

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

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

**C.P. No. D-7072 of 2018**

Badarul Haq  
Petitioner through : Mr. Inayatullah G. Morio, advocate

Respondents No.1&2  
Through : Mr. Muhammad Aslam Chaudhry, advocate

Respondent No.3  
Through : Mr. Muhammad Nishat Warsi, DAG

Date of hearing  
& order : **07.03.2022**

**ORDER**

This matter pertains to the pensionary benefits of the petitioner, who stood retired in 2018 and his pensionary benefits have been withheld by the respondent-Council for Works and Housing Research Karachi (CWHR) on the ground that he is involved in an act of corruption in two projects of Government of Pakistan, which is of paramount consideration.

The case of the petitioner is that he was appointed as Research Engineer in BPS-17 in 1984 and lastly was serving as Principal Research Officer BPS-19 in GT & RR Section with the respondent No.1/CWHR, on attaining the age superannuation he was allowed to retire from the service of respondents on 30.06.2018 vide Office Order dated 28.6.2018; however his pensionary benefits were withheld by the respondents on account of pendency of inquiry proceedings against him.

Mr. Inayatullah G. Morio, learned counsel for the petitioner has submitted that the long and unjustified delay in the payment of pension to the petitioner amounts to humiliation to the retiring official and his family; that any delay in settling such terminal benefits has to be viewed seriously. In support of his contentions, he relied upon the case of *Nasir Kamal v. Federation of Pakistan through Secretary, Ministry of Maritime Affairs, Islamabad & another* **2021 CLC CS 1226** and submitted that under fundamental Rule 54-A disciplinary proceedings after attaining the age of superannuation is not permissible.

Mr. Muhammad Nishat Warsi, learned DAG, has submitted that the service regulations of CWHR are non-statutory so this petition is not maintainable. Learned DAG submitted that the monitoring committee was also constituted by the present Chairman to evaluate the progress/status on the project "Accreditation of CWHR Laboratories under

ISO 17025:2005” and the said committee opined that no work at all in this regard was done due to non-cooperation and resultantly the situation remained as such with no change, therefore, the remaining benefits could not be allowed to the petitioner. Learned DAG pointed out that though the petitioner reached the age of superannuation on 30.06.2018, however, his retirement notification from government service has been kept in abeyance due to disciplinary proceedings. 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 the government by 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**, *Federation of Pakistan through General Manager/Operations Pakistan Railways, Headquarters Office, Lahore and others v. Shah Muhammad* **2021 SCMR 1249** and submitted that under the Civil Service Regulations, the conduct of civil servant will govern the grant of pension. He further submitted that a government service, who retires from service and caused loss to the government exchequer, recovery can be made from the pension. 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 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 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/public 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 JCMR 600.* Learned counsel further 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 the 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.

We have heard the learned Counsel for the parties on the subject issue and perused the record and case-law cited at the bar.

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 2018, however, in violation of law he has been denied the pensionary benefits even the respondents have kept in abeyance the retirement notification dated 28.6.2018 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 almost four 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 2018 and thereafter waited for the unknown reasons and lastly kept in abeyance the notification of his retirement and pensionary benefits on account of alleged loss caused to the government exchequer. 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 the petitioner 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 2018; and, prima facie continued to perpetuate the illegalities, despite knowing the fact that petitioner has caused loss to government kitty 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 the Pension Act, 1871, and the rules, framed thereunder. Besides that, a government servant, who retired from service qualifying for retirement benefits, pension being a material part of it, does not get the same as a bounty of the state, but as a right acquired after putting in satisfactory service. The grant of pension cannot be refused arbitrarily and if refused, it has to be under the relevant rules. On the aforesaid proposition, we are fortified with the decisions of the Hon'ble Supreme Court in the cases of Federation of Pakistan through General Manager Operations Pakistan Railways, Headquarters Office, Lahore and others v. Shah Muhammad **2021 SCMR 1249**, Province of Punjab through Conservator of Forests Faisalabad and others v. Javed Iqbal, 2021 SCMR 328.

We cannot dilate upon the conduct of the petitioner at this stage so far as his service tenure is concerned, prima facie, the allegations leveled against the petitioner are severe that could be looked into by the competent authority of respondents under the relevant law.

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**, pensionary benefits of the judges of superior Courts, PLD 2013 SC 829, I.A. Sherwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others, 1991 SCMR 1041.

Primarily, the long and unjustified delay in the payment of pension to the pensioner amounts to humiliation to the retiring official and his family, 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.

We have noticed that after the lapse of four years from the date of attaining the age of the superannuation on 30.06.2018, the respondents are precluded to issue any charge-memo to the petitioner, under Pension Rules. Hence, the petitioner has filed the instant petition for disbursing his retrial pension benefits in full, together with simple interest, on the outstanding dues, for the delayed disbursement from 30.06.2018 up to date of payment in full. Besides, prompt payment of retirement benefits is the duty of the

respondents, and failure in that direction entails the respondents liable to pay penal interest to the petitioner.

It is well settled that gratuity is required to be paid on the date of retirement and pension should be paid at the expiry of the following month; and, in case of delay in disbursement of the terminal benefits, the respondents are liable to disburse the pensionary benefits with interest at the rate of 6% per annum, for the reason that a grant of pension is not a bounty but a right of the government servant under the pension Rules. It is settled law that the delay in settlement of retirement benefits is frustrating the basic spirit of the law.

Coming to the main point raised by the learned DAG that due to the pendency of the charge against the petitioner, payment of terminal benefits was withheld. Prima-facie this stance cannot be accepted as the charge, which was found in the purported inquiry proceedings could not be culminated into its logical conclusion by the competent authority during the service of the petitioner; and petitioner was allowed to retire from the service of respondents in the year 2018.

Prima-facie the delay in completing the disciplinary proceeding against the petitioner has caused him mental agony after reaching the age of superannuation. We are of the considered view that the retirement benefits payable to the petitioner as of 30.06.2018 were delayed for about four years for which the respondents are at fault and they have to account for. In principle, the payment of pension is not an act of grace or bounty on the part of anyone; that is a right earned by the Government servant, in recognition of his past services; and any delay in settling such terminal benefits has to be viewed seriously.

Thus, the competent authority of the respondent department is 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 and pay the pensionary benefits to the petitioner along with increases accrued thereon the withheld pensionary benefits with effect from 30.06.2018 to date in the light of dicta laid down by the Hon'ble Supreme Court in the aforesaid cases.

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 2018. 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 competent authority of respondents, 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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