

IN THE HIGH COURT OF SINDH AT KARACHI
CP. No. D-5888 of 2015
(*Abdul Basit Khan Vs. Federation of Pakistan & others*)

Date	Order with signature of Judge
	Before: Mr. Justice Muhammad Karim Khan Agha Mr. Justice Adnan-ul_Karim Memon

Date of hearing and order: 20-01-2025.

Mr. Ehsanullah, advocate for the petitioner.
Mr. Sohail H. K. Rana advocate for respondents No. 2 and 3.

ORDER.

Adnan-ul-Karim Memon J:- The petitioner Abdul Basit Khan seeks pensionary benefits and challenges the audit objection and compulsory retirement order dated 19.07.2006, demanding the release of his monthly reduced pension from January 21, 2006, to July 19, 2006.

2. Brief facts of the case are that the petitioner was employed as an Electrician in respondent Cantonment Board Clifton, Karachi establishment on 23.04.1987. During his service he was charge-sheeted for absence from duty (15.01.2005 - 20.01.2006) by respondent No.2. He rejoined his service on 21.01.2006. however, the major penalty of compulsory retirement was imposed on the petitioner vide order dated 19.07.2006, and the petitioner was held not entitled to pensionary benefit due to lack of length of service of 25 years; besides audit department objected vide letter dated 05.07.2007, to release the pensionary benefits in favor of the petitioner on the premise that petitioner failed to qualify for compulsory retirement pension as he lacked qualifying length of service which is 20 years, besides period of his absence as EOL was not mentioned as for qualifying service as period of EOL is not accounted for service qualifying for pension.

3. At this stage, learned counsel for the Cantonment Board has contended that the petitioner has never challenged his compulsory retirement but has accepted the retirement and has prayed for pensionary benefits declined due to Audit Objection as attached with the petition; that the petitioner got his compulsory retirement on 19.07.2006 as he was serving abroad. It is 19 years old order not impugned, if the same is withdrawn by the Respondents No. 2 and 3 the lapse of 19 years old order is not impugned, if the same is withdrawn by the respondents No.2 and 3 the lapse of 19 years shall create more complications for the parties. He has contended that the petitioner was an employee of the

respondent's Cantonment Board and he was charge-sheeted of his absence from 15.01.2005 to 20.01.2006. thereafter the respondent department appointed an inquiry officer and held a proper inquiry against the petitioner and the authorized inquiry officer recommended a penalty of compulsory retirement with the benefit including Pension. He next contended that the respondent department received the letter that the petitioner is not entitled to pensionary benefits as he has not completed the service of 25 years, therefore due to audit objection the pensionary benefits to the petitioner were declined. He has lastly contended that the respondent department not only filed para-wise comments but in assistance this court filed a concise statement and more particularly a copy of the order passed by D.B. of this court. He has lastly contended that the petitioner impugned the letter dated 19.07.2006 which is hopelessly time-barred, the petitioner was legally entitled to seek remedy under the Cantonment Service Rules 1954 and admittedly the Appellate Authority is Director Military Land & Cantonments. He lastly prayed for the dismissal of the instant petition.

4. Learned counsel for the petitioner has contended that the petitioner served the respondent's Cantonment Board for more than 18 years and his service is pensionable, therefore he is entitled to pensionary benefits. He has further contended that the petitioner is lawfully entitled to reduce pensionary benefits despite his compulsory retirement order in the year 2006. He has next contended that very objection/refusal to allow the pension to the petitioner by the respondent's Cantonment Board is against the condition stipulated/provided in the retirement letter dated 19.07.2006 and the grant of pension to the petitioner is also the up-shot of the said order. He further submitted that he filed Service Appeal No. 2(K) CE/2009 before the Federal Service Tribunal Islamabad (Karachi Bench) which was decided on 22.07.2015 for want of jurisdiction and direction was issued to the petitioner to seek his remedy as such he filed this petition before this court on 19.09.2015. He submitted that there is no cavil to the proposition that a retiring pension is admissible after completing 25 years of service, however, the petitioner has been retired compulsorily as such the total length of service for such pension is 20 years but the petitioner is still entitled to the reduced pension i.e. 2 years as he has completed 18 years in the respondent Cantonment Board. He submitted that the petitioner after return from Saudi Arabia joined his duties w.e.f. 21.01.2006 but subsequently the major punishment was imposed upon him in July 2006, thus the respondent Cantonment condoned such absence from duty as he was conditionally retired with back benefits and this was the reason the petitioner was allowed G.P. Fund by completing other codal formalities. He lastly prayed for allowing the instant petition.

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

6. First and foremost, we would address the question of the jurisdiction of this Court to entertain the petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

7. Before deciding the question of maintainability of the petition based on the analogy so put forward by the learned counsel respondent Cantonment Board, as the Cantonment Board is a statutory body having statutory protection of service under the SRO, therefore, we need to go ahead and noticed that in service jurisprudence, there are different kinds of retirement envisaged, which are as follows:

- i. *Superannuation retirement takes place when an employee crosses the maximum age prescribed under the service rules beyond which he cannot remain in active service.*
- ii. *Compulsory retirement is one of the penalties under different service regulations. It can be imposed on an employee upon a departmental inquiry based on proven charges.*
- iii. *Premature retirement is a concept where the employer in terms of service regulations has the power to order the retirement of an employee upon crossing a certain age or completion of a certain number of years of service in the public interest.*
- iv. *Voluntary retirement is a concept where an employee upon completion of a certain number of years of qualifying service can with the permission of the employer proceed on voluntary retirement. Suppose the employee has put in a sufficient number of years of service and is permitted to retire on a voluntary retirement basis. In that case, he retains all the benefits of the service already put in and would be entitled to all post-retirement benefits based on the number of years of service put in by him.*
- v. *In certain service regulations, there is also a concept of retirement on medical grounds permitting the employee to seek a pension called invalid pension even though the employee may not have put in a sufficient number of qualifying years of service to seek pension under the normal rules.*

8. It may be noted that the term compulsory retirement is often used for non-penal premature retirement. However, we may not lose sight of the fact that there is a distinction between these two kinds of retirements, namely, penal retirement upon departmental inquiry based on proven misconduct, which normally results in disentitling an employee from seeking any pensionary benefits; and, a non-penal retirement referred to as the premature or compulsory retirement upon completion of a certain number of years of service, in which case the employee retains all the benefits of the past service; and is entitled to full post-retirement benefits on that basis.

9. In this case, the respondents have not bothered to look into the factum whether the petitioner had the requisite length of service to inflict the punishment

of compulsory retirement vide letter dated 19.07.2006, which primarily depends upon the 20 years length of service under the CSR Regulations, whereas the petitioner was initially appointed in the year 1987 and was compulsory retired in 2006, thus he had no length of service i.e. 20 years in his credit to deal with such a situation as he served the respondent department for about 18 years, thus the office order dated 19.07.2006 needs to be looked into afresh, as upon compulsory retirement pensionary benefits as accrued to him under the rules are admissible whereas petitioner lacks the length of service for imposing such major penalties of compulsory retirement, however since much water has flown under the bridge and petitioner approached this court in the year 2015 to call in question such office order which action also falls within the doctrine of laches.

10. Moving ahead, this Court is concerned with a case of compulsory retirement of the petitioner, who is otherwise required to be retired in the year 2014, before the normal age of superannuation by the respondent department, upon completion of 60 years of age.

11. The short question is whether the compulsory retirement of the petitioner on the ground that he remained absent from duty w.e.f 15.01.2005 to 20.01.2006 would be a valid exercise of the powers to impose the major penalty of compulsory retirement in the year 2006; and, whether such a purpose could be termed to be in the public interest.

12. Primarily an employee who has crossed a certain age that may be specified in the service rules and whose service is found to be not satisfactory may be required to be retired compulsorily before attaining the age of superannuation and such powers have been recognized and protected by the Superior Courts in the public interest.

13. Perusal of the above inquiry report explicitly shows that allegations leveled by the respondents against the petitioner the required procedure was followed to ensure transparency in deciding on imposing the major penalty of compulsory retirement from service upon the petitioner, however, they ignored the opinion of Assistant Director Services Karachi whereby he opined as under:-

“The case may please be finalized in the light of Government orders & Rules as the DD.No. 725 dated 19.07.2006 seems to be objective.

- i) *A major penalty has been imposed on compulsory retirement whereas the individual has not qualified for the length of service required for compulsory retirement i.e. 20 years.*
- ii) *Period of absence converted as EOL not mentioned as for qualifying service, period of EOL is not accounted for as service qualifying for pension;*

14. Hence, in our view, the decision taken by the Cantonment Executive Officer Clifton Cantonment to impose the major penalty of compulsory retirement upon the petitioner is violative of the principles of natural justice and law on the subject issue, so as the length of service of the petitioner is concerned, which is not sustainable under the law. On the aforesaid proposition, the decision rendered by the Supreme Court of Pakistan in the case of Jan Muhammad v. General Manager, Karachi Telecommunication Region and another, **1993 SCMR 1440**, is clear in its terms.

15. Foregoing the reasons, this petition is disposed of with a direction to the Cantonment Executive Officer Clifton Cantonment to take a fresh decision by hearing the petitioner within two months.

JUDGE

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