

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Present

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon.**

C.P. No.D-378 of 2017

Syed Mubarik Ali ZaidiPetitioner

Vs.

The Finance Director HESCORespondent

Date of hearing 14.01.2019

Petitioner present in person.

Mr. Muhammad Arshad S. Pathan, Advocate for respondent.

Mr. Muhammad Aslam Pervaiz Khan, D.A.G.

ORDER

Through the captioned petition, the petitioner is seeking direction to the respondents for revision of his Pension Papers Orders by showing 50% net pension as Rs.2,3833.75/- which he was drawing through his pension book alongwith 50% commuted portion of pension as Rs.35,158.09/-.

2. Petitioner who is present in person has referred to his statement filed on 22.03.2018 and has submitted that he has received 50% commuted portion of pension with certain increases on 01.10.2015 but the restoration of 50% commuted portion of pension amount has been entered in Monthly column Pension as Rs.35,158.09 in his Pension Papers Orders Disburser's Portion and the same amount is being paid to him through his Pension Book w.e.f. 01.10.2015 to date; that the same amount is being treated as 100% Gross Pension, which is quite wrong. The petitioner has referred to his statement available at page No.199 of case file, which is reproduced as under:-

(i)	<i>50% Net pension which I was drawing through my Pension Book as on 01.10.2015, but the same has been disallowed illegally.</i>	<i>Rs.23,833.75</i>
(ii)	<i>50% restoration of Commuted Portion of Pension will be increased/included in my 50% Net Pension in accordance with Finance Division O.M referred to above (as per Annexure-F on page No.37 to 43 of C.P. No.378 of 2017), and as per para No.3 of the Undertaking which is self-explanatory has been obtained from me on stamp paper of Rs.50/- (as per Annexure-C on page No.9 of my C.P. No.378 of 2017). But treating as my 100% Gross Pension.</i>	<i>Rs.35,158.09</i>
(iii)	<i>My 100% Gross Pension will be as on 01.10.2015 and will be entered in column Monthly Pension in my PPO Disburser's Portion. (As per Annexure-II, Para No.22 case judgment 2011 PLC (CS) 580 Lahore High Court.</i>	<i>Rs.58,991.84.</i>

He further added that the aforesaid amount, which was earlier worked out by Director Pension WAPDA, Lahore, later on has been struck of. The details are as under:-

(i)	<i>Total increase on 50% commuted portion.</i>	<i>Rs.33, 655.68.</i>
(ii)	<i>50% my Net Pension which I was drawing through my Pension Book as on 01.10.2015, but the same has been disallowed illegally.</i>	<i>Rs.23, 833.75.</i>
(iii)	<i>Amount entered in space for Increase in serial No.2 of my PPO, Later on struck off.</i>	<i>Rs.57, 489.43.</i>
(iv)	<i>50% starting commuted portion of pension as on 01.10.1990 also returned to me on 01.10.2015 on my commuted date of restoration.</i>	<i>Rs.1, 502.42.</i>
(v)	<i>100% my Gross Pension will be as on 01.10.2015 and will be entered in Monthly Pension Column of my PPO Disburser's Portion. (As per Annexure-II, Para No.22 case judgment 2011 PLC (CS) 580 Lahore High Court).</i>	<i>Rs.58,991.84</i>

A query was raised by this Court as to how the instant petition is maintainable on the premise that the petitioners stood retired voluntarily after completing 26 years' service on 01.10.1990 from the service of WAPDA/HESCO. He in reply to the query has submitted that in view of judgment dated 05.01.2012 passed by the learned Federal Service Tribunal and upheld by the Honorable Supreme Court of Pakistan vide judgment dated 24.04.2012, petitioner is entitled to the same relief as given to other pensioners in the aforesaid judgments; that in the aforesaid judgments respondents were directed to determine the pension of the applicants from date of restoration of their commuted pension at the same rate, which they were drawing.; that the Government of Pakistan through office memorandum dated 03.07.2013 decided to implement the aforesaid judgments of Superior Courts, therefore, his 100% Gross Pension needs to be calculated in accordance with the ratio of the judgments. Per petitioner he is entitled for the amount of Rs.23, 833 on account of his 100% Gross Pension, which he was drawing on 01.10.2015. He lastly prayed for restoration of his 50% net pension which has been disallowed by the respondents.

3. Mr. Muhammad Arshad S. Pathan learned counsel for the respondent-HESCO has raised the question of the maintainability of the petition and referred to the statement dated 26.01.2018 and argued that pensionary dues of the petitioner have been calculated by the Competent Authority in accordance with WAPDA pension rules and nothing is left on the part of WAPDA to be paid on account of pensionary benefits of the petitioner in support of his contention he relied upon the comments filed on behalf of WAPDA.

4. At this stage the petitioner has objected to the contention of the learned counsel representing HESCO and has submitted that the certain amounts, which have been shown in the schedule are less amount than the petitioner claims, through instant petition. He next submitted that the respondent-company has given lame excuses and delayed in releasing the dues of the

petitioner, however, he denied the contents of the statement and annexures attached thereto of the respondent and stated that the same is based upon false assertions. He further stated that the main grievance of the petitioner is release of 50% commutation amount and other pensionary benefits, which have been stuck up due to lethargic conduct of the responded-company for that he has suffered a lot in litigation, therefore, he is entitled for increase of payment as mentioned in the schedule of payment as discussed supra. The petitioner has referred to his synopsis and statement filed in this regard. Petitioner also referred to Office Memorandum dated 29-2-2008 which is also reproduced hereunder for ready reference: ---

*“Government of Pakistan
Finance Division (Regulations Wing)

No.F.13(16)-Reg.6/2003 Islamabad the 29th February, 2008.

OFFICE MEMORANDUM

*Subject:- RESTORATION OF PENSION SURRENDERED
IN LIEU OF COMMUTATION/GRATUITY.*

The undersigned is directed to refer to Finance Division's O.M.No.F.5(2)-Reg.6/2002 dated 2nd July, 2002 on the above subject and to state that in pursuance of the Judgment dated 21.4.2007 passed by Federal Service Tribunal in civil petition No.495(R)/CS/2003, it has been decided that increase in pension admissible in the respective financial year be allowed on the restored commuted portion of pension to all those Government servants who retired on or before 30-6-2001 with effect from the date on which the commuted value of pension has been restored.”

5. The contention of the petitioner is that during the period of commutation increase in pension was granted and therefore restoration of pension means the pension inclusive of increments granted over the last 15 years. Therefore, pension should be double of the 50% pension. He added that that the increase has been made in the "pension" and, therefore, the petitioner cannot be deprived of the said increments. In support of his submissions, he referred to Section 19 of the Civil Servants Act, 1973 and I.A. Sharwani and others v.

Government of Pakistan through Secretary, Finance Division, Islamabad and others 1991 SCMR 1041 (at 1096). He lastly prayed for direction to the respondent-company to clear pensionary benefits of the petitioner in accordance with the judgment passed by honorable Supreme Court of Pakistan as discussed supra.

6. We have heard the parties on the aforesaid issue and perused the material available on record.

7. The precise question for determination before this Court is the quantum of 50% pension that is restored at the end of the commutation period.

8. To fully appreciate the contention of the parties this Court vide order dated 21.02.2018 passed the following order:-

“The petitioner after submission of documents finally request that an opinion of Ministry of Finance may be sought in the matter as to the methodology of calculation of pension any benefit as available not being satisfied by what is granted by the respondents. Learned counsels present do not oppose such a request. Considering the same as a technical aspect, it is ordered that such an opinion be obtained for which necessary documents be provided to the office of learned D.A.G. by the petitioner. The concerned Ministry is required to comment upon methodology of calculation of pension any benefit for the period before completion of the computation period as well as thereafter.”

In compliance of aforesaid order the Finance Department, Government of Pakistan has submitted its report. An excerpt of the same is reproduced as under:-

“The petitioner (Syed Mubarik Ali Zaidi) retired from Government service on 01.10.1990 and his surrendered portion of commuted pension was restored in the year 2015 after outliving the prescribed period for which the pension was commuted in accordance with the commutation table, 1986 issued by Finance Division vide O.M. dated 01.07.1986. As per Federal Government policy, the petitioner is entitled to periodical increases upon surrendered portion of commuted

pension after restoration w.e.f. 01.12.2001, without arrears, in the light of Judgment dated 05.01.2012 duly upheld by Apex Court dated 24.04.2012 and subsequently implemented by Finance Division vide O.M. dated 21.01.2013 and 11.03.2013. Periodical increases upon surrendered portion of commuted pension from 1990 to 2001 are not admissible as the petitioner had already received these increases upon gross pension in the light of Finance Division O.M. dated 03rd October, 1991.”

9. As per petitioner he commuted his 50% pension for a period of 15 years, which means that a lump sum payment of 50% of the pension on the basis of the pension as it stood in the year 1990 was worked out. Therefore, under the Rules the pension stands RESTORED at the end of the commutation period i.e. 15 years. This means that the petitioner is once again entitled to 100% pension as it stands on the day of his retirement as provided under Rule 3.29 of the Pension Rules.

10. We are cognizant of the fact that this Court can enforce the fundamental rights of pensioner. We are not satisfied with the calculation made by the respective parties, for the simple reason that Hon'ble Supreme Court of Pakistan in the aforesaid judgment has categorically ordered to release commutation amount of pensioners, therefore, respondent-company cannot be allowed to sit in appeal against the judgment passed by Hon'ble Supreme Court of Pakistan and withhold the pensionary benefits of the pensioner. Apparently the payment of the pensionary benefits to the petitioner has been delayed for which the petitioner cannot be held responsible.

11. In view of the facts and circumstances of the case and for the reasons alluded as above, we are not satisfied with the explanation offered by the respondent-company that compliance of the judgment of Hon'ble Supreme Court of Pakistan has been made in its letter & spirit, therefore, at this juncture, before taking cognizance of the matter for enforcing the judgment of the Honorable Supreme Court of Pakistan, we in the above circumstances, at

the first instance direct Additional Registrar of this Court to consult with the Accountant General Sindh, who is directed to depute an Official to assist Official of this Court to undertake the exercise of recalculation of the pensionary benefits of the petitioner including commutation as directed by the Supreme Court of Pakistan in the aforesaid judgment, in accordance with rules and regulations. The comprehensive report has to be submitted by Learned Additional Registrar of this court within a period of 01 month from the receipt of order of this Court. The parties to file their claim before Additional Registrar of this Court within one week, who thereafter will transmit the same to the Accountant General Sindh for re-calculation of the same. Such report shall be submitted within the stipulated period after receipt of this order.

12. The hearing of this matter is adjourned to be taken up after one month.

JUDGE

JUDGE

Irfan Ali