

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, CJ
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 1477 OF 2019

(On appeal against the judgment dated 01.02.2017
passed by the Peshawar High Court, Peshawar in
Writ Petition No. 1588-P/2013)

Muhammad Siddique

...Appellant

VERSUS

Senior Executive Vice President, PTCL and others

...Respondent(s)

For the Appellant: In person

For the Respondents: Mr. Shahid Anwar Bajwa, ASC

Date of Hearing: 09.06.2021

...

JUDGMENT

SAYYED MAZHAR ALI AKBAR NAQVI, J.- Through this appeal by leave of the Court under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the appellant has called in question the judgment dated 01.02.2017 passed by the Peshawar High Court, Peshawar, whereby writ petition filed by him was dismissed.

2. Succinctly stated the facts of the matter are that the appellant was working as Senior Accounts Clerk (BPS-11) in the respondent department. Pursuant to introduction of Voluntary Separation Scheme (VSS), the appellant applied for the same. Considering his basic salary as Rs.7605/- per month, he was paid emoluments of Rs.198,8999/- vide letter dated 05.03.2008. At the time of final settlement, an amount of Rs.81,520/- was also recovered on account of outstanding house building advance. However, the appellant claimed that his last basic pay was Rs.8070/- and the emoluments should be calculated on the basis of this last pay. According to him, the outstanding amount of house building advance was Rs.77750/- instead of Rs.81520/-. Keeping in view the wrong calculation, he served grievance notice on 03.11.2008 upon the respondents but the same was

never responded. The appellant then filed petition before Labour Court, Peshawar, which stood dismissed vide order dated 27.05.2010. This decision was maintained by the Labour Appellate Tribunal vide judgment dated 06.06.2012 as also by the learned Peshawar High Court vide impugned judgment. Hence, this appeal by leave of the Court.

3. The appellant, who appeared in person, submitted that the learned courts below have misread the evidence and decided the matter in a hasty manner without deeply appraising the record; that according to Last Pay Certificate (LPC), his basic salary was Rs.8070/- but the courts below never taken into consideration this document; that he is put to loss of Rs.465/- per month in pension, thus a valuable right has been accrued in his favour; that he had availed house building loan of Rs.77,520/- but the department has wrongly deducted Rs.81,520/- thereby putting him to financial loss of Rs.4000/-.

4. On the other hand, learned counsel for the respondents mainly contended that there are concurrent findings of three courts below against the appellant and that the claim of the appellant is false and he does not deserve any relief by this Court.

5. We have heard the appellant in person and learned counsel for the respondents at some length and have perused the record.

6. It appears from the record that the department had introduced Voluntary Separation Scheme somewhere in November, 2007. The appellant applied for the same and vide letter dated 21.01.2008, the appellant was asked to complete the requisite documents by 25.01.2008. After completing all codal formalities, he was paid the emoluments vide letter dated 05.03.2008 considering his basic pay as Rs.7605/- per month. We have perused two documents available on record. One is Last Pay Certificate (LPC) dated 29.03.2018 (Exh.PW2/5) and Initial Pay Slip dated 28.02.2008 (Exh.PW-2/4). Both these documents clearly show that at the relevant time, the basic pay of the appellant was Rs.8070/-. The appellant has also produced on record an email dated 09.03.2008 (Ex.PW-2/5), written by Manager HR, Peshawar to General Manager, PTCL, which was to the effect that according to service book, the basic pay of the appellant was Rs.8070/-. The learned courts below while refusing the claim of the appellant put much stress on the point that while appearing as PW-3, he had admitted during cross-examination that his basic salary was Rs.7605/- per month. However, in view of the aforesaid documents available on

record, which clearly show that at the relevant time the basic salary of the appellant was Rs.8070/-, the oral statement of appellant has no force and the same cannot be used against him to deprive him of his valuable rights. The appellant has admitted before us that at the time of cross-examination, he inadvertently mentioned his basic salary as Rs.7605/- and later on he tried to rectify his mistake by placing reliance on the aforesaid documents but these documents were never taken into consideration by the courts below. There is a well known dicta that 'a man can tell a lie but a document cannot'. If a person has or has been bestowed some legal right and he omitted to claim such legal right through oral assertion but the best documentary evidence of which the case in its nature is susceptible is found in his favour then the documentary evidence in favour of a person should be given credence. When we confronted learned counsel for the respondents with this aspect of the matter, he candidly conceded that as only a difference of approximately Rs.450/- per month in the pension and an amount of Rs.47000/- in the commutation would occur, he would not oppose the claim of the appellant. So far as the difference of Rs.4000/- in the house building loan amount is concerned, learned counsel for the respondents also frankly conceded that since it is a meager amount, he will not oppose the claim of the appellant.

7. For what has been discussed above, this appeal is allowed and the impugned judgment is set aside. The respondent department is directed to recalculate the monthly pension and the amount of outstanding house building advance of the appellant in the light of this judgment and pay the difference to the appellant within a period of one month.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
9th of June, 2021
Not Approved For Reporting
Khurram