

THE HIGH COURT OF SINDH, KARACHI

Present:

Justice Mohammad Karim Khan Agha
Justice Nisar Ahmed Bhanbhro

CP No.D-6685 of 2022

[Mohammad Khan Naich v. Federation of Pakistan and others]

Petitioner : Mohammad Khan Naich through Syed
Ali Ahmed Zaidi, Advocate

Respondents No.1 : through Ms. Wajiha M. Mehdi, AAG

Respondents No.2&3 : through Mr. Bashir Ahmed, advocate

Dates of hearing : 06-03-2025

Date of decision : 12-03-2025

J U D G M E N T

Mohammad Karim Khan Agha, J. - Through this petition, the petitioner prays for the following reliefs:

- i. *Declare that the order dated 10.09.2021 issued by the respondent No.3 is without jurisdiction, arbitrary, contrary to law and as such set aside the same;*
- ii. *Declare that the petitioner's entitlement must be assessed in accordance with Fundamental Rules and Supplementary Rules framed by the Federal Government;*
- iii. *As a consequence of the above, declare that the petitioner is entitled to pensionary benefits and allied benefits from the date of joining service i.e. 04.07.1989.*
- iv. *As a consequence of the above, declare that the respondents must release the entitlement of the petitioner in accordance with the Fundamental Rules and Supplementary Rules framed by the Federal Government.*
- v. *Grant an injunction restraining the respondents No.2 and 3(and/ or persons acting under or through them) from evicting the petitioner from the official quarters/ accommodation till release till final determination of the instant petition.*
- vi. *Suspend in perpetuity the impugned order/ letter dated 10.09.2021 issued by the respondent No.3 as the same is arbitrary, without jurisdiction and malafide.*

vii. *Any other relief and/or interim relief which this court deems fit and proper under the circumstances especially considering the petitioners have retired from service.*

2. Succinctly, the facts of the case are that the Petitioner was appointed as Assistant Electrical Engineer in BPS-17 in KPT on Adhoc basis on 04-07-1989 and his service was regularized in BS-17 vide Letter dated 13-11-1995 issued by KPT Mech & Elect Department; that during service, the petitioner was promoted in BPS-18 on 08-04-2011 w.e.f. from 04-02-2011, which was confirmed vide letter dated 08-04-2011 issued by the Manager Human Resources of the KPT; that on attaining the age of superannuation, he was retired from service on 01-02-2020 but pensionary benefits were not released. As such, he filed C.P.No.D-3930/2020 before this Court, which was by consent disposed of vide order dated 10.12.2020, wherein it was ordered that post-retirement benefits of the petitioner shall be settled by KPT strictly in accordance with law and relevant Rules/Regulations/Policy. However, compliance of such order was not made by the Respondents/KPT, hence petitioner filed contempt application. On 11.08.2021 this Court directed to Chairman KPT to hear the petitioner and after adjudication with regard to pensionary benefits shall pass order and submit report. In pursuance of it, the Chairman KPT/respondent No.3 in violation of laws passed order dated 10.09.2021 that petitioner was not entitled to pensionary benefits prior to 12.10.1995, such report was submitted before this Court. After going through it, this Court vide order dated 08.10.2021 directed the competent authority to complete the entire exercise and settle the service dues of the petitioner within 60 days from the date of the order. Respondents assailed such order before Apex Court by preferring CPLA No. 5919/2021, however, the same was disposed of vide order dated 02.02.2022 with observation that the petitioner was left at liberty to pursue his remedy in accordance with law. Thereafter, petitioner and two others filed C.P.No.D-1028/2022, which was disposed of by this Court while observing inter-alia that petitioner shall seek relief to the extent of order dated 10.09.2021 passed subsequent to the observations of Supreme Court vide order dated 02.02.2022 passed in CPLA No.5919/2021. Hence the petitioner has filed instant petition.

3. The learned counsel for the petitioner contended that the petitioner being retired employee of the Karachi Port Trust (KPT) is entitled to pensionary benefits from the date of joining the service of KPT and no exception can be taken thereto; that the Petitioner is entitled to the protection of the Fundamental Rules and Supplementary Rules framed by the Federal Government as the KPT has no pension rules and adopts the standing rules of the Federal Government on the subject, therefore, services rendered on adhoc basis shall also count for the purposes of pension; that the petitioner 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 his pensionary and other benefits; and, the petitioner cannot be penalized on account of lapses, if any, on part of the KPT, especially since the petitioner during his service was never made aware of any lapses nor was allowed to defend any allegation; that service of the Petitioner with the KPT amounts to a past and closed transaction and the same cannot be agitated to deprive him of his 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 he has been dealt with in a discriminatory manner by the Respondents. Learned counsel placed reliance on the cases of **Ahmad Farooqi vs. Government of Pakistan and another** (1986 PLC (C.S) 722), **Gatron (Industries) Limited vs. Government of Pakistan and others** (1999 SCMR 1072), **Nafees Ahmad vs. Government of Pakistan and others** (2000 SCMR 1864), **Chairman Central Board of Revenue and others vs. Nawab Khan and others** (2010 SCMR 1399), **Haji Muhammad Ismail Memon Advocate complainant** (PLD 2007 SC 35), **Messrs State Oil Company Limited vs. Bakht Siddique and others** (2018 SCMR 1181), **Chairman Pakistan Railway Government of Pakistan Islamabad and others vs. Shah Jehan Shah** (PLD 2016 S.C 354), **Ministry of Finance through Secretary and others vs. Syed Afroz Akhtar Rizvi and others** (2021 SCMR 1546), **Secretary, Ministry of Finance Islamabad and others vs. Tayyaba Halim Subhani and others** (2022 SCMR 77), **Collector of Customs (Valuation) and another vs. Karachi Bulk Storage and terminal Ltd** (2007 SCMR 1357),

4. On the other hand, learned counsel for Respondent No.2 argued that the petitioner has been paid pension as per rules from the date of regularization of his services till his retirement against the post and not from the date of joining the service which was initially on ad-hoc basis; that the Petitioner is to be dealt with under the 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; that service under the ad-hoc period will not be counted for the purpose of pension because there were no sanctioned posts in the year 1989; that the relationship of Respondent No.1 and the Petitioner is governed by KPT Act. Lastly, argued that the petitioner has been dealt with in accordance with law, hence the instant petition is misconceived and merits dismissal. Learned counsel placed reliance on the cases of **Isra Village Housing Scheme and others vs. Province of Sindh and others** (SBLR 2022 Sindh 505), **Muhammad Zaman and others vs. Government of Pakistan through Secretary Finance Division (Regulation Wing) Islamabad and others** (2017 SCMR 371), **Secretary Ministry of Science and Technology and another vs. Muhammad Anwar Butt** (2015 SCMR 106), and an unreported order dated 07.10.2022 passed in C.P.No.D-4872 of 2020.

5. We have heard learned counsel for the parties and perused the record with their able assistance.

6. At the very outset, learned counsel for the respondents raised objection regarding maintainability of the instant petition. However, record reflects that KPT 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 KPT Act, 1886. Thus, in such circumstances, the Apex Court in the case of **Pakistan Defence Housing Authority vs. Lt. Col. Javed Ahmed** (2013 SCMR 1707) held that "*an aggrieved person can invoke constitutional jurisdiction of this Court against a public authority*". Hence, we find no force in this argument of learned counsel for the respondents.

7. Perusal of record, reveals that petitioner was appointed in the year 1989 as Assistant Electrical Engineer in BS-17 on adhoc basis by the Board

of Trustees/Selection Committee while his adhoc service was regularized in the year 1995, and thereafter, he was promoted to BS-18 in the year 2011 and stood retired on 01.02.2020. Therefore, according to Articles 358, 371-A, 423 and 474 (b) of Civil Service Regulations, his previous service on ad-hoc basis with effect from 1989 to 1995 (06 years' service) is countable to his regular service for service/pensionary benefits and other benefits in terms of the judgment of the Apex Court in the case of **Secretary, Ministry of Finance, Islamabad and others v. Tayyaba Halim Subhani and others** (2022 SCMR 77). Reliance is also placed upon the case of **Messrs. State Oil Company Limited V/S Bakht Sidique and others** (2018 SCMR 1181), wherein it was held 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."

8. In the present case, the petitioner who had served 06 years as an ad-hoc contract appointee and thereafter his service was regularized, hence in view of dictum laid down by the Apex Court, the employment of the petitioner ought to have been treated as permanent and erroneously it has 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 in violation of the Constitutional 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."*

9. We also find that the issue before us i.e counting the period of Ad hoc employment for the purpose of pensionary benefits has already been decided/settled earlier by a Divisional Bench of this court in the case of **Dr.Mazhar Ali Jatoi** in CPD 5634 of 2022 dated 07.02.2023 (unreported) whereby by equally placed persons as the petitioner in KPT were found to be entitled to the same relief which the petitioner seeks which decision is still in the field and as such the petitioner is also entitled to be treated

equally with his fellow workers and not be discriminated in that regard as decided in the above mentioned petition

10. For the foregoing reasons, we allow this petition with directions to the competent authority of the respondents to release pensionary benefits and other ancillary benefits of the petitioner within 2 months of the date of this order with effect from the date of his superannuation in 2021 by counting his previous service rendered on an ad-hoc basis.

11. A copy of this Order shall be sent to Chairman KPT for compliance.