

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

C.P No.D-1889 of 2013

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.

Mr. Justice Syed Saeeduddin Nasir.

Pakistan PVC Limited General
Employees Union. Petitioner

V E R S U S

Government of Pakistan & another..... Respondents

Date of hearing 07.12.2016

Syed Shoa-un-Nabi, Advocate for the Petitioner.

Malik Mushtaq Ellahi, General Secretary of the Union.

Shaikh Liaquat Hussain, Standing Counsel.

Abdul Haseeb, Senior Legal Consultant, Privatization
Commission of Pakistan.

Nadeem Arshad, Section Officer (Legal), Ministry of
Finance, Government of Pakistan, Islamabad.

Muhammad Ali Mazhar, J: This petition has been filed by the staff union of Pak PVC. Limited through its General Secretary for seeking direction against the respondents to pay the outstanding amount of gratuity and cost of living allowance.

2. The brief facts of the case are that on 15.10.1991, a Memorandum of Agreement was signed between Government of Pakistan and employees of State Owned Industrial Units which were perceived to be privatized. A copy of Memorandum of Agreement dated 15.10.1991 is

attached with the memo of petition at page 29. By means of this agreement, different modalities were settled to deal the employees of different Industrial Units intended to be privatized with the genre and manner for the payment of their full and final settlement dues including Golden Hand Shake Scheme. The petitioner union has brought the case on behalf of its aggrieved members that though amount calculated by the management in terms of Golden Hand Shake Scheme have been paid to them but at the time of calculation, the impact of cost of living allowance was disregarded and or overlooked so for all intent and purposes, it is quite obvious that the calculation made by the respondents and or prospective owner of the industrial unit is incorrect and the dues were not paid as per GHS. Scheme and in view of the agreement dated 15.10.1991 in which the effect of cost of living allowance was mentioned.

3. The petitioner has also attached a copy of letter dated 13.11.2012 written by the Director General, Privatization Commission, Ministry of Privatization, Government of Pakistan to Mr. Nisar A. Memon, Board Member of Privatization Commission in which the reference has been given for the meeting with the Secretary, Privatization on the issue of payment of outstanding dues to the ex-employees of Pak. PVC Ltd. which was sold to Reyaz Shaffi (Buyer) vide sale agreement dated 23.01.1992. It is further stated that in the original sale agreement, there was no clause regarding payment of Golden Hand Shake Scheme to the workers but in order to address this issue, a Memorandum of Agreement was executed between Privatization Commission and the buyer on 16.06.1992, whereby, it was agreed that other legal dues to which workers are entitled shall be paid by the new owner along

with Golden Hand Shake amount. Later a supplementary agreement was signed on 22.10.1992, whereby, it was agreed that liability for payment of Golden Hand Shake amount of the workers shall be shared equally between Privatization Commission and the buyer. In the same letter, a reference of Privatization Commission board meeting dated 26.01.2009 has also been given that a committee was constituted comprising the board members along with the representative of Finance Division and Ministry of Industries and Production to examine the case of workers of the Pak. PVC Ltd. Based on the recommendations of the Committee, the Privatization Commission Board in its meeting held on 19.11.2009 recommended to the Cabinet Committee of Privatization for the payment of gratuity and cost living allowance amounting to Rs. 21.262 Million to the employees of Pak PVC Ltd. and to arrange the above payment, the Finance Division was requested to provide funds for payment to ex-employees.

4. The petitioner in fact wants the implementation of this recommendation only to the extent of payment mentioned in the letter. On last date of hearing, notice was issued to the Director General, Privatization Commission to depute a responsible person fully conversant with the facts of the privatization of Pakistan PVC Ltd. and Secretary Finance was also directed to depute the Deputy Secretary, Finance to appear.

5. Mr.Abdul Haseeb, Senior Legal Consultant, Privatization Commission of Pakistan and Mr.Nadeem Arshad, Section Officer (Legal), Finance Division, Ministry of Finance, Islamabad are present. The representative of Privatization Commission admitted the contents of letter dated

13.11.2012. He responded that 483 employees have already been paid the amount of Golden Hand Shake but the amount of gratuity of some employees is outstanding in the sum of Rs.8 Million while 13 Million is outstanding against the payment of cost of living allowance so according to their working, they have rightly mentioned the total amount of 21.262 Million in the above letter. He has also submitted a statement in court to show that a letter has been sent on 05.12.2016 to the Ministry of Finance for the payment however there are some issues which are being examined by the Finance department.

6. Be that as it may. We feel no disinclination in our mind to hold that as soon as the liability has been admitted in the sum of Rs. 21.262 Million against the amount of gratuity and cost of living allowance, there is no further justification to delay the payment. The Privatization was completed in the year 1992 and since then the poor employees are combating for the payment of their dues including gratuity and cost of living allowance which is their vested right in terms of law as well as agreement signed between the Ministry of Privatization with Action Committee of the different Unions of employees of State Owned Industrial Units and Corporations. It is also well-settled that gratuity and cost of living allowance both are the part of wages. Gratuity is actually a benefit for services rendered in the past and reward of good, efficient and faithful service for a substantial period of time. Under the law, it is the responsibility of the employer to immediately pay all full and final settlement dues to its employees either in case of retirement or even under the GHS Scheme introduced if any. There is no justification of withholding this payment for such a long time. Most of the Members of Petitioner are present in court and they have shown their

miseries that due to the delay in payment they are facing financial hardship. There is no rational to hold this payment to an unlimited period of time. A person who devoted and dedicated valuable years of his life at least deserves this courtesy and respect that his legitimate dues should be paid to him promptly.

7. The learned Standing Counsel submits that letter dated 05.12.2016 has been received by the Finance Division therefore he requests for some time so that the Finance Division may examine the matter. This issue relates to payment of dues since 1991 and since 2013 this petition is pending in this court without any progress so it would be totally unjustified to grant any further time in view of the information conveyed by the learned counsel for the petitioner that out of 483 employees, at least 130 employees have expired but their dues could not be paid during their life time while remaining workers are suffering from severe hardship due to in action or the reckless attitude of the Privatization Commission and Government of Pakistan in the payment of admitted dues. One more important facet cannot be ignored which has been discovered from the letter dated 13.11.2012 as under:-

“2. Later a Supplementary Agreement was signed between the Buyer and the PC on October 22, 1992 whereby it was agreed that the liability for payment of GHS amount to workers shall be shared equally between PC and the Buyer. [Emphasis applied] It was also agreed that the Buyer will clear the GHS liability and liability for all legal dues in favour of the workers before November 30, 1992.”

8. On one hand, the Privatization Commission was so generous to share the GHS amount equally with the buyer but on the other hand, the poor employees are divested and deprived of their lawful dues. Whether this is a common practice of PC that in each case of privatization they are used to behave so generous to relieve the burden of every buyer by aforesaid sharing formula? This aspect also needs to be examined and interrogated by the Competent Authority. At this stage, the representative of Privatization Commission submits that still some amount is to be paid by the buyer. This is the look out and responsibility of Government of Pakistan and the Privatization Commission to recover the amount for which the poor employees are not responsible and they shall not become victim of inefficiency and or generosity of Government Departments extended to the buyer.

9. As a result of above discussion, this petition is disposed of with the directions to the Respondents to deposit admitted liability of Rs.21.262 Million with the Nazir of the Sindh High Court within fifteen (15) days. On proper verification and identification, the amount will be disbursed by the Nazir to the individual employees. The General Secretary of the petitioner union will submit proper list of the employees who are entitled to receive this amount along with proper calculation of dues of each employee to the Nazir of this Court but before submitting this statement, the General Secretary will work out the amount of each worker with the help and assistance of the concerned department of Privatization Commission. Copy of this order may be transmitted to the learned Standing Counsel.

Judge

Judge