

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 3745 of 2014

Ghulam Hussain v. Fauji Fertilizer Company Ltd: and others

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of hearing: **15-02-2022**

Date of decision: **15-02-2022**

Mr. Ghulam Shabbir Shar, Advocate for the Petitioner.
Mr. Abdul Rasheed Kalwar, Advocate for Respondent No.2.
Mr. Muhammad Hamzo Buriro, Deputy Attorney General.

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ORDER

Muhammad Junaid Ghaffar, J. – Through this Petition, the Petitioner has sought the following relief(s):

- (a) *That this Honourable Court be pleased to declare aggregate Service 35 Years 4 Months 4 Days rendered by the petitioner in continuity as pension-able and fresh Appointment Order of Petitioner bearing No: 6.5/P/PSFL dated 1-6-2002 segregating previous services with Pak Saudi Fertilizers Ltd: and treating one year Service on probation as illegal, unlawful and of no legal effect.*
- (b) *That this Honourable Court may further be pleased to direct respondents through Writ of the Court to Sanction Pension Gratuity / EX- Gratia under the Fauji Fertilizer Company Ltd: Management Staff Pension Fund Rules and equal to the emoluments per pro-rata paid to the Co-employees M/S Abdul Hameed Mirza and others without any discrimination.*
- (c) *To grant Costs of the Petition.*
- (d) *To award any other relief as deemed fit and proper under the circumstances of case.*

2. On 14-10-2015, an objection was raised by the Respondent's Counsel regarding maintainability of this Petition and since then the same is pending, and while confronted, Petitioner's Counsel has argued that since considerable time has lapsed, therefore, this objection stands overruled and cannot be taken up by the Court so belatedly. In support, he has relied upon the case reported as Muhammad Aslam v. Senior Member (Colonies), Board of Revenue, Punjab and others (2004 SCMR 1587).

3. On the other hand, Respondent's Counsel has argued that the Petition is not maintainable, and in support, he has relied upon the cases reported as Salahuddin and 2 others v. Frontier Sugar Mills & Distillery Ltd., Tokht Bhai and 10 others (PLD 1975 Supreme Court 244) and Echo West International (Pvt) Ltd. Lahore v. Government of Punjab through Secretary and 4 others (PLD 2009 Supreme Court 406).

4. We have heard both the learned Counsel and perused the record.

5. It is not in dispute that the Petitioner is claiming some service benefits against Respondents being a company incorporated under the then Companies Ordinance, 1984. There are no statutory rules of service; whereas, even otherwise, the Respondents-Company is a business entity and is not performing any functions assigned to the State.

6. Insofar as the argument of the Petitioner's Counsel that since considerable time has lapsed, this objection stands overruled is concerned, the same appears to be misconceived inasmuch as firstly this objection was taken at the very initial stage of hearing of this Petition on 14-10-2015 and since then it has not been satisfied by the Petitioner's Counsel. Secondly, even otherwise, an objection regarding maintainability of a case always remain alive until the matter is finally decided; more so, when the same is in respect of service benefits of a person as the Hon'ble Supreme Court has time and again settled this aspect of the matter and has given guidelines.

7. The present case does not fall in any of the exceptions in respect of which it has been held by the Hon'ble Supreme Court that a Petition is maintainable in respect of a service benefit. Neither the Respondent Company has any statutory rules of service; nor is otherwise amenable to the writ jurisdiction of this Court, at least in respect of service benefits of an employee, which are to be governed by the principle of "master and servant". Accordingly, the Petition being not maintainable is hereby **dismissed**.

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Abdul Basit