

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-5967 of 2021

Muhammad Ayub Alvi

Petitioner: In person.

Respondents: Through Mr. Yasir Ahmed Shah, AAG a/w
Muhammad Asif Khan, Admin. Incharge for
respondents No. 1 to 4.

Date of hearing
& Decision: 30.01.2023.

ORDER

The petitioner through the captioned petition seeks indulgence of this court for the release of his back benefits as well as his retirement notification in terms of the decision of this court in C.P No.4942 of 2017.

2. Petitioner who is present in person submitted that this matter pertains to his back benefits in terms of the ratio of the judgment dated 20.03.2018 passed by this court in C.P No.4942 of 2017, whereby he was ordered to be reinstated in service and his back benefits would be subject to the outcome of fresh notice/proceedings, which could not be concluded in its logical conclusion before his date of superannuation i.e. 12.08.2018. He further submitted that his other dues i.e. Rs.2.93 million have been paid and only back benefits have been withheld by the respondents on the ground that in the inquiry proceedings, he had been found guilty and thus was not entitled to back benefits. He raised his voice of concern that his retirement notification has not yet been issued which is apathy on the part of the respondents.

3. At this stage Mr. Yasir Ahmed Shah learned Assistant Attorney has intervened and submitted that the respondents are ready to issue the retirement notification of the petitioner. So far as the back benefits of the petitioner are concerned since he has not been exonerated honorably from the charges and found guilty in two consecutive inquiries. At this stage, we enquired whether, in the inquiry proceedings dated 22.05.2018 and 20.07.2018, the competent authority passed any order. He referred to the record and submitted that the record is silent to that effect, however, he insisted that the petitioner is not entitled to the back benefits in terms of the conclusion arrived by the Inquiry

Committee as he was/is not a Graduate and obtained job in 1987 to the post of Cotton Field Officer as his credentials were verified in 2016 and found that petitioner was not graduate and was simpliciter Intermediate. He further submitted that in compliance with the judgment dated 28.3.2018 petitioner was reinstated in service and inquiry proceedings continued after his retirement on 12.08.2018, however, no final decision was taken by the competent authority even till today either in the shape of major or minor punishment and in the intervening period petitioner stood retired from service in the year 2018. Learned AAG further referred to the orders dated 17.02.2021, 16.03.2021, and 29.07.2021 passed by this court in CP No.D-4942/2017 and submitted that the petitioner has been paid other dues, however, the issue of back benefits has yet to be decided by this court. He agreed that the retirement notification of the petitioner shall be issued shortly.

4. We have heard the petitioner and learned AAG on the issue. This is a matter of grave concern that for several years, the long and unjustified delay in the payment of service benefits has been a source of tremendous hardship and humiliation to retiring officials and their families. Despite the strictures and orders passed by the Honorable Supreme Court of Pakistan in its various pronouncements and simplified guidelines laid down by the Government, petitions on account of delay persist.

5. Prima facie, the petitioner has a qualifying length of service to his credit and he stood retired in 2018, however, his other dues have been paid to the petitioner which factum is disclosed in the comments filed on behalf of the respondents, his back benefits have been withheld, which has triggered the cause and hardship to the petitioner to approach this court.

6. In the instant case, the departmental proceedings against the petitioner have not yet been concluded even after 04 years of his retirement. The respondents have just closed the inquiry proceedings without obtaining the final decision of the competent authority on the inquiry proceedings and the fate of that proceeding is shrouded in mystery which is a negligent part of the respondent department. Primarily, the departmental proceedings, therefore, have no legal consequence and the subsequent departmental orders could not come in the way of the petitioner to claim service benefits, and prima facie it is the fault and negligence of the respondent department, who failed to initiate the disciplinary proceedings against the petitioner in time and allowed him to retire from government service in 2018; and thereafter waited for the unknown reasons

and withheld the service benefits of the petitioner on account of the alleged act of seeking appointment in the year 1975 based on graduation degree though he was simply passed intermediate.

7. Prima facie, these are mere allegations against the petitioner and there is no final decision against the petitioner by the competent authority, therefore, this court cannot presume that he is guilty or otherwise of the charges leveled against him which are yet to come on record.

8. For this reason, we take exception to the impugned action of the respondent department and are of the considered view that the respondents are fully at fault for not culminating the disciplinary proceeding into its logical conclusion within time and allowing the petitioner to retire in 2018; and, prima facie continued to perpetuate the illegalities, despite knowing the fact that respondents misused their power and authority being a competent authority for appointment in the department and now at this stage in point in time they are raising hue and cry that the petitioner is not entitled to the service benefits. In this background of the case, the Hon'ble Supreme Court of Pakistan in the case of *Province of Punjab through Conservator of Forests, Faislabad, etc. v. Javed Iqbal*, **2021 SCMR 328**, has held that the government must ensure that the cases of retired employees are fast-tracked so that they are concluded within the statutory time frame i.e. 02 years of his retirement, allowing the retired employees to enjoy their retired life and the government to save unnecessary expense and time in pursuing matters against retired employees.

9. We cannot dilate upon the conduct of the petitioner so far as his service tenure is concerned to the effect whether recruitment rules for the subject post in the year 1987 were notified or otherwise and whether at the time of initial appointment, the respondents verified the candidature of the petitioner to obtain a job as Cotton Field Officer on a temporary basis and whether after framing of recruitment rules in the year 1995 petitioner was issued the show cause notice on the subject issue, these questions ought to have been resolved in time, however, nothing could be done and the respondents took cognizance of the facts in 2016 when the petitioner was at the verge of retirement and succeeded in obtaining the judgment in his favor which was not assailed before the Hon'ble Supreme Court of Pakistan, therefore, at this stage this Court is not a position to say for and against so far as inquiry proceedings are concerned and could only see that these allegations, *prima facie*, could have been inquired in time by the competent authority of respondents at their end, which they failed to do so, thus no entire

responsibility could be fixed upon the petitioner all alone, there could be the complicity of respondents on the subject issues.

10. The Honorable Supreme Court in recent judgment has held that in case of reinstatement or restoration to a post on merits, the employee is entitled to full back benefits and in the present case, there is no discontinuity of service of the petitioner, for the reason that when a civil/public servant once exonerated from the charges would stand restored in service as if he were never out of it and would be entitled to back benefits. Since the petitioner was reinstated in service in terms of the ratio of the judgment passed by this court in C.P No.4942 of 2017, thus he is entitled to the benefits now in terms of the ratio of the judgment passed by the Honorable Supreme Court in the case of Province of Punjab through Conservator of Forests, Faisalabad, etc. supra.

11. This petition stands disposed of in terms of the ratio of the judgment passed by the Honorable Supreme Court in the case of the Province of Punjab through Conservator of Forests, Faisalabad, etc. (supra). Resultantly the respondents shall issue the retirement notification of the petitioner and the issue of back benefits to the petitioner shall be taken care of in terms of the ratio of the judgment passed by the Honorable Supreme Court in the case of the Province of Punjab through Conservator of Forests, Faisalabad, etc. within two weeks.

JUDGE

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