

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –3026 of 2015

Muhammad Waris

Versus

Federation of Pakistan and another

Constitutional Petition No. D –5644 of 2016

Mst. Zaib-un-Nisa

Versus

Pakistan Telecommunication Company Ltd and 02 others

Constitutional Petition No. D –5645 of 2016

Rubeena Yasmeen Qureshi

Versus

Pakistan Telecommunication Company Ltd and 02 others

Constitutional Petition No. D –5646 of 2016

Sahiba

Versus

Pakistan Telecommunication Company Ltd and 02 others

Constitutional Petition No. D –5647 of 2016

Ghazala Mughal

Versus

Pakistan Telecommunication Company Ltd and 02 others

Constitutional Petition No. D –5648 of 2016

Musarat Nazeer

Versus

Pakistan Telecommunication Company Ltd and 02 others

Constitutional Petition No. D –5649 of 2016

Mst. Ghulam Sughara

Versus

Pakistan Telecommunication Company Ltd and 02 others

Constitutional Petition No. D –5650 of 2016

Reshma

Versus

Pakistan Telecommunication Company Ltd and 02 others

Constitutional Petition No. D –5651 of 2016

Shabnam Magsi

Versus

Pakistan Telecommunication Company Ltd and 02 others

Constitutional Petition No. D –5652 of 2016

Ashiq Ali

Versus

Pakistan Telecommunication Company Ltd and 02 others

Constitutional Petition No. D –5653 of 2016

Shakeela Bano

Versus

Pakistan Telecommunication Company Ltd and 02 others

Constitutional Petition No. D –6385 of 2016

Masood Ahmed Bhatti

Versus

E.O.B.I and 02 others

Constitutional Petition No. D –6386 of 2016

Inam Hafiz Siddiqui

Versus

E.O.B.I and 02 others

Constitutional Petition No. D –6387 of 2016

Sohail Ahmed Hakro

Versus

Pakistan Telecommunication Company Ltd and 02 others

Constitutional Petition No. D –6388 of 2016

Syed Zaki Haider

Versus

E.O.B.I and 02 others

Constitutional Petition No. D –6389 of 2016

Syed Ansar Hussain Zaidi

Versus

E.O.B.I and 02 others

Constitutional Petition No. D –434 of 2017

Ali Nawaz Unar

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –435 of 2017

Shair Muhammad

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –436 of 2017

Syed Sultan Shah

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –437 of 2017

Fida Hussain Chachar

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –438 of 2017

Liaquat Ali

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –439 of 2017

Haji Noor Muhammad

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –440 of 2017

Mulla Idrees

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –442 of 2017

Ghulam Sughran

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –443 of 2017

Ghulam Shabbir

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –528 of 2017

Ashraf Ali

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –529 of 2017

Omer Shah

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –530 of 2017

Muhammad Naseem

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –531 of 2017

Muhammad Naseer Farooqi

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –532 of 2017

Saeed Ahmed Siddiqui

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –533 of 2017

Khaleel Maseeh

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –534 of 2017

Mehmood Ather

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –535 of 2017

Shabbir Ahmed

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –536 of 2017

Muhammad Usman

Versus

Pakistan Telecommunication Company Ltd and another

Constitutional Petition No. D –537 of 2017

Said Fateh Muhammad

Versus

Pakistan Telecommunication Company Ltd and another

Date of hearing & order : 16.11.2020

Syed Ansar Hussain Zaidi, petitioner in person and advocate for other petitioners.

M/s Zia-ul-Haq Makhdoom and Muhammad Azhar Mahmood, advocates for the respondent No.1 / PTCL.

Mr. Muhammad Nishat Warsi, DAG along with Mukhtar Ali, Executive Officer, Law Department, EOBI Head Office, Karachi.

ORDER

ADNAN-UL-KARIM MEMON, J. All the above referred constitutional petitions are being disposed of vide this common order as common questions of law and facts are involved therein.

2. Precise facts of the case of the petitioners as per their pleadings are that they are retired employees / family members of deceased employee of the Pakistan Telecommunication Company Limited ("PTCL") and claiming a certain amount of contribution on account of Employees Old-Age Benefits.

3. We asked learned counsel for the petitioners as to how the petitioners are entitled to the retirement old-age benefits under the provision of Employees' Old-Age Benefits Act, 1976, secondly as to how these petitions are maintainable, when they voluntarily opted Voluntary Separation Scheme ("VSS") introduced by PTCL, resultantly, petitioners were given severance pay, separation bonus, and medical benefits, leave encashment, and housing allowance depending upon their length of service, as computed under the offered scheme.

4. Syed Ansar Hussain Zaidi, learned counsel for the petitioners, has relied upon Sections 35 and 36 of the Pakistan Telecommunication (Re-organization) Act, 1996, and submitted that since the Federal Government stood as guarantor in safeguarding the terms and conditions of service and rights including the pensionary benefits of the transferred employees, these rights cannot be undermined or ignored by introducing the VSS. Learned counsel attempted to give brief history of the case and argued that in the year 1996, to reorganize the telecommunication system in the country, the Pakistan Telecommunication (Re-organization) Act, 1996 (Act XVII of 1996) was passed ; that the status of 'Pakistan Telecommunication Company Limited' a company limited by shares that were incorporated with effect from 01.01.1996 under the Pakistan Telecommunication (Re-organization) Act, 1996, all employees of the defunct Corporation were to be transferred to the five distinct entities out of which a very large number was transferred to the respondent-company. The employees of the defunct Corporation, who were transferred to the respondent-company, their terms, and conditions of service were secured under Section 36 of the Pakistan Telecommunication (Re-organization) Act, 1996.

5. We asked learned counsel for the petitioners as to whether during the tenure of service of the petitioners, any EOBI contribution was deducted from their wages or otherwise. He candidly concedes that it was the responsibility of the respondent-company to deduct such contribution, but failed to do so, therefore, they are fully entitled to the issuance of an EOBI Card for pensionary benefits. In support of his contention, he relied upon the judgment of the Honorable Supreme Court rendered in the case of Pakistan Telecommunication Company Limited versus Employee Old-Age Benefits Institution and another,

2016 SCMR 1220 and argued that since the respondent-company has been held liable to pay contributions under the provisions of Employees' Old-Age Benefits Act, 1976, from the date of its incorporation, petitioners are entitled to be given the retiring benefits by the EOBI / respondent No.2.

6. Conversely, Mr. Zia-ul-Haq Makhdoom, advocate for respondent No.1 assisted by Muhammad Azhar Mahmood, advocate has referred the para-wise comments filed on behalf of respondent No.1 (PTCL) in C.P No.D-5645/2016 and other connected petitions and argued that in the light of judgment passed by the Hon'ble Supreme Court in the case of PTCL as discussed supra, the matter was finally settled between the PTCL and EOBI and PTCL made payment of agreed amount of EOBI contribution for all its employees, which was payable at the relevant time ; that it is the responsibility of EOBI to issue EOBI cards to the petitioners if they qualify for issuance of EOBI card ; that petitioners were employed with the PTCL from September 03, 1995 up to February 18, 2008 and during this period no EOBI contribution was deducted by the PTCL from the wages of the petitioners ; that petitioners were paid full service benefits as per law under VSS scheme in 2008 thus are not liable for the relief claimed in these petitions. He prayed for dismissal of the instant petitions.

7. We have heard the parties on the issue of maintainability of the instant petitions and perused the material brought on record and case-law cited at the bar.

8. The petitioners are claiming the pensionary benefits under the EOBI Act, 1976. We have to see whether petitioners were paid full-service benefits under the VSS scheme introduced by respondent-company in 2008 or are entitled to the issuance of EOBI Cards?

9. Prime object of the Employees' Old-Age Benefits Scheme, administered by the Employees' Old-Age Benefits Institution, is to provide subsistence pension to workers, employees / insured persons from the private sector who retire after completing a minimum period of fifteen (15) years of insurable employment. Petitioners have admitted in their pleadings that they voluntarily opted for VSS introduced by PTCL, resultantly, petitioners, at their own instance, were given severance pay, separation bonus, medical benefits, leave encashment, and housing allowance depending upon their length of service, as

computed under the offered scheme. Therefore, they are not qualified for pension under Section 22(b) of the Act being VSS beneficiaries.

10. The issue of VSS has already been dealt with by the Hon'ble Supreme Court in Civil Appeal No.2506 of 2016, therefore, no further deliberation is required on our part. An excerpt of the order is reproduced as under:

"6.... The appellants had instead projected themselves to have been wronged and embarked upon unnecessary litigation to obtain a benefit to which they were not entitled to. The fora below however mostly considered whether or not the appellants could have filed grievance petitions without considering whether they had a grievance. In our opinion, the appellants did not have a grievance as they had voluntarily served their relationship with the Company by availing of the VSS, which included a substantial amount received on account of Separation Bonus which only an employee who had less than twenty years of service could receive. The case of P.T.C.L. v Masood Ahmed Bhatti, which has been relied upon by the learned counsel for the appellants, stipulates that where an organization is governed by statutory rules then any action taken by such organization in derogation of or in violation of such rules would if it is prejudicial to any employee, maybe set aside. However, in the present case, the Company did not take any action prejudicial to the appellants. On the contrary, the appellants had voluntarily availed of the VSS, received payments thereunder, including the Separation Bonus which was only payable to those employees who had less than twenty years of Qualifying Length of Service.

7. If the appellants genuinely believed that their training period should have been counted towards their length of service, and consequently, they were entitled to pension then they were not entitled to receive the Separation Bonus amount. And, even if we presume that the Separation Bonus was paid to them by mistake it was incumbent upon them to have stated this and to have returned/refunded it to the Company before proceeding to claim a pension on the ground that they had served the Company for twenty years or more. Significantly, the appellants at no stage, including before us, have submitted that they were not entitled to receive the Separation Bonus, let alone offering to return it. The appellants' actions are destructive of their claim to pension, because if they had twenty years or more service they should not have received the Separation Bonus. Therefore, leaving aside the jurisdictional point which forms the basis of the judgments of the learned judge of the High Court and of the learned Judge of the Labour Court the appellants had by their own actions demonstrated that they had no grievance and that they were not entitled to pension."

11. Prima-facie this abortive attempt on the part of the petitioners is not appreciated on the strength of common judgment dated 04.12.2019 passed by this Court in C.P. No. D-141 of 2017 along with connected petitions and judgment rendered by the Honorable Supreme Court passed in Civil Appeal No.2506 of 2016. For convenience sake, an excerpt of the common judgment dated 04.12.2019 is reproduced as under:

"18. Thus, no distinction, as compared to those who were dealt with earlier in the aforesaid judgments, is available to the petitioners and their case is identical to those who were considered in the aforesaid judgment of Hon'ble Supreme Court in the case of Civil Appeal No.2506 of 2016 and others i.e. the case of Mst. Tasneem Farima & others v. Pakistan Telecommunication Company Limited.

19. *These petitioners have consciously opted for VSS and were promptly benefited. They cannot have a cake and eat it. The claim is to be seen from the lens of judgments of the Hon'ble Supreme Court discussed above which filtered the claim of these petitioners.*

20. *VSS is a binding contract and nothing about its unconstitutionality was established nor is there any substance to render it as void under the Contract Act. In the entire scheme of Pension Act and rules, there is nothing to prevent the employees from entering into a contract in the bargain with their post-retirement or pensionary benefits which they could have availed, for any prompt gain.*

21. *Insofar as those petitioners who claim that despite excluding the period of training their length of service was more than what was declared/calculated by the employer, firstly they have not agitated their grievance at the relevant time and it is now past and closed transaction. Even otherwise these being disputed questions of fact as to how much service was rendered by each of employees cannot be dealt with in terms of Article 199 of the Constitution of Islamic Pakistan 1973.*

22. *Thus, in view of above, we are of the view that the petitioners have failed to make out a case for interference and consequently the petitions are dismissed along with pending applications."*

12. Adverting to the point raised by the petitioners that the respondent-PTCL deposited the requisite contribution with EOBI as such they are entitled to the benefits. We do not agree with the aforesaid proposition for the reason that the Hon'ble Supreme Court in the case of PTCL as discussed supra directed the respondent-PTCL to pay such contribution under the provision of Employees' Old-Age Benefits Act, 1976, and as per the statement of the respondent-PTCL such demand of respondent No.2 was fully satisfied from the relevant period, whereas petitioners during their tenure of service never contributed such EOBI amount to respondent No.2 for payment before their voluntarily retirement. However, we may observe that if the petitioners would not have opted for VSS Scheme, the position of the case would have been different for the simple reason that after their option of VSS, they are estopped to claim such benefits.

13. In view of the above, these petitioners fail to make out their case. Consequently, the petitions are dismissed along with the pending application(s) with no order as to costs.

J U D G E

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Shahzad*