

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

## **Constitutional Petition No.D-7028 of 2018**

(Najmul Kareem and 03 others v. Federation of Pakistan and 03 others)

Mr. Qadir Hussain Khan, advocate for the petitioners

Mr. Yasir Ahmed Shah, Assistant Attorney General

Date of hearing

& decision

: 13.03.2023.

## **ORDER**

Through this petition, the petitioners are seeking directions to the respondent Employees' Old-Age Benefits Institution (EOBI) to release their all pensionary benefits.

2. As per petitioners Nos.1, 3& 4, they served with Kareem Containers (Pvt.) Limited and petitioner No.2 also served in two different companies with effect from 01.07.1976 to 01.11.1988 and their contribution/ share/funds were deposited with EOBI, which amount has not been paid to the petitioners by EOBI on the purported ground that M/S Kareem Containers (Pvt.) Limited disowned the petitioner No.2 as its employee, therefore, his service was not taken into account as insurable employment. As per respondent EOBI, petitioner No.2 has been awarded Old Age Grant (One-time lump sum payment) for 13 years of verified service amounting to Rs.39000/- which he has received.

3. Mr. Qadir Hussain Khan, learned counsel for the petitioners, contended that after the retirement of petitioners from their companies, they approached the EOBI offices for their pensionary benefits, but no heed was paid. Per counsel, vide order dated 26.05.2014 (page 151) the adjudicating authority had directed the Region concerned to consider the employment of the petitioner No.2 with M/S Karim Containers from 01.01.1996 to 19.10.2010, however, nothing has been done compelling the petitioners to approach this court on 04.10.2018 seeking directions to the respondents to release their pensionary benefits.

4. Mr. Yasir Ahmed Shah, AAG, has raised the question of the maintainability of the petition by referring to the para-wise comments filed on behalf of respondents 2, 3 & 4. He submitted that petitioner No.2 namely Muhammad Abdul Kaleem has served in two different establishments i.e. M/S

Shafiq Textile Mills with effect from 1.7.1967 to 8.9.1981 and M/S Metal Containers Pvt. Ltd. from 7.9.1981 to 1.11.1988. As per learned AAG both periods are verified and insurable under Eemployees' Old Age Benefits Institution Act 1976. Learned AAG further pointed out that since the employer of petitioner No.2 refused to recognize the service of petitioner No.2 therefore, the services rendered by him shall not be taken into account as insurable employment, however, he was granted the service benefits amounting to Rs.39000/- for 13 years' service as he lacks 15 years insurable employment, thus he is not entitled to pensionary benefits under section 22 of EOBI Act. So far as the claim of petitioner No.1,3&4 is concerned, they have submitted that they have not approached the EOBI, therefore, in absence of the claim they cannot help out the petitioners. He prayed for the dismissal of the petition in terms of file comments on behalf of respondent EOBI.

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

6. Prima facie, the case of petitioners/legal heirs is tenable for the reason that respondent EOBI has received the contribution of the petitioners from the employers and issued Social Security Registered Cards. The petitioners cannot be nonsuited on the purported plea of the employer; and, it was the duty of the EOBI to ensure pensionary grant of benefits to the petitioners, who have acquired the right to claim pensionary benefits after attaining the required insurable service under the EOBI law.

7. In view of the above, this matter is remanded to the Chairman, EOBI Karachi to adjudicate the case of petitioners and after providing a hearing to all concerned including the petitioners and/or their counsel, their case for pensionary benefits shall be processed within 15 days positively. However, it is made clear that the petitioners shall not be non-suited based on the plea of the employer for the reason discussed supra.

8. This Petition stands disposed of in the above terms. Let a copy of this order be transmitted to the Chairman EOBI for compliance.

**JUDGE**

**JUDGE**

Nadir\*