

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C. P. No. D – 1853 of 2011

[Ahmed Ali Manzoor versus Pakistan Railways and others]

Present:

Mr. Nadeem Akhtar, J.

Mr. Muhammad Faisal Kamal Alam, J.

Date of hearing : 06.12.2017.

Petitioner : Fazal Ellahi (son of Ahmed Ali Manzoor),
through Mr. M. A. Hakeem, Advocate.

Respondents : The Federation of Pakistan through
Chairman Pakistan Railways and others,
through M/s Aslam Jatoi, Assistant Attorney
General along with Ghulam Abbas Akhtar,
Advocate.

ORDER

Muhammad Faisal Kamal Alam, J: Through the present petition, the Petitioner is primarily seeking that his pensionary benefits should be re-fixed in accordance with Basic Pay Scale (“BPS”)-17. Petition contains the following prayer clause(s)_

- “1. *That the honourable High Court may be pleased to declare the contents of notice dated 19.03.2011 in respect to non-accountal for calculation of emoluments towards pension, as illegal, void ab initio and Respondents be directed to extend the benefit of fixation of pay from BPS-16 to 17 towards pension and gratuity and the petition be paid arrears of pension from the date of retirement i.e. from 23.02.2001.*
2. *Any suitable relief which the honourable High Court deems fit along with costs of this petition.”*

2. Mr. M. A. Hakeem, learned counsel for the Petitioner, has argued that the impugned letter of 19.03.2011, in which the pay of the Petitioner was fixed for calculating emoluments and pensionary benefits, is illegal and void *ab initio* as it has not taken into the account the facts that when Petitioner was promoted in BPS-17, then his retirement benefits should also commensurate with his last drawn salary. He has further complaint about the discriminatory treatment meted out to the Petitioner by the Respondents, particularly, the Respondents No.2 and 3 (of Pakistan Railways). He has placed reliance on a correspondence of 08.12.2010 (Annexure 'E' of the petition) in support of his arguments that in case of another employee Mr. Iftikhar Hussain, the Respondents have extended pensionary benefits to the said former employee in the same manner as prayed for by the present Petitioner. He has further cited the Office Memorandum issued by the Finance Division of 01.07.1986 (Annexure 'F' of the Petition) to augment his arguments that under this Office Memorandum, pension of civil servant shall be calculated on his last pay / emoluments drawn.

3. The above contentions of learned counsel for the Petitioner have been vehemently opposed by the Respondents, who have filed their parawise comments.

4. It is not disputed that the Petitioner is a retired Government Employee of Pakistan Railways and was working in the Officer Grade. Petitioner retired after attaining the age of superannuation on 23.02.2001.

5. The Respondents have defended their stance as contained in the impugned letter of 19.03.2011. It has been further stated that the pay of Petitioner was re-fixed at Rs.6,200/- in BPS-17 and even the Petitioner

was paid Rs.1,80,615/- (Rupees One Lac Eighty Thousand Six Hundred Fifteen only) through cheque No.701736 and Rs.4,291/- (Rupees Four Thousand Two Hundred Ninety One only) through cheque No.701735, both dated 05.04.2011, towards difference of pay. However, while relying on the subsequent Office Memorandum of the Finance Division bearing No.8(1) R-2/2010 (pt-10) dated 29.01.2011, the pay of higher post cannot be made basis in the calculation of emoluments towards the pension. Learned counsel representing the Respondents have raised serious question about the maintainability of this petition in view of the Article 212 of the Constitution of Islamic Republic of Pakistan, 1973 (the “**Constitution**”).

6. The arguments of the learned counsel representing the Petitioner and Respondents have been considered and record perused.

7. The afore-mentioned Annexure ‘E’, the correspondence of Respondents dated 08.12.2010, which has been relied upon by the Petitioner’s side in support of his case, if examined carefully, in fact does not support the latter’s case, as clause (iv) of this correspondence clearly stipulates that the pay of the higher post shall not be accounted for in the calculation of the emoluments towards the pension. This is the identical language, which has been used by the Respondents in their impugned Letter of 19-03-2011. This only shows that the same treatment was meted out to the other employee(s) as well. Thus, plea of discrimination as alleged by the Petitioner is misconceived in nature. More so, the Petitioner has not challenged the (afore referred) subsequent Office Memorandum of the Finance Division, as relied upon by the Respondents, nor the fact of getting the differential amount of pay has been disputed by the learned counsel for the Petitioner.

8. Notwithstanding to the above, the issue of maintainability of present petition cannot be left unattended. In a recent Judgment handed down by the learned Division Bench of the Balochistan High Court in the case of *Aurangzaib v. Division Superintendent Pakistan Railways and others [2016 P L C (C.S.) page-1314]*, learned Judges after following the dicta of the earlier decisions of the Honourable Supreme Court, have dismissed the constitutional petition in view of the constitutional bar as envisaged in the Article 212 of the Constitution. In this reported case, the petitioner was an employee of the Pakistan Railways and challenged the promotions of other colleagues.

9. The Respondent No.1 is a Division of Ministry of Railways, under the Rules of Business, 1973, and Petitioner was holding a post in connection with the affairs of the Federation and hence, cannot directly invoke the writ jurisdiction of this Court under Article 199 of the Constitution. Consequently, the present Petition is dismissed but with no order as to costs. However, it is clarified that the Petitioner is at liberty to avail his remedy (if any) in accordance with Law.

Judge

Judge