

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE YAHYA AFRIDI
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL PETITION NO.405/2020

*(Against judgment dated 09.12.2019
passed by Lahore High Court
(Rawalpindi Bench) in Writ Petition
No.275/2018)*

National Saving Central Directorate,
Islamabad through its DG & another

...

Petitioner(s)

Versus

Muhammad Farooq Raja

...

Respondent(s)

For the Petitioner(s) : Molvi Ijaz ul Haq, DAG
Mr. Saghir Ahsan Farooqi, Joint Director
(CDNS)
Mr. Fareed Nasir, Law Officer, National
Savings

For the Respondent(s) : Mr. Zafar Mehmood Mughal, ASC

Date of Hearing : 02.11.2020

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ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J: - Civil petition seeking leave to appeal under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 against the judgment dated 09.12.2019 passed by Lahore High Court, Rawalpindi Bench in Constitutional Petition No.275/2018.

2. Brief facts of the case are that the respondent is born national of Pakistan who migrated to Denmark and as such at present he is permanent resident of Denmark while enjoying status of dual nationality. National Saving Centre Rawalpindi introduced a profit generating scheme under the title of "Bahbood Saving Certificate Scheme" (here-in-after referred to as) the "**Scheme**". Though it was a profit scheme, but with special emphasis for senior citizens attaining the age of 60 years or above

or widows unless, attains the status otherwise after re-marriage. The respondent deeming himself an eligible person to avail the benefits of said scheme invested rupees three millions in aforesaid scheme without any reservation at the part of the petitioner authority. The respondent continued to enjoy the benefit accrued to him in lieu of the purchase of scheme. As a consequent, he withdrew his monthly profit when it was intimated by the petitioner authority that the respondent was not eligible person to avail the benefits of said scheme on the basis of dual nationality. As a consequence, he was duly apprised by the petitioner authority to submit an application for irregular investment against the profit he already availed. It was further informed that the petitioner authority has transferred the amount of the respondent in regular profit scheme even without seeking any consent from him. The said avenue shown by the authority was agitated by the respondent with the petitioner authority; however, respondent was declined redressal of his grievance by the petitioner. The respondent being aggrieved readily approached "Wafaqi Mohtasib" with a complaint which was duly entertained and after due process it was acceded to in favour of the respondent. The direction issued by "Wafaqi Mohtasib" in favour of respondent proved futile exercise. Ultimately respondent had no other option, except to file constitutional petition before Lahore High Court, Rawalpindi Bench. The said constitutional petition was entertained and decided by learned Single Bench of High Court vide order dated 09.12.2019. The gist of the said order is that the respondent is declared to be an eligible person to avail benefit of the "Scheme". Being aggrieved by the order of learned Single Bench, the petitioner filed the instant petition before this Court.

3. At the very outset, it has been argued by the learned Deputy Attorney General that the scheme issued by National Saving Centre was

exclusively designed for a particular section of society. Contends that according to rule 5 of "Bahbood Saving Certificate Rules, 2003, twofold criteria was laid down which includes:-

- (i) Senior citizen aged 60 years or above.
- (ii) Widow if (she has not changed her status after re-marriage)

Contends that the sole purpose was to provide an incentive to those persons falling in these categories. Further contents that respondent never qualified to purchase the bonds and benefit accrued in consequence of the same as the respondent was disentitled due to his dual nationality. Finally argued that impugned judgment is not sustainable in the eye of law as the question of dual nationality was not discussed by the learned Single Bench. He sought leave against the order.

4. On the other hand, the contentions raised by the learned Deputy Attorney General are vehemently controverted by the learned counsel for the respondent. The crux of the arguments advanced by the learned counsel for the respondent is that primarily it was the duty of the petitioner to scrutinize all legal requirements prior to issuance of bonds enabling him to avail the benefits of the said scheme. Contends that at belated stage, the respondent cannot be deprived of the advantages of the said scheme which is hit by doctrine of promissory estoppel in all fairness and equity and as such any action at a belated stage by the petitioner is contrary to the dictates of justice.

5. We have heard the learned Deputy Attorney General as well as learned counsel for respondent and gone through the record.

There is no denial to this fact that the respondent being a national by birth is also holding nationality of Denmark, as a consequent he is enjoying status of dual nationality. National Saving Centre, Rawalpindi introduced profit generating scheme with high rate but it was

solely designed to provide a special relief to senior citizens and widows. The criterion laid down by the petitioner authority is clearly mentioned in rule 5 of "Bahbood Saving Certificate Rules 2003" duly framed by the Federal Government. Rule 5 is reproduced as under:-

"5. A certificate may be purchased by a single widow only."

Rule 5 was substituted vide notification No. F.12(1)DM-11/2003-243 dated 20th January, 2004 which is reproduced as under:-

"5. A certificate may be purchased by any of the following namely:-

- (a) A citizen of Pakistan aged sixty years or above: and*
- (b) A single widow so long as she does not re-marry."*

It was further substituted vide notification No. 25(1)GS-1/2005-1273 dated 23rd June, 2008 which reproduced as under:-

"A certificate may be purchased by any of the following citizens of Pakistan namely:-

- (a) a senior citizen aged sixty years or above.*
- (b) a single widow so long as she does not re-marry and*
- (c) two eligible persons as in clause (a) and (b) in their joint names:-*
 - (i) payable to the holders jointly or payable to either with the written consent of the other (joint class-A); and*
 - (ii) payable to either (Joint class-B)".*

It was further substituted vide notification No.25(1)GS-I/2020-1350 dated 1st August, 2011 and the words "Citizens of Pakistan" was inserted in clause (a). However, rule 8 deals with any profit or payment which have been made in contravention of these rules. Rule 8 is reproduced as under:-

"8. Any profit or payment which may have been made in contravention of these rules or by mistake shall be refunded to the Government on demand and in the event of failure to refund, may (in addition to other remedies for the recovery thereof by the Government) be deducted from any money payable by the Government to the person who received the profit or payment or from her estate, or be recovered as arrears of land revenue."

Rule 8 was substituted vide notification No. F.25(1)GS-I/2010-1350 dated 1st August, 2011 which is reproduced as under:-

“8. Any profit or principle payment which may have been made in contravention of these rules or by mistake shall be refunded to the Government in lump-sum and in the event of failure to refund the amount, shall be deducted from any money payable by the Government to the person who received the profit or principal payment. In case no money is payable by the Government to the person(s), (in addition to other remedies for the recovery thereof by the Government), the recovery shall be got effected from his or her or their estate, or be recovered as arrears of land revenue.”

The respondent under the impression that he is eligible to purchase bonds duly issued by the petitioner under the scheme applied for the same, in response to the acceptance shown by the petitioner, he invested an amount of rupees three millions in the said scheme as a bonafide claimant. The incentive arising out of the said investment was extended in favour of the respondent in accordance with the rules framed under “Bahbood Saving Certificates Rules 2003”. During smooth continuation of said scheme in favour of the respondent, on one fine morning, petitioner intimated respondent that now he cannot claim the privileges of scheme as during scrutiny of the record, it has transpired that according to rule 5 of “Bahbood Saving Certificate Rules 2003, he was ineligible to avail said scheme. He was further informed that authority of his own has converted the amount of three millions affixed under the scheme into regular investment even without the consent of the respondent. The respondent was further intimated to deposit the amount incurred out of the profit scheme till it was scrutinized that respondent was not competent to purchase the same because of dual nationality. The act of the petitioner was agitated by the respondent before the petitioner authority but it proved without any success. The respondent made a representation to “Wafaqi Mohatasib” for the redressal of his grievance. As a consequent, a direction was issued by the said office to the petitioner to resolve the issue of the respondent in accordance with law. The petitioner did not paid any heed to the direction issued by said office, hence, the respondent had no other

option, except to file constitutional petition against the petitioner for resolution of his grievance.

6. We have noticed that the petitioner was under incumbent duty to scrutinize the status of the respondent prior to issuing acceptance which has accrued a right in favour of respondent, any slackness at the part of the petitioner at belated stage cannot be burdened to the respondent and the same is hit by principle of locus poenitentiae. In a similar case reported as (PLD 1992 SC 207) “The Engineer-in-Chief Branch through Ministry of Defence, Rawalpindi and another Vs. Jalaluddin” this court while adjudicating the matter has held which is reproduced as under:-

“However, as the respondent had received the amount on the bona fide belief, the appellant is not entitled to recover the amount drawn by the respondent during this period when the letter remained in the field.... We consider that as far as the recovery of amount in question is concerned, the principle of locus poenitentiae would be applicable and the appellants are not entitled to recover the amount. The appellants have themselves taken a liberal view and the recovery of only 12 months is being made”

Otherwise the case of the respondent is also covered by section 24-A of General Clauses Act, 1897, which clearly reflect that once a right is accrued, the same cannot be withdrawn unless and until it is established that the scheme was obtained by practicing fraud or misrepresentation. Section 24-A of the General Clauses Act, 1897, is reproduced as under:-

“24-A. Exercise of power under enactments.—

- (1) *Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.*
- (2) *The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate give reasons for making the order or, as the case made be for issuing the direction and shall provide a copy of the order or as the case may be, the direction to the person affected prejudicially.”*

The contention of the learned counsel for the respondent that the doctrine of promissory estoppel is squarely applicable has force. It is well settled that where the Government control functionaries make promise which ensues a right to anyone who believes them and acts under them, then those functionaries are precluded from acting detrimental to the rights of such person/citizen. Otherwise the case of the respondent is also hit by doctrine of "legitimate expectation". Justice (Retired) Fazl Karim, in his book, "Judicial Review of Public Actions" at page 1365 has equated the aforesaid doctrine to the "fairness" and equity which is legitimate attribute of a public functionary. The relevant passage reads like this:-

"The justification for treating 'legitimate expectation' and 'promissory estoppel' together as grounds for judicial review is, one, that they both fall under the general head 'fairness'; and too, that 'legitimate expectation' is akin to an estoppel."

This very doctrine has a history of appreciation by this Court in a various judgments including (1986 SCMR 1917) "Al-Samrez Enterprise vs. The Federation of Pakistan" wherein it is held as under:-

"It is a settled rule that an executive authority cannot in exercise of the rule-making power or the power to amend, vary or rescind an earlier order, take away the rights vested in the citizen by law."

7. During the course of proceedings, it has been brought in our notice that the Ministry of Interior, Government of Pakistan (Directorate General of Immigration & Passports) has issued the list of 20 countries, the citizen of those countries mentioned in the said document are eligible to keep dual nationality without any deprivation of any legal rights under the protection of law of the land. Admittedly the respondent is citizen of Denmark which is marked at serial (19) in the list duly issued by the Ministry of Interior, Government of Pakistan and as such the respondent enjoys the facilitation of law. Otherwise it has been held by learned Single Bench of the High Court that the petitioner has already crossed the age

required of 60 years which otherwise make him eligible to seek advantage of the said scheme.

8. In view of the facts and circumstances narrated above, we are of the considered view that the case of the petitioner is without any legal substance. The findings of the learned Single Bench of Lahore High Court (Rawalpindi Bench) are quite in accordance with law. We do not find any merit in this petition which is accordingly **dismissed**. Leave to appeal is declined.

JUDGE

JUDGE

JUDGE

Islamabad, B-III
02.11.2020/*Athar
Approved for reporting