

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

**C.P. No. D- 3930 of 2020**

**Muhammad Khan**

Petitioner

Through : Mr. Ali Asadullah Bullo, advocate.

Respondent No.1

Through : Mr. Muhammad Nishat Warsi, DAG.

Respondent No.2

Through : Mr. Bashir Ahmed, advocate

Dates of hearing : **08.10.2021**

Date of Order : **08.10.2021**

**O R D E R**

**ADNAN-UL-KARIM MEMON,J:-** The captioned petition was disposed of vide order dated 10.12.2020 with the following understanding between the parties:

*“Learned counsel for KPT states that the matter of settlement of post-retirement benefits of the petitioner is under process and shall be finalized. On behalf of KPT, he undertakes that possession of the Petitioner shall not be disturbed till settlement of his post-retirement benefits. Petitioner Muhammad Khan, who is present in person, states that he shall vacate the subject quarter within thirty (30) days from the date of settlement of his claim. He shall also be liable to clear all utility bills up to the date of handing over possession of the subject quarters. Needless to say the post-retirement benefits of the petitioner shall be settled by KPT strictly in accordance with law and the relevant rules/regulations/policy. By consent, the petition stands disposed of in the above terms with no order as to costs.”*

2. The petitioner has assailed the compliance report submitted by the respondent-KPT through the listed application bearing CMA No.7026/2021 inter-alia on the ground that the petitioner served with respondent-KPT for about twenty-five (25) years against the substantive post and on Adhoc basis six (06) years as a regular employee (total 31 years) without any break in service; the career of petitioner during the aforesaid period was unblemished; after his regularization in the year 1995 and then attaining the age of superannuation on 8.2.2020, the respondent-KPT is not ready and willing to include the period of Adhoc employment of the petitioner in his regular service to disqualify him

from meeting the criteria of qualifying service for superannuation pension. He added that Rule 2.3 of the West Pakistan Civil Servants Pension Rules, 1963, is also relevant in this case to resolve the controversy, which is reproduced herein below:-

“Temporary and Officiating Service- Temporary and officiating service shall count for pension as indicated below:

(i) Government servants borne on temporary establishment who have rendered more than five years continuous temporary service shall count such service for the purpose of pension or gratuity; and

(ii) Temporary and officiating service followed by confirmation shall also count for pension or gratuity”.

3. Sub Rule-(i) of the *ibid* rule provides that a government servant who has rendered more than 5 years temporary service shall be counted for pension or gratuity while sub Rule-(ii) provides that temporary officiating service followed by confirmation shall also be countable for pension and gratuity; in the case of the petitioner, he was appointed on 04.07.1989 as Junior Engineer in KPT against the budgetary post while his service was regularized in the year 1995 vide letter dated 13.11.1995. His Adhoc/ temporary service which was followed by his regularization shall also be counted for pensionary benefits; as per Chapter-IV, Rule 4.4 of the *ibid* Rules, a civil servant becomes entitled to a pension after qualifying service of not less than 10 years as per formula provided thereunder; as per record, his total length of service is 31 years; and, thus petitioner was/is entitled to the pensionary benefits on the aforesaid analogy. He lastly argued that the case of the petitioner relates to the pensionary benefits, but he has been deprived of the same, which is a violation of his fundamental right, as such the listed application is liable to be processed under Article 204 of the Constitution of Islamic Republic of Pakistan 1973.

4. Mr. Bashir Ahmed, learned counsel for respondent No.2, has referred to the compliance report dated 16.10.2020 and argued that the listed application is not maintainable under the law *inter-alia* on the ground that petitioner was appointed on Adhoc basis with effect from 4.7.1989 as Trainee Engineer and thereafter his service was regularized vide Board's Resolution No.131 dated 12.10.1995 on regular basis, however, it was made clear that no backdated benefit could be granted to any absorbee and his seniority was counted with effect from

12.10.1995, thus no retrospective effect could be given from the date of Adhoc appointment. Learned counsel further submitted that the petitioner has retired from KPT service and he has been paid pension from the date of regularization of his service i.e. 12.10.1995, therefore, no Adhoc period could be counted. In support of his contentions, he relied upon the documents attached with the compliance report and order dated 11.3.2016 passed by the Hon'ble Supreme Court in the case of *Nazeer Ahmed Soomro v. Muhammad Younis and another*. Learned counsel also referred to the letter dated 10.09.2021 issued by the respondent-KPT whereby his case was considered and rejected by the competent authority. Learned counsel lastly argued that there was no direction by this Court to count the Adhoc service of the petitioner with effect from 1989, as such the respondents have complied with the order dated 10.12.2020 passed by this Court in its letter and spirit however if the petitioner is so aggrieved against the decision of respondent-KPT he may avail remedy as provided under the law. At this stage, learned counsel objected to the submissions of the learned counsel for the KPT on the premise that this Court vide order dated 10.12.2020 directed the KPT to settle post-retirement benefits of the petitioner strictly under the law and the relevant rules of the regulations/policy as such they cannot deviate from their undertaking as recorded by this Court on the aforesaid date, thus they are bound to decide the case of the petitioner's pension in accordance with law, which they have completely failed to do so compelling the petitioner to institute contempt proceedings against them.

5. We have heard arguments of the parties on the listed application and have carefully perused the compliance report submitted on behalf of the alleged contemnor.

6. The pivotal question involved in the listed application is whether Civil / Government / public servant is entitled to have the protection of the previous service rendered as Adhoc temporary/contingent basis in the organization for fixation and counting of the previous service for pension.

7. The issue is concerning the protection of the previous service in the respondent-KPT on Adhoc basis for fixation and counting of the

previous service for pension. This protection is provided under Fundamental Rule 22-A, which is fully applicable in the case of KPT.

8. To elaborate further on the proposition in hand, we have noticed that Service Regulations of KPT spells out that the qualifying service of an employee shall commence from the date he takes the charge of the post to which he is first appointed either substantively or in a temporary capacity. Provided that temporary service is followed without interruption by substantive appointment in the same or other service cadre or post.

9. It is well-settled law that the right to claim pension is a right connected with the tenure of service which under the applicable pension rules has to be served by an employee to make him eligible for pension. So to claim pension, minimum qualifying service is the threshold that has to be crossed first which would then entitle an employee to claim the pension.

10. The condition precedent is the rendition of the minimum length of service. Therefore, rendering of qualifying service is a prerequisite for claiming the pension. Unless an employee of KPT renders minimum qualifying service he cannot become entitled to claim superannuation pension or any other privilege that is attached with pensionary rights as discussed supra. On the aforesaid proposition, we are fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Sakina Riaz V/S University of Karachi and others, 2018 SCMR 1272.

11. Prima facie, the petitioner has (31) years' service to his credit which is a qualifying length of service for superannuation pension. However, the Adhoc period of the petitioner had already been brought on normal budget by regularizing his previous service as discussed supra which entitled him to entire (31) years' service benefits. Even otherwise if an employee who, during the period of probationary/ad-hoc service, was eligible to be confirmed against any post, retires from service before being confirmed, shall not, merely because of such retirement be refused confirmation to such post or any benefit accrued therefrom.

12. To add further, Article 371-A of Civil Service Regulations is clear in its terms that a government servant not employed in a substantive permanent capacity who has rendered more than five years continuous temporary service counts such service for pension or gratuity excluding the broken period of service, if any, rendered previously. Continuous temporary and officiating service of less than five services immediately followed by confirmation shall also count for gratuity or pension, as the case may be.

13. Record reflects that petitioner was appointed in the year 1989 as Junior Engineer in KPT against the sanctioned /budgetary post while his service was regularized in the year 1995 vide letter dated 13.11.1995 and he continuously served as such and then his Adhoc employment was converted into regular service in the year 1995, and therefore, according to Articles 358, 371-A, 423 and 474 (b) of Civil Service Regulations, his previous service on ad-hoc basis with effect from 1989 to 1995 is countable to his regular service for service/pensionary benefits and other fringe benefits.

14. In view of the foregoing legal position of the case, the petitioner is entitled to claim entire (31) years' service/pensionary dues by counting his previous service to retire / superannuation benefits. Even otherwise under Section 474 (b) of CSR petitioner's case is fully covered under the aforesaid regulation. We are guided by the decisions of the Hon'ble Supreme Court in the cases of *Nafees Ahmad V/S Government of Pakistan and others*, **2000 SCMR 1864**, *Ch. Muhammad Azim V/S The Chief Engineer, Irrigation and others*, **1991 SCMR 255**, and *Chairman, Central Board of Revenue and others V/S Nawab Khan and others*, **2010 S C M R 1399**.

15. Since the petitioner served with the respondents in the year 1989 and his service was regularized in the year 1995, the principle set forth by the Hon'ble Supreme Court of Pakistan in the case of *Messrs. State Oil Company Limited V/S Bakht Sidique and others*, 2018 SCMR 1181, is guiding the issue involved in the matter, excerpt whereof is as under:

“3..... However, at this stage, we would like to observe that the employment of the respondents shall be regularized with effect from the date when they approached the learned High Court through the Constitution petition but for their pensionary benefit and other long term benefits, if any, available under the law, they would be entitled

from the date when they have joined the service of the petitioner. All the petitions are accordingly dismissed.”

16. We are not impressed by the submissions of learned counsel for the alleged contemnor that the services of six years of the petitioner on adhoc basis could not be counted for pensionary benefits. In our view, the petitioner is entitled to the benefit of the aforesaid judgment passed by the Hon’ble Supreme Court of Pakistan, therefore, prima-facie the competent authority of respondent-KPT was/is under obligation to comply with the direction of this Court as well as the Hon’ble Supreme Court in the case of Messrs. State Oil Company Limited.

17. We have also scrutinized the compliance report submitted on behalf of the alleged contemnor; prima-facie the explanation offered by the Respondents vide compliance reports dated 16.10.2020 and 31.1.2021 is not tenable under the law, in our view, the purported compliance report is not in compliance with the order passed by this Court and the Hon’ble Supreme Court in letter and spirit. Prima facie, they have not looked into the basic spirit of the order as discussed supra, therefore, the same is rejected to the extent of non-counting of adhoc period of employment of petitioner for pensionary benefits. The petitioner has pointed out malice on the part of the alleged contemnor warranting interference of this Court to take action against the alleged contemnor under Article 204 of the Constitution, who failed and neglected to count his previous service, thus, we are left with three options; either to initiate proceedings for contempt against the alleged contemnor under the provisions of Contempt of Courts Ordinance, 2003 or Article 204 of the Constitution or to direct the Chairman /Competent Authority of respondent-KPT to implement the order passed by this Court in letter and spirit, expeditiously, without any delay and with reasonable dispatch and/or dismiss the application as same has served its purpose. However, to avoid multiplicity of the proceedings, we are inclined to direct the competent authority to complete the entire exercise and settle the service dues of the petitioner within sixty (30) days from the date of this order.

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