

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-5613 of 2021

Aftab Ahmed Memon
Petitioner through : Mr. Ahmed Ali Ghumro, advocate

Respondents
Through : Mr. Ali Safdar Depar, AAG along with Ghulam Ali
Birhmani, Additional Secretary (SGA&CD)

Date of hearing
& order : **14.02.2022**

ORDER

This matter pertains to the pensionary benefits of the petitioner, who stood retired in 2019 and his pensionary benefits have been withheld including notification of his retirement on the ground that NAB reference is pending against him, which is of paramount consideration.

We have heard learned counsel for the parties on the issue.

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 the strictures and orders passed by the Honorable Supreme Court of Pakistan in its various pronouncements and simplified guidelines laid down by the Government, petitions on account of delay persist.

Mr. Ali Safdar Depar, learned AAG, has submitted that the petitioner is facing the NAB proceedings before the learned Accountability Court on account of massive corruption and corrupt practices/misuse of authority and has been placed under suspension. Per learned AAG that under the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, the petitioner is liable to be proceeded who is accused of subversion, corruption, and misconduct. Learned AAG pointed out that though the petitioner reached the age of superannuation on 04.10.2019, however, his retirement notification from government service has been kept in abeyance till the finalization of NAB reference pending against him before the competent court of law. Learned AAG referred to the West Pakistan Civil Service Pension Rules and submitted that Government reserves the right of recovery from the pension of the government pensioner on account of losses found in judicial or departmental proceedings to have been caused to government by the negligence, or fraud of such government pensioner during his service, provided that such departmental proceedings shall not be instituted after more than a year from the date of retirement of government pensioner. He also relied upon the case of *Government of NWFP v. Muhammad Said Khan*, **PLD 1973 SC 514**. He also referred to various clauses of pension rules and submitted that the government also reserves to itself the right to recover from the pension, any sum, which it had suffered by way of flaws while the pensioner

remained in service. He prayed for the dismissal of the instant petition, leaving the respondents to take disciplinary action against the petitioner and culminate it to its logical conclusion, even after, he retires from service under the pension rules and initiates the recovery proceedings against him for the losses caused to the government exchequer.

The stance of the learned AAG has been refuted by learned counsel for the petitioner on the premise that pension and gratuity are rights of the pensioner on his retirement on service. Per learned counsel, the pensionary benefits cannot be withheld on account of the pendency of a criminal case and/or departmental proceedings after the lapse of 02 years from the date of retirement. Learned counsel further submitted that if the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement, he shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualifies for pension or gratuity. Learned counsel further submitted that under the law if a government servant, who has been suspended pending an inquiry into his conduct attains the age of superannuation before the completion of the inquiry, the disciplinary proceedings against him shall abate and government servant shall retire with full pensionary benefits and the period of suspension shall be treated as a period spent on duty. On the aforesaid proposition, he relied upon the cases of Muhammad Zaheer Khan v. Government of Pakistan, **2010 SCMR 1544**, Muhammad Anwar Bajwa, Executive Director, Agricultural Development Bank of Pakistan v. Chairman Agricultural Development Bank of Pakistan, **2001 PLC CS 336**, and Secretary Education Schools, Government of Punjab, Lahore v. Muhammad Akhtar Ex-headmaster, **2006 SCMR 600**. Learned counsel submitted that the government has no power under the rules to suspend the payment of whole or any part of the pension of a government servant otherwise admissible, pending inquiry against him. He also submitted that it follows that any order on that behalf in anticipation of the result of the inquiry, will be without any valid basis. He added that the disposal of disciplinary proceedings assumed vital importance especially in cases against government servants who are about to attain the age of superannuation. He also emphasized that delay in disposal of such cases not only causes hardship to the affected persons but also puts the administration to unnecessary criticism. He, therefore, requested that in future the disciplinary proceedings against the government servants nearing the age of superannuation should be disposed of before they superannuate. He prayed for allowing the instant petition.

Prima facie, the petitioner has a qualifying length of service to his credit and he gave various reasons to claim the interest on the delayed payments on the premise that he stood retired in 2019, however, in violation of section 13 of the Sindh Civil Servants Act, 1973, he has been denied the pensionary benefits even the respondents have not issued the retirement notification till date, which has triggered the cause and hardship to the petitioner to approach this court.

In the instant case, the departmental proceedings against the petitioner have not yet been finalized even after 03 years of his retirement. Primarily, the departmental proceedings, therefore, have no legal consequence and the subsequent departmental orders could not come in the way of the petitioner to claim pensionary benefits and prima facie it is the fault and negligence of the respondent-department, who failed to initiate the disciplinary proceedings against the petitioner in time and allowed him to retire from government service in 2019 and thereafter waited for the unknown reasons and lastly withheld the notification of his retirement and pensionary benefits on account of alleged corruption and corrupt practices. Prima facie, these are mere allegations against the petitioner and there is no conviction against the petitioner by the competent court of law, therefore, this court cannot presume that he is guilty or otherwise of the charges leveled against him which are yet to come on record.

For this reason, we take exception to the impugned action of the respondent-department and are of the considered view that the respondents are fully at fault for not culminating the disciplinary proceeding into its logical conclusion within time and allowing the petitioner to retire in 2019; and, prima facie continued to perpetuate the illegalities, despite knowing the fact that petitioner has committed massive corruption and now at this stage in point in time they are raising hue and cry that the petitioner is not entitled to pensionary benefits. In this background of the case, the Hon'ble Supreme Court of Pakistan in the case of Province of Punjab through Conservator of Forests, Faisalabad, etc. v. Javed Iqbal vide judgment dated 26.11.2020 passed in CP No.1554-L to 1573-L of 2020 has held that the government must ensure that the cases of retired employees are fast-tracked so that they are concluded within the statutory time frame i.e. 02 years of his retirement, allowing the retired employees to enjoy their retired life and the government to save unnecessary expense and time in pursuing matters against retired employees.

It is well-settled law that no pension granted or continued to the pensioner is liable to seizure by the department under Pension Act, 1871, and the rules, framed thereunder.

Learned counsel for the petitioner has pointed out that the pension of the petitioner has been withheld without assigning any cogent reason.

We cannot dilate upon the conduct of the petitioner so far as his service tenure is concerned, however, we have been informed by the parties that the petitioner during his tenure of service, being Secretary Land Utilization Department, Board of Revenue, Sindh, Karachi, in connivance with other co-accused fraudulently managed to regularize 07 acres in Sector 40, Scheme 33, District Malir, Karachi, and got issue offer letter and challan for regularization of 07 acres land which was subsequently mutated in favor of M/S Pink Residence he being the member of Sindh governments land committee issued fraudulently working paper managed the regularization of land in a committee meeting held on 11.9.2014. In addition to the above, he also illegally, fraudulently, and without authority issued the offer letter dated 21.5.2018 and fraudulently got the approval of regularization of land in favor of accused Muhammad Aslam Qureshi in respect of 23-31 acres out of 30-31 acres land in Scheme 33, District Malir Karachi, although Sindh

Government Land Committee had already been dissolved by the Government of Sindh. Prima facie, the allegations are severe that could be looked into by the competent authority of respondents.

So far as the stance of the respondents that pensionary benefits could be withheld on account of the allegations leveled against the petitioner, in our view, pensionary benefits cannot be stopped on account of any charges; and, is violative to the law laid down by the Honorable Supreme Court in the case of Haji Muhammad Ismail Memon, **PLD 2007 SC 35**. Thus, the competent authority of the parent department of the petitioner and the Chief Secretary, Sindh, are liable to release the pensionary amount of the petitioner and pay the pension amount and other ancillary benefits to the petitioner to which he is entitled under the law within two weeks from the date of receipt of this order. The competent authority of the respondent is also directed to recalculate the pensionary benefits of the petitioner and increases accrued thereon the withheld pensionary benefits with effect from 4.10.2019 to date.

In view of the above, this petition stands disposed of with no order as to costs with direction to the competent authority of respondents to look into the matter of the petitioner and take prompt disciplinary action against all delinquent officials who in their lethargic attitude failed and neglected to take disciplinary action against the petitioner within the stipulated time and allowed the petitioner to retire from service in 2019. Such disciplinary proceedings shall be initiated against them forthwith and culminate into its logical conclusion within a reasonable time after providing a meaningful hearing to them.

Let a copy of this order be sent to the Chief Secretary, Government of Sindh, for compliance. Such compliance report be submitted through MIT-II of this court, just after two months from the date of receipt of this order.

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