

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO.1540 OF 2013

KAFOOR KHAN
Vs.
PRESIDENT/CHIEF EXECUTIVE PAKISTAN
TELECOMMUNICATION COMPANY
LIMITED, ETC.

Petitioner by : Hafiz Famanullah, Advocate.

Respondents by : Mr. Tariq Aziz, Advocate.
Mr. Raheel Zafar, Manager (Legal), PTCL.

Date of hearing : 14.09.2020.

LUBNA SALEEM PERVEZ, J. Through this petition, the Petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, for grant of following prayer:-

“Under the circumstances, it is, therefore, very humbly and respectfully prayed that this Honourable Court may very kindly be pleased to direct respondent No. 1 to revise salary/pay of the petitioner after removal of anomaly admissible as per respondents’ Letter Nos. PA&P 6-17/97.

It is further requested that this Honourable Court may kindly be pleased to direct respondent No. 1 to revise salary/pay of the petitioner with effect from 01.06.1994 with all consequential benefits in the light of the decision of Honourable Lahore High Court in Writ Petition No.4496/2007 dated 31.03.2008.

Any other relief which the Honourable Court deems fit and proper may also be granted.”.

2. Facts of the case are that the petitioner joined erstwhile Telephone and Telegraph Department (the *T&T Department*) on 09.12.1975, and was retired from the services after 32 years by availing Voluntary Separation Scheme (the “*VSS*”) from Pakistan Telecommunication Company Limited (the “*PTCL*”) on 10.03.2008. After his retirement, the petitioner on the basis of letters No. PA&P 6-7/97, dated 22.04.1999, and PA&P 6-17/97, dated 22.03.2000 as well as on

judgment of Hon'ble Lahore High Court vide Writ Petition No. 4496/2007, dated 31.03.2008, through letter dated 28.05.2010, addressed to the Respondent No. 1, requested to remove the anomaly occurred at the time of revising basic pay scale and due to which his salary was fixed at Rs. 3,717/- which was lesser than the salary & benefits drawn by his juniors at Rs.3,783/-. A reminder dated 27.10.2010, was also issued to the respondents when no reply to letter dated 28.05.2010, was received from them. Finally, as a result of no response from the respondents petitioner filed this petition for directions to the respondents for revision of his pay and allowances *w.e.f.* 01.06.1994, in the light of the letters issued by PTCL and judgment of the Hon'ble Lahore High Court, Lahore dated 31.03.2008, passed in Writ Petition No. 4496/2007.

3. Learned counsel for the petitioner submitted that he is also entitled for the same relief as granted by the Hon'ble Lahore High Court, vide order dated 31.03.2008, passed in Writ Petition No. 4496/2007, to other employees of the PTCL having similar grievance of anomaly in revision of pay scale *w.e.f.* 01.06.1994, when during the pendency of this petition, the respondents redressed the grievance of the petitioner by removing the anomaly occurred in the pay scale. Learned counsel for the petitioner particularly relied on the following observation of the Hon'ble High Court in the said judgment whereby the other employees of the PTCL department were also directed to extend the same relief who had suffered financially due to the anomaly while fixing the revised salary:-

"7. At this point it is noticed that the respondents are dragging the similarly placed retired employees into indecent litigation with no fault of them and compelling each other such like employee to approach the Court of law, when confronted with the situation the Deputy Director who is appearing on behalf of the respondents offer to make a statement in the following term:-

That almost 200 cases of anomaly were pending in their office out of these 92 cases have been finalized whereas it is assured that the rest of the cases shall be finalized within one month i.e. on or before 01.05.2008 and the emoluments shall be released to all such like aggrieved persons without recourse to any litigation whatsoever particularly keeping in view the inter office memo dated 30.03.2006, issued by PTCL which is reproduced as follows:-

Previously an anomaly case of Mr. Imtaiz Ahmed, Accountant (BS-16) of your office settled / sanctioned by this Head Quarter vide office memo No. PA&P. 6.17/97 dated 22.04.1999, wherein it was further mentioned that all other cases may kindly be disposed of accordingly.

8. After going through the statement of the representative of the respondents it is directed that the matter of anomaly of all concern shall

be decided who may have not taken any legal proceedings as in such a case the dictates of justice and rule of good governance demand that the benefit of inter office memo dated 30.06.2006, be extended to all other employees / ex-employees who may not be part to the present litigation instead of compelling them to approach any legal forum following the principle of equal protection of law enshrined in Article 25 of the constitution of Pakistan.”.

4. Learned counsel for the petitioner while relying on the above findings submitted that since, petitioner is one of the affecttees, thus, he is entitled for the same relief in terms of Article 25 of the Constitution of Pakistan as granted to other employees of the PTCL for being similarly placed. He further submitted that the Hon’ble Court has specifically directed the respondents PTCL to grant benefit of the office memo dated 30.03.2006, to all employees of the respondents.

5. On the other hand, learned counsel for the respondents vehemently controverted the arguments made on behalf of the petitioner and submitted that the present writ petition is not maintainable as the petition is hit by laches as the petitioner has availed VSS on 10.03.2008, and has filed this petition in April, 2013, which is after about five years of his voluntary retirement; that the petitioner has availed the option of VSS on his own free will and the calculations and the basis thereof was communicated to him, who after understanding the basis and method of computation, confirmed the calculation sheet; that the petitioner also filed a declaration that he fully understand that his pension is subject to revision on the completion of necessary formal inquiries and that he has no objection to such revision and also the provisional pension paid to him exceeds the pension to which he was eventually entitled; that after opting for VSS, the petitioner is no longer entitled for any further benefits he is claiming when he was in service in 1994 as monetary benefit under VSS is a full and final settlement for this early retirement; that he has not raised any objection with regard to calculation of his final VSS settlement and has filed declaration for his pension wherein he declared that *entries made in service book and history of service are correct and that no claim is pending against the department.* Therefore, the findings contained in W.P. No. 4496/2007, dated 31.03.2008, are not applicable to the case of the petitioner. Learned counsel relied on the judgment of Hon’ble Lahore High Court in W.P. No. 21228/2012, wherein, the petitioner after availing benefit of VSS sought similar relief in terms of W.P. No. 4496/2007. The Hon’ble Court was pleased to dismiss the said petition by observing that *the benefit of order dated 31.03.2007, in Writ Petition No.*

4496/2007, would be available to those who have a continuing relationship with the respondents and who are receiving regular pension from the respondents. He further relied on the judgment of this Hon'ble Court in case titled as *Ghulam Sarwar and others vs. Federation of Pakistan (W.P. No. 2114/2016)*.

6. Heard arguments of learned counsel for the parties and perused the record with their able assistance.

7. The petitioner is aggrieved of not allowing entitlement of removal of anomaly with regard to revision of salary w.e.f. 01.06.1994, as according to him his revised salary was lesser then the salary to his juniors in service as well as in pay scale, which as a consequence adversely affected his salary and pensionary benefits at the time of his retirement through VSS on 31.03.2008. It has not been denied by the petitioner that at the time of voluntary retirement through VSS in 2008 he did not raise objection regarding removal of anomaly and revision of his salary as per direction, vide decision in W.P. No. 4496/2007, and admittedly all the documents of his retirement and calculation sheet of gratuity and other benefits were examined by him and he had opted for VSS without any pressure or coercion but separating voluntarily from the service thus, his retirement is not the normal course according to the terms of the service but through special provisions and terms of the scheme of voluntary separation according to which the payment made under VSS is the full and final settlement of the dues meaning thereby there remain no unpaid claim against the Respondent. It is also admitted that this petition has been filed by the petitioner after more than five years after availing of VSS. Thus, after willingly accepting the benefits as a final settlement and by declaration that no further claim is pending, the petitioner could not after inordinate delay of five years demand revision in salary which he has not agitated or demanded while he was in service or soon after the announcement of judgment by Hon'ble Lahore High Court. The learned counsel for the respondents in support of his contention relied on the judgment of Hon'ble Lahore High Court in case titled *Javed Mehmood, etc vs. President CEO PTCL, etc (W.P. 21228/2012)*, dated 19.02.2013, which is squarely applicable to the facts and circumstances of the present case, wherein, it has been held as under:-

“6. Admittedly, the petitioners retired on 26.12.2007 pursuant to the VSS scheme. Admittedly, they received VSS package and made a declaration upon receipt of that package that they have no claim pending against the Respondent department and there is no

departmental dues outstanding against them. Admittedly, payments were made to the Petitioners pursuant to VSS scheme. However, the petitioners now want to take the benefit of order dated 31.03.2008 passed in W.P. No. 4496/2007. VSS scheme is a contractual relationship between the petitioners and the respondents. Having received their package from the respondents, the petitioners since 2007 have no relationship with the respondents. Any benefit made available to the employees of the Respondents subsequently to the order dated 31.03.2008 passed in W.P. No. 4496/2007 is not available to the Petitioners because their retirement was on the basis of contractual arrangement, which they consented to and against which they took all the benefits from the Respondents. The relationships between the Petitioners and the Respondents came to an end as per terms and conditions of the contract. The Respondents are not obliged to revise the emoluments granted to the petitioners at the time as per their existing pay scales. Learned counsel for the petitioners has argued that the declaration made on the wrong facts and unknown facts were not applicable to the Petitioners. I am of the opinion that the voluntarily scheme closed the relationship between the petitioners and the respondents and after availing the VSS scheme the Petitioners have no claim on the Respondents. The benefit of order dated 31.03.2008 passed in W.P. No. 4496/2007 would only be available to those, who have a continuing relationship with the respondents and who are receiving regular pension from the Respondents. Therefore no illegality is made out. Petition dismissed."

8. For what has been discussed above, I am of the considered view that the petitioner opted for early separation from service of respondent after willingly agreeing and accepting the terms of VSS and has received all the service benefits and dues as per terms of VSS and the petitioner cannot raise any further monetary claim on the pretext of revision of salary which he did not claim during service or at the time of settlement of dues under VSS. The petition is thus devoid of any merit hence, **dismissed**, accordingly.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on this 01st day of September, 2020.

JUDGE

M. JUNAIDUSMAN