

**IN THE HIGH COURT OF SINDH
AT KARACHI**

SUIT NO. 635 OF 2009

Plaintiff : Mirza Asghar Baig, through Mr. S. Abrar Bukhari, Advocate

Defendant : National Refinery Limited, through Mr. Javed Asghar Awan, Advocate

Date of hearing : 16.10.2018

ORDER

YOUSUF ALI SAYEED, J – The Plaintiff is a former employee of the Defendant No.1, having apparently remained in the employ of the Defendant No.1 between 08.05.1978 and 30.06.2002, on which date he stood retired pursuant to a Voluntary Separation Scheme (the “**VSS**”). As can at best be discerned from the plaint, the case set up by the Plaintiff is that he was not paid his legitimate dues on severance, as he had been due for upgradation to salary grade II-A in view of his eligibility in terms of seniority and fitness but was not so upgraded with the result that the benefit of the due upgrade was not factored in for purpose of computation of his emoluments under the VSS as on 01.07.2002, and, furthermore, that he is also entitled to continued pensionary benefits.

2. In terms of the plaint, it has obliquely been stated that “For that the cause of action accrued to the Plaintiff first on January 2001 when the Defendants did not up gradation salary grade-II-A, for which the Plaintiff became entitled on the Seniority cum Fitness as per Company Policy and continued till last served by the Plaintiff up to 30.06.2002 and his applications appeal and legal Notice dated 10.11.2008 which replied on 13.12.2008 and then continued till filing of this suit Continued day to day till finally release the dues of pension and other allowances being recurring effects.” [Sic]

3. It is on this professed basis that the Plaintiff has brought the instant Suit on 24.02.2009, seeking judgment and decree in the following terms:

“i) To direct to the defendants that the Plaintiff is entitled for up gradation of NRL Salary Grade-II-A w.e.f 01.01.2001 and he is entitled to be paid revised compensation package of arrear from 01.01.2001 to 30.06.2002 last served by the Plaintiff to the defendants as other employees of NRL in Managerial cadre were paid and Plaintiff singled out malafidely, in capricious manner with out disclosing any reason resulted he has been suffered mentally, financially entitled to be claim damages worth Rs.5000000/- Rupees Fifty Lacs.

ii) To hold and direct to the defendants that the Plaintiff is entitled to be paid pensionary benefits on his last served i.e. 30.06.2002, more than 24 yrs to the defendants.

iii) For that any other relief which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.” [Sic]

4. The plaint was accompanied by an Application under Section 5 of the Limitation Act, 1908 (CMA No. 3937/2009), whereby it was prayed that the Court “may be pleased to condone the limitation if any in filing of the present Suit...”. In this very context, it is also pertinent to mention that on 02.03.2009 the Additional Registrar (O.S.) had raised an objection as to maintainability, observing that the claim dated back to the year 2002 and that the suit was barred under Article 56 of the Limitation Act, 1908, which prescribed a 3-year period of limitation. In response to the office objection, it was contended that non-payment of pensionary benefits was a continuous wrong affording a fresh cause of action and no period of limitation was therefore applicable. Upon the matter being placed in Court on 30.03.2009, the Court was pleased to order that notice be issued whilst observing *inter alia* that the office objection would be open to consideration if raised by the Defendant.

5. In this backdrop, an Application under Order 7, Rule 11 CPC (CMA No. 8756/09) was filed on behalf of the Defendants seeking rejection of the plaint principally on the ground of limitation, and in terms of the Order made on 24.03.2014 counsel for the Plaintiff was also put on notice to satisfy the Court as to how the Suit was within time. It is this Application intertwined with the question of maintainability that is presently the subject of determination along with aforementioned CMA No. 3937/2009, which are addressed as follows herein below.

6. Addressing the question of maintainability and the point of limitation, learned counsel for the Plaintiff advanced essentially the same arguments as had been put forward in response to the aforementioned office objection, contending that the denial of pensionary benefits constituted a continuing wrong in respect of which limitation did not apply. In this regard he placed reliance on the judgments of the Honourable Supreme Court in the cases reported as Muhammad Iqbal v. Secretary to the Government of Pakistan, Narcotics Control Division, Islamabad & 4 others 1995 SCMR 557, Muhammad Ahmed v. Government of Sindh 1999 SCMR 255, as well as certain judgments of the Federal Service Tribunal reported as Rao Muhammad Yasin Khan v. Secretary, Ministry of Education & 2 others 1986 PLC (C.S.) 66, Muhammad Hanif Shah v. Divisional Commercial Officer, Rao Solat Yasin Khan v. Director General, Federal Directorate of Education, Islamabad & 2 others 1995 PLC (C.S.) 1026, Pak Railways, Multan & another 1996 PLC (C.S.) 832.

7. Conversely, learned counsel for the Defendant No.1 submitted that the relationship between the Plaintiff and Defendant No.1 had been governed under the principle of 'master and servant', which had been brought to an end by virtue of the Plaintiff opting for early retirement so as to avail the benefit of the VSS filed as Annexure "H" to the plaint, and the incentive payments provided under Clause 3 thereof.

8. On the aspect of pension, learned counsel for the Defendant No.1 pointed out that further early retirement benefits had been extended in terms of Clause 4 of the VSS, which had been bifurcated so as to provide a mechanism in terms of sub-clause (i) thereof for those employees who had completed 20 years of pensionable service and attained the age of 50 years as on 31.12.2001, and a separate mechanism had been prescribed in terms of sub-clause (ii) for other eligible employees who did not meet that criteria. He also pointed out that since the Plaintiff's date of birth was 01.03.1952, as stated in paragraph 1 of the Plaint, he was evidently not 50 years of age as on 31.12.2001 and therefore fell within the framework of sub-clause (ii), which provided as follows:

“(ii) OTHER ELIGIBLE EMPLOYEES, WHO DO NOT MEET THE CRITERIA SPELLED OUT IN SUB-PARAGAPH NO. (i) OF PARAGRAPH.4 ABOVE.

A. MPT STAFF ‘Officers’.

In consideration of surrender of rights for receipt of pension as per existing pension rules, the Officers shall get the gratuity @ 1.5 (i.e. 150%) of current basic pay for each completed year as per existing pension rules.”

9. He submitted that the Plaintiff had evidently opted for the VSS as per the tenor of the correspondence filed along with the Plaint, and for good measure also produced the relevant page of the VSS Option Form bearing the signature of the Plaintiff, as had been withheld from the copy of the VSS filed along with the Plaint. He stated that the question of any ongoing pensionary benefits accruing to the Petitioner did not arise and as the Plaintiff had left the service of the Defendant No.1 of his own accord the rights and obligations of the parties were to be reckoned in accordance with its terms and the bar of limitation could not be circumvented. He placed reliance on the judgments of the Honourable Supreme Court in the cases reported as State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others 2012 SCMR 280, and Suo Moto Action Regarding Non-Payment of Retirement Benefits By The Relevant Departments And Others: In the matter of 2018 SCMR 636.

10. Learned counsel also drew attention to the Defendant No.1's letter dated 28.01.2002 filed as Annexure "B-1" to the plaint wherein it had been unequivocally communicated to the Plaintiff with reference to his impending release from employment on 01.07.2002 that whilst he would continue to receive his salary and perquisites, he would not be entitled to other terminal benefits such as provident fund or pension and gratuity contribution after 31.12.2001. He submitted that the only grievance that could conceivably have been espoused by the Plaintiff would have been that of a failure on the part of the Defendant No.1 to adhere to and fulfill its obligations towards the Plaintiff under the VSS. However, that too would have been subject to a 3-year period of limitation to be reckoned from 31.12.2001, but this was a moot point as the Defendant No.1 had made all payment that were due to the Plaintiff in that regard, including in terms of Clause 4(ii) and no default in that respect had even otherwise been alleged. He submitted that the Suit was misconceived, as no cause of action had arisen in favour of the Plaintiff for payment for pension and the prayer for alleged arrears on the basis of a professed right of upgradation was itself patently time barred. He averred that the Plaint ought to be rejected accordingly.

11. Having examined the Plaint and considered the arguments advanced at the bar, it is apparent that the VSS constituted a contract between the Plaintiff and Defendant No.1 and the retirement of the Plaintiff took place under the terms thereof rather than any service regulations otherwise in force, and once having gone beyond the pale of the service regulations the Plaintiff could not then advance a claim to upgradation or increase in compensation as may have applied in the case of employees who otherwise remained in regular service. Furthermore, as the rights and obligations of the parties had crystallized in terms of the VSS, any grievance as to a professed entitlement in excess of what was received at the time had to be agitated through appropriate proceedings instituted within the applicable period of limitation, whether as per Articles 56 or 115, which in either event was 3-years,

whereas the Suit came to be filed after a lapse of 7 years. Needless to say, Section 5 of the Limitation Act, being inapplicable to suits, would be of no benefit and CMA 3937/2009 filed thereunder is evidently misconceived.

12. The judgments cited on behalf of the Plaintiff on the point of limitation in relation to pensionary rights are readily distinguishable on the facts in as much no aspect of voluntary separation was involved in those matters, whereas in that context the Honourable Supreme Court of Pakistan in the case titled Muhammad Rafiullah and others v. Zarai Taraqiati Bank Limited (ZTBL) through President, Islamabad and another (2018 SCMR 598) has held as under:

“Where an employee voluntarily accepted and received benefits under some arrangement with the employer out of his own free will then he could not turn around and seek benefits that were ordinarily applicable to other employees”

13. Furthermore, on the point of limitation, reliance can be placed on the case titled State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others (2012 PLC (C.S.) 218) where in the very context of a scheme akin to the present VSS the Honourable Supreme Court of Pakistan has held that:

“Laches is a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its enforcement, if it is found by the court of a law that its case is hit by the doctrine of laches/limitation. Right remains with the party, but he cannot enforce it. The limitation is examined by the Limitation Act, 1908 or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved do not approach the appropriate forum within the stipulated period/time, the grievance though remains, but it cannot be redressed because if on the one hand there was a right with a party which he could have enforced against the other, but because of principle of limitation/laches, same right then vests/accrues in favour of the opposite party.”

14. In view of the foregoing it is apparent that the Suit is barred by limitation, hence is not maintainable, and CMA No. 3937/2009 is hereby dismissed whereas CMA No. 8756/09 is allowed, with the result that the plaint stands rejected accordingly.

JUDGE