

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan

Civil Appeal No.527 of 2020

[Against the judgment dated 18.06.2019, passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Writ Petition No.785 of 2014]

The Controller Military Accounts (Pension)
Lahore Cantonment and others.

...Appellants (s)

Versus

Muhammad Sabir (deceased) through L.Rs. *...Respondent(s)*
and others.

For the Appellant(s) : Mr. Ayaz Shaukat, Deputy
Attorney General for Pakistan
Imtiaz Ahmed, Assistant Accounts
Officer

For the Respondent(s) : Malik Muhammad Asghar (son of
(Legal Heirs) Muhammad Sabir, deceased)

Date of Hearing : 03.12.2020

ORDER

Gulzar Ahmed, CJ.— Respondent No.1, Muhammad Sabir (**the Respondent**), was a reservist in the Pakistan Army and was discharged. He was being paid special pension payable to reservists as per the Pension Regulations of Armed Forces. The Federal Government issued Office Memorandum dated 01.07.1988, by which the minimum pension was fixed at Rs.300/- per month. Through a further Office Memorandums dated 02.07.2008, the minimum pension was increased to Rs.2,000/- per month, then to Rs.3,000/- per month from 05.07.2010 and to Rs.5,000/- per month from 16.07.2013. The minimum pension was not allowed to the respondent, who then filed a writ petition in the Lahore High

Court, Rawalpindi Bench (**the High Court**) claiming that he was entitled to be paid the minimum pension. The High Court, by the impugned judgment dated 18.06.2019, allowed the writ petition and directed the appellants to pay the minimum pension to the respondent and set aside the Notifications dated 27.05.1989, 14.11.2008 and 09.07.2009 denying the minimum pension to the respondent.

2. We have heard the learned Deputy Attorney General for Pakistan (**the DAG**) so also Malik Muhammad Asghar, son of Muhammad Sabir, the deceased respondent.

3. The learned DAG has contended that the respondent, being a reservist, was not entitled to payment of the minimum pension for the reason that a reservist is not a regular Armed Forces Personnel, rather is a reserve whose service can be called upon by the Army if and when required. During the period a reservist's service is not required, he is entitled to engage himself in any service for his monetary gain. He has further contended that the reservists are persons, who do not have active qualifying service for pension and are therefore, granted special pension at a fixed rate provided in the Pension Regulations.

4. On the other hand, Malik Muhammad Asghar, son of the deceased respondent, has supported the impugned judgment.

5. It is noted that the Federal Government, under Section 176-A of the Pakistan Army Act 1952, has issued the Pension Regulations for Armed Forces and such Pension Regulations have been updated, corrected and amended from time to time.

6. The respondent was discharged as a reservist in or about 1973. He was issued a Pension Book, where the class of

pension was noted as "Proportionate SPR". The respondent continuously received such pension along with increases granted by the Federal Government from time to time. Through Office Memorandum dated 01.07.1988, the Federal Government directed that with effect from 01.07.1988 no gross pension of a retired government employee, including those paid from Defence Services Estimates as sanctioned under the Rules would be less than Rs.300/- per month. The Federal Government also issued Office Memorandums dated 02.07.2008, 05.07.2010 and 16.07.2013 by which the minimum pension of the government employees and those paid from Defence Services Estimates were increased to Rs.2,000/-, Rs.3,000/-, Rs.5,000/-per month respectively.

7. The Controller Military Pensions addressed a letter dated 03.12.2013 to the Chief Postmaster (Pension), Rawalpindi, GPO that a special pensioner cannot be granted the minimum pension announced by the Government from time to time as per the clarification issued by the Military Accountant General's letters dated 27.05.1989, 14.11.2008 and 09.07.2009. A perusal of the above mentioned letters of the Controller Military Pensions shows that special reservist pensioners drawing a special pension have been excluded from being paid the minimum pension as sanctioned by the Federal Government. Not much of a reason has been given as to why such minimum pension is not admissible to the special reservist pensioners drawing special pension. The Controller of Military Accounts in his report filed in the High Court has given the following reason for non-payment of the minimum pension to the reservists:-

"It is submitted that Special Pension is granted to those individuals who do not complete the service limit prescribed

for the rank and discharge from service before completing the 15 years colour service. Such individuals are placed on reserve liability and discharged on completion of reserve period. As per para 5 of the New Pension Code such individuals are entitled for grant of fixed rates of Special Pension when they are discharged on completion of more than 15 years, colour + Reserve Service. Copies of page No. 29 and 30 of New Pension Code are enclosed as per Annexure "B". The same rules have been incorporated in Pension Regulation Vol-I 1986, 1999 and 2010. Copy of rule 65 of pension Regulation Vol-1 2010 is enclosed as per Annexure "C".

It is submitted that the minimum pension is admissible to those pensioners who complete the service limit prescribed for the rank, therefore, the reservist pensioners are not at par, hence not entitled for minimum pension as per clarification of the MAG Rawalpindi issued vide letter No. AT/Pen/3336-VI dated 27-05-1989 (page 26 of the writ petition). It is further submitted that the claim for grant of Special Pension is submitted by the executive i.e. commandant of concerned Record Wing duly signed by the individual, wherein he requests for grant of Special Pension."

8. A copy of the Pension Code has been attached with the report as Annexure 'B' and Item 5 thereof provides for Service Qualifying for Pension. Clauses (d) & (e) thereof deal with the reserve service, which are as follows: -

(d) One-half of a reserve service will count as pensionable service in the case of persons recalled to colours or called up for Active Service.

(e) A person discharged from the Reserve, after a prescribed period at combined Colour/Active and Reserve qualifying service of not less than 15 years, will be eligible for a special pension at the following rates:

(i) Those who are recalled [**released**] from Reserve without having drawn pay in the revised scales effective from 1-12-1962.

Sepoy	)	& equivalent ranks	=Rs.10/- P.M.
Naik	)	in the Navy and Air Force	=Rs.13/-
Hav	)		=Rs.15/-
J.C.O	)		=Rs.25/-

(ii) Those who are released from Reserve after having drawn pay in the revised scales of pay effective from 1-12-62.

Sepoy	)	& equivalent ranks in	=Rs.20/- P.M.
Naik	)	the Navy and Air Force	=Rs.25/-
Hav	)		=Rs.30/-
J.C.O	)		=Rs.50/-

NOTE: Para 5 (d) & (e) modified vide Ministry of Defence No. F. 383/D.45/69 dated 10-9-1969.

When the qualifying service is 10 years or more but less than 15 years, a proportionate pension based on the above rates will be admissible.

NOTE: (i) Reserve Service not involving periodical training will not reckon as pensionable service.

(ii) Reserve Service not preceded by Colour Service without a break will not reckon as pensionable."

9. The above portion of the Pension Code shows that reservists are paid a special pension, the rate of which has been fixed in the Code itself. It also provides that where qualifying service is 10 years or more but less than 15 years, a proportionate pension based on the rates will be admissible.

10. The High Court, in the impugned judgment, has proceeded to consider the case on the basis that the Office Memorandums issued by the Federal Government does not distinguish the class of pensioners, who are to be granted minimum pension and noted that the sanction of the Federal Government of minimum pension is for all classes of pensioners, without any discrimination. The High Court also noted that the appellants were not competent to vary or modify the decision of the Federal Government by interpretation or clarification. In the case of I.A. Sharwani and others vs. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041), a five member bench of this Court on the question of reasonable classification held that "*equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike*". The Court further held that "*in order to make a classification reasonable, it should be based upon an intelligible differentia, which*

distinguishes persons or things that are grouped together from those who have been left out; that the differentia must have rationale nexus to the object sought to be achieved by such classification".

11. On the basis of this authority, we note that the very Pension Regulations of the Armed Forces has created a class of reservist pensioners and this class of reservist pensioners has been created on the basis that one-half of a reserve service will be counted as pensionable service in case of a person recalled to the colours or called up for active service and a person discharged from the reserve after a prescribed period of combined colour/active and reserve qualifying service of not less than 15 [10] years will be eligible for a special pension at the rates mentioned therein.

12. The Pakistan (Army and Air Force) Reserves Act, 1950, provides for the creation of a Division of reserve force in the Pakistan Army. By Section 6, the Federal Government has been given the power to make rules to carry out the purposes of the said Act, including providing for the constitution of, and the appointment or transfer of any person as a reservist to the reserves, to regulate the pay and allowances of a reservist, and to provide for and regulate the gratuities or compensation, if any, to be paid to reservists or any category of reservists or to any dependents of reservists. Pursuant to the said Act, the Pakistan Army Reserves Rules, 1974 were made. Rule 3 of the rules provides that all the reservists other than Junior Commissioned Officer shall be subject to the Pakistan Army Act, 1952 and the rules and regulations made thereunder only when called up by the competent authority for service in the Army or for training. Rule 11

thereof deals with the pay and allowance during training and recalled Army service and provides that pay and allowances to which a reservist is entitled shall be admissible from the date on which he leaves his place of residence or employment for the place of training or duty up-to the date of his return to his residence or place of employment on completion of duty or training, provided that he has no entitlement of pay and allowances for the period of the journey from the other source, Government or Semi-Government.

13. The Pension Book of the respondent, a copy of which is filed with the writ petition, shows the class of pension of the respondent as "*proportionate SPR*" and having the rank of *sepoy*, he was paid proportionate pension of the rate fixed in the above Code. Now, a pensioner whose class is that of a fixed rate and that too proportionate of a fixed rate will at all admit of a class of pensioners, who are allowed minimum pension. The law does allow classification of pensioners into different groups with different amounts of pensions admissible to the respective groups. The condition, as in respect of government employee, is that it should be so determined by statute, rules or regulations duly made by the competent forum. We see from the Army Pension Code, which is admittedly made as Regulations under Section 176-A of the Army Act, 1952 that the reservist is a separate class or group of Army Pensioners. The main reason for this classification is that the reservists are paid fixed rated pension as fixed by the Army Pension Code, whereas the remaining classifications are of those, who are Retiring Pensioners, Invalid Pensioners, Superannuation Pensioners and Compensatory Pensioners and their pensions are

not provided for in the Army Pension Code to be fixed rated, rather their pensions are counted on their having qualifying period of service and last pay drawn etc.. Thus, the classification of reservist pensioners is quite distinct from other classes of pensioners in the Army.

14. Now, we come to deal with the question of whether reservist pensioners of Army could be allowed minimum pension. As noted above in the Army Pension Code, reservists are fixed rated pensioners. The word "rate" is used in Item 5 of the Code and the rates of pensioners are also mentioned against the ranks. The Four Office Memorandums issued by the Federal Government providing for minimum pensions are as follows: -

"Finance Division O.M. No.F-9(12) Reg.(6)/88(A) dated 01.07.1988

"The President has been pleased to direct that with effect from 01.07.1988 no gross pension of a retired government employee, including those paid from Defence Services Estimates as sanctioned under the Rules would be less than Rs.300/- per month.

Finance Division O.M. No. F.15(1)-Reg.6/2008 dated 02.07.2008

"The undersigned is directed to refer to Finance Division's O.M. No.9(12)-Reg.6/88-(A) dated 01.07.1988 on the subject cited above and to state that the President has been pleased to sanction with effect from 1st July, 2008 the increase in minimum pension from Rs.300/- p.m. to Rs.2000/- p.m. to civil pensioners of the Federal Government including civilians paid from Defence Estimates as well as Armed Forces Personnel."

Finance Division O.M. No. F.15(1)-Reg.6/2010/777 dated 05.07.2010

"The undersigned is directed to refer to Finance Division's O.M. No.15(1)-Reg.6/2008 dated 02.07.2008 on the subject cited above and to state that the President has been pleased to sanction with effect from 1st July, 2010 the increase in minimum pension from Rs.2000/- p.m. to Rs.3000/- to civil pensioners of the Federal government including civilians paid from Defence Estimates as well as Armed Forces Personnel."

Finance Division O.M. No. F.15(1)-Reg.6/2010-1375 dated 16.07.2013

"The undersigned is directed to refer to Finance Division's O.M. No.15(1)-Reg.6/2010 dated 05.07.2010 on the subject cited above and to state that the President has been pleased

to sanction with effect from 1st July, 2013 the increase in minimum pension from Rs.3000/- p.m. to Rs.5000/- to civil pensioners of the Federal government including civilians paid from Defence Estimates as well as Armed Forces Personnel."

The first of the above quoted Office Memorandum dated 01.07.1988, specifically provides that "no gross pension of a retired government employee, including those paid from Defence Services Estimates as sanctioned under the Rules would be less than Rs.300/- per month". The remaining three Office Memorandums dated 02.07.2008, 05.07.2010 and 16.07.2013, as they read, have been issued in continuation of the first Office Memorandum because they specifically and respectively make reference to the earlier Office Memorandum. This means that the condition or conditions mentioned in the first Office Memorandum have to be read in the remaining three Office Memorandums. This is also so because the subject of the first Office Memorandum was "minimum pension" and the remaining three Office Memorandums also deal with the same subject i.e. "minimum pension". This interpretation is in accord with the principle of interpretation of statutes in *pari materia* and in Crawford: the Construction of Statutes (1940) at pages 433-434 has dealt with it as follows: -

"The rule which thus allows the Court to resort to statutes in *pari materia* finds its justification in the assumption that statutes relating to the same subject matter were enacted in accord with the same legislative policy; that together they constitute a harmonious or uniform system of law; and that, therefore, in order to maintain this harmony, every statute treating the same subject matter should be considered. As a result, statutes in *pari materia* should not only be considered but also construed to be in harmony with each other in order that each may be fully effective. They are to be construed together as if they constituted one act."

Read on this established rule of interpretation, the foremost thing that catches our attention is that the first Office Memorandum has its application to a retired government

employee, including those paid from Defence Services Estimates. The words "including those" in this Office Memorandum cannot be given any extended meaning but to be construed *ejusdem generis* i.e., those paid from Defence Services Estimates will not be anyone but a retired employee paid from Defence Services Estimates. Thus, the first Office Memorandum has its application to retired government employees and retired employees paid from Defence Services Estimates and same is the effect of the remaining three Office Memorandums. The respondent, in para-4 of the writ petition, has admitted that he was discharged as a reservist and that he was granted special pension of Rs.40/- per month. The respondent has nowhere alleged that he was a retired employee paid from Defence Services Estimates. Being not a retired employee, the four Office Memorandums have no application to the respondent and the respondent is not entitled to the grant of a minimum pension as prescribed by the said four Office Memorandums and subsequent Office Memorandums issued on the same subject.

15. We also note that the respondent, being a fixed rated pensioner, was not entitled to the minimum pension, for that, the scheme of minimum pension does not fit, in the scheme of fix rated pension. We also note while announcing minimum pension by the Office Memorandums, the Federal Government did not change or alter the fixed rates of pensions of reservists as prescribed by the Army Pension Code. As from time to time the Army Pension Code has been amended by the Federal Government and the last mentioned amendment appears to have been made in 2010, where

Army Reservists are shown to be entitled to fix rate of special pension.

16. We also note that reservists comprise of reserve forces created by the Pakistan (Army and Air Force) Reserves Act, 1950 with their rules of service by the name of the Pakistan Army Reserve Rules, 1974. The Reserve Force of the Pakistan Army is a distinct force from the regular Pakistan Army Force created under the Pakistan Army Act, 1952. This narration itself shows that a reservist or Reserve Force is a distinct class of force from that of a regular Pakistan Army Force.

17. The High Court in the impugned judgment has not considered the matter in the light of the above mentioned applicable facts and laws and thus, passed the judgment, which is not sustainable in law. Consequently, the appeal is allowed and the impugned judgment is set aside. The writ petition filed by the respondent is dismissed.

CHIEF JUSTICE

Bench-I
Islamabad
03.12.2020
APPROVED FOR REPORTING
Rabbani*/

JUDGE

Announced in open Court on 1st April, 2021

CHIEF JUSTICE