

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

C P D 4790 of 2021 : Nisar Ahmed Shaikh vs.
Federation of Pakistan & Others

For the Petitioner : Mr. Syed Shoa-un-Nabi, Advocate

For the Respondents : Mr. Khalid Mehmood Siddiqui, Advocate

Mr. Muhammad Nishat Warsi
Deputy Attorney General

Date/s of hearing : 17.08.2022

Date of announcement : 17.08.2022

ORDER

Agha Faisal, J. Briefly stated, the services of the petitioner were engaged in 1996, however, the said engagement was terminated the following year. In 2010, the petitioner was re-hired pursuant to the Sacked Employees (Reinstatement) Ordinance 2009 (“Ordinance”). In 2018, the petitioner was retired on medical grounds. Since the tenure of the petitioner’s service did not amount to ten years, required to qualify, therefore, he was not given any pension. It is the petitioner’s case that his service be computed with effect from 1996 till 2018, hence, he may be found entitled to pension.

2. The crux of the argument articulated by the petitioner’s counsel was that the Court ought to consider the tenure of appointment from the initial date, 1996, and thus observe that the ten year period has been duly completed. Reliance was placed in such regard upon *State Oil*¹.

3. The respondent’s counsel submitted that the petitioner had been justifiably retired on medical grounds and had placed all the relevant documentation, including the medical findings, on record. It was submitted that any purported cause of action could be claimed either from 2010, when the petitioner was reinstated, or from 2018, when he was retired; thus, stipulating that the present petition, filed in 2021, was barred by *laches*. In conclusion, it was argued that the Ordinance, since repealed by the Sacked Employees

¹ *State Oil Company Limited vs. Bakht Siddique & Others* reported as 2018 SCMR 1181.

(Reinstatement) Act, which in itself has been struck down by the Supreme Court, precluded any reinstated person from claiming any benefit, save as provided therein, no retrospective effect was ever provided for any reinstatement pursuant to the Ordinance.

4. Heard and perused. It is imperative to record at this juncture that the respective counsel have admitted that an employee must have had ten years' service to be eligible for pension benefits in the circumstances under scrutiny. Therefore, the only question that remains is whether the petitioner did in fact have the qualifying tenure of service.

5. The retirement of the petitioner was predicated upon medical grounds and record to such effect has been placed on file. The reiteration of the medical findings is eschewed herein for the sake of propriety; however, the record demonstrates the existence of serious medical issues of an incapacitating nature. It is imperative to denote that the petitioner's counsel made no endeavor to articulate or record any cavil / objection to the medical record placed on file by the respondent.

6. There is yet another aspect to consider, being that the petitioner was awarded all *due* end of service benefits and the same were availed / accepted without any demur. The correspondence and copies of the relevant payments are on record and once again the petitioner's counsel made no endeavor to articulate or record any cavil / objection to the same.

7. Section 10 of the Ordinance precluded the contemplation of any benefit upon a reinstated person, save as that provided therein. A surety was also required to be provided in such regard by the person availing benefit of the Ordinance. It was never the petitioner's case that the Ordinance included any prior period, between termination and reinstatement, in the computation of any benefit to the reinstated person. On the contrary the respondent's counsel demonstrated that such a proposition was expressly precluded by virtue of section 10 of the Ordinance.

8. Therefore, no case has been made out before us to consider the petitioner as an employee for the period post his termination and prior to his reinstatement. The reliance upon *State Oil* is unmerited as the judgment pertains to regularization and not reinstatement, hence, distinguishable in the present facts and circumstances. It is observed that the petitioner did not have the qualifying tenure of service, either mathematically or through any fiction of law.

9. In view hereof, we are constrained to observe that the petitioner has failed to set forth any case to merit indulgence in the discretionary² writ jurisdiction of this Court, hence, this petition, being misconceived and devoid of merit, is hereby dismissed.

JUDGE

JUDGE

² Per *Ijaz Ul Ahsan J. in Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.