

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Muhammad Ali Mazhar
Justice Syed Hasan Azhar Rizvi
Justice Aqeel Ahmed Abbasi

CPLA.No.147-K/2023

(On appeal against the Order dated
23.01.2023 passed by the High
Court of Sindh, Karachi in
C.P.No.D-2901 of 2022)

Qazi Khalid Ali

...Petitioner

Versus

Federation of Pakistan through its ...Respondents
Secretary Ministry of Law and Justice
Government of Pakistan and others.

For the Petitioners : Dr. Muhammad Farogh Naseem,
ASC along with Petitioner

For the Respondent(s) : Mr. Mohsin Shahwani, Additional
Attorney General
Mr. Ghulam Rasool Mangi, AOR
Mr. Sajjad Mustafa, S.O, Ministry
of Law.

Date of Hearing : 12.06.2025

Judgment

Muhammad Ali Mazhar, J. – This Civil Petition for leave to appeal is directed against the impugned Order dated 23.01.2023, passed by the learned Division Bench of the High Court of Sindh in C.P.No.D-2901 of 2022.

2. If we delve into the ephemeral facts, it shows that the petitioner approached the High Court with the grievance that after completing his term as the Chairman, Federal Service Tribunal ("**FST**"), he submitted his representation to the Secretary, Ministry of Law & Justice, Government of Pakistan, for grant of pensionary benefits but it was regretted *vide* letter dated 22.01.2020. The petitioner also asserted that he held various offices/positions for an aggregate period of 20 years such as an Additional Advocate

General, a Judge of the High Court of Sindh from 04.11.2007 to 02.08.2009, a Professor of Law at Sindh Muslim Government Law College, Karachi, the Dean of Karachi University, the Founding Vice Chancellor of Shaheed Zulfiqar Ali Bhutto, University of Law, Karachi, and lastly, as the Chairman FST. Therefore, he is entitled to pensionary benefits. The petitioner sought the declaration that the order communicated by the Section Officer (Admin-II), Ministry of Law & Justice, *vide* Letter No. F.38(1)/2019-A-II dated 22.01.2020 regarding the refusal of pensionary benefits is to be struck down, being null, void, *ab-initio* and without jurisdiction, and prayed for grant of maximum pension payable to a Judge of the High Court under Presidential Order No. 3 of 1997 ("**Presidential Order**").

3. The learned counsel for the petitioner argued that the reading of the appointment notification dated 22.04.2019 under Section 3(4) of the Service Tribunal Act, 1973, clearly shows that that Presidential Order (High Court Judges (Leave, Pension and Privileges) Order, 1997) has been made applicable to the petitioner in respect of remuneration and other terms and conditions of service as Chairman, FST. He further pointed out that the petitioner, in his memo of petition, has mentioned names of various other persons who remained Chairman of the FST and, after completion of their tenure, have been granted pensionary benefits. It was further contended that according to the terms and conditions of appointment as Chairman FST for a non-extendable term of 3 years under Section 3(4) of the Service Tribunal Act, 1973, read with Rule 5 of the Federal Service Tribunal (Chairman and Members) Service Rules, 1983, the petitioner is entitled to pension and other retirement facilities/benefits. It was further averred that the petitioner served in various government departments/institutions in connection with the affairs of the Federation of Pakistan and the Province of Sindh within the meaning of Article 260 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"). In support of his contention, he relied on dicta laid down by this Court in case of Registrar, Supreme Court of Pakistan Vs. Wali Mohammad (1997 SCMR 141)

and Salahuddin Vs. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244), which were also referred to in the case of Hidayatullah Vs. Federation of Pakistan (2022 SCMR 1691). The learned counsel for the petitioner predominantly relied on the Rule 5 of the Federal Service Tribunal (Chairman and Members) Service Rules, 1983, and argued that according to this Rule, the petitioner is otherwise entitled to pensionary benefits but the learned High Court failed to consider this Rule and maintained silence regarding this aspect in the impugned order.

4. The learned Additional Attorney General referred to the concise statement filed by the Federation of Pakistan, Ministry of Law and Justice, Islamabad and the Accountant General of Pakistan, and argued that the FST was established by the Federal Government in pursuance of Article 212 of the Constitution. The mandate given to it under the Constitution as well as the Service Tribunal Act, 1973, is to adjudicate upon all the matters relating to the terms and conditions of service of civil servants. The terms and conditions of service have been laid down by the President of Pakistan. Whereas, the terms and conditions of service of a Judge of the High Court are regulated under the High Court Judges (Leave, Pension & Privileges) Order, 1997, promulgated under the Fifth Schedule to the Constitution. However, it was further contended by the learned Additional Attorney General that as far as the niceties of Rule 5 are concerned, the same was also to be considered in accordance with the Presidential Order, for accepting or denying the claim of pensionary benefits lodged by the petitioner.

5. Heard the arguments. The crux of the matter, in its simplest form, is that the petitioner approached the learned High Court on the ground that he performed his duties as Chairman, FST, and was appointed *vide* Notification dated 22.04.2019, issued by the Ministry of Law & Justice, for a non-extendable period of three years, with effect from the date of assuming charge of the post. After completing his tenure as Chairman of the FST, he applied, by means of

representation before the Respondent No.1/Secretary Ministry of Law & Justice, for grant of pensionary benefits, but *vide* letter dated 22.01.2020, the request was declined by the Ministry of Law & Justice. The main reason for denial of the pensionary benefit was that the petitioner was appointed as Chairman, FST, Islamabad for a non-extendable period of three years *vide* Notification dated 22.04.2019, being an advocate qualified to be a Judge of the High Court. However, his appointment as a Judge of the High Court, Sindh, was declared unconstitutional, void *ab initio*, and having no legal effect in the light of the judgment of the Supreme Court of Pakistan reported as PLD 2009 SC 879 ("**Judges case**"). One of the reasons of refusal was that the terms/contract of appointment of a certain length of service could not be construed as regular service for pensionary benefit.

6. At this juncture, the outcome and rationality of Rule 5 of the Federal Service Tribunal (Chairman and Members) Service Rules, 1983, ought to be scrutinized, which is, for the ease of convenience reproduced as under: -

"5. If a person who is neither a Judge or retired Judge of a High Court nor is or has been in the service of Pakistan is appointed as Chairman, he shall be entitled to such salary, allowances and privileges as are admissible to a Judge of a High Court."

7. In line with Article 205 of the Constitution, the remuneration and other terms and conditions of service of a Judge of the Supreme Court or of a High Court shall be as provided in the Fifth Schedule, and consistent with Clause 3 of the Fifth Schedule, the pension payable to a retired Judge of the Supreme Court *per mensem* shall not be less or more than the amount specified in the table, depending on the length of his service as Judge in that Court or a High Court, provided that the President may, from time to time, raise the minimum or maximum amount of pension so specified.

8. If the petitioner is entitled to pensionary benefits, then a delay in finalizing the case or claim of pension is totally unjustified. The High Court, while rendering the impugned

order, followed an altogether different pathway to decline the claim and also failed to consider the impact and effect of Rule 5 of the Federal Service Tribunal (Chairman and Members) Service Rules, 1983, which cannot be made inconsequential or redundant, and which unambiguously articulates that if a person who is neither a Judge or retired Judge of a High Court, nor is or has been in the service of Pakistan, is appointed as Chairman, he shall be entitled to such salary, allowances, and privileges as are admissible to a Judge of a High Court. In the case of Haji Muhammad Ismail Memon (PLD 2007 SC 35), this Court observed that it is a pathetic condition that government servants, after having served for a considerable 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. In the case of Muhammad Yousaf Vs. Province of Sindh (2024 SCMR 1689 = 2024 SCP 291), while speaking for the bench, one of us held that the catchword "pension" articulates the payment of a fixed 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 economic refuge and shelter and to recuperate old-age security. In general phenomena, 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 the main source of income for livelihood. If the service is pensionable and the payment of pensionary benefits is protected under the law, rules, and regulations then it becomes a vested right and not charity, alms, or donation but compensation for services.

9. In the notification of appointment, it is clearly mentioned that when the petitioner assumes charge as a Chairman, he shall be entitled to such pay, allowances, and privileges as are admissible to a judge of the High Court as may be prescribed from time to time. Apparently, the rejection of the

representation or the denial of the claim of pension is primarily based on the tenure of the petitioner as a High Court Judge. However, while declining the request, the Federal Service Tribunal (Chairman and Members) Service Rules, 1983, were not taken into consideration with its actual spirit, in particular Rule 5 of the said Rules.

10. After hearing the learned counsel for the petitioner, we are of the view that while declining the pensionary benefit, the Ministry of Law & Justice should have considered the Federal Services Tribunal (Chairman and Members) Service Rules, 1983, especially Rule 5. In our discernment, this is a fit case for remand for *de novo* consideration, on which the learned Additional Attorney general also concedes that if the matter is remanded to the Ministry of Law & Justice, the representation of the petitioner will be considered in accordance with the law, including the stipulations and prerequisites of the aforesaid Rules, as to whether the petitioner is entitled to pension or not.

11. In wake of the aforesaid discussion, this Civil Petition is converted into an appeal and disposed of in the following terms:

i. The matter is remanded to the Ministry of Law & Justice for *de novo* consideration on the representation filed by the petitioner which is deemed to be pending.

ii. While considering the representation, the Ministry of Law & Justice shall also consider the Federal Services Tribunal (Chairman and Members) Service Rules, 1983, including Rule 5, and shall pass a speaking Order within a period of 3 months after receiving the copy of this judgment and convey the same to the petitioner to confirm whether in terms of the notification of appointment and the above-mentioned rules, he is entitled to the benefit of pension or not.

iii. Seemingly, in the impugned order of the learned High Court of Sindh, the effect or

applicability of Rule 5 of the Federal Service Tribunal (Chairman and Members) Service Rules, 1983, was not considered or adverted to properly and the judgment is based on different premises. Therefore, while deciding the pending representation of the petitioner for grant of pension, the Ministry of Law & Justice/Competent Authority shall not be influenced by any findings recorded in the impugned judgment that may be adverse to the interest of the petitioner and shall decide the pending representation judiciously with an independent application of mind.

Judge

Judge

Judge

Karachi
12.06.2025
Khalid
Approved for reporting.