

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 614 of 2003

[Zafar Ahmed *versus* Associates Press of Pakistan and others]

Date of hearing : 22.03.2022. 12.04.2022 & 21.04.2022.

Date of Decision : 22.08.2022.

Plaintiff : Zafar Ahmed through Mr. S. Ashfaq Hussain Rizvi, Advocate, along with Mr. Asif Ali Siyal, Advocate.

Defendants No.2&3 : Associates Press of Pakistan and another, through Mr. Sardar Sultan Jehangir, Advocate, along with Mr. Pervez Aslam, Director, Associated Press of Pakistan..

Defendant No.3 : Nemo.

JUDGMENT

Muhammad Faisal Kamal Alam, J: - Plaintiff has filed present *Lis* for recovery of his service dues from Defendant No.1, with the following prayer clause_

- a) *That the plaintiff as served as permanent employee over 31 years to the defendant No.1 from 17-7-1967 till 6-3-1998, under permanent employment and therefore the plaintiff is entitled for service benefits for such period.*
- b) *That the plaintiff is entitled for the grant of pension at the rate of 70% of the salary with effect from date of retirement i.e. 6-3-1998.*
- c) *Declare that the plaintiff is entitled for Rs.13,08,252/- (Thirteen Lac Eight Thousand Two Hundred Fifty Two) 50% contribution of each party as provident fund including the contribution made by the defendant No.1, as per audit report, after deducting Rs.4,72,836/- (Four Lac Seventy Two Thousand Eight Hundred Thirty Six) which has been paid to the plaintiff recently.*
- d) *That the plaintiff is entitled for the gratuity of over 30 years as per rules of the defendant No.1, amounting to Rs.6,75,571/- (Rupees Six Lac Seventy Five Thousand Five Hundred Seventy One Only).*

- e) *Directing the defendants to pay the above emoluments with effect from 6-3-1998 with a mark up of 15% to the plaintiff, as per break up Annexure "P-10".*
- f) *Grant damages for rupees 50 lac on account of mental torture caused to the plaintiff and his family members for non payments of dues in time which should be paid by defendants No.1, 2 & 3, jointly of severally.*
- g) *Any other relief which this Hon'ble Court may deem fit and proper in the circumstances of the case may also be awarded."*

2. It is averred that Plaintiff joined Defendant No.1 in the year 1967 and in due course rose to the position of Bureau Chief Sindh, but under the conspiracy (*purportedly*) Defendant No.1 issued a Letter of Retirement to Plaintiff, retiring him from 05.03.1998, which was challenged by the Plaintiff in this Court in Suit No.150 of 1998 and initially was granted interim relief, which was challenged by Defendant No.1 in the High Court Appeal No.60 of 1998 and the case was remanded with the directions to pass fresh order. However, in the intervening period after insertion of Section 2-A in the Service Tribunal Act, 1973, *inter alia*, empowering the Federal Service Tribunal to hear matters of employees of statutory bodies, the suit was dismissed with the observation that Plaintiff would be at liberty to invoke the jurisdiction of Federal Service Tribunal for redressal of his grievances. Being unsuccessful before the Federal Service Tribunal ("FST"), the Service Appeal No.1981 of K-1998 was dismissed with the directions that Defendant No.1 should complete the retirement papers of the Plaintiff enabling him to get his pensionary benefits including provident fund within a period of two months. Although, this decision was challenged before the Honourable Supreme Court, but without any success. Further contended that since Federal Service Tribunal did not have any power to execute the judgment, therefore, present *Lis* is filed; acknowledged that while filing the present proceeding, Plaintiff only received a cheque of

about one third of the provident fund and not the full and final service / retirement dues. In paragraph-6 of the plaint, the grievances of Plaintiff are highlighted, which are_

- a) That under the Newspapers Employees (Condition of Service) Act, 1974, newspaper and news agency should guarantee ten percent deduction from wages of the employees towards provident fund account, but Defendant No.1 violated the same. Defendant No.1 did not contribute the equivalent amount towards provident fund. Per Plaintiff, the total deduction of Plaintiff towards provident fund comes to Rs.654,120/- and at that time of retirement after contribution of Defendant No. 1, he should have been paid amount of Rs.13,08,252/-, but he only got one third of the above amount.
- b) Defendant No.1 did not pay gratuity which they are duty bound from 17.07.1967 till 03.11.1998. Claim of gratuity comes to Rs.675,571/-.
- c) Defendant No.1 is paying pension of 70% of the salary to those employees, who are in their good books, but to Plaintiff, they are paying only 42.5 percent of the last drawn salary.
- d) Plaintiff has also claimed damages from defendants to the tune of Rupees Five Million.

3. In the Written Statement, claim of the Plaintiff is rebutted, while raising question of maintainability of present Suit, *inter alia*, invoking Section 11 of CPC, because it is argued that learned FST has decided the Appeal of present Plaintiff, by well-reasoned order, which was maintained up to the Honorable Supreme Court. Defendant No.1 stopped payment of gratuity with effect from 01.01.1996 under the Government Instructions, which was notified in view of the Judgment of the Honourable Supreme Court of Pakistan in the case of ***Independent Newspapers Corporation (Pvt.) Ltd. and another versus Chairman, Fourth Wage Board and Implementation Tribunal For Newspapers Employees, Government of***

Pakistan, Islamabad, reported in **1993 SCMR 1533**. Since Plaintiff retired on 06.03.1998, hence he was not entitled to receive payment of gratuity, *whereas*, although in the Seventh Wage Board Award, effective from 01.07.2000, pension rate for employees of Defendant No.1 was raised from 42.5 percent to 70 percent, but since Plaintiff retired in March 1998, therefore, same benefit could not be extended to him.

4. From the divergent pleadings of the parties, following Issues were settled by the Court, vide order dated 19.04.2004_

1. *Whether the suit as framed is maintainable, in view of the Section 2-A of the Service Tribunal Act 1973?*
2. *Whether the suit is barred by limitation and for want of jurisdiction?*
3. *Whether the suit is bad for mis-joinder of necessary party i.e. Federation of Pakistan through Ministry Information?*
4. *Whether the Plaintiff is entitled for the benefit as claimed in suit?*
5. *To what relief, if any, the Plaintiff is entitled to?*

5. Vide order dated 07.02.2005, Issues were modified by the Court and following Issues were settled_

1. *Whether the suit as framed is maintainable?*
2. *Whether the suit is barred under Section 11 CPC?*
3. *Whether the plaintiff has served the defendant No.1 from 17.7.1967 till 6.3.1998 under permanent employment?*
4. *Whether the plaintiff is entitled for grant of pension, provident fund, gratuity or any other emoluments. If so, what amount and under which head?*
5. *Whether plaintiff has suffered any damages, if so, what amount?*
6. *What should the judgment and decree be?*

6. Both Plaintiff and Defendants led the evidence. Plaintiff examined himself, was cross examined and closed his side, *whereas*, Rashid Ali, Bureau Chief of Defendant No.1 testified as the sole witness.

7. Plaintiff in his cross-examination has not disputed the earlier litigation. He has denied the suggestion that he is not entitled to both gratuity and provident fund and reiterated his stance that he is entitled to enhancement of his pension at the rate of 70 percent of last drawn salary and not 42.5 percent. Although, he admitted that he did not challenge the amount of pension before the Implementation Tribunal as his case was already *sub judice* in this Court. He reiterated his claim for damages and denied the suggestion in this regard in the cross-examination.

8. To a specific question, sole witness of Defendants did not deny the fact that amount of Rs.654,120/- was deducted on account of his provident fund. He has categorically denied that under the 1974 Wage Award, 10 percent deduction was to be made on Wages, while further clarifying that the 10 percent deduction was made on the basic pay. Said witness has not denied the suggestion that three employees, namely, Gulzar Ahmed, Moeen Siddiqui and Ajab Khan were paid on 10 percent deduction of the wages with arrears.

ISSUES NO.1 AND 2:

9. Decision given by the learned FST in the above Appeal filed by present Plaintiff has been perused. The said Appeal was preferred against the Order dated 03.12.1997, *whereby*, the Plaintiff was ordered to retire from service with effect from 06.03.1998; thus, as far as the present claim of Plaintiff with regard to his service / retirement benefits and dues is concerned, the same was not adjudicated upon in the said Service Appeal, hence, Section 11 of CPC [principle of *res judicata*] is not attracted to the

facts of present case. Even otherwise, the present suit is not barred by any of the provisions of law and is maintainable. Issues No.1 and 2 with regard to the maintainability are answered accordingly and in favour of Plaintiff.

ISSUES 3 AND 4:

10. The contention of Plaintiff with regard to the payment of gratuity in addition to pension has been successfully disproved by Defendants in view of the judgment of the Honorable Supreme Court of Pakistan handed down in Independent Newspapers case (*supra*). In paragraph-17 of the said judgment it is held, that there is no ground to extend both of these retirement benefits to the employees. This was followed in the subsequent judgment of the Honorable Supreme Court of Pakistan in the case of *Safdar Ali Qureshi and 5 others verses Associated Press of Pakistan* (present Defendant No.1), copy of this decision is available in the record. The Honorable Supreme Court of Pakistan has held that there is no independent right in favor of employees for entitlement of the gratuity. In this regard, defence of Defendant, that with effect from 01.01.1996, gratuity is not paid, under the Government Instructions is correct.

11. Adverting to the Issue of grant of increased pension. Decision of 7th Wage Board for newspaper employees has been notified by the Federal Government and Gazetted, vide SRO. 744(I)/2001, dated 25.10.2001; Copy whereof is in the Record. Under Paragraph-45 relating to the employees of APP, their stance was recorded and discussed, that, on retirement, the employees of APP / Defendant No.1 were given pension to the extent of 42.5% of the basic pay, as against government servants, who receive pension at the rate of 70%. It was determined that since **demand of the employees of Defendant No.1 is reasonable, thus**, allowed; and they will be paid pension at the rate of 70 percent on retirement, “*which is being given to the government servants, the employees of Associated Press of*

Pakistan shall also be given due move over in their service structure". To this claim of Plaintiff, the defence set up by Defendant No.1 is feeble, rather misconceived in nature. Plaintiff is denied the enhanced rate of pension merely because he was retired on 06.03.1998, *whereas*, Decision of the 7th Wage Board is applicable from 01.07.2000 [the Date of Decision], although in their Written Statement the above fact **has been admitted**, that under the above 7th Wage Board Decision, pension rate for employees of Defendant No.1 has been increased from 42.5 to 70 percent, as given to government employees.

The Defendants have illegally deprived the Plaintiff from the benefits of enhanced pension since 01.07.2000. Defendants should have considered the service rendered by Plaintiff to the Organization; he has given his prime years of life to Defendants No.1 and in all fairness deserves a fair treatment from Defendant No.1.

Secondly, undisputedly, terms of service of Plaintiff is governed by The Newspaper Employees (Conditions of Service) Act, 1973; which is a beneficial piece of legislation and is to be liberally construed. Once the Wage Board has given a Decision [*supra*] as envisaged in the above Statute, then the benefit of enhanced rate of Pension should have been extended to Plaintiff, unless, it was expressly mentioned in the above Decision that determination about the enhancement of Pension is to be applied to those employees of APP who retired after 1-07-2000; but, no such observation is mentioned.

Consequently, Plaintiff is entitled for this enhanced pension of 70 percent from 01.07.2000; since, Defendant No.1 has been paying a lesser amount of pension, that is, @ 42.5% to Plaintiff, instead of 70%, therefore, this shortfall being arrears of pensionable amount of past years is to be paid to the Plaintiff by Defendant No.1. Therefore, Issue No.4 is answered in

negative with regard to the entitlement of provident fund and gratuity, but, in the affirmative for the claim of pension.

In view of the above discussion, Issue No. 3 has become redundant.

ISSUE NO.5:

12. Plaintiff has claimed special damages, which cannot be awarded in the absence of tangible evidence and positive evidence, which the Plaintiff is unable to bring on record. However, in this regard the settled rule is that it is discretion of the Court to grant general damages, taking into the account the facts of a Case. As discussed in the foregoing paragraphs, since Defendants have illegally deprived the Plaintiff from the payment of enhanced rate of pension, thus caused him continuous monetary loss, besides mental anguish; consequently, in the circumstances, the Plaintiff is also entitled for a sum of Rs.500,000/- towards general damages.

ISSUE NO.6:

13. Suit is partly decreed in the above terms, that is, that Defendant No.1 being the Employer of Plaintiff is liable to pay arrears of pension from 01.07.2000 till date; Plaintiff is entitled for pension at the rate of 70 percent as determined herein-above [in the 7th Wage Board Decision] and a sum of Rs.500,000/- towards general damages, payable by Defendant No.1.

14. Parties to bear their own cost.

Judge

Karachi.

Dated: 22.08.2022.

Riaz / P.S.