

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-6770 of 2018

Bostan Khan Khattak Petitioner

Versus

Federation of Pakistan
Through the Secretary, Ministry of Defence
& 03 others Respondents

Date of hearing: 16.05.2019

Date of order: 16.05.2019

Petitioner, Bostan Khan Khattak, present in person.
Mr. Altamash Arab, Advocate for Respondents No.3 & 4.
Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON, J: - Through the captioned Petition,
the Petitioner is seeking following relief[s]:-

- a. To hold and declare that the petitioner is entitled for House Rent Subsidy (HRS) w.e.f. 13.03.2010 to 03.08.2012 and the respondents be directed to pay such amount to the petitioner which was paid by the petitioner to the lady landlord Mst. Fatima Begum.
- b. To hold and declare that the HRS allowed to the petitioner by the respondents on 10.04.2013 w.e.f. 13.12.2012 to 23.04.2013 as per lease agreement dated 15.08.2012 was not in consonance with the law on the subject as the petitioner was in active service of the department and of the reaching the age of 60 years had retired from service on 24.04.2013.
- c. To set aside the impugned order dated 26.04.2018 through which the petitioner has been denied the House Rent Subsidy (HRS) and declare that the petitioner is entitled for such house rent subsidy w.e.f. 13.03.2010 to 03.08.2012 from the respondents.

2. Basically, the Petitioner has filed this petition under Article 199 of the Constitution to recover the amount from the

Respondents, on account of House Rent Subsidy [**HRS**], which was paid by him to the lady landlord Mst. Fatima Begum. Petitioner has premised his case that, he stood retired from the service of the Respondent-Pakistan Atomic Energy Commission, as a Senior Assistant (Admin.), after attaining the age of superannuation vide letter of retirement dated 23.04.2013 and is/was entitled for grant of HRS, as provided under clause “h” of Chapter IV- of “National Command Authority Accommodation Allocation Rules-2010” with effect from 13.03.2010, instead of 03.08.2012.

3. We queried from the Petitioner as to how this Petition is maintainable in its form, the petitioner, who is present in person has submitted that HRS allowed to him by the Respondent-Commission vide letter dated 10.04.2013, with effect from 13.12.2012 to 23.04.2013, but not as per Rent Agreement dated 19.5.2009 and subsequent Rent Agreements executed between the parties. He added that during his tenure of service, he demanded such subsidy but no heed was paid to his genuine request and finally through the impugned order dated 26.04.2018 HRS was declined; that the aforesaid decision of the Respondents is erroneous, thus liable to be set aside; that he is entitled for such House Rent Subsidy with effect from 13.03.2010 to 03.08.2012. In support of his contention, he referred various documents attached with the Memo of Petition and case law cited therein. He prayed for allowing the instant petition.

4. The Respondents have controverted the stance of the petitioner on the premise that “National Command Authority Accommodation Allocation Rules-2010” are non-statutory, cannot be enforced through the Writ petition by virtue of the National

Command Authority (Amendment) Act, 2016, and the petitioner cannot institute recovery proceedings against the Respondents, through the Constitution Petition; that there are disputed questions of fact and the same cannot be resolved under Writ jurisdiction; that the petitioner stood retired from the service of Respondents on 23.04.2013 and has instituted this Petition on 25.9.2018, thus the instant Petition is seriously suffering from laches.

5. We have heard the parties and perused the material available on record.

6. It appears from the record that the petitioner was declared unfit on 23.09.1996 by the Medical Board and he stood retired from service and was awarded invalid pensionary benefits, which amounted to Rs.194253/-.The Petitioner claimed that he recovered from incapacitation and was reinstated in service vide order dated 14.10.2008 passed by this court in Constitution Petition No.D-113/2007.

7. We inquired from the petitioner that this Court vide Judgment dated 15.3.2018 passed in CP No.D-4136/2013, dismissed his petition, then how this petition is maintainable? Petitioner replied that, he being aggrieved by and dissatisfied with the judgment dated 15.3.2018, assailed the same before the Hon'ble Supreme Court in Civil Petition No.550-K of 2018 and Civil Petition No.602-K/2018. The Hon'ble Supreme Court vide order dated 16.8.2018, dismissed his petition and leave was declined in the following manner:-

“It appears that the petitioner was reinstated, however, he stood retired on 23.4.2013 and the amount received by him as invalid pension during

the period he remained out of service pursuant to the order of the High Court dated 14.10.2008, was recovered in lump-sum, amounting to Rs.1942253/-. The petitioner filed another petition bearing No.D-4136/2013, and the learned Bench of the High Court noted in para-10 of the impugned judgment that the petitioner cannot be allowed double pension i.e. invalid pension and superannuation pension. It may be observed that the petitioner during the period he received invalid pension, was not receiving superannuation pension and when he became entitled to receive superannuation pension from the date of his retirement on 23.4.2013 he was accordingly entitled to regular pension, thus, there was no double payment of pension. However, the learned Bench arrived at a just conclusion that the recovery was affected pursuant to the order of the learned Bench of the High Court in CP D-113/07 in terms of the paragraph as already reproduced above. Presently the petitioner has not challenged the order of the learned Bench of the High Court in CP D-113/07, whereby the recovery was ordered to be made, therefore, the conclusion drawn by the High Court in the instant matter is unexceptionable and does not call for interference, consequently the petition is dismissed and leave to appeal declined.”

8. Mr. Altamash Arab, learned Counsel for the Respondents No.3 & 4 has referred to the para-wise comments, filed on behalf of the Respondents No.3 & 4 and raised the question of maintainability of the instant Petition and argued that the grievance of the Petitioner is wholly misconceived; that the order dated 26.4.2018 passed by the Respondent-Commission, whereby his request for grant of HRS w.e.f. 13.03.2010 [*date of assessment of house*] instead of 03.8.2012 [*date of approval of HRS*] was considered, and found untenable, due to non-availability of funds and maintenance of seniority for HRS. Per learned Counsel, the finding of the Department stands on cogent and legitimate footing thus is not called for interference by this court under the Writ jurisdiction. He, however, denied that the Department executed any Agreement with lessor [Mst. Fatima Begum] on behalf of M/s. Karachi Nuclear Power Complex that demised premise was hired for acquiring accommodation for the Petitioner; that purported Rent Agreement dated 9.6.2009 and subsequent Agreements filed by the petitioner, in support of his stance explicitly show that the petitioner is not entitled for any relief from this court; that Petitioner was not denied any right of accommodation for the

period i.e. 13.3.2010 to 3.8.2012; that the report of Assessment Board relied upon by the petitioner, was just explanation that the House was suitable for hiring by the employees of SPS-10 and did not in any manner demonstrate that the House was available for accommodation, to be provided to the petitioner, even otherwise the same was based on seniority basis. He lastly prayed for dismissal of the instant Petition.

9. Mr. Muhammad Nishat Warsi, learned DAG has supported the legal stance of the learned Counsel, representing the Respondents No.3 & 4.

10. We have heard the parties on the point of Maintainability of the instant Petition and perused the material available on record

11. The foremost question which require our findings whether the petitioner is/was entitled for House Rent Subsidy (HRS) i.e. 13.03.2010 to 03.08.2012, during his tenure of service?

12. To appreciate the entitlement of the petitioner for grant of HRS, we have noticed that the learned Division Bench of this Court vide order dated 14.10.2008 passed in C.P. No.D-113/2007, while reinstating him in service, observed that the petitioner will not be entitled for the salary during the period in which he was remained out of job. As regards pensionary benefits taken by the petitioner during the period he remained out of job, the respondents will adjust the same from the salary of the petitioner. For convenience sake, an excerpt of the order is reproduced as under:-

“The principle laid down by the Hon’ble Supreme Court in the case of Hashmat Ali is applicable to the facts of this case. The petitioner is medically now fit and relying upon the principle laid down in case of Hashmat Ali, we grant this petition; order to reinstate the petitioner in service with a pensionary benefits **but petitioner will not entitle for the salary during the period in which he was remained out of job. As regards pensionary benefits taken by the petitioner during the**

period he remained out of job, the respondents will adjust the same from the salary of the petitioner or other amount available as he deems fit.” (Emphasis Added).

13. It appears that the Petitioner in his pleadings has admitted that HRS was allowed to him by the Respondents on 10.04.2013 with effect from 13.12.2012 to 23.04.2013, but he asserted that the same was not in accordance with law. The Respondents have disputed the claim of the petitioner for his entitlement of HRS with retrospective effect for the simple reason that the petitioner purportedly executed lease agreement, with lady landlord Mst. Fatima Begum on 15.08.2012 and claiming HRS with effect from 13.03.2010 to 03.08.2012, on the basis of previous Rent Agreements.

14. Prima-facie the entire claim of the petitioner, as brought through this petition is based on factual controversy, which cannot be resolved under Constitutional Jurisdiction. Besides that the issue of maintainability of the captioned Constitutional Petition is involved in the present proceedings, by virtue of the National Command Authority (Amendment) Act, 2016, whereby the following amendment has been made:

“Section 3. Amendment of section 15 of the Act V of 2010.-In section 15 of the Act V of 2010, the following new proviso shall be added:

Provided that notwithstanding anything contained in any judgment of any court or in this Act or in any other law for the time being in force, **the rules, instructions or orders already made, or which may be made, in respect of the employees and strategic organizations of the Authority shall be non-statutory unless approved by the Federal Government and published in the Official Gazette of Pakistan**”

15. In the light of the aforesaid legal position of the case, the case of the petitioner is directly hit by decisions rendered by the Honorable Supreme Court of Pakistan, in the cases of Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman

and others (PLD 2010 SC 676), Abdul Wahab and others v. HBL and others (2013 SCMR 1383), PIA Corporation v. Syed Suleman Alam Rizvi (2015 SCMR 1545), Pakistan International Airline Corporation Vs. Aziz-ur Rehman Chaudhary and others (2016 SCMR 14), Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010) and Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others (2019 SCMR 278), Shafique Ahmed Khan and others versus NESCOM through Chairman Islamabad and others (PLD 2016 SC 377), Muhammad Zaman etc. versus Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad (2017 SCMR 571) and latest decision announced on 13.5.2019 by the Honorable Supreme Court in the unreported case of Maj. (R) Syed Muhammad Tanveer Abbas and another (Civil Appeals No.26-K & 27-K of 2018).

16. In the light of above discussion and the case law referred above, the instant Petition is dismissed along with the pending Application[s]

JUDGE

JUDGE

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