

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 1287 of 2022

(Dr. Mazhar Ali Jatoi v. Federation of Pakistan and 03 others)

Mr. Akbar Sohail, advocate for the petitioner

Mr. Bashir Ahmed, advocate for respondents 2 to 4

Date of hearing

& Order: 15.02.2023

ORDER

Through this Petition, the Petitioner seeks direction to the respondent-Karachi Port Trust (KPT) to release Eid-ul-Adha bonus-2021, amounting to Rs.292, 900/-, inter-alia on the ground he is a retired employee of KPT and was/is entitled to the Eid-ul-Adha bonus-2021; that he was denied the benefit on the premise that he had been placed as an Officer on Special Duty (OSD).

2. Petitioner has averred that Chairman KPT was not competent to place him on special duty (OSD) as the same carried stigma. Petitioner submitted that there is no provision under the KPT Act 1886 and the Rules framed thereunder to place the officer of KPT as OSD. Petitioner added that before taking impugned action he was condemned unheard under Article 10A of the Constitution. He further submitted that respondent KPT had stopped his Eid-ul-Adha bonus for the year 2021 without providing the opportunity for a fair hearing. He further submitted that both the decisions placing him as OSD and the stoppage of the aforesaid bonus are illegal and without lawful authority. Petitioner emphasized that the denial of his fundamental right is also thus he was compelled to file CP.No.D-4417 of 2021 before this court, which was allowed vide order dated 13th August 2021 which reads as under:-

“At this juncture, learned counsel for the respondents No.2 to 5 has relied upon case law reported as 2009 SCMR 1448 and further contends that he was appointed on acting charge. Before taking plea of ‘acting charge’ , it is insisted that first there must be legal justification to remove the proper person from his place (post of grade-19) couple with justification for placing him on OSD when he (petitioner) only has two months towards his retirement which is lacking in instant case. The respondent no.5, before establishing his legal entitlement to hold the post, legally can’t claim any benefit of order/letter of ‘acting charge’ because through which a person, who was not entitled for the post, has been posted in grade 19 in name of acting charge which, too, without any justification. Accordingly, impugned order/ letter dated 09th July 2021 at page 17 is hereby set aside. Petition is allowed and parties shall bear their own cost. With regard to case law relied upon by learned counsel for the respondents, with utmost

respect, on same analogy the judgment which is more applicable is Anita Turab case supra.”

3. Petitioner has submitted that the aforesaid order was assailed before the Honorable Supreme Court in C.P.5297/2021 which was dismissed as infructuous, vide order dated 19.11.2021, an excerpt whereof is as under:-

“2. Though such is the state of law laid down by this Court but at the same time, learned counsel for the petitioners states that as the respondent has retired from service, thus, this petition becomes infructuous. Dismissed as having become infructuous.”

4. The learned counsel for the respondent-KPT has questioned the maintainability of the petition and submitted that the payment of bonuses is based on performance and the petitioner failed to perform his duties during his tenure of service, thus not entitled to bonuses as claimed by him under the KPT Act and the K.P.T. Officers and Servants (Efficiency & Discipline) Rules (“Rules”). He further submitted that the bonus is neither pay nor allowance but it is an ex gratia payment linked with satisfactory performance. Learned counsel also referred to the decision rendered by the Hon’ble Supreme Court of Pakistan in the case of *Government of Khyber Pakhtunkhwa and others v. Intizar Ali and others*, **2022 SCMR 472**, and argued that the factual controversies could not be resolved in the constitutional petition which is the domain of civil court in terms of the ratio of the judgment passed by the Hon’ble Supreme Court of Pakistan in the case of *Fatahyar Pvt. Ltd. v. Commissioner Inland Revenue*, **2021 SCMR 1133**. Learned counsel also relied upon the unreported order dated 03.10.2022 passed by this court in CP No.D-2106/2020 and prayed for the dismissal of the instant petition.

5. Since the petitioner has retired from the service of respondent-KPT on 31.10.2021 as Manager Coordination and no record has been placed whether, on the plea of nonperformance of duty, the petitioner was saddled with the proceedings under the K.P.T. Officers and Servants (Efficiency & Discipline) Rules.

6. The record shows that the petitioner was allowed to retire from service in 2001 without stigma, thus the contention of the respondent-KPT that the petitioner failed to perform his duty during his tenure of service was/is not entitled to the aforesaid bonus, which was purely based on performance in terms of policy decision dated 12.10.2021, cannot be considered to be the only criteria to non-suit the petitioner for his entitlement for his Eid-ul-Adha bonus for the year 2021, therefore, without touching the merits of the case, we refer the matter of the petitioner to the Chairman KPT to hear the petitioner by providing

meaningful hearing and if he is at all entitled to the disbursement of the Eid-ul-Adha bonus for the year 2021, the same be paid to him without discrimination and if he is found not entitled, a speaking order shall be passed.

7. Petition stands disposed of in the above terms.

JUDGE

JUDGE

Nadir/-