

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D-1615 of 2022
(*Allah Dino Chachar Vs. P.O Sindh & others*)

Date	Order with signature of Judge
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Present:

***Justice Ms. Rashida Asad &
Justice Mr. Khadim Hussain Soomro.***

Hearing of case.

- 1. For Orders on office objection.***
- 2. For hearing of main case***

Mr. Muhammad Aslam Gadani, advocate for the petitioner.
Mr. Sundar Khan Chachar, advocate for respondents/E.O.B.I Sukkur.
Mr. Shahriyar Imdad Awan, Assistant Advocate General, Sindh.

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Date of hearing. 08-08-2023.
Dated of Order. 22-08-2023.

KHADIM HUSSAIN SOOMRO, J: Through the instant petition, the petitioner seeks direction for respondent No. 2/ Deputy Director EOBI, Sukkur and respondent No.3/Commissioner to pay Wages Authority, Sukkur, for the issuance of retirement benefits, of ongoing and future pension benefits and retirement.

2. Notices of this petition were issued to respondents, Additional A.G, Sindh, and Deputy Attorney General, Pakistan. After receipt of the notice, respondent No.2 filed his objections.

3. Learned counsel for the petitioner, submits that the petitioner, served in different private companies i.e M/S Corporation from July 1984 to November 1997, M/S Mahar Cotton ginning pressing, & Oil Mill Pano Akil from December 1997 to 2000, and the said companies are registered with EOBI; that according to

the EOBI Act, 1976, the petitioner has got 16 years of service at his credit, therefore, he is eligible for grant of pensionary benefits, including other benefits granted under the law, but the respondent No. 2/Deputy Director EOBI Sukkur, respondent No.3/Commissioner Pay Wages Authority, Sukkur have not considered the application of the petitioner, and respondent No. 2/Deputy Director EOBI Sukkur, passed two different orders dated 12-04-2019, 19-01-2021, and rejected the application of the petitioner; that petitioner then preferred appeal u/s 35 of the EOBI Act, 1976, before the respondent No. 5/Deputy Appellate Authority, Board of Trustees, Employees Old-Age Benefits Institution Camp Office at Hyderabad, which was also dismissed vide order dated 13-12-2021 ; that as far as the verification of the documents is concerned, same have to verified by respondent No.4/Adjudicating Authority-I, EOBI (Sindh & Baluchistan) at Karachi; that it is evident from the record that the petitioner has served out more than 15 years of job in different companies, such certificates are also issued by both M/S Cotton Export Corporation of Pakistan (Pvt) Ltd, and Mahar Cotton Ginning Pressing & Oil Mill.

4. On the other hand, learned counsel for the respondents/EOBI submits that the petitioner is not entitled to the benefits which he claims, that the concerned officers verified the particulars of the service certificate and wage statements, and the signatures over the said documents are fake, bogus/fabricated, and found that the same was managed, due to which the claim was refused; that record of Regional Office Sukkur as well as Computer Database, and found that Mahar Cotton Ginning Pressing Factory & Oil Mills, Pano Akil, Registration No.ADE00007 was closed in the year 1997, and the last payment of EOBI Contribution, in the amount of Rs. 21251/-, had been deposited by the employer in the month of January 1997 and since then, no payment has so far been paid by the employer; that Old-Age Benefits Act, 1976, is a special beneficial enactment, which has provided a complete mechanism and hierarchy

of forums for any grievances u/s 33, 34 & 35 of EOB Act, 1976, the petitioner has approached the relevant forum, but could not qualify for such benefit, and holds no merit; hence petition is liable to be dismissed.

5. Learned Assistant Advocate General adopts, the same arguments as advanced by the counsel for respondent no 2, and requested for the dismissal of the instant petition.

6. Heard learned counsel for the parties and have gone through the material made available before me on record.

7. The claim of the petitioner is that he has served out more than 15 years in different companies; such certificates are also issued by both M/S Cotton Export Corporation of Pakistan (Pvt) Ltd and Mahar Cotton Ginning Pressing & Oil Mill, as such he is entitled to pension and other pensionary benefits. In the instant petition, the petitioner prayed for pension amount being an insured employee under Old Age Benefits Act, 1976; it is essential to examine the relevant provisions of the said Act. According to Section 22 of the EOB Act, 1976, which provides the qualification of an employee entitled to the pension, the section says that every insured person applying for an old age pension must have 60 years of age, and secondly, he must have 15 years of insurable employment at his credit. The required period of 15 years is to be relaxed to 07 years if he/the employee joins the scheme at the age of 40 and 45 years, and in case he is above 45 years, he shall be required to have a minimum 05 five of service to qualify for an old age pension. It is evident from the record that the petitioner was registered by his employer, as per section 11 of the Old Age Benefits Act, 1976, being an employee of M/S Corporation in the year 1984. If the age of the petitioner is to be calculated from his CNIC, which shows that his date of birth, as 08-06-1957, at the time of joining his service, he was aged about 27 years old. Therefore in terms of his age and tenure of service, the petitioner does not qualify to be

entitled to an old age pension, as his case does not fall in either of the categories discussed above.

8. We have observed that the said company Mahar Cotton Ginning Pressing Factory & Oil Mills, Pano Akil, has its Registration No.ADE00007 had been closed in the year 1997, and the last payment amounting to Rs. 21251/-was deposited by the said company to EOBI as a contribution for the petitioner, and since then, no contribution was deposited, either by the petitioner himself, being an employee or by his employer. The petitioner claimed that he had served another tenure of three years from 1997 to 2001, but during this period, the contribution was not deposited either by the employer or by the employee. It is not necessary that only the employer can deposit the contribution amount of the insurable employee. For instance, the employer does not deduct or deposit the insured person's contribution; the registered insured person can deposit his own share of contribution through a Challan as set out in a Form and can produce a copy of said Challan along with Pass Book to the nearest office of the Institution for an entry of the particulars regarding payment. Section 9-B of the Employees Old Age Benefits Act 1976 authorized the insured person to deposit the contribution amount at the rate of one per cent of the wage in the prescribed manner. However, the petitioner was unable to provide any documentation that could confirm the deposit of the contribution amount after 1997. This lack of evidence hinders the petitioner's ability to substantiate their claim before this court.

9. At this juncture it is very much important to reproduced, section 9-B Employees Old Age Benefits Act 1976 which says that, ***“On and from the first day of July 2001 the contribution shall be payable every month by an ensured person, [one percent of his wages in the prescribed manner.]”***. It is evident that the petitioner can only claim the pension amount if the contribution has been deposited and the valid proof thereof is available with him, but in the instant

case there is no proof of contribution payment made after 1997, by the petitioner. During the course of arguments the petitioner and his counsel were specifically asked about the proof of contribution slip but they failed to produce the same. Section 22 of Employees Old Age Benefits Act 1976, provides that the ensured person is entitled to receive pension amount if the contribution in respect of employee is paid either by employer or employee by himself. In fact the case of the petitioner does not fall in either of the classification, as enunciated in Section 22 of Employees Old Age Benefits Act 1976. For the sake of convenience the relevant Section is re-produced as under;

Section 22 of EOB Act, 1976 contained the conditions for award of old age pension for convenience the relevant part of section 22 is reproduced as under:-

“ (1) An insured person shall be entitled to a monthly old-age pension at the rate specified in the Schedule:

Provided that— (a) he is over [sixty] years of age, or [fifty-five] years in the case of a women; and (b) contribution in respect of him were [paid] for not less than fifteen years 2 [:] 4 [Provided further that the age specified in clause (a) will be reduced by five years in the case of an insured person employed in the occupation of mining for at least ten years immediately preceding retirement 3 [:] 3 [Provided also that where the employee was insured under the provisions of this Act on or before 30th June 2002, and contributions payable under the Act by the employer prior to 30th June, 2002, in respect of said insured person had not been paid, the insured person shall enjoy the rights under this Act as if for the word "payable" the word "paid" were not substituted: *[Underlining is for Emphasis]*.

Provided further that where the contribution under section 9B is paid regularly by the insured person himself in accordance with prescribed procedure,

his entitlement, to the benefit shall not be affected by default in payment of employer's share of contribution under section 9.]

(2) If an insured person was on the first day of July, 1976, or is on any day thereafter on which this Act becomes applicable to an industry or establishment,___

(i) over forty years of age, or thirty-five years in the case of a woman, clause (b) of sub-section (1) shall have effect as if for the word "seven" were substituted; or

: or (ii) over forty-five years of age or forty years in case of a woman, clause (b) of sub-section (1) shall have effect as if for the word "fifteen" therein the word "five" were substituted. 5 [Provided that nothing in this section shall apply to an employee insured under this Act on or after 1st day of July, 2008.]

10. The petitioner approached respondent no 2/Deputy Director EOBI Sukkur, who passed two different orders dated 12-04-2019, and 19-01-2021 and rejected the application of the petitioner. Thereafter the petitioner preferred appeal u/s 35 of the EOBI Act, 1976, before the respondent No. 5/Deputy Appellate Authority, Board of Trustees, Employees Old-Age Benefits in Institution Camp Office at Hyderabad, which was also dismissed vide order dated 13-12-2021 with this observation this ***“the petitioner was required to have minimum 15 years of insurable employment for old pension, but the insurable employment to his credit was 13 years with M/S Cotton Export Corporation of Pakistan Limited and the documents with regarded to M/S Mahar Cotton Ginning Mill appeal suspicious and fake”***. The petitioner's counsel failed to point out any material illegalities and irregularities in the orders passed by the EOBI hierarchy, which can be rectified in the writ jurisdiction.

11. In the light above discussion, and relevant provision of the law, we do not

find the petitioner to be entitled to a pension; therefore, the instant petition is dismissed. However, it has transpired from the record as well as admitted by the counsel for respondents 2 and 3, that the petitioner has got 13 years of service, as an insurable employee, at his credit; therefore, respondents no 2 and 3 are hereby directed to hand over an old age grant amount to the petitioner within the period of one month, after receipt of this order, in case of failure the contempt proceedings shall be initiated against the responsible respondents. The office is directed to communicate this order to the respondents for compliance.

12. The petition stands disposed of accordingly.

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Nasim /PA