

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No. D-1088 of 2020

[Ahmed versus M/s Oil and Gas Development Company Ltd & others]

Before:

Mr. Justice Mahmood A Khan

Mr. Justice Adnan-ul-Karim Memon

Petitioner : Through Mr. Bisharat Ali Memon advocate
Respondent No.1 : Mr. Muhammad Irfan Chandio advocate
Ms. Shamim Mughal Asst. Attorney General
Mr. Allah Bachayo Soomro, Addl: A.G Sindh
Date of hearing : **05.10.2022**
Date of Decision : **12.10.2022**

ORDER

Through the instant petition, the petitioner has called into question the vires of the impugned order dated 08.09.2020, passed by respondent-Full Bench National Industrial Relations Commission, whereby Appeal bearing No.12(189)/2019-K filed by respondent-OGDCL was allowed and in consequence, thereof directions contained in the order dated 27.06.2019, passed by respondent No.2/Single Member NIRC, as to the release of retirement benefits of the petitioner within 60 days, were expunged and respondent management was directed to investigate the matter first and decide.

2. It is claimed by the petitioner in the memo of the petition that he was initially appointed as Well Attendant temporarily on 01.09.1986 in OGDC based on middle qualification and subsequently based on the satisfactory performance he was made a permanent employee as "Well Attendant" (Class-IV). It is further claimed that at the time of appointment the petitioner had submitted the required academic certificate as well as other certificates with respondent No.1 and they being satisfied appointed the petitioner to the said post since then he started to perform his duties with his hard labor, honestly and sincerely to the utmost satisfaction of his superiors; and, keeping in view the honest and long-standing sincere services, he was promoted as Well Operator, CL-III in BPS-11. It is also claimed that with the intimation and prior permission of respondent No.1 the petitioner had proceeded to perform Hajj on 27.08.2015 and returned on 07.10.2015 and at the back of the petitioner, the respondent-OGDC issued a Show Cause Notice Dated 31.8.2015 along with the statement of allegations knowingly that the petitioner was out of Pakistan and had gone to perform Hajj. It is alleged that that respondent No.1 was bent upon the terminate the long standing service of the petitioner at the verge of his retirement, as such, prior to this the petitioner filed a petition No.4A(370)/2015-K before the Single

Member National Industrial Relations Commission Karachi wherein the respondent No.1 also filed its reply; however, during pendency of petition, petitioner stood retired on attaining the age of superannuation and consequently vide order dated 27.06.2019 petition was disposed of having become infructuous by respondent No.2 (Single Member National industrial Relations Commission); but with directions to respondent No.1-OGDCL to release the retirement benefits to the petitioner within a period 60 days; the said order was challenged by the respondent No.1 before respondent No.3 (Full Bench NIRC), which appeal was allowed vide impugned order dated 08.09.2020 and in result whereof the directions to the extent of releasing the retirement benefits of petitioner within 60 days were expunged and management of respondent was left to investigate the matter as to the alleged fake Matric Certificate of petitioner and then decide whether he was/is entitled for retirement benefits or otherwise.

3 Mr. Bisharat Ali Memon learned counsel for the petitioner argued that impugned order passed by the respondent No.3/Full Bench NIRC is opposed to law, facts, equity and principles of natural justice, whereas the order of the respondent No.2/Single Member NIRC is legal, valid in accordance with law and the same is liable to be maintained; that the learned respondent No.3 did not cite a single reason as to how setting aside the order of the respondent No.2, to the extent of expunging of directions as to the release of retirement benefits of the petitioner within 60 days, is justified despite the fact that petitioner has about 29 years of service; that the malafide of the respondent No.1 was apparent when at the verge of the retirement of the petitioner he was issued Show Cause Notice on the basis of bogus Matric Certificate purportedly submitted by the petitioner with the respondents; that objection of the respondent No.1 has no basis to stand on, as the appointment of the petitioner was based on middle qualification; that the petitioner served about 29 years in Oil and Gas Development Company Limited and on the basis of it, he cannot be deprived to get his retirement benefit; that the respondent No.3 has no jurisdiction to try and adjudicate upon the matter, as the petitioner had become ex-worker of the respondent No.1. Learned counsel contended that dismissal from service with retrospective effect as has been done in the petitioner's case is not warranted in law. He lastly prayed for setting aside of the order passed by respondent No.3/Full Bench NIRC and in consequence whereof requests that the order passed by respondent No.2/Single Member NIRC may be maintained.

4. Mr. Muhammad Irfan Chandio learned counsel for respondent No.1-OGDCL submits that petitioner had submitted documents inclusive of SSC, which was later on sent for verification to the concerned Board and the same was declared as bogus; that after receiving verification report of documents dated 14.7.2015, Show-Cause Notice was issued against the petitioner regarding "dispensing with inquiry"; that it makes no difference whether the petitioner was on leave or present in the office, rather he was

required to submit his reply of Show Cause within seven days but instead of submitting reply, petitioner had filed petition bearing No.4A(370)/2015-K before respondent No.2-Single Member NIRC Karachi, wherein, restraining orders were passed, restraining the respondent No.1 from taking any coercive action against the petitioner on the basis of Show Cause Notice till final disposal of petition; however, inquiry proceedings were directed to be continued; that thereafter disciplinary proceedings were completed by the respondent but final order could not be issued due to restraining order, as mentioned above, and meanwhile petitioner stood retired on 31.05.2019 on attaining the age of superannuation and his petition was disposed of being infructuous with directions to respondent to release his retirement benefits within 60 days; that said order was challenged by the respondent No.1 before respondent No.3-Full Bench NIRC, who after hearing the parties expunged the direction, as to the release of retirement benefits and left at respondent management to investigate the matter first; that thereafter final order was issued on 20.09.2020 whereby petitioner was dismissed from service with effect from 28.05.2019, as inquiry had already been completed, as pointed out above. He prayed that since the petitioner has already been dismissed from service vide office order dated 25.09.2020; therefore, he is not entitled to retirement benefits.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. There is no cavil to the proposition that good conduct is an implied condition of every kind of pension. The government may withhold or withdraw a pension or any part of it if the pensioner is convicted of a serious crime or is found to have been guilty of grave misconduct either during or after the completion of his service. Provided that before any order to this effect is issued, the Pension Sanctioning Authority shall give full opportunity to the pensioner to vindicate his position; and the Government reserves to themselves the right of recovery from the pension of Government pensioner on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence, or fraud of such Government pensioner during his service. Provided that such departmental proceedings shall not be instituted after more than a year from the date of retirement of the Government pensioner; and If the departmental proceedings are not completed within one year after the retirement of the government servant, he may be allowed to draw up to 80% or less of full pension to ensure that government loss in full is recovered from the balance. In the case of judicial proceedings, the judgment of the Court may be awaited. If the proceedings are delayed beyond one year after retirement, a reduced pension may be allowed as in the case of pensioners facing departmental proceedings. However no pension may be granted to a Government servant dismissed or removed for misconduct, corruption, subversive activities, or

inefficiency, but, if he deserves special consideration he may be granted a compassionate allowance not exceeding 2/3rd of the pension which would have been admissible to him had he retired on invalid pension. It is also important to highlight that closure of departmental proceedings initiated in 2015 and culmination into the dismissal from service of the petitioner in 2020, after his superannuation in 2019, is not a new phenomenon, which negates the terms of Fundamental Rules (FR). The plain reading of F.R.54-A is clear that the disciplinary proceedings against the officer abate if the latter attains the age of superannuation. The Rule entitles such an officer to retire with full pensionary benefits and the period of suspension is bound to be treated as a period spent on duty.

7. In the instant case, the departmental proceedings against the petitioner have been culminated/finalized, an excerpt of the findings of the inquiry report is as under:

“6. FINDINGS

After thoroughly going through the case, hearing the accused in person, cross examining him and getting his statements verified through the relevant record, the undersigned has found as under:

- a. *The statements of the accused remained misleading and contradictory in his statements during cross questioning section.*
- b. *In respondent to my first question, he accepts that he had submitted his SSC Certificate at the time of appointment, however, he plead that he was appointed on the basis of “land owner quota”.*
- c. ***Personal Data (Annex-M)** of the accused, **which depicted the accused as “Matriculate”** at the time of appointment.*
- d. *Later on during the cross questioning, the accused pleads that he is “Primary Pass” and didn’t know who had submitted SSC Certificate.*
- e. *Version of the accused employee that he was appointed as Well Operator on the basis of “land owner quota **“is not proved”** as there is no policy of engagement against the land owner quote.*
- f. *The Version of accused regarding not getting any promotion on the basis of SSC Certificate is **found false** as evident, the “Personal Data” oracle generated by HRIS reveals that the accused was promoted from Well Attendant Class-IV to Well Operator Class-III on 07-02-2008 now switchover as Well Operator Class-III(NMG-11)*
- g. *The application duly signed by accused at the time of his first appointment (Annex-N). Police verification roll and notification for appointment are also shows that he is **“Matriculate”**. The basic qualification for the post of Well Attendant/ Well Operator is “Matric Science.”*

*h. The accused, Mr. Ahmed **neither provided any documentary evidence** regarding his bogus SSC certificate **nor denied the charges** as evident from his statement and cross questions. Therefore, the charges mentioned at Sr. No1 to 3 of the statement of allegations regarding submitting a bogus SSC Certificate to the company and committing of an act of misconduct **stand proved.**”*

8. It appears that the petitioner had challenged the Show Cause Notice before respondent No.2-Single Member NIRC wherein restraining orders were passed on 15.10.2015 whereby respondent-OGDCL was restrained from taking any adverse action towards employment of the petitioner based on Show Cause Notice dated 31.08.2015; however, respondents-OGDCL were set at liberty to conduct the inquiry if any. Thereafter inquiry was conducted, findings whereof are reproduced above, however, the final order could not be passed due to restraining order and during the pendency of the petition, filed before respondent No.2, the petitioner stood retired on 31.05.2019 and orders, no dues, as well as clearance certificates, were also issued in this regard; and, then petition filed by the petitioner before respondent No.2 was disposed of having become infructuous with directions to respondent No.1-OGDCL to release the retirement benefits of petitioner vide order dated 27.06.2019. The record further reflects that said order was challenged by respondent No.1 before respondent No.3-Full Bench NIRC, who expunged the said directions and left the respondent management (OGDCL) to investigate the matter first; and, since the inquiry was already completed, therefore, immediately after the impugned order passed by Full Bench NIRC, issued the dismissal order of petitioner; however, w.e.f. 28.05.2019. A perusal of the order dated 27.06.2019 passed by respondent No.2-Single Member NIRC shows that petition was disposed of with the no objection tendered by counsel for respondent-OGDCL.

9. In our opinion, if an employee has not been placed under suspension pending an inquiry, it may be that the authority will have no power to pass an order either dismissing him from service or removing him from service, or retiring him from service retrospectively. Under these circumstances, an order passed in any one of the manners indicated above can be intended to take effect only from the date on which the order is passed. And in the present case, the service of the petitioner has been dispensed with on 20.09.2020 with effect from 28.05.2019, just one year after he retired from service. It is well-settled law that an employee can be dismissed only prospectively and not retrospectively. However, the show cause was indeed issued to the petitioner before his retirement. But a retrospective dismissal order in nature ought not to have been passed as the petitioner had completed the full 29 years of service. In our view, if a retrospective dismissal order is passed, it is severable and it will act only prospectively; besides his performance has not been called into question throughout the tenure of his service; and the question of the element of salary is not disputed by

the respondent-company and they only confined the to the extent of dismissal from service issue in terms of findings of inquiry officer, thus we will not travel to that question and restrict ourself to the extent of the contribution made by the petitioner from his salary and hold him entitled to the said benefits and interest accrued thereon if any.

10. As regards the contention of the learned counsel for the petitioner that employment was not gained by the petitioner by submitting the bogus degree in question, because no academic qualification was required by O.G.D.C.L. for appointing the petitioner, suffice it to say that that the conduct of an employee submitting a fake educational certificate at the time of his employment knowing it will boost his chances for selection, was not entitled to be considered for any relief. However, the petitioner shall only be entitled to the benefits of his contribution deducted from his salary and interest accrued thereon as he has served the respondents for approximately 29 years of actual service.

11. In view of what has been declared above, the captioned petition is disposed of with the direction to the competent authority of respondents to release the contribution so deducted from the salary of the petitioner, and interest accrued thereon as well as ancillary benefits arising thereon, shall be paid to the petitioner. The aforesaid exercise shall be undertaken within two weeks.

12. This petition is disposed of in the above terms.

JUDGE

JUDGE