

# **IN THE HIGH COURT OF SINDH, KARACHI**

**C. P. No. D-2788 of 2020**

Date

Order with signature of Judge

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

**Petitioner:**

**Muhammad Siddiq Mughal,  
Through Mr. Muhammad Kamran Mirza,  
Advocate.**

**Respondents:**

**Federation of Pakistan & Others,  
Through M/s Ali Asadullah Bhullo, Fahim  
Baloch & Sikandaruddin Khaskheli,  
Advocates.**

**Date of hearing:**

**30.11.2022.**

**Date of Order:**

**30.11.2022.**

## **J U D G M E N T**

**Muhammad Junaid Ghaffar, J:** Through this Petition, the Petitioner seeks a declaration that he is entitled for Old Age Pension under Section 22(2)(ii) of the Employees Old Age Benefits Act, 1976, ("Act")

2. Learned Counsel for the Petitioner submits that Petitioner had worked in Respondent No.3 from 1.1.2007 to 28.2.2017 and thereafter applied for grant of Old Age Pension in terms of the Act; but his request was first turned down by the adjudicating authority through order dated 21.2.2019, whereas, his Appeal has also been dismissed by the Appellate Authority of Respondent No.2 through Judgment dated 15.11.2019. Per learned Counsel, Section 22(2)(ii) of the Act has been interpreted in favour of the employees by the learned Islamabad High Court in Writ Petition No. 41 of 2020 and other connected matters vide Judgment dated 23.12.2020 which has been maintained as Intra Court Appeals of the Respondents were dismissed vide order dated 08.11.2021 and even their Civil Petition No. 6286 of 2021 and other concerned matters have been dismissed by the Hon'ble Supreme Court vide order dated 29.3.2022; hence, the Petitioner is also entitled for the same relief as granted by the learned Islamabad High Court.

3. On the other hand, learned Counsel appearing on behalf of the Respondents has controverted the stance of the Petitioner and submits that the Petitioner is not entitled to any benefit in terms of Section 22(2)(ii) of the Act as he was required to complete 15 years of service for such entitlement in terms of Section 22(i)(b) of the Act. He submits that the present facts of the Petitioner's case are different and therefore, he is not entitled for the relief being claimed.

4. We have heard both the learned Counsel and perused the record. Insofar as the Petitioner is concerned, he admittedly had been employed with Respondent No.3 from 1.1.2007 to 28.2.2017 (for 10 years and 2 months approximately) and to that effect there appears to be no dispute insofar as Respondents are concerned. The Petitioner's claim is that he was born on 10.2.1957 and was entitled for the benefit or concession as provided under Section 22(2)(ii) of the Act. Before proceeding further, it would be advantageous to refer to the relevant provisions of the Act, including the definition of contribution, an insured person and Section 22 of the Act which reads as under: -

**"1. Short title, extent, commencement and application. -**

- (b) **contribution**" means the sum of money payable to the Institution by the employer 3[or by the Federal Government] in respect of an insured person under the provisions of this Act;
- (h) .....
- (i) **"insured person"** means 2[an employee] who is or was in insurable employment;

**22. [Old-Age pension]. - 3[(1) An insured person shall be entitled to a monthly old-age pension at the rate specified in the Schedule:**

Provided that -

- (a) he is over [sixty] years of age, or [fifty-five] years in the case of a woman, and
- (b) contributions in respect of him were 1[paid] for not less than fifteen years:

**(2) If an insured person was on the 1st day of July, 1976, or is on any day thereafter on which this Act becomes applicable to an industry or establishment -**

- (i) over forty years of age, or thirty-five years in the case of a woman, clause (b) of sub-section (1) shall have effect as if for the word "fifteen" therein the word "seven" were substituted; or
- (ii) over forty-five years of age, or forty years in the case of a woman, clause (b) of sub-section (1) shall have effect as if for the word "fifteen" therein the word "five" were substituted.])"

5. From perusal of the aforesaid provision of Section 22 ibid, it appears that an insured person as defined in Section 1(b) shall be entitled to a

monthly old-age pension at the rates specified in the Schedule<sup>1</sup> provided that he is over sixty years of age, or fifty-five years in the case of a woman, and contributions as defined in Section 1(h)(i) in respect of him were paid for not less than *fifteen years*. Simply put, there are two requirements for availing the benefit of old age pension as provided in Section 22 *ibid*; (i) person Petitioner must be 60 years of age; and (ii) contribution must have been paid for at least a minimum period of 15 years. If a person fulfils these two basic requirements, he is entitled for old-age pension. The petitioner as per Respondents case does not fulfil conditions (ii). So what happens if a person has tough attained the age of 60 years; but does not fulfil requirement (ii) regarding contribution for not less than 15 years. The legislature has taken care of this and an exception has been provided as to the period of 15 years of contribution and sub-section 22(1)(b) of the Act has to be read in the manner as provided in Section 22(2)(i) & (ii) of the Act, if the conditions so specified therein are fulfilled. Per sub-section (2) of Section 22 of the Act, if an *insured person* was on the 1st day of July, 1976, i.e. when this Act was promulgated; or is on any day thereafter on which this Act becomes applicable to an industry or establishment (relevant for the present purposes), is over forty years of age, or thirty-five years in the case of a woman, then clause (b) of sub-section (1) of Section 22 shall have effect as if for the word "fifteen" therein the word "seven" were substituted; or is over forty-five years of age, or forty years in the case of a woman, then clause (b) of sub-section (1) shall have effect as if for the word "fifteen" therein the word "five" were substituted. Again simply put, it seems that subject to what has been stated in sub-section (2) of Section 22 *ibid* (i.e. If an insured person was on the 1st day of July, 1976, or is on any day thereafter on which this Act becomes applicable to an industry or establishment -), if an employee is 40 years of age and is a male, his contribution must be paid for a minimum of seven years, whereas, if he is over 45 years of age then a contribution for a minimum of five years has to be paid. Similar would be the position if an employee is a female, except that the age limit is thirty-five and forty years respectively. For the present purposes we may state that it is only clause (ii) which is to be considered, whereas, the petitioner is admittedly a male.

6. Insofar as the Petitioner is concerned, as per record Respondent No. 3, his employer was registered with Respondents No.2 on 1.3.2006, whereas, the Petitioner was employed and registered with Respondent No.2

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<sup>1</sup> (1) The monthly rate of old-age pension or invalidity pension payable to an insured person shall be calculated in accordance with the following formula, namely: -  
Average monthly wages X number of years of insurable employment.

with effect from 1.1.2007. His case is that he fulfils the condition of sub-section (2)(ii) of the Act; hence, entitled for old-age pension. On the other hand, the Respondents stance is that sub-section (2) of Section 22 has to be read in a manner that the date on which the Act has become applicable to an industry or establishment i.e. Respondent No.3 and the date on which the employee is registered shall be the same, and if that is so, only then an employee is entitled for old age pension under Section 22 *ibid*. According to them Petitioner is not entitled for benefit of old-age pension in terms of section 22 *ibid*; however, he is entitled for old-age grant in terms of Section 22A of the Act which has been paid to him. However, this contention of the Respondent does not seem to be correct on two grounds; firstly, though in sub-section (2) of Section 22 of the Act, it has been provided and this is only relevant for the present facts of the case, that if any insured person i.e. the Petitioner, on 1.3.2006 when the Act became applicable upon Respondent No.3; or when it was registered with Respondent No.2, he should have been over 45 years of age. Admittedly, when the Petitioner was registered on 1.1.2007 with the Responders and started paying contribution he was more than 49 years of age as per his date of birth i.e. 10.2.1957. Even if the period between 1.3.2006 and 1.1.2007 is deducted it would not make much of a difference as to the qualifying age of the Petitioner for the purposes of benefit under Section 22 *ibid*. This is for the reason that though it has been provided in sub-section (2) that the crucial date is the date of applicability of the Act upon an establishment or industry; but at the same time it is in relation to the age of the insured person. This, in our considered view, has to be read and understood in this manner and not otherwise as contended by the Respondents. Secondly, it has to be seen that in the Act itself the only condition is that as to when the establishment has been registered or the Act of 1976 has been made applicable and from that date the age of an employee i.e. the insured person has to be counted. Even if the insured person is registered later, it would be of no consequence if otherwise, the age restriction provided in Section 22(2)(i) and (ii) is fulfilled; the benefit of Section 22 *ibid* has to be extended.

7. It may also be relevant to observe that if the stance of the Respondents is accepted as correct, then perhaps, the provision of sub-section (2) would become redundant in respect of those employees who are otherwise unable to complete the mandatory period of 15 years stipulated in Section 22(1)(b). In fact, the legislature has provided an exception to persons / employees who join any establishment at a later age [see sub-section (2)(i)(ii)]

and by reason of such a handicap, would not, otherwise be in a position to complete the period of 15 years as provided in sub-section (1) (b) of Section 22 *ibid*. The legislative intent has to be seen as it is creating an exception in respect of the mandatory period of contribution for at least 15 years as provided in Sub-section (1) (b) of Section 22 of the Act, which in essence is benefiting certain set of insured persons who are unable to meet the threshold as per sub-section (1)(b) of Section 22 *ibid*. Any other interpretation as arrived at by the Respondents themselves; or by way of any circular, would be against the very provision of law and as a consequence thereof, cannot be acted upon. The learned Islamabad High Court has also come to the same conclusion; however, we are not entirely in conformity with the reasoning so assigned by the learned Islamabad High Court; but to the extent that the interpretation of the Respondents is against the law appears to be correct and this is what we hold.

8. In view of hereinabove facts and circumstances of this case, it appears that the impugned orders of the two authorities of Respondents No.2 dated 21.12.209 and 15.11.2019 are against the very mandate of law and are accordingly set aside by holding that the Petitioner is entitled for Old Age pension in terms of Section 22 of the 1976 Act; as he is otherwise qualified in terms of Section 22(2)(ii) of the Act; hence his pension should be paid accordingly. However, if any other relief or grant has been paid to him instead of the old-age pension as reflected from the comments, the same shall be subject to adjustment accordingly.

9. Petition stands allowed in the above terms.

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