

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-8756 of 2018

Jawed Qureshi *versus* Federation of Pakistan and another

Date of hearing: 04.05.2021

Mr. Manzoor Hussain Khoso, advocate for the petitioner.

Mr. S. Ashfaq Hussain Rizvi, advocate for respondent No.2.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON, J. Through the instant petition, the petitioner has assailed the vires of the office order No.42/2018 issued by respondent-Employees Old-age Benefits Institution (‘**EOBI**’), whereby he was declared as “Dead wood”, consequently, he was forcibly sent on Early Retirement from the service of EOBI on the ground that his further retention in service would be of no benefit for the institution.

2. Brief facts of the case are that the petitioner was performing his duties as Deputy Director/ Regional Head, Regional Office, Larkana; and, was served with the disciplinary proceedings vide show cause notice dated 17.8.2017, which was culminated into issuance of office order No.42/2018 vide letter dated 09.02.2018, whereby he was sent on early retirement from service of EOBI on the accusations that he could not earn good Personal Evaluation Reports (PERs) during his tenure of service, thus the competent authority, keeping in view his poor and dismal performance, decided to get rid of him, having been declared “Dead wood” vide impugned office order dated 09.02.2018. He being aggrieved by and dissatisfied with the aforesaid decision, preferred statutory appeal under Regulation No.33 of EOBI (Employees Service) Regulations, 1980, to the President Board of Trustees of EOBI (BOT), which too was dismissed vide office order dated 20.11.2018 issued by Secretary, Ministry of Overseas Pakistanis and Human Resource Development / President, BOT. For convenience sake an excerpt of the office order No.42/2018 and appellate order dated 20.11.2018, are reproduced as under:

“Office Order No.42/2018

4. AND WHEREAS, the undersigned has examined your personal file and astonished to find that you were considered for promotion in October 2013 when there was no PER assessment for the last two years and in the third preceding year, you were assessed “Average” with recommendations of “not fit for promotion”. It is beyond comprehension on what basis and grounds the DPC recommended you for promotion with adverse remarks and missing last two PERs prior to DPC. However, it is a closed transaction but reflects poorly on the DPC, which cleared you despite such poor record.

5. NOW, THEREFORE, I being the Competent Authority having thoroughly examining all details wherein due to your poor and dismal performance, you cannot be considered for any further promotion. It would not be wrong to declare you a “Deadwood” as your further retention in service would be of no benefit for the Institution. Therefore, under section 20(i) of the EOBI (Employees Service) Regulations 1980, you Mr. Jawed Qureshi are hereby with immediate effect send on early retirement from the service of EOBI.”

Appellate Order dated 20.11.2018

4. The Appellant and the Departmental Representative were heard in length. The relevant record was perused and it was observed that there are enough reasons to send the Appellant on early retirement. Hence, impugned Order No.42/2018 dated 09.02.2018 issued by the Chairman, EOBI is upheld and Appeal is dismissed accordingly.

3. Petitioner has averred that he was served with the show cause notice dated 17.8.2017 on the grounds of poor performance and average entries in his PERs; and, on that basis, he was awarded a penalty of early retirement vide office order No.42/2018. It is urged that he never applied for early retirement from service; besides that, there was/is no concept of early retirement in Service Jurisprudence, thus the purported action on the part of EOBI was/is a nullity in the eyes of law. He emphasized that there are three concepts of retirement from service in Service Law i.e. Voluntary Retirement, Compulsory Retirement, Premature retirement and Superannuation Retirement, therefore, the penalty imposed upon him by the respondent-EOBI could not be borne out of the service law, thus liable to be declared invalid. He asserted that merely poor performance of an employee does not envisage adverse remarks in his PERs, therefore, the same could not be converted into a major penalty of removal from service under EOBI (Employees Service) Regulations 1980 (EOBI Regulations 1980). It is also urged that he is a permanent employee of respondent-EOBI whose service tenure is secured up to the age of superannuation; and, a different concept of early retirement was applied in his case at a

very early stage of his career, which is against the basic principles of natural justice. He asserted that his service tenure is secured; and, could not be reduced in any manner to whatsoever nature; further that he was holding tenure post, and before completion of his tenure he could not be thrown out of office in a manner, as has been done in his case. He asserted that the concept of early retirement could not be invoked, having the effect of jeopardizing the tenure of petitioner beyond reasonable limits. He prayed for setting aside the original order dated 09.02.2018 and appellate order dated 20.11.2018 passed by the respondent-EOBI.

4. Para-wise comments were filed on behalf of respondents, who converted the allegations leveled by the petitioner on the premise that sending him on early retirement was/is justified under the provision provided in Regulation No.20 (i) of EOBI Regulations, 1980, due to his poor performance on the ground that he had become a bottleneck for the respondent-Institution, thus his retention in service could not bear the fruit. It is, inter alia, contended by Sayed Ashfaq Hussain Rizvi learned counsel for the respondent-Institution that the competent authority of respondents considered the case of the petitioner for promotion from time to time, but could not reach the conclusion to grant him promotion in the next rank as his performance had remained poor since 2004, especially in the last five to seven years, all reporting/countersigning officers had evaluated him "average" with recommendation of "not fit for promotion" and "unlikely to progress further", however, he was promoted to the post of Deputy Director in the year 2013 and the said promotion remained questionable; and, there was no point to allow him to continue in service due to his low grade performance over the last five to seven years. Learned counsel also attacked the petition on the point of maintainability on the ground of non-statutory rules of service of respondent-Institution. Learned counsel referred to para wise comments filed on behalf of respondent No.2 and the documents attached therewith and argued that both the orders passed by the competent authority are well-reasoned and justified, thus could not be called in question through the instant petition. He lastly prayed for dismissal of the instant petition.

5. We have heard the learned counsel for the parties on the subject issue and perused the material available on record.

6. The question involved in the present proceedings is whether early retirement from service is a punishment, unlike Compulsory Retirement?

7. The aforesaid controversy arising in this petition, as noted earlier, the case of the petitioner is that having put sufficient years of service in EOBI, it is not open for the respondent-EOBI to retire him prematurely only on the ground that he is unlikely to progress further.

8. Before deciding the said issue, we have noticed that in service jurisprudence, there are different kinds of retirement envisaged, which are as under:

i. Superannuation retirement takes place when an employee crosses the maximum age prescribed under the service rules beyond which he cannot remain in active service.

ii. Compulsory retirement is one of the penalties under different service regulations. It can be imposed on an employee upon a departmental inquiry on the basis of proved charges.

iii. Premature retirement is a concept where the employer in terms of service regulations has the power to order retirement of an employee upon crossing certain age or completion of certain number of years of service in public interest.

iv. Voluntary retirement is a concept where an employee upon completion of certain number of years of qualifying service can with the permission of the employer proceed on voluntary retirement. If the employee has put in sufficient number of years of service and is permitted to retire on voluntary retirement basis, he retains all the benefits of the service already put in and would be entitled to all post retiral benefits on the basis of number of years of service put in by him.

v. In certain service regulations, there is also a concept of retirement on medical grounds permitting the employee to seek pension called invalid pension even though the employee may not have put in sufficient number of qualifying years of service to seek pension under the normal rules.

9. It may be noted that the term compulsory retirement is often used for non-penal premature retirement. However, we may not lose sight of the fact that there is a distinction between these two kinds of retirements, namely, penal retirement upon departmental inquiry based on proved misconduct which normally results in disentitling an employee from seeking any pensionary benefits and a non-penal retirement referred to as the premature or compulsory retirement upon completion of a certain number of years of service in which case the employee retains all the

benefits of the past service and is entitled to full post-retirement benefits on that basis.

10. In the present petition, this Court is concerned with a case of early retirement of the petitioner, who is otherwise required to be retired, before the normal age of superannuation by the respondent-EOBI, upon completion of 60 years of age. The short question is whether retiring of the petitioner on the aforesaid grounds would be a valid exercise of the powers; and, whether such a purpose could be termed to be in the public interest?

11. Primarily an employee who has crossed certain age that may be specified in the service rules and whose service is found to be not satisfactory may be required to be retired compulsorily before attaining the age of superannuation and such powers have been recognized and protected by the superior Courts in the public interest. Prima-facie the reason assigned by the respondent-EOBI to get rid of him, that the subject post could be more usefully held in the public interest by an officer more competent than the petitioner. The observation of the competent authority that there was a good deal of dead wood; and it was in the public interest to chop him off. In our considered view, the expression in the context of early/premature retirement has a well-settled meaning. It refers to cases where the interests of public administration require the retirement of a Government servant who with the passage of years has prematurely ceased to possess the standard of efficiency, competence and utility called for by the Government service to which he belongs; that no stigma or implication of misbehaviour is intended, and punishment is not the objective. It appears to us to be beyond dispute that the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the government servant, however, the Government is given the power to energies its machinery and make it more efficient by compulsorily retiring those who in its opinion should not be there in the public interest.

12. In the present case, principally, the petitioner has been dealt with under Regulation 20(i) *ibid*, whereby he has been sent on an early retirement upon completion of his 20 years' service. Prima facie, there is no relevance of petitioner's early retirement order dated 09.02.2018 with compulsory retirement based on misconduct or inefficiency, which is a

punishment under the service jurisprudence, and without proceeding with disciplinary rules and its culmination into its logical end, he ought not to have been sent on early retirement from service.

13. In the light of the above, we are of the candid view that the competent authority of EOBI is at liberty to remove any of its employees, from service, or may require him to retire from it, on the ground of misconduct, insolvency or inefficiency under the regulations 1980. Whereas, in the present case, the petitioner proceeded on the sole ground that his performance was not up to the mark so they opted to send him on early retirement. Prima facie, mere obtaining 'average performance' in his career could not be the sole ground to send him on early retirement under Regulation 20(i) of EOBI (Employees Service) Regulations, 1980, which deals with separate category. However, he could have been dealt with under the provision of compulsory retirement on completion of twenty years of service qualifying for pension as the competent authority could, in the public interest, direct. And, where no such direction is given under the eventuality, his service till sixty years of age.

14. Removal of the petitioner from service of the respondent-EOBI in such a cursory/arbitrary manner is violative of Article 10-A of the Constitution of the Islamic Republic of 1973. The remarks passed against the petitioner in the impugned order dated 09.02.2018 are highly undesirable and uncalled for, which required thorough probe under EOBI (Employees Service) Regulations, 1980.

15. Adverting to the ground raised by the learned counsel for the respondent-EOBI that petitioner has rightly been nonsuited under Regulations 1980. We are not in agreement with the assertion of the learned counsel for the respondent-EOBI on the premise that Regulation 20 (i) ibid deals with the term 'superannuation retirement' and not 'early retirement'. Both terms are different in meaning and scope. Besides the Legislature in its wisdom has not fixed any period for early retirement.

16. Before parting with this order the competent authority of respondent-EOBI is at liberty to initiate disciplinary proceedings against the petitioner based on two supersessions, if any; and/or if he is found involved in misconduct or inefficiency in service, strictly under the law, after providing meaningful hearing to him. On the aforesaid proposition,

we are fortified with the decision of the Hon'ble Supreme Court in the case of Muhammad Rashid Bhatti v. Director General FIA (2018 SCMR 1995). Even otherwise, Civil/Public Servants' prospects of promotion could not be jeopardized based on such adverse remarks unless the same is communicated and a meaningful hearing is given to the Civil/Public Servant under the law.

17. In view of the above legal position, the contentions of the learned counsel for the Petitioner have force, in the result, we find merit in the petition. Consequently, the instant Petition is allowed along with the listed application(s). The impugned office order No.42/2018 issued by respondent Employees' Old-age Benefits Institution and appellate order dated 09.02.2018 are, therefore, quashed with no order as to costs. The petitioner is also entitled to the back benefits of the intervening period in the light of the ratio of an unreported judgment dated 11.02.2021 passed by the Hon'ble Supreme Court in C.P. Nos.517-L, 1019-L, 1062-L & 1232-L of 2016 and 1929-L/2017.

18. Above are the reasons of our short order dated 04.05.2021, whereby we have allowed the petition.

JUDGE

JUDGE

Nadir