

IN THE HIGH COURT OF SINDH KARACHI  
**Constitutional Petition No. D – 562 of 2016**

Date	Order with Signature of Judge(s)
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Before:  
Mr. Justice Irfan Saadat Khan  
Mr. Justice Adnan-ul-Karim Memon

Muhammad Munawar and others,  
Petitioners, through : Dr. Raana Khan, advocate.

Federation of Pakistan  
& 05 others, respondents  
through : Mr. Nishat Warsi, Deputy Attorney  
General for respondent No.1 a/w  
Zafar Ismaeel, Deputy Secretary,  
Establishment Division for  
respondent No. 2

Date of hearing : 24.05.2021

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

**ADNAN-UL-KARIM MEMON, J.** – Through the instant petition, in principle, the petitioners demand all the service/pensionary benefits, as admissible to the Civil Servants, serving in Federal Government Departments, as per the terms of Office Memorandums (OMs) dated 6.9.2000, 30.11.2005 and 23.11.2020 issued by the Finance Division, Government of Pakistan may be granted to them.

2. The question which has been raised in the captioned petition is whether the petitioners employed in the Abandoned Properties Organization (hereinafter referred to as "APO.") were civil servants, within the meaning of Civil Servants Act, 1973, and were thus governed by OMs dated 6.9.2000, 30.11.2005 and 23.11.2020, in the matter relating to their Service/pensionary benefits.

3. Petitioners have submitted that they were appointed on different posts in BPS-2 to 16, vide different appointment orders, issued in the year 1977 to 2009 in the office of APO (Page-5), thereafter most of them retired on attaining the age of superannuation; and, some of them had passed away and the rest of the petitioners are still serving. Petitioners have asserted that the respondent-APO did not pay them service benefits/retiring benefits, as per their entitlement under the aforesaid OMs,

being civil servants. Petitioners have submitted that the cause of action, leading to the petitioners, to call in question the inaction/unwillingness of the respondents, to extend the benefits of the aforesaid OMs to them and that's why they have approached this Court on the ground that since similar benefits under the aforesaid (OMs) had been extended to other employees of different Government Organizations/ Entities, whereas the Petitioners have been discriminated in violation of Article 25 of the Constitution; besides above their status as a civil servant has not yet been determined by the respondents, which has triggered the cause to claim service/pensionary benefits as government employees.

4. To substantiate the above stance, Dr. Raana Khan, learned counsel for the petitioners, has emphasized that the petitioners are serving and retired employees of respondent-APO, thus are entitled to all the service/pensionary benefits as admissible to the Civil Servants, serving in Federal Government Departments; and, referred to the OM dated 23.11.2020, whereby the Ministry of Law and Justice declared the employees of the respondent-APO as Civil Servants as defined under the Civil Servants Act, 1973. She briefed us on the subject elaborately by stating that APO was established under the Abandoned Properties (Management) Act, 1975 vide Resolution dated 16-10-1986 issued by the Ministry of Health (Health Division), Government of Pakistan. "Board" was set up under the said law to frame policies and supervise and manage the affairs of the said Organization. For discharge of its functions, the Board was to be guided on questions of policy by the Organization issued by the Federal Government. She asserted that under the said law/ Resolution, the Board was authorized to appoint officers and servants and to engage advisors and consultants as were considered necessary for the proper functioning of the Organization. The manner of selection of such officers and servants and their terms and conditions of service were to be prescribed by the Abandoned Properties (Management) Service Rules, 1981, (though not gazetted), to be approved by the Federal Government, therefore the claim of the Petitioners for enforcement of the aforesaid O.Ms in favor of the Petitioners could not be denied. Per learned counsel this act on the part of the respondent-APO is illegal and discriminatory; that the Petitioners being inducted in the respondent-organization as permanent employees are eligible for all the service/pensionary benefits under Policy decision made by the Federal Government as discussed supra and the Petitioners could not be deprived of the benefit of the same; that omission of the respondents is discriminatory; since, similarly placed employees of other State Owned

Entities (SOE)/ Statutory Bodies and Autonomous Bodies are getting the benefit of pension, yet the petitioners are deprived of the same; that the respondents are lingering on the matter, which tantamounts to violation of Articles 4 & 25 of the Constitution.

5. We asked the learned counsel as to how petitioners claim to be Civil Servants, she replied with vehemence and referred to her statement dated 25.01.2021 and argued that the office of Abandoned Properties Organization (APO) is going to be wound up and in this regard, a query was raised about the status of the employees of APO from the Cabinet Division, which came in favour of the petitioners as such they were declared as Civil Servants, therefore they are fully entitled to all the service benefits including the pensionary benefits as admissible to the employees of other organization of the Federal Government with the status of Civil Servants. Learned counsel referred to various documents attached with the memo of the petition and extensively argued with the assertion that the case of the petitioners is akin to the case decided by this Court in C.P No.D-1728/2010 vide order dated 11.10.2020. Learned counsel further averred that Hon'ble Supreme Court in the case of Mrs. M.N. Arshad and others v. Miss. Naeema Khan and others (PLD 1990 SC 612) has settled the proposition about the status of the organization of the Federal Government with the status of Civil Servants as such petitioners are also entitled to be given the same status, as has been done through the aforesaid OM dated 23.11.2020. In support of her contention, she relied upon the case of Haji Muhammad Ismail Memon, advocate (PLD 2007 SC 35) and Human Right Case No.05/2009 vide order dated 07.04.2009 (Page-71). She further argued that if a Tribunal or this Court decides a point of law relating to the terms and conditions of a Civil Servant who litigated, and there were other Civil Servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demands that the benefit of the said decision be extended to other civil servants also who may not be the parties to that litigation instead of compelling them to approach another legal forum, therefore, the petitioners' case is akin the decision decided by this Court vide order dated 11.10.2010 in C.P No.D-1728/2010 (Page-159) and the petitioners are legitimately expecting that they would be given similar treatment based on the same principle as discussed supra. Per learned counsel in terms of the judgment of the Hon'ble Supreme Court in the case of Mrs. M.N. Arshad supra the organization established through resolution are deemed to be subordinate offices, as defined in Rule 2(i)(xx) of Rules of Business, unless their status is changed through legislation to make them Autonomous / Body Corporate as such the respondent-APO is deemed to be the subordinate office of the Ministry of Cabinet Division, Government of Pakistan

6. The aforesaid stance has been refuted by the learned DAG by submitting that Establishment Division is of the view that the employees of respondent-APO are not Civil Servants in terms of section 4, 26 and 30 of the Abandoned Properties (Management) Act, 1975. Learned DAG referred to Rule 3 (3) of Rules of Business 1973 and submitted that the terms and conditions of the service of the petitioners are not governed under the Civil Servants Act, 1973 and the rules framed thereunder, as such they are not Civil Servants. However, he principally agreed for disposal of this petition in the light of Abandoned Properties (Management) Service Rules, 1981, and submitted that the petitioners shall be treated under the law and Service Rules, 1981, and as per their entitlement, the petitioners will be provided with the service benefits i.e. Gratuity or Contributory Provident Fund subject to the provision of Abandoned Properties Organization Employees C.P. Funds Rules, and other facilities, as admissible to them under the law, if earlier not provided so.

7. Learned counsel for the petitioners, however, has some reservation on the aforesaid proposal put forward by the learned DAG on the premise that the petitioners are required to be given retirement benefits upon reaching the age of superannuation as Civil Servants as determined by the respondents in the aforesaid OM. Learned counsel also referred to para-wise comments, filed by the respondents, wherein it was conceded that the claim of the petitioners for pensionary benefits as provided under Rule 371-A of Civil Service Regulations is available to them. In support of her contention, she relied upon the cases of *Mir Murad Khan v. Secretary to Government and others* (1997 SCMR 1477), *Saeed Rabani v. Director General Leather Industries Development Organization and another* (PLD 1994 SC 123), *Sajida Tabshir v. Government of Punjab through Secretary Education Department, Lahore and others* (2001 PLC (CS) 905), *Chairman Pakistan Council of Scientific and Industrial Research Islamabad and three others v. Dr Mrs Khalida Razi* (1995 SCMR 698), and *Dr Rashid Anwar v. Federation of Pakistan through Secretary Establishment Division, Islamabad and others* (1996 SCMR 1572). She lastly prayed for allowing the instant petition.

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

9. Primarily, APO is a statutory organization established under the Abandoned Properties (Taking Over and Management) Act, 1975. "Board of Trustees" was set up under the said law to frame policies and supervise and manage the affairs of the said Organization. For discharge of its functions, the Board was to be guided on questions of policy by the

Organization issued by the Federal Government. Under the said law, the Board was authorized to appoint officers and servants and to engage advisors and consultants, as were considered necessary for the proper functioning of the Organization. In pursuance of the Act 1975, the Federal Government framed the Abandoned Properties (Taking Over and Management) Rules 1975, and the conditions of service of the Administrator, etc. were determined under Section 3 (2) of the Rules, 1975, which provide that all officers appointed under the Act, shall subject to any special contract to the contrary be governed by the Rules applicable to the grade of officers to which they belong.

10. During the arguments, we have also come across the notification dated 22.08.1981, whereby the Board of Trustees of APO notified the Abandoned Properties (Management) Service Rules 1981, whereby employees of APO have given Medical Facilities, Gratuity and Contributory Provident Fund subject to conditions enumerated in Abandoned Properties (Management) Organization Employees Contributory Provident Fund Scheme 1990, and Benevolent Fund/ Group Insurance with certain conditions as enumerated in Rule 32, 33, 34 & 35.

11. Coming to the question raised by the petitioners' that they ought to have been given the status of Civil Servants. This assertion in our view, prima-facie, is misconceived in the light of Article 240 of the Constitution, which provides that the terms and conditions of service of persons in the service of Pakistan shall be determined as under:-

"(a) in the case of the services of the Federation, posts in connection with the affairs of the Federation and All Pakistan Services, by or under Act of Parliament; and (b) in the case of the services of a province and posts in connection with the affairs of a province, by or under Act of the Provincial Assembly."

12. The Civil Servants Act, 1973, which was enacted by the Parliament to regulate the appointment of persons in service of Pakistan and their terms and conditions of service, came into force on 19-9-1973. Section 2(b) of the Civil Servants Act, 1973 defines civil servant" as under:--

"Civil servant' means a person who is a member of an All-Pakistan Service or of a Civil Service of the Federation, or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, but does not include—

(i). a person who is on deputation to the Federation from any province or other authority;

(ii) a person who is employed on contract, or work-charged basis, or who is paid from contingencies; or  
 (iii) a person who is a 'worker' or 'workman' as defined in the Factories Act, 1934 (XXV of 1934), or the Workmen's Compensation Act, 1923 (VIII of 1923);"

13. Section 3 of the Act provides that the terms and conditions of service of a "civil servant" shall be as provided in the Act and the Rules made thereunder, in pursuance of the above, the Civil Servants (Appointment, Promotion and Transfer) Rules, 1973, were framed.

14. In our view Non-Civil Servants cannot be given the status of Civil Servants; and, petitioners' terms and conditions of their service were / are to be governed under the Abandoned Properties (Management), Act and Service Rules framed thereunder. On the aforesaid proposition, we are fortified with the decision of Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456).

15. In view of the above discussion, prima-facie, the status of APO is an autonomous body that cannot enjoy the status of a civil servant under the Civil Servants Act, 1973. Therefore, notwithstanding the view taken under the aforesaid O.M dated 23.09.2020, that the cases of the employees of respondent-APO were civil servants, we find ourselves not in agreement with the aforesaid stance on the premise that the employees of Abandoned Properties Organization are governed under the Abandoned Properties (Management) Act, 1975 and in terms of Section 26 the Board of Trustees is empowered to appoint or employ such officer and servant for the efficient performance of its functions on such terms and conditions as may be determined. Prima-facie, the terms and conditions of employees of APO are not governed under the Civil Servants Act and Rules framed thereunder, thus, they are not Civil Servants.

16. Adverting to the claim of the grant of pensionary benefits of the petitioners, suffice it to say that the learned DAG has candidly endorsed the stance of Deputy Secretary (Establishment Division) that the petitioners shall be provided their due service benefits, as admissible under the relevant law, if not earlier paid to them; and, no discriminatory treatment shall be meted out with them.

17. in view of the statement of Deputy Secretary (Establishment Division), this petition stands disposed of in the terms whereby the competent authority of respondent-department is directed to allow all service benefits to the retired petitioners, as admissible under the law, if

not earlier paid to them, within a period of one month from the date of receipt of this judgment.

18. As a result, the petition stands disposed of along with the pending application(s), with no order as to costs.

JUDGE

JUDGE

Shahzad/