

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. D- 520 OF 2009

Masood Ahmed Bhatti

Versus

Federation of Pakistan & others

BEFORE:

**Mr. Justice Faisal Arab
Mr. Justice Muhammad Shafi Siddiqui**

Date of Hearing: 14.05.2013

Petitioner: In person.

Respondent No.1: Through Ms. Rukhsana Siyal, standing counsel.

Respondent No.2&3: Through Mr. Khurram Rasheed Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- The petitioner has challenged the acts of respondents No.2 and 3 in finalizing the release of the petitioner under final Voluntary Separation Scheme (VSS) Scheme 2007.

2. Brief facts of the petitioner's case are that he was appointed as Divisional Engineer in the year 1983 and after successful completion of training posted in the erstwhile Pakistan Telegraph & Telephone Department as Assistant Divisional Engineer. He was subsequently promoted as Divisional Engineer in the year 1989 and as Director in the year 1998. It is case of the petitioner that in the year 1991 vide Pakistan Telecommunication Corporation Act, 1991, Pakistan Telegraph and Telephone Department was incorporated as a Corporation and the employees of Pakistan Telegraph and Telephone Department by virtue of Section 9 of the said Act stood transferred and became employees of the Corporation on the same terms and conditions to which they were

entitled immediately before such transfer. It is contended that while petitioner was serving as Director in BPS-19 and has total 24 years 1 month and 15 days service, PTCL management abruptly circulated VSS Scheme 2007 vide letter dated 15.11.2007. The petitioner was also addressed such letter with certain statistics as regards his service length, basic pay, leave etc. Petitioner sought these statics to be reviewed from his available personal record. Subsequently, on 17.01.2008 the petitioner was intimated regarding correction sought by him, whereby certain corrections though were made in the statistics of the petitioner however the length of service was not corrected, as desired by the petitioner.

3. It is contended by the petitioner that while exercising the option dated 14.01.2008 he provided reasons for choosing to participate in VSS 2007. Thus, he accepted the aforesaid VSS Scheme as a conditional option. It is contended by the petitioner that his qualifying service in terms of the record comes to 24 years 5 months and 10 days and hence VSS 2007 based on the length of service of 22 years resulted in less monetary benefits earned by him. Consequently, the petitioner has prayed that his release in terms of VSS 2007 is unjustified, malafide and without lawful authority and that he is entitled for VSS settlement and release of his actual pension and other service benefits.

4. On the other hand learned counsel for respondents No.2 and 3 at the very outset objected to the maintainability of this petition as the answering respondents since privatized is a company not owned by the government and thus not amenable to writ jurisdiction as it does not enjoy the status of statutory corporation. It is further argued that the petition revolves upon factual controversy and requires evidence which cannot be done in this lis. The enforcement of voluntarily contractual rights cannot be entertained under writ jurisdiction. It is further urged

that the petition suffers from laches and the petitioner has approached this Court with unclean hands.

5. On merits, learned counsel for respondents submitted that the actual length of service is 22 years 6 months and 4 days and not 24 years 1 month and 10 days as the studying and training session are not to be included in the qualifying length of service. Learned counsel for respondents further submitted that the conditional acceptance was not the mandate of the scheme as it is clearly stated at page 9 of the terms and conditions of VSS Circular that there could be no conditional acceptance of the VSS. It was urged that the petitioner signed the VSS Option Form and agreed to leave the company with the best of the benefits. Thus, it was obvious that some date was to be announced as departure date and such date cannot be said to be discriminatory and unfair. Learned counsel further argued that the pensionary benefits could only be issued under VSS scheme once the petitioner submits his off-boarding papers which the petitioner has failed. Learned counsel further submitted that the petitioner was facilitated to the extent that all his expenses of travelling and accommodation were borne by the respondents. He further submitted that in a meeting which was subsequently held, adjustments and re-calculations were made solely without prejudice as a gesture of good-will to the satisfaction of the petitioner. Even the issues that were not part of the Agenda were discussed and addressed during the meeting and a final revised VSS package had been offered by the respondents to the petitioner which contained enhanced offer of Rs.4,039,307/- (an increase of Rs.791,291/), while the pension payable to the petitioner was also offered to be enhanced by about Rs.5000/- a month (from Rs.16,343/- to Rs.21,045/-).

6. We have heard the petitioner who appeared in person and learned counsel appearing for the respondents and perused the record. The substantial question which is of prime consideration is the signing of the VSS by the petitioner. The terms and conditions of VSS are admitted, the relevant terms and conditions of the same are reproduced as under:-

- i) *All regular status PTCL employees under the age of 58 as of 15 November, 2007 are eligible for the VSS programme.*
- ii) ...
- iii) *Eligible employees will have 60 calendar days from the announcement date to notify PTCL management of their decision regarding participation in the VSS. Employees must accept or decline by completing the VSS Option/Waiver Form (enclosed), and submitting it via registered mail, to be postmarked no later than 14 January, 2008.*
- iv) *This VSS being offered by way of this Circular is a one time opportunity. After the option period ends on 14 January, 2008 no additional option/Waiver Forms will be accepted as part of this Scheme.*
- v) ...
- vi) ...
- vii) *Once submitted, the Option/Waiver Form will not be allowed to be withdrawn.*
- viii) *There can be no conditional acceptance of VSS.*
- ix) ...
- x) ...
- xi) *The payment of VSS benefits by PTCL to accepted employees shall be in full and final settlement of all dues and employees shall not be entitled to pursue any action, claim or legal proceedings of any kind, whatsoever, against PTCL thereafter.*
- xii) *Employees must submit the necessary off-boarding and/or pension paperwork before settlement payments can be issued.*
- xiii) ...
- xiv) *When computing qualifying length of service:*

Any period of six months or more will be rounded up as a full year.

Any period of less than six months will be rounded down.

Any remaining service months will be rounded off to the nearest month

Period(s) of extraordinary leave without pay and absence(s) without leave will deducted to determine the qualifying length of service

xv) ...

xvi) ...

xvii) *Employees deciding to opt for the VSS by way of the Option/Waiver Form shall thereby agree to be bound by the provisions and the terms and conditions contained in this Circular.*

xviii) *Employees who wish to appeal may call the VSS Support Centre to initiate the appeals process. All appeals must be initiated within 180 days of the VSS announcement date.*

xix) ...

xx) ...

- *Qualifying Length of Service (QLOS) does not include training period for some designations and extraordinary leaves.*

7. Perusal of the contract shows that it is one time concluded contract and the parties were neither coerced nor compelled to enter such adjustments. The VSS scheme was signed by the petitioner challenging certain statistics in terms of the length of service which he could have agitated before VSS Support Centre to initiate the appeal process which was to be decided within 180 days of the VSS announcing date. The petitioner did not opt for such process and has voluntarily signed the separation scheme. It is a binding and concluded contract and the petitioner cannot resile from the terms and conditions thereof. It is required to be accepted as it is or not at all as it is the spirit of the contract itself which says "take it or leave it". The petitioner's claim appears to have been further adjusted only as a gesture of good-will when the package was enhanced to Rs.4,039,307/- and an additional amount of Rs.791,291/- was offered along with enhanced payable

pension to the petitioner. In the circumstances, we are of the view that the petitioner has failed to substantiate his claim vis-à-vis final VSS settlement and release of his actual pension and other service benefits, however, since the petitioner is agitating his grievances since 2009 and the amount is also lying with the respondents, therefore, the petitioner is entitled to the interest over such amount. Accordingly, while disposing of the petition vide short order dated 14.05.2013 the respondents were directed to pay interest at the rate of 8% per annum from 10.3.2008 till the entire amount is paid to the petitioner.

8. Above are the reasons of our short order dated 14.05.2013.

Dated:

Judge

Judge