

IN THE HIGH COURT OF SINDH AT KARACHI

Present.

Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

Constitution Petition No.D-2307 of 2018

Muhammad Yaqoob Soomro

Versus

Federation of Pakistan and others

Date of Hearing
& Decision:

09.02.2021

M/s. Ikhtiar Ali Channa and Deedar Ali, advocates for the petitioner.
Mr. Ahmed Ali Ghumro, Advocate for respondents No.4&5.
Mr. Muhammad Nishat Warsi, DAG.

ORDER

The Petitioner is seeking a declaration to the effect that the impugned letter dated 14.12.2015 issued by Respondent-WAPDA, whereby they deducted excessive withdrawal of pension amount through difference and monthly bills from his pensionary benefits, being illegal and in violation of constitutional provisions. Petitioner further seeks a declaration that he is entitled to all increases in pension accumulated for the last 15 years on a restored commuted portion of his pension. He also seeks determination and calculation of his pensionary benefits w.e.f. 12.7.2012 under law.

2. Brief facts of the case as per pleadings of the parties are that Petitioner stood retired from the service of Respondent-WAPDA as LS1-1, Sukkur Electric Power Company, Larkana (SEPCO) vide Notification dated 12.7.1997. After completion of the statutory period of 15 years i.e. on 12.7.2012, he approached Respondents for the restoration of 50% commuted portion of his Pension inclusive of all increases accrued thereon. Petitioner claims that on 01.01.2012, he was regularly receiving a monthly pension amount of Rs.12846.95, however, the Federal Government raised 20% increase of the net pension to vide O.M dated 2nd July 2012. The petitioner being aggrieved by and dissatisfied with the aforesaid actions has filed the instant Petition on 21.3.2018.

3. Learned Counsel for the Petitioner has referred the calculation made by the Petitioner available at page No.03 of the case file, which is reproduced as under: -

Amount of Pension as of 01.01.2012 A	20% increase as per circular B	Total a+b c	Total after doubling d
12,846.95	2,569.39	15,416.34	30,832.68

Learned Counsel has submitted that Respondent-WAPDA vide letter dated 30.08.2012 restored 50% commuted portion upon completion of his 15 years i.e. on 12.07.2012, which was revised vide Letter No.Dir/Pen/PPO No.34654/34948 SP, whereby his pension was restored for an amount of Rs.23,55.72 with effect from 01.07.2013, per learned Counsel, the same is not correct calculation on the premise that it was not affected from the date of completion of a period of 15 years i.e. 12.7.2012 and it did not increase 20% as per O.M dated 02.7.2012. Learned Counsel has submitted that the Petitioner protested with the Respondents by lodging complaint about the correction in calculation of his pensionary benefits; that the Respondents in their abortive attempt stated that they have calculated the correct figure of the pensionary benefits of the Petitioner, however, the same is not under the law; that his actual amount comes to Rs.30,832.68 as it stood on 12.7.2012; that Petitioner being aggrieved by and dissatisfied with the inaction on the part of Respondents approached the learned Wafaqi Mohtasib for actual restoration of commuted portion equal to 50% after completion of 15 years i.e. 12.7.2012 and stoppage of undue deduction of purported excessive amount from his pensionary benefits. Learned Wafaqi Mohtasib vide his finding dated 17.6.2016 opined that the Petitioner should approach the proper forum for redressal of his grievance. He preferred a statutory appeal to the President of Pakistan, which was forwarded to SEPCO for re-examination and decision afresh within two months. He next submitted that the Petitioner is seriously prejudiced by the actions of the Respondent-WAPDA who wrongly calculated his pensionary benefits after his retirement on 12.7.1997.

4. Mr. Ahmed Ali Ghumro, learned counsel for the Respondent-WAPDA has raised the question of the maintainability of the petition and referred to para-wise comments filed by the Respondent-WAPDA and argued that pensionary dues of the Petitioner have been calculated by the Competent

Authority under WAPDA pension rules and nothing is left on the part of WAPDA to be paid on account of pensionary benefits of the Petitioner, however, excessive payment has been made to the Petitioner which is being deducted from his pensionary benefits. In support of his contentions, he relied upon the documents attached with comments filed by WAPDA. Learned Counsel emphasized that while scrutinizing the monthly pension of the Petitioner it was transpired that he had been drawing the pension excessively / beyond the sanctioned revised pension order issued by Director, Pension, WAPDA vide letter dated 24.02.2014 as Rs. 23,553/- but he received an excessive monthly pension of Rs. 31,090/-, the details of which are as below: -

No	Description	Amount
01	Actual diff due for the period July-12 to Feb-14	145926
02	Already drawn (Rs.186505 vide chq: No-1379635 dated 07.04.2014 & Rs.101941 vide cheq: No.1379658 dated 07.05.2014	288446
03	Difference (Excess drawn/recoverable)	1,42,520
01	Actual due March -14 to March-15	375468
02	Drawn from March-14 to March-15	480247
03	Difference (Excess drawn/ recoverable)	1,04,779
Total excess amount drawn/recoverable		2,47,299

5. Mr. Ahmed Ali Ghumro, learned Counsel representing SEPCO (WAPDA) further relied upon an unreported order dated 26.2.2020 in CP No.6090/2017 and argued that prima facie the calculation of pension made by the petitioner is factually incorrect in the light of office memorandum dated 11.3.2013 regarding restoration of pension. However, he submitted that the calculation made by the Nazir of this Court in consultation with the office of Accountant General Sindh is factually correct in the line with the calculation made by the respondent-WAPDA.

6. Keeping in view the aforesaid contention of the parties, this Court vide order dated 08.8.2019 directed the Nazir of this Court to consult with the Accountant General Sindh, who was directed to depute an official to assist the Official of this Court to undertake the exercise of recalculation of the pensionary benefits of the Petitioner including commutation as directed by the Honorable Supreme Court of Pakistan in the aforesaid judgment, under rules and regulations. However, he may also undertake the exercise of excessive payment, if any, received by the Petitioner as alleged by the Respondent-WAPDA. A comprehensive report has to be

submitted by the Nazir of this Court within 01 month from the receipt of this order and the hearing of this matter was adjourned.

7. We are satisfied with the calculation made by the Nazir of this Court in consultation with the office of the Accountant General Sindh, an excerpt whereof is reproduced as under:-

“that the total restoration pension of the petitioner as of 12.7.2012 comes to Rs.23,544.80. However, the petitioner claims the pension amount of Rs.30,833 (Rupees Thirty Thousand Eight Hundred thirty-three only) as per order dated 24.4.2012 passed by the Hon’ble Supreme Court of Pakistan. The restoration of commutation portion of pension be double as $50\% + 50\% = 100\%$. The difference comes in restored commutation portion of pension because of the increasing of 20% (Rs.907) for the year 1997, and medical allowance which have already been drawn by the petitioner in his regular monthly pension.”

8. The aforesaid report has been objected by the petitioner on the premise that his pension was initially restored and the restored commuted portion was equal with the monthly amount which the petitioner was drawing at the time of restoration of commuted portion i.e. 30,832.68.

9. Since petitioner has objected to the calculation and recalculation of his pensionary benefits by the Nazir of this Court who in consultation with the office of Accountant General Sindh submitted a comprehensive report dated 15.1.2020 which calculation is made by the expert body i.e. Accountant General Sindh.

10. In such circumstances, we are not in a position to make deliberation in numerical figures as stated above and in such circumstances of the case we dispose of this petition along with pending application(s) in terms of the report of Nazir. However, subject to all just exceptions as provided under the law, if the parties are so aggrieved against the calculation of the Nazir, they may take resort of the Court of plenary jurisdiction.

JUDGE

JUDGE

Nadir/-