

# IN THE HIGH COURT OF SINDH, AT KARACHI

Before:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D-3206 of 2010

Shaukat Saleem Akhund versus Pakistan Steel Mills Corporation limited and 02 others.

For hearing of CMA No.4898/2016 (151CPC):

Date of hearing

& decision: 16.03.2020

Syed Shoa-un-Nabi, advocate for the petitioner.

Mr. Agha ZafarAhmed, advocate for Pakistan Steel Mills.

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## ORDER

ADNAN-UL-KARIM MEMON, J: - The captioned Petition was disposed of vide

judgment dated 16.12.2015 with the following observations:-

*“45. The upshot of the above discussion therefore is that the Removal from Service Order dated 23-6-2010 (the Impugned Order) is struck down primarily on account of the 2<sup>nd</sup> show cause notice not precisely specifying the type of major penalty to be imposed and not giving reasons as to why the Competent Authority had departed from the recommendations of the Inquiry Officer in the Inquiry Report and intended to impose a higher penalty on the Petitioner which he was not given an adequate opportunity to respond to. However if the Respondents want to impose a major penalty beyond that recommended by the Inquiry Officer in the Inquiry Report they should confront the reasons for their departure in writing to the Petitioner and after providing him with an opportunity of personal hearing pass a speaking order within 20 days positively of this judgment. Failing which the Respondents shall pay to the Petitioner all back benefits based on the recommendation of the Inquiry Officer until he reached superannuation within 7 days and thereafter any consequential benefits, if any, such as pension etc. That within 30 days of receipt of all back benefits the Petitioner shall vacate the flat which belongs to the Respondents and which he is currently occupying.”*

2. Per learned counsel, representing the Respondent-Pakistan Steel, in pursuance of the aforesaid judgment, the competent authority issued Office Memorandum dated January 8, 2016, whereby penalty of Removal from Service notified on 23.06.2010 was maintained. We confronted him that the impugned action was taken by the respondents on 08.01.2016, after lapse of 24 days of the passing of the judgment dated 16.12.2015, as well as, retirement of the petitioner viz. 30.4.2011. He could not controvert the said assertion.

3. Applicant being aggrieved by and dissatisfied with the aforesaid departmental decision filed an application under Section 151 CPC (CMA No.4898/2016) for setting aside the Office Memorandum dated 08.01.2016. This Court, after hearing the parties on the listed application, vide order dated 26.01.2018, allowed the aforesaid application and declared the Office Memorandum dated 08.01.2016 being violative of the judgment dated 16.12.2015 passed by this Court.

4. Respondent-Pakistan Steel being aggrieved by and dissatisfied with the aforesaid order preferred Civil Petition for Leave to Appeal before the Hon'ble Supreme Court of Pakistan, whereby the order dated 26.01.2018 passed by this Court was set aside and the matter was remanded to this Court for decision on merit.

5. Syed Shoa-un-Nabi Advocate has appeared on behalf of the applicant and stated that his only prayer is that since the Petitioner has retired on 30.4.2011, hence the enquiry proceedings initiated against him may be declared to be violative of the judgment dated 16.12.2015 passed by this Court. He stated that the Petitioner may be absolved from the departmental proceedings initiated against him after his retirement.

6. The counsel for the respondents, on the other hand, have not denied the position as stated by the learned counsel for the Petitioner. However, he has objected the petition on the ground that in compliance of the order dated 22.12.2015 Petitioner was heard and penalty of removal from service earlier imposed on 23<sup>rd</sup> June, 2010 was maintained vide Office Order dated 08.01.2016, therefore, the Petitioner has no case for pensionary benefits.

7. We have heard all the learned counsel at considerable length and have perused the record and the decisions relied upon by the learned counsel for the Petitioner.

8. As per the record, the Petitioner was removed from service vide Office Order dated 23.06.2010, however, on 25.8.2010 he filed the instant petition by calling in question the impugned order of the Removal from Service and the same impugned order was set aside by this Court vide judgment dated 16.12.2015 and the respondents were directed to provide him an opportunity of personal hearing and pass a speaking order within 20 days and in the meanwhile, he reached the age of superannuation on 30.4.2011. Per learned counsel for the Petitioner this Court has already allowed C.P No.D-141 of 2011 and C.P No.D-871 of 2007, which were upheld by the Hon'ble Supreme Court, therefore, the Petitioner is entitled for entire pensionary benefits.

9. This an admitted position that the penalty of Removal from Service imposed upon the Petitioner vide Order dated 23.6.2010 was struck down by this Court with certain reasonings and the same are still in the field as the respondents have failed to assail the said findings before the Appellate forum. Now the only question involved in the present proceedings is whether the Petitioner can be saddled with the major penalty of Removal from Service, when he stood retired from service on attaining the age of superannuation on 30.4.2011. It is noted from the record and from the admitted position, the Petitioner is no more in the service, hence enquiry proceedings against the Petitioner ought not to have been continued since he is/was no more in the service of the respondents after his retirement. On the aforesaid proposition, our view is supported by the judgments rendered by the Honorable Supreme Court in the cases of MUHAMMAD ZAHEER KHAN V. GOVERNMENT OF PAKISTAN AND OTHERS (2010 SCMR 1554), ABDUL WALI VS. WAPDA AND OTHERS (2004 SCMR 678), ROSHAN DANI AND OTHERS VS. WAPDA AND OTHERS (2015 PLC (CS) 263), BILQUIS NARGIS VS. SECRETARY TO GOVERNMENT OF THE PUNJAB, EDUCATION DEPARTMENT (1983 PLC (CS) 1141) and PARVEEN JAVAID VS. CHAIRMAN WAPDA AND OTHERS (2011 PLC (CS) 1527).

10. The plea raised by the learned counsel for the respondents that the Petitioner has not honorably been acquitted from the charges leveled against

him, therefore, he is not entitled to the service benefits. We are of the view that the Honorable Supreme Court has already dealt with this proposition of law in the case of Superintendent Engineer GEPCO Sialkot Vs. Muhammad Yusuf vide Order dated 23.11.2006 passed in Civil Petition No. 1097-I of 2004.

11. In view of the dicta laid down by the Honorable Supreme Court in the case referred supra, we do not agree with the contention of the learned counsel for the respondents. The Fundamental Rules 54-A is clear and does not support the case of the respondents, which provides as under:-

**“If a Government servant, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of inquiry, the disciplinary proceedings against him shall abate and such Government servant shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.”**

12. We have further observed that in pursuance of the Court’s judgment dated 16.12.2015, no inquiry has been conducted by the respondents against the Petitioner in respect of his culpability. Per judgment of this Court, back benefits of the Petitioner were dependent on the result of fresh notice and proceedings to be conducted by the respondents into the allegations leveled against the Petitioner. But, the question arises as to whether an inquiry could be conducted against a retired Government employee. As per the Fundamental Rule 54-A disciplinary proceedings cannot be continued or conducted as the Petitioner ceased to be an employee of the respondents on attaining the age of superannuation on 30.4.2011. The plea taken by the respondents that the service benefits cannot be awarded to the Petitioner upon his reinstatement is not tenable in the law. Since, the respondents could not conduct fresh proceedings/enquiry against the Petitioner in compliance with the judgment of this Court, they were left with no option but to award the service benefits in terms of the judgment passed by this Court. Record shows that the allegations could not be enquired and the Petitioner was not heard on the allegations leveled against him, therefore, at this juncture no exception to that can also be taken into consideration. The respondents admitted, before this Court that

on the basis of qualifying service of the Petitioner i.e. more than 32 years, which is a qualifying service for service benefits. We are clear in our mind that Pension is not a bounty from the State / employer to the servant / employee, but is fashioned on the premise and the resolution that the employee serves his employer in the days of his ability and capacity and during the formers debility, the latter compensates him for the services so rendered by him. Therefore, the right to pension has to be earned and for the accomplishment thereof. We, therefore, in the light of the submissions *supra* and the decisions, are of the view since it is now a settled proposition of law that in the event of retirement from the service of the Petitioner, the enquiry proceedings initiated against him could not continue since he was/is no more a public servant/employee of respondents

13. In the foregoing legal position of the case, we are not convinced with contention of the learned Counsel for the Respondent- Pakistan Steel that the Petitioner is not entitled to service benefits i.e. intervening period from removal of service of the Petitioner on 23rd June, 2010 till his retirement on 30.4.2011.

14. In view of forgoing discussion, the listed application is disposed of with direction to the Respondent-Pakistan Steel to calculate the service benefits of the Petitioner till his retirement and other benefits as admissible under the law and make payment of the same to the Petitioner within a period of (60) days from the date of receipt of this Order. The application bearing CMA No.4898/2016, therefore, stands disposed along with the pending application by declaring the departmental proceedings initiated against the Petitioner, since he has retired, to be abated and of no legal effect.

**JUDGE**

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