

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D – 1497 of 2020

Date	Order with signature of Judge
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Before :
Mr. Justice Nadeem Akhtar
Mr. Justice Mahmood Ahmed Khan

Petitioner : Nasir Kamal,
through Mr. Waleed Khanzada, Advocate.

Respondent No.1 : Federation of Pakistan,
through Mr. Muhammad Nishat Warsi, Deputy Attorney
General.

Respondent No.2 : Pakistan National Shipping Corporation,
through Mr. Abdul Ghaffar, Advocate
along with Zafarullah Khan, G.M. (Legal Affairs), PNSC.

Date of hearing : 05.08.2020.

J U D G M E N T

NADEEM AKHTAR, J. – Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, (**'the Constitution'**) the petitioner has prayed for a declaration that the action of respondent No.2 / Pakistan National Shipping Corporation (**'PNSC'**) of withholding his post-retirement benefits is illegal and in violation of his fundamental rights ; and, for a direction that PNSC be directed to release his said benefits immediately.

2. The relevant facts of the case are that the petitioner was appointed by PNSC on 27.01.1976 as a typist and he retired therefrom as a Manager on 18.02.2017 upon attaining the age of superannuation after serving for forty one (41) years. On 28.06.2016, a charge sheet was issued to him on the basis of the allegations contained therein, which were denied by him. However, a show cause notice was issued to him on 14.02.2017 contents whereof were also denied by him vide his reply dated 17.02.2017. Thereafter, an inquiry was initiated against him, but before such disciplinary proceedings could be finalized, he retired from the service on 18.02.2017. Meanwhile, PNSC filed Suit No.1119/2017 against him before the learned IIIrd Senior Civil Judge Karachi East for recovery of Rs.5,869,553.00, which is reportedly still pending. PNSC also lodged FIR No.13/2017 against him before the learned Special Judge (Central-I) at Karachi, wherein he was acquitted vide judgment dated 10.01.2020. After his said acquittal, the petitioner approached the competent authority of PNSC for the release of his outstanding post-retirement benefits,

but the same were not paid to him on the ground that disciplinary proceedings were still pending against him. In the above background, he was constrained to file the present petition.

3. In support of this petition, learned counsel for the petitioner, while reiterating the grounds urged therein, strongly relied upon an unreported judgment dated 21.02.2013 pronounced by the Hon'ble Supreme Court in Civil Appeal No. 48 of 2013 (International Islamic University, Islamabad through its President Islamabad V/S Jehanzeb Khan & others). He submitted that in view of the law laid down by the Hon'ble Supreme Court in the above referred case, the post-retirement benefits of the petitioner could not be withheld by PNSC on any ground whatsoever. He further submitted that the impugned hurdle and or delay in the finalization and payment thereof to the petitioner is in clear violation of not only the aforesaid judgment, but also the unalienable fundamental rights of the petitioner guaranteed by the Constitution.

4. On behalf of PNSC, a preliminary objection was raised by their learned counsel that as the service regulations of PNSC are non-statutory, this petition is not maintainable. In support of this contention, he relied upon PIA Corporation V/S Syed Suleman Alam Rizvi, 2015 SCMR 1545, Pakistan International Airline Corporation & others V/S Tanveer-ur-Rehman & others, PLD 2010 SC 676, Abdul Wahab & others V/S H.B.L & others, 2013 SCMR 1383, Pakistan Airline Pilots Association & others V/S Pakistan International Airline Corporation & others, 2019 SCMR 278 and Syed Nazir Gillani V/S Pakistan Red Crescent Society & another, 2014 SCMR 982. On merits, it was submitted by him that PNSC was/is fully justified in withholding the post-retirement benefits of the petitioner as formal disciplinary proceedings were initiated against him during his tenure of service on the ground of serious misconduct, cognizance whereof was also taken by the Federal Investigation Agency ('FIA') by registering FIR No.13/2017 against him under Sections 409, 468 and 471 PPC read with Section 5(2) of PCA, 1947. It was contended by him that as FIA was investigating the above matter, PNSC was directed by FIA to "freeze / hold" the outstanding dues of the petitioner, which fact is also mentioned in paragraphs 6 and 7 of the comments filed by PNSC. According to him, PNSC could not act contrary to the above direction given by FIA. He insisted that in view of the above and also because of the pendency of the recovery Suit against the petitioner, he is not entitled, at least for the time being, to receive his post-retirement benefits.

5. Exercising his right of rebuttal, learned counsel for the petitioner

submitted that this petition is fully competent and maintainable in view of the law laid down by the Hon'ble Supreme Court in Pakistan Defence Officers Housing Authority & others V/S Lt. Col. Syed Jawaid Ahmed, **2013 SCMR 1707**, particularly in paragraph 50 thereof, and also in Muhammad Rafi & another V/S Federation of Pakistan and others, **2016 SCMR 2146**.

6. After hearing the learned counsel for the parties at length and examining the material available on record and the case-law cited at the bar, we are of the view that the entire controversy between the parties revolves around two main questions viz. (a) whether the post-retirement benefits of the petitioner could be withheld by PNSC on account of mere pendency of disciplinary / criminal / civil proceedings against him ; and (b) whether the departmental enquiry / disciplinary proceedings, initiated against the petitioner while he was in service, could continue after his retirement.

7. Before addressing the above main questions involved in this petition, the preliminary objection raised on behalf of PNSC regarding the maintainability of this petition has to be decided. It is not disputed that PNSC is a national flag carrier and it came into existence after the merger of the National Shipping Corporation with the Pakistan Shipping Corporation in the year 1979 pursuant to the promulgation of the Pakistan National Shipping Corporation Ordinance No.XX, 1979. It is also not disputed that PNSC is wholly owned and controlled by the Government of Pakistan. In Abdul Wahab and others V/S HBL and others, **2013 SCMR 1383**, the Hon'ble Supreme Court was pleased to hold that Constitutional Petition under Article 199 of the Constitution against Habib Bank Limited was not maintainable as the said Bank did not fall within the definition of "person or authority performing functions in connection with the affairs of the Federation", nor the State / Federation had the majority shareholding therein or majority representation in its Board of Management. Whereas in the present case, as noted above, PNSC is wholly owned and controlled by the Federation, and due to this reason it certainly falls within the definition of person or authority performing functions in connection with the affairs of the Federation. In Pir Imran Sajid and others V/S Managing Director / General Manager (Manager Finance) Telephone Industries of Pakistan and others, **2015 SCMR 1257**, it was held, *inter alia*, by the Hon'ble Supreme Court that the service / employment rules of Telephone Industries of Pakistan (TIP) were non-statutory, but the Constitutional Petition against TIP was competent as it fully met the "Function Test" prescribed by the Hon'ble Supreme Court in Abdul Wahab (supra). In Muhammad Rafi (supra), it was held by the Hon'ble Supreme Court that an

aggrieved person can invoke the constitutional jurisdiction of High Court against a public authority if the act of such authority is violative of the service regulations even if they are non-statutory. In Pakistan Defence Officers Housing Authority & others (supra), the Hon'ble Supreme Court was pleaded to hold that where the action of a statutory authority in a service matter was in disregard of the procedural requirements and is violative of the principles of natural justice, it can be interfered with in writ jurisdiction. Even otherwise, the question of payment of pension, being purely a matter pertaining to fundamental rights of the petitioner, can be looked into in the Constitutional jurisdiction of this Court irrespective of the fact whether the service rules of PNSC are statutory or not. In view of the above, we have no hesitation in holding that the instant petition is maintainable against PNSC which is undisputedly owned and controlled wholly by the Federation.

8. Having dealt with the above preliminary objection, we may now revert to the merits of the case, but before doing so it would be advantageous to understand the concept and connotation of the term "pension", the rights / privileges and obligations attached thereto, the importance thereof and the law laid down in respect thereof by the Hon'ble Supreme Court. The definition and *raison d'être* of the term "pension" and the nature of right in respect thereof were examined in depth by the Hon'ble Supreme Court of Pakistan in the case of I. A. Sharwani and others V/S Government of Pakistan through Secretary, Finance Division, Islamabad and others, **1991 SCMR 1041**, by referring, *inter alia*, to the following extracts from various authoritative books and dictionaries, and also to paragraph 29 of the judgment pronounced by the Supreme Court of India in D.S. Nakara and others V/S Union of India, **AIR 1983 SC 130** :

Extract from Encyclopedia Britannica Vol.17, 1963 Edition, page 488 :

"Pensions are periodic payments, usually for the natural life of person who retires because of age or disability. Sometimes the term refers to periodic payments to wives, widows or children of a primary or deceased person or pensioner, occasionally, a pension will be conveyed solely as an honour for conspicuous service or valour. Pensions are also provided by many non-governmental employees as a means of protecting workers retiring for age or disability and for relieving the payroll of superannuated personnel."

Extract from Corpus Juris Secundum, Vol. 67, pages 763-764 :

"..... The granting of pension to public officers or public employees serves the public purpose, and is designed to induce competent persons to enter and remain in the public service or employment, and to encourage the retirement from public service of those who have become incapacitated from performing their duties as well as they might be performed by younger or more vigorous persons.

It has also been stated that a pension system is intended to promote efficient, continued and faithful service to the employer and economic security to the employees and their dependents, by an arrangement under which, by fulfilment of specified eligibility requirements, pensions become property of the individual as a matter of right upon the termination of public service.”

Extract from Corpus Juris Secundum, Vol. 70, page 423 :

“A pension is a periodical allowance of money granted by the Government in consideration or recognition of meritorious past services, or of loss or injury sustained in the public service. A pension is mainly designed to assist the pensioner for providing of his daily wants, and it presupposes the continued life of the recipient.”

Paragraph 29 from the judgment in the case of D.S. Nakara (supra) :

“Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the heyday of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or of a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical raison d’etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.”

9. In The Government of N.W.F.P. through the Secretary to the Government of N.W.F.P. Communications and Works Department, Peshawar V/S Mohammad Said Khan and another, **PLD 1973 SC 514**, the Hon’ble Supreme Court was pleased to hold as under :

“It must now be taken as well-settled that a person who enters Government service has also something to look forward to after his retirement, to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well-settled that pension like salary of a civil servant is no longer a bounty but is a right acquired after putting in satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules.”

10. In the case reported as Re : Pensionary Benefits of the Judges of Superior Courts, **PLD 2013 SC 829**, it was held, *inter alia*, by the Hon’ble Supreme Court that pension is a right which the Government servants or employees in different positions and different capacities earn in terms of the relevant statutory provisions applicable to their case, mostly depending upon

their length of service ; and, in any case it is not a State bounty which could be awarded as a favour to any individual outside the scope of the applicable statute. In the above-cited case, the “right to pension” and the true connotation and concept of pension was again examined by the Hon’ble Supreme Court by referring, *inter alia*, to the following definitions :

Law Laxicon :

“A periodical payment made by a Government, company or any employer or labour in consideration of past services or the relinquishment of rights, claims or emoluments ; regular payments to persons in order that they may maintain themselves.”

Black’s Law Dictionary :

“Retirement benefit paid regularly (normally monthly) with the amount of such based generally on length of employment and amount of wages or salary of pensioner ; Deferred compensation for services rendered.”

New Encyclopedia Britannica Vol.9, 15th Edition at page 266 :

“Series of periodic money payments made to a person who retires from employment because of age, disability or completion of an agreed span of service. The payments generally continue for the remainder of the natural life of the recipient, and sometimes to a widow or other survivor.”

11. In view of the concept and connotation of the term “pension”, the rights / privileges and obligations attached thereto and the importance thereof, and the law laid down by the Hon’ble Supreme Court in respect thereof, as discussed above, it is well-settled that pension is a measure of socio-economic justice which inheres economic security in the fall of life ; a person who enters the Government / public service has also something to look forward to after his retirement viz. his retirement benefits, the grant of pension being the most valuable of such benefits ; pension is like a salary and is no longer a bounty, but is a right acquired after putting in satisfactory service for the prescribed minimum period ; pension cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules ; and, pension becomes the property of the retiring employee or civil / public servant as a matter of right upon the termination of his service. From the above principles settled by the Hon’ble Supreme Court, it is clear that pension, like salary, is a regular source of livelihood, and thus is protected by the right to life enshrined in and guaranteed by Article 9 of the Constitution. Due to this reason also, the instant petition is maintainable as already held by us above. This view is fortified by Abdul Wahab and others (supra), wherein the Hon’ble Supreme Court was pleased to hold, *inter alia*, that there seems no room to disagree with the plea / legal position that the right to life of a person / citizen shall include the right to

livelihood and such right, therefore, cannot hang on to the fancies of individuals in authority ; and, the employment is not a bounty from them i.e. individuals in authority, nor can its survival be at their mercy.

12. Coming back to the instant case, it is admitted position that the disciplinary proceedings initiated against the petitioner did not conclude during his tenure of service and as such the charge alleged against him could not be established. It is well-settled that any type of disciplinary proceedings, including an inquiry, against an employee or public servant cannot continue after his retirement from service, and if the disciplinary proceedings are not finalized before his retirement, such proceedings stand abated upon his retirement. In this context, we may refer to Fundamental Rule 54-A which provides that on attaining the age of superannuation disciplinary proceedings, which have not been completed, automatically abate and the civil servant is entitled to receive all pensionary benefits. In view of Fundamental Rule 54-A, the provisions and effect whereof are mandatory because of the word “shall” used therein, the disciplinary proceedings initiated against the petitioner stood abated and he was/is entitled to full post-retirement benefits permissible under the law. The above view is fortified by the following pronouncements of the Hon’ble Supreme Court :

A. In Abdul Wali V/S WAPDA through its Chairman and others, **2004 SCMR 678**, the Hon’ble Supreme Court was pleased to hold that as a general rule disciplinary proceedings cannot be taken against a civil servant for imposition of a major or minor penalty as contemplated by the E&D Rules after he has already retired from service on attaining the age of superannuation.

B. The above principle was reiterated by the Hon’ble Supreme Court in Syed Sajjad Haider Kazmi V/S Director-General (S&GAD) WAPDA and another, **2007 SCMR 1643**.

C. In Deputy Director Food V/S Akhtar Ali, **1997 SCMR 343**, it was held by the Hon’ble Supreme Court that an officer superannuating during disciplinary proceedings ceases to be a civil servant and was rightly so excluded by Section 2(1)(b) of The Punjab Service Tribunals Act, 1974.

D. In Muhammad Zaheer Khan V/S Government of Pakistan through Secretary Establishment and others, **2010 PLC (C.S.) 559**, it was held by the Hon’ble Supreme Court that the disciplinary proceedings against an employee must be completed before his date of retirement.

13. The main thrust of the arguments advanced on behalf of PNSC was that PNSC was directed by FIA to “freeze / hold” the outstanding dues of the petitioner as the allegations against him were being investigated by FIA, and PNSC could not act contrary to the above direction given by FIA. This argument, on the face of it, is absolutely misconceived as it was candidly conceded by learned counsel for PNSC that the petitioner was acquitted in the criminal case registered against him by PNSC on the basis of the said allegations. Therefore, there was no justification at all for PNSC for withholding or denying his post-retirement benefits. Regarding the alleged direction given by FIA to PNSC to “freeze / hold” the outstanding dues of the petitioner, as argued on behalf of PNSC, suffice it to say FIA had no jurisdiction or authority to give any such direction to PNSC and PNSC was not bound under the law to follow such illegal direction, especially when the petitioner was acquitted. Rather, PNSC was duty-bound to pay to the petitioner his post-retirement benefits promptly in accordance with law ; and, by not doing so PNSC has in fact violated the law and has infringed the valuable and inalienable fundamental right to life / livelihood of the petitioner.

14. Before parting with this case, we may refer to a landmark judgment of the Hon’ble Supreme Court wherein the non-payment / delay / refusal in payment of post-retirement benefits to an employee was strongly deprecated and certain directions in this behalf were issued, which have not been followed in the instant case by PNSC. The said case is reported as Re : Haji Muhammad Ismail Advocate, **PLD 2007 SC 35**, wherein the Hon’ble Supreme Court was pleased to hold as under :

“7. It is pathetic condition that Government servants, after having served for a considerable long period during which they give their blood and sweat to the department had to die in a miserable condition on account of non payment of pension / pensionary benefits etc. The responsibility, of course, can be fixed upon the persons who were directly responsible for the same but at the same time we are of the opinion that it is an overall problem mostly in every department, where public functionaries failed to play their due role even in accordance with law. Resultantly, good governance is suffering badly. Thus everyone who is responsible in any manner in delaying the case of such retired officers / official or widows or orphan children for the recovery of pension / gratuity and G.P. Fund has to be penalized. As their such lethargic action is in violation of Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan, 1973. Admittedly, it is against the dignity of a human being that he has to die in miserable condition and for about three years no action has been taken by the concerned quarters in finalizing the pension case and now when the matter came up before the Court, for the first time, they are moving in different directions just to show their efficiency and to clear their position before the Court. Such conduct on their behalf is

highly condemnable and cannot be encouraged in any manner.

8. *We, therefore, direct that all the Government Departments, Agencies and Officers deployed to serve the general public within the limit by the Constitution as well as by the law shall not cause unnecessary hurdle or delay in finalizing the payment of pensionary / retirement benefits cases in future and violation of these directions shall amount to criminal negligence and dereliction of the duty assigned to them. Thus having noticed such miserable condition prevailing in the department particularly relating to the payment of the pension to retired Government servants or widows or orphan children, we direct all the Chief Secretaries of the Provincial Governments as well as the Accountant Generals and the Accountant General Pakistan Revenue, Islamabad, to ensure future strict adherence of the pension rules reproduced hereinabove and clear such cases within a period not more than two weeks without fail.”*

15. Similar direction was again given by the Hon’ble Supreme Court in a recent case viz. Province of Punjab, through Conservator of Forest, Faisalabad and others V/S Javed Iqbal, **2021 SCMR 328**, by directing the Government to ensure in future 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.

16. Vide order dated 03.03.2020, PNSC was directed by this Court to submit a statement showing the amount payable to the petitioner on account of his post-retirement benefits. In compliance of the said order, a statement dated 04.06.2020 was submitted on behalf of PNSC according to which an amount of Rs.17,848,779.00 is due and payable to the petitioner towards his outstanding salary and post-retirement benefits.

17. In view of the above, PNSC is hereby directed to pay all the post-retirement benefits to the petitioner strictly in accordance with law without fail within fifteen (15) days and to submit compliance report to this Court through MIT-II within seven (07) days thereafter. For future as well as for cases pending for calculation and/or payment of post-retirement benefits, PNSC is further directed to ensure compliance of the directions given by the Hon’ble Supreme Court in Haji Muhammad Ismail Advocate (supra) and Province of Punjab, through Conservator of Forest, Faisalabad (supra) in letter and spirit The petition is allowed in the above terms with costs.

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