

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 501 of 2018

(Abdul Hameed Qazi and others versus Federation of Pakistan and others)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **16.04.2024**

Date of decision : **16.04.2024**

Mr. Jamshed Ahmed Faiz, Advocate for petitioners.

Mr. Abdul Rasheed Kalwar, Advocate for respondent No.8.

Mr. Muhammad Aslam Jatoi, Assistant Attorney General.

ORDER

Muhammad Iqbal Kalhoro, J. – Petitioners claim to be ex-employees of defunct Pak-Saudi Fertilizer Company established U/S 284 of the Companies Act, 1984, which was finally merged in Fauji Fertilizer Company after the latter purchased the shares of the former. At the time of such merger, petitioners, employees of Pak-Saudi Fertilizer Company, were offered golden handshake scheme, which they somehow under purported protest accepted. Being aggrieved however by such merger and sale of the company, the petitioners challenged the same on various grounds before the courts but without a success.

2. Case of the petitioners is that at the time of such merger, there was a huge amount, running in billions, available in the welfare fund / private fund of Pak-Saudi Fertilizer Company meant for employees including the petitioners, which was to be distributed among them according to their entitlement. But the Fauji Fertilizer Company with *mala fide* intention had taken the said amount from such fund and deposited it in its account and invested in some other business to earn profits in violation of law. The Fauji Fertilizer Company after getting the all shares of Pak-Saudi Fertilizer Company laid off petitioners and other employees without fixing 10% remaining share of the company in their favour and further did not provide them the amount from the provident fund, to which they were entitled. It is, more or less, in this background, the petitioners have made following prayers:

- a) To direct the respondents to deposit private funds of petitioners including other affectees of Pak-Saudi Fertilizer Company through Accountant of

this Honourable Court and thereafter the said amount be distributed amongst the petitioners and other affectees as per their entitlement.

- b) To also direct the respondents to pay the full benefits of petitioners including the other affectees in respect of their gratuity as well as pensionary benefits plus its interest from 2002 up to date.
- c) To direct the respondents to fix 10% Remaining shares of petitioners as well as other affectees as per agreement of October, 1991 made between Government of Pakistan and all Pakistan enterprises workers action committee and pay the said amount including the profit earned by the company on said shares.
- d) To grant ad-interim injunction restraining the respondents from taking out the amount of Private fund as well as other funds etc. of petitioners and other affectees either by themselves or through their servants and agents in any manner whatsoever till the final disposal of this petition.
- e) To grant any other relief, which has not been specifically prayed for, under the circumstances of the present matter.
- f) To award cost of the petition.

3. The respondents have filed comments challenging maintainability of this petition on the grounds, among others, that factual controversies are involved and petitioners, being ex-employees of Pak-Saudi Fertilizer Company, having no statutory rules of service, are barred under the law to file a constitutional petition for the reliefs as above. It is further pointed out in the comments that petitioners had voluntarily opted for golden handshake scheme and were provided all the benefits including gratuity and provident fund. 10% remaining shares of the company meant for ex-employees of Pak-Saudi Fertilizer Company were up for grabs up to 24.05.2022, but no ex-employee came forward to purchase the same; hence they were ultimately sold to Fauji Fertilizer Company.

4. We have heard the parties and perused material available on record. Learned Counsel for the petitioners, tracing the entire history of merger of Pak-Saudi Fertilizer Company into Fauji Fertilizer Company, the alleged illegalities in such process, violation of rights of the ex-employees including petitioners at the time of such merger, embezzlement in provident fund, meant for employees, by taking out amounts from it and investing the same in some other business by Fauji Fertilizer Company, has prayed for reliefs as above. On the other hand, his arguments have been rebutted by learned Counsel for respondent No.8 and learned Assistant Attorney General.

5. The record shows that in the year 2007, on the same facts and grounds, the ex-employees, including some of the petitioners, had filed a CP No. D-51 of

2007 seeking the same reliefs which they are asking for in this petition. It was dismissed on the ground of maintainability and petitioners were directed at the same time to seek remedy as may be available to them in accordance with law. The order for ready reference is reproduced hereunder:

“Learned counsel for the petitioners was confronted with the question that since the petitioners are employees of Pak-Saudi Fertilizer Company Limited, which is a company incorporated under the Companies Ordinance, 1984 and does not have statutory rules of service; therefore, in terms of dicta laid down by the Supreme Court in the case of Pakistan International Airline Corporation & others versus Tanweer-ur-Rehman & others, PLD 2010 SC 676 and by a DB of this Court in the case of Nasir-ud-din versus PTCL, 2010 PLC 323, how this Petition is maintainable. Learned counsel relied upon a Judgment of DB of this Court in C.P No.1926/2010, passed on 27-01-2011. That was a matter regarding employees of Karachi Port Trust. Admittedly, Karachi Port Trust is a statutory entity, established under the Karachi Port Trust Act, 1886 and it has statutory rules of service; therefore, the case is clearly distinguishable.

On the other hand, Mr. David Lawrence relied upon Muhammad Rahim Shaikh versus Pakistan Telecommunication Company Limited, 2010 PLC (CS) 1258 and a Judgment of another DB of this Court in the case of Syed Muhammad Ali Shah versus Federation of Pakistan & others, CP No.415/2010, decided on 03-02-2011.

Since the petitioners were employed by an organization, which did not have statutory rules of service, in terms of dicta laid down by the Supreme Court in Tanweer-ur-Rehman’s case (supra), this Petition is not maintainable and the same is, therefore, dismissed. However, the petitioners shall be at liberty to seek such remedy as may be available to them in accordance with law.”

6. During arguments, it has also been pointed out that an ex-employee of Pak-Saudi Fertilizer Company filed a Civil Suit in the year 2011 before the original jurisdiction of this Court at Karachi asking for the same reliefs, which is still pending.

7. Insofar as claim of the petitioners that they have not been given any amount in terms of their retirement through golden handshake scheme is, it has been disputed by the other side. To establish the point they have filed certain statements, particularly a statement dated 16th March 2023, containing a detail of amounts given to the petitioners in terms of golden handshake scheme that is duly supported by relevant vouchers and receipts. These vouchers and receipts *prima facie* have not been rebutted by the petitioners by filing any documentary evidence or by submitting a counter evidence in this regard. Since such evidence available on record shows transfer of amount in the bank accounts of petitioners on the cusp of their retirement, in terms of golden handshake scheme, we do not find any merit in the petition for such relief sought by the petitioners. Furthermore, no relevant record in regard to any

private or provident fund of petitioners or other ex-employees in Pak-Saudi Fertilizer Company to take action on finding some ambiguity therein by this Court has been provided either by the petitioners.

8. The prayer regarding payment to the petitioners – full benefits of their retirement – it has already been disputed by the respondents, and therefore this fact without recording evidence cannot be sorted out. This proposition, when brought forth in arguments, was not even countered by learned Counsel for the petitioners in a meaningful manner.

9. Regarding sale of 10% remaining share of Pak-Saudi Fertilizer Company to its ex-employees, the petitioners have not come up with any record showing their offer to purchase such shares, and no evidence has been put forward either by them to indicate that they were ever even interested in purchasing such shares by making some tangible effort, and were desisted by the respondents from doing so.

10. In addition to above, learned Counsel for the petitioners could not satisfy that when the previous petition on same facts and grounds on the point of maintainability had already been dismissed, how this petition seeking same reliefs on identical facts and grounds by somehow the same petitioners would be maintainable.

11. We, therefore, find no merit in this petition and **dismiss** it. These are the reasons of our short order dated 16.04.2024.

J U D G E

J U D G E

Abdul Basit