

IN THE HIGH COURT OF SINDH KARACHI  
**Constitutional Petition No. D – 3788 of 2020**

Date	Order with Signature of Judge(s)
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Before:  
Mr. Justice Irfan Saadat Khan  
Mr. Justice Adnan-ul-Karim Memon

Wazir Rehman,  
Petitioner through : M/s Tariq Hussain, advocate.

Trustees of the Port of  
Karachi, respondent  
through : Mr. Bashir Ahmed, advocate  
Mr. Muhammad Nishat Warsi, DAG

Date of hearing : 20.05.2021

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**ADNAN-UL-KARIM MEMON, J.** – In principle, the petitioner has called in question the notice dated 28.03.2017 issued by respondent-Karachi Port Trust (KPT), whereby a certain amount of salary was deducted from his pensionary benefits after his retirement on 14.04.2011.

2. We have noticed that the petitioner under the garb of ad-interim order dated 14.05.2012 passed by the learned Sindh Labour Court No.IV, Karachi (SLC) in Grievance Application No.75 of 2012, continued to work, by agitating his date of retirement as 29.04.2013, however, his Grievance Application was dismissed by the learned SLC vide order dated 21.12.2013. The petitioner being aggrieved by and dissatisfied with the aforesaid decision challenged the same before the Sindh Labour Appellate Tribunal (SLAT) by filing Appeal No.Kar-11/2013, which was allowed vide order dated 07.04.2014 and the matter was remanded to the learned SLC, however, he continued to serve in respondent-KPT under the garb of status quo order dated 14.05.2012 and order dated 07.04.2014 passed by the learned SLAT.

3. In consequence of the remand order, the above application No.75/2012 was renumbered as 21/2014, which was dismissed by the learned SLC on 25.10.2016, however, the said order was challenged in Appeal No.Kar-79/2016 before the learned SLAT which was finally disposed of as not pressed by him vide order dated 14.03.2017 and he continued in service with effect from 29.04.2013 to 14.11.2016 for which he drew a salary, bonus, overtime etc. While making the final payment the respondent-KPT issued notice/letter dated 28.03.2017 for adjustment. However, the petitioner continued to initiate another litigation and challenged the said impugned notice dated 28.03.2017 in Grievance Application

No.38/2017 before the learned SLC, which was disposed of in terms of order dated 10.08.2017. The petitioner consented to vide his application dated 15.08.2017 to allow the respondent-KPT to retain the amount drawn by the petitioner during the disputed period and release the remaining amount of pensionary benefits and monthly pension and now he approached this Court on 19.08.2020 agitating all the questions already decided in the aforesaid proceedings.

4. Learned counsel for the petitioner mainly argued that since the petitioner worked for KPT during the interim order as discussed supra, he is entitled to be allowed to retain the salary and deduction made by the respondent-KPT from his pensionary benefits was/is uncalled for.

5. We are afraid, we cannot accept the version of the petitioner for the simple reason that a person cannot be allowed to retain the benefits of his wrong and cannot seek protection behind the interim order of the learned Labour Court. We have noticed that at the verge of retirement, the petitioner thought to alter his date of birth and filed a Grievance Application before the learned SLC wherein an ad-interim order was passed and the petitioner was allowed to work from 29.04.2013 to 14.11.2016 in KPT and subsequently the said Grievance Application was dismissed. He now claims that as he had worked for the aforesaid period after passing ad-interim order, hence is entitled to the amount of salary for such period. *Prima facie*, such claim of the petitioner at the verge of retirement for such alteration in his date of birth was not only unlawful but also misconceived. The petitioner took employment in KPT and after reaching the age of superannuation he thought to rectify his date of birth from his original date of birth, hence *prima facie* he was not entitled at the time of filing of the said Grievance Application for rectification of his date of birth and such consideration cannot be extended to the petitioner in respect of interim order when his lis was finally decided as mentioned above.

6. In the foregoing circumstances, we must record our displeasure over the manner under which the petitioner dealt with the issue of alteration of his date of birth after reaching the age of superannuation. We, therefore, hold that the petitioner is not entitled to any relief in terms of the letter dated 28.03.2017 issued by the KPT. The Honourable Supreme Court in the case of Dr. Muhammad Aslam Baloch v. Government of Balochistan through Secretary Health Department & others (2014 SCMR 1723) has already dealt with the issue of alteration in the date of birth as well as recovery proceedings from the pensionary benefits.

7. In the light of dicta laid down by the Honourable Supreme Court in the aforesaid case, the issue of salary of the disputed period of service of the petitioner has already been settled by the Honourable Supreme Court in the aforesaid matter, which does not require further deliberation on our part.

8. In view of what has been discussed above, the instant petition is entirely misconceived and is dismissed along with the pending application with no order as to costs.

9. These are the reasons for our short order passed on 20.05.2021, whereby we have dismissed the instant petition.

JUDGE

JUDGE

Zahid\*