

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

CPNo.D-4744 of 2021

Abdul Majeed Khan

Petitioner:

Through Mr. Mahmood Habibullah, advocate

Respondent No.1:

Through Mr. Yasir Ahmed Shah, AAG

Respondents No. 2 to 4:

Through Mr. Azhar Elahi, advocate

Date of hearing

& Decision:

18.01.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. Through the instant Petition, the petitioner is seeking directions to the respondent National Bank of Pakistan ('NBP') to pay his retirement benefits i.e. Provident Fund, Gratuity, Leave Encashment, and Pension with effect from 10.07.1995.

2. The relevant facts, in nutshell, are that the petitioner was initially appointed as Typist in the respondent bank on 21.03.1974 and lastly promoted as Grade-III Officer on 01st November 1991, having 21 years of services in his credit. Per the petitioner, he applied for 120 days Ex-Pakistan Leave from 29.01.1995 to 28.05.1995, which was acceded to vide letter dated 23.01.1995 and he left the country on 31.01.1995. According to the petitioner, due to his serious illness, he was not in a position to return and join the service, therefore, vide letter dated 12th August 1997, he had been compulsorily retired from service on 10.07.1997 without completing prescribed and legal formalities, therefore, he is entitled to be paid pensionary benefits.

3. Mr. Mahmood Habibullah, learned counsel for the petitioner, alleged that the petitioner was compulsorily retired from service vide impugned letter dated 12.08.1997 illegally and without any reason and no charge-sheet, show cause or any inquiry was conducted against him. Learned counsel contended that he has been unlawfully retired from service when he was on ex-Pakistan Leave, and

retirement and legal dues have not yet been settled by the respondent bank for which the petitioner approached the respondent Bank, but declined and so also the Golden Handshake Scheme was announced by the respondents but was not offered to the petitioner. He lastly prayed for allowing the instant petition.

4. In rebuttal, learned counsel for NBP contended that the petitioner has approached this Court after 24 years of his vacation of appointment, therefore, this petition is hopelessly time barred and hit the principle of laches as well as NBP Staff Service Rules are non-statutory. Learned counsel alleged that the petitioner was not a retired officer as his appointment was vacated due to his unauthorized absence and the petitioner never submitted his alleged medical certificate. Learned counsel contended that the petitioner has failed to place on record the letter of approval of his ex-Pakistan leave, therefore, his services were vacated on 12.08.1997 on account of unauthorized absence against which he moved representation dated 14.05.2011 which was replied vide letter dated 20.05.2011, whereby the petitioner was advised to adjust his outstanding loan but instead of pursuing the same, the petitioner went in deep slumber and filed this petition. In support of his contentions, he relied upon the case of *Ardeshir Cowasjee v. Karachi Building Control Authority*, **1999 SCMR 2883**. He lastly prayed for the dismissal of this petition.

5. We have heard learned counsel for the parties, and perused the material available on record and case law cited at the bar.

6. The question involved in the present proceedings is whether the petitioner could be forcibly retired from service vide common order dated 12.08.1997 by vacating his appointment order without initiating disciplinary proceedings under the service rules.

7. It appears from the record that the petitioner was appointed as Clerk-cum-typist in the respondent Bank in the year 1974 and earned promotion in Grade III in 1991 and now claims pensionary benefits i.e. Provident Fund, Gratuity, Leave Encashment for 21 years' service, the pension from 10.07.1995. This stance has been refuted by the respondent Bank on the ground that the petitioner has approached this Court after about 24 years of his vacation of appointment order made in the year 1997, thus his case falls within the ambit of the doctrine of

laches. Learned counsel for the respondent Bank has emphasized that the petitioner was not a retired officer/employee of the bank but his appointment was vacated due to his unauthorized absence. Learned counsel also emphasized that the petitioner was not granted any leave to proceed abroad and on his own accord he opted to remain absent with effect from 29.01.1995 without permission. Learned counsel also submitted that he admitted in his appeal for retirement benefits that he left the country for the United States of America due to the issuance of certain threats in Pakistan and failed to inform the Bank compelling the Bank to recall his appointment letter for his unauthorized absence.

8. The petitioner has placed on record a letter dated 20.05.2011 whereby the Vice President, NBP regretted the request of the petitioner for conversion of punishment from the vacation of appointment into retirement without assigning a reason. He submitted that once the appointment letter had been issued then such the appointment letter cannot be vacated after 21 years of service without resorting to legal proceedings under the Service Law of the Bank, however, we confronted him as to how the Bank could have waited for such long period to keep the post vacant, without any intimation as the petitioner left the country in 1995 under certain threats and allegedly fell ill in the United States of America, however, no such record of a grant of permission by the competent authority of the respondent Bank has been placed on record to substantiate the claim on the aforesaid analogy and after the lapse of 24 years he approached this Court on 03.08.2021 to claim his service dues.

9. In view of the above, without touching the merits of the case, no case for the indulgence of this Court under Article 199 of the Constitution is made out. The petition stands dismissed on the point of laches as the alleged cause of action accrued to the petitioner in the year 1997 and he filed the instant petition on 03.08.2021 after about 24 years. However, the petitioner may avail his remedy before the competent authority of the respondent Bank so far as his dues of 21 years' service are concerned, which shall be taken care of if the petitioner is at all entitled to his service dues.

JUDGE

JUDGE