

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

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

## Constitutional Petition No.D-2525 of 2018

**Wahid Baksh Mallah**

Petitioner through : Mr. Imtiaz Mansoor Solangi, advocate.

Respondent 1

through : Mr. Hussain Bohra, AAG

Respondents 2 & 3

through : Mr. Furqan Ali, advocate

Dates of hearing

& order : **27.04.2022**

### **ORDER**

**Adnan-ul-Karim Memon, J.** In principle, this petition is filed for revision and re-fixation of the pension of the petitioner and other ancillary benefits, who stood retired from his service from National Insurance Company Limited (NICL) on 04.06.2002. He claims annual increases in his restored commuted portion of pension (double pension), strictly under the Office Memorandums dated 21.01.2003, 29.02.2008, 16.05.2011 & 11.03.2013, and decisions rendered by the Hon'ble Supreme Court of Pakistan in the case of *Secretary, Government of Pakistan and Finance Department and 269 others v. M. Ismail Tayer and 269 others*, **2014 SCMR 1336**.

2. At the outset, Mr. Furqan Ali, learned counsel for the respondent-NICL has raised a preliminary legal objection about the maintainability of the instant petition on the ground that respondent-NICL has no statutory rules of service, therefore, the constitution petition is not maintainable. In support of his contention, he relied upon the unreported order dated 22.1.2021 passed by the learned Division Bench of this Court in CP No.D-5833/2021. He further submitted that the surrendered portion of the petitioner's pension with effect from 4.6.2017 has already been restored, thus he is not entitled to a gross monthly pension of Rs.85,358/-. Per learned counsel, nothing is left to be more paid to the petitioner. Further submitted that petitioner's earlier petition bearing No.7513/2015 was dismissed and his Civil Appeal No.80-K/2017 was also dismissed by the Hon'ble Supreme Court of Pakistan vide order dated 16.8.2018 He prayed for dismissal of this petition on the aforesaid proposition.

3. Mr. Imtiaz Mansoor Solangi, learned counsel for the petitioner, has refuted the stance of the learned counsel for the respondent-NICL on the question of maintainability of this petition and argued that the aforesaid question was raised by the respondent-NICL before this Court in the earlier round of litigation i.e. in C.P. No. D-7513/2015 which was later on discarded by this Court vide judgment dated 16.08.2018. He continued to submit that the respondent-NICL is a Government-owned and controlled Company, therefore, the instant Petition is maintainable under the law. On merit, his stance is that during the

period of commutation, increases in pension of the pensioners were allowed by all the Federal Government organizations, institutions, and entities, especially keeping in view the Office Memorandums dated 21.01.2003, 29.02.2008, 16.05.2011 & 11.03.2013, and decision rendered by the Hon'ble Supreme Court of Pakistan on the subject issue. Per learned counsel restoration of pension means the pension inclusive of increments granted over the last 15 years from the date of retirement. He next pointed out that respondent-NICL is a Government controlled Company, having its own rules of service; and, the financial directives contained in the aforesaid Office Memorandums issued by the Government of Pakistan from time to time are stricto-sensu applicable in the petitioner's case; that respondent-NICL adopted the same for providing pension to its pensioner employees; however the respondents are not making payment of such increases on a commuted portion of the pension according to the rates admissible to him in the light of decisions rendered by the Hon'ble Supreme Court of Pakistan regarding restoration of commuted portion of pension, compelling the petitioner to approach this Court for redressal of his grievances. He added that the increase has been made in the "pension" and, therefore, the petitioner cannot be deprived of the said increments. He lastly prayed for the direction to the respondent-NICL to clear such arrears of increases accrued during the aforesaid period in favor of the petitioner alongwith double pension under the judgments passed by the honorable Supreme Court of Pakistan as well as office memorandums as discussed supra.

4. Since the issue relates to the enforcement of the judgments of the Hon'ble Supreme Court of Pakistan rendered in the cases of *Federation of Pakistan v. Ghulam Mustafa and others*, **2012 SCMR 1914** and *Secretary Government of Punjab V/S M. Ismail Tayer and others*, **2014 SCMR 1336**, is involved, therefore, this matter can be heard and decided on merit.

5. The controversial points as agitated by the parties, so far as increases on commutation portion of pension is concerned, have already been set at rest by the Honorable Supreme Court in the cases of Federation of Pakistan V/S Ghulam Mustafa and others, 2012 SCMR 1914, and Secretary Government of Punjab V/S M. Ismail Tayer and others, 2014 SCMR 1336. The Hon'ble Supreme Court of Pakistan has held as under:

*"9. In the light of judgments of the Lahore High Court confirmed by the Apex Court and the judgment of the Punjab Services Tribunal, we accept the appeals. The respondents are directed to determine the pension of the appellants from the date of restoration of their commuted pension at the rate at which they were drawing 50% remaining pension. The arrears shall also be paid to them. It is also clarified that the appellants shall not be entitled to claim arrears from the period prior to restoration of their commuted pension."*

6. In the former case the Honorable Supreme Court has held as under:

*"16. Thus, under section 18 of the Act of 1974, a retired Civil Servant is entitled to receive pension as may be prescribed. In case a portion of the pension is commuted for a particular period of time, he surrenders his right to receive full pension in lieu of lump-sum payment received by him and on expiry of the commuted period, his right and entitlement to receive a full pension, as prescribed, is restored and re-vested in him. The restoration of the right to receive a pension in terms of Rule 8.12 of the Rules of 1963, is without any rider and upon re-vesting of such right, the status of such retired Civil Servant in law is brought at par with the other retired Civil Servants, who had not exercised their option of seeking commutation of their pension. Such is the obvious effect of the term "restoration" as used in the Rules in question. In the circumstances, a retired Civil Servant, on expiry of the period of commutation, cannot be discriminated against by being paid less pension, than his colleagues, who had not sought commutation, as there was no valid classification available in law between the two. If the Government were to adopt such a course of action as has been attempted to be done, it would offend against Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. Such right in terms of section 18 of the Act of 1974 would obviously mean the pension, as prescribed by the Rules payable on the date of restoration and would obviously include any*

*increase in pension granted by the Government during the intervening period of commutation, as such, increase is envisaged by the Rules.*

*17. The reliance attempted to be placed by the learned Additional Advocate General, Punjab, in the case, reported as Akram ul Haq Alivi (supra) is misconceived. By way of the said judgment, the law as laid down by this Court in Civil Appeals Nos.1305 to 1327 of 2003, has been reiterated and reproduced in-extenso. The dictum, as laid down is merely that a retired Civil Servant is entitled to the pension as may be prescribed and a decision granting increase in pension has been interpreted by upholding the legal fiction of a net-pension created for the purpose of calculating the increase as granted by the decision under consideration.*

*18. With regards to Civil Servants in the service of the Federation, an attempt was made to press the judgment, reported as Akram ul Haq Alvi (supra) to deprive the said Civil Servants of the increases sanctioned during the commuted period of pension. Such argument was resoundingly repelled by this Court in its judgment, reported as Federation of Pakistan v. Ghulam Mustafa and others (2012 SCMR 1914).*

*19. The afore-said are the detailed reasons of our short Order dated. 31- 3-2014, which is reproduced hereunder: --*

*"For reasons to be recorded later in the detailed judgment; we are persuaded to hold that the interpretation being accorded to Rule 8.1 read with 8.12 of the Punjab Civil Services Pension Rules vide the office memorandum issued by the Government of Punjab dated 22-10-2001 is not only violative of those Rules but also of Article 25 of the Constitution of Islamic Republic of Pakistan. These appeals and petitions are, therefore, dismissed with no orders as to costs."*

7. Per learned counsel for the petitioner, the petitioner stood retired from services of NICL, and his commuted portion of pension was required to be restored after the required period of 15 years, with increases accrued thereon as per office memorandums issued by the Federal Government from time to time alongwith double pension. He further submitted that the subject issue has already been set at rest by the Hon'ble Supreme Court in the aforesaid cases; and, after the judgments of the Honorable Supreme Court, the petitioner became entitled to such increases as discussed supra; that this Court can enforce the fundamental rights of pensioners. He emphasized that the Hon'ble Supreme Court of Pakistan in the aforesaid judgments has categorically ordered to release commutation amount of pensioner, therefore, respondent-NICL cannot be allowed to sit in appeal against the judgments passed by Hon'ble Supreme Court of Pakistan and withhold such increases accrued thereon.

8. Before dilating upon the merits of the case; and, since the issues of commutation and increases thereon, pensionary and allied benefits and its calculation and recalculation are involved in the present proceedings; and, even before taking cognizance of the matter for enforcing the judgments of the Honorable Supreme Court of Pakistan, we at the first instance deem it appropriate to direct the competent authority of respondent-NICL to undertake the exercise of recalculation of the pensionary benefits of the petitioner including commutation of pension and interest accrued thereon, if any, as directed by the Hon'ble Supreme Court of Pakistan in the aforesaid judgments, under rules and regulations as well as office memorandums as discussed supra. The comprehensive report about the entitlement of the petitioner under the ratio of the judgments of the Hon'ble Supreme Court of Pakistan discussed supra, shall be submitted by the respondent-NICL within one (01) month from the receipt of the order of this Court.

9. The hearing of this matter is adjourned to be taken up after one month.

**JUDGE**

**JUDGE**