

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3364 of 2013
Akhtar Hussain Shah

Versus

Oil & Gas Development Company Limited and another

Dates of Hearing: 31.10.2019, 07.11.2019 and 18.12.2019
Petitioner by: M/s Abdul Rahim Bhatti, Yasser Rahim Bhatti
and Muhammad Amin, Advocates
Respondents by: Syed Mudassir Ali Rizvi, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Akhtar Hussain Shah, impugns the Office Memorandum (“O.M.”) dated 24.07.2013 issued by respondent No.1 (Oil and Gas Development Company Ltd.) (“O.G.D.C.L.”), whereby earlier Office Memoranda dated 22.01.2013 and 20.05.2013 regarding the grant of additional pay to the petitioner for a period of six months, were withdrawn. Furthermore, the petitioner impugns respondent No.1’s O.M. dated 01.08.2013, whereby the petitioner’s pay was re-fixed by excluding the advance increments that have been approved in his favour on 19.02.2010 and 30.05.2013.

2. The facts essential for the disposal of the instant petition are that on 19.02.2010, the Managing Director (“M.D.”), O.G.D.C.L. granted two advance increments to five employees, including the petitioner, in recognition of their excellent performance. The grant of these increments was approved on 19.03.2010. All the five employees that were granted the said increments were members of the staff posted with M.D., O.G.D.C.L.

3. Vide O.M. dated 16.04.2010, the petitioner’s pay was re-fixed by including the two advance increments at the rate of 20% of his basic pay.

4. The petitioner was one amongst three employees to whom the best employee award was approved to be given. On 29.05.2013, the petitioner submitted a representation for the grant of two advance increments on the basis of the best employee award given to him. On the very next day, i.e. 30.05.2013, the petitioner’s said

representation was allowed and he was granted two advance increments at the rate of 20% of his basic pay as on 30.05.2013.

5. On 01.01.2013, the petitioner filed an application for a formal approval of M.D., O.G.D.C.L. for holding the dual charge of Manager (Technical) as well as Manager (Administration/Human Resource). On 10.01.2013, M.D., O.G.D.C.L. allowed the said application. Vide O.M. dated 22.01.2013, a dual charge allowance at the rate of 20% of his basic pay with effect from 01.01.2013 was granted to the petitioner for a period of six months. According to respondent No.1's O.M. dated 20.05.2013, the dual charge allowance granted to the petitioner, vide O.M. dated 22.01.2013, was to be treated as additional pay with effect from 01.01.2013 for a period of six months.

6. On 23.06.2013, the petitioner retired from service on attaining the age of superannuation. Paragraph 389 of the note file (annexed at page 23 of this petition) and O.M. dated 20.05.2013 show that the petitioner had been granted two advance increments and additional pay equivalent to two advance increments within a period of six months preceding his retirement.

7. Vide impugned O.M. dated 24.07.2013, the additional pay granted to the petitioner vide O.M. dated 20.05.2013 was withdrawn. Furthermore, vide O.M. dated 01.08.2013, the petitioner's pay was re-fixed by excluding the advance increments that had been granted to him on 19.03.2010 and 30.05.2013. As mentioned above, two advance increments had been granted to the petitioner by M.D., O.G.D.C.L. on 19.03.2010, and two advance increments had been granted to him on 30.05.2013 for having been given the best employee award.

8. O.G.D.C.L.'s Executive Committee, in its meeting held on 18.07.2013, decided that necessary adjustments be made in the petitioner's pension since the service increments given to him were not permissible under the existing increment system. On 19.08.2013, the petitioner submitted a representation to M.D., O.G.D.C.L. protesting against the withdrawal of the increments and the re-fixation of his pay. Having not received any response to the said representation, the petitioner filed the instant writ petition. During the pendency of the instant petition, O.G.D.C.L.'s Board of Directors,

in its 179th meeting held on 22.01.2016, decided to annul the decision to make back dated recoveries from officers including the petitioner.

9. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that pension and retirement benefits are calculated on the basis of the last pay drawn by a retired employee; that the last pay drawn by the petitioner included the four annual increments as well as the additional pay; that such annual increments as well as the additional pay would be considered as a part of the petitioner's pay for the calculation/determination of his pension; that the increments and additional pay granted to the petitioner could not have been withdrawn after his retirement; that the petitioner played no role in the process for the grant of such increments and additional pay; that this fact has been duly acknowledged by O.G.D.C.L.'s Board of Directors in their 179th meeting held on 22.01.2016; and that the petitioner's basic pay including the advance increments on the date of the retirement was calculated by O.G.D.C.L. to be Rs.3,79,565/-, whereas after the withdrawal of the increments and additional pay, his pay was re-calculated to be Rs.2,63,583/-.

10. Learned counsel further submitted that since M.D., O.G.D.C.L. had been delegated the powers to grant increments to O.G.D.C.L.'s employees by O.G.D.C.L.'s Board of Directors, the grant of increments and additional pay to the petitioner did not suffer from any legal infirmity; and that respondent No.1 has not given any explanation as to how the grant of increments and additional pay to the petitioner was unlawful. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

11. On the other hand, learned counsel for O.G.D.C.L. submitted that vide O.M. dated 22.01.2013, the petitioner was assigned the charge of Manager (Technical) with effect from 01.01.2013 in addition to his own responsibilities and was compensated with the payment of dual charge allowance at the rate of 20% of his basic pay for a period of six months only; that such dual charge allowance could not have been considered as a part of the petitioner's substantive pay for the purpose of calculating his pension; that vide

O.M. dated 20.05.2013, O.G.D.C.L. corrected and modified the said O.M dated 22.01.2013 by treating the additional allowance as additional pay for a period of six months with effect from 01.01.2013; that additional charge was assigned to the petitioner under Regulation 10 of the Oil and Gas Development Corporation Employees (Service) Regulations, 1994 (**"the 1994 Regulations"**) under which additional remuneration not exceeding 20% of the basic pay can be granted with the approval of the appointing authority for a period not exceeding six months when an employee is given an additional charge; that after the petitioner retired on 23.06.2013, O.G.D.C.L. withdrew earlier Office Memoranda dated 22.01.2013 and 20.05.2013 through O.M. dated 24.07.2013; that the Office Memoranda dated 22.01.2013 and 20.05.2013 had not been withdrawn with retrospective effect; and that the additional pay drawn by the petitioner on the basis of the said Office Memoranda shall not be recovered from him.

12. Learned counsel further submitted that Regulation 14 of the Oil and Gas Development Corporation Pension and Gratuity Regulations, 1985 (**"the 1985 Regulations"**), provides the method for the calculation of pension; that under the said Regulation, pension is to be calculated on the basis of average monthly emoluments drawn by an employee during the last twelve months of his service; that Regulation 2(b) of the said Regulations defines *"emoluments"* to include basic pay, special pay, technical pay and officiating pay received by an employee; that the additional remuneration paid to the petitioner by virtue of Office Memoranda dated 22.01.2013 and 20.05.2013 for a period of six months only does not come within the meaning of *"emoluments"*; that O.G.D.C.L. had already shown generosity to the petitioner by not making any recoveries made from him; and that the procedure prescribed in the 1994 Regulations for the payment of increments had not been followed in the petitioner's case . Learned counsel for O.G.D.C.L. prayed for the writ petition to be dismissed.

13. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have

been set out in sufficient detail in paragraphs 2 to 8 above and need not be recapitulated.

14. Since the petitioner was employed in O.G.D.C.L. prior to the promulgation of the Oil and Gas Development Company Limited (Reorganization) Ordinance, 2001, he would be entitled to the protection under Section 5(1) of the said Ordinance, which is reproduced herein below:-

“5. Transfer of employees from the Corporation to the Company.-(1) All officers, workmen or other employees of the Corporation (hereinafter referred to as the employees) shall, as on the date of incorporation of the Company, be deemed to be employees of the Company on the same remuneration and other conditions of service, rights and privileges including, but not limited to, provisions as to the pension, provident fund and gratuity, if any, and other matters as were applicable to them before the conversion of the Corporation into Company.”

(Emphasis added)

15. The petitioner's terms and conditions of service with O.G.D.C.L. are governed by the 1994 Regulations. Regulation 51 of the said Regulations is reproduced herein below:-

“51. Grant of pre-mature increment:- (1) Competent authority may grant premature increments in the scale on the recommendations of the Head of Department. Such increment shall be granted once in a year.

(2) A pre-mature increment shall not affect in the date of normal increment.”

16. Learned counsel for O.G.D.C.L. admitted that the competent authority for the grant of pre-mature increment was M.D., O.G.D.C.L. The grant of two advance increments to five employees, including the petitioner had been approved by M.D., O.G.D.C.L. on 19.02.2010. After this approval, the petitioner's pay was re-fixed vide O.M. dated 16.04.2010, which included the two advance increments. As regards the two advance increments that had been granted to the petitioner in recognition of him being the recipient of the best employee award, the same were also approved by M.D., O.G.D.C.L. on 30.05.2013.

17. There is no written order or a decision by the Board or M.D., O.G.D.C.L. re-calling the decisions/approvals dated 19.02.2010 and 30.05.2013 regarding the grant of advance increments to the petitioner. The petitioner's pay was re-fixed, vide O.M. dated 01.08.2013, which was issued after his retirement. The calculations in this O.M. omit the advance increments that had been approved in

the petitioner's favour on 19.02.2010 and 30.05.2013. Learned counsel for O.G.D.C.L. could not explain the Court as to how the grant of the said advance increments was in violation of the 1994 Regulations.

18. In O.G.D.C.L.'s parawise/written comments, it had been pleaded *inter alia* that the petitioner, during his posting in the office of M.D., O.G.D.C.L., was *"driven by personal greed"* and *"invoked every trick which he thought would promote his personal interests at the cost and interests of the Respondent Company."* It was also pleaded that the petitioner had resorted to misrepresentations and concealment of material facts from the relevant authorities. The petitioner was also alleged to have used coercion when anyone resisted his illegal moves. In the said pleadings, the petitioner has been accused of maneuvering and misusing his position. More importantly in paragraph 3 of the written comments, it is pleaded *inter alia* that the petitioner had dishonestly gained the advance increments in his favour by misusing his position while posted at the Secretariat of M.D., O.G.D.C.L.

19. The aspersions cast by O.G.D.C.L. against the petitioner in the written comments were in bad faith. I have no doubt in holding so after going through the minutes of the 179th meeting of O.G.D.C.L.'s Board of Directors held on 22.01.2016. In the said meeting, it was resolved that the decision of back dated recovery made from the officers, including the petitioner, regarding advance/special increments be annulled *"as the officers were not involved in any manner in the process of approval and had not made any misrepresentation to obtain these increments."* This decision of O.G.D.C.L.'s Board belies the false imputations made by O.G.D.C.L. against the petitioner in the written comments. Public sector organizations ought to be careful in the selection of words employed in their written comments with respect to any contesting party. Pleadings in a *lis* become public documents and false insinuations against a party in such pleadings can defame and lower such a party in the estimation of all those who read such pleadings. The privilege with respect to pleadings must not be abused by any party. Unnecessary and false accusations like the ones made by O.G.D.C.L.

against the petitioner in the written comments must be met with the imposition of costs under Section 35(1)(iii) of the Code of Civil Procedure, 1908.

20. Since O.G.D.C.L.'s Board had taken a decision that the petitioner was not involved in any manner "*in the process of approval*" of the advance increments, it implies that the advance increments (which O.G.D.C.L. had not taken into account while calculating the petitioner's pension and re-fixing his pay) had been granted after due approval. Since with the grant of increments, an employee's basic pay is enhanced, non-consideration of the increments approved in the petitioner's favour on 19.02.2010 and 30.05.2013, while calculating his pension is declared unlawful. O.G.D.C.L. is directed to re-calculate the petitioner's pension by taking into consideration the advance increments that had been granted to him after the said approvals. In holding so, reliance is placed on the following case law:-

- (i) In the case of Dr. Habib-ur-Rehman Vs. Secretary to Government of Khyber Pakhtunkhwa (2018 PLC (C.S.) Note 110), advance increments paid to the petitioner on the basis of higher qualifications were being recovered after his retirement. It was held by the Division Bench of the Hon'ble Peshawar High Court that "*advance increments validly paid after a due process created valuable rights in favour of the petitioner*". In the said case, advance increments had been paid to the petitioner on the basis of the Finance Department's letter dated 22.07.1987 under which advance increments could be granted to doctors, who possessed or acquired a post-graduate degree in their relevant field for which they had not been allowed any qualification pay.
- (ii) In the case of Province of Punjab Vs. Pervaiz Iqbal (2004 SCMR 309), two advance increments were granted to the respondent on the basis of Finance Division's notification dated 01.08.1991 which allowed two advance increments to civil servants on improvement of their educational qualifications. These increments were sought to be withdrawn on the basis of the clarification given by the Finance Division on 08.07.1993.

The Punjab Service Tribunal and the Hon'ble Supreme Court concurrently held that the clarification could not be given retrospective effect and consequently no deduction could be made from the respondent for the increments received prior to the clarification.

21. As regards the grant of dual charge allowance to the petitioner vide O.M. dated 22.01.2013, it is not disputed that the petitioner had been assigned the charge of Manager (Technical) with effect from 01.01.2013 in addition to his own responsibilities. This allowance at the rate of 20% of his basic pay was granted for a period of six months only. The petitioner retired from service prior to the expiry of six months. Vide O.M. dated 20.05.2013, earlier O.M. dated 22.01.2013 was modified and the additional allowance granted to the petitioner was to be treated as "*additional pay*". The question that needs to be determined is whether this additional pay could form part of his substantive pay, and his pension be calculated accordingly.

22. Regulation 14(1) of the Oil and Gas Development Corporation Pension and Gratuity Regulations, 1985 is reproduced herein below:-

"Method of calculation of pension.- (1) Pension shall be calculated on the basis of the average monthly emoluments drawn by an employee during the last twelve months of his service, excluding the period of leave without pay and the period of suspension followed by reinstatement with forfeiture of pay not specifically declared at the time."

23. Since pension is to be calculated on the basis of the average monthly emoluments drawn by an employee of O.G.D.C.L. during the last twelve months of his service, it needs to be determined whether the additional pay given to the petitioner for a period of six months would come within the meaning of the term "*emoluments*". The term emoluments has been defined in Regulation 2(b) of the 1985 Regulations to include basic pay, special pay, technical pay and officiating pay received by an employee. If it was the intention of O.G.D.C.L. that the additional pay given to the petitioner for being assigned the charge of the Manager (Technical) to be treated as an emolument, it would have been specifically described in O.M. dated 20.05.2013 as one of the pays that came within the definition of the term "*emoluments*" in Regulation 2(b) *ibid*. This is moreso since

O.G.D.C.L. had amended its earlier O.M. dated 22.01.2013, whereby “*dual charge allowance*” had been granted to the petitioner for being assigned the charge of Manager (Technical). The additional pay which had been granted to the petitioner for a short period of six months only could not have been treated as a part of his substantive pay so as to be included in the calculation of his pension.

24. In view of the above, this writ petition is partly allowed; O.M. dated 01.08.2013 issued by O.G.D.C.L. is set-aside to the extent of non-inclusion of the annual increments approved by the competent authority in the petitioner’s favour on 19.02.2010 and 30.05.2013; and O.G.D.C.L. is directed to re-calculate the petitioner’s pension by taking into consideration the said increments approved in his favour. O.G.D.C.L. shall bear the petitioner’s costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON ____/2020

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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