

2024 P L C (C.S.) 597

[Lahore High Court (Multan Bench)]

Before Muhammad Raza Qureshi, J

KOUSAR PARVEEN

versus

GOVERNMENT OF THE PUNJAB through
Secretary Education and 6 others

Writ Petition No.18509 of 2019, heard on 8th November, 2021.

Punjab Civil Services Pension Rules, 1963---

---R. 1.8(a)---Pensionary emoluments, withholding of---Bogus documents---Pensionary benefits of petitioner / retired civil servant were withheld, on the basis that her Matriculation Certificate filed at the time of her initial appointment was bogus---Validity---All credentials and degrees and record of petitioner was with respondent authorities, who never questioned her qualification or degree---Upon attaining superannuation all required certificates were issued and till year 2017 no question was raised about her degrees---No departmental disciplinary proceedings were pending in such regard against petitioner at the time of attaining age of superannuation---Authorities conceded that till year 2019 the Government remained silent and upon a direction issued by High Court for the first time it was informed to petitioner that her Matriculate Certificate was bogus, that too, in a manner in which petitioner was never associated with proceedings initiated against her and she was informed that pensionary benefits were withheld and could not be released---High Court set aside order of withholding pensionary benefits of petitioner and imposed cost upon authorities for passing such order illegally and without lawful authority---High Court directed the authorities to release pensionary benefits to petitioner---Constitutional petition was allowed, in circumstances.

[pp. 602, 606] A & B

Haji Muhammad Ismail, Advocate's case PLD 2007 SC 35 and Province of Punjab through Conservator of Forest, Faisalabad and others v. Javed, Iqbal 2021 SCMR 328 rel.

The Government of N.W.F.P. through the Secretary to the Government of N.W.F.P. Communications and Works Department, Peshawar v. Mohammad Said Khan and another PLD 1973 SC 514; D.S. Nakara and others v. Union of India AIR 1983 SC 130; Regional Operation Chief, National Bank of Pakistan, Human Resource Department, Regional Office, Sargodha and others v. Mst. Nusrat

Perveen and others 2021 SCMR 702 and Syed Raza Mehdi Baqari v. Province of Punjab through Secretary, LG & CD Department and 2 others 2016 PLC (C.S.) 1046 ref.

Syed Azhar Abbas Haider Bukhari for Petitioner.

Mian Muhammad Shahid Riaz, Assistant Advocate General with Ms. Rukhsana Yasmeen, Deputy District Education Officer, Kabirwala for Respondents.

Date of hearing: 8th November, 2021.

JUDGMENT

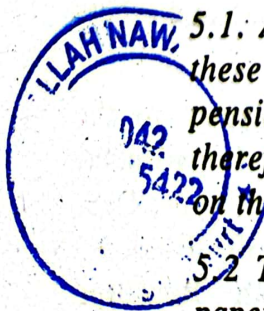
MUHAMMAD RAZA QURESHI, J.----The term "Pension" denotes to a grant after release from service. It is designed to assist in providing a person daily wants and it presupposes the continued life after retirement of a person, who dedicates his/her entire life, expertise, experience, energy and loyalty to his employer with the hope that after retirement when he may no longer be able to earn any other livelihood in his old age he will receive a monthly regular income without recourse to employer to cater his/her own needs and those of the family

2. A right to pension and benefits attached thereto is an inviolable fundamental right of every retired civil servant guaranteed by the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "Constitution") as it is directly linked with rights to livelihood, property, dignity and right to life. Likewise, the fundamental right to property ensured security of pecuniary and pensionary benefits attached to the service. A delay in the disbursement or finalization of the pensionary benefits of the Government servant, widows or orphan children have been held liable for contempt of the order passed by the august Supreme Court of Pakistan and as per *dictum* laid down in "Haji Muhammad Ismail, Advocate," (PLD 2007 Supreme Court 35) wherein officer causing delay has been directed to be dealt with strictly in accordance with law.

3. To protect and safeguard the rights and interests of the Petitioner the West Pakistan Civil Servants Pension Rules, 1963, Chapter V, Rule 5.1 commands as under:-

5.1. All authorities dealing with applications for pensions under these rules should bear in mind that delay in the payment of pensions involves peculiar hardship. It is essential to ensure, therefore, that a Government servant begins to receive pension on the date on which it becomes due.

5.2 The responsibility for initiation and completion of pension papers is that of the Head of Department, Attached Department



concerned in the case of Gazetted Officers and of the Head of Office concerned in the case of non-Gazetted Government servants. The action should be initiated one year before a Government servant is due to retire so that pension may be sanctioned a month before the date of his retirement. For this purpose every Government servant should be asked to submit his pension application in Form 3 (Pen) 6 months in advance of the date of his retirement"

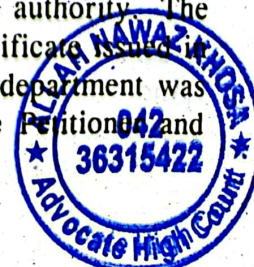
4. With the dictates of law one Mst. Kausar Parveen (hereinafter referred to as "Petitioner") has invoked the Constitutional jurisdiction of this Court under Article 199 of the Constitution and complained that despite having retired on 25.09.2017 she has been deprived of her pensionary benefits even after lapse of four (04) years.

5. The facts culminating into instant Petition emanate from a background that Petitioner passed her Matriculation in the year 1976 and joined service in School Education Department in the year 1979 as untrained Primary School Teacher through Appointment Order No.8283. During her service she improved her qualification by obtaining Primary Teaching Certificate (PTC) and year 1991 she passed her Intermediate exam. Subsequently in year 2004 the Petitioner obtained her Degree in Bachelor of Arts from Allama Iqbal Open University, Islamabad and upon attaining her age of superannuation she retired from Government Service vide Notification bearing No.5169/Admn. dated 25.09.2017.

6. It is a worth noting fact that before her retirement the Education Department issued Petitioner a No Inquiry Certificate, No Demand Certificate, No Punishment Certificate, No Audit Para Certificate and Service Completion Certificate. Upon issuance of said certificates her retirement Notification was issued. Upon her retirement the Petitioner was not issued her Service Book on the premise that her documents have not been signed by the competent authority.

7. In these circumstances the Petitioner was constrained to institute Writ Petition No.9144 of 2019 and through Order dated 17.06.2019 the said Petition was disposed of with the direction to the Deputy District Education Officer, Kabirwala to decide the fate of the Petitioner within a period of 02 weeks.

8. This was the first time when pursuant to direction of this Court Deputy District Education Officer, Kabirwala passed order dated 21.08.2019 confronting the Petitioner that her pensionary documents at the relevant time were not signed by the competent authority. The Petitioner was also informed that her Matriculation Certificate issued in year 1976 was found to be bogus and accordingly the department was directed to withdraw the retirement Notification of the Petitioner and referred the matter to the Anti Corruption Establishment.



9. Obviously this must have been shocking for the Petitioner who dedicated her whole career to serve the Education Department. In these circumstances she filed another Writ Petition bearing No.13987 of 2019 and pursuant to Order dated 20.09.2019 direction was issued to the Chief Executive Officer, Khanewal to look into the matter and issue service book to the Petitioner so that she may earn her pensionary benefits.

10. Pursuant to a direction of this Court the Chief Executive Officer, District Education Authority, Khanewal passed order dated 13.11.2019 declaring that since the Matriculation Certificate issued to the Petitioner in year 1976 has been informed to be bogus, therefore, the Petitioner is responsible for this act and she cannot be extended pensionary benefits.

11. With this background the instant Writ Petition has been filed by the Petitioner challenging the Impugned Order dated 13.11.2019 passed by Chief Executive Officer, District Education Authority, Khanewal.

12. Learned counsel for the Petitioner submits that the Impugned Order is arbitrary, unlawful and illegal and such a heinous allegation has been determined against the Petitioner that too after lapse of two (02) years of her retirement. Learned counsel for the Petitioner has ably assisted this Court that neither departmental proceedings were ever initiated against the Petitioner nor she was associated with the proceedings at any level and she was denied right to access to justice in violation of her rights guaranteed by Articles 4 and 10-A of the Constitution. Learned counsel for the Petitioner vehemently argued that pensionary benefits are directly linked with Articles 9, 14 and 24 guaranteed to the Petitioner by the Constitution. Learned counsel for the Petitioner has apprised this Court that the Petitioner is presently suffering from chronic heart disease and cannot even afford to earn her livelihood. Conversely, learned Assistant Advocate General supports the impugned actions and submits that in facts and circumstances of the case the Petitioner cannot be held entitled to the pensionary benefits.

13. It is astonishing and disappointing that the pensionary benefits of the Petitioner are withheld by the Education Department, Government of the Punjab without even confronting her with allegations against her till year 2019 as if it is a state bounty which could be awarded as a favour to any individual outside the scope of applicable statute. This approach is not only incorrect but also inhumane as the pension is a right which the government servants and employees in different positions and different capacities earn in terms of the relevant statutory provisions applicable to their case and mostly depending upon their length of service. It is not a State bounty. The Hon'ble Supreme Court of Pakistan in the case of "The Government of N.W.F.P. through the Secretary to the Government



of N.W.F.P. Communications and Works Department, Peshawar
Mohammad Said Khan and another (PLD 1973 SC 514) held

"It must now be taken as well settled that a person who enters Government service has also something to look forward to after his retirement, to what are called retirement benefits, grant of pension being the most valuable of such benefits. It is equally well-settled that pension like salary of a civil servant is no longer a bounty but is a right acquired after putting in satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules."

The same view has been taken by the Supreme Court of India in "D.S. Nakara and others v. Union of India" (AIR 1983 Supreme Court 130).

"Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on saving. One such saving in kind is when you give your best in the heyday of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or of a surrender of rights or emoluments to one retired from service. Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon."

14. Thus the pension becomes the property of retiring employee of civil/public servant as a matter of right upon the completion of his/her service, which is a regular source of livelihood thus is protected by the right to life and rights enshrined in and guaranteed by the Articles 9, 14, 23 and 24 of the Constitution.

15. These rights declared by the Hon'ble Supreme Court of Pakistan are not only available to the retiring employee but are extended beyond his life for protection and safeguard of his survivable interests and equally available to his/her legal heirs. Reliance in this regard is placed on "Regional Operation Chief, National Bank of Pakistan, Human

Resource Department, Regional Office, Sargodha and others v. Mst. Nusrat Perveen and others" (2021 SCMR 702) wherein Hon'ble Supreme Court held as under.

"Under our constitutional scheme, abatement of proceedings on the death of a civil servant, in a case, where the cause of action carries a survivable interest will unduly deprive the decedent civil servant, as well as, his legal heirs of their constitutional rights to livelihood, property, dignity and fair trial. Fundamental right to life including right to livelihood ensures the security of the terms and conditions of service; fundamental right to property ensures security of the pecuniary and pensionary benefits attached to the service; fundamental right to dignity ensures that the reputation of the civil servant is not sullied or discredited through wrongful dismissal, termination or reversion etc; and fundamental right to fair trial and due process, inter alia, safeguards and protects the survivable interest and ensures continuity of the legal proceedings even after the death of the civil servant, equipping the legal heirs to pursue the claim. Fundamental rights under the Constitution do not only protect and safeguard a citizen but extend beyond his life and protect and safeguard his survivable interests by being equally available to his legal heirs. It is reiterated that other than pecuniary and pensionary benefits that inure to the benefit of the legal heirs, the right to restore one's reputation is also a survivable right and flows down to the legal heirs to pursue and take to its logical conclusion. Any slur on the reputation of a civil servant impinges on his human dignity and weighs equally on the dignity and honour of his family."



16. In the instant case, it is noticed that all credentials and degrees and record of the Petitioner was with the Department who never questioned the qualification or degree of the Petitioner and upon attaining the age of superannuation, all required certificates mentioned above were issued and till then in year 2017 no question was raised about her degrees and neither it is the case of the Respondent/Department that any departmental disciplinary proceedings were pending in this regard against the Petitioner at the time of attaining the age of superannuation, rather reply submitted by the Education Department, Government of the Punjab itself concedes that till year 2019, the Government remained silent and upon a direction issued by this Court for the first time it was informed to the Petitioner that her Matriculate certificate was bogus, that too, in a manner in which the Petitioner was not even ever associated with the proceedings initiated against her and through the Impugned Order she was informed that pensionary benefits are withheld and cannot be released.

PLC (Service)

17. Now to identify the scheme of law in the facts and circumstances of the case, it is imperative to examine the provision of applicable law and analyze the status of the Petitioner being a retired employee. The first applicable law is the Punjab Employees Efficiency, Discipline and Accountability Act, 2006 (hereinafter referred to as the "PEEDA Act") which is an Act to provide for proceedings against the employees in government and corporation service in relation to their efficiency, discipline and accountability and according to its section 1(4) it applies to employees in government service; employees in corporation service; and retired employees of government and corporation service provided that in case of retired employees proceedings under PEEDA Act are initiated against them during their service or within one year of their retirement. For convenience section 21 of the PEEDA Act is reproduced hereunder:

"21. Proceedings under this Act.- Subject to this Act, all proceedings initiated against the employees having retired or in service, shall be governed by the provisions of this Act and the rules made thereunder:

Provided that in case of retired employee, the proceedings so initiated against him shall be finalized not later than two years of his retirement.

(2) The competent authority may, by an order in writing, impose one or more penalties specified in clause (c) of section 4, if the charge or charges are proved against the retired employee."

18. The mandate of law contained in the PEEDA Act demonstrate that against the retired employees any proceedings under the PEEDA Act can only be initiated during their service or within one year of their retirement and proceedings so initiated are bound to conclude and finalize not later than two years of retirement of the employees. The applicable provisions of section 1(4)(iii) as well as proviso to section 21 of PEEDA Act from their language reflect that these are mandatory in their nature, ambit and scope. Obviously the object of these provisions is to enhance good governance in service matters. The scheme of the PEEDA Act seems to support the public policy that an employee who has served the government all his life must enjoy his retirement and must be spared from undergoing any drawn departmental proceedings during his retired life. The provisions of PEEDA Act will only remain applicable to those employees against whom departmental proceedings or other proceedings have been initiated during the service. Reliance in this regard is placed upon case Allan Nawaz v. Province of Punjab

PLC(Service)



through Conservator of Forest, Faisalabad and others v. Javed Iqbal" (2021 SCMR 328) and "Syed Raza Mehdi Baqari v. Province of Punjab through Secretary, LG & CD Department and 2 others" (2016 PLC (C.S.) 1046).

19. Admittedly no departmental proceedings were initiated against the Petitioner during her service, therefore, the provisions of this Act are inapplicable to the Petitioner.

20. The other law which may attract in the facts and circumstances of the case is Punjab Civil Servants Pension Rules, 1963 (hereinafter referred to as the "Pension Rules"). Pursuant to Rules 1.8, 1.9 and 1.10 the position of law emerges as under:

"1.8. (a) Good conduct is an implied condition of every kind of pension. Government may withhold or withdraw a pension or any part of it if the pensioner be convicted of serious crime or be found to have been guilty of grave misconduct either during or after the completion of his service:

Provided that before any order to this effect is issued, 10 [the pension Sanctioning Authority shall give full opportunity to the pensioner to vindicate his position.]

(b) Government reserves to themselves the right of recovery from the pension of Government pensioner on account of losses found in judicial or departmental proceedings to have been caused to Government by the negligence, or fraud of such Government pensioner during his service:

Provided that such departmental proceedings shall not be instituted after more than a year from the date of retirement of the Government pensioner.

10[Note: If the departmental proceedings are not completed within one year after retirement of the government servant, he may be allowed to draw upto 80% or less of full pension so as to ensure that government loss in full is recovered from the balance. In the case of judicial proceedings, judgment of the Court may be awaited. If the proceedings are delayed beyond one year after retirement, reduced pension may be allowed as in the case of pensioners facing departmental proceedings.]

(c) In case the amount of pension granted to a Government servant be afterwards found to be in excess of that to which he is entitled under the rules, he shall be called upon to refund such excess.

1.9. No pension may be granted to a Government servant dismissed or removed or misconduct, corruption, subversive activities or in efficiency, but, if he deserves special consideration he may be granted a compassionate allowance not exceeding 2/3rd of the pension which would have been admissible to him had he retired on invalid pension.

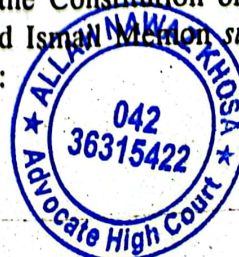
1.10. Any of these rules may for reasons to be recorded in writing be relaxed in individual cases by a competent authority if it is satisfied that a strict application of the rules will cause hardship to the individual."

21. It is evident from Rule 1.8(a) that Government may withhold or withdraw a pension if the pensioner is convicted in a serious crime or has been found guilty of grave misconduct during or after the completion of service. The proviso to sub-rule (a) envisages that before an order to this effect is passed, the Pension Sanctioning Authority shall give full opportunity to the Petitioner to vindicate his position. Pursuant to sub-rule (b) the scheme of Pension Rules is aimed towards closure of departmental proceedings after retirement of an employee as for attraction of sub-rule (b) the fundamental condition is that the departmental proceedings shall not be instituted after more than a year from the date of retirement of the Government pensioner. For safeguarding the public policy it is held that provisions of Rule 1.8 of Pension Rules are mandatory.

22. A plain reading of PEEDA Act, Pension Rules and other laws such as Fundamental Rights, Civil Service Regulations and Civil Establishment Code clearly reflect that all these laws as a matter of public policy are aimed towards the good governance and streamlining the closure of proceedings against a retired employee with a legislative intent to curb the situations of retired employees undergoing departmental proceedings during his retired life.

23. Interestingly in the instant case, neither proceedings were ever initiated against the Petitioner under the PEEDA Act or under Pension Rules nor the provisions thereof attract in the case of the Petitioner as no proceedings have been initiated against the Petitioner to date. Simply through the Impugned Order without associating the Petitioner in the proceedings is not only violative of her fundamental right but also the withholding of pensionary benefits of the Petitioner magnifies the bad governance reflective of delinquent act on the part of the Education Department and as per *dictum* laid down by Hon'ble Supreme Court of Pakistan which is binding under Article 189 of the Constitution on all State functionaries in the case of Haji Muhammad Isma'il *supra* wherein the Hon'ble Supreme Court held as under:

PLC (Service)



"8. We, therefore, direct that all the Government Departments, Agencies and Officers deployed to serve the general public within the limit by the Constitution as well as by the law shall not cause unnecessary hurdle or delay in finalizing the payment of pensionary/retirement benefits cases in future and violation of these directions shall amount to criminal negligence and dereliction of the duty assigned to them. Thus having noticed such miserable condition prevailing in the department particularly relating to the payment of the pension to retired Government servants or widows or orphan children, we direct all the Chief Secretaries of the Provincial Governments as well as the Accountant Generals and the Accountant General Pakistan Revenue, Islamabad, to ensure future strict adherence of the pension rules reproduced hereinabove and clear such cases within a period not more than two weeks without fail.

9. Similarly, the Chief Secretaries shall also issue instructions along with the copy of this judgment to the Heads of the Departments including responsible officers to initiate and finalize the pension cases well in advance from the date of retirement of Government servant without fail as required by rule 5-2 of Chapter V of the West Pakistan Civil Servants Pension Rules, 1963.

24. In the light of law laid down in Haji Muhammad Ismail Memon's case and Javed Iqbal supra a direction to the Government of the Punjab to ensure in future that cases of retired employees is fast tracked so that they are concluded within the aforesaid statutory time frame allowing the retired employees to enjoy their retired life and the Government to save unnecessary expenses and time in pursuing the matters against the retired employees.

25. In view of what has been declared above, the instant Petition is **allowed** with costs and the Impugned Order is set aside being passed illegally and without lawful authority.

26. Consequently, the Respondent / Department is ordered to release the pensionary benefits to the Petitioner from the date of her superannuation within a period of 15 days as failure in complying with the direction of this Court may expose all officials in hierarchy to the contempt proceedings.

MH/K-2/L



Petition allowed.