

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 923 of 2010

J U D G M E N T

Date of hearing: 11.10.2013.

Plaintiff: Abdul Rehman in person

Defendants: Chairman M/s. Mari Gas Co. Limited and two others through Mr. Khaleeq Ahmed, Advocate.

NAZAR AKBAR, J. The plaintiff through this suit has sought damages and compensation for suffering mental torture and harassment at the hands of the defendants, his employers.

2. In brief the facts of this case are that the plaintiff, a foreign qualified Chemical and Gas Engineer, has served in the Defendant No.3-company in the capacity of General Manager from June 1982 to June 1995 and as Director from June 1995 to 2004. In 1982 when the plaintiff joined the service, the company was ESSO Eastern International which was subsequently taken over by the Fauji Foundation. Later on, it was taken over by Mari Gas Company. The plaintiff after serving in the capacity of General Manager as well as in the capacity of one of the Directors of the Board of Defendant No.3 retired in 2006. He was enjoying different pensionary benefits including medical benefits as per medical policy approved in the 24<sup>th</sup> meeting of the Board of Directors of Mari Gas Company Limited held on 4<sup>th</sup> June 1990. According to the said health policy the medical benefits were continued even after the retirement. The Defendants by a letter dated 15.11.2006

informed the plaintiff that they have changed their medical policy as per approval of meeting of Board of Directors held in October 2006. The plaintiff challenged the adverse effect of change in the policy on the entitlement of plaintiff through a constitution petition No. D-2224 of 2007. This Court first granted interim relief. The defendants preferred a leave to appeal before the Hon'ble Supreme Court of Pakistan against the interim order dated 1.11.2007 and got the interim orders suspended but the Hon'ble Supreme Court by order dated 09-7-2009 dismissed the appeal of defendants and ultimately High Court by order dated 29.3.2010 allowed the petition. The plaintiff's case is that the change of policy was illegal, and malafide which has deprived him of his legitimate entitlement of medical benefits. It was also contrary to the legal opinion given by the legal advisor of Defendant No.3 company. Therefore, he was compelled to go for litigation for restoration of his medical benefit and the cumbersome lengthy process caused mental torture and harassment to him. The plaintiff claimed a sum of Rs.5,00,00,000/- as compensation for such mental torture and harassment.

3. The defendants in their written-statement have denied the allegations. They averred that the company's medical policy have been changed several times and under the policy effective from 1.12.2006 the medical benefits were monetized and pensioners were given a fixed amount of Rs.7,000/- per month on the basis of average claim of pensioners and it was communicated to the plaintiff. The plaintiff is bound by the policy of the defendants. The defendants also raised several preliminary objections in their written-statement.

4. This Court on 5.11.2012 framed the following issues:-

- “1. Whether the suit is maintainable?
2. Whether the suit is time barred. The medical policy was made effective on 01.12.2006 and suit was filed 02.06.2010?
3. Whether the defendant is liable to pay to the plaintiff as per rules the Medical Facilities after his retirement from service?
4. Whether the change in medical policy applicable only to the plaintiff or all its employees?
5. Whether the plaintiff is entitled for his medical benefit as per medical policy?
6. Whether the conduct of the defendant caused mental torture agony/stress to the plaintiff?
7. Whether the plaintiff is entitled for damages/compensation of Rs.50 Crores.
8. What should the decree be?

5. The plaintiff himself appeared in the witness box and produced several documents as Ex. PW-1 to Ex. PW-1/25 and a photocopy of profit and loss account as X-1. In rebuttal the defendants examined Shaikh Naveed Ahmed and Jawad Raza Abbasi.

6. I have heard the plaintiff and learned counsel for the defendants and perused the record. My findings on the issues are as follows:

ISSUE NOS.1 and 2: These two issues are interconnected and therefore discussed jointly. The counsel for the defendants has contended that the suit is not maintainable on the ground that the plaintiff was retired from the service in 2004 and he has enjoyed the benefit upto 15<sup>th</sup> November 2006 whereafter the policy was revised and the present was filed on 2.6.2010 after lapse of four

years whereas the limitation for claiming compensation of an injury is one year in terms of Article 22 of the Limitation Act and, therefore, the suit is not maintainable. The plaintiff has filed the suit for compensation on account of mental torture and harassment caused to him on account of change in medical policy of the defendant. The policy was made effective in November 2006 but it was declared illegal by this Court in C.P. No.D-2224 of 2007 and, therefore, the injury continued from the date of announcement of policy till the date of judgment in favor of Plaintiff and the Plaintiff has filed suit within three months from the judgment dated 29.3.2010, hence it is within time and maintainable. The cause of action was continuing and matured on 29.3.2010 and time for filing of suit started running on 29.3.2010. In view of this admitted position from the record the Issue No.1 is decided in affirmative and Issue No.2 in negative. The suit is maintainable and it is within time.

ISSUE NOS.3, 4 AND 5: All these three issues appear to have been framed out of the pleadings. There appears to be no dispute with regard to the liability of the defendants to extend medical facilities to the plaintiff after his retirement as per medical policy. The defendants have not denied the fact that the plaintiff was entitled to medical facilities even after the retirement nor the plaintiff has claimed any medical benefit through this suit. In the suit the plaintiff has only claimed damages for the mental torture and harassment on account of the change in the medical policy which according to the plaintiff was an illegal and unjustified act on the part of defendants. The plaintiff was forced to file C.P. No.D-2224

of 2007 to secure his medical benefit. In the said C.P. No.2224 of 2007 the plaintiff has sought the following reliefs;

- A. Direct the respondents to sanction the same medical facilities as the petitioner was enjoying during his services for the last approximately twenty three years and continued under the medical policy as on 24<sup>th</sup> meeting of the Board of Directors of Mari Gas Co., Ltd held on June 04, 1990, which is applicable in the case of the petitioner.
- B. Set aside the unilateral declaration of the Manager HR issued with the support of the Managing Director, and restore, the medical facilities and related benefits of the petitioner unaffected by the new policy adopted on 15.11.2006, which is not applicable in the case of the petitioner.
- C. Direct the respondent to entertain all medical bill of the petitioner pending payments, which are claimed at actual expense incurred by the petitioner and are duly supported by hospital receipts.
- D. Direct the respondent to stop harassment of the petitioner by not delaying payments of claims of petitioner's bills against medical expense and clear all submitted bill which are duly supported by the hospital receipts with immediate effect with out any delays.
- E. Restrain the respondents from taking any adverse action/coercive measures against the petitioner in any manner whatsoever till final Court Orders in the present petition.
- F. Any other relief this Hon'ble Court deems fit and proper under the circumstances of the case."

The above prayers in the petition fully covered Issue Nos.3, 4 and 5. The last two paragraphs of the judgment dated 29.3.2010 whereby the said petition was allowed are reproduced hereinabove:-

"Since legally a person who has retired from service is entitled to continuation of all the benefits which were available to him at the eve of retirement it is not available to the employer to make any change in

such benefits in respect of any such employee who has already retired. Mari Gas Company Limited being a person within contemplation of Article 199 of the Constitution of Islamic Republic of Pakistan 1973, can not be allowed to violate its legal obligation in this regard.

For the above reasons this Constitution Petition is allowed and Mari Gas Company is directed to allow the same benefits as were applicable in the case of the petitioner at the time of his retirement and not to make any change in any of such benefits to the detriment of the petitioner or any other person after the petitioner or any such person has retired.”

The above mentioned findings of this Court are binding not only upon the Defendants but also on this Court and therefore, I in respectful agreement with the findings already in favour of the Plaintiff answer all the three issues i.e Issue No.3, 4 & 5 in affirmative.

ISSUE NO.6 & 7. All the issues No.1 to 5 have been answered in favour of the Plaintiff and the logical consequence of these findings is that the change of medical policy was not applicable in the case of Plaintiffs and an attempt was made by the Defendant to enforce it. This attempt on the part of Defendants must have caused mental stress on the Plaintiff until he fully frustrated the Defendants attempt to implement it on the Plaintiff. The facts of the case have already been discussed in the earlier part of this judgment. The evidence is to be examined before determining a justifiable quantum as compensation for the mental torture suffered by the Plaintiff. The plaintiff has examined himself and produced as many as 29 documents which include

minutes of the meeting of Board of Directors of the Defendant as exhibit PW-1/2 and PW-1/3. He has also produced correspondence which took place between the plaintiff and the defendant prior to knocking the door of the Court through Constitutional Petition No.224/2007 to challenge the medical policy of the defendants comprising letters dated 23.05.2005, 15.11.2006, 23.11.2006 as exhibit PW-1/5, PW-1/7 & PW-1/8 and record of litigation before the High and Supreme Court as Exhibits PW-1/9 to PW-1/25. It is an admitted position that the Plaintiff has served the company from 1982 to 2006 and his service contract included payment of medical expenses in terms of the pensionary benefits after his retirement. The Plaintiff on one fine morning in May 2005 was suddenly informed that the management from 1.12.2006 will not be responsible for the medical expenses of the Plaintiff. This was definitely an unpleasant surprise / shock for the Plaintiff. The Plaintiff medical needs at his 73 years advanced age are on the rise and the Defendants curtailed it to just Rs.7000/- p.m. as medical expenses without any lawful basis merely in exercise of their absolute authority to change the medical policy of retired employees without consulting them. The old man of 73 years of age who has given 24 years of his prime life to the Defendants, first tried to negotiate and convince the Defendants through correspondence and ultimately he had to approach the Court of law for restoration of his pensionary benefit in the shape of medical expenses. It

cannot be presumed that the Plaintiff from the date of receipt of letter of Defendants' dated 23.5.2005 Ex.PW-1/5 justifying denial of medical benefit did not suffer from any mental stress untill 29.3.2010 when his petition No.2224/2007 was allowed to restore his medical benefit.

The Defendants were adamant in their stand that the policy adopted by them has to be implemented in the case of plaintiff. This policy was declared not applicable on the Plaintiff by this Court in 2010 and their own legal adviser in 2004 had opined that the Defendant in the name of new policy cannot take away existing rights of employee. The Plaintiff has also placed on record Ex.PW-1/3, showing that the policy was against the legal advice of the Defendants' own legal experts. The relevant part of Ex.PW-1/3 is reproduced below:-

PW-1/3.

MARI GAS COMPANY LIMITED

Minutes of the 96<sup>th</sup> meeting of the Board of Directors held on June 24, 2004 at 10.45 a.m.

- b. Is it legally permissible for the Board to change any of the existing Policies whereby the eligibility criteria is revised for future implementation which would render some of the existing employees ineligible for particular benefit to which they would otherwise have become entitled on the happening of a specific event e.g on completion of prescribed service or promotion to higher grade etc?



39. The legal advisors' opinion is as under:
- a. It is a basic principle of law that a benefit once given to the employees cannot be withdrawn unilaterally ( i.e. without the express consent of the other party). A Managing Director, acting on an ostensible authority binds the Company in a contractual obligation with any third party (i.e. employees) irrespective of the validity of the actual/express authority. The Board may initiate an action against Managing Director(s) for acting beyond their express authority but cannot take any step which would amount to repudiating existing contracts with the employees.
  - b. The Board has the legal authority to change the Company policies for future implementation so long as any such change does not adversely affect the existing contractual rights of the employees. The change can also be applied to a particular section of the existing employees who have not yet become entitled to or taken a benefit under a specific policy. However, there may be a possibility of the affected employees challenging such change on the ground of "Discrimination". The outcome of any such challenge will depend on the particular facts of each case and any legal precedents.(emphasis supplied)

Despite the above legal advice the Defendants changed the medical policy and attempted to apply it on the Plaintiff with effect from 01.12.2006. The Plaintiff filed constitution petition after failing to convince the Defendants that the Defendant have acted illegally against the legal opinion of their own legal advisers, and this is victimization and harassment. The Plaintiff has also filed order of this Court in CP No.D-2224/2007 dated 01.11.2007 (Exhibit PW-1/9) whereby the Division Bench has directed the Defendants to continue the medical facilities extended to the Plaintiff pending the petition. However, the Defendant challenged that interim

order before the Hon'ble Supreme Court and got the said interim order suspended on 4.12.2007 through Civil Petition No.924/2007 with in hardly one month and four days. (Exhibit PW-1/21). Thus the policy continued to be applicable on the Plaintiff. However, the Hon'ble Supreme Court by order dated 09.07.2009 (Exhibit PW-1/18) finally dismissed the Civil Petition. Thereafter the petition No.2224/2007 which was pending before this High Court was allowed by order dated 29.3.2010 restoring medical expenses as the same were applicable prior to the new policy of 2006. It was after the said judgment that the Plaintiff filed this suit on 02.06.2010 claiming damages and compensation against the Defendants for their illegal act of depriving the Plaintiff of his medical benefits and such deprivation has caused mental torture to him. The Plaintiff has with strong evidence established that he has suffered mental stress and agony on account of the conduct of the Defendants. The conduct of Defendant was that they turned down advice of their own legal adviser; they challenged before the Supreme Court the interim order of High Court to the effect that for the time being the policy may not be implemented. In fact the Defendants tested the nerves of their 73 years old ex-employee. Therefore, the issue No.6 is decided in affirmative. In view of the findings on issue No.6 it is now obligatory on the Court to determine the quantum of compensation. The Plaintiff has claimed Rs.50 crore which obviously is an imaginary figure and the Plaintiff has not

substantiated the claim to justify such exorbitant compensation for the mental torture and agony suffered by him. At the same time once this Court has come to the conclusion that the Plaintiff has suffered mental torture and agony for which the Defendants are responsible the Court has to grant damages as compensation. The damages are obviously general damages and discretion is to be exercised in justifying the quantum in awarding the compensation to the Plaintiff. The quantum is to be determined by following the Rule of Thumb. Any accurate and definite answer to the question that in given facts of a case what should be a satisfactory compensation for a mental torture suffered by the Plaintiff in terms of money is not possible. We can appreciate such sufferings of fellow human being but we cannot truly appreciate the magnitude / impact of mental torture suffered by others and therefore, it is humanly impossible to assess a fair compensation to the satisfaction of a person who has complained of such injury. However, the Court even in absence of any method to determine a fair assessment of damage for the aggrieved complainant to redress his grievance is under an obligation to decide an amount of money as compensation keeping in view the facts and circumstances placed on record by the injured to show that how torturous was the conduct of the aggressor and how long he remained under mental stress. Therefore, while applying Rule of Thumb in assessing a fair amount to be awarded to

the Plaintiff, the conscience of the Court should be satisfied that the damages to be awarded, if not completely, satisfactorily compensate the aggrieved party / the Plaintiff as laid down by the Hon'ble Supreme Court in the case of SUFI MUHAMMAD ISHAQUE ..VS.. THE METROPOLITAN CORPORATION, LAHORE through Mayor (PLD 1996 SC 737) and reiterated in the case of Malik GUL MUHAMMAD AWAN ..VS.. FEDERATION OF PAKISTAN through Secretary M/o Finance and others (2013 SCMR 507). I have discussed in detail the evidence to satisfy my conscience in awarding damages to compensate the Plaintiff for the mental torture suffered by him. The medical benefits restored to the Plaintiff in June 2010 were under threat and even remained suspended for several years from 01.12.2006 onwards. Therefore in my humble view the 73 years old Plaintiff is entitled to a sum of Rs.20,00,000/- (Two Million) as damages for his mental torture and agonies of going through the litigation upto the Supreme Court to dislodge the adamant behavior of the Defendants in denying the Plaintiff's medical benefits attached to his pension and in doing so the Defendant acted against the legal opinion of their own lawyers. Issue No.6 and 7 are answered in above terms.

ISSUE NO.8. In view of the findings on issue No.1 to 7, the suit is decreed against the Defendants jointly and severally and pay a sum of Rs.20,00,000/- (Rupees Twenty Lacs) as compensation with 10% interest from the date of decree till

payment of compensation. The cost of this suit shall also be borne by the Defendants.

Karachi  
Dated:02.04.2014

JUDGE

*SM*