

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui
Justice Ms. Sana Akram Minhas.

High Court Appeal No.123 of 2020

Asadullah Khawaja
Versus
Investment Corporation of Pakistan (ICP)
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Date of hearing: 16.05.2024

Mr. Khalid Mehmood Siddiqui, Advocate for the Appellant.

Mr. Nabeel Kolachi, Advocate for the Respondent.
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Muhammad Shafi Siddiqui, J.- The appellant has filed a suit for declaration and recovery of Rs.28.62 million. The suit was contested by the Respondent Investment Corporation of Pakistan [hereinafter referred as ICP], who filed their written statement. Learned single Judge framed the following seven issues:-

1. *Whether the plaintiff was retired under the Voluntary Retirement Scheme notified vide circular No.32/97 dated 31.10.1997 and is entitled to his retirement benefits on the basis of salary drawn on cutoff date i.e. 30.11.1997? If so, its effect.*
2. *Whether the revision of fixation of salary in scale M-1 by the Federation Government and ICP Board prospectively w.e.f. 6/6/1998 through FD's letter dated 6/6/1998 and Board's 164th Meeting held on 4/8/1998 has any effect on the retirement benefits of the plaintiff? If so, its effect.*
3. *Whether any revision of the salary could be effected retrospectively or otherwise?*
4. *Whether the Plaintiff has been paid all retirement benefits in accordance with law, rules and regulations applicable thereto?*
5. *Whether the Plaintiff has been paid any amount in excess of his legitimate dues? If so what amount?*
6. *Whether the Plaintiff is liable to refund any amount to IDBP?*
7. *To what relief, if any, the parties are entitled?*

2. There was no issue as to suit being barred by time, however, learned single Judge addressed it in terms of para-6 to 8 of the impugned judgment and held the suit within time. The Respondent in this appeal has not raised such point.

3. In respect of the other issues, the evidence was recorded. Appellant examined himself and was subjected to cross-examination, whereas, the Respondent examined its witness Muhammad Naeem Khalid and was cross-examined as explained in para-5 of the impugned judgment.

4. After hearing learned counsel for the parties, the primary issue that came out for the consideration of the appellate court is whether the appellant being a managing director of ICP enjoyed his grade as (M-I). The issue primarily is based on documents and law.

5. For the purposes of establishing the remunerations/terms and conditions of the Chairman, ICP, appellant's counsel has relied upon Section-11(3)(a) of the Banks (Nationalization) Act, 1974 [the Act, 1974]. This Section provides that subject to Sub-section-2 a Bank shall have a Board with the formation of a President and not less than five and more than seven other members including one or more directors whose election by the private shareholders, removal, and other matters shall be governed by the Companies Ordinance, 1984 [as it then was].

6. Sub-section-2 of Section-11 of the Act, 1974 provides that the federal government may, if it deems necessary, appoint a Chairman of the Board in respect of a Bank. Sub-section-3 of Section-11 of the Act, 1974 deals with the appointment of a Chairman, President and

other members of the Board representing federal government with the direct and indirect shareholders.

7. Clause-(a) of Sub-section-3 of Section-11 of the Act, 1974 provides that they shall be appointed by the federal government in consultation with the State Bank of Pakistan for a term of three years, on such terms and conditions as may be fixed in the general meeting of the Bank. It is this part of the provision which is insisted by Mr. Khalid Mehmood Siddiqui that the terms and conditions of the Chairman, President and other Board's members representing federal government is to be fixed by its Board in the general meeting of ICP, which was not given due adherence.

8. On this core issue, we have heard learned counsel and perused the material available on record.

9. The office memorandum of 30.04.1980 clearly demonstrates the contours of the managing director of the ICP and that is grade M-I. This office memorandum issued by the federal government of Pakistan is binding on all entities disclosed therein which include the ICP which restrict the management grades. The Board of the ICP cannot exceed the limit provided to them and they being in exercise of such powers available to them in terms of Sub-section-3 of Section-11 could manage the terms and conditions for three years and that appointment has to be by the federal government in consultation with State Bank. This Sub-section-3 of the Act, 1974 does not give unbridled powers to appoint the Chairman, President and other board members to presume as they deem fit and proper.

10. Section-12(1)(d) of Investment Corporation of Pakistan Ordinance, 1966 [ICP Ordinance, 1966] enables the federal

government to appoint the Chairman, President and the Board's members. The terms and conditions were to be decided by the federal government by way of Section-14(1) of the ibid Ordinance. This fact may have lost its sight. In 148th meeting of the Board where the privileges of the previous managing director was allowed pursuant to memorandum 50 of 1995 dated 24.04.1995 whereby last pay was held to be what MD was drawing with ICP. Appellant Asadullah Khawaja had himself chaired and signed the said meeting. The law applicable at that point in time was ICP Ordinance, 1966 particularly Section-12(1)(d) and Section-14 thereof.

11. The previous managing directors such as M.W. Memon, Matiur Rehman and M.B Abbasi were all dealt with in the above statutory frame as explained above. In the disputed general meeting which was held on 08.10.1997, the Chairman was the appellant and only he proposed the terms and conditions of the appointment under some misconception. Even though it was not on the agenda, a note was put up under the head "Any other matter" and chairman conceived that since terms and conditions were not settled/determined, so fresh terms/conditions were placed. Surprisingly on 08.10.1997, the chairman proposed terms and conditions and secured approval notwithstanding application of ICP Ordinance, 1966.

12. The record further shows that the meeting was held on 04.08.1998 and a decision was made which was accepted by the managing director whereby his salary was revised which was Rs.19,899/-.

13. In the meeting of 9th March, 2000 the request of the appellant for Voluntary Retirement Scheme [VRS] was accepted. The minutes of

the meeting held on 29.04.2000 also disclosed and as accepted by the appellant his salary as Rs.19,899/-.

14. There is no denial in the evidence/cross-examination that the general notification of the Ministry of Finance was accepted and that the memo No.50 of 1995 which was in respect of terms and conditions of appellant and was placed in Board's meeting. Although it was the applicable law as referred above, but in last portion of the evidence of the cross-examination of the Respondent's witness it has been admitted that managing director was appointed by the government, his salary and terms and conditions were fixed by the government and that the appointment was for five years. The appellant availed VRS on such understanding. The appellant also admitted reduction of his salary to Rs.19,143/-.

15. Record reflects that the appointment of appellant as managing director was made on 23.02.1995 by the government of Pakistan and the applicable law was ICP Ordinance, 1966. Since the appointment was made in pursuance of ICP Ordinance, 1966, therefore, the governing law, as of now, could only have prospective effect, unless the specific law in this regard is expressed¹.

16. Since the appointment terms and conditions of the appellant was by the federal government, his terms and conditions could only be determined by the federal government. Appointment under the Banks (Nationalization) Act, 1974 (amendment) 1997 Act is to apply only on new appointments, made in pursuance of and in accordance with the criteria laid down in the amendment act. The appellant on

¹ PLD 2016 SC 398 [Zila Council Jehlum through District Coordination Officer v. M/s. Pakistan Tobacco Company Limited and others].

its own acceptance is also stopped from seeking such privileges and the doctrine of promissory estoppel would also come in the way².

17. With this understanding of law, the appellant has not made out a case. The appeal as such is dismissed.

Dated: - 31.05.2024

JUDGE

JUDGE

Ayaz Gul

² 2015 CLC 1640 [Mst. Alia Riaz v. Government of Punjab and others].