

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 6090 of 2017

Dr. Farrukh MirzaPetitioner

Versus

The Secretary, Finance Division,
Islamabad & 03 othersRespondents

For hearing of CMA No.37762/2018 (Contempt Appl.)

Date of hearing: **09.05.2019**

Date of Order: **09.05.2019**

Petitioner present in person.

Mr. Muhammad Nishat Warsi, Deputy Attorney General along with Mr. Qamaruddin Sheikh, Accounts Officer of Respondent No.4.

ORDER

ADNAN-UL-KARIM MEMON, J:- This Petition was disposed of by this Court vide order dated 11.10.2018, by giving directions to the Respondent No.4-Controller of Military Accounts (Pensions) to restore the commuted portion of the petitioner and increases accrued thereupon, strictly in accordance with law and keeping in view the decision rendered by the Hon'ble Supreme Court of Pakistan in Civil Petitions No.549 to 559 and 575 to 589 of 2012.

2. On 08.12.2018, Petitioner filed an application being [CMA No. 37762/2018] under sections 3 and 4 of Contempt of

Court Ordinance 2003 read with Article 204 of the Constitution of Islamic Republic of Pakistan 1973, for initiating contempt proceedings against the alleged contemnor, who deliberately and intentionally refused to obey the order dated 11.10.2018 passed by this Court.

3. Petitioner who is present in person has referred to his Written Arguments filed on 16.4.2019 and has submitted that he has received 50% commuted portion of pension with certain increases but the restoration of 50% commuted portion of pension amount has been wrongly calculated by the contemnor; that the aforesaid calculated amount is being treated as 100% Gross Pension, which is quite wrong calculation on his part; that the alleged contemnors have violated the basic sprit of the Order passed by the Hon'ble Supreme Court on the premise that the Respondent No.4 has not determined the pension of the Petitioner from the date of restoration of the commuted portion of the pension, instead of restoration from the date of his retirement which is illogical; that Respondent No.4 has not determined the quantum of increase on restoration of commuted portion of pension from the date of retirement of the petitioner in the year 1999. He however disputed the statement of the Respondents regarding recalculation of his pensionary benefits. The petitioner has referred to Paragraphs-4 to 8 of the Affidavit-in-rejoinder, and submitted that which reads that on the date of restoration i.e. 20.05.2014 this petitioner was drawing Rs: 67,326/- per month as pension (Excluding medical & orderly allowances); that in view of the Judgment of Honorable Lahore High Court upheld by Honorable Supreme Court of Pakistan quoted at para 3 above, the

amount of pension (only) drawn on the date of restoration i.e. 20.05.14 was Rs: 67, 326/- and should have been doubled to Rs: 134,652/- (67,326 x 2=134,652). Petitioner has relied upon the summary of calculation of his pension, which reads as under:-

Date of Retirement	Date of Restoration
20 th May 1999	20 th May 2014
Gross Pension 20 th May 1999 was Rs: 13,225/-	
50% commuted amount Rs: 6,612.5/-	
50% residual pension Rs: 6,612.5/-	
Pension excluding allowances on the date of Restoration i.e. 20.05.2014 was Rs: 67,326/-	
Pension excluding allowances after restoration should have been 67,326 +67326=134,652/-.	

7. That on the date of restoration the pension (excluding allowances) of the petitioner has been determined by respondent no.4 as Rs: 82,409/- meaning an increase of Rs: 15,038/- Per month (82,409-67,326=15,083).

Petitioner has submitted that arithmetically the following calculation made by the Respondents is not humanly possible. An excerpt of the same is reproduced as under:-

- A. 50% of gross pension which was Rs:6,612.5/- as residual pension grew to Rs:67,326/- after 15 years.
 B. 50% of the gross pension which was (commuted), also Rs: 6,612.5/- remained Rs: 15,083/- after 15 years.

The difference between A & B above are obviously huge, especially when rate of increase 5% to 20% and the period of increase i.e. 15 years is constant in both the cases `A` & `B` above.

4. Conversely, Mr. Muhammad Nishat Warsi, Deputy Attorney General has refuted the claim of the Petitioner and argued that the Petitioner has been paid full and final payment and nothing is left on their part to be paid more to the Petitioner, however, he submitted that commuted portion of pension viz Rs.6612.50 was restored by the Respondent vide No.G-5/P/6899/Misc dated 12.06.2014 and pension of the petitioner was made double viz Rs.6612.50 (Residual Pension) + Rs.6612.50 (commuted portion of pension) = Rs.13225 (Gross Pension); that annual increases in pension (IPs) have also been revised on gross pension except the I.P

1999 (as the same was already allowed on gross pension); that after authorizing the revised increases, the petitioner was entitled pension viz Rs.95479 p.m. (including the amount of Medical and Special Additional Pension) w.e.f. 20.05.2014; that later on due to authorization of further increases (i.e. IP 07/2015, 07/2016, 07/2017 and 07/2018) the net payable pension of the petitioner comes to Rs.151291/- w.e.f. 01.07.2018 onwards; that the Respondents are making payment of the pension through his bank account according to the rates admissible to him in the light of decision rendered by the Honorable Supreme Court of Pakistan regarding restoration of commuted portion of pension. He lastly prays for dismissal of the listed application being meritless.

5. We have heard the Petitioner who is present in person and learned DAG on the listed application and perused the material available on record.

6. We have noted that the aforesaid matter was disposed of by giving directions to the Respondent No.4-Controller of Military Accounts (Pensions) to restore the commuted portion of the petitioner and increases accrued thereupon strictly in accordance with law and keeping in view of the decision given by the Hon'ble Supreme Court of Pakistan in Civil Petitions No.549 to 559 and 575 to 589 of 2012. It appears that the Respondent No.4 finally concluded the matter with the aforesaid assertions.

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. 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, 1999 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 in the year 1999 and not from the date of completion of commuted period i.e. 2014 as provided under Rule 3.29 of the Pension Rules.

9. 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-Department 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 miscalculated for which the petitioner cannot be held responsible.

10. 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-Department 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 Nazir 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 Nazir of this Court within a period of one [01] month from the receipt of order of this Court. The parties to file their claim before Nazir of this Court within one week, who thereafter will transmit the same to the Accountant General Sindh for recalculation of the same. Such report shall be submitted within the stipulated period after receipt of this order.

11. The hearing of this matter is adjourned to be taken up after summer vacation. Let a copy of this order be communicated to all concerned for information and compliance within stipulated period of time.

JUDGE

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