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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(AER)

CIVIL APPEAL NO.31 OF 2020.

*(Against the order dated 13.03.2018 passed by
the Federal Service Tribunal, Islamabad in M.P.
No.2271 of 2017 in Appeal No.1813(R)CS of
2012).*

Chairman Pakistan Ordnance Factories Board,
Wah Cantt.

...*Appellant(s)*

Versus

Shahzad Amin and others.*Respondent(s)*

For the Appellant(s): Mr. Haseeb Shakoor Paracha, ASC.

For Respondent No.1: Mr. Zaheer-ud-Din Babar, ASC.

Date of Hearing: 16.02.2021.

JUDGMENT

IJAZ UL AHSAN, J.- This appeal by leave of the Court arises out of an order of Federal Service Tribunal, Islamabad dated 13.03.2018 (*"the Tribunal"*). Through the impugned order, the Tribunal directed the Appellant to proceed in the matter in accordance with the provisions of Regulation 371-A of the Civil Service Regulations ("CSR") and finalize the issue of pensionary benefits to the Respondent within a period of three months in accordance with Rules regulating pensionary benefits of civil servants.

2. Briefly stated the facts necessary for disposal of this appeal are that Respondent No.1 was appointed as SS-II

in Pakistan Ordnance Factories ("POF") Wah Cantt on 29.03.1997. He was promoted as SS-I in 2000 and SKD in 2007. Subsequently, he absented himself from duty on 20.05.2011 onwards. According to the Respondent, he had met with an accident and was unable to perform his duty. However he was dismissed from service vide order dated 20.02.2012. His departmental appeal did not succeed. He filed a Service Appeal bearing No.1813(R)CS of 2012 and sought reinstatement in service with all back benefits. Vide judgment dated 13.07.2015, the appeal was partly allowed by the Tribunal to the extent that penalty of dismissal from service was converted into compulsory retirement. The reason recorded for conversion of the penalty of dismissal from service to compulsory retirement was that he had rendered 13 years of service and that in his previous service he had not been punished or subjected to disciplinary proceedings at any stage. On the basis of such facts, the Tribunal came to the conclusion that the penalty was excessive and harsh compared to the gravity of the offence.

3. The Respondent approached the Appellant for his pensionary benefits in line with judgment of the Tribunal dated 13.07.2015. He was informed that he was only entitled to gratuity in the sum of Rs.124000/- which was paid to him. The Respondent however claimed that he was also entitled to pension in view of the fact that he had 13 years service to his credit. On being declined such relief, the Respondent approached the Tribunal by way of filing a Miscellaneous

Petition bearing No.2271 of 2017 which was disposed of vide impugned order dated 13.03.2018 in the terms noted above.

4. Leave to appeal was granted by this Court on 14.01.2020 in the following terms:

"The learned counsel for the petitioner submits that the direction by the Service Tribunal for finalizing the issue of pensionary benefits in favour of respondent No.1 is based on misapplication of Regulation 371-A of Civil Service Regulations. He submits that though the Tribunal through its judgment had converted dismissal from service of respondent No.1 into compulsory retirement and in pursuance thereof, the petitioner has paid to respondent No.1 the gratuity amount of Rs.1,24,000/- . However, since he has not completed 25 years of service, therefore was not entitled to any pensionary benefits and such could not be granted to him, whereas Regulation 371-A ibid is/was of no avail to the respondent as he never served as temporary or officiating employee which service could be put to his account. He further submits that respondent No.1 has served the petitioner board only as a permanent employee and that too for twelve (12) years and, therefore, could not avail the benefit of Regulation 371-A ibid. The contentions raised need consideration. Leave is accordingly granted. Issue notice to the Respondents."

5. Learned counsel for the Appellant has submitted that the judgment of the Tribunal dated 13.07.2015 had fully been complied with in view of the fact that the Respondent was not entitled to any pension. He maintains that qualifying service for entitlement to receive pension is 25 years. He therefore maintains that the Tribunal acted illegally and without jurisdiction in directing that case of the Respondent for grant of pensionary benefits be processed within a period

of three months. He further maintains that such order could not have been passed pursuant to a miscellaneous petition. Even otherwise, Regulation No.371-A of CSR was wrongly relied upon by the Tribunal while passing impugned order.

6. The learned counsel for the Respondent on the other hand has defended the impugned order. We have heard the learned counsel for the parties and gone through the record. The facts narrated above are admitted between the parties. We have asked the learned counsel for Respondent to show us any provision of CSR which entitles an employee who has rendered only 13 years of service to receive pension. We have also gone through the provisions of Regulation No.371-A of CSR find that they contain no mention of payment of pension to an employee who has rendered only 13 years of service for receiving pension. The learned counsel for the Respondent has also not been able to rebut that qualifying service for receipt of pension is 25 years which qualifying service had not been rendered by the Respondent. Regulation No.371-A of CSR lays down as follows:

"Notwithstanding anything contained in Article [355(b), 361,] 368, and 371 of these Regulations, temporary and officiating service, in the case of Government servants who retired on or after the 1st January, 1949, or who joined service thereafter, shall count for pension according to the following rule:

- i) Government servants borne on temporary establishment who have rendered more than 5 years continuous temporary service shall count such service for the purpose of pension or gratuity excluding broken periods of temporary service, if any, rendered previously and*

ii) temporary and officiating service followed by confirmation which does not qualify for pension under the rules in this section shall also count for pension or gratuity subject to the exclusion of the broken periods of temporary or officiating service, if any."

7. It is clear and obvious from a plain reading of the Regulation in question that it neither provides for payment of pensionary benefits to a person who has rendered service for 13 years nor does it contain any provision that a person who has rendered less than the qualifying service may be entitled to receive pension. We are at a loss to understand how the Tribunal came to the conclusion that the Respondent's case fell within the parameters of Regulation No.371-A of CSR having more than 10 years of service and was therefore entitled to pension. The said conclusion is not only unsupported by the record but also by the Regulation that the Tribunal relied upon to grant relief to the Respondent. Having come to the conclusion that the minimum qualifying service for receipt of retirement benefits is 25 years and Regulation No.371-A of CSR was not attracted to the case of the Respondent. We are in no manner of doubt that the impugned order of the Tribunal is unsustainable on facts as well as law. We have, therefore, no hesitation to set aside the same.

8. For reasons recorded above, we allow this appeal and set aside the impugned order of the Tribunal dated 13.03.2018 and hold that by way of payment of gratuity in the sum of Rs.124,000/- the earlier judgment of the Tribunal dated 13.07.2015 stood implemented and the Appellant was

under no obligation to make any further payment to the Respondent.

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ISLAMABAD.

16.02.2021.

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'Not Approved For Reporting'