

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-1827 of 2014

Muhammad Ilyas

Petitioner: Through Mr. Muhammad Aslam Khan, advocate

Respondents No.1: Through Dr. Shahnawaz, advocate

Respondents No.2 to 5: Through Mr. Yasir Ahmed Shah, AAG

Respondent No.6: Nemo

Date of hearing
& Decision: 25.01.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. – Through this petition, the petitioner (since deceased now through his widow) seeks direction to the respondent-Civil Aviation Authority (CAA) for revision of his pension based on 20 years' service in CAA and 10 years' service in the different organization of the Government of Pakistan, as admissible under the Rules and subsequent reimbursement of all the pensionary benefits including arrears along with profit to him now to his widow inter alia, on the ground that he joined Government of Pakistan, Directorate General, Radio Pakistan Karachi with effect from 01.12.1961 and served till 13.10.1966 and thereafter his service was transferred to Commercial Audit with all benefits and on transfer, the petitioner served the department with effect from 14.10.1966 and thereafter reported for duty on 23.7.1978 in the Government of Pakistan Cabinet Division, Abandoned Properties Organization, Karachi with effect from 23.7.1978. Petitioner has averred that after severance with his previous organizations, he joined CAA on 21.8.1984 and retired after attaining the age of superannuation on 14.7.2004 from the post of General Manager (G-10), but his pensionary benefits covering qualifying service of only 20 years which was rendered in the respondent-authority, neglecting 10 years' service rendered by him in the previous organizations of the Government of Pakistan.

2. Mr. Muhammad Aslam Khan learned counsel for the petitioner has submitted that the petitioner has served Radio Pakistan with effect from 01.12.1966 to 13.10.1966, Commercial Audit Department from 14.10.1966 to 22.7.1978, Cabinet Division from 23.7.1978 to 21.8.1984 and CAA from 21.8.1984 to 14.7.2008. Per learned counsel, the petitioner had rendered continuous pensionable service of over 30 years and has been illegally denied pension emoluments admissible for 30 years of service. Learned counsel added that respondent-authority has partially allowed pension to petitioner covering only 20 years rendered in the CAA although 10 years of pensionable service rendered in previous organizations was admissible by counting his previous service, thus, the respondent-CAA has violated para-16 of the Office Memorandum dated 14.9.2001 issued by the Finance Division Regulation Wing, Government of Pakistan regarding revision of pay scales and fringe benefits of civil employees BPS-1 to 22 of the Federal Government. Learned counsel referred to Article 371-A (ii) of the Civil Service Regulations (CSR) and submitted that temporary and officiating service followed by a confirmation also counts for pension or gratuity subject to the exclusion of the broken periods of temporary or officiating service if any. Learned counsel also relied upon Article 418 (b) of CSR and submitted that resignation of an appointment to take up another appointment service which counts is not a resignation of the public service which is further explained in para-1(e) of the Fundamental Rules 116 and 117. Learned counsel submitted that the Honorable Supreme Court in the case of *Ministry of Finance Vs. Syed Feroz Akhter Rizvi*, **2021 SCMR 1546** has held that the general principles apply to employees who have worked against contractual posts which were subsequently converted into regular posts for grant and calculation of pension. He further submitted that the Honorable Supreme Court has clarified that in case, an employee has served a Government Department for the duration of the period qualifying him to receive a pension, the period spent as a contractual employee may be added to his regular qualifying service only and only to calculate his pension and for no other purpose. He next argued that the Honorable Supreme Court further held that the provisions of Article 371- A of CSR start with a non-obstante clause which means that the said Article does not relate to the question of entitlement or eligibility to receive the pension. It is clearly and restricted to counting the period of a minimum of five years which has been rendered by a temporary contractual employee to be taken into account with the object of calculating the quantum of his pension and not more. The non-obstante clause in Article 371-A of CSR does not allow those who do not fulfill the

requisite conditions for qualifying for a pension to bypass such conditions and add up regular and contractual periods of employment to meet the eligibility criterion of ten years of service. Such an interpretation would create absurd situations and would render other provisions and Articles of CSR redundant, unnecessary, and surplus; Article 371 of CSR does not allow Government Servants rendering temporary service in a temporary establishment for more than 5 years to be entitled to a grant of pension rather such period can be counted towards the calculation of pension only if otherwise entitled to pension by meeting the criteria of qualifying service. He, therefore, prayed for allowing the instant petition in terms of the ratio of the decision of the Hon'ble Supreme Court as discussed supra.

3. We have heard learned counsel for the parties and perused the record.

4. It appears from the record that the petitioner joined CAA on 22.8.1984 and retired on 15.7.2004 upon reaching the age of superannuation. The record reflects that there were breaks in the services rendered by the petitioner in his previous organizations, and the petitioner before joining another organization resigned from the previous posts, thus there was a break in service before joining CAA.

5. In view of the above, the respondent-CAA cannot be held responsible to pay pension to the petitioner for 10 years rendered by the petitioner in the following three different organizations: -

Name of Organization	Period	Remarks
Radio Pakistan Corporation	01.12.1961 to 13.10.1966	Non-Pensionable
Commercial Audit	14.10.1966 to 22.7.1978	Pensionable. He has received CVT amounting to Rs.81941/=
Abandoned Properties Organization	23.7.198 to 21.08.1984	Non-pensionable
Civil Aviation Authority	21.08.1984 to 15.07.2004	Pensionable

6. However, at this juncture, learned DAG has referred to the statement filed on behalf of respondent No.6 and submitted that regarding the liability towards payment of the capitalized value of pensionary charges for the period with effect from 23.7.1978 to 21.9.1984 is admitted and the respondent No.6 has no objection if the service of the petitioner rendered in the organization is counted

towards a pension in CAA and the contribution (if necessary) are paid to the petitioner and now to the widow of the petitioner.

7. Primarily, in case, an employee of any other organization is permanently absorbed in the service of the government-owned and controlled corporation/company/authority/organization, they may accept the pensioner liability in respect of such an employee subject to the condition that a pension scheme exists in the former organization from where the employee has been transferred and that organization pays the proportionate liability for the period the employee remained in their service. Such pension contributions will be recovered from the concerned organization at the rate approved by the organization.

8. In the present case, we have been informed that previous service rendered by the petitioner in the aforesaid organizations was/is not pensionable and thus could not be counted towards pension and the petitioner cannot claim 30 years' pension. Be that as it may, we leave it to the competent authority of these organizations to look into the matter of the petitioner's widow and take appropriate measures and decide the issue of pensionary benefits of the petitioner rendered in their organizations and if the service was/is pensionable, the contribution shall be disbursed to the CAA for onward payment to the petitioner's widow, however, that arrangement is subject to pensionable service in the previous organizations.

9. During the pendency of the petition petitioner passed away and his widow joined the proceedings and received the following amount from the respondent-CAA: -

i.	Monthly Family Pension (w.e.f. 21.12.2017 to 31.3.2018	=	Rs.302,302/-
ii.	Payable CVP amount	=	Rs.81,941/-
iii.	Medical allowance	=	Rs.23,139/-
	Total payable	=	Rs.407,382/-

And w.e.f. 01.4.2018 monthly pension was fixed as under: -

Net pension & all increases	Rs.83,764.00
20% Medical (2010)	Rs.6170.00
25% Medical (2015)	Rs.1,543.00
Total	Rs.91,477.00

10. In the light of the above facts and circumstances of the case, this petition is disposed of in terms of the preceding paragraphs, and the competent authority of the respondent-CAA is directed to cooperate with the head of the previous organizations if existing and forward the case of the petitioner's widow for the contribution of service rendered by the petitioner in the aforesaid organizations and payment be made to the petitioner's widow if she is at all entitled under the law. The exercise shall be completed within two weeks. Let a copy of this order be transmitted to the respondents for compliance.

JUDGE

JUDGE

Nadir*