

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.

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

C.P. No.D-6397 of 2022

Mohsin Khan & others

Vs.

Sindh Labour Appellate Tribunal (SLAT), Karachi & another

Date of hearing: - 22.02.2023

Date of order:-

Mr. Arslan Wahid, advocate for petitioner
Mr. Shoukat Ali Choudhry, advocate for respondent No.2
Syed Yasir Ali Shah, Assistant Attorney General

ORDER

Muhammad Iqbal Kalhoro, J: - Petitioners were employed as permanent worker with respondent No.2, M/s. National Refinery Limited, an establishment. They were compulsory retired from service prematurely on the ground that their services were no longer required. They served grievance notices to respondent No.2 and thereafter filed grievance application before the Sindh Labour Court No.5, Karachi as the grievance notices were not replied.

2. In the written statement, respondent No.2 claimed that petitioners after promotion to the posts of foreman / supervisor had become part of the Management, Professional and Technical (MPT) Cadre and do not fall any more in the definition of workman. The Labour Court accepted this argument and dismissed their application vide judgment dated 06.04.2022 holding that appellants were not workmen.

3. Petitioners challenged this decision before the Sindh Labour Appellate Tribunal, Karachi, which has rendered the impugned judgment dated 20.09.2022 ordering their reinstatement with 50% back benefits but with a condition of returning all retiring benefits, which they had received at the time of retirement. It is basically these two conditions i.e. return of retirement benefits and 50% back benefits and not 100%, petitioners have challenged in this petition by seeking following reliefs:-

- a. Declare that the condition imposed by the Respondent No.1 as mentioned in para 17 and 17 vide order dated 20.09.2022 is / are completely unjust, illegal, unlawful and against the constitution of Islamic Republic of

Pakistan, while setting aside the same and directing the Respondent No.2 to reinstate the Petitioners with full back benefits without delay.

- b. Declare that the since the condition imposed by the Respondent No.1 in para 16 and 17 are itself of no legal effect, being unjust, unlawful, illegal and unconstitutional, hence the reinstatement with 50% back benefits is also unjust, unlawful and unconstitutional, therefore liable to be set aside forthwith and the petitioners are to be admitted / reinstated in the service without condition, with full back benefits.
- c. Direct the Respondent No.2 to continue the pensionary and medical benefits of the Petitioners without delay, and condition(s) imposed by the Respondent No.2 is / are illegal unlawful and of no legal effect.
- d. Direct the Respondent No.2 to withdraw the notices dated 06.10.2022, as same are unjust and unlawful and the same based on the impugned order dated 20.09.2022 with its condition, which itself is of no legal effect being unjust and unlawful.
- e. Permanently and pending disposal of the main petition, while restraining the Respondent No.2 from retaining / stopping the pensionary and medical benefits, while further directing the Respondent No.2 to reinstate / admit the petitioners on service and issues salaries, and restrain them from taking any coercive action which is against the petitioners lawful right in respect of the Pension and medical benefits.
- f. Grant any other relief deems fit.
- g. Grant cost and special cost"

4. Learned counsel for the petitioners has mainly submitted that findings of the Labour Appellate Tribunal are against evidence available on record and have been made without taking notice of the fact that petitioners' premature compulsory retirement was illegal. He further submits that grant of only 50% back benefits to the petitioners is completely unlawful and without jurisdiction; petitioners are entitled to full back benefits as during the period of compulsory retirement they remained jobless. He further submits that retirement benefits are the vested right of petitioners because they had remained jobless, which shall not be ordered to be returned, and the petitioners may be reinstated in service without condition of return of all the retirement benefits, etc. And that notices issued on 06.10.2022 to the petitioners demanding return of all retirement benefits is illegal and *void ab initio*.

5. His arguments have been opposed by learned counsel for the respondent No.2 and learned AAG.

6. We have heard learned counsel for the parties and perused the material available on record. For ready reference paras-16 & 17 of the impugned order are reproduced as under:-

“16. In view of the above, it is clear that the respondents have wrongfully retired the appellants from service prematurely. Mere acceptance of legal dues/retirement benefits will not estop them from challenging their premature retirement, as after their sudden premature retirement they badly needed money for their and their families sustenance. Accordingly, orders of the labour court dismissing the grievance applications and orders of the

respondents retiring the appellants prematurely are set aside. The respondents are directed to reinstate the appellants, who have not attained the age of retirement, i.e. appellants Mohsin Khan, Abdul Mateen Siddiqui, Syed Muhammad Farooq Naqvi and Tahir Islam in service, subject to returning the retirement benefits within one month, as they cannot avail retirement benefits and regular benefits of the same service together. In case they fail to return the retirement benefits to the respondents within one month, their appeals shall be deemed to have been dismissed.

17. As for their back benefits, the respondents have not denied their claim that after their retirement they were jobless. However, they, having availed benefit of the money received by them on retirement, will not be entitled to full back benefits. They had received Rs.6,953,330/- , Rs.4,024,194/-, Rs.5,996,125/- and Rs.4,920,336/- respectively as pension commutation and provident fund. Besides, they have been receiving their monthly pensions regularly. In such circumstances, they are allowed to 50% back benefits which the respondents are directed to pay them on their reinstatement in service.”

From the arguments of learned counsel for the petitioners and pleadings filed by him here, we have gathered that petitioners intend to retain all the retirement benefits, already received by them, and avail reinstatement in service with full back benefits simultaneously. Learned counsel has however not been able to cite any law generating such proposition, either in fact or law, in favour of the petitioners: reinstatement in service with full back benefits and to retain all the retirement benefits altogether at the same time. Learned Sindh Labour Appellate Tribunal, Karachi, while subjecting reinstatement of petitioners into service to return of all retirement benefits, has given cogent reasons -- they (petitioners) cannot avail retirement benefits and regular benefits of the same service together. Further, the Tribunal, considering the fact that respondent No.2 had not denied their claim that after accepting retirement they had remained jobless, reinstated them into service with 50% back benefits. This observation, we do not find suffering from any illegality and is in fact in line with assertion, propounded by learned counsel for the establishment, noted by this Court, while disposing of a C.P. No.D-4294/2020, that an employee cannot avail retirement benefits and regular benefits of the same service together at the same time.

7. Consequently, we do not find any illegality or perversity in the said reasoning adopted by Sindh Labour Appellate Tribunal in para-16 & 17 of the impugned order holding reinstatement of service of the petitioners subject to condition of returning of retirement benefits by them. The emphasis of learned counsel that petitioners may be reinstated in service, the retirement benefits may be converted into compensation, and they may be allowed to retain the same and further they may be given the full back benefits by respondent No.2 is not tenable. Firstly because under no law such proposition is permissible, and secondly, it does not appeal to the common prudence. A person would

either avail benefits of service, he is rendering in a particular establishment, or he can lay claim on retirement benefits. He cannot ask for nor he would be entitled to both of them to be conferred upon him at the same time. The impugned notices asking the petitioners to return the retirements benefits are in line with the impugned order and do not suffer from any illegality.

8. This being the position, we do not find any illegality, as held above, in the impugned order and finding the petition thus meritless, dismiss it accordingly. However, before parting with this order, we extend time of one month to start from this order for petitioners to comply with impugned order and return the retirement benefits to Respondent No.2 as a condition for the reinstatement with 50% back benefits.

Judge

Judge

Rafiq P.A.