

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-5634 of 2022

(Dr. Mazhar Ali Jatoi v. Federation of Pakistan and 02 others)

Constitutional Petition No.D-5635 of 2022

(Dr. Habib ur Rehaman v. Federation of Pakistan and 02 others)

Syed Ali Ahmed Zaidi, advocate for the petitioners
Mr. Bashir Ahmed, advocate for respondents No.2 and 3
Mr. Yasir Ahmed Shah, Assistant Attorney General

Date of hearing
& Decision:

07.02.2023.

ORDER

Through this common order, we intend to decide the present petitions as the controversy, and questions raised on behalf of the petitioners, are common. The relief sought by the petitioners through common prayer is as under:

“Declare that the Petitioner is entitled to post-retirement benefits including, but not limited to, pensionary, medical, and other allied benefits from the date of joining the services of the Respondent/ KPT”

2. The case of the petitioner in CP No.D-5634/2022 is that during the subsistence of his service, he was promoted from BPS-18 to BPS-19 vide promotion order dated 14-04-2017 and after attaining the age of superannuation on 31-10-2021, he stood retired from service of Karachi Port Trust (KPT). The Petitioner has averred that he rendered Thirty-Two (32) years of service to the KPT and has been unlawfully deprived of his service/pensionary benefit for the period, he served in KPT on an ad-hoc basis i.e. 1989 till regularization of service in 1995.

3. The petitioner in CP No.D-5635/2022 during his service at KPT earned his promotion as Assistant Traffic Manger in BPS-18 and stood retired from service on attaining the age of superannuation on 14-10-2020. The Petitioner has averred that he has been deprived of pensionary benefits of an ad-hoc period i.e. 1989 till regularization of service in 1995.

4. Syed Ali Ahmed Zaidi, learned counsel for the petitioners, contended that the petitioners being retired employees of the Karachi Port Trust / KPT are entitled to pensionary benefits from the date of joining the services of KPT and

no exception can be taken thereto. Learned counsel submitted that without prejudice to the above, the Petitioners are entitled to the protection of the Fundamental Rules and Supplementary Rules framed by the Federal Government as the KPT has no pension rules and adopted the standing rules of the Federal Government on the subject, therefore, services rendered on adhoc basis shall also count for the purposes pension; that the petitioners having served the Respondents without any complaint and subsequently retiring from service on reaching the age of superannuation have a legitimate expectation to be given their pensionary and other benefits; and, the petitioners cannot be penalized on account of lapses, if any, on part of the Karachi Port Trust, especially since the petitioners during their service were never made aware of any lapses nor were allowed to defend any allegations. The service of the Petitioners with the KPT amounts to a past and closed transaction and the same cannot be agitated to deprive them of their pensionary benefits; that the petitioners even qualified on the strength of Regulation 371-A of the Civil Service Regulations (CSR); that the Petitioners' fundamental rights, guaranteed under Articles 3, 4, 10-A, 14 of the Constitution of Islamic Republic of Pakistan, 1973, have been violated and they have been dealt with in a discriminatory manner by the Respondents. Learned counsel placed reliance on the cases of the Ministry of Finance through Secretary and others v. Syed Afroz Akhtar Rizvi, **2021 SCMR 1546**.

5. On the maintainability of the petition learned counsel has argued that KPT is a government-owned and controlled organization and is not a private entity but is a corporate body established under the statutory law and it has been carrying on essential State Functions. Learned counsel contended that the question of statutory or non-statutory Rules of Service does not arise as the respondent KPT has attempted to violate the law laid down by the Honorable Supreme Court on the subject issue, thus their terms and conditions of the service could not be varied which are protected under KPT Service Rules-2011, which is a statutory dispensation. He next argued the Honorable Supreme Court has already allowed various writ petitions against the respondent KPT and thus the objection raised on behalf of the respondents is of no consideration.

6. Mr. Bashir Ahmed, learned counsel for respondents No.2 and 3, argued that the petitioners have been paid pension as per rules from 12.10.1995 from the date of regularization of their services till their retirement against the Post and not from the date of joining the service on an ad-hoc basis; that the Petitioners are to be dealt according to KPT Act and the rules framed thereunder and thereafter the rules applicable to Civil servants may be made applicable as per Section 79B of KPT Act. The Service under the ad-hoc period will not count for a pension because there were no sanctioned posts in the year 1989; that the

petitioners should expect what is legitimate and admissible under the rules; that the induction of petitioners, their regularization, and continuation in service is very much clear to the petitioners. Nothing is hidden; that CSR 371 A is not an independent rule; that the relationship of Respondent No.1 and the Petitioners is governed by KPT Act. The petitioners have been dealt with according to law; they are being treated according to law; the petitioners were appointed in KPT on the recommendation of the Placement Bureau, a cell established in the Ministry of Communications, hence, the respondents are under the Control of Federal Government under Section 79, 79A, 79B and Section 23 & 24 of KPT Act 1886 and hence they are bound to abide by the lawful orders of the Respondent No.1. The Petitioners have a remedy to approach the respondent No.1 for redressal of their Grievance and has an efficacious remedy by the way of Appeal to Respondent No.1 under Section 23 of KPT Act 1886. Learned counsel placed reliance on the cases of Isra Village Housing Scheme & others v. Province of Sindh and others, **SBLR 2022 Sindh 505**, Muhammad Zaman and others v. Government of Pakistan through Secretary Finance Division (Regulation Wing), Islamabad and others, **2017 SCMR 571**, Secretary, Ministry of Science and Technology and another v. Muhammad Anwar Butt, **2015 SCMR 106**, and Secretary Ministry of Finance, Islamabad and others v. Tayyaba Halim Subhani and others, **2022 SCMR 77**.

7. Upon perusal of the pleadings and after hearing arguments of the learned Counsel for the parties, the question raised in these proceedings is whether the respondent KPT is a statutory entity, having non-statutory rules of service.

8. To address the aforesaid proposition, primarily, Karachi Port Trust Officers Recruitment, Appointment, Seniority, and Promotion Regulations-2011 are statutory rules of service and admittedly the same were framed by the Board of Directors of Karachi Port Trust with the prior approval of the Federal Government, pursuant to Section 22 of the Karachi Port Trust Act, 1886. In the given circumstances, we are fully fortified by the view enunciated by the Hon'ble Supreme Court in para 50 of the judgment delivered in the case of Pakistan Defence Housing Authority vs. Lt. Col. Javed Ahmed (**2013 SCMR 1707**) "that an aggrieved person can invoke constitutional jurisdiction of this Court against a public authority".

9. We have also examined Karachi Port Trust Officers Recruitment, Appointments, Seniority and Promotion Regulations-2011, which shows that the employees of the KPT are not Civil Servants (as defined in Section 2(I)(b) of the Civil Servants Act, 1973) as well as under Section 4 read with Section 2(a) of the

Service Tribunals Act, 1973. Therefore, they cannot file service appeal before the Federal Service Tribunal and the only remedy available to them is under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

10. In view of what has been discussed above, the preliminary objection regarding the maintainability of the petition is overruled and the petitions are held to be maintainable in terms of Article 199 (5) of the Constitution.

11. Having decided the question of maintainability of the petitions, the primordial question involved in the listed petitions is whether petitioners are entitled to have the protection of the previous service rendered on an Adhoc basis in the KPT for fixation and counting of the previous service for pension. It has been urged by the petitioners that this protection is provided under Fundamental Rule 22-A, which is fully applicable in the case of KPT being a Federal Government owned entity.

12. To appreciate the aforesaid proposition, in principle ad-hoc appointment means the appointment of a duly qualified person made otherwise than following the prescribed method of recruitment, in the pending recruitment through a competitive process; and, in the present case appointment of the petitioners was made on an ad-hoc basis in 1989 by the order of the competent authority of KPT, which is approximately six years adhoc period (1989 to 1995), subsequently, the Board of the KPT was pleased to regularize the aforesaid period of the petitioners vide resolution dated 12.10.1995.

13. Respondent KPT is claiming that the ad-hoc period of service of the petitioners could not be counted for pension for the reason that there were no sanctioned posts at the relevant point in time, thus their appointment was not based on codal formalities.

14. The concept of ad-hoc appointments means appointments for special and particular to last for a particular period. An adhoc appointment is made and continued from time to time, does not get automatically regularized. The ad-hoc appointment is temporary and is to be made subject to following the procedure prescribed for such appointment under the recruitment rules, and any appointment made in transgression thereof is an illegal appointment and is void and confers no right on the appointees. There are judgments of the Hon'ble Supreme Court on the subject that if an ad-hoc or temporary employee is continued for a fairly long spell, the authorities must consider his/her case for regularization provided he/she is eligible and qualified according to the rules and his/her service record is satisfactory and his/her appointment does not run counter to the policy of the Government.

15. The concept of Regularization means to make it regular. Once the adhoc /contract services are regularized, the appointment can become substantive (i.e. permanent). Normally the appointments are made in a prescribed manner, but exigencies of work may sometimes call for making appointments on an ad-hoc and/or temporary basis.

16. To go ahead further, a person appointed on a purely adhoc /contractual basis by the Government on the specific express condition that his/her services shall be liable to be terminated at any time without giving any notice or assigning any reason and that the tenure of such appointment is for a limited period and would not have any right to be absorbed in regular cadres and/or to be absorbed permanently. Besides that merely, the length of ad hoc, temporary, and/or contract/casual employment is no ground to regularize the service and to convert it into permanent service and such appointees do not acquire any right enforceable by the Court of law.

17. In the present case, respondent KPT stressed that the initial appointment of the petitioners was not under the law and they did not take action due to political interference, if this is their stance, the question arises as to why they allowed them to continue in service till their retirement. Besides why their ad-hoc service period was regularized by the competent authority of KPT under the Board Resolution, and raising hue and cry at this stage when the petitioners reached the age of superannuation, is of no help to them. Since the aforesaid question cannot be considered by this court after the retirement of the petitioners and we restrict to deciding the question of counting of adhoc service of the petitioner with effect from 1989 to 1995.

18. The Service Regulations of KPT spell out that the qualifying service of an employee shall commence from the date he takes the charge of the post to which he is first appointed either substantively or in a temporary capacity; and, if the appointment is made on adhoc basis is terminable on the appointment of a person on regular basis. The rules further provided that if the post is on contract for a fixed period, the officer has to ask for voluntary retirement before assuming a new post, he will be eligible for pensionary/gratuity benefits as applicable, however, basic pay will be adjusted. Provided further that if the post is permanent, the service rendered in KPT will be considered for pensionary benefits but not for counting seniority, which factum explicitly shows that temporary service, if followed without interruption by substantive appointment in the same or other service cadre or post, the period of that service, could be counted for pensionary benefits.

19. Even otherwise if an employee who, during the period of probationary/ad-hoc service, was eligible to be confirmed against any post, retires from service before being confirmed, shall not, merely because of such retirement be refused confirmation to such post or any benefit accrued therefrom, therefore, the question of non-consideration of the service period from the date of ad-hoc employment till regularization of service for pensionary benefits is misconceived on the part of respondent KPT.

20. Coming to the issue of pension, it is well-settled law that the right to claim a pension is right connected with the tenure of service which under the applicable pension rules has to be served by an employee to make him eligible for a pension. So to claim a pension, minimum qualifying service is the threshold that has to be crossed first which would then entitle an employee to claim the pension.

21. Prima facie, the petitioners have approximately (32) years of service to their credit, which is a qualifying length of service for a superannuation pension. Besides, the adhoc period of the petitioners with effect from 1989 had already been brought on the normal budget by regularizing their previous service in 1995 as discussed supra which entitled them to entire approximately (32) years of service benefits with effect from 1989 to 2020-21(the date of the retirement).

22. To add further, Article 371-A of Civil Service Regulations is clear in its terms that a government servant not employed in a substantive permanent capacity who has rendered more than five years continuous temporary service counts such service for pension or gratuity excluding the broken period of service, if any, rendered previously. Continuous temporary and officiating service of fewer than five years services immediately followed by confirmation shall also count for gratuity or pension, as the case may be.

23. Record reflects that petitioners were appointed in the year 1989 as Trainee Officers in KPT on adhoc by the then Chairman KPT while their adhoc service was regularized in the year 1995 and they continuously served as such and then their adhoc employment was converted into regular service in the year 1995, and therefore, according to Articles 358, 371-A, 423 and 474 (b) of Civil Service Regulations, their previous service on ad-hoc basis with effect from 1989 to 1995 (06 years' service) is countable to their regular service for service/pensionary benefits and other fringe benefits in terms of the ratio of the judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of Secretary, Ministry of Finance, Islamabad and others v. Tayyaba Halim Subhani and others, 2022 SCMR 77, for the reason that the service of the petitioners with effect from 1989

to 1995 were never terminated by the respondents rather they condoned the adhoc period of service by regularizing the said period, thus at this stage they cannot raise hue and cry that their service of the aforesaid period is not a service rendered by them rather their services could be counted from the date of regular appointment, thus argument could have been better if the issue of seniority had been raised. Now the issue involved herein is that the period of 06 years as an ad-hoc appointee could be counted for pensionary benefits along with regular service or otherwise. The petitioners retired from their service in 2020-2021 after they were regularized they too in most, after more than 32 years of service, 06 years of service rendered by the petitioners could not be treated as service, but they were employed against their respective posts for almost for 06 years. As such, the arguments of the learned counsel of KPT in this regard do not hold much force and the employment of the petitioners ought to have been treated as permanent and they have erroneously discarded the aforesaid period from the pensionary benefits on the erroneous analogy which needs to be set at naught by the respondents, therefore, their actions are not only contrary to the Constitutional dictates but also contrary to the principles of policy enshrined in the Constitution which states that there has to be an equal adjustment of right between employer and employees.

24. In view of the foregoing legal position of the case, the petitioners are entitled to claim entire (32) years' aggregate service/pensionary dues by counting their previous service (06 years' service on an ad-hoc basis) to retire / superannuation benefits. Even otherwise under Section 474 (b) of CSR petitioner's case is fully covered under the aforesaid regulation. We are guided by the decisions of the Hon'ble Supreme Court in the cases of Nafees Ahmad V/S Government of Pakistan and others, **2000 SCMR 1864**, Ch. Muhammad Azim V/S The Chief Engineer, Irrigation and others, **1991 SCMR 255**, and Chairman, Central Board of Revenue and others V/S Nawab Khan and others, **2010 S C M R 1399**.

25. Since the petitioner served with the respondents in the year 1989 and his service was regularized in the year 1995, the principle set forth by the Hon'ble Supreme Court of Pakistan in the case of Messrs. State Oil Company Limited V/S Bakht Sidique and others, **2018 SCMR 1181**, is guiding the issue involved in the matter, excerpt whereof is as under:

“3..... However, at this stage, we would like to observe that the employment of the respondents shall be regularized with effect from the date when they approached the learned High Court through the Constitution petition but for their pensionary benefit and other long-term benefits, if any, available under the law, they would be entitled from the date when they have joined the service of the petitioner. All the petitions are accordingly dismissed.”

26. We are not impressed by the submissions of learned counsel for the respondents that the services of six years of the petitioners on an adhoc basis could not be counted for pensionary benefits. In our view, the petitioners are entitled to the benefit of the aforesaid judgment passed by the Hon'ble Supreme Court of Pakistan.

27. In the light of the above facts and circumstances of the case, these petitions are allowed with directions to the competent authority of the respondents to release pensionary benefits and other ancillary benefits of the petitioners forthwith with effect from the date of their superannuation in 2020/2021 by counting their previous service rendered on an ad-hoc basis in terms of the ratio of the judgments passed by the Hon'ble Supreme Court of Pakistan in the cases of *Haji Muhammad Ismail Memon*, **PLD 2007 SC 35**, *Ministry of Finance and others v. Syed Feroz Akhtar Rizvi*, **2021 SCMR 1556**, and *Secretary Ministry of Finance Islamabad and others v. Tayyaba Halim Subhani*, **2020 SCMR 77**.

JUDGE

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