

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.1610/2018  
Abdul Jabbar Bhatti

**Versus**

Oil and Gas Development Company Limited and others

**Date of Hearing:** 06.11.2019  
**Petitioner by:** Mr. Muhammad Bashir Khan, Advocate  
**Respondents by:** Mr. Aftab Ahmad Butt, Advocate

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioner, Abdul Jabbar Bhatti, seeks a direction to the Oil and Gas Development Company Limited/respondent No.1 (“O.G.D.C.L.”) to release his pensionary benefits.

2. The facts essential for the disposal of the instant writ petition are that on 28.12.1994, the petitioner was selected for appointment as a Driver (PS-6) in O.G.D.C.L. On 11.01.1995, the petitioner joined his duty as a Driver (PS-06). Prior to joining his duty, the petitioner had submitted educational certificates to O.G.D.C.L. Vide O.G.D.C.L.’s office memorandum dated 06.03.1995, the petitioner was re-designated as a Lower Division Clerk/Typist and on 10.03.2000, he was re-designated as Assistant Storeman. On 07.12.2006, the petitioner was promoted to the post of Storeman; on 12.01.2012, he was promoted to the post of Store Assistant in Supply Chain Management; and on 05.07.2017, he was promoted as Senior Store Assistant (NMG-16) with effect from 01.12.2016.

3. On 20.01.2018, the petitioner retired on attaining the age of superannuation. A clearance certificate was also issued to him by O.G.D.C.L. Ever since the petitioner’s retirement, he has not been paid his pension and retirement benefits. This prompted the petitioner to file the instant writ petition.

4. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that at no material stage during the petitioner’s service was he issued any notice by O.G.D.C.L. regarding the verification of his educational testimonials; that the petitioner was also not issued any show

cause notice during his service; that it is only after the petitioner's retirement that O.G.D.C.L. has taken the plea that his Intermediate certificate was bogus; that the petitioner's employment as a Driver (PS-06) was not on the basis of his Intermediate certificate; that even matriculation was not the required qualification for appointment as a Driver (PS-06); and that O.G.D.C.L. could not deprive the petitioner of his fundamental right to be paid his pension and retirement benefits.

5. Learned counsel for the petitioner further submitted that the petitioner served with O.G.D.C.L. for a continuous period of over twenty three years; that O.G.D.C.L. cannot conduct an inquiry against the petitioner after his retirement; that Rule 21(1) of the Oil and Gas Development Corporation Limited (Service) Regulations, 1994 ("the 1994 Regulations") provides that on retirement from service, an employee shall be entitled to receive pension or gratuity, as the case may be, provided the employee has been given the option for pension and gratuity in accordance with the Oil and Gas Development Corporation, Pension and Gratuity Regulations, 1985; that it is well settled that no proceedings can be initiated against a retired employee; and that O.G.D.C.L. had awarded minor penalties to other employees who had submitted bogus educational certificates during the course of their employment with O.G.D.C.L. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions learned counsel for the petitioner placed reliance on case law referred to herein below.

6. On the other hand, learned counsel for O.G.D.C.L. admitted that during the petitioner's service with O.G.D.C.L., he had not been called upon to submit his educational testimonials for the verification of their authenticity. He, however, submitted that the petitioner, in his application for employment as a Driver (PS-06), had stated that he had done his Intermediate in the year 1978; that the petitioner had also applied for two advance increments with effect from 01.03.1995 on the ground that he had done his Intermediate in 1978; that vide letter dated 29.01.2018, O.G.D.C.L.

had forwarded the petitioner's Intermediate certificate to the Board of Intermediate and Secondary Education, Sargodha ("B.I.S.E., Sargodha") with the request that the same be verified; that vide letter dated 02.02.2018, the said Board informed O.G.D.C.L. that the petitioner's Intermediate certificate bearing serial No.16836 and Roll No.6797 was bogus; that since the Board of Intermediate and Secondary Education, Lahore ("B.I.S.E., Lahore") had asked for the petitioner's original matriculation certificate, O.G.D.C.L., vide letter dated 26.02.2018, called upon the petitioner to provide his original matriculation certificate so that its authenticity could be verified; that till date, the petitioner has not provided his original matriculation certificate to O.G.D.C.L.; that had the petitioner's matriculation certificate been genuine, he would not have hesitated in providing his original certificate to O.G.D.C.L. so that its genuineness could be verified; and that since the petitioner had committed fraud by representing himself to have done his Intermediate in the year 1978, and on this basis had also applied for two advance increments, and since the petitioner's Intermediate certificate had been declared as bogus by the B.I.S.E., Sargodha, he was not entitled to be paid his pensionary/retirement benefits. Learned counsel for O.G.D.C.L. prayed for the writ petition to be dismissed.

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraph 2 to 3 above, and need not be recapitulated.

8. It is well settled that pension is not a bounty or an ex-gratia payment but a right acquired in consideration of past service and the same cannot be withheld or reduced arbitrarily. Pension forms a part of an employee's retirement benefits. The withholding of pension has been deprecated by the Hon'ble Supreme Court in the matter of Haji Muhammad Ismail Memon, Advocate (PLD 2007 S.C. 35). The importance of pension has been emphasized by the Hon'ble Supreme Court in several judgments, including the following ones:-

- i. In the case of the Government of N.-W.F.P., through the Secretary to the Government of N.-W.P.P., Communication and Works Department, Peshawar Vs. Mohammad Said Khan (PLD 1973 S.C. 514), it was held as follows:-

*“It must now be taken as well-settled that a person who enters Government service has also something to look forward after his retirement, to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well-settled that pension like salary of a civil servant is no longer a bounty but is a right acquired after putting in satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules.”*

- ii. In the case of I.A. Sharwani Vs. Government of Pakistan (1991 SCMR 1041), it was held as follows:-

*“A pension is intended to assist a retired civil servant in providing for his daily wants so long he is alive in consideration of his past services, though recently the above benefit has been extended inter alia in Pakistan to the widows and the dependent children of the deceased civil servants. The raison d'etre for pension seems to be inability to provide for oneself due to old-age. The right and extent to claim pension depends upon the terms of the relevant statute under which it has been granted.”*

9. The right to pension has been conferred on an employee of O.G.D.C.L. under Regulation 21(1) of the 1994 Regulations, which provides that *“on retirement from service an employee shall be entitled to receive pension or gratuity, as the case may be, provided the employee has given his option for the pension or gratuity in accordance with the O.G.D.C. Pension and Gratuity Regulations, 1985”*. Regulation 12 of the Oil and Gas Development Corporation Pension and Gratuity Rules, 1985 provides that superannuation pension shall be granted to an employee who retires on attaining the age of sixty years. Regulation 39(1) of the said Regulations provides that if the amount of pension granted to an employee is found within one year to be in excess of that to which he was entitled under the Regulations, he shall be called upon to refund such excess. I have gone through the said Regulations and do not find any provisions therein which empowers or authorizes O.G.D.C.L. to withhold the pension of retired employee on the basis of any pending inquiry.

10. Ever since the petitioner's retirement on 20.01.2018, he has not been paid his pension. Vide letter dated 26.02.2018, O.G.D.C.L. had informed the petitioner that the finalization of his pension documents will be subject to the provision of necessary information establishing the authenticity of his educational certificates. The vital question that needs to be answered is whether O.G.D.C.L. could withhold the payment of the petitioner's pensionary benefits on the ground that he had not provided his original Matriculation Certificate so that its authenticity could be verified by the B.I.S.E., Lahore or that his Intermediate certificate had been declared as bogus by the B.I.S.E., Sargodha.

11. On 08.03.2011, the Management Services Wing of the Establishment Division (Government of Pakistan) informed the Secretary, Petroleum and Natural Resources Division, Islamabad that the Prime Minister of Pakistan had directed that measures should be taken to authenticate degrees/certificates of all Federal Government employees of the respective Ministries/Divisions, their Departments, Subordinate Offices and Autonomous Bodies under their administrative control. On 09.05.2012, the Managing Director of O.G.D.C.L. ordered that all degrees, diplomas and certificates submitted by all existing employees (officers and staff) should be verified on priority basis but not later than six months. On 24.04.2013, the management of O.G.D.C.L. issued a circular providing *inter alia* that all cases of fake degrees/certificates are to be processed on the basis of uniform standards and principles and no exceptions are to be made. On 31.12.2013, the management of O.G.D.C.L. issued a circular providing *inter alia* that management had decided that irrespective of the fact that fake degrees/educational certificates are submitted at the time of induction, i.e. joining the service of O.G.D.C.L. or at a later stage to seek some other benefits etc., the employee found guilty of submission of fake degrees/certificates should be terminated from service.

12. In pursuance to the abovementioned decisions and circulars of O.G.D.C.L., the verification process of the educational certificates/degrees of O.G.D.C.L.'s employees was initiated.

O.G.D.C.L. initiated departmental proceedings against those employees whose educational qualifications/certificates were found to be bogus by their respective educational boards. Some employees who were issued show cause notices by O.G.D.C.L. challenged such notices in petitions before the National Industrial Relations Commission (“N.I.R.C.”). The petitions were dismissed by N.I.R.C. with the observation that an inquiry could not have been dispensed with while proceeding against employees who were alleged to have committed misconduct by submitting bogus educational testimonials. The judgments of N.I.R.C. were challenged by the employees of O.G.D.C.L. in writ petitions before this Court. Vide consolidated judgment dated 31.07.2017 passed by this Court in writ petition No.1489/2016 titled “Saeed Ahmad and others Vs. Chairman, Oil and Gas Development Company Limited” and connected matters, all the writ petitions were dismissed. Thereafter, regular inquiries were conducted against the employees of O.G.D.C.L. and these inquiries culminated in the issuance of office memoranda whereby major penalty of “dismissal from service” was imposed on them. Writ petitions filed by such employees were dismissed by this Court vide judgment reported as Kaloo Khan Vs. Oil and Gas Development Company Limited (2019 PLC (C.S) 519). Civil Petitions filed before the Hon'ble Supreme Court against the said judgment were dismissed as not pressed vide order dated 19.11.2019.

13. As mentioned above, on 20.01.2018 the petitioner retired from service upon attaining the age of superannuation. The petitioner had served with O.G.D.C.L. for more than twenty-three years. At no material stage during the petitioner's employment with O.G.D.C.L. did the latter take any step for the verification of the authenticity of the petitioner's matriculation and Intermediate certificates.

14. The documents brought on record by O.G.D.C.L. along with its written comments show that on 29.01.2018 (i.e. after the petitioner's retirement), O.G.D.C.L., along with its letter dated 29.01.2018, had forwarded the petitioner's Intermediate certificate to the B.I.S.E., Sargodha with the request that the same

be verified. Vide letter dated 02.02.2018, the said Board informed O.G.D.C.L. that the petitioner's Intermediate certificate bearing serial No.16836 and Roll No.6797 was bogus.

15. O.G.D.C.L., vide letter dated 29.01.2018, also requested the B.I.S.E., Lahore to verify the genuineness of the petitioner's Matriculation certificate. This was also after the petitioner's retirement. Since B.I.S.E., Lahore required the original matriculation certificate for verification purposes, O.G.D.C.L., vide letter dated 26.02.2018, called upon the petitioner to submit his original matriculation certificate. It is an admitted position that till date the petitioner has not submitted his original matriculation certificate to O.G.D.C.L.

16. As mentioned above, no explanation was presented for the inexcusable delay of more than five years on the part of O.G.D.C.L. in initiating the process for the verification of the petitioner's educational certificates. This omission on the part of O.G.D.C.L.'s management is deplorable given the fact that in the previous five years, O.G.D.C.L. had not just completed the verification process of the educational certificates of numerous employees but had also initiated departmental proceedings against those employees whose educational certificates had been declared by the relevant Educational Boards as bogus, and had dismissed them from service. O.G.D.C.L. had initiated the process of the verification of the petitioner's educational certificates not just with a delay of more than five years but also after the petitioner's retirement. This is an actionable omission on the part of O.G.D.C.L.'s officials.

17. Worse than O.G.D.C.L.'s conduct in this case has been that of the petitioner. It is not disputed that in 1994, when the petitioner applied to O.G.D.C.L. for appointment as a Driver, he had claimed to have done his Intermediate in the year 1978. Vide letter dated 02.02.1996, the petitioner had also applied for the grant of two advance increments on the basis of his Intermediate qualification. O.G.D.C.L., along with its written comments, had filed the petitioner's application for employment as well as the application for the grant of two advance increments. The

authenticity of the said documents had not been disputed by the petitioner.

18. In the writ petition, the petitioner has not pleaded that he had done his Matriculation and Intermediate. In his arguments, learned counsel for the petitioner did not take the position that his Matriculation and Intermediate certificates annexed with O.G.D.C.L.'s written comments were genuine. However, he submitted that O.G.D.C.L. had awarded minor penalties to other employees who had submitted fake educational testimonials either to gain employment with O.G.D.C.L. or to gain service benefits. In this regard, the petitioner referred to office memoranda dated 02.12.2012, 12.04.2013, 31.07.2013, 10.04.2014, 06.01.2015, 28.04.2015, 24.06.2016, 18.01.2017, and 04.07.2017 issued by O.G.D.C.L. whereby penalties such as withdrawal of increments, reduction to lower post, and compulsory retirement were imposed on employees of O.G.D.C.L. who were found to have submitted fake educational testimonials during the course of their employment with O.G.D.C.L. Learned counsel for the petitioner stressed that the petitioner could not be treated differently from those employees of O.G.D.C.L. against whom allegations similar to the ones as against the petitioner had been made and on whom such penalties were imposed as would not result in the withholding or forfeiture of their pension. This argument of the learned counsel for the petitioner, in my view, is an implied admission that the educational testimonials submitted by the petitioner in order to secure employment with O.G.D.C.L. or to gain advance increments were not genuine. Such an admission coupled with the fact that the petitioner has not even pleaded that his Matriculation and Intermediate certificates are genuine would make an inquiry against the petitioner an exercise in futility.

19. As mentioned above, the B.I.S.E., Sargodha vide letter dated 02.02.2018 informed O.G.D.C.L. that the petitioner's Intermediate certificate bearing serial No.16836 was "*bogus*". Any reasonable person with a genuine Intermediate certificate against whom such a declaration is given would have made a beeline for B.I.S.E., Sargodha and taken steps to have it reversed. The petitioner has



not done so. The petitioner has also not responded to O.G.D.C.L.'s letter dated 26.02.2018 requiring him to provide his original Matriculation certificate so that its authenticity could be confirmed. This lack of response on the petitioner's part makes his conduct most inequitable disentitling him to any discretionary relief.

20. It is an admitted position that at no material stage were any inquiry proceedings initiated against the petitioner. It was emphasized by the learned counsel for the petitioner that inquiry proceedings could not be conducted against the petitioner after his retirement. In this regard, learned counsel for the petitioner placed reliance on the judgments in the cases of Abdul Wali Vs. WAPDA (2004 SCMR 678), Sajjad Haider Kazmi Vs. Director-General (S&GAD) WAPDA (2007 SCMR 1643) and Muhammad Zaheer Khan Vs. Government of Pakistan (2010 SCMR 1554). These are judgments of the Hon'ble Supreme Court deciding appeals against the judgments of the Service Tribunal rendered prior to the partial striking down of Section 2A of the Civil Servants Act, 1973 in the case of Mubeen-ul-Islam Vs. Federation of Pakistan (PLD 2006 S.C. 602). By virtue of Section 2A of the Civil Servants Act, 1973 employees of statutory bodies and corporations owned and controlled by the Government were treated as civil servants.

21. I have gone through the case law relied upon by the learned counsel for the petitioner and have noted that the inquiry proceedings initiated against employees after their retirement were set-aside on the strength of Regulation No.417-A of the Civil Service Regulations ("C.S.R. No.417-A") and Rule 54-A of the Fundamental Rules ("F.R. No.54-A"), both of which are reproduced herein below:-

*"417-A. If an officer, who has suspended pending inquiry into, his conduct attains the age of superannuation before the completion of the inquiry the disciplinary proceedings against him shall abate and such officer shall retire with full pensioner benefits and the period of suspension shall be treated as period spent on duty.*

*"54-A. If a Government servant, who has been suspended pending inquiry into his conduct attains the age of superannuation before the completion of inquiry, the disciplinary proceedings against him shall abate and such Government*

*servant shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.”*

22. The 1994 Regulations(which were applicable to the petitioner) and the O.G.D.C.L. Service Rules, 2002 do not have any provision in *pari materia* or similar to C.S.R. No.417-A and F.R. No. 54-A. These provisions, which do not permit inquiry proceedings against an officer or a Government servant to continue or be initiated after such officer or Government servant attains the age of superannuation, have admittedly not been adopted by O.G.D.C.L. at any material stage in its services rules or regulations. In the case of Muhammad Afzal Vs. Board of Intermediate and Secondary Education, Lahore (2007 SCMR 1460), it was held *inter alia* that “*unless the Rules and Regulations of the Provincial or Federal Government are specifically adopted by a statutory body controlled by such Government, the same cannot be automatically made applicable to employees of a statutory body.*” In the case of Muhammad Aslam Vs. Punjab Small Industries Corporation (2001 YLR 32), it was held *inter alia* that since the provisions of the Punjab Civil Servants (Efficiency and Discipline) Rules, 1999 had not been adopted by the Punjab Small Industries Corporation, the same were not applicable to the employees of the said Corporation. Additionally, in the case of Nusrat Elahi Vs. Registrar, Lahore High Court (1991 MLD 2456), it was held *inter alia* that the provisions of the Civil Servants Act, 1973 and the Rules made thereunder were not applicable to the staff of the High Court unless adopted by the Court itself.

23. C.S.R. No.417-A and F.R. No. 54-A do not *proprio vigore* apply to the employees/staff of O.G.D.C.L. (who are not civil servants) nor could they be read as part of the 1994 Regulations or the O.G.D.C.L. Service Rules, 2002 unless specifically adopted by the regulations/rules-making authority in O.G.D.C.L. It may be explained that F.R. No.54-A does not apply on its own force to the Provincial Civil Servants in the Province of Sindh, but rather because it had been adopted by the Finance Department of the Government of Sindh vide notification No.FD-(E&A)-9(19)/76(I) Karachi, dated 07.12.1980. In the case of Sami-ur-Rehman Vs.

Chief Secretary, Government of Sindh (1983 PLC (C.S.) 832), it was held by the Service Tribunal Sindh that an inquiry pending on the date of the retirement of a government servant abates on the completion of one year, and that pension cannot be withheld beyond one year after retirement. It was so held because F.R. No.54-A had been adopted and made applicable to the Provincial Civil Servants in the Province of Sindh.

24. In the case of Abdul Wali Vs. WAPDA (2004 PLC (C.S.) 771), the penalty of compulsory retirement from service imposed on an employee of WAPDA after his retirement was set aside by the Service Tribunal with the observation that the authority would be at liberty to proceed against him in accordance with the law. After the retirement of the employee on attaining the age of superannuation, the authority issued him a charge sheet stating therein that if the allegations against him were established, he would be liable to the imposition of one or more major or minor penalties. It was held by the Hon'ble Supreme Court that disciplinary proceedings could not be taken against him after his retirement. Relief in the said case was granted to the petitioner, who was an employee of WAPDA, primarily because the Pakistan Water and Power Development Authority Employees (Efficiency and Discipline) Rules, 1978 had provided that an employee of WAPDA could not be proceeded against after his retirement from service, and because WAPDA had amended its pension Rules through circular dated 16.02.1981 and adopted C.S.R. No. 417-A. Similarly, in the case of Sajjad Haider Kazmi Vs. Director-General (S&GAD) WAPDA (2007 SCMR 1643), it was held *inter alia* that *denovo* proceedings could not be initiated against an employee of WAPDA after his retirement. In the case of Muhammad Zaheer Khan Vs. Government of Pakistan (2010 SCMR 1554), on the strength of F.R. No.54-A, it was held that *“pending disciplinary proceedings against an officer abate if the latter attains the age of superannuation.”*

25. Inquiry proceedings under Part-II titled *“Efficiency and Discipline of Chapter IX of Oil and Gas Development Corporation Employees (Service) Regulations, 1994”* cannot be taken against

the petitioner after his retirement upon attaining the age of superannuation. I hold so not on the strength of C.S.R. No.417-A and F.R. No. 54-A but because the petitioner cannot be termed as an '*accused*' after his retirement. The term '*accused*' has been defined in Regulation 121(a) of the 1994 Regulations to mean a '*corporation servant*' against whom action is taken under the said Regulations. Since upon retirement, the petitioner ceased to be a '*corporation servant*', he could not be proceeded against on the charge of misconduct.

26. Regardless of whether inquiry proceedings can be conducted against the petitioner after his retirement, the petitioner has not challenged B.I.S.E., Sargodha's letter dated 02.02.2018 declaring his Intermediate certificate to be bogus. The petitioner is also refusing to provide O.G.D.C.L. with his original Matriculation certificate issued by B.I.S.E., Lahore so that its authenticity could be verified. With such conduct, the petitioner cannot expect this Court to direct O.G.D.C.L. to pay his pension. Writ jurisdiction is discretionary in character and relief can only be claimed by a person having a *bonafide* claim and who approaches the Court with clean hands for the enforcement of a legal right obtained in a lawful manner. In the case of Farzana Rasool Vs. Dr. Muhammad Bashir (2011 SCMR 1361), it was held that the conduct of a party before a Court of law is always taken as relevant.

27. In view of the above, the instant petition is dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_/2019

(JUDGE)

APPROVED FOR REPORTING