

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.1804-2019

Ishfaq Ahmad

Vs.

**The Managing Director, Oil & Gas Development Company Limited,
Islamabad & Another**

Petitioner by : Ch. Muhammad Arshad Bajwa, Advocate
Respondents by : Mr. Usman Raza Mir, Advocate
Date of hearing : 12.02.2020

AAMER FAROOQ J. The petitioner was offered to join Oil & Gas Company Limited (at the relevant time, Oil & Gas Corporation) as Management Trainee vide letter dated 08.02.1996. The referred training was for a period of six months and could be terminated with one month's notice. The training period was terminated vide Office Memorandum dated 17.06.1997. The petitioner was again offered to join as Management Trainee by Oil and Gas Development Company Limited (OGDCL) vide letter dated 08.06.2009. It is pertinent to observe that in letter dated 08.02.1996, it was provided that after completion of training, it would not be binding for the Corporation to offer any post for regular appointment, however, in letter dated 08.06.2009, it was provided that on satisfactory performance, the petitioner shall be considered against a vacant permanent position in EG-I. The petitioner's services were terminated, however, he was reinstated in service and regularized under Sacked Employees (Re-instatement) Act, 2010 vide letter dated 12.01.2011. It was provided in the letter that he is reinstated in service as 'Assistant Data Acquisition Officer' in EG-II w.e.f. 17.06.1997 and his services were regularized

w.e.f. 08.12.2010. The petitioner retired from service and now seeks payment of pension from OGDCL, which is being denied to him by his ex-employer on account of the fact that petitioner does not fulfill the requirement of completion of requisite service.

2. Learned counsel for the petitioner, *inter alia*, contended that period, required for payment of pensionary benefits, is undoubtedly ten years, which the petitioner, has completed inasmuch as he was working as 'Management Trainee' in 1996, when after lapse of six months, same was terminated, however, he was reinstated in service from 1997, which clearly stipulates that he would be deemed to be in service thus fulfils the requirements of ten years' service for payment of pension. It was contended that pension is not a bounty but is a right of any employee. In support of his contentions, learned counsel placed reliance on cases reported as 'Pakistan Telecommunication Employees Trust (PTET) through M.D. Islamabad and others Vs. Muhammad Arif and others' (2015 SCMR 1472), 'Abdul Hameed and Others Vs. Special Secretary Education, Government of Punjab, Lahore and others' (2017 PLC (CS) 697), 'Civil Aviation Authority through Director General CAA and 3-others Vs. Mst. Gul Yasmin' [2019 PLC (CS) 130], 'Inam ul Haq Shah and 3-others Vs. Government of the Punjab through Secretary Technical Education and Vocational Training Authority and 2-others' [2006 PLC (CS) 11], 'Khawaja Abdul Hameed Nasir and others Vs. National Bank of Pakistan and others' (2003 SCMR 1030), 'Hameed Akhtar Niazi Vs. The Secretary, Establishment Division, Government of Pakistan and others' (1996 SCMR 1185), 'Khawaja Ghulam Sarwar Vs. Pakistan through the

General Manager, PWR, Lahore’ (PLD 1962 Supreme Court 142) and ‘Captain Muhammad Azhar Vs. Commissioner of Karachi and Province of West Pakistan’ (PLD 1966 Supreme Court 253).

3. Learned counsel for the respondents, *inter alia*, contended that at the time of reinstatement in service, the petitioner executed an undertaking and a surety bond, whereby he undertook not to claim any benefit. It was further contended that under the service regulations of OGDCL, ten years’ period is required and that too the regular service with OGDCL. It was further contended that petitioner does not possess ten years’ regular service rather has only eight years and one month service at this credit which cannot be counted for pension purposes. It was contended that pension is a right of every employee, but only for the one, who fulfills the requirements as prescribed by the employer and since petitioner does not do so, he is not entitled to payment of pension. In support of his contentions, learned counsel placed reliance on cases reported as ‘National Bank of Pakistan Vs. Iftikhar Rasool Anjum and others’ [2017 PLC (CS) 453], ‘Muhammad Rafiullah and others Vs. Zarari Taraqiati Bank Limited (ZTBL) through President, Islamabad and another (2018 SCMR 598) and unreported case titled ‘Syeda Sakina Riaz Vs. Federation of Pakistan and another’ (Civil Appeal No.1189-2017).

4. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

5. The controversy, between the petitioner and the respondents, has been mentioned above therefore need not be repeated.

6. An employee of OGDCL is entitled to pension under Oil and Gas Development Corporation Pension and Gratuity Regulations, 1985. Under Regulation 5, an employee's service qualifying for pension, shall be counted from the date of his appointment in the Corporation. In this behalf, under Regulation 5(2), where even a person is not in the regular service, time spent would be counted; various instances have been mentioned above but do not include the working of any person as 'Management Trainee'. The length of service for payment of pension is ten years.

7. As noted above, the petitioner initially joined as 'Management Trainee' in February, 1996 and his training was terminated in June, 1997. Subsequently, he was reinstated in service w.e.f. 17.06.1997 vide letter dated 12.01.2011 but his services were regularized w.e.f. 08.12.2010.

8. An employee of OGDCL is eligible for payment of pension from the time when he was appointed in the Corporation i.e. working as a regular employee. The matter was clarified by OGDCL through clarification dated 11.10.2005, wherein it was provided as follows: -

"OIL & GAS DEVELOPMENT COMPANY LIMITED
REGULATIONS SECTION HEAD OFFICE
ISLAMABD

NO.AAO103-22

11TH October 2005

Subject:- TRAINING POLICY – COUNTING OF TRAINING PERIOD

In partial modification of O.M. No. AA0103-22 dated 18th November 1990, it has been decided that the 02 years or any period for those trained at PRTI under OGDCL training program, cannot be counted for any purpose i.e. promotion/ pension etc.

2. *However, regular employees that go for training will have the days/ years counted.*
3. *This issue with the approval of Managing Director.*

(Saadullah Khan Safi)
A/Manager (Regulations)
Ext:-3505"

The bare perusal of letter shows that earlier letter dated 18.11.1990 was modified and it was provided that time in service as Management Trainee, would not be counted towards promotion/pension etc. The letter, which stood modified, did provide that if training period is of two years, the same would be counted for service/promotion/pension.

9. There is no cavil with principles laid down in cases relied upon by learned counsel for the petitioner, however, those are not applicable in the facts and circumstances of instant case inasmuch as pension is a right of every employee provided he fulfills the requirements of employer. In this behalf, regulations of respondents provide ten years' service and letter dated 11.10.2005 clearly stipulates that the period as 'Management Trainee' would not be counted for promotion or pension. The petitioner's services were regularized from December, 2010 hence upon his retirement on 03.02.2019 the period of service was less than the required period of ten years for pensionary benefits.

10. Moreover, the petitioner executed a surety bond dated 19.06.2009 on his reinstatement in service, wherein he categorically undertook not to claim any seniority or arrears of pay or benefits of any other nature whatsoever on account of any previous training as Management Trainee at OGDCL; he also undertook that he shall be bound and shall abide by the terms and conditions of his enrolment and all other rules and policies made applicable to Management Trainees from time to time.

11. Though it was argued on behalf of petitioner that such undertakings are meaningless and without force in light of decision of august Apex Court in case reported as 'Khalid Mehmood Vs. State Life

Insurance Corporation of Pakistan and others’ (2018 PLC 182), yet to the contrary, the Hon’ble Supreme Court of Pakistan in case reported as ‘Muhammad Rafiullah Vs. ZTBL’ (2018 SCMR 598) held that where an employee who voluntarily accepts and receives benefit under some arrangement with the employer out of his own free-will, then cannot turn around and seek benefits which were ordinarily applicable to other employees. In another judgment, the Hon’ble Supreme Court of Pakistan, in case titled ‘Syeda Sakina Riaz Vs. Federation of Pakistan and another’ (Civil Appeal No.1189-2017), held as follows:-

“Right to claim pension is a right connected with the tenure of service which under the applicable pension rules has to be served by an employee in order to make him eligible for pension..... The right to claim pension cannot be equated with an insurance policy that becomes enforceable due to an event that occurs even before its maturity date as right to claim pension is always attached to a specified term of office which an employee has to put in i.e. it is a benefit which is earned by an employee as a result of giving service to an employer for a specified number of years”.

12. The Hon’ble Division Bench of Lahore High Court, in case reported as ‘National Bank of Pakistan Vs. Iftikhar Rasool Anjum and others’ [2017 PLC (CS) 453], observed that claim of pension is regulated by the rules in force at the time when employee retires, resigns, or was invalidated, or was compulsory retired, or was discharged from service, or was injured, or suddenly died whilst in service, depending upon the type of pension claimed. It was also observed that right to receive pension flowed directly out of the rules applicable and not out of any order of any officer or authority, though, for the purposes of determining or quantifying the amount it may be necessary for the authorities to pass such order.

13. In view of above position of law and facts, since it is the decision of OGDCL not to count the period of petitioner put in by him Management Trainee for the purposes of receiving pension and the said decision holds the field at the time the petitioner retired and also since he undertook not to claim any benefit of the period when he was not in service or was working as Management Trainee, he cannot claim that his period of service as Management Trainee or even the period he did not actually worked, be counted for calculating the period to receive pension.

14. For what has been discussed above, instant petition is without merit and is accordingly dismissed.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on _____

JUDGE

Zawar