

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D –5666 of 2021

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| Date | order with signature of Judge(s) |
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1. For hearing of CMA No.23830/2021 (Stay)
2. For hearing of main case

09.03.2022

Mr. Ahmed Ali Ghumro, advocate for the petitioner
Mr. Ali Safdar Depar, AAG alongwith Riaz Ahmed, Assistant Accounts Officer,
Accountant General Sindh

Through this petition, the petitioner has impugned the act of respondent No.1, who withheld the pension and other service benefits of the petitioner in BS-20 after attaining the age of superannuation on 28.10.2020 without any justification and in violation of the judgment of the Hon'ble Supreme Court.

2. Mr. Ahmed Ali Ghumro learned counsel for the Petitioner has contended that since the Petitioner is a retired officer, who was not proceeded departmentally during his tenure of service, however, the same proceedings could not be culminated into its logical conclusion, is not liable to be denied the pensionary benefits under the pension rules, on any ground whatsoever; that denial of pensionary benefits is sheer malafide and colorful exercise of powers, which do not find support from the law related to the subject. Learned counsel emphasized that the criminal liability is distinct from the civil liability as held by superior Courts, as such nobody can be denied civil benefits merely based on any criminal liability if any; that the Hon'ble Supreme Court has held that the proceedings under Efficiency and Discipline Rules cannot be continued after two years from the date of superannuation and the same stood abated just after the stipulated period. Learned counsel further contended 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/her retirement or death, he/she or his/her family, as the case may be, 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/Public Servant which qualifies for pension or gratuity; and any overpayment consequent on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family. He further added that pension cannot be retained to recover Government dues if any. Learned counsel for the Petitioner argued that Government has no right to withhold or postpone the pensionary benefits. He added that once a person has

retired from service, his pension cannot be withheld on a finding of misconduct or negligence during the period of service; that the finding of misconduct has to precede the order adversely affecting the pension in any manner. He further submitted that the inquiry proceedings if any cannot continue indefinitely. Per learned counsel, the delay is enough to quash the departmental proceedings. It has been vehemently argued by the learned counsel that there is no right with the Sindh Government to withhold pension in anticipation of the exercise of its right to withhold or withdraw the pension. In the same strain, the learned counsel argued that any amount due from the pensioner to the Government or any liability of the pensioner towards the Government would not adversely affect the retiree in his entitlement for pension. Per learned counsel, the Government could exercise its right to recover its dues or enforce the liability of the pensioner or recover the pecuniary loss, if any, caused by the pensioner to the government under the law, without affecting the pension. He prayed for a direction to the respondents to release the pensionary benefits of the petitioner with interest on the withheld amount of pension.

3. Mr. Ali Safdar Depar learned AAG mainly resisted this petition on the ground that denial of pensionary benefits to petitioner by respondents is due to pendency of NAB reference against him before the learned Trial Court. Learned AAG refuted the submissions made on behalf of the Petitioner with the assertion that the Government has retained the power to impose a cut in pension both at the time of retirement i.e. before granting pension as well as after it has been granted i.e. after retirement. Per learned AAG, there is no limit provided for imposing a cut in pension. He averred that the pension can be withheld or withdrawn in its entirety under the law. It was vehemently contended that good conduct during service and after the service is a pre-requisite for granting pension or its continuity. He asserted that good conduct during the service is a pre-condition to earn pension for assessing pension and impliedly good conduct after granting of pension is a condition precedent for its continuance. He prayed for dismissal of the instant petition.

4. We have heard the learned counsel for the parties at length and have gone through the material available on record.

5. The question involved in the present case is whether pensionary benefits of any civil/public servant can be withheld on account of pendency of disciplinary proceedings/ criminal case/NAB Reference against him?

6. To answer the issue which we have framed for our consideration, primarily, we may observe here that providing pension on retirement is one of the steps for implementation of the principles as set forth in the Constitution. The Constitution expects the Government to provide adequate means of livelihood when the health

and strength for strenuous work start falling. It is one of the safeguards against the exploitation of elderly people of society.

7. The concept of pension conforms and aligns with the concept of social justice and is an essential feature in a welfare state. It is one of the steps by which the Government attempts to secure living with dignity at the fag-end of life. In a welfare State, it is the normal expectation that the Government would provide the mechanism to protect the individuals against forced working unsuitable to one's health.

8. As to the plea raised by the learned AAG to the withholding of pensionary benefits of the petitioner due to pendency of NAB reference against him on the premise that petitioner has not honorably been acquitted from the charges leveled against him, therefore, he is not entitled to pensionary benefits, we are of the considered view that Honorable Supreme Court has already dealt with this proposition of law in the case of Superintendent Engineer GEPCO Sialkot Vs. Muhammad Yusuf vide **Order dated 23.11.2006** passed in Civil Petition No. 1097-I of 2004.

9. In view of the dicta laid down by the Honorable Supreme Court in the case referred supra, we do not agree with the contention of the learned AAG. The Fundamental Rule 54-A is clear and does not support the case of the respondents, that 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 such Government servant shall retire with full pensionary benefits and the period of suspension shall be treated as a period spent on duty.

10. As per Fundamental Rule, 54-A read with Sindh Civil Service Regulations, disciplinary proceedings cannot be continued or conducted as the petitioner ceased to be an employee of the respondents on attaining the age of superannuation on 28.10.2020. Law provides that the period of suspension followed by reinstatement or superannuation count towards qualifying service for pension.

11. Reverting to the right of the Government to withhold pension in certain cases. The Government reserves to itself right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence and/or convicted by the competent Court of law, during the period of his service, within the time limit i.e. two

years after his retirement under the ratio of the judgment passed by the Hon'ble Supreme Court in the case of *Province of Punjab through Conservator of Forest, Faisalabad, etc. v. Javed Iqbal* vide **judgment dated 26.11.2020** passed in Civil Petition No.1554-L to 1573-L of 2020. The law on the subject is very clear in its terms that if an officer, 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 such officer shall retire with full pensionary benefits and the period of suspension shall be treated as a period spent on duty.

12. In our view, the pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer. It creates a vested right subject to the statutory rules framed in the exercise of powers conferred by the Constitution. It is an indefeasible right to property. The pension cannot be termed as an ex-gratia payment instead it is a payment for the past service rendered. It is a part and parcel of the conditions of service. The right to get a pension does not depend on the discretion or sweet will or pleasure of the Government, though it is subject to the statutory rules. The pension cannot be equated with a doll and the quantum of pension is correlated to the average emoluments drawn and availability of the resources with the State. It is further observed that this property right is granted with the object of setting up of political society to set up a welfare state in consonance with directive principles of the Constitution. The pension can be affected for the reasons provided by statutory rules. The pensionary or retiring benefits could not be refused solely on the ground of initiation or intending initiation of disciplinary/criminal proceedings. Thus we are of the considered view that the pension or commutation of it, cannot be withheld or postponed before a finding is returned that retiree is guilty of causing loss to the state during the tenure of his service. Mere pendency of inquiry or probability of the Government exercising its power of withholding or withdrawing of pension by itself is not sufficient to withhold pension.

13. It may be observed here that the authorities dealing with applications for pensions under the pension rules should bear in mind that delay in the payment of pensions involves peculiar hardship. It is essential to ensure, therefore, that a Civil/Public /Government servant begins to receive his pension on the date on which it becomes due. The responsibility for initiation and completion of pension papers is that of the Head of Department. The action should be initiated one year before a Civil/Public /Government servant is due to retire so that pension may be sanctioned a month before the date of his/her retirement. In cases in which the date of retirement cannot be foreseen, 6 months in advance, the Government servant may be asked to submit his pension application immediately after the date of his retirement is known; and a Government servant proceeding on leave preparatory to retirement in excess

of 6 months may be asked to submit his/her application at the time of proceeding on such leave.

14. As a result of the above discussion, we would conclude that the respondents have no right to withhold or postpone pension or the payment on account of commutation of pension. The respondents were bound to release the pension to the petitioner at the time of superannuation i.e. 28.10.2020, which factum is disclosed vide Notification dated 21.10.2020.

15. In view of the foregoing discussion, this petition is allowed in the terms whereby the Chief Secretary Sindh and Secretary Local Government Department, Sindh, Karachi, are hereby directed to calculate the pensionary benefits of the service of the petitioner and other ancillary benefits as admissible to him under the law and delay in payment to the petitioner if any accrued on the withholding of the pensionary benefits, under rules and regulations. Such amount must be paid to the petitioner within two weeks from today. However, the respondents are at liberty to take action, so far as alleged loss caused to the public exchequer is concerned i.e. subject to the decision of the learned Accountability Court in the subject reference, which is stated to be pending.

Let a copy of this order be communicated to the Chief Secretary Sindh, and Secretary Local Government Department, Government of Sindh, for compliance in time. In case of failure, stern action shall be taken against all delinquents who are instrumental in non-compliance with the order of this Court.

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Nadir*