

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-5614 of 2023

(Akbar Ali Soomro v Federation of Pakistan & others)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul_Karim Memon

Date of hearing and judgment: 22.01.2025

Ghulam Sarwar Candio advocate for the petitioner.

Mr. Jffar Hussain advocate for Respondents Pakistan Railway.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: Through this constitution petition, the petitioner has prayed as under:

- 1. To hold that the letter dated 07.10.2020 revising the petitioner's salary for the period from 1990 to 2019 after 25 years is without lawful authority and against the spirit of the order dated 12.04.1995 passed by Sindh Labor Court No.VI Hyderabad and set aside the same.*
- 2. To direct respondents No. 2 and 3 from further deduction/recovery from the legal dues/benefits of the petitioner and refund the amount already deducted from his payment.*

2. It is inter alia contended by learned counsel for the petitioner that the petitioner after completing all the codal formalities was selected for the post of Assistant Station Master (ASM) in Pakistan Railways in the year 1989 and was sent on mandatory training at Walton Training School Lahore. He has further submitted that after completing the training he was not posted, and he being aggrieved by the decision had sent a grievance notice to the respondent Railways authorities; since the grievance notice sent by the petitioner was not replied to, he filed the grievance petition under section 25-A of the Industrial Relations Ordinance, 1969 (IRO) before the learned Sindh Labor Court VI, Hyderabad. He next contended that in pursuance of the order dated 12.04.1995, respondent No.3 reinstated the petitioner and others in service. He added that the petitioner's service period from 19.0.1991 to 14.04.1995 was confirmed by the Sindh Labor Court and his pay was fixed accordingly and he received salary without objection since 1996. He argues that the salary paid cannot be withdrawn. He lastly prayed for allowing the instant petition.

3. Mr. Jaffar Hussain advocate for respondent-Pakistan Railway has refuted the claim of the petitioner and submitted that the Petitioner was reinstated without back benefits. As per learned counsel, the petitioner knew of the EOL period but did not challenge the notice within the time limit. He argued that the Petitioner admitted reinstatement without back

benefits in 1995 alongside other applicants, receiving regular salaries and increments. He further submitted that the petitioner's premature retirement application was reviewed and due to staff shortage and the position being essential, it was denied and kept on file. The petitioner continues to receive full regular salary without deductions for premature retirement. However, deductions for G.P.F, B.F, and Income Tax are still being made from the regular salary. He submitted that the petitioner's pay was revised to BS-13. He added that the Petitioner could have appealed to the FST but chose not to, making this current petition inadmissible. He lastly prayed for the dismissal of the instant petition.

4. We have heard learned counsel for the parties and have perused the material available on record with their assistance and case law cited at the bar.

5. Several applicants including the petitioner were initially employed by the respondent-Pakistan Railways in various roles (ASM, RTCR, RCC) between 1987 and 1989. They were subsequently removed from their positions without explanation, despite submitting grievance notices. These applicants filed grievances applications under Section 25-A of the IRO 1969 before the Sindh Labour Court (SLC), challenging their removal. Respondent admitted recruitment and training of applicants but stated they were placed on a waiting list due to lack of vacancies. The petitioner subsequently submitted a statement renouncing benefits in exchange for reinstatement and posting orders. The respondent's counsel confirmed receipt of the statements and confirmed that the applicants had agreed not to claim back benefits if reinstated and posted as directed. The learned labor court allowed the grievance applications with modified service continuity, which order remained in the field.

6. The eligibility for increments during the period of E.O.L. (Extra Ordinary Leave) for an employee reinstated without back benefits and continuity of service is a question to be determined.

7. The respondent claims that the petitioners were recruited as signaller Gr-1 in BS-06 on 11.07.1990 and placed on a waiting list on 19.03.1991. He was later reinstated in service on 15.04.1995 following a successful court appeal. The court's orders deemed the employee's period from 19.03.1991 to 14.04.1995 as EOL, as per office letter No. 220-E/178/RCCT/Vol-1/P-1 dated 15.2.1996. The petitioner was reinstated on 15.04.1995. The petitioner applied for premature retirement w.e.f 01.01.2021. However the respondents while revising his pay opined that the petitioner was granted annual increments during EOL, which is not

permissible. It cannot be ignored that once he applied for premature retirement and the annual increment received by the petitioner during the intervening period when his service was reinstated with continuity of service the period treated as EOL was an erroneous decision as he continued to serve in terms of order passed by the learned SLC, as such is pay ought not to have been revised based on the aforesaid analogy. On the aforesaid proposition, reliance can be placed on the case of *Shams ur Rehman v Military Accountant General Rawalpindi and another* **2020 SCMR 188**.

8. The reinstatement order explicitly states that the petitioner is reinstated without back benefits and continuity of service, however, it does not suggest that the period of E.O.L. is not to be considered actual service for increment eligibility. So far as recovery of amount is concerned upon premature retirement and if the amount so received was an overpayment of salary or pension due to an error or miscalculation, the employer may have the right to recover it. However, the recoverability can be influenced by factors like the length of time since the overpayment, the amount involved, and the employer's internal policies. If the amount was a bonus or incentive that was not rightfully earned or was subject to specific conditions, the employer may have the right to recover it. But in the present case, the petitioner was reinstated in service in the year 1995 without back benefits however with the continuity of service and the respondent treated the period from 19.03.1991 to 14.04.1995 as EOL, this opinion is against the order passed by the SLC and now it cannot be recovered from the pension of the petitioner if applied premature retirement.

9. Article 9 of the Constitution guarantees the right to life, liberty, and protection of the law. This right encompasses all aspects of human existence, including "amenities and facilities" necessary for a dignified life. The right to life, liberty, and security of person, including the right to work, just conditions of employment, and protection against unemployment. The Supreme Court in *Shahla Zia v. WAPDA* (PLD 1994 SC 693), held that the right to accrued pension is an integral part of a retired person's "lifeline" for sustenance, and its denial without lawful justification amounts to a violation of the right to life.

10. In the case of *Haji Muhammad Ismail Memon* (PLD 2007 SC 35), this Court observed in paragraph 07 that it is a pathetic condition that Government servants, after having served for a considerable long period during which they give their blood and sweat to the department, had to die

in a miserable condition on account of nonpayment of pension/pensionary benefits, etc. Thus, everyone who is responsible in any manner for delaying the case of such retired officers/officials or widows or orphan children for the recovery of pension/gratuity and G.P. Fund has to be penalized. In the end, this Court issued strict directions that all the Government Departments, Agencies, and Officers deployed to serve the general public within the limit of the Constitution as well as by the law shall not cause unnecessary hurdles or delays in finalizing the payment of pensionary/retirement benefits cases in future and violation of these directions shall amount to criminal negligence and dereliction of the duty assigned to them.

11. The payment of pensionary benefits are protected under the law, rules and regulations even in the private sector, where the scheme of pension in vogue is according to the organizational/management policy, so in all fairness, where the pension is payable, it is a vested right and not charity, alms or donation by the employer but a compensation of services rendered assiduously by giving blood, sweat, toil, and tears.

12. In view of the above facts and circumstances of the case, the impugned order is deemed incorrect on the premise that the same cannot be revised after retirement of the petitioner if any as such this petition is disposed of accordingly.

JUDGE

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