

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Irfan Saadat Khan

Mr. Justice Zulfiqar Ahmad Khan

C.P. No.D-1196 of 2020

[Mst. Yasmeen v. Pakistan Telecommunication Company Limited & others]

Date of Hearing : 23.11.2022

Petitioner through : Mr. Ansar H. Zaidi, Advocate alongwith
Mr. Saood Ahmed, Advocate

Respondent No. 1 through : Mr. Zia ul Haq Makhdoom, Advocate.
a/w M/s. Azhar Mehmood, Faisal Aziz
& Muhammad Khan, Advocates and Zia
Ahmed, G.M., H.R, PTCL.

None present for respondent No. 2 & 3

J U D G M E N T

Zulfiqar Ahmad Khan, J.:- The petitioner who is widow of late Aftab Ahmed Bhutto has filed this petition being one of the legal heirs of the deceased, who was originally an employee of erstwhile Pakistan Telegraph & Telephone Department, having joined the service on 28.07.1988 and offered a Voluntary Separation Scheme (“VSS”) on 01.01.2008, depicting his length of service over 19 years as supported by the service book of the deceased, as well as by employer’s own calculation which suggests that the petitioner’s husband had served 20 years of service as per the VSS scheme’s clause (xiv) which provides that while computing qualifying length of service, six months or more are to be rounded up as a full year, therefore, the petitioner was not only eligible for the pension as well as for commutation, which has not been provided, not only so, other benefits like benevolent grant and group insurance claim has also not been honoured, per contents of the memo of the petition.

2. Learned counsel for the petitioner submitted that through a Decision dated 14.11.2016, the respondent No.1 in compliance of order dated 16.05.2016 passed in C.P. No.D-2490/2015 wrongly chose to declare the length of service of the petitioner's husband "as per available record" to only 14 years 7 months and 17 days, and on that basis they chose to withhold pensionary benefits and other claims of the petitioner, and no details of the material which led the said respondent to the forementioned conclusion about the length of service of late Aftab Ahmed Bhutto viz-a-viz change of opinion was confronted with the petitioner, nor has been submitted to this Court, therefore, such calculation is unjust and solely aimed to deprive the petitioner of the pensionary and allied benefits, therefore, in the interest of justice, unless the respondents are able to prove the ground of reducing the service length of the petitioner's husband, the adversarial conclusion drawn by the respondent should be set aside.

3. Learned counsel for the respondent No.1 stated that the instant case has a chequered history. Learned counsel states that VSS option was offered to the petitioner on 01.01.2008 which the petitioner accepted as a sum of Rs. 4,50,000/- was received in his account. Learned counsel next states that earlier Suit No.825 of 2013 for the restoration of pensionary benefits was filed before the Court of VIII Senior Civil Judge South, Karachi, however, the same was returned under Order VII Rule 10 CPC for the want of jurisdiction whereafter the petitioner filed C.P. No.D-2490 of 2015 which was disposed of vide order dated 16.05.2016 passed in bunched C.P. No.D-335 of 2015, wherein, PTCL was directed to consider the case of all the petitioners and decide the same in accordance with law and regulations within a period of 4 months. Learned counsel states that

in compliance of this order, PTCL decided the case of the petitioner's husband too and declined the pension claim on the ground that deceased had only served 14 years 7 months and 17 days. Learned counsel stated that the revised VSS showed qualifying length of service of petitioner's husband as 14 years 7 months and 17 days, therefore, he was not eligible for the pensionary benefits claimed by the petitioner's husband. Learned counsel stated that a complaint was also filed by late Aftab Ahmed Bhutto, which was replied through letter dated 19.06.2008 where he was directed to return the VSS package and to join the PTCL, which offer was not accepted by the deceased. Learned counsel stated that since the petitioner did not qualify for pension, hence he was awarded with a Separation Bonus in the sum of Rs. 4,50,000/-. The petitioner has chosen to file this petition, per learned counsel, once again to press the claim which was settled through the agreement titled VSS Scheme. Learned counsel next states that the petitioner never challenged as to why service of her husband was reduced 14 years 7 months and 17 days at any forum, except through the instant petition, and that too, after delay of more than four years. Learned counsel states that the Hon'ble Supreme Court through the judgment rendered in the case of Mst. Tasneem Fatima & others v. Pakistan Telecommunication Company Limited & others (Civil Appeal No. 2506 of 2016) dismissed all such petitions of the employees who were seeking pensionary benefits, once they had already received separation bonuses. Learned counsel emphasized on para-7 of the said judgment. Learned counsel further stated that on the basis of the said judgment of the Hon'ble Supreme Court, this Court in the case reported as 2020 PLC (CS) 985 also chose to hold that VSS was a binding contract and if

there is a dispute as to the length of service, the same should have been agitated through civil suit rather than under Article 199 of the Constitution. Learned counsel also stated that said judgment of the High Court was upheld by the Hon'ble Supreme Court, as an appeal against it was dismissed. Learned counsel also placed reliance on the judgment reported as 2022 PLC (CS) 481 to show that even in the cases when someone who had a claim of 29 years of service, courts chose to decline the claim of pensionary benefits since such rights were forfeited under VSS scheme.

4. In rebuttal, learned counsel for the petitioner submitted that the revised VSS as alleged by the respondent No.1 is a fake document as it could be seen that the said VSS was never signed or accepted by the petitioner's husband and only an amount of Rs.4,50,000/- was unilaterally transmitted in the account of the petitioner without later's consent. Learned counsel stated that the case of the petitioner is distinguishable to the extent that while disqualifying the petitioner's husband and reducing the length of service from 20 years to 14 years 7 months and 17 days, no opportunity of hearing was given to the petitioner nor he was permitted to adduce any evidence or to confront the official record, to the extent that the Decision dated 14.11.2016 through paragraph VIII states that "certain record showed that deceased only served 14 years 7 months and 17 days", however, no record was shown to the petitioner's family nor made part of this petition. It was stated that petitioner was condemned unheard.

5. Heard the learned counsel for the parties and perused the record. As advised by the learned counsel for the respondent PTCL that the controversy at hand has been laid to rest by the Judgment of

the Hon'ble Supreme Court in Civil Appeal No.2506/2016 titled as Mst. Taseen Fatima & other v. PTCL & others, where per learned counsel, the Hon'ble Supreme Court declined to award pensionary benefits to PTCL employee who opted for VSS as they had instead obtained Separation Bonus, being extra bonus as their length of service was less than 20 years. It would be thus useful to reproduce the relevant paragraph of the said judgment:

“7. If the appellants genuinely believed that their training period should have been counted towards their length of service, and consequently, they were entitled to pension then they were not entitled to receive the Separation Bonus amount. And, even if we presume that the Separation Bonus was paid to them by mistake it was incumbent upon them to have stated this and to have returned/refunded it to the Company before proceeding to claim a pension on the ground that they had served the Company for twenty years or more. Significantly, the appellants at no stage, including before us, have submitted that they were not entitled to receive the Separation Bonus, let alone offering to return it. The appellants' actions are destructive of their claim to pension, because if they had twenty years or more of service they should not have received the Separation Bonus. Therefore, leaving aside the jurisdictional point which forms the basis of the judgments of the learned judge of the High Court and of the learned Judge of the Labour Court the appellants had by their own actions demonstrated that they had no grievance and that they were not entitled to pension.”

6. In our humble view, the reliance on the said judgment of the Hon'ble Supreme Court is misplaced, considering the facts of the case at hand, where the dispute is not with regards adjustment of the training period of the petitioner, rather it is as to the examination of the employee's service book who joined the service on 28.07.1988 and was relieved allegedly under the VSS Scheme on 01.01.2008, making his length of service as 19½ years which is treated as 20 years under the VSS Scheme, which under clause (xiv) provides that while

computing qualifying length of service periods of six months or more are to be rounded up as full years.

7. It is an admitted position that for the purpose of restoration of pensionary benefits, husband of the petitioner filed suit No.825/2013 seeking declaration before the learned 8th Senior Civil Judge South, Karachi, however, plaint thereof was returned under order VII Rule 10 CPC for the want of jurisdiction which resulted petitioner filing of C.P. No.D-2490/2015 before this Court which was disposed of vide order passed on 16.05.2016 in the main C.P. bearing No.D-335/2015 giving directions to the respondent PTCL to decide the cases in accordance with law, rules and regulations within four months. Said order is reproduced hereunder:-

“A joint statement has been filed by Mr. Ansar H. Zaidi counsel for the petitioners. Mr. Ziaul Haq Makhdoom counsel for Respondents, so also Mr. Izhar Muhammad counsel for Respondents Nos. 2 and 3 in C.P. No.D-3993, 3994 and 3995 of 2013, which is taken on record. In the statement it is stated that Respondent No.1/PTCL shall consider the cases of the petitioners and decide the same within four months.

In view of the above statement, Respondent No.1/PTCL is directed to consider the cases of the petitioners and decide the same within a period of four months strictly in accordance with law, rules and regulations.

All these petitions stand disposed of accordingly.”

8. The respondent PTCL was given four months' time to decide the cases, however, the admitted position is that no such decision was rendered in the case of the petitioner who filed a contempt application that was answered by giving a report dated 04.09.2018 stating that the case of the petitioner has been rejected. Full text of the said letter is reproduced hereunder:-

“PAKISTAN TELECOMMUNICATION COMPANY LIMITED

No.VSS-2008/Hearing/2016 Dated 14.11.2016

SUBJECT: DECISION OF APPLICATION OF MR. AFTAB AHMED BHUTTO S/O MUHAMMAD ALI

In compliance of the order dated 16/05/2016 PASSED IN Constitution Petition No. C.P. No.D-2490/2015 by Hon'ble Sindh High Court, Karachi, following order is passed:-

i. Whereas PTCL offered VSS in 2008, amongst its employees with specific terms and conditions, which was purely a voluntary program.

ii. Whereas you opted VSS with your free will and PTCL Management accepted your application for VSS.

iii. Whereas you opted VSS-2008 you filed constitutional petition No. C.P. No.D-2490/2015 before the Hon'ble High Court of Sindh at Karachi, wherein on 16/05/2016 certain orders with regard to resolution of your grievance were passed.

iv. Therefore, in pursuance of the orders mentioned ibid vide notice dated 20/08/2016 you were called for personal hearing to demonstrate as to how you are entitled for the pensionary benefits.

v. Whereas during the course of hearing conducted on 30/08/2016 following points were raised, considered and discussed.

vi. That after opting for VSS-2008, you are now claiming for pension benefits, however there is no policy in PTCL for grant of pension to retired employees having less than 20 years of regular service at their credit.

vii. Your service as per available record amounts to 14 years 7 months 17 days only.

viii. That you were afforded an opportunity vide letter dated 19/06/2008 to return the paid amount and rejoin PTCL if not satisfied with the offered benefits/package, but you declined and decided to keep all the benefits paid under VSS 2008.

ix. You have received all admissible emoluments/monitory benefits as per terms and conditions of VSS and now are claiming pension benefits.

x. That you have signed the waiver form with your free will by accepting the clause that "no claim is pending against PTCL which amounts to a contract between you and PTCL".

xi. That your claim after accepting of VSS is past and closed transaction which is also a time barred case.

xii. That you had got all admissible benefits without any hesitation.

xiii. That as per Policy in vogue, you are not entitled to pension.

xiv. That as per different judgments passed by Superior Courts, the persons/employees who opted for VSS and received the benefits are not entitled for any extra benefits at a belated stage, as VSS amounts to a contract and is binding on the parties.

xv. Whereas you were afforded ample opportunity of hearing to your personal satisfaction.

*As such, the competent authority considered your submissions in the light of the guidelines settled by Hon'ble High Court of Sindh at Karachi. A sympathetic consideration was extended to your submission, policies of the PTCL, judgments passed by Hon'ble Superior Court and the documents submitted by you whereby you have extended waiver of any further rights. As such the competent authority has reached to an irresistible conclusion that your claim is legally unfounded for the obvious reasons of failing to meet the eligibility criterion & waiver of rights, therefore your claim for pensionary benefits is hereby declined in view of the reasons mentioned *ibid*. [underlining is ours]*

9. It is worth pointing out that during this exercise of reducing the service length from the factual period of more than 19½ years to 14 years 7 months and 17 days, no notice was given to the petitioner neither he was confronted, nor any reference has been given in the impugned Decision that what material was considered to reduce the service length from 19 plus years to 14 years 7 months and 17 days. It is also worth observing that in the said Decision, date of appointment of the petitioner is not even mentioned, which fuels fear of unfairness. In the meanwhile, the petitioner's husband passed away, resultantly the present petitioner (wife of the employee) has filed this petition where her sole grievance is that the material which led PTCL to reduce the length of service from 19½ years to 14 years 7 months and 17 days be provided to the petitioner, and in the absence of such material, findings adversal to the petitioner's interest be set

aside by making payment of pensionary benefits as well as benevolent fund and group insurance to the petitioner, as per law, rules and regulations. Candidly when this question was posed to the respondent's counsel as to why no material was produced that led to an adversarial decision, learned counsel stated that all the material has been destroyed over the years on account of changes that took place in the respondent organization which was originally a government department, however, later on transferred in the PTC and eventually emerged as PTCL.

10. We are not convinced with such a stance and fear that the Decision dated 14.11.2016 reducing service length of the petitioner cannot be taken as gospel truth. While this Court is fully aware of the controversy which has been laid to rest by the judgment of the Hon'ble Supreme Court, and the findings given by the learned Division Bench where question as to the qualifying length of service has been considered, but the fact is that the petitioner's plaint in earlier suit No.825/2013 was returned to turn into constitutional petition bearing C.P. No.D-2490/2015, which was decided through order dated 14.11.2016, however, it is alarming that the said Decision of reducing deceased's length of service from over 19½ years to 14 years 7 months and 17 days is not supported by any material and that the Respondent's counsel was inquired as to whether he is in a position to provide this Court with the material leading the said respondent to reduce the service length of petitioner's husband from over 19½ years to 14 years 7 months and 17 days, learned counsel candidly stated that no such documents are available.

11. It is corner stone of all legal proceedings, supported by legal pronouncements that any order adversely affecting a party must be reasonable, fair and just as guaranteed under Article 10-A of the Constitution as well as under Section 24A of the General Clause Act, and admittedly it was on the account of this calculation, that the petitioner's late husband was deprived from the pensionary benefits; and where respondents have not been able to show that the petitioner's husband signed the claimed VSS as no such signed document is available, mere transmission of funds into the petitioner's husband account would not in our humble view constitute a valid contract. A communication available at page 107 made by the petitioner, which seemingly was answered vide letter dated 19.06.2008, but the petitioner has denied having received it. This Court is not convinced that the impugned Decision which adversely affects the petitioner's right of pension, in the absence of any cogent reason and material that led to the reduction of service length of the petitioner's husband could go un-challenged, therefore, we allow this petition and remand the matter back to the respondent No.1 to pass speaking order alongwith cogent reason that lead the said respondent to reduce the qualified service length of over 19½ into 14 years 7 months and 17 days after properly tabulating it and in the process giving opportunity of hearing to the adverse party i.e. the petitioner and let a copy of such order passed be sent to this Court through learned MIT-II in not later than 21 days. This petition alongwith all pending applications are disposed of in the above terms.

Karachi
Dated 21.12.2022

JUDGE

JUDGE