

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

W.P.No.4212 of 2018  
Maqbool Hussain Minhas

**Versus**

Federation of Pakistan through Secretary, Ministry of Science & Technology  
and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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**22.09.2020**

**Mr. Ahsan Qureshi, Advocate for the petitioner, Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General, M/s Umair Habib, Deputy Director and Abdul Qayyum, APS for respondents No.1 and 3**

Through the instant writ petition, the petitioner, Maqbool Hussain Minhas, seeks a direction to the respondents to release his pensionary and other allied benefits.

2. Learned counsel for the petitioner submitted that on 13.02.2016, the petitioner retired on attaining the age of superannuation; that till date, the petitioner's pensionary benefits have not been released to him; that on 13.03.2013, F.I.R. No.93 was registered against the petitioner under Section 409 of the Pakistan Penal Code, 1860 ("P.P.C.") at Police Station Industrial Area, Islamabad; that till date, a charge against the petitioner has not been framed; that presently, the petitioner is on bail; that the petitioner cannot be made to wait indefinitely to be given his pensionary benefits; and that since the petitioner has not been convicted, he is deemed to be innocent. 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 the judgments reported as 2004 SCMR 678, 2010 PLC (C.S.) 559, 2011 PLC (C.S.) 1227, 2010 PLC (C.S.) 662, and 2005 PLC (C.S.) 244.

3. On the other hand, learned Assistant Attorney-General submitted that since the petitioner was not a civil servant but an employee of an autonomous body, Fundamental Rule 54-A did not apply to him; that there is no provision in *pari materia* to FR 54-A in the National Institute of Electronics Employees Service Rules, 1998 (**"the 1998 Rules"**); that the petitioner was arrested on 11.02.2014 and was subsequently released on bail; that since the criminal case against the petitioner is still pending until the said case is decided in the petitioner's favour, he will be treated as an employee under suspension by operation of Rule 11(a) of the National Institute of Electronics Employees (Efficiency and Discipline) Rules, 1992 (**"the 1992 Rules"**); and that until the petitioner's acquittal in the said case, pensionary benefits cannot be granted to him. Learned Assistant Attorney-General prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the petitioner and the learned Assistant Attorney-General and have perused the record with their able assistance.

5. On 13.03.2013, F.I.R. No.93 was registered against the petitioner under Section 409 of the P.P.C. at Police Station Industrial Area, Islamabad. The complainant was Muhammad Haqbab, President Action Committee of the National Institute of Electronics Employees Cooperative Housing Society (**"NIEECHS"**). The allegation against the petitioner was that he, in his capacity as Vice President of NIEECHS, sold a part of the land belonging to the said society without approval of its members. In the proceedings pursuant to the said application, a charge has not been framed as yet.

6 The Station House Officer (**"S.H.O."**), Police Station Sabzi Mandi vide letter dated 18.02.2014

informed the Director General, National Institute of Electronics ("N.I.E.") that the petitioner had been arrested on 11.02.2014 after his bail petition was dismissed by this Court. Furthermore, a special report was sent by the S.H.O. for departmental proceedings against the petitioner. Vide office order dated 04.03.2014, the petitioner was suspended due to his arrest in connection with F.I.R. No.93 dated 13.03.2013.

7. Vide order dated 16.05.2014 passed in criminal misc. No.191-B/2014, this Court granted interim bail to the petitioner for a period of one month so as to enable him to resolve the issue with NIEECHS. Since the dispute between the petitioner and NIEECHS could not be resolved, this Court recalled the said interim bail granting order. Subsequently, on 30.07.2015, the learned Trial Court granted post-arrest bail to the petitioner.

8. After the petitioner was released on bail, he submitted an application dated 05.10.2015 to the Director General, N.I.E. for the termination of his suspension. Vide letter dated 11.01.2016, the Ministry of Science and Technology informed the Director General, N.I.E. that the petitioner will remain under suspension till his acquittal from the criminal case.

9. On 13.02.2016, the petitioner retired on attaining the age of superannuation. Vide letter dated 25.01.2016, the petitioner requested the Director General, N.I.E. to be granted full pensionary benefits and to treat his suspension period as though he was on duty. Vide letters dated 22.03.2017, 30.07.2018 and 09.08.2018, the petitioner's request for the release of his pensionary benefits were turned down by the respondents on the ground that FR 54-A did not apply to his case since he had been placed under suspension on account of criminal proceedings

pending in the Court and that clause 11(a) of the 1992 Rules provides that an employee committed to prison on criminal charge shall be considered as under suspension till the termination of the proceedings against him.

10. N.I.E. was established under the provisions of the National Institute of Electronics Ordinance, 1979 (“the N.I.E. Ordinance”). In terms of entry No.23, paragraph 36 of the Rules of Business, 1973, N.I.E. comes under the administrative control of the Science and Technology Division. N.I.E. is an autonomous body and its employees are not civil servants. Therefore, the provisions of the Fundamental Rules and the Civil Service Regulations do not apply on their own force to the employees of N.I.E. However, Rule 46 of the 1998 Rules states that in matters not specifically provided for in the said rules and the procedures applicable to the Federal Government Servants shall apply to the employees as may be directed by the Federal Government provided that no financial benefits shall thereby become admissible unless specifically sanctioned by the Federal Government.

11. Pursuant to Section 19 of the N.I.E. Ordinance, the Federal Government made the 1992 Rules. Rule 11(a) of the 1992 Rules provides that where an employee of N.I.E. is committed to prison either for debt or on criminal charge, he shall be considered as under suspension from the date of his arrest till the termination of the proceedings against him.

12. By reason of the said provision, an employee of N.I.E. “*committed to prison*” either for a debt or on criminal charge is to be treated as under suspension from the date of his arrest till the termination of proceedings against him. As mentioned above, the proceedings pursuant to FIR No.93, dated 13.03.2013 have not come to an end as yet. Even

after a lapse of more than seven years, a charge has not been framed against the petitioner. There is no provision either in the 1992 Rules or the 1998 Rules which deprives an employee of N.I.E. who superannuates from pensionary benefits on the ground that either a criminal case is pending against him or that he had been under suspension when he superannuated. Needless to observe that mere registration of an F.I.R. cannot be considered as a verdict of guilt against the accused person. Unless and until the criminal proceedings culminate in a conviction of an accused he has to be considered as innocent.

13. It is an admitted position that at no material stage was any departmental proceedings, either before or after the petitioner's retirement initiated against him. Rule 11(a) of the 1992 Rules would operate to treat the petitioner as under suspension until his acquittal in the criminal proceedings but could not operate to deprive him of his fundamental right to receive pension. In the case reported as PLD 1973 SC 514, it has been held that pension is not a bounty but a right. Additionally, in the case reported as PLD 2007 SC 35, the withholding of pension was deprecated by the Hon'ble Supreme Court. In the case reported as 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."*

14. In view of the above, the instant petition is allowed, and it is declared that Rule 11(a) of the 1992 Rules cannot operate to deprive the petitioner of his

right to receive his pension and retirement benefits. Consequently, the respondents are directed to release the petitioner's pension and retirement benefits.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

*Qamar Khan*

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