

*Judgment Sheet*

**IN THE HIGH COURT OF SINDH KARACHI**

**Constitutional Petition No. D – 6863 of 2019**

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Taj Muhammad Ansari V/S The Province of Sindh and 02 others

Date of hearing : 03.03.2020

Date of decision : 11.03.2020.

Syed Abrar Ahmed Bukhari, Advocate for the petitioner.

Mr. Hakim Ali Shaikh, Additional Advocate General.

Dr. Mansoor Abbas Rizvi, Secretary Law.

Muhammad Saleem Soomro, Focal person Law Department.

Dr. Liaquat Ali Abro, Law Officer.

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J.** – Through the captioned petition, the petitioner claims pensionary benefits from the Law department on account of his attaining the age of superannuation i.e. 60 years.

2. Brief facts of the case as per pleadings of the parties are that on 22.02.1995 petitioner was appointed as Assistant Public Prosecutor/Assistant Government Pleader on contract basis, his services were regularized on 16.01.1996 as Deputy District Attorney ; during his service tenure, he was proceeded with under the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, and was served with a show cause notice, having been absent from duty with effect from 20.10.2005 up to the age of superannuation i.e. 11.01.2013. It is noted that during his service tenure, he was arrested in criminal case by the local Police Station Nishatabad, Faisalabad, in Crime No.1081 of 2005. He was tried, convicted and sentenced under Sections 148/149, 295-A, 295-B, 295-C, 302, 324/149, 186, 353 PPC and Sections 7(a) and 9 of ATA of 1997 by the learned Anti-terrorism Court Faisalabad vide judgment dated 06.02.2006. The petitioner's father filed Criminal Appeal No.123-J of 2006 before the learned Lahore High Court, Lahore, which was partly allowed by acquitting him only to the extent of the charge under Section 295-C PPC ; whereas, the appeal was dismissed vide order dated 26.05.2009 in respect of his conviction under Section Sections 148/149, 295-A, 295-B, 302,324/149, 186, 353 PPC and Sections 7(a) and 9 of ATA, 1997. The petitioner's father also filed Criminal Appeal No.25 of 2010 before the Hon'ble Supreme Court of Pakistan, which was partly allowed to the extent

that conviction under Section 302(b), 324, 337-IL(2) PPC and Sections 7(a) and 9 of ATA was set aside while conviction under other provisions of law viz. 148/149, 295-A, 295-B, 149, 186, 353 PPC awarded by the learned trial Court was upheld vide order dated 22.02.2016. The competent authority in exercise of the powers conferred under Section 3(e) of the Removal from Service (Special Powers) Sindh, Ordinance, 2000, imposed major penalty of dismissal from service upon the petitioner vide office order dated 25.06.2014.

3. At this stage, we queried from the learned counsel for the petitioner as to how he is claiming his pension benefits, since he did not join the duty and remained absent with effect from 2005 to 2013 and in the meanwhile he was convicted by the competent Court of law and his conviction is still intact. Syed Abrar Ahmed Bukhari, learned counsel for the petitioner, submitted that he was arrested in the aforesaid crime by the police, therefore, it was not possible for him to continue for the duty in time. He next added that since he has retired from service, the respondent-department was / is duty-bound to allow the petitioner to pay pensionary benefits after his release from the prison ; and, that he was wrongly awarded a major penalty of dismissal from service vide office order dated 25.06.2014. Petitioner being aggrieved by and dissatisfied with the impugned action has filled the instant petition on 24.10.2019 ; since the petitioner is a retired officer of respondent-department, who was not proceeded with departmentally during his tenure of service, is not liable to be denied the pensionary benefits on any ground whatsoever ; that the criminal liability is distinct from the civil liability as held by superior Courts, as such nobody can be denied civil benefits merely on the basis of conviction for any criminal offence ; that the Hon'ble Supreme Court has held that the proceedings under E&D Rules cannot be continued beyond the age of superannuation and the same stood abated after superannuation. Learned counsel for the petitioner argued that the Government has no right to withhold or postpone the pensionary benefits. Once a person has retired his pension cannot be withheld on a finding of misconduct or negligence during the period of service.

4. Dr. Mansoor Abbas Rizvi, Secretary Law, is present in person with his comments and submits that the petitioner was involved in criminal cases, which were investigated and final challan was submitted before the learned trial Court, which culminated in his conviction in the aforesaid crime. He next argued that the conviction entails adverse effect on the character of the petitioner under the law. Learned AAG has supported his view point and prayed for dismissal of the instant petition.

5. We have heard learned counsel for the parties at length and have gone through the material available on record.

6. The primordial question on the subject petition is below:

*Whether pensionary benefits of any civil servant can be withheld on account of his conviction in criminal case against him?*

7. Having considered the arguments advanced on the proposition and having gone through the pleadings and record, the version of the petitioner cannot be accepted for the simple reason that once an employee is convicted on a criminal charge, the competent authority has only to consider the conduct which led to such conviction and thereupon is to take a decision on the penalty to be imposed.

8. As to the plea raised by learned AAG with respect to withholding of pensionary benefits of the petitioner due to his conviction in a criminal case on the premise that his conviction under Sections 148/149, 295-A, 295-B, 149, 186, 353 PPC is still intact, therefore, he is not entitled to pensionary benefits, we are of the considered view that the Honorable Supreme Court has already settled this proposition of law in the case of Superintendent Engineer GEPCO Sialkot V/S Muhammad Yusuf vide order dated 23.11.2006 passed in Civil Petition No. 1097-I of 2004 and in Ghulam Hussain V/S Chairman POF Board, Wah Cantt. and another, 2002 SCMR 1691. This Court after seeking guidance from the aforesaid decisions of the Hon'ble Supreme Court of Pakistan took the similar view in the case of Mansoor-ul-Haque v. Government of Pakistan through its Secretary M/o Defence and another, PLD 2017 Sindh 614, and the aforesaid judgment was assailed before the Hon'ble Supreme Court of Pakistan in C.P.313-K/2017 and the same was dismissed as withdrawn vide order dated 06.06.2018.

9. In view of the dicta laid down by the Honorable Supreme Court in the cases referred to supra, we do agree with the contention of Secretary Law, Government of Sindh. On the aforesaid proposition, Rule 1.8 of the West Pakistan Civil Servants Pension Rules, 1963, is clear in its terms. It is necessary to set out in extenso Rule.1.8 which reads 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, the procedure regarding imposition of the penalty of removal from service shall be followed.

*(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.*

*(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.*

*(d) Except with the previous sanction of the Provincial Government, no pensioner shall, within a period of two years from the date of his retirement take part in any election or engaged in political activity of any kind.”*

10. A plain reading of clause (a) of the above cited rule would, however, make it absolutely clear that it is a self-contained and independent provision designed to cover two entirely different situations. Under clause (a) maintenance of “good conduct” is made an inseparable condition for the grant or continuance of pension to a government servant and the government reserves to itself plenary power to withhold or withdraw a pension or any part thereof if the pensioner is convicted for serious crime or found guilty of grave misconduct whether during or after completion of his service. Admittedly clause (a) is attracted to the facts of the instant case as the petitioner has been convicted of serious crime and admittedly his conviction still subsists.

11. It is well-established law that when a Court of law, convicts any civil servant of a heinous offence, it presupposes that he was guilty of grave misconduct and his retention in service ought not to have been in the larger public interest. In this regard, we refer to Section 15 of the Sindh Civil Servants Act, 1973, which provides that no person convicted of an offence involving moral turpitude be appointed to a civil service or post. For convenience, the same is reproduced herein below:

*“15. No person convicted for an offence involving moral turpitude shall, unless Government otherwise directs, be appointed to a Civil Service or post.”*

12. It is also established law that when the competent Court of law convicts a civil servant and if his conviction is maintained in appeal, then there is clear bar under Section 15 of the Sindh Civil Servants Act, 1973, to retain him in service. In this regard, Rule 8 of the Sindh Civil Servants (Efficiency & Discipline) Rules, 1973, is clear, which articulates that upon conviction by a Court and sentence to imprisonment or fine on charge(s) involving moral turpitude, in such case the competent authority shall be legally obliged to dismiss the person from service if he is on duty.

13. Admittedly, the aforesaid criminal case was proceeded with and tried by the learned trial Court and culminated in the conviction of the petitioner, which

were for offences involving moral turpitude under the Criminal Procedure Code and by virtue of the judgments of the learned trial Court, learned appellate Court and the Hon'ble Supreme Court, the petitioner's status got changed into a convicted person in terms of the provisions of Criminal Procedure Code and according to the Sindh Civil Servants Act and the rules framed thereunder which provide mechanism in this regard as noted above.

14. A closer view on the judgment dated 06.02.2006 passed by the learned trial Court and partly maintained by the Hon'ble Supreme Court of Pakistan vide order dated 22.02.2016 clearly shows that the petitioner is still under conviction. Since the conviction of the petitioner is still in the field, the same falls within the definition of "moral turpitude". The expression "moral turpitude" has been explained in words and phrases Permanent Edition 27-A, which is as follows:-

*"In determining whether the crime is one involving "moral turpitude", the test is whether the act denounced by the statute offends the generally accepted moral code of mankind." -----  
----- "Moral turpitude" is a vague term, and its meaning depends to some extent on the state of public morals; it is anything that is done contrary to justice, honesty, principle or good morals; and act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man; it implied something immoral in itself, regardless of fact whether it is punishable by law."*

15. For the above reasons, we are of the view that the petitioner has not been deprived of his fundamental rights as argued by his learned counsel to maintain the constitutional petition under Article 199 of the Constitution. From the foregoing facts and the law referred, in our view, the act of the Petitioner falls within the ambit of "moral turpitude".

16. In the light of Section 15 of the Sindh Civil Servants Act, 1973 and Rule 8 of Efficiency & Discipline Rules, 1973, the petitioner is not entitled to the pensionary benefits as he was / is not qualified to retain the aforesaid post in public office due to his conviction in the criminal cases.

17. In the light of above facts and circumstances of the case as well as law referred to above, the instant petition is found to be devoid of merits and is accordingly dismissed along with the listed application(s) with no order as to costs.

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