

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**Present:**  
**Mr. Justice Muhammad Iqbal Kalhoro**  
**Mr. Justice Zulfiqar Ali Sangi**

**C.P. No.D-3548 of 2017**

Abdul Aziz Khoso ----- Petitioner

VERSUS

Federation of Pakistan & others ----- Respondents

**Dates of hearing: 03.09.2019, 26.09.2019 and 08.10.2019.**

**Date of order: 16.10.2019**

Petitioner present in person.

Mr. Muhammad Hamayoon Khan, Deputy Attorney General for Pakistan.

Mr. Jhamat Jethanand, advocate for Respondent University.

**ORDER**

**MUHAMMAD IQBAL KALHORO, J:-** Petitioner was appointed chowkidar (BPS-1) in 2003 in Federal College of Arts & Design, Jamshoro, which is currently known as Center of Excellence in Arts & Design (CEAD) Mehran University Engineering & Technology Jamshoro (MUET). Later on he was appointed as driver on 28.06.2006 in the same intuition. By means of this petition he has impugned an office order dated 2.11.2017, whereby he has been awarded major penalty of Compulsory Retirement from Service with effect from 24.4.2017 by the competent authority under Center of Excellence Employees Efficiency & Discipline Rules, 1997.

2. We have heard the petitioner in person and learned counsel representing the Respondent-University and perused the material available on record. Since length of service of the petitioner appointed on 28.06.2006 and compulsory retired on 24.4.2017 was hardly 11 years, we enquired from learned Counsel for university as to how the petitioner was imposed such a penalty when he had no qualifying service for retirement, and therefore was not entitled to retiring benefits. He did not give us a satisfactory reply.

3. Section 13(i) of Sindh Civil Servant Act, 1973 deals with the term 'compulsory retirement', which is a punishment unlike Voluntary Retirement. This provision of law stipulates qualifying service of at least 20 years for a civil servant/public servant to retire. Meaning thereby that a public servant even if he stands guilty of misconduct, he could not be at least retired compulsorily. For inflicting such a punishment which would entitle the civil servant/public servant to

all the retiring benefits he/she shall have at least 20 years of qualifying service. For a ready reference an excerpt of the said provision of law is reproduced herein under:

“(13). **Retirement from service:** A civil servant shall retire from service.

(i) On such date after he has completed (twenty) years of service qualifying for pension or other retirement benefits as the competent authority may, in the public interest, direct:

Provided that no civil servant shall be retired unless he has been informed in writing of the grounds of the action proposed to be taken against him and has been given reasonable opportunity of showing cause against that action.”

“(ii) Where no direction is given under clause (i) on the completion of the (sixty years) of his age.”

4. If above provision of law is read with Articles 161 of Civil Service Regulations (CSR), it will make things further clear to understand on what age a government servant could be compulsory retired.

“161- (a) Except as otherwise provided in this rule the date of compulsory retirement of a Government servant is the date on which he attains the age (55 years). He may be retained in service after the date of compulsory retirement with the previous sanction of Government on public grounds, which must be recorded in writing”

(b) A Government servant in inferior service should be required to retire at the age of 60 years. He may not be retained in service after that age except with the sanction of Government”

5. Relevant to above discussion would be a question that since the petitioner has been compulsory retired, whether he would be entitled to retiring benefits including pension, which otherwise as stated above are granted to a government servant who is visited with such penalty by the competent authority. Following provision of law holds a reply to such question.

6. **Article 251 of Sindh Civil Service Regulations (CSR).**

“1) **Superannuation pension**, which is a pension granted to a Government Servant who retires from Government service at an age which he is by rule entitled or required to retire.

2) **Retiring pension**, which is a pension granted to a Government servant who retires voluntarily, or is required by Government to retire, from Government service after completing a prescribed period of duty and service or duty alone but before reaching the age of superannuation.

3) **Invalid pension**, which is a pension granted to a Government servant who retires from Government service, before reaching the age of superannuation, on account of mental or bodily infirmity.

4) **Special additional pension**, which is a pension granted to a Government servant in addition to a superannuation, retiring, or invalid pension, in consideration of the nature of the duties which he has performed.

5) **Compensation pension**, which is a pension granted to a Government servant who is discharged from Government service, otherwise than on medical certificate and for no fault of his own, before earning a retiring or superannuation pension.

6) **Wound or injury pension**, which is a pension granted to a Government servant wounded or injured while in Government service.

7) **Compassionate pension**, which is a pension granted to a Government servant who is removed from the Government service for misconduct, insolvency, or inefficiency.

8) **Family pension**, which is a pension granted to the family of a deceased Government servant.”

7. A joint reading of above provisions of law leaves indelible impression in mind that pensionable service would mean service which qualifies the government servant to receive pension, and secondly a government servant who retires compulsorily, voluntarily or is required by Government to retire after completing a prescribed period of duty and service or duty alone but, before reaching the age of superannuation would be entitled to pension besides other retiring benefits. In law the service which qualifies the government servant to receive pension is not less than 20 years, whereas service of the petitioner is less than the said qualifying period of service as such he does not appear to be entitled to pension and other retiring benefits. And when he is not entitled to such benefits, he cannot be *retired* compulsorily.

8. No provision of law or any relevant rule of Center of Excellence Employees Efficiency & Discipline Rules, 1997 under which the petitioner has been imposed impugned penalty has been quoted to justify such a punishment to the petitioner. And in view of such legal position, we have decided not to traverse into merits of allegations and inquiry conducted thereon against the petitioner by the university. And in such facts and circumstances, we are disposing of this petition in the terms whereby while setting aside the impugned order remit the matter back to the Competent Authority of Respondent-University to take a fresh decision in the case of petitioner within a period of 01 months from the date of receipt of this order.

**JUDGE**

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