit petitioner challenged the discretion exercised by the respondent in withholding the regular inquiry against the major penalty likely to be imposed. The show-cause notice dated 16.07.2014 was thus impugned on different counts including the above. In consideration of the facts and circumstances of the case, learned Single Judge of this Court was pleased to pass interim order that the proceedings under show-cause notice may continue however they (respondents) shall not pass any final

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order till the next date of hearing, which interim order continued. Petitioner however was ordered to associate himself in the proceedings of show-cause notice. The respondent however never continued with the proceedings and hence the proceedings remained pending without any progress. Petitioner then filed a suit bearing No.787 of 2015 in respect of an inquiry undertaken by the FIA.

3. On reaching the age of superannuation the earlier suit was withdrawn unconditionally while the latter is still pending. Learned counsel for the petitioner submitted that the fate of the inquiry in any form either before FIA or department has no consequential effect insofar as the pensionary benefit or post-retirement benefits are concerned since under the law they stand abated. Learned counsel for the petitioner in support of his arguments relied upon the case of Haji Muhammad Ismail Memon (PLD 2007 SC 35), Dr. Fayyaz Ahmed Cheema v. Punjab Employees Social Security Institution (2017 YLR 576), Mst. Ameeran Khatoon v. Mst. Shamim Akhtar (2005 SCMR 512), Mir Ahmad Khan v. Secretary to Government (1997 SCMR 1477), Suo Motu Case (2017 SCMR 838), Secretary Agriculture Government of the Punjab v. Muhammad Akram (2018 SCMR 349), Abdul Wali v. WAPDA (2004 SCMR 678), Director General, Military Land and Cantonment Department v. Dr. Capt. Nazeer Ahmed Baloch (2011 PLC (C.S) 1257), Mst. Shahnaz Bano v. Chairman WAPDA (2017 PLC (CS) 643) and Province of Punjab v. Zulfiqar Ali (2006 SCMR 678).

4. Mr. Khalid Mehmood Siddiqui, learned counsel appearing for the respondent, challenged the maintainability of the petition on the count that petitioner has already availed the jurisdiction of this Court on the original side by filing the above referred suits. He next argued that the rules and regulations of the Civil Aviation Authority are non-statutory and hence no petition could be maintained in this regard. Thirdly, the petitioner having presented an unverified degree is seeking the remedy of his post-retirement benefits hence has come with unclean hands. Learned counsel next relied upon Regulation 31 of Civil Aviation Authority Service Regulations 2014 and submitted that the authority reserved rights to withhold and withdraw pension or part thereof either permanently or for a specified period and may order recovery from the pension of the whole or part of any pecuniary loss caused to the authority. Thus, learned counsel concluded his argument that petition is otherwise not maintainable under the law. In support of his contention,

he relied upon the case of Pakistan Airline Pilots Association and others v. Pakistan International Airline and another, 2019 SCMR 278.

5. We have heard the learned counsel for the parties and perused the material available on record as well as the case-law cited at the bar.

6. Firstly, we would address the question of maintainability of the instant petition under Article 199 of the Constitution. Admittedly, the respondent-Authority is a Government-owned and controlled Institution, as such, falls within the ambit of Article 199 (5) of the Constitution of the Islamic Republic of Pakistan, 1973, and this Court has jurisdiction to entertain the Constitution Petition. Besides, it is not for the enforcement of any regulation or service rules that the petitioner could be non-suited on the count that they do not have statutory rules of service. Similarly, the ground of filing of the two suits, based on which respondent's counsel seek dismissal of the petition, is also not available since the scope of the two suits is different than the scope of this petition and hence there is no question to hold that petitioner approach the Court with unclean hands. The subject matter of show-cause notice has not reached to its logical end and hence under the law, the proceedings are questioned.

7. The substantial question of law that arises in this petition is confined to the extent of whether the departmental proceedings of gross misconduct initiated against the petitioner during his tenure of service with respondent-CAA could be finalized after his retirement date i.e. 17.10.2016?

8. The aforesaid issue has been set at rest by the recent decision dated 26.11.2020 passed by the Honorable Supreme Court in the case of Province of Punjab through Conservator of Forest, Faisalabad versus Javed Iqbal, an excerpt whereof is reproduced as under:

"14. In the instant cases, the departmental proceedings against the respondent have been finalized after a period of two years of his retirement, the departmental proceedings, therefore, have no legal consequence and the subsequent departmental orders are void and have no legal effect. For this reason, we take no exception to the impugned judgments and are of the view that they do not warrant any interference. Leave is, therefore, declined and these petitions are dismissed. For future, the Government must ensure that cases of retired employees are fast tracked so that they are concluded within the aforesaid statutory timeframe allowing the retired employees to enjoy their retired life and the Government to save unnecessary expense and time in pursuing matters against retired employees." Emphasis Added.

9. The following is the rule position of the proposition that departmental proceedings after the retirement of civil/public servants could not be continued under Fundamental Rules (FR), the Civil Service

Regulations (CSR), Pension Rules, and Civil Establishment Code (ESTA CODE).

FR 54-A states:

54A. If a Government servant, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of inquiry, the disciplinary proceedings against him shall abate and such government servant shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.

10. The plain reading of F.R.54-A is clear in its terms that the disciplinary proceedings against the officer abate if the latter attains the age of superannuation. The Rule entitles such an officer to retire with full pensionary benefits and the period of suspension is bound to be treated as a period spent on duty. The fundamental principle laid down in FR.54-A postulates that the case of the petitioner cannot be remanded to the competent authority for holding de novo proceedings, after four years of his superannuation. Rule 54-A shows that if disciplinary action is initiated against the Civil/Public/Government servant and the said action remains inconclusive during his service and he retires on attaining the age of superannuation in the meanwhile, not only the un-concluded disciplinary action shall abate against such a Civil/Public/Government servant but that he shall also be entitled to full pensionary benefits. The time limit has also been fixed for such departmental proceedings since no such inquiry can be held after one year of the retirement of a pensioner.

11. The Civil Service Regulations (CSR) also provide the same proposition as under:-

351-A. The President reserves to himself the right to order the recovery from the pension of an officer who entered service on or after 23rd February 1939 of any amount on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence or fraud of such officer during his service:

Provided that-

(1) such departmental proceedings, if not instituted while the officer was on duty, -

(i) shall not be instituted save with sanction of the President;

(ii) shall be instituted before the officer's retirement from service or within a year from the date on which he was last on duty whichever is later;

(iii) shall be in respect of an event which took place not more than one year before the date on which the officer was last on duty and:

(iv) shall be conducted by such authority and in such places whether in Pakistan or elsewhere, as the President may direct;

(2) all such departmental proceedings shall be conducted, if the officer concerned so requests, in accordance with procedure applicable to departmental proceedings on which an order of dismissal from service may be made; and

(3) such judicial proceedings, if not instituted while the officer was on duty, shall have been instituted in accordance with sub-clauses (ii) and (iii) of clause (1).

351-B The Government may, within one year from the date of issue of Pension Payment Order, recover any of its dues from the pension granted to a civil servant, subject to the condition that no recovery shall be made from the pension without the personal order of the Head of the Ministry or Division or Head of the Department, declared as such under S.R.2 (10) and included in Appendix No.14, Vol. II of the Compilation of the Fundamental Rules and Supplementary Rules, as the case may be.

417-A. If an officer, who has been suspended pending inquiry into his conduct, attains the age of superannuation before completion of the inquiry, the disciplinary proceedings against him shall abate and such officer shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.

12. Under pension Rules the authority reserves the right of recovery from the pension of 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 service, provided that such departmental proceedings shall not be instituted after more than a year from the date of retirement of the Government pensioner.

13. Under the Civil Establishment Code (ESTACODE), the following instructions have been issued for quick disposal of disciplinary proceedings pending against Government Servants who are about to superannuate:

Sl. No. 31.619

It has come to the notice of government that inquiry proceedings against civil servants under the Government Servants (Efficiency and Discipline) Rules, 1973 (Sl.No.23) tend to be unduly protracted for various avoidable reasons causing hardships to the affected government servants on the one hand and defeating the purpose of speedy disposal of cases in others. This is obviously against dictates of justice.

2. The disposal of disciplinary proceeding assumes vital importance especially in cases against government servants who are about to attain the age of superannuation. It goes without saying that delay in disposal of such cases not only causes hardships to the affected persons but also puts the administration to unnecessary criticism.

3. It is, therefore, requested that disciplinary proceedings against government servants nearing the age of superannuation in future should be disposed of before they superannuate. All the agencies working under the administrative control of the Ministry concerned should be advised accordingly.

Sl. No. 31.720

Reference Estt. Division's O.M.No.12/2/88-R.3, dated the 3rd October, 1988 (Sl No.31.6) on the subject mentioned above, wherein all the Ministries/Divisions were requested that disciplinary proceedings against Government Servant nearing the age of superannuation should in future be disposed of before they superannuate. Despite this, instances have come to the notice of this Division wherein the disciplinary cases have been delayed to such an extent that these stood abated due to non- finalization thereof before the age of superannuation of the accused civil servants, which is not a happy state of affairs.

2. In order to guard against recurrence of such instances, it is once again requested that the instructions (Sl. No. 143) may please be brought to the

notice of all concerned for strict compliance to ensure that the State's interests are fully protected and the civil servants really guilty of misdemeanor of any sort do not go unpunished due to the inefficiency and/or connivance of the departmental personnel in finalizing the Efficiency and Discipline cases before the accused's superannuation.

14. Reverting to the issue of pendency of the civil litigation between the parties and to understand the scope of the two suits, we have perused the complaints in those suits. In suit No.1231 of 2014 petitioner has challenged the act of issuance of show-cause notice dated 16.04.2014 dispensing regular inquiry as against major penalty likely to be imposed. While the suit was pending interim order was considered and the interim order of the nature that no final order be passed i.e. the inquiry may continue but it may not be finalized. Subsequent suit bearing No.787 of 2015 is in respect of an inquiry conducted/undertaken by the FIA and hence two suits are independent and are not, in any case, overlapping the subject petition i.e. entitlement of the petitioner insofar as post-retirement/pensionary benefits and other dues are concerned and abatement of the inquiry and disciplinary proceedings on reaching the age of superannuation and consequential retirement.

15. There is no cavil to this proposition that the respondent did not pursue the proceedings in pursuance of show-cause notice issued to the petitioner. They were lethargic and inefficient insofar as taking the inquiry to its logical end is concerned. The petitioner was appointed in the year 1984 and after almost 30 years' respondents have initiated the proceedings against an unverified degree without extending the scope of inquiry against those who were responsible for such appointments. In our view, the primary perpetrator would be the one who was responsible for the appointments. This not being a question here, we intend to confine ourselves to decide this lis wherein post-retirement benefits are being claimed. In this regard, Regulation No.31 of Service Regulations 2014 itself is very clear in this regard. It reads that the authority reserved the right to withhold or withdraw pension or part thereof either permanently or for a specified period and may order recovery from the pension of the whole or part for any pecuniary loss caused to the authority if, under any disciplinary or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence or corruption during the period of his service. There is no judicial proceeding determining the conduct of the petitioner which may require applicability of the subject Regulation 31.

16. There is no disciplinary proceeding conducted by the department itself even though there were clear directions of the learned Single Judge of this Court in the above-referred suit that they (respondent) may continue with the proceedings in pursuance of show-cause notice. They could have conducted the proceedings and could have asked the learned Single Judge for the announcement of any final decision based on the inquiry/findings however they have failed to complete the task assigned by the learned Single Judge. Thus, on both the proposition highlighted in Regulation 31 the case of the respondent has not been made out for taking any action about pension amount either any part of it or as a whole. It is not a case of any pecuniary loss made out in the show-cause notice.

17. Adverting to the case of Pakistan Airline Pilots Associate v. Pakistan International Airline reported in 2019 SCMR 278, as relied upon by learned counsel for the respondent which is primarily for the enforcement of terms and conditions of employment, which were not governed by any statutory provisions in the context whereof the Hon'ble Supreme Court observed that they were amenable to rule of "master and servant". The subject of this petition is the claim of post-retirement pensionary benefits, which has triggered article 9 of the Constitution of Islamic Republic of Pakistan, 1973 as the petitioner for his livelihood is dependent solely on the post-retirement/pensionary benefits. Civil Aviation Authority consuming the services of the petitioner for about more than 32 years, realized that the very appointment was not lawful.

18. We are of the view that the respondent-CAA cannot blow hot and cold in the same breath to hide their negligence in the appointment of the petitioner without checking his testimonial/credentials and had allowed him to continue on his job till his superannuation. No doubt the petitioner was appointed after going through a transparent procedure particularly when during his entire service nothing adverse in terms of character and/or inefficiency in the subject field was observed by the Competent Authority of the respondent-CAA. The petitioner served the respondent-authority for almost 32 years which is more than sufficient time. Therefore the disciplinary action of the respondent-CAA after his retirement is unjustified and against principles of natural justice and equity.

19. Before parting with this order, we may observe here that all appointments are to be made transparently, after inviting applications through a public notice, the eligibility criteria for the post is a

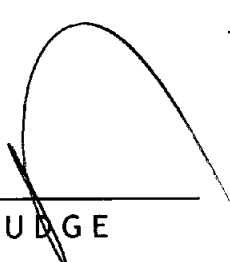
prerequisite, and scrutiny of the credentials of the candidates are paramount consideration for which the management of respondent-CAA has been found negligent in scrutinizing his credentials since his initial appointment in the year 1984 till his date of superannuation in the year 2016; for which Petitioner cannot be blamed to be solely responsible for his appointment on the subject post based on Fake Degree, which is against the law; that the Competent Authority had not verified the credentials of the petitioner at the relevant time and continued him in the job till he superannuated in 2016. Undeniably, the respondent-CAA initiated disciplinary proceedings against the Petitioner in the year 2014 after a lapse of 30 years of service; and, even could not finalize the disciplinary proceedings with effect from 2014 till he retired from service and now pleaded the case that he is not entitled to pensionary benefits. Prima-facie this stance has been taken at the belated stage and the parties have already initiated civil litigation for which we refrain ourselves to dilate upon the subjudice issue before the learned single judge of this court (Original Side) which shall be decided independently without influencing the observation recorded hereinabove. However, the respondent-CAA is at liberty to take all remedial measures as provided to them under the law, except the disciplinary action as discussed in the preceding paragraphs.

20. Respondent is relying on an unreported judgment of Division Bench of this Court passed in High Court Appeal No.239/2020, also strengthen the view that disciplinary proceedings are to be abated on reaching the age on superannuation and consequential retirement and for this reason CAA filed appeal for vacation of interim order and consequently the interim order was vacated. This enabled the Authority to pass order before retirement of the employee on the disciplinary proceedings pending before authority which is not the case here.

21. In view of the above facts and circumstances of the case discussed above, the instant Constitution Petition is allowed, the impugned disciplinary proceedings initiated against the petitioner are held to be abated after his retirement from service in the year 2016. Resultantly, the respondent is directed to calculate and disburse his retirement benefits in accordance with law within one month.



22. These are the reasons for our short order announced in open Court on 01.02.2021, whereby we have allowed the instant petition.



 JUDGE
 4.2.2021

Directions

① For Order of Emanc. 6860/21 (U/A)

② " " 6861/21 (Contempt)

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