

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

I.C.A.No.200 of 2014  
Pakistan Telecommunication Company Limited  
**Versus**  
Ch. Muhammad Yousaf and others

**Date of Hearing:** 24.05.2017  
**Appellant by:** Mirza Aamer Baig, Advocate,  
**Respondents by:** Respondent No.1 (Ch. Muhammad  
Yousaf)-in-person,  
Mr.Raheel Zafar, Advocate (Manager/  
Legal/PTCL).

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant Intra Court Appeal, the appellant, Pakistan Telecommunication Company Limited, impugns the order dated 26.02.2014, passed by the learned Judge-in-Chambers, whereby W.P.No.790/2011, instituted by respondent No.1 (Ch. Muhammad Yousaf), was allowed, and the appellant was directed to grant pensionary benefits to respondent No.1.

2. Learned counsel for the appellant submitted that respondent No.1 joined the erstwhile T&T Department on 02.09.1975; that on 29.05.1978, respondent No.1's services were terminated as a result of disciplinary action under the Government Servants (Efficiency and Discipline) Rules, 1973, ("E&D Rules"); that respondent No.1 did not prefer an appeal against the termination orders within a period of one month as required under the relevant rules; that respondent No.1 proceeded abroad after his termination; that after about nine years, respondent No.1 filed an appeal before the Ministry of Communications, which appeal was turned down; that the Review Board constituted by the Federal Government, on 19.12.1989, recommended that respondent No.1 be reinstated; that respondent No.1 filed a petition on 30.09.1991, before the National Industrial Relations Commission ("N.I.R.C.") for the implementation of the recommendations of the Review Board; that the appellant filed W.P.No.1356/1991 before the Hon'ble Lahore High Court, which set aside the recommendations of the

Review Board; that after a period of 15 years, respondent No.1 submitted an appeal before the Hon'ble Prime Minister seeking his reinstatement in service, that the said appeal was turned down; and that despite the above, respondent No.1's writ petition seeking the grant of pensionary benefits was allowed by the learned Single Judge-in-Chambers. Learned counsel prayed for the instant appeal to be allowed and for respondent No.1's writ petition to be dismissed.

3. On the other hand, respondent No.1 appeared-in-person, and submitted that his case before the learned Single Judge-in-Chambers pertained to the grant of pensionary benefits by taking into consideration the period during which respondent No.1 was employed by the appellant prior to his termination in the year 1978; and that respondent No.1 had also sought the benefit of Civil Service Regulation No.418, which essentially provides that resignation to take up another appointment in which the service counts for pension is not a resignation for the purposes of pension.

4. It was further submitted that respondent No.1's case was that he joined the Pakistan Railways as an Assistant Station Master on 13.02.1965; that he worked for Pakistan Railways up to 02.09.1975 until he was offered a job of an Assistant by the T&T Department at Islamabad; that respondent No.1 joined the T&T Department after resigning from Pakistan Railways; that according to Civil Service Regulation No.418, respondent No.1 was entitled to pensionary benefits by taking into consideration his service in Pakistan Railways; that under the said Regulation, resignation of an appointment to take up another appointment, service in which counts, is not a resignation of the public service; and that respondent No.1 was recommended by the Review Board to be reinstated in the appellant/department, but the appellant had not implemented the decision of the Review Board. Respondent No.1 admits taking political asylum in Belgium after he was terminated, and coming back to Pakistan in 1988. Respondent No.1 prayed for the instant appeal to be dismissed.

5. We have heard the contentions of the learned counsel for the appellant as well as respondent No.1, and perused the record with their able assistance.

6. The record shows that respondent No.1 was employed as an Assistant in the T&T Department on 02.09.1975. On 29.05.1978, respondent No.1's services were terminated. Since respondent No.1 did not challenge his termination orders, the same attained finality. Respondent No.1 in his writ petition admitted that he had proceeded abroad to avoid political victimization, and returned to Pakistan in the year 1988. After respondent No.1's return, he applied to the Review Board constituted vide Labour Division's notification No.LR.17(6)/88, dated 20.05.1988, (chaired by the Chairman N.I.R.C.) for his reinstatement in service. The Review Board considered respondent No.1's case and recommended to the Federal Government (Ministry of Communications) to direct the management of the T&T Department to reinstate respondent No.1 with effect from 19.12.1989. On 03.05.1990, the Ministry of Communications, vide its office memorandum, requested the Director General of the T&T Department to take necessary actions in the light of the said recommendations of the Review Board. Since respondent No.1 was not reinstated in service, he filed an application on 30.09.1991 before the N.I.R.C. for the implementation of the said recommendations of the Review Board. Vide order dated 05.10.1991, the N.I.R.C. admitted respondent No.1's application and advised the appellant to immediately comply with the said recommendations of the Review Board. The appellant impugned the said order dated 05.10.1991 in W.P.No.1356/1991 before the Hon'ble Lahore High Court. Vide judgment dated 20.10.1996, the said writ petition was allowed and the order dated 05.10.1991, passed by the N.I.R.C. was set aside. It was held by the Hon'ble High Court that the Review Board was not competent to consider respondent No.1's case for reinstatement, because his employment had not been terminated as a result of any political victimization.

Respondent No.1 did not challenge the said judgment dated 20.10.1996, which attained finality for all intents and purposes.

7. Respondent No.1 in his writ petition had also prayed for the grant of pensionary benefits in accordance with the law. Although, respondent No.1 in his writ petition made reference to the recommendations of the Review Board, he made no mention of the judgment dated 20.10.1996, passed by the Hon'ble Lahore High Court in W.P.No.1356/1991. The question that remains to be determined is whether respondent No.1 was entitled to pensionary benefits for his services in the T&T Department up to 29.05.1978, when services were terminated.

8. The termination order dated 29.05.1978 shows that the charge of misconduct against respondent No.1 for unauthorizedly occupying a government quarter had been proved. Consequently, his services were 'terminated' on 29.05.1978 under the E&D Rules. It is an admitted position that respondent No.1 had joined the erstwhile T&T Department on 02.09.1975. Respondent No.3 (Chairman, Pakistan Railways) in its written comments to the writ petition had admitted that the petitioner served in the Pakistan Railways from 13.02.1965 until his resignation on 02.09.1975. Therefore, respondent No.1 joined the employment of the T&T Department on the same very day on which he left the employment of Pakistan Railways. In such circumstances, it needs to be determined whether respondent No.1's was entitled to pensionary benefits from the appellant by taking into account his service in Pakistan. The learned Single Judge-in-Chambers held that respondent No.1 was so entitled on the basis of Civil Service Regulation No.418. The said Regulation is reproduced herein below:-

*"418. (a) Resignation of the public service, or dismissal or removal from it for misconduct, insolvency, inefficiency not due to age, or failure to pass a prescribed examination entails forfeiture of past service.*

*(b) Resignation of an appointment to take up another appointment, service in which counts, is not a resignation of the public service."*

(Emphasis added)

9. The appellant did not raise any serious challenge to the applicability of Civil Service Regulations No.418 as regards

respondent No.1's service in Pakistan Railways to be taken into account for determining his pensionary benefits. The appellant's emphasis was on the point that since respondent No.1's services were terminated on the ground of misconduct, he would not be entitled to any pensionary benefits. It was also stressed that 'dismissal' or 'removal' from service is synonymous to 'termination'.

10. Section 19(3) of the Civil Servants Act, 1973, provides that no pension shall be admissible to a civil servant, who is dismissed or removed from service for reasons of discipline, but the government may sanction compassionate allowance to such a civil servant not exceeding the prescribed amount. Respondent No.1's case is that he was neither 'dismissed' nor 'removed' from service. He does admit that his service was 'terminated', but he claims that such termination would not deprive him of his right to pensionary benefits.

11. As per Rule 4 of the E&D Rules, major penalties include (i) reduction to a lower post or time scale, or to a lower stage in time scale; (ii) compulsorily retirement; (iii) removal from service, and (iv) dismissal from service. Although, the imposition of the penalty of removal and dismissal from service would deprive a person from pensionary benefits, that is not so with regard to a person who is compulsorily retired from service. Now, the letter dated 29.05.1978, whereby respondent No.1's services were 'terminated', can not be read as 'dismissal' or 'removal' from service. The said letter dated 29.05.1978 does not mention whether respondent No.1 has been 'dismissed' or 'removed' or 'compulsorily retired'. 'Termination' is not one of the major penalties under Rule 4 of the E&D Rules. The termination of the relationship of employer and employee can take place through dismissal, removal or compulsory retirement. In such a scenario, an interpretation beneficial to the subject is to be adopted. Although, a penalty under the E&D Rules was imposed on respondent No.1, he could not held to have been 'dismissed' or 'removed' entailing a disability to seek pensionary benefits. A well settled rule of statutory interpretation is that every word in

a statute is to be given its literal meaning, and in cases of penal provisions they are to be strictly construed, and in case of any doubt, the benefit is to be given to the subject. By the same analogy, the doubt created by the use of the word 'termination' in the letter dated 29.05.1978, has to be interpreted in favour of the subject i.e. the employee/respondent No.1. Thus respondent No.1 would be entitled to be paid his pensionary benefits in accordance with the law.

12. In view of the above, the instant appeal is dismissed with no order as to costs.

(ATHAR MINALLAH)  
JUDGE

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2017.

(JUDGE)

(JUDGE)

APPROVED FOR REPORTING

Qamar Khan\*

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