

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 4335 of 2018

Masood Ahmed Bhatti

Petitioner

Through : Mr. Ahmed Ali Ghumro, advocate.

Respondent No.1

Through : Mr. Muhammad Nishat Warsi, DAG.

Respondents No.2 to 4

Through : Mr. Altamash Arab advocate.

Date of hearing : **05.10.2021**

Date of Order : **05.10.2021**

ORDER

ADNAN-UL-KARIM MEMON, J. Through this petition, the Petitioner has prayed as under:-

- i) To declare that the respondents have no legitimate authority/ jurisdiction to change, modify or alter adversely the terms and conditions of service of the petitioner settled at the time of initial appointment in accordance with the dictum laid down by the Supreme Court reported at page 2012 SCMR 152 and 2016 SCMR 1362.
- ii) Pass restraining orders to the respondents not to apply their own non-statutory regulations in the case of petitioner exerting colorable exercise of powers with malafide intentions, without any lawful authority and of no legal effect and void ab-initio.
- iii) To direct the respondents No.2 to 4 to issues pay slip after due fixation of pay on point to point basis after revision of basic pay scale (BPS) since 01.12.2001.
- iv) To direct the respondent No.1 to perform his responsibilities as guarantor ensuring guarantees under sub-sec (1) & (5) of Se.36 of the P.T (Re-Organization) Act, 1996.
- v) To direct respondents 2 to 4 to discharge assumed duty of payment of pension in accordance with statutory procedure and rules applicable in the case of the petitioner after settlement of due pay and due emoluments thereafter calculating correctly due pension.

- vi) To direct the respondent No.2 to 4 to immediately start payment of provisional anticipatory pension until such time the amount of payment pension is finally determined.
- vii) Action in accordance with law and the dictum laid by the Hon'ble Supreme Court reported at page PLD 2007 SC 35 be taken against Mr. Daniel Ritz, President & CEO Pakistan Telecommunication Company Ltd. Block E, PTCL, H/Qtrs., sector G-8/4, Islamabad (respondent No.2) having failed to decide the pension case of the petitioner in accordance with directions of the Hon'ble Supreme Court thus be held liable for the contempt of the Court.

2. The petitioner namely, Masood Ahmed Bhatti who is present along with his counsel has briefed us about his case with the averments that he was an employee of Pakistan Telecommunication Corporation Company Ltd (PTCL). He was inducted into service with Pakistan Telegraph and Telecom Department in 1983; that the respondent-PTCL offered him in the form of a voluntary separation scheme (VSS), which he reluctantly accepted with protest and challenged the VSS option, by filing Constitution Petitions Nos.D-520 of 2009 before this Court. This petition was dismissed by this Court through the common judgment dated 3-6-2010, on the point of maintainability, which was impugned before the Honorable Supreme Court by the petitioner in the case of Masood Ahmed Bhatti and others Vs. Federation of Pakistan and others (2012 SCMR 152). The Honorable Supreme Court was pleased to allow the same vide judgment dated 11.8.2011 and remanded the matter to this Court to decide afresh with the following observation:

“The appellant Masood Ahmed Bhatti had approached the High Court through Constitution Petition No.D-520 of 2009. It was, inter alia, alleged by him that termination of his services w.e.f. 10-3-2008 was invalid and also that PTCL had unilaterally and without his concurrence imposed a Voluntary Separation Scheme on him. Since this aspect of the appellant's case and the other merits of his Constitution Petition were not discussed or adjudicated upon by the High Court, the impugned judgment to the extent it relates to the appellant is set aside. The said petition shall be deemed pending before the High Court and shall be decided afresh in the light of this judgment”.

3. After post remand scenario, this Court after hearing the parties disposed of the aforesaid petition vide short order dated 14.05.2013 with the observation that the petitioner failed to substantiate his claim viz-a-viz final VSS settlement and release of his actual pension and other service benefits; with further observation that since the

petitioner agitated his grievance since 2009 and the amount was also lying with the respondents, therefore, the petitioner was held entitled to the interest over such amount and the respondent-PTCL was directed to pay interest @ 8% per annum from 10.03.2008 till the entire amount is paid to the petitioner. The petitioner being aggrieved by and dissatisfied with the aforesaid decision preferred Review Application (Mic No.25207/2013), which was dismissed vide order dated 02.03.2015 with the observation that if he has a qualifying length of service he is entitled to pensionary benefits. Petitioner again being aggrieved by and dissatisfied with the aforesaid decision preferred 12(2) CPC application which is reported to be pending. Petitioner also approached Hon'ble Supreme Court against the order dated 14.05.2013 in C.P No.257-K of 2015. Finally, during litigation petitioner reached the age of superannuation on 1.1.2016.

4. The respondent-Pakistan Telecommunication being aggrieved by and dissatisfied with the judgment dated 11.8.2011 passed by the Honorable Supreme Court, preferred Review Petitions Nos.247 to 249 of 2011 and Civil Appeals No.239 to 241 of 2011, which were dismissed vide short order dated 19.02.2016 in the case of PTCL and others Vs. Masood Ahmed Bhatti and others (2016 SCMR 1362) with the following observation:

“9. The same view was held in the case of Pakistan Telecommunication Company Limited through General Manager and another v. Muhammad Zahid and 29 others (2010 SCMR 253) which attained finality as review there against was also dismissed. We, therefore, hold that the view taken in the impugned judgment is not a departure much less outright from the dicta of this Court laid down in the cases of Principal Cadet College, Kohat v. Muhammad Shoaib Qureshi, Pakistan Red Crescent Society v. Syed Nazir Gillani, Executive Council Allama Iqbal Open University, Islamabad through Chairman and another v. Muhammad Tufail Hashmi, Pakistan Telecommunication Company Ltd. through Chairman v. Iqbal Nasir and others, Pakistan International Airlines Corporation and others v. Tanveer-ur-Rehman and others, Oil and Gas Development Company and others v. Nazar Hussain and others, Syed Tahir Abbas Shah v. OGDCL through M.D. Head Office, Islamabad and another, Muhammad Tariq Badar and another v. National Bank of Pakistan and others, Pakistan Telecommunication Employees Trust (PTET) through M.D. Islamabad and others v. Muhammad Arif and others, Pakistan Telecommunication Corporation and another v. Riaz Ahmed and 6 others, and Divisional Engineer Phones, Phones Division, Sukkur and another v. Muhammad Shahid and others (supra).

10. Having thus considered, we do not think a case for review of the judgment of this Court dated 7.10.2011 is made out. These review petitions as well as Civil Petition No. 423 of 2011 being without merits

are dismissed. These are the detailed reasons for our short order dated 19.02.2016.”

5. Learned counsel for respondents No.2 to 4 has agitated that the petitioner also litigated on the subject by filing another C.P No.D-6426/2016 on the similar grounds and cause of action, which was disposed of vide common order dated 25.11.2016 with direction to the PTCL to consider the petitioner’s case under the law, rules, and regulation within 180 days. The petitioner preferred contempt application in the aforesaid matter and this Court vide order dated 10.05.2018 disposed of the contempt application with the observation that since the order dated 25.11.2016 was complied with in its letter and spirit vide office order dated 25.07.2017, whereby his case was considered by the respondent-PTCL and rejected his claim fixation of pay and payment of provisional anticipatory pension. The petitioner being aggrieved by and dissatisfied with the aforesaid decision preferred Civil Petition No.704-K of 2018 before Hon’ble Supreme Court, which was dismissed vide order dated 07.08.2018 with the observation that no case for contempt is made out. He, however, was left at liberty to agitate his claim to appropriate proceedings subject to all just expect and limitations. Now he has filed the present petition calling in question the decision dated 25.07.2017 issued by the respondent-PTCL *inter-alia* on the ground that act and actions taken by the respondent-PTCL are illegal, arbitrary, malafide, in violation of Article 2-A, 4, 9, 18, 24, 25, and 38(b) of the Constitution of the Islamic Republic of Pakistan, 1973, and dictum laid down by the Honorable Supreme Court in the cases Masood Ahmed Bhatti, and PTCL and others supra; that under Sections 35 and 36 of the Pakistan Telecommunication (Re-organization) Act, 1996, 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; 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; that respondents No.2 to 4 are bound under the law to issue payslip to the petitioner after due fixation of pay on point to point basis after revision of basic pay scale (BPS) since 01.12.2001; that the respondent-PTCL has failed and neglected to pay pension to the petitioner after he reached the age of superannuation on 1.5.2016, which violates dicta laid down by the Honorable Supreme Court in the case of *Advocate Ismail Memon* (**PLD 2007 SC 35**); that the petitioner has a qualifying length of service to his credit as per the VSS scheme.

6. Learned counsel representing the respondents have supported the decision of the respondent-PTCL and argued that the case of the petitioner is barred under the doctrine of constructive res-judicata; that no fundamental rights of the petitioner have been abridged; that petitioner is not entitled to the pension. Learned counsel relied upon the case of *Wali-ur-Rehman and others vs. State Life Insurance Corporation* [**2006 SCMR 1079**], and argued that petitioner on opting premature retirement under Voluntary Retirement Scheme got additional benefits qua, therefore, petitioner after having retired from the respondent-Corporation would have no case against the present respondent-company for claiming the benefit of revised pay scales. He next relied upon the case of *Qari Allah Bux and others vs. Federation of Pakistan and another* [**2011 PLC (C.S) 488**] and argued that the petitioner cannot be allowed to wriggle out of such contractual obligation by availing the benefits of VSS and ask for other benefits. He next relied upon the case of *Wahid Baksh Wattoo and others vs. Pak American Fertilizers Limited and others* [**2014 SCMR 113**]. He lastly prayed for the dismissal of the instant petition.

7. Learned Deputy Attorney General representing Respondent No.1, has adopted the arguments of learned counsel representing respondent-PTCL.

8. We have heard the learned counsel for the petitioner at some length as well as learned counsel representing the respondents No.2 to 4 and perused the material available on record and case law cited by them on the subject.

9. The question involved in the present petition is whether the petitioner is entitled to the pension besides receiving a lump-sum package offered by PTCL and ask for enforcement of the terms and conditions of his past service and other ancillary service issues, when he voluntarily opted VSS introduced by PTCL, resultantly, petitioner was given severance pay, separation bonus, and medical benefits, leave encashment, and housing allowance depending upon his length of service, as computed under the offered scheme.

10. Before proceeding further on the issue, we have noticed that this Court vide dated 01.06.2018 subject to the maintainability of the petition, issued notice to the respondents as well as DAG. The petitioner being aggrieved by and dissatisfied with the aforesaid decision preferred Civil Petition No.839-K of 2018 before the Hon'ble Supreme Court, which was dismissed vide order dated 31.08.2018 with the observation that the question as to whether the VSS optee is entitled to premature pension or not could be determined once the court concludes that VSS was not availed of under law. Petitioner also preferred review, which was too dismissed vide order dated 31.12.2018.

11. We have gone through the impugned decision of the respondent company, which explicitly provides that due hearing was afforded to the petitioners, and found his claim not sustainable under the law. An excerpt of the decision dated 25.7.2017 is reproduced as under:

- i. *That after opting for VSS-2008 and judgment of the Court, you are now claiming for revision of pensionary benefits.*
- ii. *You have received all admissible emoluments / monitory benefits as per terms and conditions of VSS and now are claiming pension benefits.*

- iii. *That you have signed the waiver form with your free will by accepting the clause that “no claim is pending against PTCL which amounts to a contract between you and PTCL”.*
- iv. *That your claim after accepting of VSS is a past and closed transaction which is also a time-barred case. Further your case was finally decided up to the level of Supreme Court.*
- v. *That you were sent pensionary papers for submission after signatures so far back on 19th August 2013 through courier but despite having duly received you did not submit the same. Moreover, unless the pension documents are submitted, the pension cannot be processed.*
- vi. *That you had got all admissible benefits without any hesitation pursuant to orders of High Court of Sindh.*
- vii. *That as per different judgments passed by Superior Courts, the persons/employees who opted for VSS and received the benefits are not entitled to any extra benefits at a belated stage, as VSS amounts to a contract and is binding on the parties.*
- viii. *Whereas you were afforded ample opportunity of hearing to your personal satisfaction.*

*As such the competent authority considered your submissions in the light of the guidelines settled by Hon'ble High Court of Sindh at Karachi. A sympathetic consideration was extended to your submission, policies of the PTCL, judgments passed by the Hon'ble Superior Court, and the documents submitted by you whereby you have extended waiver of any further rights. As such the competent authority has reached to an irresistible conclusion that your claim is legally unfounded for the obvious reasons as your case is a past and close transaction in view of the judgments passed in C.P No.520 of 2009, CPLA No.257 of 2015 and CRP No.38 of 2015 hence your claim for further pensionary benefits is hereby declined in view of the reasons mentioned *ibid*.*

General Manager (HRO)”

12. Prima-facie, the respondent-Company offered the VSS Scheme to all its employees having different lengths of services. The VSS includes terms and conditions, based on which it was offered, the eligibility, length of service, being categorized therein, and other facilities such as transport, housing, telephone, and medical. Petitioner's main grievance is that his rights created under the original service terms and conditions when he was 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. Petitioner has elected to sever his relationship by opting to avail prompt financial benefits, as provided under VSS.

13. Petitioner who is present in Court has admitted to having received severance pay, separation bonus, medical benefits, leave encashment, and housing allowance depending upon his length of service, as computed under the scheme offered, however with protest. At this juncture, Mr. Ahmed Ali Ghumro, learned counsel for the petitioner, under the instructions of petitioner, has offered to deposit the amount so received by the petitioner under VSS with the Nazir of this Court. Be that as it may, we are unable to understand how the plea of the petitioner can legally sustain because VSS was never meant more than 'offer' by the company for its employee(s) with complete right/option, where legal right to refuse the VSS policy was available with the petitioner because the VSS means **voluntarily** separation scheme while exercising the rights of choice between two, we shall emphasis the plea of **protest** cannot be taken. It has never been the case of the petitioner that he (petitioner) never had a choice to refuse the VSS, therefore, having received the benefits which were to follow only in case of acceptance of VSS the petitioner was legally stopped raise the plea of **acted under protest.** Needless to add that it is always the conduct and behavior of one which determines his intention. In the instant matter, it is not disputed that:-

- a) The company sent VSS to a number of its employee(s) including the petitioner while making it clear that availing benefit will bring certain benefits at cost of normal service benefits, which are because entitled to after completion of required service.
- b) The petitioner did accept such offer and allowed process thereof under his own signature meant to show consent /concurrence of the party to a document.
- c) Received the benefits as admitted by the petitioner himself.

Thus we are not inclined to stamp that the petitioner being an educated person continued behaving in such a manner was not with his consent though in consequences of such action undeniably, the other party (company) believed about his consent of petitioner to VSS; did pay all benefits to the petitioner which too were received /enjoyed by him. We are guided by the decision of the Honorable Supreme Court in the case of *State Bank of Pakistan vs. Khyber Zaman and others* [2004 SCMR 1426].

14. 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 a pension.”

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 a 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. Prima-facie this abortive attempt on the part of the petitioner is not appreciated on the strength of aforesaid decisions of this Court and Honorable Supreme Court on the subject.

17. We have also noticed that the learned Division Bench of this Court has already decided the issue of VSS vide common judgment dated 04.12.2019 passed in C.P. No. D-141 of 2017 along with connected petitions on the strength of decision of the Honorable Supreme Court rendered in Civil Appeal No.2506 of 2016. For convenience sake, an excerpt of the common judgment dated 04.12.2019 by this Court 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 and other connected petitions.

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 the Pension Act and rules, there is nothing to prevent the employees from entering into a contract in the bargain with their postretirement 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.”

18. For the above reasons, we are of the view that the petitioner has not been deprived of his fundamental rights as alleged by the petitioner. Besides the above, the case of the petitioner is barred by the principle constructive res judicata.

19. In light of the above facts and circumstances of the case, we are of the view that this Court in its Constitutional jurisdiction cannot interfere in the findings recorded by the competent authority of respondent-PTCL vide decision dated 25.07.2017 as we do not see any illegality, infirmity or material irregularity in its decision warranting interference of this Court. Hence, the instant Petition is found to be meritless and is accordingly dismissed along with the listed application (s).

20. These are the reasons for our short order dated 5.10.2021.

J U D G E

J U D G E

Shahzad Soomro