

IN THE HIGH COURT OF SINDH, AT KARACHI

Present: Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-4323 of 2016

Syed Shahid Ahmed and others.....PETITIONERS

V e r s u s

Federation of Pakistan and others.....RESPONDENTS

Date of hearing: 22.05.2017 and 31.5.2017

Petitioner No.1 and 6 to 8 present in person.
Mr. Furqan Ali, Advocate for Respondent No.2

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- In the captioned Petition, the Petitioners have prayed for declaration that they are lawfully entitled to the Employees Welfare Fund grant of Rs.100,000/- under the National Insurance Corporation (Staff) Service Regulations, 1976 and as paid to other similarly placed employees under the Order dated 09.12.2015 passed by the Hon'ble Supreme Court of Pakistan.

2. Brief facts of the case as set forth in the memo of petition are that the Petitioners were permanent employees of Respondent No. 2/National Insurance Corporation, Karachi (hereinafter referred as NICL) which introduced a Voluntarily Retired Scheme (hereinafter referred as VRS, 2000) for its regular and permanent employees vide Circular dated 16.10.2000. The Petitioners applied for premature retirement under VRS, 2000 through Applications which were accepted. And Petitioners were retired from service up till 31.12.2000 with payment of all relevant dues by the Respondent Company. That some employees of Respondent-Company who retired under the said VRS, 2000 challenged the said formula before the learned Federal Service Tribunal, Lahore in Service Appeal bearing No. 33(L)CE and 34(L)CE of 2009 respectively which were allowed vide Order dated 28.04.2010. Thereafter, Respondent-Company assailed the said judgment dated 28.04.2010 by filing Civil Appeals No. 615 and 616 of 2010 respectively before the Hon'ble Supreme Court of Pakistan which were allowed vide Order dated 09.12.2015. However,

Hon'ble Supreme Court while setting aside the said Judgment dated 28.04.2010 directed that the private respondents will be entitled to retiring benefits under the National Insurance Corporation (Staff) Service Regulations, 1976, which shall be paid to them positively within three months. The Petitioners have asserted that they moved Representations to this effect before the Respondent-Company, but they did not entertain the same, hence this Petition filed on 08.08.2016.

3. Petitioner No.1 and 6 to 8 present in person have contended that Petitioners voluntarily retired from service of the Respondent-Company on 31.12.2000 thus, are entitled to amount Rs.100,000/- as Welfare Fund per National Insurance Corporation (Staff) Service Regulations, 1976. It is further contended by the Petitioners that Respondent-Company illegally and arbitrarily deducted an amount of Rs.50,000/- from the dues of Welfare Fund Grant of each Petitioner causing financial loss to them. It is further added by them that the colleagues of Petitioners namely Riaz Ahmed Qureshi and Shamim Ahmed Toor filed Service Appeal No. 33(L) CE/09 and 34(L) CE/09 before the learned Federal Service Tribunal, Lahore which were allowed vide Order dated 28.04.2010 and Respondent-Company paid said amount to them accordingly. Thus, the petitioners are also entitled to similar treatment under VRS-2000. Petitioners further added that the Respondent-Company approached the Hon'ble Supreme Court and was issued directions by the Apex Court to pay their retiring benefits within three months vide Order dated 09.12.2015. It is further contended by the Petitioners that Respondent-Company has no justification to deduct and retain amount of Rs.50,000/- from the Petitioner's dues after clear directions by the Hon'ble Supreme Court of Pakistan. Petitioners in support of their contentions relied upon the case of Muhammad Ilyas Khokhar and 24 others Vs. Federation of Pakistan and others (2006 SCMR 1240), Zarai Taraqati Bank Limited and others Vs. Said Rehman and others, (2013 PLC (C.S.) 1223) and Naz Hassan Teherani Vs. Secretary Establishment Division, Islamabad and 2 others (2000 PLC C.S. 1240).

4. Mr. Furqan Ali, learned counsel for Respondent-Company has contended that NIC Employees Welfare Fund Grant Committee did not enhance the said grant from Rs.75000/- to Rs.100,000/- with effect from 01.07.1997 in a meeting held on 25.5.1997 as asserted by the

Petitioners; that in the 18th meeting of NIC Employees Welfare Fund held on 29.5.1997, it was unanimously decided that only benefit of retirement/death was to be enhanced from Rs.75,000/- to Rs.100,000/- with effect from 01.06.1997; that National Insurance Corporation Employment Welfare Fund was created to provide retirement benefits to the employees who did not opt for VRS, 2000 and in the 25th meeting of the Respondent-Company it was decided that payment to employees shall be made according to their respective length of service subject to maximum amount of Rs. 50,000/= and submission of declaration form to that effect; that a declaration form dated 4.9.2001 was issued and on submission of declaration form by the Petitioners the payment was made to them on the basis of decision taken in 25th meeting; that so far as payment made to Shamim Ahmed Toor and Riaz Ahmed Qureshi in compliance of the order dated 09.12.2015 passed by the Hon'ble Supreme Court in Civil Appeals No.615 and 616 of 2010 is concerned, the appeals of the Respondent-Company were allowed and impugned Judgment dated 28.04.2010 passed by the learned Federal Service Tribunal was set-aside. It is further contended by learned counsel that the Petitioners had voluntarily submitted their declaration form and payments were made to them in accordance with Circular dated 16.10.2000 and decision of the management which is binding on Petitioners; that Petitioners cannot retract from the said declaration and agreement after considerable time. Furthermore, no additional amount is due and payable to the Petitioners; that Petitioners were paid Welfare Fund Grant as per policy devised in 25th Meeting and Respondent-Company did not deduct Rs. 50,000/= from the dues of Petitioners. It is next contended that Petitioners received the payment as full and final settlement without any objection. In support of his contentions, learned counsel placed reliance upon the case of State Bank of Pakistan and others v. Imtiaz Ali Khan and others (2012 PLC CS 218).

5. We have heard the petitioners in person and learned counsel for the Respondent-Company and perused the material available on record and case law.

6. The foremost point in the present case is that whether Petitioners are entitled to an amount of Rs. 100,000/- instead of 50,000/- as per NIC Welfare Fund Grant as provided under National Insurance Corporation Welfare Fund Regulations, 1976?

7. We have perused Minutes of Meeting of NIC Employees Welfare Fund held on 29.5.1997 wherein it was unanimously decided that retirement/death benefits of employees were to be enhanced from Rs.75,000/= to Rs.100,000/= with effect from 01.6.1997 to the existing employees. Whereas, in the year 2000 the Petitioners opted for VRS, 2000 and obtained due amount as full and final settlement against their Welfare Fund Account under the said Scheme. Therefore, after voluntary retirement Petitioners cannot claim benefit of Minutes of Meeting dated 29.05.1997.

8. We have also perused Circular dated 16.10.2000 and noted that Petitioners submitted declaration form dated 4.9.2001 in respect of payment of Welfare Grant amount payable to them under VRS, 2000. Petitioners admitted to have received following amount as full and final settlement against their respective Welfare Fund Accounts in accordance with the option submitted by them for VRS, 2000. Copies of respective declaration forms of Petitioners are available at Annexure P/1 to P/6 along with comments of Respondent Company mentioned as follows:

- a. Petitioner No.1 received Rs.50,000/-
- b. Petitioner No.2 received Rs.50,000/-
- c. Petitioner No.3 received Rs.50,000/-
- d. Petitioner No.4 received Rs.50,000/-
- e. Petitioner No.6 received Rs.50,000/-
- f. Petitioner No.7 received Rs.20,000/-
- g. Petitioner No.8 received Rs.44,000/=

9. Petitioner No.1 namely Syed Shahid Ahmed while referring to Order dated 9.12.2015 passed by Hon'ble Supreme court in Civil Appeals No. 615 and 616 of 2010 respectively argued that Petitioners are entitled to Welfare Fund Grant amounting to Rs. 100,000/- as directed by the Hon'ble Supreme Court. We have perused the short order dated 9.12.2015 (available at page 49 of the file) followed by detailed Judgment dated 14.01.2016 passed by the Hon'ble Supreme Court and the same are reproduced as follows”:

“Order dated 09.12.2015:

We have heard the arguments of the learned ASC for the appellant and respondent No.1 in person (in CA No.615/10). For the reasons to be recorded separately, both these appeals are allowed. The impugned judgment of the Federal Service Tribunal is set-aside however, with further direction that the

private respondents will be entitled for their retiring benefits under the National Insurance Corporation (Staff) Service Regulations, 1976 which shall be paid to them positively within three months.”

“Order dated 14.01.2016:

“On 9.12.2012, a bunch of identical civil appeals was taken up together for hearing, where after Civil Appeals No. 247-L, 249-L, 250-L, 428, 429 and 431 to 437 of 2011, were disposed of vide separate judgment dated 09.12.2012, whereas these two appeals were disposed of vide short dated 9.12.2012.

2. The facts forming background of these two appeals and the controversy involved is somewhat identical to one, which has been dilated upon and decided by this Court in its above referred judgment dated 9.12.2015. Thus, it shall mutatis mutandis apply to these appeals for grant of requisite relief, as per short order dated 9.12.2015.

3. Foregoing are the reasons for final disposal of these appeals in terms of the short order.”

10. After perusal of the Orders passed by the Honourable supreme court as well as record we find that the judgment of the learned Federal Service Tribunal, Lahore was set-aside by the Hon’ble Supreme Court vide Order dated 09.12.2015 passed in Civil Appeal No.615 and 616 of 2010, in which the petitioners were not party, therefore, they cannot rely upon the judgment of learned Federal Service Tribunal, Lahore.

11. Secondly, the above quoted judgments of Hon’ble Supreme Court are based on the facts which are different from the facts of the instant Petition. We are of the view that Hon’ble Supreme Court directed the Respondent-Company that private respondents will be entitled to retiring benefits under the National Insurance Corporation (Staff) Service Regulations, 1976 whereas in the present case, the Petitioners applied for voluntary retirement under Circular dated 16th October 2000, issued by the Respondent-Company and voluntarily submitted declaration form and received due payment in accordance with the policy.

12. The learned Federal Service Tribunal, Lahore vide judgment dated 28.04.2010 allowed grant of Welfare Fund by the Respondent-Company to the Appellants in Appeal No.33(L)CE/2009 (Riaz Ahmed Qureshi, etc.) and 34(L) CE/2009 (Shamim Ahmed Toor) as had been done in the case of Ch. Riaz Ahmed. It is pointed out by learned counsel for the Respondent-Company that Mr. Shamim Ahmed Toor and Mr. Riaz

Ahmed Qureshi did not opt for VRS, 2000. Furthermore, Mr. Shamim Ahmed Toor and Mr. Riaz Ahmed Qureshi were paid pensionary benefits in pursuance of Order dated 09.12.2015 passed by the Hon'ble Supreme Court on merits.

13. We are of the view that this is not a case of grant of pension benefits to the petitioners, but of Welfare Fund Grant to the employees retired against VRS as per NIC Employment Welfare Fund Regulations, 1976. The Circular/option form indicates that the Welfare Fund Account of the employees shall be settled, however, it was decided to allow payments to VRS employees from the Welfare Fund according to the numbers of years of their service in NIC, subject to maximum of Rs. 50,000/- within the funds available in the Welfare Account. Because the Petitioners have not retired from service of the Respondent-Company under NIC (Staff) Service Regulations, 1976, but, they left the Respondent Company voluntarily under VRS Scheme, 2000. Therefore, their service is squarely governed and controlled by the terms and conditions of NIC Employment Welfare Fund Regulations, 1976 and circular dated 16th October, 2000.

14. Admittedly, VRS, 2000 was not imposed upon the Petitioners nor anyone was compelled or put under duress, pressure or coercion to opt for same. On the contrary, Petitioners voluntarily opted for the same and undertook that they will not claim any further amount in respect of welfare grant in future. Therefore, they cannot rescind from the agreement unilaterally to claim further amount of Rs. 50,000/- from the Respondent-Company.

15. We have also noted that the instant Petition is hit by doctrine of laches because, the Petitioners filed the instant Petition on 08.08.2016 whereas, the alleged cause of action initially accrued to them in the month of October 2000 when they opted for Voluntarily Retirement. In other words, Petitioners have approached this Court after almost 16 years without any explanation whatsoever. Hence, the case of Petitioners is clearly suffering from laches as well. It is well settled law that delay defeats equity and that equity aids the vigilant.

16. We do not see any violation of Article 25 of the Constitution because the Petitioners have failed to make out a case of discrimination.

17. We have noted that the case law cited by the Petitioners is distinguishable from the facts and circumstances of the present case.

18. In the light of above facts and circumstances, Petitioners are not entitled to the relief prayed for. Therefore, the instant Petition is dismissed with no order as to costs.

JUDGE

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