

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-982 of 2021
(*Syed Naseem Ahmed Rizvi v PTCL & others*)

Date _____ Order with signature of Judge _____

Justice Adnan-ul-Karim Memon
Justice Abdul Mobeen Lakho

Date of hearing and order:- 19.01.2026

Mr. S. Ansar Hussain Zaidi advocate for the petitioner.

Mr. Altamash Arab advocate for Respondent No.1

Ms. Mehreen DAG

ORDER

Adnan-ul-Karim Memon, J. – The petitioner has filed the captioned Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- (A) *To declare that the action of the Respondents with regard to withholding the Retirement Notification, non-fixation of pay of the petitioner as announced by the Federal Government, and forcibly removing the petitioner before superannuation age without any payment is illegal and unlawful*
- (B) *To direct the Respondent No.1 to issue retirement Notification with the grant of 365 days Leave Preparatory to Retirement as admissible under the rule on the basis of attaining superannuation age on 14.01.2021 by setting aside the order dated 31.12.2016 and re-instate the petitioner in service pay arrear after fixation of pay and accordingly pay pension as per last emoluments drawn on the basis of his actual pay entitled under Federal Government revision announced from time to time since application dated 07.02.2017 neither decided nor petitioner get any single benefit under invitation to offer of the VSS.*
- (C) *To restrain respondent No.1 not to discontinue medical facility till pending of the case.*
- (D) *Cost of grave injustice be paid to the petitioner.*
- (E) *Grant any other relief deemed just and proper in the circumstances.*

2. The Petitioner's case is that he was appointed as a Civil Servant on 01-10-1990 in the erstwhile Pakistan Telegraph & Telephone Department and subsequently transferred to Respondent No.1 under statutory protection of service terms under the Civil Servants Act, 1973, and Sections 35(2) & 36 of the Pakistan Telecommunication (Re-organization) Act, 1996. It is urged that the Petitioner was due to superannuate on 14-01-2021. However, Respondent No.1 introduced the Voluntary Separation Scheme (VSS-2016) vide notification dated 28-11-2016. The Petitioner objected to the miscalculation of benefits under VSS as the same were not based on the Federal Government Revised Basic Pay Scales. Vide letter dated 07-02-2017, the Petitioner categorically refused to avail VSS; however, Respondent No.1 relieved him vide order dated 31-12-2016 without payment of any VSS amount. He, however admitted that he signed the VSS contract agreement. He also added that Respondent No.1 failed to implement Revised Basic Pay Scales from 2005 onwards

in violation of statutory protections available to transferred employees, thereby reducing and curtailing the Petitioner's lawful pay and pensionary benefits through mala fide exercise of authority, compelling him to file the instant petition on 08.02.2021.

3. Learned counsel for the petitioner argued that the Petitioner has no alternate efficacious remedy except to invoke constitutional jurisdiction under Article 199 of the Constitution, as his fundamental rights under Articles 2-A, 4, 9, 18, 24, 25 & 38(b) of the Constitution stand violated. He submitted that the cause of action is continuing, as the Petitioner was forcibly relieved before superannuation without settlement of lawful dues, despite repeated representations, as such he is entitled to regular pension rather than based on purported VSS. He prayed to allow this Petition.

4. The learned counsel for the respondents submitted that the instant petition is barred by laches, as it challenges the notification dated 31-12-2016 after more than six years, following acceptance of VSS-2016 via contract agreement. He emphasized that the Petitioner voluntarily opted for and accepted VSS-2016, rendering the matter a closed and past transaction and there was the reason, he was relieved. He next argued that the Petitioner has not approached the Court with clean hands and is not entitled to equitable relief. He again emphasized that the Petitioner voluntarily opted for VSS-2016 by signing an irrevocable option/waiver form and was lawfully relieved. Non-payment occurred due to failure to vacate official accommodation and non-submission of clearance, pension papers, and affidavits, which was requirement of law. He submitted that VSS-2016 was a valid, binding contract could be revoked at later stage. Reliance has been placed on Muhammad Usman v. Federation of Pakistan (2020 PLC (CS) 895). He lastly submitted that the Petitioner continues to occupy official accommodation and the petition is mala fide and barred by laches. He lastly prayed to dismiss this petition.

5. Having heard learned counsel for the parties and examined the record, it emerges that the controversy hinges upon two determinative issues: (i) whether the Petitioner voluntarily opted for and accepted VSS-2016, and (ii) whether the petition, filed after an inordinate delay, is maintainable in constitutional jurisdiction.

6. The record shows that VSS-2016 was introduced vide notification dated 28-11-2016, and the Petitioner was relieved from service on 31-12-2016 and he failed to approach this Court in time i.e. 2016, when he was retired from service and later stage approached this Court in 2021, when he reached the age of 60 years. The Respondents have produced documentary material demonstrating that the Petitioner exercised the option under the VSS by signing the option/waiver form, which was expressly stated to be irrevocable. It is now settled that once an employee, of his own free will, enters into a voluntary separation arrangement and is relieved in consequence thereof, the relationship of master and servant comes to an end and the

transaction attains finality. Prima facie, such a concluded contract cannot subsequently be reopened through constitutional jurisdiction merely on the ground that the employee is dissatisfied with the quantum of benefits, by approaching this Court at belated stage when he reached the age of 60 years.

7. The plea of non-payment of VSS dues does not advance the Petitioner's case. Even assuming some amount remained unpaid, the record reflects that payment was subject to fulfillment of conditions attached to VSS-2016, including vacation of official accommodation and submission of clearance and pension papers. Failure to comply with these preconditions prima facie disentitle the Petitioner from asserting that he was unlawfully deprived of benefits, particularly when he admittedly continued to occupy official accommodation and even he failed to clear the formalities as required under the law.

8. The argument relating to protection of service under the Civil Servants Act, 1973, and the Pakistan Telecommunication (Re-organization) Act, 1996, also loses significance once the Petitioner opted for VSS-2016. In principle, by entering into a voluntary and bilateral contract, the Petitioner consciously waived the continuance of service and the attendant statutory protections. In this regard, the law is settled that an employee who voluntarily accepts a separation scheme is estopped from later claiming benefits applicable to serving or retiring employees. The principle laid down in Muhammad Usman v. Federation of Pakistan (2020 PLC (CS) 895) squarely applies, as a person cannot approbate and reprobate at the same time, as such the claim of the petitioner seems to be afterthought.

9. Furthermore, the petition suffers from gross laches. The impugned relieving order was issued on 31-12-2016, whereas the Petitioner approached this Court after more considerable period of time i.e. five or six years. Constitutional jurisdiction under Article 199 of the Constitution is discretionary and equitable in nature; a litigant who sleeps over his alleged rights for years cannot invoke such jurisdiction by merely labeling the cause of action as "continuing." No plausible explanation for the inordinate delay has been furnished in the present case.

10. In view of the above, this Court is of the considered opinion that the Petitioner has failed to establish any illegality, lack of jurisdiction, or violation of fundamental rights warranting interference under Article 199 of the Constitution. The petition is barred by laches, involves a past and closed transaction arising out of a voluntary contractual arrangement; entered into by the parties in 2016 accordingly, the petition is disposed of in terms that his legal dues shall be paid to him as per the terms of his VSS contract forthwith if not paid earlier as per his entitlement.

JUDGE

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