

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, BAHAWALPUR
BENCH, BAHAWALPUR
JUDICIAL DEPARTMENT**

Writ Petition No.174 of 2022/BWP

**Muhammad Tariq
Versus
The Government of the Punjab through Secretary
Finance, Lahore & others**

JUDGMENT

Date of hearing: 07.11.2023.
Petitioner by: S.M. Areeb Abdul Khafid, Advocate.
Respondents by: Rai Mazhar Hussain Kharal, Assistant Advocate General along with Mukhtar Ahmad, District Accounts Officer, Bahawalpur.

MUHAMMAD SAJID MEHMOOD SETHI, J.: Through instant petition, petitioner has assailed *vires* of correspondence dated 09.12.2019 & 20.01.2020, issued by respondents No.3 & 1, respectively, whereby deficiency in qualifying service of petitioner was not condoned and petitioner was disentitled for grant of pension.

2. Learned counsel for petitioner submits that correct provision of the Punjab Civil Services Pension Rules (“**the Pension Rules**”) has not been applied to the petitioner’s case while declining his retirement claim, therefore, impugned letters refusing pensionary benefits of petitioner are unsustainable in the eye of law. In support, he has relied upon *Muhammad Naeem Khan v. Government of Balochistan, Coastal Development and Fisheries Department, Civil Secretariat, Zarghoon Road, Quetta through Secretary and 2 others [2023 PLC (C.S.) Note 58]*, *Shahab Saqib through Attorney v. Sadaf Rasheed and 2 others (PLD 2023 Islamabad 34)* and *Basharat Ali v. The State and another (2023 MLD 60)*.

3. Contrarily, learned Law Officer defends the impugned actions.

4. I have heard the arguments of learned counsel for the parties and perused the available record.

5. Record shows that petitioner was dismissed from service *vide* order dated 04.09.2009, however, in appeal, learned Punjab Service Tribunal, Lahore *vide* order dated 19.12.2018, converted the penalty of dismissal from service into compulsory retirement w.e.f. 04.09.2009. Petitioner was appointed as Junior Clerk on 17.01.1990, so his total service upto compulsory retirement becomes 19-years, 07-months & 18-days. However, petitioner's case for grant of retiring pension was declined by the respondent-authorities on the ground that deficiency in qualifying service could not be condoned in case of compulsory retirement. It is pertinent to mention here that under Rule 3.1 of the Pension Rules, pensions are classified into four categories catering for different situations and circumstances. The said classes are as under:

- (a) Compensation Pension
- (b) Invalid Pension
- (c) Superannuation Pension
- (d) Retiring Pension

The case of petitioner falls in the category (d) i.e. Retiring Pension, which is dealt with under Rule 3.5. At this juncture, it would be beneficial to reproduce Rule 3.5 of the Pension Rules, which is as under:-

"3.5 Retiring Pension. – A retiring pension is granted to a Government servant, who not being eligible for superannuation pension-

.....

(ii) is compulsorily retired from service by the authority competent to remove him from service on grounds of inefficiency, misconduct or corruption."

The above Rule does not prescribe any minimum or maximum length of service for grant of retiring pension. Furthermore, Rule 2.12(2)(a) of the Pension Rules provides that a deficiency of 06-

months or less in qualifying service of a government servant shall be deemed to have been condoned. The said relevant portion is reproduced as under:

“2.12 Condonation of interruptions and deficiencies. –

(1)

(2) (a) A deficiency of six months or less in the qualifying service of a Government servant shall be deemed to have been condoned.

.....”

In this view of the matter, petitioner reaches the threshold of twenty years of qualifying service for pension or other retiring benefits within the contemplation of Section 12 of the Punjab Civil Servants Act, 1974.

Needless to say that compulsory retirement differs from dismissal or removal from service as it does not stipulate penal consequences inasmuch as a person retired compulsorily is entitled to pension and other retiral benefits proportionate to the period of service standing to his credit. Reference can be made to Abdul Ghani v. Hon'ble Chief Justice through Registrar High Court [2023 PLC (C.S.) Note 43].

6. *Ex facie* the orders / correspondence impugned through instant petition do not have any legal basis as it is well-established that the administrative officials are not vested with any constitutional or legal authority to interpret, extend, curtail, modify, add or subtract a provision of law. Interpretation of law is purely and exclusively a judicial function under the scheme of trichotomy of power enshrined in the Constitution of the Islamic Republic of Pakistan, 1973 (“the Constitution”) and jurisprudentially entrenched in our legal system through consistent and exhaustive pronouncements of the Apex Court in this regard. Reliance is placed upon The Province of Punjab through Secretary Finance Department, Government of the Punjab, Lahore and others v. Kanwal Rashid and others [2021 SCMR 730] and Muhammad Faheem Zafar v. Government of the Punjab through Accountant General, Punjab and 3 others [2022 PLC (C.S.) 1156]. Therefore, in attending circumstances, clarification Notification issued

by the Finance Department, Government of the Punjab has no lawful basis and impugned letters do not appear to have been issued in accordance with law, thus, same are unsustainable.

7. In view of the above, instant petition is **allowed** in the manner that impugned letters are set aside being illegal and without lawful authority. Respondent No.3 is directed to proceed in the matter and finalize the case of petitioner within a fortnight, keeping in view the dictum of law laid down by the Hon'ble Supreme Court in **Haji Muhammad Ismail Memon, Advocate (PLD 2007 Supreme Court 35)**.

**(Muhammad Sajid Mehmood Sethi)
Judge**

Approved for reporting

Judge

A.H.S.