

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-1779 of 2020

Date	Order with signature(s) of Judge(s)
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Present

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Arshad Hussain Khan

Pakistan Reinsurance Company Limited.....Petitioner

Versus

Wafaqi Mohtasib (Ombudsman) & others.....Respondents

Date of Hearing: 18.11.2020.

Mr. Fayyaz Ali Metlo, Advocate for the Petitioner.
Mr. Hussain Bohra, Assistant Attorney General.
Respondent No.5 Mst. Zahida Parveen present in person.

Muhammad Ali Mazhar, J. This petition has been brought to challenge the letters dated 22.07.2019, 12.09.2019 and 08.10.2019 issued by Wafaqi Mohtasib (Ombudsman) Secretariat to the Chief Executive/Chairman of Pakistan Reinsurance Co. Ltd. for the implementation of findings rendered on 03.10.2018 in the Complaint No.KHI/7094/2018 lodged by respondent No.5.

2. The learned counsel for the petitioner argued that the petitioner company was established in 1952 as Pakistan Insurance Corporation under the Pakistan Insurance Corporation Act, 1952 and subsequently transformed into a public limited company in 2001 with the present nomenclature which is under the administrative control of Ministry of Commerce, Government of Pakistan. The petitioner is obliged to follow policy directions of the Government of Pakistan by virtue of Public Sector Companies (Corporate Governance) Rules, 2013. It was further contended that the respondent No.5 is being paid family pension as per Pakistan Insurance Corporation Employees (Pension) Regulations, 1990. The commuted pension was restored at the

age of 75 years i.e. after 15 years but she filed a complaint that the petitioner was obliged under Regulation 6 (5) of the 1990 Pension Regulations to follow Office Memorandum of Finance Division dated 04.09.2001 wherein the restoration was provided at the age of 72 years i.e. after 12 years. It was further contended that as per 1990 Regulations, the pension of deceased husband of the respondent No.5 was sanctioned 50% commutation alongwith applicable rate of pension from his date of retirement and after his demise the respondent No.5 was sanctioned family pension at the rate of 50% which was subsequently enhanced to 75%. It was further averred that the impugned letters issued for implementation are without jurisdiction. The respondent No.1 failed to consider that the petitioner is a public sector corporation, therefore, the office memorandum issued by Finance Division is not applicable to it. None of the employees of the petitioner including the deceased husband of the respondent No.5 opted for the benefit of first office memorandum. The office memorandum of Finance Division dated 04.09.2001 was superseded by another Office Memorandum of Finance Division dated 17.09.2001 with some clarifications that the first office memorandum will apply as a package to autonomous bodies. The learned counsel for the petitioner relied on the case of Federation of Pakistan vs. Brig. (R) Zulfiqar Ahmad Khan (2007 SCMR 1313) and Peshawar Electric Supply Company Ltd. vs. Wafaqi Mohtasib (Ombudsman) Islamabad (PLD 2016 S.C. 940).

3. The respondent No.5 appeared in person and she supported the original order as well as the letters issued by the respondent No.1 Secretariat for the implementation of the undertaking given by the petitioner's representative which is jot down in the Original Order.

4. The learned Assistant Attorney General argued that basically the petitioner is not aggrieved by the original order. No appeal/representation was filed to the President of Pakistan under

Article 32 of the Establishment of the Office of Wafaqi Mohtasib Order, 1983.

5. Heard the arguments. To start with, we would like to emphasize and distillate that the original order was passed by the respondent No.1 on 03.10.2018. In a nutshell, the respondent No.5 complained some maladministration and delay in the restoration of commuted portion of pension of her deceased husband. According to respondent No.5 the commuted portion of pension was to be restored on the basis of attaining presumptive age of 72 years of her deceased husband but despite applying for restoration the petitioner/agency did not take any action. Paragraphs 3, 4 and 5 of the Original Order passed by the respondent No.1, somewhat germane to trim down the controversy which are reproduced as under:-

“3- Both the parties were present at the hearings held on 17-8-2018, 3-9-2018 and 11-9-2018. The complainant pointed out that commutation of pension is admissible to the widows of Federal Government pensioners on the presumptive date of attaining the age of 72 years by the pensioners. The representative of Agency did not deny the restoration of pension to the widows of Federal Government employees as admissible but stated that Pakistan Re-Insurance Company Ltd. (PRCL) is an autonomous body under the administrative control of Ministry of Commerce, and the pension rules of the Federal Government are not applicable in toto on PRCL. In response, the complainant pointed out that according to Notification of Pakistan Insurance Corporation (now PICL), published in the Gazette of Pakistan dated 18-7-1990, it was provided under Article 6(5) that:-

“Any change or revision in the rates, benefits of scale of pension or gratuity for the employees and pensioners hereafter made by the Federal Government shall also apply to the employees and the pensioners of the Corporation.”

The representative of Agency had, however, no answer to the above position of specific nature according to which all the changes and revisions in the benefit of pension and gratuity have to be adopted by the agency. Non redressal of the grievance of the complaint regarding restoration of commuted portion of pension amounts to mal-administration.

4- In view of mal-administration, the representative of Agency gave specific undertaking in the following words:-

“The case was discussed and will be put up according to rules to the competent authority and will be decided as per Rules.”

The complainant agreed to the above undertaking, thus, indicating mutual consent for redressal of grievance strictly in accordance with rules and regulations to review the subject complaint of maladministration, Agency is advised to do the needful within 30 days and report compliance.

5. In view of foregoing, further proceedings are closed in terms of Regulation 23(1)(h) of Wafaqi Mohtasib (Investigation and Disposal of Complaints) Regulations, 2013 as the complainant and representative of Agency mutually agreed on redressal of grievance.”

6. Seemingly, the original order passed by the Respondent No.1 by the looks of it put on show specific undertaking of the petitioner's representative/official that the **"case was discussed and will be put up according to rules to the competent authority and will be decided as per Rules."** It is what's more obvious that the petitioner is not aggrieved by the Original Order but perturbed and disconcerted as a result of proceedings triggered towards implementation of the order only. No representation was filed against the main order to the President under Article 32 of the Establishment of the Office of Wafaqi Mohtasib Order, 1983. The petitioner called into question and demurred only when three letters were issued one by one (Annexures A/11 to A/13) by the Secretariat of Wafaqi Mohtasib for implementation of findings recorded in the original order dated 03.10.2018 and in all aforesaid letters, the petitioner was only reminded their own undertaking reflecting in the original order. Even in the one letter dated 12.09.2019 in paragraph 4 the Consultant (Legal/Imp) of the Wafaqi Mohtasib Secretariat also pointed out a judgment of hon'ble Supreme Court of Pakistan passed in Civil Appeal No.48/2013. Paragraph 4 of the letter is reproduced as under:

"4. It is a matter of concern that the complainant, who is widow of pensioner, aged more than 70 years, is being subjected to delay in restoration of the commuted portion of pensions. Your attention is invited to Finance Division O.M. No.F.11(1)-Reg.6/2013 dated 3.5.2013 thereby circulating and quoting the Jugement dated 21.2.2013 passed by the Hon'ble Supreme Court of Pakistan in Civil Appeal No.48/13, which is reproduced as under:-

"We, therefore, direct that all the Government Departments, Agencies and Officers deployed to serve the general public within the limit by the Constitution as well as by the law shall not cause unnecessary hurdle or delay in finalizing the payment of pensionary/retirement benefits cases in future and violation of these direction shall amount to criminal negligence and dereliction of duty assigned to them.....We also direct that in future if there is any delay in the finalization of pension benefits cases of the government servants, widows or orphan children and matter is brought to the notice of this Court, the head of the concerned department shall be held liable for the contempt of the Court and shall be dealt with strictly in accordance with law."

7. The learned counsel for the petitioner referred to the case of Peshawar Electric Supply Company Ltd. vs. Wafaqi Mohtasib

(Ombudsman) Islamabad (PLD 2016 S.C. 940). The facts of this case were that certain persons filed applications before the Wafaqi Mohtasib (Ombudsman) for a direction to the concerned Electric Supply Company to appoint them in the company after relaxing the condition for the 20% quota, reserved for the children of WAPDA deceased or retired employees and employees who died during service. The Wafaqi Mohtasib made recommendations for their appointments after relaxing the prescribed condition. Not only that, the Wafaqi Mohtasib also issued notices to the Electric Supply Company for implementation of such recommendations. The apex Court held that where an order was passed by the Wafaqi Mohtasib without jurisdiction, the High Court could always in exercise of its constitutional jurisdiction rectify such error and the alternate remedy provided under Article 32 of the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 could not restrict the constitutional jurisdiction of the High Court once it came to the conclusion that the order of the Wafaqi Mohtasib was outside the domain of Article 9 of the Order. He further referred to the judgment in the case of Federation of Pakistan vs. Brig. (R) Zulfiqar Ahmad Khan (2007 SCMR 1313). In this case the petition was filed by the respondent in the Lahore High Court wherein it was held that the petitioner was a civil servant and such matter purely related to the terms and conditions of his service. Proper forum for redressal of such grievance was Service Tribunal and not the Ombudsman. The aforesaid dictums laid down by the hon'ble Supreme Court are distinguishable to the facts and circumstances of this case where the agency itself could not contest the matter on merits but they gave a clear statement that the grievance of the petitioner will be considered in accordance with the applicable rules. It is also a fact that the petitioner never challenged the original order by raising any plea of jurisdiction of the Mohtasib and not only submitted to the jurisdiction but also gave clear undertaking that the case will be considered in accordance with the applicable rules. Though the learned counsel

for the petitioner argued that none of the employees of the petitioner including the deceased husband of the respondent No.5 opted for the benefit of first office memorandum but nothing was placed on record to justify this assertion.

8. In the case in hand, implementation of order means the undertaking of the petitioner before learned Ombudsman that **“case was discussed and will be put up according to rules to the competent authority and will be decided as per Rules.”** . Article 11 of the Establishment of The Office of Wafaqi Mohtasib (Ombudsman) Order, 1983 germane to the recommendations for implementation whereas Article 12 is associated with defiance of recommendations. For the ease of reference, the aforesaid Articles are reproduced as under:-

11. Recommendations for implementation.—(1) If, after having considered a matter on his own motion or on a complaint or on a reference by the President, the Federal Council or the National Assembly or on a motion by the Supreme Court or a High Court, as the case may be, the Mohtasib is of the opinion that the matter considered amounts to mal-administration, he shall communicate his findings to the Agency concerned:

- (a) to consider the matter further;**
- (b) to modify or cancel the decision, process, recommendation, act or omission;**
- (c) to explain more fully the act or decision in question;**
- (d) to take disciplinary action against any public servant of any Agency under the relevant laws applicable to him;**
- (e) to dispose of the matter or case within a specified time;**
- (f) to take action on his findings and recommendations to improve the working and efficiency of the Agency within a specified time; or**
- (g) to take any other step specified by the Mohtasib.**

(2) The Agency shall, within such time as may be specified by the Mohtasib inform him about the action taken on his recommendations or the reasons for not complying with the same.

[(2-A). If after considering the reasons of the Agency in respect of his recommendations under clause (2), the Wafaqi Mohtasib is satisfied that no case of mal-administration is made out he may alter, modify, amend or recall the recommendations made under clause (1):

Provided that where the order is made on a complaint, no order shall be passed unless the complainant is given an opportunity of being heard].

(3) In any case where the Mohtasib has considered a matter, or conducted an investigation, on a complaint or on a reference by the President, the Federal Council or the National Assembly or on a motion by the Supreme Court or a High Court, the Mohtasib shall forward a copy of the communication received by him from the Agency in pursuance of clause

(2) to the complainant or, as the case may be, the President, the Federal Council, the National Assembly, the Supreme Court or the High Court.

(4) If after conducting an investigation, it appears to the Mohtasib that an injustice has been caused to the person aggrieved in consequence of mal-administration and that the injustice has not been or will not be remedied, he may, if he thinks fit, lay a special report on the case before the President.

(5) If the Agency concerned does not comply with the recommendations of the Mohtasib or does not give reasons to the satisfaction of the Mohtasib for non-compliance, it shall be treated as "Defiance of Recommendations" and shall be dealt with as hereinafter provided.

12. Defiance of Recommendations.—(1) If there is a "Defiance of Recommendations" by any public servant in any Agency with regard to the implementation of a recommendation given by the Mohtasib, the Mohtasib may refer the matter to the President who may, in his discretion, direct the Agency to implement the recommendation and inform the Mohtasib accordingly.

(2) In each instance of "Defiance of Recommendations" a report by the Mohtasib shall become a part of the personal file or Character Roll of the public servant primarily responsible for the defiance:

Provided that the public servant concerned had been granted an opportunity to be heard in the matter.

9. In our considerate view, while no case is made out for the interference of this court for setting aside the impugned letters but at the same time, we want to explicate and make clear that implementation of order is only with regard to the undertaking on the basis of which the case was closed by the learned Ombudsman therefore, the petitioner as per their own undertaking may submit the compliance report to the respondent No.1 with the decision of competent authority as per rules. The petition was dismissed vide our short order dated 18.11.2020. Above are the reasons.

Judge

**Karachi:-
Dated. 16.1.2021.**

Judge