

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-690 of 2022

Nazar Muhammad Jamali

Petitioner: Through Mr. Muhammad Arif, advocate

Respondent No.1: Through Mr. Yasir Ahmed Shah, Assistant Attorney General

Respondents No.2 & 3: Mr. Muddasir Iqbal, advocate

Date of hearing
& Decision: 27.01.2023.

ORDER

ADNAN-UL-KARIM MEMON, J. – Through the captioned petition, the petitioner seeks pensionary benefits in terms of the ratio of the order dated 17.03.2020 passed by this court in C.P No. D – 8984 of 2018, (*Re-Farzana Shafique V/S Federation of Pakistan and 02 others*), which is extracted as under:-

“7. In view of the above discussion, this petition is allowed with no order as to costs and the competent authority of respondents is directed to include temporary employment of petitioner’s late husband as his substantive service as regular for the purpose of service dues and other allied pensionary benefits. The competent authority of respondents are further directed to complete the entire exercise and recalculate and settle the pensionary / service dues of the petitioner’s late husband within sixty (60) days from the date of this order.”

2. The case of the petitioner is that he was appointed as Resource Person (Security Assistant) in Pakistan Television Corporation, Television Centre, Karachi (PTV) in the year 2000, and his appointment was regularized as Security Assistant in Pay Group-IV in terms of the ration of the judgment passed by the Hon’ble Supreme Court of Pakistan in the case of *Aijaz Akbar Kasi and others v. Ministry of Information and others*, 2011 PLC (CS) 367. Petitioner has averred that during his tenure of service, he earned Selection Grade in Group –V in 2014, thereafter his grade was enhanced to Group VI in 2016 ad confirmation of the promotion was made by the office order dated 16.08.2017. Fortunately, he further earned Selection Grade as Senior Security Officer to Group-VII vide office order dated 11.02.2020 and finally he stood retired from the service of PTV vide office order dated 07.06.2021. As per the petitioner, he served the respondent PTV with effect from 2000 to 2021 which duty comes to more than 21 years period as a regular employee with PTV and is entitled to the service

benefits and pensionary benefits of 21 years as a regular employee, however, he has been discriminated and has not been paid the service benefits in terms of the ratio of the order dated 17.03.2020 passed by this Court in CP No.D-8984/2018.

3. Mr. Muhammad Arif, learned counsel for the petitioner, contended that the Pakistan Television Corporation is performing its functions in connection with the affairs of the Federation and amendable to the jurisdiction of this Court under Article 199 of the Constitution. Learned counsel for the petitioner submitted that the petitioner has legal & fundamental rights to receive his benefits, dues, and pension from respondents No.2 & 3, as the petitioner had performed his duties and served more than 21 years as an employee of respondents, hence, he is entitled to his all benefits & pension as per Pension Rules and under Section 24-A of General Clauses Act, 1897. Learned counsel for the petitioner averred that there is no fault of the petitioner nor any complaint or show cause proceeding initiated against him during the period of his employment till the date of his retirement. Per counsel, the other employees of the respondents had filed C.P. No.42, 48, 50 & 62 of 2009 before the Hon'ble Supreme Court of Pakistan for regularizing their services which were allowed and thereafter the Pakistan Television regularized the services of employees and the said case was also reported in 2011 PLC (C.S.) 367. Learned counsel for the petitioner submitted that as per Article 25 of the Constitution the petitioner is entitled to grant of same relief which was granted to the other employees of the respondents as per the order passed by the Hon'ble High Court of Sindh in C.P. No.D-8984/2018, C.P. No.D-3627, 3628 & 3629/2020, therefore, the respondents are legally bound to give the response to the petitioner but the respondents have not entertained any request of the petitioner and deprived the petitioner of his fundamental rights to receive the benefits, dues & pensionary benefits as per rules of respondent No.2.

4. On the contrary, Mr. Muddasir Iqbal, learned counsel for respondents No.2 and 3 has raised the question of maintainability of the instant petition on the premise that the petition against the PTV is not maintainable on account of lack of statutory backing. He further submitted that services of the petitioner were regularized with effect from 30.12.2010 without back benefits. On the issue of pension, he submitted that the petitioner is a member of the Contributory Pension Fund Scheme and his service does not qualify for the pension. He further submitted that the petitioner was employed on contract w.e.f. 30.02.2000 and was regularized in 2010 which service is subject to all rules and regulations of

the PTV prevailing at the relevant time as his total regular length of service is less than 10 years of service and not 21 years as portrayed by the petitioner. He prayed for the dismissal of the instant petition.

5. We have heard learned counsel for the parties and perused the material available on record.

6. There is no denial of the factum that the petitioner served the respondent PTV with effect from 2000 and his service was regularized in 2010 in terms of the ratio of the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Aijaz Akbar Kasi and others supra, besides his case is akin to the decision rendered by this Court in CP No.D-8984/2018. Even otherwise, regularization of service includes the service rendered on a contract and ad-hoc basis and since the petitioner's service has been regularized by the order of the Hon'ble Supreme Court of Pakistan as such the respondents ought to have considered the previous service of the petitioner into his regular service which is more than 11 years, therefore, the contractual service is required to be counted.

7. In view of the reasoning given in the preceding paragraph, this petition is disposed of in the terms of the ratio of the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Ministry of Finance through Secretary and others v. Syed Afroz Akhtar Rizvi and others, **2021 SCMR 1546**, the relevant paragraph whereof is extracted as under:

“7. In case, an employee has served a Government Department for the duration of the period qualifying him to receive pension, the period spent as a contractual employee may be added to his regular qualifying service only and only for the purpose of calculating his pension and for no other purpose. 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 entitlement or eligibility to receive pension. It is clearly and obviously 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 fulfil the requisite conditions for qualifying for pension to bypass such conditions and add up regular and contractual periods of employment for the purpose of meeting 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. We are therefore in no manner of doubt that Article 371 of CSR does not allow Government Servants rendering temporary service in a temporary establishment for more than 5 years to be entitled for grant of pension rather such period can be counted towards calculation of pension only if otherwise entitled to pension by meeting the criteria of qualifying service.

8. It is not disputed that the Respondent rendered continuous service from 1992 to 2008 as Data Entry Operator in NIEMS. It is also not disputed that he was regularized in 2008 and retired in 2016 before meeting the criteria of qualifying service. That being so, the benefit of Article 371-A of CSR was not available to him as he did not qualify for the pensionary benefits which qualification is a necessary pre-requisite for grant of pension.

9. It may also be pointed out that the earlier view taken by a three member Bench of this Court in the case of Mir Ahmad Khan v. Secretary to Government and others (1997 SCMR 1477) was declared per incuriam in a five member judgment of this Court rendered in Shah Jahan Shah's case *ibid*. As such, the view consistently taken by this Court in a situation where the services of a contractual employee are converted into regular employment is that although the period spent in contractual employment subject to a minimum of five years can be included in calculating pensionary benefits but only and only in a situation where the employee is otherwise entitled/eligible to receive pension subject to having rendered qualifying service (10 years) in permanent employment. Unless he meets the criteria of having served for the duration of the qualifying period, the period spent in contractual employment cannot be added to make up for any deficiency in qualifying service for the purpose of eligibility to receive pension. The Tribunal has clearly and obviously taken an incorrect and erroneous view of the law and has been unable to appreciate the essence and tenor of Shah Jahan Shah's case *ibid* which is an authoritative declaration of law on the subject by this Court. Reference of the Tribunal to selective portions of the aforementioned judgments are found to be out of context leading to incorrect and erroneous interpretation of the relevant principles of law. We therefore find that the impugned judgment of the Tribunal dated 05.10.2018 is unsustainable. It is accordingly set aside. Consequently, the listed appeal is allowed and the Service Appeal bearing No.265(R) of CS 2016 filed by Respondent No.1 (Syed Afroz Akhtar Rizvi) before the Tribunal is dismissed.”

8. The competent authority of the respondents is directed to provide similar treatment to the petitioner as envisaged in the aforesaid decision of the Hon'ble Supreme Court of Pakistan and to count the contractual service of the petitioner into his regular service and if the same covers the requisite length of service for pension purpose, the service benefits of contractual service rendered by the petitioner with effect from 2000 till his regularization of service in 2010 and subsequent retirement in 2021 shall be counted as regular service and his pensionary benefits are required to be recalculated and paid to the petitioner within 60 days, if he is at all, entitled under the law.

JUDGE

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