

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1730 of 2017

Shams ul Islam

Versus

The Governor, State Bank of Pakistan and others

Dates of Hearing: 09.10.2020, 29.01.2021 and 04.02.2021
Petitioner by: M/s Abdul Rahim Bhatti, Yasser Rahim Bhatti and Qaiser Rahim Bhatti, Advocates.
Respondents by: Mr. Rehan Nawaz, Advocate
Mr. Raza Mohsin Qizilbash, Director, S.B.P.
Mr. Mehmood Nazir Rana, Law Officer, S.B.P.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Shams-ul-Islam, seeks the implementation of the judgment dated 29.04.2004 passed by the Hon'ble Supreme Court of Pakistan in criminal original petitions No.32 to 34 of 2003 (reported as 2005 SCMR 235).

2. The petitioner was appointed in the State Bank of Pakistan ("S.B.P.") on 05.03.1971. After serving for more than 26 years, he opted for the Voluntary Golden Handshake Scheme ("the Scheme") introduced by the S.B.P. through its Personnel Department's circular No.9 dated 23.10.1997. The last date for opting for the said Scheme was 22.11.1997. It would be tedious to reproduce the terms and conditions of the said Scheme as these have already been mentioned in the said judgment reported as 2005 SCMR 235.

3. Under the said Scheme, the staff and officers of the S.B.P. were entitled to the retirement benefits available under the S.B.P.'s existing rules and regulations. The financial benefits under the said Scheme included (i) three months basic pay for each completed year of service, and (ii) leave encashment subject to a maximum of 180 days. It is not disputed that the petitioner had opted for the said Scheme within the deadline and stood retired from service on 15.12.1997 on account of his option for the said Scheme having been accepted.

4. Prior to the petitioner's retirement, the salary of the employees of the S.B.P. was enhanced through the S.B.P.'s Personnel Department's circular No.12 dated 29.11.1997. This circular was to take effect from 01.12.1997. The petitioner continued to work till 15.12.1997 and for the period between 01.12.1997 and 15.12.1997, his salary was paid in accordance with the enhanced rates under the said circular. The benefits and emoluments paid to the petitioner under the said Scheme were not on the basis of the petitioner's last pay drawn, which had become effective on 01.12.1997 but on the basis of his pay drawn on 22.11.1997 i.e. the last day for opting for the said Scheme.

5. Dissatisfied with the amount disbursed to the petitioner by the S.B.P. pursuant to the said Scheme, the petitioner filed an appeal before the Federal Service Tribunal praying for a direction to the S.B.P. to correctly calculate his dues on the basis of the last pay drawn as on 15.12.1997. The said appeal was dismissed vide judgment dated 19.10.2000. Against the said judgment, the petitioner preferred C.P. No.56/2001 before the Hon'ble Supreme Court. Vide judgment dated 03.04.2001, the Hon'ble Supreme Court converted the said petition into an appeal and disposed of the same in the following terms:-

"6. It is an admitted position that the above exercise of option by the petitioners/employees in favour of VGHS circulated vide Circular No.9 dated 23.10.1997 by the Bank was accepted by the competent authority vide letter No.PD(SSD-6)/PF/2347/97 dated 3.12.1997. It is also an admitted fact that by virtue of said letter the petitioners herein were directed to be relieved from service with effect from the close of business on 15th December, 1997. Same is the position with regard to the fact that all the petitioners/employees were in service up to 15.12.1997.

7. It is also common ground between the parties that the Bank, vide its Personnel Department Circular No.12 dated 29.11.1997, informed all its employees that the Central Board in its meeting held on 22.10.1997 approved a revised salary package for its employees effective 1.12.1997 in respect of Scales 1, 2, 3, 4, 5, 6 & 7; Scales I, II, III & IV; OGs III, II & I; Sr. Grs. III, II & I and Exec. Gr. Accordingly, the above revised salary of each employee was fixed in the new Scales on the basis of his/her respective position in the present scale in accordance with the approved formula. It is also an admitted fact that all the petitioners herein were in the employment of the Bank on 1.12.1997, when the revised salary structure became effective notwithstanding the fact that they had earlier opted for the VGHS and the same was accepted by the Bank on 3.12.1997. Parties are also one on the point that all the

petitioners/employees were paid the revised salary in accordance with Personnel Department Circular No.12 dated 29.11.1997 for the period from 1.12.1997 to 15.12.1997 i.e., up to the date when they were relieved from service under the VGHS. The question therefore arises whether while calculating the pension available to the petitioners the revised salary to them for the period between 1.12.1997 to 15.12.1997 could be denied. The learned counsel for the Bank have not been able to satisfy the Court as to on what principle of law such treatment can be meted out to petitioners/employees...

8.

9. *In the result, we convert all these petitions into appeals and dispose of the same by modifying the impugned judgment of the Tribunal to the extent indicated above. The result is that the pension admissible to the petitioners/employees shall be calculated after bringing it to bear upon such calculation the number of days spent by them in service after their volition to abide by VGHS. Put differently, all the pensionary benefits shall be calculated by taking into account the period between 1.12.1997 to 15.12.1997."*

6. Since the S.B.P. did not make payment to the petitioner in accordance with the said judgment of the Hon'ble Supreme Court, the petitioner filed a petition for contempt of Court against the Governor, S.B.P. and others before the Hon'ble Supreme Court. This petition was disposed of vide judgment dated 29.04.2004. In paragraph 18 of the said judgment, it was held *inter alia* that the petitioner's pensionary and retirement benefits shall be calculated and paid on the basis of the last pay drawn after treating the date of retirement as 15.12.1997.

7. Vide letter dated 22.06.2004, the S.B.P. informed all its Chief Managers about the decision taken by the Board of S.B.P. in its meeting held on 21.06.2004 to make payment of retirement benefits *viz* (i) leave encashment, (ii) pay compensation, and (iii) medical encashment to the employees who had retired under the said Scheme by treating the date of retirement as 15.12.1997. All the Chief Managers were advised to arrange for payment of difference of the aforesaid three benefits to the employees which may be calculated on the basis of 50% of their monetized salary as on 15.12.1997, after adjustment of the payment already made to them. This was in purported compliance of the Hon'ble Supreme Court's judgment dated 29.04.2004.

8. Learned counsel for the petitioner submitted that the petitioner's present grievance is confined to him having been

paid 50% of the amount under the heads of (i) pay compensation i.e. three months basic pay for each completed year of service, and (ii) leave encashment subject to a maximum of 180 days.

9. The documents brought on record show that on 22.11.1997, the petitioner’s basic pay was Rs.10,395/-. By treating the petitioner’s date of retirement as 22.11.1997, the S.B.P. had calculated his pay compensation as Rs.8,64,270/- and his leave encashment as Rs.64,020/-. However, after the above referred judgment of the Hon'ble Supreme Court, the petitioner’s retirement date was treated as 15.12.1997. By the time the petitioner retired, his pay had been enhanced by virtue of the S.B.P.’s Personnel Department’s circular No.12 dated 29.11.1997. The S.B.P., by taking into account the petitioner’s enhanced pay, held him entitled to pay compensation of Rs.15,33,330/- and leave encashment of Rs.1,12,024/-. These amounts are admittedly 50% of the amount which the petitioner claims to be due to him under the Scheme. The S.B.P. justifies payment of 50% of the amount on the ground that in the said Scheme, it is provided that *“general provident fund contribution and 50% commutation of gross pension and payment of pension on monthly basis”* would be paid under the Scheme to those employees who had completed 25 years of service. The petitioner’s stance is that the withholding of 50% of the amount payable to the petitioner as pay compensation and leave encashment violates the judgment dated 29.04.2004 passed by the Hon'ble Supreme Court, and that this Court ought to enforce the said judgment by directing the S.B.P. to pay the complete amount to the petitioner. The differential sort by the petitioner is illustrated in the following table:-

| <i>Retirement / Financial Benefits</i> | <i>Paid on the basis of 50% pay i.e. Rs. 18,930/-</i> | <i>Payable on the basis of pay i.e. Rs.37,680/-</i> | <i>Difference payable</i> |
|---|--|--|----------------------------------|
| <i>Leave encashment subject to a maximum of 180 days.</i> | <i>Rs. 113,580 (Rs. 18,930 x 6 months)</i> | <i>Rs.2,27,160 (Rs.37,860 x 6 months)</i> | <i>Rs. 113,580</i> |
| <i>Pay Compensation. Three months basic pay for each completed</i> | <i>Rs. 15,33,330 (Rs. 18,930 x 81 months)</i> | <i>Rs. 30,66,660 (Rs. 37,860 x 81 months)</i> | <i>Rs. 15,33,330</i> |

| | | | |
|------------------------|----------------------|----------------------|----------------------|
| <i>year of service</i> | | | |
| <i>Total payable</i> | <i>Rs. 16,46,910</i> | <i>Rs. 32,93,820</i> | <i>Rs. 16,46,910</i> |

10. Through the instant petition, the petitioner is not seeking the issuance of a writ under Article 199 of the Constitution. In essence, he is seeking the enforcement of the judgment dated 29.04.2004 passed by the Hon'ble Supreme Court under Article 187(2) of the Constitution. Sub-articles (1) and (2) of Article 187 of the Constitution read thus:-

“187. Issue and execution of processes of Supreme Court. – (1) [Subject to clause (2) of Article 175, the] Supreme Court shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it, including an order for the purpose of securing the attendance of any person or the discovery or production of any document.
(2) Any such direction, order or decree shall be enforceable throughout Pakistan and shall, where it is to be executed in a Province, or a territory or an area not forming part of a Province but within the jurisdiction of the High Court of the Province, be executed as if it had been issued by the High Court of that Province.”

11. The direction of the Hon'ble Supreme Court which the petitioner is seeking to enforce is set out in paragraph 18 of the said judgment dated 29.04.2004. For the purposes of clarity, paragraph 18 of the said judgment is reproduced herein below:-

“18. In view of above, “pensionary benefits/retirement benefits” shall be paid to the petitioners by calculating all the retirement/financial benefits on the basis of last pay drawn after treating the date of retirement as 15.12.1997. This exercise be completed expeditiously and the benefits so calculated be paid to them within two months from now and compliance be reported to the Registrar of this Court.”
(Emphasis added)

12. The unequivocal direction of the Hon'ble Supreme Court to the S.B.P. was to pay to the petitioner his “pensionary/retirement benefits” by calculating the same on the basis of last pay drawn after treating the date of retirement as 15.12.1997. On 22.11.1997, the S.B.P. issued a service certificate to the petitioner which shows his retirement date to be 15.12.1997 and his monetized salary to be Rs.37,860/-. The service certificate dated 22.11.1997 also refers to the order passed by the Hon'ble Supreme Court. The issuance of this service certificate does not discharge the S.B.P.’s obligation to show compliance with the direction of the Hon'ble Supreme Court in its judgment dated

29.04.2004. The S.B.P. has tried to get away with paying the petitioner 50% of his entitlement to leave encashment and pay compensation. Additionally, the calculation/working sheet brought on record by the S.B.P. also shows that the petitioner's entitlement to leave encashment and pay compensation under the Scheme was divided by two and then paid to the petitioner.

13. It is an admitted position that the S.B.P., vide letter dated 22.06.2004, advised all its Chief Managers to arrange payment of the (i) leave encashment, (ii) pay compensation, and (iii) medical encashment to the employees who had retired under the said Scheme on the basis of 50% of their monetized salary as on 15.12.1997, after adjustment of the payment already paid to them.

14. It was the S.B.P.'s obligation to make payment to the petitioner under the Scheme on the basis of last pay drawn and by treating his retirement date as 15.12.1997. The dispute between the petitioner and the S.B.P. before the Hon'ble Supreme Court in essence pertained to the petitioner's entitlements under the Scheme. Although the terms of the said Scheme clearly provide that the employees who had completed 25 years of service would be entitled to "*general provident fund contribution and 50% commutation of gross pension and payment of pension on monthly basis.*" But the entitlement of the employees of the S.B.P. who opted for the Scheme is not restricted to 50% of the pay compensation (i.e. three months basic salary of each completed year of service) or leave encashment subject to a maximum of 180 days.

15. The only justification put forth by the learned counsel for the S.B.P. for withholding 50% of the amount of the pay compensation and leave encashment was that the Scheme had provided for "*50% commutation of gross pension and payment of pension on monthly basis.*" It is an admitted position that the petitioner's entitlement to pay compensation and leave encashment has not been treated as a part of his pension and therefore not subjected to 50% commutation. Therefore, I am of the view that the direction of the Hon'ble Supreme Court in

paragraph 18 of the said judgment dated 29.04.2004 warrants enforcement through payment of the remaining 50% of the petitioner's entitlement to pay compensation and leave encashment in accordance with the terms of the Scheme. Consequently, this petition under Article 187(2) of the Constitution is allowed, and the S.B.P. is directed to implement the said judgment dated 29.04.2004 passed by the Hon'ble Supreme Court by paying Rs.15,33,330/- as the 50% remaining pay compensation, and Rs.1,13,580/- as the 50% remaining leave encashment, which was payable to the petitioner under the Scheme, within a period of one month from the date of announcement of this judgment under intimation to this Court through the Deputy Registrar (Judicial) of this Court.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON 18/02/2021

(JUDGE)

Qamar Khan

APPROVED FOR REPORTING

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