

IN THE HIGH COURT OF SINDH KARACHI

Before:

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

C.P. No. D-6781 of 2021

(Azher Saeed Khan and 07 others v. The Administrator, Abandoned Properties Organization (APO) Islamabad and 03 others)

Mr. Imtiaz Ali Solangi, advocate for the petitioners
Mr. Muhammad Nishat Warsi, DAG
Mr. S.M. Shuja Abbas, advocate for respondent No.2.

Date of hearing
& order : **20.05.2022**

ORDER

Through this petition, the petitioners are seeking to leave encashment for up to 30 days as per Rule 36(ii) of Abandoned Properties (Management) Service Rules, 1981 framed by the Board of Trustees of Abandoned Properties Organization (`**APO**`). An excerpt of Rule 36(ii) *ibid* is as under:

“36. Leave

i)

.....

ii)

If due to the exigencies of service, leave is refused, the employee/deputationist shall be entitled to encash leave upto 30 days in a time, on foregoing the title for 30 days leave. If an employee/deputationist is not desirous of availing leave at a time by foregoing the title for 30 days leave, leave salary shall be admissible for the period of encashed leave.”

2. Mr. Imtiaz Ali Solangi, learned counsel for the petitioners, briefed us on the subject elaborately by stating that APO was established under the Abandoned Properties (Management) Act, 1975 vide Resolution dated 16-10-1986 issued by the Ministry of Health (Health Division), Government of Pakistan. "Board" was set up under the said law to frame policies and supervise and manage the affairs of the said organization. For discharge of its functions, the Board was to be guided on questions of policy by the Organization issued by the Federal Government. He asserted that under the said law/ Resolution, the Board was authorized to appoint officers and servants and to engage advisors and consultants as were considered necessary for the proper functioning of the Organization. The manner of selection of such officers and servants and their terms and conditions of service was to be prescribed by the Abandoned Properties (Management) Service Rules, 1981, (though not gazetted), to be approved by the Federal Government, therefore the claim of the Petitioners for enforcement of Rule 36(ii) of Rules 1981 of Abandoned Properties Ordinance in favor of the Petitioners could not be denied. Per learned counsel the act on the part of the respondent-APO via minutes dated 4.6.2021 to the extent para 4.1.11 regarding recovery of the payment of leave encashment amount of Rs.13.264 million is illegal and discriminatory; that the Petitioners being inducted in the respondent-Organization as permanent employees are eligible for all the leave encashment under Policy decision made by the Federal Government as discussed supra and the Petitioners could not be deprived of the benefit of the same; that omission of the respondents is discriminatory; that the respondents are lingering on the matter, which

tantamounts to violation of Articles 4 & 25 of the Constitution. Learned counsel added that the auditor has erroneously objected to its DAC meeting held on 4.6.2021 and directed the APO to recover the paid amount in respect of leave encashment during the period 2011-12 to 2018-19. He emphasized that the notification dated 22.08.1981, whereby the Board of Trustees of APO notified the Abandoned Properties (Management) Service Rules 1981, whereby employees of APO have given Medical Facilities, Gratuity, and Contributory Provident Fund subject to conditions enumerated in Abandoned Properties (Management) Organization Employees Contributory Provident Fund Scheme 1990, and Benevolent Fund/ Group Insurance with certain conditions as enumerated in Rule 32, 33, 34 & 35. Learned counsel also referred to another notification dated 20.12.1980 whereby the finance division has clarified the definition of earning and accumulation of leave as such the petitioners were rightly held entitled to leave encashment in the aforesaid period and the same cannot be recovered under the rule 36(ii) of Rules 1981 of Abandoned Properties Ordinance. At this stage, we asked the learned counsel as to how this petition is maintainable in terms of observation of the Audit Para. He replied to the query and relied upon the notification dated 22.8.1981 and submitted that the observation made by the Departmental Accounts Committee (DAC) to recover the amount so paid based on gross salary and, in the future, it should be based on basic pay is the erroneous decision in terms of Section 36(ii) of Abandoned Properties (Management) Service Rules, 1981.

3. Mr. S.M. Shuja Abbas, learned counsel for respondent No.2, has submitted that the Audit Authorities vide Para 4.1.11 of the Special Audit Report (2019-20) had pointed out that the leave encashment was paid equal to gross pay instead of basic pay. This audit was discussed in the Departmental Accounts Committee (DAC) meeting held on 04.06.2021, wherein the DAC to settle the aforesaid para had considered reported action of APO, i.e. payment of leave encashment of gross pay instead of Leave basic to its employees during 2011-12 to 2018-19, as unauthorized and directed APO to recover the amount of Rs.13.264 million so paid on gross salary and, in future, it should be based on basic pay. He submitted that the Audit authorities vide letter dated 30.09.2006 agreed to the allowances including leave encashment with the remarks "in view of the advice of Law, Justice and Human Rights Division, Para No.20,21 and 22 of the Draft Audit Report on the accounts of Cabinet Division for the year 2004-05 will not be further pursued by Audit". Per learned counsel, the advice of Law, Justice and Human Rights Division vide their communication dated 11.06.2006 opined that BOT has been empowered under section 26 to itself determine terms and conditions of employment, and the allowances were, thus, validly allowed. The BOT in its meeting held on 10.08.2006 restored the payment of these allowances. The Audit also concurred to it vide their letter dated 30.09.2006. He next submitted that APO employees are not civil servants, albeit as per Rule 24 of Abandoned Properties (Management) Service Rules, 1981, Federal Government rules would apply.

4. Mr. Muhammad Nishat Warsi, learned DAG, has adopted the arguments addressed by counsel for respondent No.2.

5. We have heard the learned counsel for the parties and have perused the material available on the record.

6. Primarily, APO is a statutory organization established under the Abandoned Properties (Taking Over and Management) Act, 1975. "Board of Trustees" was set up under the said law to frame policies and supervise and manage the affairs of the said Organization. For discharge of its functions, the Board was to be guided on questions of policy by the Organization issued by the Federal Government. Under the said law, the Board was authorized to appoint officers and servants and to engage advisors and consultants, as were considered necessary for the proper functioning of the Organization. In pursuance of the Act 1975, the Federal Government framed the Abandoned Properties (Taking Over and Management) Rules 1975, and the conditions of service of the Administrator, etc. were determined under Section 3 (2) of the Rules, 1975, which provide that all officers appointed under the Act, shall subject to any special contract to the contrary be governed by the Rules applicable to the grade of officers to which they belong. For convenience sake, the Para No.4.1.11 is reproduced as under:

**"Para No.4.1.11 IRREGULAR AND EXCESS PAYMENT OF LEAVE ENCASHMENT
RS.13.264 MILLION**

The audit pointed out that APO Karachi paid leave encashment @ gross salary instead of basic pay to its employees during 2011-12 to 2018-19 which was otherwise not admissible.

DAC considered that reported action as unauthorized and directed APO to recover the amount so paid on gross salary and, in future, it should be based on basic pay."

7. The employees of the Abandoned Properties Organization are governed under the Abandoned Properties (Management) Act, 1975, and in terms of Section 26, the Board of Trustees is empowered to appoint or employ such officer and servant for the efficient performance of its functions on such terms and conditions as may be determined.

8. In principle, this is a financial matter and there is the observation of DAC vide Para No.4.1.11 discussed supra as such we are not in a position to discard the Audit, Para, for the reason that the Auditor pointed out that APO Karachi had paid leave encashment @ gross salary instead of basic pay to its employees during 2011-12 to 2018-19; and, directed APO to recover the amount so paid on gross salary. Primarily, this is for the competent authority of the respondents to look into the matter in the above perspective by keeping in view Section 26 of the Act, 1975 read with Rule 36(ii) of the Rules, 1981.

9. In view of the facts and circumstances of the case, this petition is disposed of with directions to the competent authority of the respondents to decide whether petitioners are entitled to receive leave encashment for up to 30 days in terms of Rule 36(ii) of the Rules, 1981. The competent authority shall also call respondent No.4 and/or its representative and after providing a meaningful hearing to the petitioners and all concerned, within two weeks and place on record the decision so made on the subject issue through MIT of this Court for our perusal in chambers.

J U D G E

J U D G E