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

BEFORE:
**Mr. Justice Muhammad Shafi Siddiqui**
**Mr. Justice Zulfiqar Ahmad Khan**

**C.P.No.D-141 of 2017**
Along with
C.P Nos.6778, 6779, 6781 and 6782 of 2016, 142, 143, 144, 145, 146, 147, 148, 159, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 2194, 2195, 2196, 2197, 2198, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2611, 2612, 2613, 2614, 2615, 2616, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2630, 2631, 2632, 2633, 2634, 2763, 2764, 2765, 2766, 2767, 2768, 2769, 2770, 2771, 2772, 2773, 2775, 2776, 2777, 2778, 2779, 2780, 2781, 2782, 2783, 2784, 2785, 2786, 2788, 2789, 2790, 2791, 2792, 2793, 2794, 2795, 2846, 2847, 2873, 2874, 2875, 2876, 2960, 2961, 2962, 2963, 2964, 3533, 5627, 6034, 7201, 7592, 7593, 8293,8294, 8295, 8296, 8297, 8298, 8608, 8609, 8610 of 2017, 1234, 5735, 6539 of 2018, 2319, 6055,6056, 6057, 6058, 6308, 6309, 6590, 6591, 6592, 7054 of 2019 along with C.P.Nos.6780 of 2016, 2617, 2629, 2774 & 2787 of 2017

Muhammad Usman & others
Versus
PTCL & others

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| Date of Hearing: | 19.11.2019 and 04.12.2019 |
| Petitioners: | Through M/s. Mr. Masood Ahmed Bhatti, Advocate, Syed Ansar Hussain Zaidi, Advocate, Mr. Irfan Mir Halepota, Advocate, Mr. Muhammad Ali Lakho, Advocate and Mr. Saud Ahmed Khan, Advocate |
| Respondents: | Through M/s Mr. Ziaul Haq Makhdoom, Advocate along with M/s. Muhammad Azhar Mahmood and Faisal Aziz, Advocates, Altamash Arab, Advocate, Syed Mustafa Ali, Advocate and Mr. Muhammad Nishat Warsi, DAG. |

# J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioners in this bunch of petitions are those who opted Voluntarily Separation Scheme (VSS), as offered to them by their employer i.e. Pakistan Telecommunication Company Limited. The petitioners have attempted to categorize themselves into different classes based on the length of service, including but not limited to training period, but eventually they are filtered as one i.e.

those who opted VSS. If the case of all these petitioners could well be addressed on the basis of this common category then further classification in terms of their tenure, which otherwise is dealt with under VSS, becomes immaterial. Thus, we proceed in the matter by dealing with one category of petitioners i.e. those who opted for VSS.

2. Employees of Pakistan Telegraph and Telephone Department (Department) on their transfer to the Pakistan Telecommunication Corporation (the Corporation) became employees of the Corporation under section 9 of the Pakistan Telecommunication Corporation Act, 1991 and then of the Pakistan Telecommunication Company Limited (Company) under section 35 of the Pakistan Telecommunication (Re-Organization) Act, 1996. Their terms and conditions of service were fully protected under section 9(2) of the Act of 1991 and 35(2) of the Act of 1996. None of the terms and conditions could have been varied to their disadvantage. Legislature also bound the Federal Government to guarantee the existing terms and conditions of service and rights including pensionary benefits of the transferred employees. Since such employees became employees of the Corporation in the first instance and then the Company, they did not remain 'civil servants' any more. But the terms and conditions of their service provided by sections 3 to 22 of the Civil Servants Act, 1973 and protected by section 9(2) of the Act of 1991 and sections 35(2), 36(a) and (b) of the Act of 1996 were essentially statutory. Violation of any of them would thus be amenable to the constitutional jurisdiction of the High Court.

3. The Company offered VSS Scheme to all its employees having different length of services. The VSS includes terms and conditions, on the basis of which it was offered, the eligibility, length of service, being categorized therein, and other facilities such as transport, housing, telephone and medical. Petitioners' main grievance is that their rights

created under the original service terms and conditions, when they were recruited in T&T Department, cannot be snatched by introducing VSS. Thus, rights were statutory and hence are still available under the law, which is being guaranteed by the Federal Government in terms of ibid legislation.

4. All petitioners have elected to sever their relationship by opting to avail prompt financial benefits, as provided under VSS. They were given severance pay, separation bonus, medical benefits, leave encashment and housing allowance depending upon their length of service, as computed under the scheme offered. Learned counsels' primary submissions were that training period ought to have been included while computing the length of service to categorize them in different heads, as provided under VSS. Thus, their rights were prejudiced by this Scheme of separation, which may be voluntarily in nature.

5. Learned counsels for petitioners have relied upon Section 35 and 36 of Pakistan Telecommunication (Reorganization) 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 counsels for petitioners in addition have also disputed the calculation of the emoluments on the basis of formula, provided under the separation scheme itself, as their length of service was not which was considered even after excluding the training period.

6. Learned counsels for respondents on the other hand submitted that the questions now raised in the petition are identical to those which were raised earlier by some other employees of the respondent and were dealt with accordingly by the Hon'ble Supreme Court in terms of

judgment rendered in the case in Civil Appeal No.2506 of 2016 and others. Learned counsels submitted that these employees were offered to opt VSS without any coercion or influence and these VSSs were not only offered but mediation center was also formed, which center not only expressed the pros and cons arising out of it but have also satisfied all queries raised by the employees. Thus, they (employees) received prompt financial relief/benefits, which were not available to them had they continued their services without opting VSS.

7. We have heard the learned counsel and perused material available on record.

8. Let us first explore Sections 35 and 36 of Act 1996. It provides that the federal government may, by orders, direct that all or any property, rights and liabilities to which the Corporation was entitled or subject to immediately before such orders, and identified therein, shall, on such terms and conditions as the federal government may determine, vests in the company, National Telecommunication, the authority, the trust and the board through the federal government, and becomes the property, rights and liabilities of the respective entity. In terms of section 35(2) an order issued under subsection (1) shall specify the employees of the Corporation who shall, as from the effective date of the order, be transferred to and become employees of the entity referred to in the order, provided that such order shall not vary the terms and conditions of service of such employees to their disadvantage.

9. Section 36 provides that no person transferred to the company pursuant to subsection (2) of Section 35, hereinafter referred to as “transferred employee”, shall be entitled to any compensation as a consequence of transfer to the company. The proviso to aforesaid section provides that the federal government shall guarantee the existing terms and conditions of service and rights, including pensionary

benefits of the transferred employees. Subsection (2) of Section 36 secures the employees from any alteration in the terms and conditions adversely, except in accordance with laws of Pakistan or with consent of the transferred employees and award of appropriate compensation.

10. On the strength of the aforesaid provisions, the petitioners claimed uninterrupted continuity of their service as this severance ended up in adversely affecting their terms of service. At the very outset this cannot be termed to have adversely affected their rights arising out of the terms and conditions, originally granted to them, as these petitioners for a prompt financial gain have bartered their rights, which they claimed to have been enjoying. Subsection 2 of Section 36 enabled an employer, with the consent of the transferred employee, to award appropriate compensation in lieu of whatever benefits they could have gained at the end of their tenure i.e. reaching the age of superannuation. These employees were given service benefits, which were not even matured at the time the employees opted VSS, hence it cannot be said that any guarantee or secured right was arbitrarily snatched by the employer. These employees could have continued to serve without opting VSS.

11. Insofar as the counting of training period is concerned, these employees while they signed and submitted the VSS knew that this training period will not be counted towards the length of their service. This question otherwise came under consideration before Hon'ble Supreme Court in a number of appeals such as Civil Appeal No.2506 of 2016 and others which were disposed of by a common judgment in which it has been observed as under:-

> "6…. *The appellants had instead projected themselves to have been wronged and embarked upon unnecessary litigation with a view to obtaining a benefit to which they were not entitled to. The for a 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, may be 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.*"

12. These questions were thus considered by Hon'ble Supreme Court and were repelled.

13. The question as to altering the terms and conditions to the disadvantage of employees came into discussion before Hon'ble Supreme Court in the case of Muhammad Rafiullah v. Zarai Taraqiati Bank Limited

reported in 2018 SCMR 598 wherein it has been held as under:-

> *"6. It is a well settled principle of law that the terms and conditions of service cannot be unilaterally altered by the employer to the disadvantage of the employees. Such protection is also recognized under section 6 of the Agricultural Development Bank of Pakistan (Reorganization and Conversion) Ordinance, 2002 and section 13 of the Banks (Nationalization) Act of 1974. However, where an employee voluntarily accepts and receives benefits under some arrangement with the employer out of his own free will then he cannot turn around and seek benefits that were ordinarily applicable to other employees."*

14. This principle was already recognized in the case of Zarai Taraqiati Bank Limited v. Said Rehman and others reported in 2013 SCMR 642) in the following term:-

> *"14. Notwithstanding the legal status of the impugned Circular we concluded that the employees who were protected under section 6 of the Ordinance of 2002 i.e. who were in service prior to conversion of the appellant Bank into an incorporated company and thus were governed under the Regulations of 1981 would not be affected in any manner whatsoever nor the Circular dated 10.8.2002 shall have any relevance to their extent. However, the case of the employees who had voluntarily and out of free will accepted and adopted the Regulations of 2005 or the offer of Golden Handshake Scheme vide Circular dated 19.8.2002 and pursuant thereto had accepted and received the benefits and payments thereunder are not entitled to claim protection either under section 6 of the Ordinance of 2002 nor under section 13 of the Act of 1974. Both the said statutory provisions are a clog or restraint on the employer not to alter or change the terms and conditions to the disadvantage of an employee. The protection under section 6 of the Ordinance of 2002 or section 13 of the Act of 1974 by no stretch of imagination can be extended to such employees who consciously, out of their free will and voluntarily accept or adopt altered or changed terms and conditions of service. If this was not the case then a person tendering his resignation out of free will could also turn around later and seek protection under section 6 of the Ordinance of 2002. When an employee accepts an offer voluntarily and the same is acted upon then he or she is estopped from resiling from the commitment later. The legislative intent behind section 6 of the Ordinance of 2002 or section 13 of the Act of 1974 is to ensure that the terms and conditions*

> *of the transferred employees remain protected and they are not altered or varied to their disadvantage unilaterally and without their consent. Consent, conscious decision or acting out of free will would obviously not attract the protection contemplated under section 6 of the Ordinance of 2002 or section 13 of the Act of 1974."*

15. The VSS again came into consideration before another Bench of Hon'ble Supreme Court in Civil Petitions No.804-810 of 2017 wherein it has been held as under:-

> *"2. ….. Learned counsel for the petitioners has contended that the High Court, while exercising writ jurisdiction has dealt with factual controversy, which it could not have done in such jurisdiction. We note that there was no factual controversy for that it was a case of simple offering of VSS by the employer to its employees and it was open to the employees to accept or not to accept the same. The petitioners in the present matter have accepted the option under VSS and subsequently tried to wriggle out of the same. These are admitted facts and the learned High Court in our view has rightly proceeded to deal with the same under the jurisdiction exercised by it. Nothing has been shown to us to take contrary view from the one taken by the High Court. Consequently, we find no merit in these petitions, the same are, therefore, dismissed and leave refused. All the CMAs filed in the matter are disposed of."*

16. In yet another case i.e. Wali ur Rehman and others v. State Life Insurance Corporation reported in 2006 SCMR 1079 the Hon'ble Supreme Court had observed that:-

> *"(5). We have heard petitioner's counsel in the case of Wali-ur-Rehman, and the remaining petitioners who appeared in person and have also gone through the judgment wherein an undertaking has been given by the petitioners at the time of accepting extra pensionary benefits. A perusal whereof indicates that they are estopped under the law to put up any claim of whatsoever nature against the respondent-Corporation in respect of monetary gains in view of the revised pay scales. The petitioners, after having voluntarily accepting the premature retirement cannot be allowed to approbate and reprobate on the ground that after severing connection with the Corporation, it has granted further monetary benefits to its employees. As far as the*

*judgment relied upon by the learned counsel pertaining to State Bank's employees cases is concerned, it would not render any assistance to them because in the said case no binding undertaking was given by the employees, therefore, being distinguishable on facts and law, discussed therein, its ratio decidendi cannot be applied on the facts and circumstances of the case in hand. In addition to it, it is also to be borne in mind that after having severed their connection with the respondent-Corporation, the petitioners legitimately cannot claim monetary benefits which respondent-Corporation is extending to its employees from time to time, depending upon the changed circumstances, by the efflux of time and if the proposition put forward by the petitioners is accepted, then there would be no end to litigation. Therefore, we are of the opinion that petitioners are estopped by their conduct to claim the benefit of revised pay scales in view of the binding undertaking, which they have furnished at the time of accepting extra benefits on their premature retirement. Thus, for the foregoing reasons, we see no merit in these petitions, as such same are dismissed and leave declined."*

17. Similarly, in the case of Qari Allah Bux & others v. Federation of Pakistan reported in 2011 PLC (CS) 488 a division bench of this Court has held as under:-

*"7. We are persuaded to agree with the contention of the learned counsel for the respondent to the effect that once the petitioners having voluntarily opted for the Golden Hand Shake Scheme introduced in the year 1998 shall be governed by the terms and conditions of such scheme in .its entirety and cannot be allowed to wriggle out from such option which was availed voluntary without any objection or reservations in this regard. We are of the view that the petitioners are stopped from challenging a particular portion of Golden Hand Shake Scheme and such claim is hit by the principle of laches. Introduction of voluntary Golden Hand Shake Scheme by respondent No.2, and the petitioners having been opted for such scheme voluntarily without any objection has created a contractual obligation upon parties hence either party cannot be allowed to wriggle out of such contractual obligation. Under somewhat similar circumstances, while examining the terms of Golden Hand Shake Scheme introduced by State Bank of Pakistan for its employees this Court in the case of Syed Nasim Ahmed Shah and others v. State Bank of Pakistan and others SBLR 2010 Sindh 237 has observed that the petitioners after having opted for the entire Golden*

> *Hand Shake Scheme cannot be allowed to claim further benefits, in piecemeal, under normal existing rules which will tantamount to granting double benefits to the petitioners.*
> ……
> *10. In view of the disputed facts and controverted claim of the parties, we are of the view that the relief sought by the petitioners cannot be entertained by this Court in its constitutional jurisdiction. Accordingly, the instant petition is dismissed along with listed application."*

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 VSS and were promptly benefited. They cannot have a cake and eat it. The claim is to be seen from the lense of judgments of 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 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.

Dated: **Judge**

**Judge**