

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-1746 of 2021
(*Sanaullah versus Federation of Pakistan & others*)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order: 30.3.2026

Mr. Muhammad Ramzan advocate for the petitioner
Mr. Rameez Lalani advocate for the Respondent No.3
Mr. Tauseef advocate for Pakistan Steel Mill
Ms. Wajiha Mehdi, Assistant Attorney General

ORDER

Adnan-ul-Karim Memon, J. Petitioner has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer(s): -

- a. To declare that the petitioner is entitled to gratuity for his entire service of 30 years from 28.06.1989 to 07.05.2019;*
- b. To direct the respondents No. 2 & 3 to pay the remaining amount of gratuity of 12 years, a total amount of Rs. 23,39,111/-, as the service of the petitioner is 30 years and gratuity is only paid for 18 years, as the provident fund paid by the respondent.*
- c. To direct the respondents No. 2 & 3 to pay 30 years' gratuity as per his entitlement, as the contribution of gratuity and provident fund was also transferred for Pakistan Steel Mill to respondent No.2, and the remaining amount was deducted from the salary of the petitioner, and as such, the petitioner is entitled to gratuity of 30 years.*

2. The case of the petitioner is that he is a retired employee of Pakistan Steel Mills (PSM) and Pakistan Machine Tool Factory (PMTF), submitted that he served continuously from 28-06-1989 to 07-05-2019, initially at PSM with effect from 1989 to 2001 and then at PMTF with effect from 2001 to 2019. However, upon retirement, he received gratuity for only 18 years of service, while his total service length was/is 30 years. He claimed that the deduction of 12 years' gratuity by the respondents was/is unlawful and discriminatory, citing similar cases where employees received full gratuity for their combined service. He averred that he repeatedly requested the release of the remaining gratuity amounting to Rs. 23,39,111/-, but the respondents collectively failed to respond. He asserted that the non-payment of his gratuity has caused him serious financial hardship and prayed for full gratuity for 30 years of service.

3. The learned counsel for Respondent No. 5/PSM clarified that the petitioner was appointed at PSM in 1989 and that the gratuity dues from his

service there, after deductions, amounting to Rs. 17,153.23, were duly transferred to PMTF in 2001. The counsel stated that the remaining claims of the gratuity relate to Respondent Nos. 2 and 3, and therefore, Respondent No. 5 has no objection if Respondent Nos. 2 and 3 release the said amount to the petitioner, as he seems to be entitled to the entire gratuity of 30 years period.

4. The learned counsel for Respondent No. 3/PMTF submitted that the petitioner initially joined PMTF on a contractual basis in May 2000 and was regularized in June 2001. He argued that there was a break in service after he left PSM, and PMTF acted strictly on the instructions of Respondent No. 2/State Engineering Corporation (SEC). He added that at the time of his retirement, PMTF forwarded the petitioner's pension case to the SEC, which determined that he was/is entitled to gratuity for 18 years only. PMTF's counsel contended that it paid the gratuity amounting to Rs. 7,369,736/- in accordance with SEC's directions, and has no independent authority to decide on gratuity or pension beyond that. However, he denied any malicious action, emphasizing that all decisions regarding gratuity and pension are the prerogative of the SEC.

5. Learned AAG submitted that Respondent No. 3, Pakistan Machine Tool Factory (PMTF), has been transferred from the Ministry of Industries and Production to the Strategic Plans Division (SPD) vide notification dated 06.07.2020, and therefore PMTF is no longer dealing with its operational and administrative matters. On this, learned counsel for the Petitioner sought permission to file an amended title by impleading the necessary parties, which was allowed, and notices were issued to the newly added respondents after filing of the amended title; however, none appeared on their behalf. The learned AAG representing the Federation of Pakistan has submitted that the respondent No.3 has not filed comments, despite repetitive notices; she adopted the submissions of the learned counsel for the respondent No.2 and prayed for dismissal of the petition.

6. We have heard the learned counsel for the parties present in Court and perused the record with their assistance.

7. It appears from the record that the Petitioner was initially appointed as Assistant Executive Engineer in Pakistan Steel Mills on 25.06.1989 and served there till 12.06.2001. Thereafter, Respondent No. 02 requested his services from Pakistan Steel Mills on the grounds of his expertise in hydraulic engineering. After repeated requests, the Chairman of Pakistan Steel Mills approved the transfer on 29.05.2001, and the Petitioner was formally relieved on 12.06.2001. The Petitioner joined Respondent No. 03 on 13.06.2001 without any break in service, and the continuity of his service from 28.06.1989 was duly acknowledged

by Respondent No. 02, as reflected in the retirement letter dated 18.04.2019. It is further reflected that upon transfer, the gratuity and provident fund contributions for the Petitioner's previous service were transferred, partly by Pakistan Steel Mills and partly recovered from the Petitioner's salary, thereby regularizing the gratuity contribution in full. The Petitioner retired on 07.05.2019 on attaining the age of superannuation; however, gratuity was paid by the respondents only for 18 years of service instead of the total qualifying service of approximately 30 years, as the 12 years of service rendered at Pakistan Steel Mills were erroneously excluded without lawful justification, despite being acknowledged by the Respondents. However, we have been informed that in identical cases, including those of employees Gul Muhammad and Sarfaraz, their previous service was counted and gratuity was paid for the entire service and it has been urged that the case of the Petitioner being identical, he is also entitled to gratuity for his entire length of service, and the denial of gratuity for 12 years is discriminatory, unlawful, and violative of his fundamental rights. The contentions seem to be logical and acceded to.

8. Primarily, the gratuity is recognized as a retirement benefit under law where applicable, typically based on the Standing Orders and labour codes, and is payable at the time of retirement or termination of service. However, the legal entitlement is calculated at "30 days' wages for every completed year of service or any period exceeding six months". In principle, an employee retiring on superannuation is ordinarily entitled to gratuity for the continuous service actually rendered, subject to the terms and conditions of the establishment and any applicable statutory rules. While gratuity in industrial and commercial establishments is governed by Standing Orders and statutory labour law, a similar principle of counting total qualifying service also underpins public sector retirement benefits in the absence of a specific exclusion. In such circumstances, continuous service is a fundamental qualification for gratuity. The Courts routinely hold that a break in service must be clearly established and legitimate before excluding a period from the qualifying service.

9. It has been affirmed in many cases that continuous service on a contract/ad hoc basis may be counted for pensionary and related retirement benefits once regularized subsequently, as long as the service was never terminated and was regularized later. In that case, a petitioner's entire period of service, including the ad-hoc period, was held to be qualifiable service for pension/gratuity since the employer regularized his earlier service and allowed him to continue until retirement. The Supreme Court held that earlier service, once regularized or continued without termination, must be counted for pensionary benefits. The concept is that "service is a continuous stream unless there is clear evidence of discontinuity or termination".

10. However, in the present case, the mere change of employer from PSM to PMTF/SEC does not ipso facto break continuity if the appointment and transfer were done through valid orders through proper channel, the contributions (funds) of previous service were also transferred, and the same service was ultimately recognized and paid by the new employer. The respondents themselves appear to have treated the petitioner's service as continuous from 28-06-1989 (PSM) to 07-05-2019 (PMTF/SEC), as noted in the retirement record and relieving orders; this is a key fact establishing continuity.

11. The fact that the gratuity contribution of earlier service was transferred from PSM to PMTF confirms recognition of the earlier service by both employers, which is legally a recognition of continuity of service. The respondents' denial of 12 years' gratuity appears to be based solely on internal interpretation of policy by Respondent No.2/SEC rather than on any statutory or contractual exclusion or legitimate break in service. If the service was continuous and recognized for retirement, there is no legal authority to treat a period of service worked as non-qualifying for gratuity without a valid statutory or contractual basis. In such circumstances, denying gratuity for part of the period where services were clearly rendered and recognized, while granting it to similarly placed employees as discussed supra, raises an issue of unlawful discrimination and violation of Article 25 of the Constitution.

12. In Haji Muhammad Ismail Memon and Tayyaba Halim Subhani cases, the Supreme Court held that once an employee's earlier service has been regularized and allowed to continue till retirement, that service must be counted for retirement benefits such as pension or equivalent benefits. The Supreme Court has held that where an employer has implicitly recognized and accepted service, especially by issuing orders, allowing continuation without termination, and transferring benefits, a legitimate expectation arises that the employee will receive corresponding retirement benefits unless expressly excluded by rule; mere internal policy arguments do not trump legal rights. If service was not terminated by proper orders, and the employee remained effectively in service via transfer without interruption, a break cannot be assumed.

13. PMTF's claim of a break in service after leaving PSM is incorrect. Documentary evidence, including PSM relieving orders and the transfer of gratuity contributions of Rs. 17,153.23 to PMTF in 2001, demonstrates that the petitioner's service was continuous and recognized. PMTF acted on the SEC's instructions to pay gratuity for 18 years, but such directions cannot override the petitioner's statutory and contractual rights. Acceptance of prior gratuity and provident fund contributions further confirms acknowledgment of continuous service, and arbitrary exclusion of 12 years' gratuity amounts to

maladministration and violation of vested rights. There is no evidence of termination or resignation, and in law, service continuity is presumed for pension/gratuity purposes. In such circumstances, denying full gratuity while similarly placed employees received it violates Article 25 of the Constitution and principles of natural justice. The petitioner's service from 28-06-1989 to 07-05-2019 must be treated as continuous, and PMTF cannot rely solely on the SEC's internal instructions to limit gratuity. The respondents are legally bound to pay the outstanding Rs. 23,39,111/-, failing which it constitutes an unlawful denial of vested rights.

14. Accordingly, the petitioner is entitled to gratuity for 30 years' service, and this petition stands disposed of with the direction to the competent authority of respondents to pay the remaining gratuity amount to the petitioner with lawful interest, within one month; in case of failure, appropriate action shall be taken against the delinquent officials. Let a copy of this order be communicated to all concerned for compliance in time. They be served through electronic modes of service and the WhatsApp application.

JUDGE

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