

IN THE HIGH COURT OF SINDH KARACHI

Before:

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

C.P. No. D-6187 of 2021

Khan Muhammad
Petitioner through : In person

Respondents
Through : Mr. Ali Safdar Depar, AAG along with
Mahesh Additional Secretary, Food Department,
Government of Sindh.

Date of hearing
& order : **11.05.2022**

ORDER

This matter pertains to the pensionary benefits of the petitioner, who stood retired on 04.3.2020 vide office order dated 25.01.2021 and his pensionary benefits have been withheld by the respondent-Food Department on the ground that he was/is involved in an act of corruption and corrupt practices.

2. The petitioner who is present in person has submitted that he has already been acquitted from the Special Case No.22/2014 arising out the Crime No.02/2011 of Police Station ACE Kashmore @ Kandhkot vide judgment dated 21.01.2020 passed by the learned Special Judge Anticorruption (Provincial) Larkana and placed on record photocopy of the judgment to substantiate his claim.

3. Primarily, this petition was disposed of by this Court vide order dated 24.11.2021 with directions to respondent No.2 to release the pensionary and other benefits of the petitioner within one month.

4. Learned AAG has referred to the compliance report filed on behalf of Director Food Government of Sindh and submitted that the pension papers and claim for final payment of GP Fund in respect of the petitioner have already been forwarded to the District Accounts Officer Jacobabad vide letter dated 08.2.2022 to make payment of pension and other retirement benefits to the petitioner. However, learned AAG submitted that the respondent had issued a show-cause notice to the petitioner during his tenure of service vide letter dated 06.11.2014 on the subject issue, and a personal hearing has been given to him vide letter dated 13.04.2022, so far as recovery of Government dues are concerned, which are outstanding against him on account of corruption and corrupt practices.

5. Be that as it may, we are only concerned with the compliance of the order dated 24.11.2021 passed by this Court. Prima facie, the petitioner has a qualifying length of service to his credit and he gave various reasons to claim the interest on the delayed payments on the premise that he retired in 2020, however, in violation of law he has been denied the pensionary benefits even the respondents have kept in abeyance the retirement notification dated 25.01.2021 till date, which has triggered the cause and hardship to the petitioner to approach this court by filing the listed application.

6. We have been informed that the departmental proceedings against the petitioner have not yet been finalized even after two years of his retirement. Prima facie it is the fault and negligence of the respondent department, which 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 lastly kept in abeyance the notification of his retirement and pensionary benefits on account of alleged loss caused to the government exchequer. 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 the petitioner is guilty or otherwise of the charges leveled against him which are yet to come on record. Even otherwise, the petitioner has been acquitted from the alleged charge by the competent court of law vide judgment dated 21.01.2020, thus no adverse inference would be drawn against him at this stage and point in time, however, it is for the respondent department to take appropriate measures so far as the charges of corruption and corrupt practices against the petitioner are concerned.

7. For the aforesaid reasons, 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 the time frame under the law and the ratio of the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Province of Punjab through Conservator of Forests Faisalabad and others v. Javed Iqbal, **2021 SCMR 328**, and allowing the petitioner to retire in 2020; and, they continued to perpetuate the illegalities, despite knowing the fact that petitioner has caused loss to government kitty and now at this stage in point in time they are raising hue and cry that the petitioner is not entitled to pensionary benefits.

8. In this background of the case, the Hon'ble Supreme Court of Pakistan in the case of the Province of Punjab 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 the Pension Act, 1871, and the rules, framed thereunder. Besides that, a government servant, who retired from service qualifying for retirement benefits, pension being a material part of it, does not get the same as a bounty of the state, but as a right acquired after putting in satisfactory service.

The grant of pension cannot be refused arbitrarily and if refused, it has to be under the relevant rules. On the aforesaid proposition, we are fortified with the decisions of the Hon'ble Supreme Court in the case of Federation of Pakistan through General Manager Operations Pakistan Railways, Headquarters Office, Lahore, and others v. Shah Muhammad **2021 SCMR 1249**.

9. In our view, pensionary benefits cannot be stopped on account of any charges; and, are violative of the law laid down by the Honorable Supreme Court in the case of Haji Muhammad Ismail Memon, PLD 2007 SC 35, pensionary benefits of the judges of superior Courts, PLD 2013 SC 829, I.A. Sherwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others, 1991 SCMR 1041.

10. Primarily, the long and unjustified delay in the payment of pension to the pensioner amounts to humiliation to the retiring official and his family, despite the strictures and orders passed by the Honorable Supreme Court of Pakistan in its various pronouncements and simplified guidelines laid down by the Government; the petitions on account of delay persist. Thus, the competent authority of the respondent department is 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.

11. In view of the above, the listed application bearing CMA No.33145 of 2021 is disposed of with no order as to costs with direction to the competent authority/Chief Secretary Government of Sindh 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 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 competent authority of respondents, 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.

J U D G E

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Nadir*