

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Naimatullah Phulpoto
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-3842 of 2021

Niaz Ahmed Qureshi
Petitioner through : Malik Altaf Hussain, advocate

Respondents
through : Mr. Ali Safdar Depar, AAG

Date of hearing
& order : **19.04.2022**

ORDER

Adnan-ul-Karim Memon, J. This matter pertains to the pensionary benefits of the petitioner, who stood retired in 2020 and his pensionary benefits have been withheld by the respondent-School Education and Literacy Department, Government of Sindh, on the ground that he is involved in issuing illegal payments to the contractors and incurred loss of Rs.3,06,80036/- to the government exchequer, which is of paramount consideration.

2. The case of the petitioner is that he served as Assistant Engineer (BPS-17) (Civil) Education Works Sub Division, Bulri Shah Karim, District Tando Muhammad Khan, and was allowed to retire from Government service on attaining the age superannuation on 01.01.2020 vide notification dated 15.01.2020 without conclusion of the disciplinary proceedings within a statutory period; however his pensionary benefits were withheld by the respondents on account of pendency of inquiry proceedings against him.

3. Malik Altaf Hussain, learned counsel for the petitioner has submitted that this Court vide order dated 14.02.2022 passed in CP No.D-5613/2021 has allowed the pensionary benefits to that petitioner and the case of the present petitioner is akin. He seeks disposal of this petition in the terms of the order dated 14.02.2022. An excerpt of the order is reproduced as under:

“For this reason, we take exception to the impugned action of the respondent-department and are of the considered view that the respondents are fully at fault for not culminating the disciplinary proceeding into its logical conclusion within time and allowing the petitioner to retire in 2019; and, prima facie continued to perpetuate the illegalities, despite knowing the fact that petitioner has committed massive corruption and now at this stage in point in time they are raising hue and cry that the petitioner is not entitled to pensionary benefits. In this background of the case, the Hon’ble Supreme Court of Pakistan in the case of Province of Punjab through Conservator of Forests, Faisalabad, etc. v. Javed Iqbal vide judgment dated 26.11.2020 passed in CP No.1554-L to 1573-L of 2020 has held that the government must ensure that the cases of retired employees are fast-tracked so that they are concluded within the statutory time frame i.e. 02 years of his retirement, allowing the retired employees to enjoy their retired life and the government to save unnecessary expense and time in pursuing matters against retired employees.

It is well-settled law that no pension granted or continued to the pensioner is liable to seizure by the department under Pension Act, 1871, and the rules, framed thereunder.

Learned counsel for the petitioner has pointed out that the pension of the petitioner has been withheld without assigning any cogent reason.

We cannot dilate upon the conduct of the petitioner so far as his service tenure is concerned, however, we have been informed by the parties that the petitioner during his tenure of service, being Secretary Land Utilization Department, Board of Revenue, Sindh, Karachi, in connivance with other co-accused fraudulently managed to regularize 07 acres in Sector 40, Scheme 33, District Malir, Karachi, and got issue offer letter and challan for regularization of 07 acres land which was subsequently mutated in favor of M/S Pink Residence he being the member of Sindh governments land committee issued fraudulently working paper managed the regularization of land in a committee meeting held on 11.9.2014. In addition to the above, he also illegally, fraudulently, and without authority issued the offer letter dated 21.5.2018 and fraudulently got the approval of regularization of land in favor of accused Muhammad Aslam Qureshi in respect of 23-31 acres out of 30-31 acres land in Scheme 33, District Malir Karachi, although Sindh Government Land Committee had already been dissolved by the Government of Sindh. Prima facie, the allegations are severe that could be looked into by the competent authority of respondents.

So far as the stance of the respondents that pensionary benefits could be withheld on account of the allegations leveled against the petitioner, in our view, pensionary benefits cannot be stopped on account of any charges; and, is violative to the law laid down by the Honorable Supreme Court in the case of Haji Muhammad Ismail Memon, PLD 2007 SC 35. Thus, the competent authority of the parent department of the petitioner and the Chief Secretary, Sindh, are liable to release the pensionary amount of the petitioner and pay the pension amount and other ancillary benefits to the petitioner to which he is entitled under the law within two weeks from the date of receipt of this order. The competent authority of the respondent is also directed to recalculate the pensionary benefits of the petitioner and increases accrued thereon the withheld pensionary benefits with effect from 4.10.2019 to date.

In view of the above, this petition stands disposed of with no order as to costs with direction to the competent authority of respondents to look into the matter of the petitioner and take prompt disciplinary action against all delinquent officials who in their lethargic attitude failed and neglected to take disciplinary action against the petitioner within the stipulated time and allowed the petitioner to retire from service in 2019. Such disciplinary proceedings shall be initiated against them forthwith and culminate into its logical conclusion within a reasonable time after providing a meaningful hearing to them.

Let a copy of this order be sent to the Chief Secretary, Government of Sindh, for compliance. Such compliance report be submitted through MIT-II of this court, just after two months from the date of receipt of this order."

4. Mr. Ali Safdar Depar, learned AAG, has resisted this petition and referred to the para wise comments of the respondent and submitted that the pensionary benefits of the petitioner have been withheld on account of pending disciplinary proceedings and the petitioner was issued show-cause notice dated 03.05.2019 due to some illegal advance payments issued by the petitioner to contractors and caused Rs.3,06,80036/- to the government exchequer. Learned AAG pointed out that though the petitioner reached the age of superannuation on 01.01.2020, however, his retirement benefits have been kept in abeyance till the finalization of departmental proceedings pending against him. Learned AAG referred to the West Pakistan Civil Service Pension Rules and submitted that Government reserves the right of recovery from the pension of the government pensioner on account of losses found in judicial or departmental proceedings to have been caused to the government by the negligence, or fraud of such government pensioner during his/her service, provided that such departmental proceedings shall not be instituted after more than a year from the date of retirement of government

pensioner. He also relied upon the case of Government of NWFP v. Muhammad Said Khan, **PLD 1973 SC 514**. He also referred to various clauses of pension rules and submitted that the government also reserves to itself the right to recover from the pension, any sum, which it had suffered by way of flaws while the pensioner remained in service. He prayed for the dismissal of the instant petition, leaving the respondents to take disciplinary action against the petitioner and culminate it to its logical conclusion, even after, he retires from service under the pension rules and initiates the recovery proceedings against him for the losses caused to the government exchequer.

5. Per learned counsel, the pensionary benefits cannot be withheld on account of the pendency of a criminal case and/or departmental proceedings after the lapse of 02 years from the date of retirement. Learned counsel further submitted that if the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement, he shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualifies for pension or gratuity. Learned counsel further submitted that under the law if a government servant, who has been suspended pending an inquiry into his conduct attains the age of superannuation before the completion of the inquiry, the disciplinary proceedings against him shall abate and the government servant shall retire with full pensionary benefits and the period of suspension shall be treated as a period spent on duty. He prayed for allowing the instant petition.

6. Prima facie, the petitioner has a qualifying length of service to his credit and he stood retired on 01.01.2020, however, not a single penny has been paid to the petitioner, which has triggered the cause and hardship to the petitioner to approach this court.

7. In the instant case, the departmental proceedings against the petitioner have not yet been initiated and finalized even after 03 years of his retirement. The respondents have just issued him a show-cause notice dated 03.05.2019 and the fate of that show cause notice is shrouded in the mystery which is a negligent part of the respondent department. Primarily, the departmental proceedings, therefore, have no legal consequence and the subsequent departmental orders could not come in the way of the petitioner to claim pensionary benefits, and prima facie it is the fault and negligence of the respondent department, who failed to initiate the disciplinary proceedings against the petitioner in time and allowed him to retire from government service in 2020; and thereafter waited for the unknown reasons and withheld the pensionary benefits on account of alleged payments to contractors made in the respondent department. Prima facie, these are mere allegations against the petitioner and there is no conviction against the petitioner by the competent court of law, therefore, this court cannot presume that he is guilty or otherwise of the charges leveled against him which are yet to come on record.

8. In the light of the above facts and circumstances of the case, this petition is disposed of with no order as to costs in terms of the ratio of the order dated 14.02.2022 passed in CP No.D-5613/2021. The Chief Secretary Sindh is directed to take prompt disciplinary action against all delinquent officials who in their lethargic attitude failed and neglected to take disciplinary action against the petitioner within the stipulated time and

allowed the petitioner to retire from service in 2020. Such disciplinary proceedings shall be initiated against them forthwith and culminate into its logical conclusion within a reasonable time after providing a meaningful hearing to them.

Let a copy of this order be sent to the Chief Secretary, Government of Sindh, for compliance. Such compliance report be submitted through MIT-II of this court, just after two months from the date of receipt of this order. The MIT-II is directed to seek compliance of the order and submit his report to this Court for appropriate orders.

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