

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. D-4148 of 2020

(*Ghulam Abbas v Federation of Pakistan & others*)

CP. No. D-4149 of 2020

(*Wali Muhammad 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 Order: 27.05.2025

Dr. Raana Khan advocate for the petitioners.

Mr. Muhammad Safdar advocate for respondent No.3.

Ms. Wajiha Mehdi Assistant Attorney General.

O R D E R

Adnan-ul-Karim Memon, J: The petitioners ask this court to:

1. Declare null and void the decision made by the TCP Board of Directors in their 31st meeting on February 7, 2020. The petitioner argues this decision is contrary to the Supreme Court of Pakistan's order of January 4, 2020, and was made without impartial legal advice.
2. Direct the respondents to correct the regularization date to January 19, 2001. This is the date of the merger of CEC with TCP, aligning with the High Court's orders/judgments from January 19, 2001 (J. Misc. 36/1999) and April 10, 2001 (CMA 24/2003).
3. Direct the respondent Corporation to fully implement the High Court's orders dated April 30, 2010 (in CP No. 4795/2013) and June 9, 2017.
4. Order the payment of all retirement benefits according to TCP rules, as regularly paid to other permanent employees. This includes recalculating salary based on the TCP time scale as of October 19, 2001, and incorporating all Federal Government salary increases since January 19, 2001.
5. Grant any other relief the Honorable Court deems appropriate.

2. The petitioners, Ghulam Abbas and Wali Muhammad, claimed to be highly qualified and long-serving employees, were initially appointed with the Cotton Export Corporation of Pakistan (CEC) from January 18, 1974, before its merger with the Trading Corporation of Pakistan (TCP) on January 19, 2001. Upon his retirement from TCP on July 9, 2015, their service length, which exceeded 15 years, was not properly recognized, and their retirement

dues were not calculated from either the December 31, 1998, asset and liability transfer date or the January 19, 2001, merger date. Despite being a limited company, TCP, a federal government-owned and controlled entity, has a Board of Directors that includes senior government officials. After extensive litigation, the Supreme Court of Pakistan, on January 16, 2020, ordered TCP's Board to determine the petitioners' service length within four weeks to finalize his retirement payments. However, in its February 7, 2020, meeting, the Board failed to comply with the Supreme Court's directives. They incorrectly interpreted the petitioner's request as seeking retrospective regularization, when they sought to have their service counted from the CEC-TCP merger date of January 19, 2001, for retirement benefits, as per this Court judgment. The Board deliberately linked the petitioners' retirement benefits to a non-voluntary (VRS) scheme introduced by CEC in 1993, which had forcibly terminated employees who did not opt in. The petitioners, despite "opting" for VRS, was "retained" and continued performing essential duties, even serving on a committee overseeing the transfer of relieved employees. The merger of CEC, RECP, and TCP was approved by this Court on January 19, 2001. However, TCP's subsequent order on March 12, 2001, merely transferred CEC officers without defining the merger terms, contradicting this Court's judgment that protected retention rights of employees and maintained their existing terms and conditions. Despite the petitioners' subsequent promotions and recognition within TCP, their service regularization on August 15, 2008, was made effective from that date, rather than the January 19, 2001, merger date. Their appeal to the Chairman was ignored, leading to the petition in 2008 before this Court for seniority. This resulted in a 2010 directive for TCP to address its grievances, which TCP failed to comply with. Further litigation in 2013 culminated in the judgment passed by this court in 2017 directing TCP's Board to reconsider the service of the petitioners for full and final dues.

3. The petitioners' counsel argued that TCP's Board has a consistent bias, denying the petitioners' relief despite clear Supreme Court precedents in similar cases. The counsel emphasized that TCP's legal advisors confirmed the petitioners' right to continuous service. Therefore, the Board's February 7, 2020, decision is invalid, as it ignores prior court orders and legal opinions, thereby denying the petitioners' fundamental right to an uninterrupted service record from the merger date and corresponding retirement benefits. The petitioners' counsel argued that they continuously performed duties for TCP for over 15 years against permanent posts and without any performance issues, thus entitling them to all benefits of regular employees. Despite this, petitioner Ghulam Abbas was regularized only on August 15, 2008, and Wali Muhammad on February 23, 2011, even though they had been working continuously since September 11, 1998. She argued that they submitted that

their regularization should be effective from January 19, 2001, the merger date, citing an office order from March 12, 2001, that temporarily allowed former CEC/RECP retainees and daily wagers to work in TCP. In support of her contentions, she relied upon the unreported case of Roshan Siddique and prayed to allow the petition.

4. The learned counsel for TCP argued that the petitioners' claims for retrospective regularization and associated benefits are invalid for several reasons. He added that the petitioners voluntarily opted for the Voluntary Retirement Scheme (VRS) in 1993, retiring on September 11, 1998, and receiving all dues. A clear condition of the VRS was that no person retired under the scheme would be re-employed in any CEC office. Despite this, they were temporarily retained to complete work and later allowed to work in TCP on a temporary basis from March 12, 2001, with an office order explicitly stating no right to permanent employment or continuity. However, he added that the petitioners were regularized in TCP on August 15, 2008, and in 2011. Their claim for regularization from January 19, 2001, based on the decision of this court of that date, is baseless because the judgment did not provide for regular employment in TCP for VRS beneficiaries. Furthermore, TCP fulfilled all termination liabilities (gratuity, provident fund, pension) as per the judgment. TCP's Board of Directors, in a meeting on February 7, 2020 (following an Apex Court directive), rejected the petitioners' claims. The Board found that re-employing or regularizing individuals who had benefited from VRS defeated the scheme's objective of reducing the government's burden by offering premature retirement benefits. He argued that the petitioners received and enjoyed VRS benefits and subsequently accepted temporary contract employment. Their regularization on August 15, 2008, and February 23, 2011, cannot be antedated. Additionally, they are receiving retirement benefits from TCP for their second employment, a clear violation of VRS conditions. The petitioners' claims for seniority and promotion with retrospective effect are not legally tenable. He emphasized that temporary employees cannot be upgraded or promoted. Their regularization was not in conformity with TCP Service Rules, ESTACODE, or established recruitment policies. The counsel asserted that the petitions are misconceived and may be dismissed with compensatory costs, as the petitioners' claims lack legal ground due to their prior VRS acceptance, the re-employment bar, and the board's decision in line with the Supreme Court's directive.

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

6. The petitioners, previously employed by Cotton Export Corporation (CEC), were impacted by its merger with Trading Corporation of Pakistan

(TCP) on January 19, 2001. Although they opted for a Voluntary Retirement Scheme (VRS) from CEC, an office order dated September 11, 1998, explicitly stated they would not be relieved from duties and would continue working at their existing salary until further notice to complete outstanding tasks. However, petitioner Ghulam Abbas retired on July 9, 2015, and petitioner Wali Muhammad retired on September 12, 2013.

7. The core disagreement between the parties centers on the effective date of regularization for the petitioners. The respondents' calculation of their full and final settlement dues begins from Ghulam Abbas's regularization on August 5, 2008, and Wali Muhammad's on February 22, 2011, a basis the petitioners dispute.

8. In an earlier round of litigation, the decision of this court was challenged in the Supreme Court. In CPLA No. 462-K/2017, the Supreme Court referred the matter back to the TCP Board of Directors. This Court had directed the Board to consider the petitioners' length of service for their final dues. Without expressing its own opinion, the Supreme Court mandated that the Board decide the matter within four weeks, recommending that they seek legal advice. The Supreme Court also clarified that if the Board denied relief, the petitioners retained the right to pursue their grievance in the appropriate legal forum. With these directives, all petitions were disposed of.

9. In response to the Supreme Court's directive, the TCP Board of Directors, during its meeting on February 7, 2020, unanimously rejected the request for retrospective regularization of the petitioners. The Board noted that both individuals had voluntarily retired from the now-defunct Cotton Export Corporation (CEC) on September 11, 1998, under a Voluntary Retirement Scheme (VRS), receiving full benefits. A crucial condition of the VRS stipulated that no retired employee would be re-employed. Although temporarily retained by CEC to complete ongoing projects and subsequently allowed to work at TCP (after CEC's merger on December 31, 1998), their temporary employment was regularized much later, with petitioner Ghulam Abbas on August 15, 2008, and petitioner Wali Muhammad on February 23, 2011. Both have since retired from TCP and received associated benefits, in addition to their VRS benefits. The Board concluded that re-employing or retrospectively regularizing them would undermine the VRS's purpose of alleviating the financial burden on government corporations. Their contractual employment beginning March 12, 2001, which they voluntarily accepted, along with the subsequent regularization dates, render any antedated regularization legally untenable. Furthermore, the Board emphasized that receiving retirement benefits from TCP for their subsequent employment represented a clear violation of the original VRS conditions.

10. In *National Insurance Company v. Ahmed Ali Bhambhro* (2018 SCMR 2116), the Supreme Court ruled that an employee compulsorily transferred from the wound-up Pakistan National Produce Company Limited (PNPCL) to the National Insurance Corporation Limited (NICL) could not be denied pensionary benefits for his time at PNPCL. The NICL had submitted that Regulation 6(3) of the National Insurance Corporation Employees' Pension Funds Regulation, 1986, precluded such benefits unless a pension scheme existed at the former organization and they contributed their share. However, the Supreme Court deemed this regulation irrelevant because the employee was not on deputation but underwent a mandatory transfer, and it was unproven that PNPCL lacked a pension scheme. Consequently, his prior service pension could not be withheld.

11. In an unreported case, *National Insurance Company Ltd. v. Roshan Ali Sidique*, the Supreme Court vide order dated 11.4.2017 in Civil Appeal No.1297 of 2016 dismissed an appeal of NICL, concerning pensionary benefits. In that case, Roshan Ali Sidique was transferred from the defunct Pakistan National Produce Company Limited (PNPCL) to the National Insurance Corporation (NIC). NIC promised him pensionary benefits for his past service in PNPCL. However, after NIC became a public limited company (the "Company") in 2000, these promised benefits were withdrawn, and later denied upon his retirement. The High Court ruled in his favor. The Supreme Court upheld the High Court's decision, on the premise that the Company was barred from withdrawing the pension promise made in 1998, as a firm commitment creates an estoppel. Interpretation of Regulation 6(3): The Supreme Court agreed with the High Court that Regulation 6(3) of the National Insurance Corporation Employees (Pension) Regulations, 1986, offered the Company an option to grant pensionary benefits for previous service at the time of absorption. Once this option was exercised and a promise made, it could not be unilaterally withdrawn. It was further observed that the conversion of NIC into a company under the 2000 Ordinance mandated that employees retain their existing terms and conditions. The subsequent withdrawal of pension benefits was impermissible as a vested right had been created in Sidique's favor. Besides Sidique's withdrawal of a certain amount under protest did not negate his claim; he appropriately challenged the denial of pension when he retired. Therefore, the Supreme Court found no merit in the appeal of NICL and dismissed it.

12. We are of the considered view that the petitioners' situation regarding pensionary benefits is similar to the cases mentioned above. Their pension should be calculated from the date they were merged into TCP, rather than their later regularization dates in 2008 and 2011. This is because the petitioners were allowed to continue their service after the merger, and TCP continued to

pay them until their superannuation. Since TCP acted upon the merger, any subsequent decision by the TCP Board is irrelevant. Therefore, in line with Supreme Court principles from the aforementioned cases, their pensionary benefits must be calculated from their merger date with TCP. This calculation should be completed and disbursed to them in accordance with law within three months.

13. These petitions are disposed of in the aforesaid terms.

JUDGE

Head of the Const. Benches

Shafi