

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P. No. D-519 of 2023

(Mohammed Adnan v/s PTCL and others)

PRESENT:

MR. JUSTICE MUHAMMAD KARIM KHAN AGHA

MR. JUSTICE NISAR AHMED BHANBHRO

Petitioner : Through Syed Ansar Hussain Zaidi, Saud Ahmed Advocate.

Respondent : Mr. Muhammaed Asad Ashfaq assisted by Mr. Roman Advocate
For Respondent Nos. 1 and 2 - PTCL along with Mr Rana Mehran
Manager Legal PTCL

Respondent: Ms Wajiha M. Mehdi, Learned Assistant Attorney General

Date of hearing 19.03.2025

Date of Order: 21 .03.2025

JUDGMENT

NISAR AHMED BHANBHRO, J: The Petitioner through instant Petition has sought indulgence of this Court to issue directions to the Respondents /Pakistan Telecommunication Company Limited (“PTCL”) for release of Benevolent Grant, Group Insurance and Monthly Pension towards pension benefits of her Deceased wife Rehana Adnan.

2. Jotting down the facts made in Petition, it has been averred that Rehana Adnan deceased wife of Petitioner was employed in **PTCL** in year 1985 and worked there until her retirement on 18.02.2008 under a Voluntary Surrender of Service (**VSS**) Scheme introduced by the Federal Government under Restructuring Policy. The **PTCL** Employees including deceased wife of the Petitioner were given an offer by the Department for early retirement. The deceased wife of the Petitioner accepted the offer and entered **VSS** Agreement with PTC. That **VSS** amount of Rs 14,67,973 payable to the wife of Petitioner was determined including a monthly pension of Rs 5702. The said monthly pension was not

paid to the Petitioner as she fell short of qualifying length of 20 years' service. The wife of Petitioner filed C.P. No. 335 of 2015 before this Court, which was disposed of vide Order dated 16.05.2016 on account of the undertaking furnished by Respondents/ **PTCL** that her case would be considered and decided within four months. The Respondents decided the case of deceased wife of Petitioner and communicated such information to her through letter dated 14.11.2016. That the PTCL declined to grant monthly pension to the Petitioner as she did not possess the qualified length of service for that purpose. Since Employee Rehana Adnan wife of the Petitioner died on 04.01.2020 and decision taken by Respondents was communicated afterwards, therefore, the Petitioner being spouse of deceased employee filed this Constitutional Petition. He prayed for release of Monthly Pension, Benevolent Grant and Group Insurance.

3. The Respondents (**PTCL**) filed their Reply taking objections as to the maintainability of instant Petition on the ground of laches and further responded that the deceased had availed **VSS** of her own will and accord in the year 2007-2008 without raising any objection. The deceased employee was short of 20 years qualifying length of service to become eligible for monthly pension. The Respondents introduced a revised scheme for benefit of employees not eligible to receive monthly pension and an extra benefit in the shape of Separation Bonus of Rs.450,000/- was given to such employees which was received by deceased Rehana Adnan. Respondents prayed for dismissal of this Petition, as according to them after acceptance of **VSS** the deceased wife of the Petitioner was not entitled for any claim.

4. Learned Counsel for the Petitioner contended that though Petitioner has served the department since year 1985 spanning more than 20 years but to the admission of Respondents if the service of wife of the Petitioner is taken as 19 years and 08 months, she was still qualified for receiving monthly pension of Rs 5702 as the fraction of 8 months would be counted as a full year, as such the length of deceased employee for pension purposes would be counted as 20 years. That as per **VSS** Agreement signed by the parties

an amount of Rs./-14,67,973 was determined payable to the Petitioner with Monthly Pension of Rs.5,702/-. That the Separation Bonus Agreement was neither signed by the deceased employee nor communicated to her but an amount of Rs.4,50,000/- was parked in the Bank Account of the deceased. There is no delay in filing of the instant Petition as the Petitioner claims pensionary rights having a recurring cause of action. Deceased wife of Petitioner contributed towards Benevolent Grant and Group Insurance during her entire service and Petitioner was entitled to receive such amount after her death, which the Respondents failed to pay. While relying upon the case of **Mst Yasmeen Versus PTCL & others** reported in **SBLR 2023 Sindh 1123**, the Learned Counsel prayed for allowing the Petition.

5. Controverting the submissions made on behalf of the Petitioner, the Learned Counsel for the Respondents (**PTCL**) argued that the Petition suffers from laches as the impugned order has been challenged after period of 09 years. The PTCL introduced **VSS** Agreement entitling the employees having length of service for more than 20 years for a monthly Pension with lump sum amount. Later on, Company in order to benefit the employees falling short of 20 years mandatory qualifying length of services, launched Separation Bonus Scheme by paying an additional bonus of Rs 450,000 to such employees and this amount was paid to deceased employee. There is nothing outstanding against Respondents payable to Petitioner. He contended that soon after the acceptance of **VSS** the deceased Rehana vide letter dated 19.06.2008 was given an opportunity to Re-Join **PTCL** by depositing the amount of **VSS** Packages but she failed to do so, He further contended that the Group Insurance and Benevolent Grant is not payable to the Petitioner as she retired under **VSS** scheme. He asserted that the issue in hand stands resolved by the Honorable Apex Court in the case of **\Mst. Tasneem Fatima & others Vs PTCL & others** [Civil Appeal No. 2506 of 2016], wherein the identical claims of the employees availing **VSS** were declined. He relied upon the case of **State Bank of Pakistan Versus Khyber Zaman** reported in **2004 SCMR 1426**, unreported judgment of Honorable Supreme Court in case of **Asadullah Khan & others Versus PTCL & others** (Civil

Appeal No 68 – K of year 2020), judgment of Division Bench of this Court in the case of **Jameel Ahmed Versus PTCL** reported as **2022 PLC (CS) 481**, **Qari Allah Bux and others Versus Federation of Pakistan and another** reported as **2011 PLC (CS) 488**, and case of **Mohammed Usman versus PTCL & others** reported as **2020 PLC (CS) 895**, he prayed for dismissal of petition.

6. Heard Learned Counsel for the parties as well as learned Assistant Attorney General and perused material available on record.

7. We have considered the submissions of parties made through their Learned Counsels. The petitioner prayed for release of monthly pension, Benevolent Grant and Group Insurance. **PTCL** denied monthly Pension to the deceased Employee Rehana Adnan as she fell short of 20 years mandatory qualifying service. As per record available it appears that deceased served **PTCL** for an admitted period of 19 Years and 08 Months, for the purposes of Pensionary Benefits, eight months figure could have been rounded off and counted as one complete year bringing her service in the threshold of qualifying length of 20 years, but by her own act Late Rehana Adnan conceded to calculations made by **PTCL** that she was falling short of 20 years and accepted Separation Bonus amount of Rs 450,000 and signed a waiver form. If the deceased employee was desirous of receiving monthly pension, she should have refused to accept Separation Bonus and returned the amount back to **PTCL**. This controversy was agitated by employees of **PTCL** having a similar case and Petitions for such relief were filed before Learned Islamabad High Court at Islamabad which were dismissed. The matter came up before Hon'ble Supreme Court of Pakistan, the Appeals were dismissed, excerpts of the judgment in the case of **Mst. Tasneem Fatima & others Vs PTCL & others** [Civil Appeal No. 2506 of 2016] Para No 6 & 7 being relevant are reproduced as under:

“6. \We have noted that the appellants did not disclose the amounts received by them pursuant to VSS and particularly the amount of four hundred and fifty thousand rupees on account of the Separation Bonus. The appellants could only receive the

Separation Bonus if they had less than twenty years of Qualifying Length of Service. The appellants also did not disclose that they had voluntarily participated in the VSS, accepted the calculations made by the Company and had executed the Waiver Form. This constituted nondisclosure of material facts. The appellants had instead projected themselves to have been wronged and embarked upon unnecessary litigation with a view to obtaining a benefit to which they were not entitled to. The fora below however mostly considered whether or not the appellants could have filed grievance petitions without considering whether they had a grievance. In our opinion the appellants did not have a grievance as they had voluntarily severed their relationship with the Company by availing of the VSS, which included a substantial amount received on account of Separation Bonus which only an employee who had less than twenty years of service could receive. The case of P.T.C.L. v Masood Ahmed Bhatti, which has been relied upon by the learned counsel for the appellants, stipulates that where an organization is governed by statutory rules then any action taken by such organization in derogation of or in violation of such rules would, if it is prejudicial to an employee, may be set aside. However, in the present case the Company did not take any action prejudicial to the appellants. On the contrary the appellants had voluntarily availed of the VSS, received payments thereunder, including the Separation Bonus which was only payable to those employees who had less than twenty years of Qualifying Length of Service.

- 7. If the appellants genuinely believed that their training period should have been counted towards their length of service, and consequently, they were entitled to pension then they were not entitled to receive the Separation Bonus amount. And, even if we presume that the Separation Bonus was paid to them by mistake it was incumbent upon them to have stated this and to have returned / refunded it to the Company before proceeding to claim a pension on the ground that they had served the Company for twenty years or more. Significantly, the appellants at no stage, including before us, have submitted that they were not entitled to receive the Separation Bonus, let alone offering to return it. The appellants' actions are destructive of their claim to pension, because if they had twenty years or more of service they should not have received the Separation Bonus. Therefore, leaving aside the jurisdictional*

point which forms the basis of the judgments of the learned judge of the High Court and of the learned Judge of the Labour Court the appellants had by their own actions demonstrated that they had no grievance and that they were not entitled to pension.”

8. The case of the present Petitioner also falls in the same category as has been decided by the Honorable Supreme Court referred in the preceding paragraph. In our view Petitioner is not entitled to receive any amount on account of Monthly Pension as the VSS and Separation Bonus fully settled her claims towards monthly pension.

9. Taking up the other issue regarding of grant of Benevolent Grant and Group Insurance, it is worthwhile to mention that the parliament enacted **The Federal Employees Benevolent Fund and Group Insurance Act, 1969** (hereinafter referred as “**the said Act**”) for the common benefit of the employees of the Federal Government and Autonomous Bodies. Section 4 of **the said Act** required the Federal Government to set up **Board of Trustees of the Federal Employees Benevolent and Group Insurance Funds**. the Board was empowered under section 7 of **the said Act** to settle the claims for benevolent grant and sums assured under Group Insurance and all other acts necessary for the purposes of protection of the funds. The Federal Employees Benevolent Fund consisted of all sums paid by the employees through subscription, Grant made by the Federal Government, donations by private individuals, profits and interests of assets of Benevolent Fund and loans raised by the Board with prior approval of the Government.

10. The Benevolent Grant has been made payable under section 13 of **the said Act**, sub section 2 of section 13 being relevant for the purposes of this case is reproduced for the sake of convenience:

13 Benevolent Grants to be paid from the Benevolent Fund:

(1)

(2). *Where on or after the fourth day of September 1988, an employee is declared by the prescribed medical authority to have been completely incapacitated physically or mentally to discharge the*

duties of his employment and for that reason is retired or removed from service, he shall be entitled to receive for life such benevolent grant from the Benevolent Fund as specified in Column (4) of the Second Schedule, or where the employee dies during the continuance of his employment or during retirement before attaining the age of Seventy Years, his spouse shall be entitled to receive for life such benevolent grant from the Benevolent Fund as specified in Column (4) of the Second Schedule.

Provided Further

The bare reading of this provision of law reveals that the spouse of a deceased retired employee becomes entitled for Benevolent Grant if employee incapacitates during service to perform job any more or dies while in service or he dies after retirement before attaining the age of 70 years.

12. Adverting to the issue of Group Insurance, section 17 of **“the said Act”** requires the Federal Government to establish **“Federal Employees Insurance Fund”** consisting of the sums received from employees as Premia for the Group Insurance deducted at source from his pay. Section 18 of **the said Act** even protects the rights of family in case of default of payment of premia and makes the sum assured payable to the nominated member of family whereas in case of no nomination payment of sum assured to be made in equitable and just manner for maintenance and benefit of all family members.

13. For the payment of Benevolent Grant to the Federal Employees, to lay down procedure, the Federal Government under the exercise of powers conferred under section 23 of **the said Act** has framed **The Federal Employees Benevolent Fund & Group Insurance Rules, 1972 (the said Rules)**. The Rule 12 of the said Rules burdens the Head of the Department with an obligation to forward the application of bereaved family on Form B to Board of Trustees for grant of benefits accrued in terms of section 13 & 19 of **the said Act**.

For ease of reference the **Rule 12** is reproduced hereunder:

12. **Submission of application for Benevolent Grant, etc:** (1) *On the death of an employee during the continuance of his employment, the head of the office of such*

employee shall forward through the head of the department an application in Form B to the Board for payment of the benevolent grant and the sum assured.

(2) When an employee is declared by the medical authority to have been completely incapacitated physically or mentally to discharge the duties of his employment and is, for that reason, removed from service, the head of the office of such employee shall forward through the head of the department, an application in Form B to the Board for payment of the benevolent grant.

(3) upon receipt of an information that a retired employee has within the period laid down under rule 9, the head of the office wherefrom such employee retired shall forward, through the head of the department, an application in Form B to the Board for payment of the benevolent grant.

(4) Upon receipt of an application under this rule, the board shall after making such an inquiry and taking such evidence in the case of application under sub rule (3) as it may consider, pay the benevolent grant, or the sum assured or both as the case may be to the person entitled to receive it under section 13 or rule 10 or rule 11 as the case may be.

14. In the case of deceased Rehana Adnan she was an employee of the **PTCL** owned by the Federal Government, the status of the employee was a Federal Employee and during her services contributions to Benevolent Grant and Group Insurance were deducted from her salary. The record reflects that the deceased employee was born on 01.05.1965 and she died on 04.01.2020 at the age of about 55 years after retirement. The Petitioner has attached such death certificate issued by NADRA along with the memo of Petition at page number 17, which fact has not been denied by the Respondents. The VSS amount paid to the deceased employee was in terms of her pension benefit but not regarding Group Insurance and Benevolent Grant as the same are payable with certain conditions viz. incapacity to perform duties on medical grounds, death while in service and death after retirement before attaining the age of 70, the case of the deceased employee falls under last (3rd) category.

15. The Respondents No 1 and 2 being employer under such an eventuality were under an obligation to forward the case of the Petitioner on prescribed Form B as provided under Rule 12 of the **said Rules** referred supra for release of Benevolent Grant and Group Insurance after the death of his wife, but no action on their part was taken.

16. Adverting to the objection raised by the Learned Counsel for the Respondents as to the maintainability of this Petition under the doctrine of laches being filed after 15 years of VSS agreement. In our candid consideration such an objection was frivolous and would not sustain firstly because the law of laches is not of universal application. The doctrine of laches cannot be applied in every case as a hard and fast rule without examining the dictates of justice, equity and fair play. In the case of Petitioner, they were the Respondents No 1 to 2 to act fairly and justly to discharge their duties by forwarding the application of Petitioner on **Form B** to the Board for payment of Benevolent Grant and Group Insurance if found entitled, as use of word “shall” in Rule 12 of the said Rules burdens Head of the Department to forward the application of bereaved family to Board and under no circumstances they can be absolved of such duty. This obligation did not fall on the Petitioner, inaction on the part of the Respondents created a recurring cause of action for Petitioner and he cannot be knocked out on technicalities when otherwise he was entitled to such benefits under some statutory backing, as matter of right. If We place an embargo of laches by non-suiting the petitioner on account of laches, it will amount to perpetuate injustice and denial of justice to a bereaved family who should not be penalized though no fault of their own but on account of the failure of Respondents No 1 and 2 to fulfil their statutory obligation. Secondly the approval of Group Insurance and Benevolent Grant would not in any manner put any financial burden on the Respondent / PTCL as the same were deducted at source from the monthly pay of deceased employee. We are of the considered view that there is a recurring cause of action for the petitioner to knock at the doors of justice and petition cannot be dismissed on account of mere delay which in our view is not applicable looking at the particular facts and circumstance of the instant case.

The conclusion drawn by us, finds support from the Judgment of **Honorable Supreme Court** in the case of **Ummar Baz Khan & others Versus Jahanzeb Khan & others** reported in **PLD 2013 Supreme Court 268**, wherein the Honorable Apex Court has held as under:

“No Court could dismiss a lis on the ground of laches if it defeated the cause of justice and thereby perpetuated an injustice. Bar of Laches could not be over

emphasized in a case where where the relief claimed was based on a recurring cause of action”

In the case of **Director General Civil Aviation Authority Versus Abdul Touheed Khan** reported in **2010 SCMR 468** the Honorable Apex Court was pleased to grant pension benefits to the retired employee overruling the objection of maintainability on the doctrine of laches. In the case of **Pakistan Post Office Versus Settlement Commissioner** reported as **1987 SCMR 1119** while dealing with the issue of laches the Honorable Supreme Court was pleased to hold as under

“It needs to be emphasized that there is no justification to equate laches with statutory bar of limitation. While the former operates as a bar in equity, the latter operates as as legal bar to the grant of remedy. Thus, in the former all the dictates of equity, justice and balance of legitimate rights are to be weighed; in the latter, subject to statutory relaxations in this behalf nothing is left to the discretion of the Court; it is a harsh kaw. Thus, passage of time per se brings the statute of limitation in operation, but the bar of laches does not deny the grant of right or slice the remedy unless the grant of relief in addition to being delayed must also perpetuate justice to other party.”

17. With due reverence the case law relied upon by the parties pertain the pension benefits and are not applicable to the Benevolent Grant and Group Insurance, thus are not attracted to the instant case being distinguishable.

18. In view of, what has been discussed herein above, we find that the entitlement of Petitioner to receive Benevolent Grant for life from the date of death of his wife as she died after retirement but before attaining the age of 70 years and sum assured on account of premia contributed towards Group Insurance in terms of section 13 & 19 of **the said Act** requires determination by the Board as envisaged under Rule 12 of **the said Rules**. We partly allow this Petition and direct the Respondents to forward the case of Petitioner for grant of benefits of Group Insurance and Benevolent Grant to the Board of Trustees on prescribed Form B in terms of Rule 12 of **the said Rules** within a period of two months from the date of this order and the Board of Trustee on receipt of such claim, shall decide the case of Petitioner within a period of three months from receipt of the Petitioner case.

The Petitioner has failed to make out his case for grant of monthly pension and to that extent the petition is dismissed.

The Petition stands disposed of in above terms along with pending applications if any

JUDGE

HEAD OF THE CONSTITUTIONAL BENCH