

THE HIGH COURT OF SINDH AT KARACHI

CP No.D-3232 of 2022

Date Order with signature of Judge(s)

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Petitioner: Qurban Ali Kalhoro,
Through Mr. Ghulam Murtaza Korai

Respondents: Syed Yasir Ali, Assistant Attorney General

Mr. Muhammad Imran Shaikh, Assistant
Census Commissioner.

Date of hearing: 14.11.2022

Date of Order: 14.11.2022

ORDER

Muhammad Junaid Ghaffar, J.- Through this petition, the petitioner has sought release of his pensionary benefits withheld by the respondents. Learned counsel for the petitioner has referred to Office Order dated 16.04.2022, whereby the petitioner, upon attaining the age of superannuation w.e.f. 30.11.2020, stands retired and submits that without assigning any reason the retirement / pensionary benefits have been withheld.

2. On the other hand, learned Assistant Attorney General has referred to the comments by placing reliance upon the Civil Service Regulations ("CSR") 351 along with the judgment dated 01.06.2021 passed by the Hon'ble Supreme Court in Civil Appeal No.561 of 2020 (**Federation of Pakistan & Others vs. Shah Mohammad**) [also reported now as **2021 SCMR 1249**] and submits that since the petitioner has been convicted by the Anti-Terrorism Court with death penalty, which stands maintained in Appeal by this court; hence he is not entitled for any such benefits.

3. Heard petitioner's counsel as well as learned Assistant Attorney General and perused the record.

4. In so far as the CSR 351 is concerned, it provides that future good conduct of an employee is an implied condition for every grant of a pension; whereas the Government concerned has the right of withholding or even withdrawing a pension, if the employee is convicted of serious crime or be guilty of grave misconduct. This provision has been

interpreted by the Hon'ble Supreme Court in case as above and it will be advantageous to refer to the relevant findings which reads as under:

"12. Now, it is apparent from the rule quoted above that it provides for an additional consequence on a civil servant being convicted of a serious crime that of withholding or withdrawing of pension or any part of it. Additional consequence is mentioned for the reason that in a disciplinary proceeding with regard to the same incident civil servant is imposed penalty provided by the rules of service and if the incident also constitutes an offence under the law of the land, the civil servant is prosecuted and in case the charge is proved against him, he is convicted and sentenced and imposed fine, as the case may be. Beside these two inflictions, the rule has provided a third infliction that of withholding or withdrawing of pension or any part thereof where the civil servant is convicted of a serious crime, It is not shown by any law that this third infliction is contrary to law rather we find that it is a deliberate rule so as to obtain good conduct of a pensioner, which is an independent ground on which pension or any part of it can be withheld or withdrawn.

13. We now come to, deal with the question whether respondent was convicted of a serious crime. The learned ASC for the respondent did not argue before us that the respondent was not convicted of a serious crime. We have noted that the term "serious crime" is not defined in the rules nor any statute was shown giving specific meaning to this term. In the absence of the definition in the rules itself or in the statute, the Court has to rely upon its ordinary dictionary meaning. In Black's Law Dictionary (Ninth Edition) the term "serious crime" is defined as follow:

Serious crime. 1. see serious offense under OFFENSE (1) 2. See FELONY.

Serious offense. An offense not classified as a petty offense and usually carrying at least a six-month sentence also termed serious crime. Cf. petty offense.

Felony, n. 1. A serious crime usually punishable by imprisonment for more than one year or by death. Examples include burglary, arson, rape, and murder. - Also termed major crime; serious crime.

In Advanced Law Lexicon (2005) the term "serious crime" is defined as follow:

Serious crime. See under 'FELONY'.

Felony: Crime of any kind, - legally graver than misdemeanour. Acts declaring any act or omission to be felony attach to the act or omission all the incidents for the time being attached by common law or other past or future statutes to felonies.

A serious criminal offense for which the penalty is usually more than a year's confinement in a state or federal prison.

A serious crime usually punishable by imprisonment for more than one year or by death. Examples include murder, rape, arson, and burglary. At common law, a felony was an offense for which conviction involved the forfeiture of the defendant's lands or goods, or both, to the Crown. Treason was traditionally included in the term.

14. These definitions of the term "serious crime" have a common feature of being related to and measured by the amount of sentence imposed that of more than six months. In the present case the criminal trial Court convicted the respondent under section 302(c), P.P.C. and sentenced him to suffer R.I. of fourteen (14) years besides other convictions and sentences. In appeal, the High Court modified the conviction and sentence from under section 302(c), P.P.C. to that of section 319, P.P.C. and sentenced the respondent to suffer R.I. of 5 years besides other convictions and sentences. In the Supreme Court, the respondent's criminal appeal was dismissed as infructuous. Thus, the convictions and sentences awarded by the High Court were maintained. The respondent having been convicted and awarded sentence of R.I. of 5 years is thus more than sentence of six months and falls within the ambit of the term "serious crime" as provided in the above quoted Rule 2307 (C.S.R-351) and the respondent's pension was rightly stopped by the authority of appellants.

15. The learned ASC for the respondent has contended that no notice of stoppage of pension was given to the respondent by the appellants. We may note that the rule, as quoted above, does not require giving of any notice but simply states that if the pensioner be convicted of a serious crime his pension can be withheld or withdrawn. We are, however, conscious of a universal principle and as a general rule that notice is required before any adverse action is taken against any person. But we note that the respondent himself knows about his conviction and sentence awarded to him in

the criminal case and the very stoppage of pension was a notice to him that his pension has been stopped on account of his conviction and sentence in a criminal case, to which fact there is no dispute. The respondent has challenged the stoppage of pension to him and the appellants have taken a plea that such stoppage of payment of pension to the respondent is on account of his conviction and sentence in the criminal case. In our view, in such facts and circumstances of the matter, there was no violation of the universal principle of providing opportunity of hearing and no prejudice was caused to the respondent.”

5. From perusal of above findings, it appears that the Hon’ble Supreme Court has interpreted the provision in question and has come to a conclusion that though there are two separate and independent consequences against the civil servant, i.e. civil and criminal proceedings, whereas, besides these two inflictions; the rule has provided a third infliction that of withholding or withdrawing of pension or any part thereof where the civil servant is convicted of a serious crime. It has been further held that it is a deliberate rule so as to obtain good conduct of a pensioner, which is an independent ground on which pension or any part of it can be withheld or withdrawn. It has also been held that it requires good conduct throughout the service as well as even after retirement.

6. The argument of the learned Counsel for the petitioner as to non-issuance of any further notice or initiation of further disciplinary proceedings, we may observe that this aspect has also been attended to by the Hon’ble Supreme Court in the above case by observing that the person convicted himself knows about his conviction and the sentence awarded to him, whereas, the very withholding of his pension pursuant to such conviction is a notice by itself and there is no violation of the universal principle of providing opportunity of hearing and no prejudice was caused to the Petitioner.

7. In view of hereinabove facts and circumstances of the case and the findings of the Hon’ble Supreme Court as above, no further room is left for the petitioner to make out a case for any further indulgence. Accordingly, this petition is hereby dismissed along with pending applications, if any.

JUDGE

JUDGE