

IN THE HIGH COURT OF SINDH KARACHI

Before:

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

Constitutional Petition No.D-8830 of 2018

(Wahid Khursheed Kunwar v. Employees Old-Age Benefits Institute and 02 others)

Mr. Raj Ali Wahid Kunwar advocate for petitioner
Mr. Ali Asadullah Bullo advocate for EOBI
Mr. Muhammad Nishat Warsi DAG
Mr. Zafar Imam advocate for respondent-FBR

Date of hearing &
Order : **13.05.2022**

ORDER

The petitioner being aggrieved by the action of withholding his pension and other retiral benefits has filed the instant petition praying for a Writ of Mandamus, directing the respondents to pay full pension, gratuity, leave encashment, General Provident Fund, and outstanding salaries of the intervening period i.e. deputation period with EOBI along with interest.

2. At the outset, Mr. Raj Ali Wahid Kanwar learned counsel for the petitioner has submitted that the petitioner stood retired from Government service vide Notification dated 4.7.2019, however, his pensionary benefits have been withheld on account of pendency of criminal cases. Learned counsel, inter alia, contended that the law does not prohibit payment of pension and gratuity to a retired Civil/Government/Public servant against whom criminal proceedings were/are pending until the delinquent employee is found to be guilty of grave misconduct in departmental or judicial proceedings or to have caused pecuniary loss to the Government by misconduct or negligence. He further submitted that a Government servant, who retires 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 in accordance with the relevant rules. Consequently, the respondent-Federal Board of Revenue {FBR} cannot withhold the pension of the petitioner during the pendency of criminal proceedings.

3. Mr. Muhammad Nishat Warsi learned DAG has raised the question of maintainability of the instant petition on the ground that good conduct is an implied condition of every grant of pension. The Government reserves to itself the right of withholding or withdrawing a pension or any part of it if the pensioner is convicted of a serious crime or is guilty of grave misconduct. Per learned DAG, the decision of the Government on any question of withholding or withdrawing the whole or any part of a pension under pension rules shall be final and conclusive and cannot be called into question. He further submitted that the

Government further reserve the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct; or to have caused pecuniary loss to Government by misconduct or negligence, during his service including service rendered on re-employment after retirement.

4. At this stage we asked the learned counsel for the FBR and DAG whether the respondent-FBR has passed any order on the aforesaid analogy and whether the petitioner has been found guilty of grave misconduct through the departmental proceedings during his tenure of service or whether the petitioner has been convicted in the criminal proceedings, they simply said the cases are still pending and departmental proceedings initiated against him during his tenure of service could not be culminated in time and finally abated after his retirement from government service with effect from 30.4.2017 vide notification dated 04.07.2019, in terms of ratio of the order dated 21.07.2020 passed by the Honorable Supreme Court in Civil Petition No.1165-K of 2018.

5. Mr. Ali Asadullah Bullo, advocate for respondent Employees Old-Age Benefits Institute (EOBI) has filed a compliance report of the order dated 07.04.2020 and submitted that petitioner was posted on deputation in EOBI with effect from 17.02.2010 vide notification dated 24.02.2010 and subsequently repatriated to his parent department i.e. FBR with effect from 09.05.2013. He further submitted that during the period of his posting in the office of EOBI his salary with all perks and privileges have been paid to the petitioner from February 2010 to May 2013. In support of his contention, he relied upon copies of the salary slip and notification. However it is made clear that if any outstanding amount with regard to salary of the petitioner during the deputation period must be paid off.

6. Mr. Zafar Imam learned counsel representing the respondent-FBR has raised the question of maintainability on the plea that in terms of Article 212(2) of the Constitution of the Islamic Republic of Pakistan, 1973, this Court has no jurisdiction to deal with the matters of Civil Servants arising out of their terms and conditions of service. In support of his contention, he relied upon the case of *Ali Azhar Khan Baloch and others v. Government of Sindh and others* **2015 SCMR 456**. On merits he submitted that the petitioner is involved in cases of criminal nature based on heinous allegations of mega corruption of billions of rupees and the same are under prosecution before the competent court of law. He further submitted that under Section 13 of the Civil Servants Act 1973, the petitioner is not entitled to retirement benefits on account of the pendency of criminal cases. He next submitted that the abatement of efficiency and disciplinary proceedings does not mean honorable acquittal from criminal proceedings. At this stage, we asked the learned counsel as to how the pensionary benefits of the petitioner can be withheld after the issuance of his retirement notification dated 04.07.2018. On this question, he adopted the viewpoint expressed by the learned DAG and submitted that the pensionary benefits can be withheld till the final adjudication of the criminal cases by the Competent Court of law. He prayed for dismissal of the instant petition.

7. We have heard learned counsel for the parties, and have considered the submissions made on their behalf as well as case law cited on the subject.

8. To address the question of maintainability first, in our view, the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is valuable right vesting in a government servant and denying the pensioner right to receive pension affects the fundamental right of the pensioner under Articles 4, 9, 10-A, 11, 14, 18, 24, 25, 27, 37(f) of the Constitution of the Islamic Republic of Pakistan 1973, and as such the Constitution Petition under Article 199 is maintainable.

9. Having addressed the question of maintainability, the short issue which arises for our consideration is whether the respondent-FBR was/is justified in withholding the pension and full gratuity of the petitioner, on the ground of pending criminal proceedings? And whether in terms of Rule 2307 of General Conditions Governing Pension (C.S.R.351), the respondent-FBR was justified to stop payment of pension to the petitioner.

10. For the sake of convenience, Rule 2307 of General Conditions Governing Pension (C.S.R. 351) is reproduced below:

“2307 [C.S.R. 351]. Right to Withhold or Withdraw Pension. - Future good conduct is an implied condition of every grant of pension. The Governor General reserves to himself the right of withholding or withdrawing a pension or any part of it, if the pensioner be convicted of serious crime or be guilty of grave misconduct.

The decision of the Governor General on any question of withholding or withdrawing the whole or any part of a pension under this Rule shall be final and conclusive.”

11. 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.

12. The Honorable Supreme Court in the case of *Federation of Pakistan through General Manager of Pakistan Railways Vs. Shah Muhammad* **2021 3CMR 1249** has interpreted the Rule 2307 of General Conditions Governing Pension (C.S.R.351), and held that the rules itself provide that in order to get the pension the pensioner has to maintain future good conduct as an implied condition for grant of pension. The two instances have been given in the said rule, which give power to the Government to withhold or withdraw a pension or any part of it i.e. where the pensioner is convicted of a serious crime or be guilty of a grave misconduct. The judgment of Honorable Supreme Court is clear in its terms that in case of conviction pension can be stopped; however in the present case we have been informed that there is no conviction in the field.

13. The Honorable Supreme Court in the case of *The Government of N.W.F.P., through the Secretary to the Government of N.W.F.P., Communications and Works Department, Peshawar v. Mohammad Said Khan and another* (**PLD 1973 Supreme**

Court 514), while considering Rule 1.8 of Pakistan Civil Service Pension Rules, 1963, which to some extent is similar to Rule 2307 (C.S.R-351) *ibid* observed as follows: -

“On the other hand under clause (a) maintenance of good conduct throughout his life is an inflexible obligation of a pensioner so that if he is found guilty of a serious crime or gross misconduct even after his retirement he is liable to suffer a diminution in the amount of his pension, no matter how long it happens after his retirement.”

14. The Honorable Supreme Court has held that for being entitled to pension, a civil servant has to have good conduct throughout his life. This means that the civil servant has to have and maintain good conduct before entering service, during the period of service and even after retiring from service, for being paid pension. This Rule is an exception to the general rule which entitles the civil servant to a pension as of right after having rendered satisfactory qualifying service.

15. The Honorable Supreme Court has interpreted the terms standard of good conduct, which a civil servant was/is required to have for being entitled to payment of pension. The term "good conduct" is not defined in the rules, thus, it seems to have been left to the judgment of the authority, who is entitled to take decision in the matter. However, the said Rule itself has provided two specific instances where the authority reserves to itself the right of withholding or withdrawing a pension or any part of it, i.e., if the pensioner be convicted of a serious crime or be guilty of grave misconduct, thus the ratio of the judgment rendered in the case of *Federation of Pakistan through General Manager of Pakistan Railways* supra wherein the Honorable Supreme Court was dealing with the question of conviction of serious crime. Here the question is altogether is different as petitioner has not been convicted yet, however he is facing the criminal charges on account of corruption and corrupt practices, while working in the department, which are yet to be proved by the competent court of law. However it is made clear that if the department proves the allegations against the petitioner before the competent court of law in the shape of conviction then the ratio of the judgment rendered in the case of *Federation of Pakistan through General Manager of Pakistan Railways* supra will be fully applicable in his case and consequences will follow.

16. It is well settled that the right to pension cannot be taken away by a mere executive fiat or administrative instruction. Pension and gratuity are not mere bounties or given out of generosity by the employer. An employee earns these benefits through his long, continuous, faithful, and unblemished service. The right to receive the pension of a civil/public servant has been held to be covered under the “right to property” and the pensioner could be deprived of the same only by authority of law and that pension does not cease to be property on the mere denial or cancellation of it. Even the character of pension as “property” cannot possibly undergo such mutation at the whim of a particular person or authority.

17. Because of the above facts and circumstances of the case, we hold that the respondent-FBR was/is unjustified in withholding the pension of the petitioner after the petitioner had superannuated on 30.4.2017. Besides the above, this Court vide **order dated 19.09.2018** passed in C.P No.D-4515/2017 disposed of the petition of the petitioner by declaring the inquiry proceedings initiated against the petitioner after his retirement to be

abated and of no legal effect, the respondent-FBR being aggrieved by and dissatisfied with the **order dated 17.09.2018** passed by this Court filed **Civil Petition No.1165-K of 2018** before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 21.07.2020 passed the following order:-

"Disciplinary action was initiated against the respondent and before the conclusion of disciplinary proceedings, the respondent retired from service, hence, the proceedings stood abated. This aspect has been considered by the High Court and has rightly disposed of the petition through the impugned order. No case for interference is made out. This petition is dismissed and leave refused."

18. The Hon'ble Supreme Court in the case of Haji Muhammad Ismail Memon, advocate/complainant; in the matter of (PLD 2007 SC 34) at Paragraph 07 has held that it is a pathetic condition that Government Servants after having served for a considerable long period which they give their blood sweat to the department had to die in a miserable condition on account of non-payment of pension/pensionary benefits, etc, such conduct on their behalf is highly condemnable and cannot be encouraged in any manner and directed 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 and in future any violation of the aforesaid directions shall amount to criminal negligence and dereliction of the duty assigned to them.

19. On the question of disciplinary proceedings after retirement from service, the law has already been settled need no further discussion on our part as the Hon'ble Supreme Court in the case of Abdul Wali V/S WAPDA through its Chairman and others, 2004 SCMR 678, 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. The above principle was reiterated by the Hon'ble Supreme Court in the case of Syed Sajjad Haider Kazmi V/S Director-General (S&GAD) WAPDA and another, 2007 SCMR 1643. The Hon'ble Supreme Court in the case of Deputy Director Food V/S Akhtar Ali, 1997 SCMR 343, held 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. The Hon'ble Supreme Court in the case of Muhammad Zaheer Khan V/S Government of Pakistan through Secretary Establishment and others, 2010 PLC (C.S.) 559, held that the disciplinary proceedings against an employee must be completed before his date of retirement.

20. For the aforesaid reasons, we take exception to the impugned action of the respondent-FBR and are of the considered view that the respondents No.2 and 3 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 2017; 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.

21. In this background of the case, the Hon'ble Supreme Court of Pakistan in the case of the Province of Punjab supra 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**.

22. 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, supra, pensionary benefits of the judges of superior Courts, **PLD 2013 SC 829**, and I.A. Sherwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others, **1991 SCMR 1041**.

23. In view of the above facts and circumstances of the case, this petition is allowed. The competent authority of the respondent-FBR is directed to release the pensionary amount / other ancillary benefits from the date of his retirement, including outstanding salary of the intervening period with effect from the relieving of the petitioner from EOBI to FBR, to which he is entitled under the law within two weeks from the date of receipt of this order.

Let a copy of this order be transmitted to the respondents for compliance.

JUDGE

Shahzad Soomro

JUDGE