

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Irfan Saadat Khan

Civil Petition No. 982-K of 2023

Appeal against the Order dated
19.04.2023 passed by the High
Court of Sindh Bench at Sukkur in
C.P.No.D-1289 of 2022

Muhammad Yousaf

...Petitioner

Versus

Province of Sindh and others

...Respondents

For the Petitioner:

In-Person

For the Respondents:

Mr. Sagheer Abbasi, AAG
Mr. Hakim Ali Shaikh, AAG
a/w Ghulam Muhammad, Accountant
Local Government, Sukkur.
Mr. Khursheed Ahmed, Section Officer,
Finance Department
Sikandar Hassan, Chief Law Officer

Date of Hearing:

12.06.2024

JUDGMENT

MUHAMMAD ALI MAZHAR, J: This Civil Petition for leave to appeal is directed against the Order dated 19.04.2023, passed by the learned High Court of Sindh, Sukkur Bench, in Constitutional Petition No. D-1289 of 2022, whereby the constitution petition filed by the petitioner for the relief of pensionary benefits was dismissed.

2. According to the sequence of events narrated by the petitioner, he was initially appointed as a Sanitary Worker by the Sukkur

Municipal Corporation, *vide* Office Order dated 14.09.1993, on leave vacancy basis and his engagement was discontinued *vide* order dated 11.11.1992. However, he was re-appointed as a sanitary worker, on a permanent basis, in SMC, Sukkur, *vide* order dated 14.09.1993. On 23.05.2019, he was retired from service with effect from 28.02.2018 but as a matter of fact, his date of superannuation was 06.04.2019. It was further alleged that the absence of the petitioner with effect from 01.12.2015 to 11.01 2016 was beyond his control as during this period, he was lodged in Central Jail due to enmity in a false case registered under Section 506/2 of the Pakistan Penal Code, 1860. It is further contended that at least 811 earned leaves were at his credit which were not taken into consideration and the petitioner was deprived of his pensionary benefits without the issuance of any show cause notice or providing any right of audience, the same being a violation of relevant pension rules. The petitioner challenged the action of the departmental appeal in the Sindh High Court, Sukkur Bench, *vide* Constitution Petition No. D-1289/2022 but the petition was dismissed by means of impugned order.

3. The petitioner, in-person, argued that the High Court failed to consider, despite availability of record, that the petitioner was booked in a false criminal case and his own son was murdered. He was also confined in jail, and if his 811 earned leaves are taken into consideration or adjusted, there is no justification to deprive him of the pensionary benefits. He further argued that before forfeiting the service to make him disentitled of pension, neither any show cause notice was issued nor was any opportunity of hearing provided. He further addressed that the High Court ignored its own order dated 14.12.2022 which indicates that the advocate appearing for Sukkur Municipal Corporation stated that the calculation of pensionary benefits have been made and sent to the Auditor, Local Fund Audit Department, Government of Sindh, for verification, but no further action was taken.

4. The learned Additional Advocate General ("AAG") referred to the concise statement and argued that the petitioner remained absconded from duty since 28.02.2018 and his services were terminated on 23.05.2019 and thereafter he applied for early

retirement. He also referred to Rule 2.11 (c) of the West Pakistan Civil Service Pension Rules, 1963 ("**Rules**"), which is related to the "Forfeiture of past service" in case of absences from duty without leave. He also relied on Rule 1.8 (a) of the same Rules and argued that under this Rule good conduct is an implied condition of every kind of pension. It was further averred that the Government may withhold or withdraw a pension or any part of it if the pensioner is convicted of a serious crime or is found to have been guilty of grave misconduct.

5. Heard the arguments. According to the Rules, Rule 1.8 (a) articulates that good conduct is an implied condition of every kind of pension and the Government may withhold or withdraw a pension or any part of it if the pensioner be convicted of serious crime or be found to have been guilty of grave misconduct either during or after the completion of his service, provided that before any order to this effect is issued, the procedure regarding imposition of the penalty of removal from service shall be followed. In addition, thereto, under clause (b), it is provided that the Government reserves the right of recovery from the pension on account of losses found in judicial or departmental proceedings to have been caused to the Government by the negligence, or fraud of such Government pensioner during his service, provided that such departmental proceedings shall not be instituted after more than a year from the date of retirement of the Government pensioner. While according to clause (c), if the amount of pension granted to a Government servant is afterwards found to be in excess of that to which he is entitled under the rules, he shall be called upon to refund such excess. Whereas clause (d) provides that except with the previous sanction of the Provincial Government, no pensioner shall, within a period of two years from the date of his retirement, take part in any election or engage in political activity of any kind. It is further elucidated that in future all Civil Servants who are under enquiry be excluded from the enquiry proceedings under the Civil Servants (Efficiency and Discipline) Rules, 2020, after attaining the age of superannuation and they may be allowed full pensionary benefits as provided under the rules. However, it has further been decided that if some pecuniary loss caused to the Government is likely to be proved against a Government Servant who superannuates before

the decision of the case against him, an FIR should be lodged against him for judicial proceedings immediately after the date of superannuation and exclusion of his name from the departmental enquiry. Rule 2.11 of the same Rules is germane to the "Forfeiture of Past Service" wherein a Government servant forfeits his past service in the following cases: (a) resignation of a post unless it is to take up another post service which counts for pension; (b) removal or dismissal from service; (c) absence from duty without leave. An explanatory note is also appended to this Rule that "The authority which sanctions the pension may commute retrospectively periods of absence without leave into extraordinary leave". While Rule 2.7 relates to leaves wherein it is clearly provided that all leave (other than extraordinary leave) counts as qualifying service for purposes of pension.

6. According to the respondents, the service of the petitioner was forfeited due to absence from duty without leave, but it is also a ground reality which was not controverted that the petitioner already had 811 earned leaves at his credit which were not counted or adjusted which seems to be a violation of the aforesaid rules in which all leaves (other than extraordinary leaves) are to be reckoned as qualifying service for the purposes of pension. It is also an admitted position that the petitioner had performed his duty as a sanitary worker for 24 years, 05 months and 15 days while the threshold for pension entitlement is 25 years. A plea was taken by the respondent that the petitioner remained absent for 16 months. When we asked the learned AAG whether before taking this drastic action any show cause notice was issued to the petitioner; as according to the niceties of the aforesaid rules, before any order to this effect is issued, the procedure regarding imposition of the penalty of removal from service shall be followed, which in our view includes the issuance of the show cause notice, providing right of hearing and even holding of inquiry as may be required to be conducted. However, the learned AAG, on instructions, responded that no show cause notice was ever issued nor any right of personal hearing was afforded to the petitioner and the action was taken without any information or intimation to him.

7. Due process is a prerequisite that needs to be respected at all stratum. Right to fair trial is a fundamental right. In case of stringency and rigidity in affording this right, it is the function, rather a responsibility, of the court to protect this right so that no injustice and unfairness is done to anybody. The concept of natural justice is intended to restrain arbitrary actions within the bounds of upholding and protecting the supremacy of law. This fundamental principle is consistently and squarely applicable to the proceedings, whether judicial, quasi-judicial or administrative, except where the law specifically and unambiguously excludes its application in the peculiar facts and circumstances of the case. The solitary pragmatic importance of the rule of natural justice is to prevent injustice and miscarriage of justice, and ensure that justice is not only done, but is also manifestly and undoubtedly seen to be done. The learned High Court also did not advert to the crucial question that before taking such a drastic action, the petitioner was neither issued any show cause notice nor provided any right of hearing. Had the petitioner been provided the right to an audience and submit a reply, he could have presented valid reasons of his absence and claimed the adjustment of his 811 earned leaves as a matter of right permissible under the Rules. The learned High Court, in a slipshod manner, relied on the comments of the department and observed that the petitioner remained absconded from duty since 28.02.2018 and his services were terminated on 23.05.2019, and thereafter he applied for his early retirement but at the same time the learned High Court observed that the qualifying service for pension is 25 years, while the petitioner rendered 24 years, 05 months and 15 days, but nothing was said with regard to the adjustment of his 811 earned leaves on his credit which were quite enough to accommodate the situation.

8. According to Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"), to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen and (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law; (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and (c) no person shall be compelled to do that which the law does not require

him to do. In the case of Shahla Zia v. WAPDA (PLD 1994 SC 693), this Court held that the word "life" is very significant as it covers all facets of human existence. The word "life" does not mean, nor can it be restricted to, only vegetative or animal life or mere existence from conception to death. The word "life" includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. According to Article 3 of the Universal Declaration of Human Rights (UDHR), everyone has the right to life, liberty and security of person, while under Article 23, everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment; everyone, without any discrimination, has the right to equal pay for equal work; everyone who works has the right to just and favourable remuneration, ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection and everyone has the right to form and to join trade unions for the protection of his interests. In our view, right of accrued pension in accordance with law is also an integral part of one's lifeline for sustenance and salvation and after serving a long period, its denial without any lawful justification amounts to denying the right to life of a retired person who, on attaining the age of superannuation, solely depends on his pension for his livelihood as a source of income. The immensity of the expression "life" embedded in the Constitution under Article 9 has a manifold and multifarious understanding and interpretation, and it cannot be read in a restricted or limited sense, rather it should be read in its wholeness with all the fundamental rights, privileges, and obligations, and in case of any deprivation of lawful or accrued right, it amounts to cause serious impairment and defacement to the right to life.

9. In the case of Haji Muhammad Ismail Memon (PLD 2007 SC 35), this Court observed in paragraph 07 that it is a pathetic condition that Government servants, after having served for a considerable long period during which they give their blood and sweat to the department, had to die in a miserable condition on account of nonpayment of pension/pensionary benefits, etc. Thus, everyone who is responsible in any manner in delaying the case of such retired officers/official or widows or orphan children for the recovery

of pension/gratuity and G.P. Fund has to be penalized. In the end, this Court issued strict directions that all the Government Departments, Agencies, and Officers deployed to serve the general public within the limit by the Constitution as well as by the law shall not cause unnecessary hurdle or delay in finalizing the payment of pensionary/retirement benefits cases in future and violation of these directions shall amount to criminal negligence and dereliction of the duty assigned to them.

10. It is well-known that the catchword "pension" articulates the payment of a fix amount according to the scheme of pension in accordance with the law, rules and regulations or the pension scheme in vogue which is recompensed on a regular basis to a person on his superannuation. The foremost and predominant strength of mind is to afford and safeguard the economic refuge and shelter and recuperate old-age security. In general phenomena, the superannuation or stepping down is considered a second inning in which a retired person aspires to live up to his highly anticipated imaginings or dreams and devote time to his kith and kin and friends. After retirement, the timely payment of pension is considered as the main source of income for livelihood. Despite serving for a long time with sheer commitment, if the pensionary benefits are delayed or denied without any lawful justification or without assigning any reason or providing any opportunity of hearing, it would be a very sorry state of affairs, rather an appalling and deplorable situation for a person who performed his duties with utmost dedication and enthusiasm throughout his career but at the eve of his retirement, he is treated inhumanly, coldheartedly and gets nothing as done in this case, on the pretext of totally misconceived interpretation of some rule, even then, the pension could not have been denied without issuing show cause notice and providing opportunity of hearing to the petitioner. Quite the reverse, the unfortunate petitioner has been deprived of the pensionary benefits despite serving the department for at least 24 years, 05 months and 15 days without adjustment of his earned leaves.

11. The payment of pensionary benefits are protected under the law, rules and regulations even in the private sector, where the scheme of pension in vogue is according to the organizational/management

policy, so in all fairness, where the pension is payable, it is a vested right and not charity, alms or donation by the employer but a compensation of services rendered assiduously by giving blood, sweat, toil, and tears. It is time and again seen in Court in various cases that after serving for a long period, when a person reaches his superannuation and submits his papers for starting pension, instead of fulfilling the requirements and helping out the past employee, the department started raising unwarranted glitches or complications to delay the pensionary benefits resting on unmerited or trivial pretexts including financial crunch, which has nothing to do with a retired employee. Even the widows and orphans of retired employees are faced with such a terrible and disgraceful situation for the payment of family pension which is a right and not charity. On the contrary, the employer is bound to process the pension claim as soon as the pension papers are filed after fulfilling all the requisite formalities but due to inordinate delay, this Court shows displeasure and observed in the case of Haji Muhammad Ismail Memon (*supra*) that everyone who is responsible in any manner in delaying the case of such retired officers/official or widows or orphan children for the recovery of pension/gratuity and G.P. Fund has to be penalized. Under the exactitudes of pension rules and regulations, the concerned department is obligated to immediately process the pension papers without putting it on hold or throwing it in shelves for an unlimited period of time. At the same time, it is also the onerous duty and obligation of the head of the department/competent authority and all other persons in the department who are engaged in the completion process to keep a vigilant eye in order to ensure the swift payment of pensionary benefits without unreasonable delay for protecting and safeguarding the interest of the retired employees and their families. They should also remember that in the near future, they will also relish the flavor of retirement and file their own papers for pension and step into the shoes of retired employees. In the self-accountability process with the honest motto of not dragging the payment of pensionary benefits of others, the persons responsible in order to change the culture of making delays should maintain a clearheaded policy to complete the process for pension fairly within a sensible time. If a swift process really comes into fashion by means of their sincere efforts then hopefully, at the time of their retirement, they may not face the

same problems and hindrances that their past colleagues faces. As the saying goes, "as you sow, so shall you reap".

12. In the wake of the above discussion, while we were setting aside the impugned order of the learned High Court which does not reflect the correct exposition of law and has also failed to advert to cardinal points at issue, the learned AAG at this juncture came to rescue with other officers present in the Court and they jointly undertook and assured us that the case of the petitioner will be processed for grant of pension and within three weeks the payment will be made to him after adjustment of the 811 earned leaves and submit the compliance report to the Assistant Register of this Court at Branch Registry, Karachi, for our perusal in Chambers. This Civil Petition is converted into appeal and disposed of accordingly.

Judge

Judge

Judge

Karachi
12.06.2024
Khalid
Approved for reporting