

46/21

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED, HCJ.
MR. JUSTICE IJAZ UL AHSAN.

(AFR)
Civil Appeal No.1237 of 2020

Against judgment dated 24.02.2020 of Lahore High Court, Bahawalpur Bench, Bahawalpur, passed in Writ Petition No.775 of 2019-BWP.

Province of Punjab through Secretary, Finance Department, Civil Secretariat, Lahore etc

...Appellant(s)

VERSUS

Atta Muhammad Zafar

...Respondent(s)

Civil Petition No.912 of 2019

Against judgment dated 17.01.2019 of Punjab Service Tribunal at Faisalabad, passed in Appeal No.519 of 2018.

Surriya Begum Qureshi

...Petitioner(s)

VERSUS

Secretary to Government of Punjab,
Finance Department, Lahore, etc

...Respondent(s)

For the Appellant(s):

Mr. Qasim Ali Chohan, Addl.AG, Pb.
Mian Zahid, Law Officer, FD, Pb.
Abdul Rauf, DS, FD, Pb.

For the Petitioner(s):

In person a/w her husband.

For the Respondent(s):

Mr. Qasim Ali Chohan, Addl.AG, Pb.
Mian Zahid, Law Officer, FD, Pb.
Abdul Rauf, DS, FD, Pb.
(in CP#912 of 2019)

Mr. M. Ozair Chughtai, AOR/ASC
(via video link from Lahore in CA#1237 of 2020)

Date of Hearing:

14.04.2021.

J U D G M E N T

IJAZ UL AHSAN, J- Through this single judgment, we propose to decide Civil Appeal No.1237 of

2020 (filed by Province of Punjab through Secretary, Finance Department, Lahore, etc) and Civil Petition No.912 of 2019 (filed by Surriya Begum Qureshi) as common questions of law arise in both matters. For the sake of convenience, the facts of Civil Appeal No.1237 of 2020 will be used to explain the factual background of the controversy, as the legal questions involved in both matters are identical.

2. Civil Appeal No.1237 of 2020 by leave of the Court arises out of a judgment of Lahore High Court, Bahawalpur Bench, Bahawalpur dated 24.02.2020. Through the impugned judgment, while allowing a Constitutional Petition (W.P.No.775-BWP of 2019) filed by the Respondent (Atta Muhammad Zafar) orders dated 11.01.2019 and 17.01.2019 passed by the Appellants were declared to be illegal and without lawful authority and were thus set aside.

3. Briefly stated the facts necessary for disposal of this *lis* are that the Respondent (Atta Muhammad Zafar) had challenged an order dated 11.01.2019 passed by the Appellants whereby his representation for grant of 20% increase in pension from 01.07.2009 and another 20% increase in pension from 01.07.2010 was declined. It appears that the Respondent retired from service on 30.11.2001. The Government of Punjab announced an

increase in pension, vide notification dated 25.09.2009 which was amended on 30.03.2013 whereby the pensioners retiring on or before 30.11.2001 were given increase in pension @ 20% while the pensioners retiring after 01.12.2001 were to be granted the said increase in pension @ 15%. The Respondent also sought benefit of notification dated 15.07.2010 whereby the pensioners retiring before 01.12.2001 were awarded increase in pension @ 20% while for the pensioners retiring after 01.12.2001 the increase in pension was granted @15%. The learned High Court through the impugned judgment dated 24.02.2020 allowed the Constitutional Petition and granted the relief prayed for by declaring the orders dated 17.01.2019 passed by the Appellants as illegal and without lawful authority.

4. Similar orders were passed in the case of Surriya Begum Qureshi (*petitioner in Civil Petition No.912 of 2019*) by the Secretary, Finance Department, Government of the Punjab, Lahore (*Respondent No.1 in Civil Petition No.912 of 2019*) which were challenged before the Punjab Service Tribunal (*"the Tribunal"*) by way of filing a Service Appeal bearing No.519 of 2018. However, the Tribunal refused to grant relief and upheld the order of Respondent No.1 declining increase in pension to the petitioner @ 20%.

5. The Government of Punjab was aggrieved of the judgment of the Lahore High Court dated 24.02.2020 and approached this Court by way of a Civil Petition (CPLA No.873-L of 2020) in which leave to appeal was granted vide our order dated 17.12.2020 in the following terms:-

"Learned Additional Advocate General, Punjab contends that the respondent was a civil servant and the very writ petition filed by him in the Lahore High Court was barred by Article 212 of the Constitution. Further contends that in terms of Revision of Basic Pay Scales and Fringe Benefits of Civil Employees (BS 1-22) of the Punjab Government issued by the Finance Department, Government of the Punjab on 22.10.2001, the respondent has opted for the Scheme of the Revision of Basic Pay Scales, Allowances and Pension, 2001, which provides mechanism for increase of pension and thus, the respondent was not entitled to increase in the pension granted vide Finance Department's Notification dated 25.07.2009 and 30.03.2013. Learned AAG further states that on similar points another case of the petitioner titled Surriya Begum Qureshi vs Secretary to Government of the Punjab, Finance Department, Lahore & others (C.P. No.912/2019) is pending in this Court.

3. Submissions made by learned AAG need consideration. Leave to appeal is granted to consider, inter alia, the same. The appeal stage paper book be prepared from the available record with the liberty to the parties to file additional documents, if any, within a period of one month. As the matter relates to service, office is directed to club both the cases together and fix the same expeditiously, preferable after three months."

6. The learned Additional Advocate General, Punjab appearing for the Appellants submits that the Respondent (Atta Muhammad Zafar) retired from Government Service on 30.11.2001. At that time, he was

governed by the Pay & Pension Package available to Government Servants since 1994. However, on 22.10.2001 the Government of Punjab, Finance Department, introduced a new salary package under which basic pay scales and allied benefits of the civil employees of the Government of Punjab from BS-1 to BS-22 were revised. The said revised package envisaged higher pay scales compared to the ones available under the pay scales of 1994 and dealt with all material financial matters related to the salaries of the Government Servants. Part-III of revised package of 2001 dealt with pension and commutation. Item 17 of the revised pay package of 2001 provided an option to all existing civil employees in BS-1 to BS-22 of the Provincial Government to either continue to be governed by the basic pay scales of 1994 or opt for the revised basic pay scales and pension/commutation scheme of 2001. Item 18 of the revised pay package of 2001 provided that a Government Servant who will retire with effect from 01.07.2001 shall be given the benefit of the revised pay scales on presumptive basis, discounted by 5% increase in pension if availed, subject to the condition that all those who may like to avail this benefit should opt for the entire package i.e. revised schemes of basic pay scales as contained in the Package of 2001. He submits that it is an admitted fact that the Respondent opted for the

revised package of 2001 as it provided better financial and pensionary benefits to the Government Servants. He points out that in terms of Item 18, date of retirement was for the purpose of calculation of pension, presumptively treated as 01.12.2001, in view of the fact that the revised pay scales, although circulated vide circular dated 22.10.2001, were to give effect from 01.12.2001. He maintains that the Respondent not only enjoyed the benefits of the new package but also, the periodical increases granted under the said package. He argues that the learned High Court has failed to appreciate the fact that the Respondent had himself voluntarily opted for the pay & pension package of 2001 effective from 01.12.2001 and cannot be given the benefit of the letters dated 30.03.2013 and 01.07.2010 by treating his date of retirement as 01.11.2001 as he had already opted for the 2001 package in its entirety and availed its benefits which would otherwise have not been available to him but for treating his date of retirement as 01.12.2001 on presumptive basis to provide him a benefit.

7. The learned Law Officer contends that the learned High Court has also failed to appreciate the fact that the pensionary increases through notification dated 25.07.2009 amended on 30.03.2013 and 15.07.2010

were intended to extend benefit to the retirees of 2001 who had not opted for 2001 package, to bring them at par with those who had adopted the pension package of 2001. He maintains that the net effect of the relief given to the Respondent is that he will get double benefit which is neither fair nor permissible under the law insofar as his pension would be more than those who had retired under the 2001 package. He further submits that the Respondent continued to receive 15% increase granted through notifications of 2009 and 2010 and it was only in 2019 that he challenged the same before the High Court by way of a Constitutional Petition. He therefore submits that the Writ Petition suffered from *laches* and the relief granted by the High Court could not have been granted in exercise of its extraordinary constitutional jurisdiction which is discretionary in nature.

8. Learned ASC for the Respondent in Civil Appeal No.1237 of 2020 as well as the husband of Surriya Begum Qureshi (*petitioner in Civil Petition No.912 of 2019*) who was allowed to argue the case on behalf of his wife have defended the impugned judgment of the High Court. They submit that there is no ambiguity or confusion in a plain reading of the two notifications which clearly and unambiguously provided that those who retired on or before 30.11.2001 were entitled to

increase in pension @ 20% and those retiring after the said date were entitled to increase in pension @ 15%. It is therefore submitted that the fact that the Respondent (*Ata Muhammad Zafar*) and the petitioner (*Surriya Begum Qureshi*) had opted for the package of 2001 is of no legal consequence and cannot be used to deprive them of the benefit of notification of 2009 as amended in 2013 and the notification of 2010 both of which provided that employees retiring on 30.11.2001 or before would be entitled to increase in pension @ 20%.

9. We have heard the learned Additional Advocate General, Punjab as well as learned ASC for the Respondents and husband of the petitioner, gone through the written synopsis of arguments submitted before us and carefully examined the record. There is no denial of the fact that the Respondent (*Atta Muhammad Zafar*) and the petitioner (*Surriya Begum Qureshi*) had retired from service on 30.11.2001. Therefore, *prima facie* and at the first glance, they appear to be entitled to receive increase in pension @ 20% by virtue of notification of 2009 as amended in 2013 and the notification of 2010. However, the matter is not as simple as it *prima facie* appears to be. There was a twist in the matter which was caused by reason of introduction of the revised basic pay scales and the pension package

sanctioned on 22.10.2001 with effect from 01.12.2001. Admittedly, the scales and benefits offered in the package of 2001 were a substantial improvement in terms of quantum of salaries and other benefits compared to the salaries and other benefits being received by the Government Servants under the pay scales of 1994. However, in all fairness, an option was given to the Government Servants to decide whether they wanted to draw pay and pension as per the existing pay scales of 1994 or according to the revised basic pay scales and pension/commutation scheme of 2001 with the caveat that those who opted to avail the benefit of 2001 Package would opt for the entire package and not indulge in pick and choose. Further, in order to be fair and equitable, the Government Servants retiring with effect from 01.07.2001 were also held entitled to avail the benefit of the revised pay scales on presumptive basis, discounted by 5% increase in pension, if availed. It is an admitted fact that the Respondent in the Civil Appeal and the petitioner in the Civil Petition opted for 2001 package/scheme and their pensions were accordingly calculated on the basis of revised pay scales which admittedly came into effect from 01.12.2001 while they had retired on 30.11.2001. They in essence requested and opted that the date of their retirement be treated as 01.12.2001 so that they may be able to avail the benefit

of the policy of 2001 and hence the better financial package that it provided. It is also not denied that they continued to receive salaries and periodical increases in pension granted to those who were governed by the 2001 Package. However, when the notifications dated 01.07.2009 and 01.07.2010 were issued, the same envisaged an increase @ 20% for those retiring on or before 30.11.2001 and 15% for those who retired on or after 01.12.2001 despite the fact that the Respondent (*Atta Muhammad Zafar*) and the petitioner (*Surriya Begum Qureshi*) had opted for the revised package of 2001 and had been treated as per their own option, freely exercised, as having presumptively retired on or before 01.12.2001. They availed all benefits under the 2001 Scheme till the issuance of the aforesaid notifications. However, much after issuance of the 2009 and 2010 notifications, they wished to claim 20% increase in their pensions asserting that their date of retirement may again be treated as 30.11.2001 which to our mind was not justified for the reason that they had already availed the benefit of the presumptive provisions of 2001 Package whereby they were treated as having retired with effect from 01.12.2001. Having availed the said benefit continuously till issuance of the notifications they were estopped from claiming that they may be treated differently this time by treating their date of retirement as

30.11.2001 so that they could avail an additional benefit which was not due to them and was not given to any other employee. Further, they did not claim the additional benefit for many years till the Respondent (*Atta Muhammad Zafar*) approached the High Court by way of a Writ Petition and the petitioner (*Surriya Begum Qureshi*) approached the Tribunal through a Service Appeal. In our opinion, the Tribunal correctly interpreted the facts, circumstances and background of the matter and came to the conclusion that the petitioner had retired from service when the pay scales of 1994 were in the field but had opted to receive pension as per pay scale of 2001 which was financially more beneficial and, she was treated at par with those Government Servants who had retired on or after 01.12.2001. Having availed the said benefit by exercising the conscious choice of availing the offered option of choosing the 2001 package, the petitioner did not fall in the category of those pensioners who had retired on or before 30.11.2001 and were not entitled to increase in pension @ 20%. It was therefore correctly held that she fell in the category of those who are governed by 2001 package which came into effect on 01.12.2001 presumptively treating her date of retirement as 01.12.2001 for her own benefit and, at her request. Therefore, she was only entitled to an increase in her pension @ 15%.

10. Unfortunately, the learned High Court failed to notice, appreciate and understand this distinction and wrongly concluded that the Respondent (*Atta Muhammad Zafar*) was entitled to 20% increase in pension pursuant to the notifications dated 01.07.2009 and 01.07.2010. We also notice that the High Court failed to appreciate the fact that the Respondent having voluntarily opted to be governed under the pay and pension package of 2001 effective from 01.12.2001 could not be given an additional benefit which was intended to bring those who had retired on or before 30.11.2001 and were being governed by 1994 package at par with those who had opted for 2001 package. The effect of the judgment of the High Court creates an anomalous situation by granting a double benefit to the Respondent (*Atta Muhammad Zafar*) by allowing him the benefit of pay & pension package of 2001 and treating his date of retirement as 01.12.2001 for one purpose and thereafter, granting him an additional benefit which was clearly not due by again treating his date of retirement as 30.11.2011 for the purpose of increase in his pension @ 20% as envisaged by the notifications of 2009 and 2010. The net result of this anomalous situation is that the Respondent stands to receive more pension compared to others identically placed who had retired on or before 01.12.2001 and had availed the revised package of 2001. Such an unusual

and artificially created situation is untenable. It is neither reasonable nor logical and is also, to our mind, contrary to the intent and purpose of the notifications of 2009 and 2010. We therefore hold that the Respondent (Atta Muhammad Zafar) and the petitioner (Surriya Begum Qureshi) are entitled to increase in their pension only to the extent @ 15% pursuant to the notifications dated 01.07.2009 and 01.07.2010.

11. We also note that the learned High Court has laid a lot of emphasis on the point that a decisive step taken by the authorities cannot be withdrawn and that once a right is created by extending a benefit for no default of a person the same cannot be taken away on the whims and fancy of any executive authority and that the doctrine of *locus poenitentiae* would be attracted. We are unfortunately unable to agree with the simplistic and over generalized view taken by the High Court in the impugned judgment. This Court has in a large number of judgments clearly and categorically held that *locus poenitentiae* is the power of receding till a decisive step is taken but is not a principle of law that an order once passed becomes irrevocable and it is a past and closed transaction. If an order is illegal then, a perpetual right cannot be created on the basis of such illegal order. In this regard, reference may usefully be made to the case of

Engineer-in-Chief Branch v. Jalaluddin (PLD 1992
Supreme Court 207).

12. In the instant case, the Appellants came to know that on the basis of incorrect interpretation of the notifications, referred to above, the Respondent had been granted increase @ 20% which was not due. Considering the facts and circumstances of the present case, the principle of *locus poenitentiae* was not attracted and the High Court seriously erred in law in setting aside the well reasoned and well considered orders passed by the Secretary, Finance Department, Government of the Punjab which were based upon the correct interpretation of the law. We would however hold that if the Respondent (*Atta Muhammad Zafar*) and the petitioner (*Surriya Begum Qureshi*) had received any amounts in the *bona fide* belief that they were entitled to the same, the Appellants will not be entitled to recover the same. However, the refusal of the Appellants to grant increase in pension @ 20% was valid, justifiable and in accordance with the true spirit of the law and the benefits availed and the options exercised by the Respondent and the petitioner could not have been revisited by the High Court in order to grant a benefit which was clearly not due or payable.

13. For reasons recorded above, we find that the impugned judgment of Lahore High Court dated 24.02.2020 is unsustainable. It is accordingly set aside and the Appeal is allowed.

14. For the same reasons as recorded above, we find no merit in Civil Petition No.912 of 2019 (*filed by Surriya Begum Qureshi*) so also that no question of law of public importance within the contemplation of Article 212 (3) of the Constitution of Islamic Republic of Pakistan, 1973 is raised through this petition. The same is therefore dismissed and leave to appeal is refused.

Sd/- HCLJ
Sd/- J

ISLAMABAD, THE

15th April, 2021

ZR/*

'Not Approved For Reporting'

