

Order Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP. No. D- 1343 of 2016

Muhammad Ishaque

v. Province of Sindh & others

BEFORE :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Petitioner: Muhammad Ishaque through
Mr. Asif Ali Talpur, Advocate

Respondents : Province of Sindh and others through Mr. Allah
Bachayo Soomro, Addl.A.G.

Date of hearing & decision: 28.10.2021

O R D E R

ADNAN-UL-KARIM MEMON, J:- Through instant petition, the petitioner has mainly prayed as under:-

- a. direct the respondents to treat the service of the petitioner is 37 years as in the reinstatement order, the period, for which, the petitioner remained out of service has been ordered to be treated as leave without pay.
- b. Direct the respondents to make the payment of all the remaining pensionary benefits, gratuity, and monthly pension to the petitioner forthwith.

2. Brief facts of the case are that the petitioner was appointed as Police Constable in Sindh Police on 14.01.1977; after 3 years of his service, the petitioner was discharged from service by SSP Badin (respondent No.5) vide order dated 8.12.1979 for remaining absence from duty for 12 days; against the said dismissal from service petitioner preferred appeal to DIGP Hyderabad Range, and then to IGP Sindh and finally he moved mercy petition to Home Minister, Sindh, who reinstated the petitioner vide order dated 25.08.2008 awarding him minor penalty of stoppage of increments for two years and the period of his absence and the period he remained out of service (viz. from 8.12.1979 to 25.08.2008) was ordered to be treated as leave without pay; the petitioner rejoined his duty and was sent for

Refresher Course and on completion of said course, he started performing his duty; that on attaining the age of superannuation, the petitioner retired from service with effect from 23.03.2013 vide order dated 18.03.2013; and, he was granted 273 days leave for lump-sum payment of full pay in lieu of LPR. Petitioner has averred that he was required to be retired from service on 23.03.2014 but he was mistakenly retired on 23.03.2013 against which the petitioner appealed before respondent No.4 which was allowed and the intervening period from 24.03.2013 to 26.01.2014 was treated as on duty; and, he finally stood retired from service on superannuation pension w.e.f 23.03.2014 vide order dated 6.2.2014 passed by the respondent No.5; after retirement, the pension papers of petitioner were prepared duly attested by respondent No.5 (SSP Badin) and sent to the office of respondent No.6 (District Accounts Officer, Badin) and the petitioner was paid commutation of Rs. 72,553/= treating his service as 8 years only, whereas the service of the petitioner is required to be counted from the date of his initial appointment with effect from 14.01.1977 to 23.03.2014 (37 years). Petitioner has submitted that he was also paid leave encashment for 273 days and fixed GP Fund but he was denied monthly pension on the ground that his service is below 10 years. Petitioner further submitted that he moved an application to respondents 4 and 5 requesting therein for treating his service 37 years and payment of monthly pension to him on the ground that he is 60 years of age; and, has to support his big family but no fruitful result was achieved; it is urged by him that it has been mentioned in the reinstatement order that the period of his absence and the period he remained out of service is treated as leave without pay, as such, the service of the petitioner for a period he remained out of service is required to be counted for pensionary benefits but the same is not being counted by respondent No.6; and, payment is not being released in respect of difference of commutation, gratuity, and monthly pension; that since the date of his retirement he is continuously approaching the respondents for the above purpose but no heed was paid hence he has filed the instant petition.

3. At the outset, we asked learned Additional A.G to show us any law to the proposition that when the termination order has been withdrawn by the respondents, his service ought to have been reinstated from the date of termination order i.e. 8.12.1979.

4. Mr. Allah Bachayo Soomro, Addl. A.G. has submitted that the petitioner lacks the qualifying length of service for pension which is only 8 years 5 months and 13 days, however, the remaining 28 years 8 months, and 20 days cannot be declared as the qualifying length of service for pension as provided under Rule 2.7 of West Pakistan Civil Servants Pension Rules 1963, which provides that 'All leave (other than extraordinary leave) counts as qualifying service for purpose of pension; in support of his contentions, he relied upon SI No.21 of A Manual of Pension Procedures and argued that a governments servant who has rendered five years qualifying service or more but less than ten years qualifying service may be granted as gratuity not exceeding one-month emoluments for each completed year of qualifying service; and, in this case, no pension is admissible. He prayed for dismissal of the instant petition.

5. We are not satisfied with the assertion of learned A.A.G. on the aforesaid analogy, for the reason that Fundamental Rule 54, is clear in its terms, dealing with the reinstatement of an employee consequent to setting aside his dismissal/removal from service, the entitlement of the employee, to have the period of his absence from his service treated as "on duty" is a statutory consequence of his being reinstated on merits. That being so, we do not feel that it would be fair to deny the petitioner his just entitlement of service benefits of the intervening period under FR-54, an excerpt whereof is as under:

“Where a Government Servant has been dismissed or removed is reinstated, the revising or appellate authority may grant to him for the period of his absence from duty:

(a) if he is honorably acquitted, the full pay to which he would have been entitled if he had not been dismissed or removed and, by an order to be separately recorded, any allowance of which he was in receipt prior to his dismissal or removal; or

(b) if otherwise, such portion of such pay and allowances as the revising or appellate authority may prescribe. In a case falling under clause

(a), the period of absence from duty will be treated as a period spent on duty. In a case falling under clause

(b), it will not be treated as a period spent on duty unless the revising or appellate authority so directs.”

6. The Hon'ble Supreme Court in the case of *Pakistan International Airlines Corporation through Chairman v. Inayat Rasool (2003 SCMR 1128)* has already settled the aforesaid proposition.

Thus, there is no need to further deliberate on the subject issue; so the Plea taken by learned A.A.G. that petitioner is not entitled to claim benefits of period, he remained out of service is not found tenable. The proposition noted above is obvious on the ground that the term reinstatement means to place a person in his previous position that has already been done in the year 2008 and therefore, according to Articles 358, 371-A, 423, and 474 (b) of Civil Service Regulations, his period under which he remained out of service, due to the purported act of the respondents, is countable to his substantive/regular service as qualifying length of service as provided under Rule 2.7 of West Pakistan Civil Servants Pension Rules 1963, which provides that 'All leave counts as qualifying service for purpose of pension and other fringe benefits; besides that under Rule 9 of the Revised Leave Rules 1981, the competent authority i.e. Chief Minister has authorized the Finance Department to grant extension in Extra Ordinary Leave (without pay) for the reasons beyond the control of a civil servant; up to maximum limit of five years and three more years combined together in case of those who have put in more than ten years service and five years for those who have put in at least two years continuous service. Thus the leave without pay allowed to the petitioner vide office order dated 25.8.2008, could be counted as qualifying service for pension under Rule 2.7 of West Pakistan Civil Servants Pension Rules 1963, for the reason that petitioner moved an appeal to the competent authority for reinstatement in service, which was decided in the year 2008 if it would have been decided within a reasonable time, the situation could have been different, therefore no exception to that effect could be taken at this stage.

7. In view of the foregoing legal position of the case, the petitioner is entitled to claim the entire thirty seven (37) years service dues by counting his service when he remained out of service with effect from 8.12.1979 till his reinstatement vide order dated 25.8.2008, for the purpose of qualifying length of service and benefits accrued thereon. Even otherwise under Service Regulations CSR, petitioner's case is fully covered under the aforesaid regulation. On the aforesaid proposition, we are fortified by the decisions of 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 SCMR 1399.

8. This is a matter of grave concern that for several years, the long and unjustified delay in the payment of pension has been a source of tremendous hardship and humiliation to retiring officials and their families. Despite various orders passed by the Honorable Supreme Court of Pakistan in its various pronouncements and guidelines laid down by the Government, which act on part of the respondents-police department cannot be appreciated at all, even otherwise the same act is in disregard of the Judgment passed by Hon'ble Supreme Court in the case of Haji Muhammad Ismail Memon (PLD 2007 SC 35).

9. This being the legal position of the case, the instant petition is allowed with no order as to costs by holding that the service of the petitioner was reinstated with effect from termination of his service i.e. 8.12.1979. The respondents are directed to grant his service/pensionary benefits for the intervening period i.e. 8.12.1979 till his reinstatement in service on 25.8.2008 under law, within two (02) weeks from the date of receipt of this order.

JUDGE

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