

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D- 4646 of 2017

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Zaheer-uddin Ahmed Quraishi & 13 others V/S Province of Sindh & 04 others.

For hearing of CMA No.24365 of 2019 (Contempt) :

Date of hearing

& decision: 04.03.2020

Mr. Abdul Salam Memon, advocate for the petitioners.

Mr. Jamal Bukhari, advocate for respondents/SESSI.

Mr. Hakim Ali Shaikh, Additional Advocate General.

ORDER

ADNAN-UL-KARIM MEMON, J. This petition was disposed of vide order dated 20.08.2018 by giving direction to the competent authority of the Sindh Employees' Social Security Institution (**SESSI**) to look into the matter about the arrears of the commuted amount from the date of restoration of the pension of the petitioners and decide the same, especially keeping in view the judgment passed by the Hon'ble Supreme Court of Pakistan in the case of Federation of Pakistan V/S Ghulam Mustafa and others, 2012 SCMR 1914. Per learned counsel for the respondent-SESSI, they have complied with the aforesaid order by issuing an Office Memorandum dated 31.01.2018, allowing restoration of commuted portion of pension of the petitioners with increases with a rider that pensioner of SEESI shall not be entitled to claim arrears for the period before his restoration i.e. 01.07.2017. For convenience sake, an excerpt of the Office Memorandum dated 31.01.2018 is reproduced as under:

“The Governing Body SESSI in its 147th meeting has been pleased to allow the “Restoration of Commuted portion of the Pension with increases” for the respective Financial years in respect of all those Pensioners of SESSI who retired on or before 30th June 2001, the rate at which they were drawing their 50% Pension w.e.f. 01st July 2017, in accordance with the Notification of Finance, Department Government of Sindh bearing No.FD/(SR-III) 3-402/2013 Dated: 05th August 2015 and further recommendations of the Subcommittee of Governing Body SESSI for Pension Gratuity & the G.P. Fund in its meeting dated: 17th January 2017 for the adoption of same Notification of Government of Sindh at the level of SESSI. However, such Pensioners of SESSI shall not be entitled to claim arrears for the period prior to this restoration i.e. 01st July 2017”

2. Petitioners being aggrieved by non-compliance of the aforesaid order initiated contempt proceedings by filing CMA No.25788/2018 with the assertion that the meeting was convened and it was decided that annual increased

commuted portion of the pension would be restored, with effect from the date of restoration of commuted period, however, they have imposed certain condition as discussed supra, which was/is uncalled for and is affecting the petitioner No.2. Looking through the above perspective and keeping in view the factual position of the case, this Court vide order dated 20.08.2018 converted contempt application into an application under Section 151 CPC and directed the Commissioner SESSI to do the needful by law and in the meanwhile, directed the Accountant General Sindh to submit a report within three (03) weeks as to which of the calculations is correct in the light of judgment rendered by the Hon'ble Supreme Court of Pakistan in the case of *Ghulam Mustafa and others* (supra). In compliance of the order dated 15.01.2020, Deputy Accountant General, Pension, has submitted his report dated 04.3.2020, an excerpt whereof is reproduced as under:

“This officer has also prepared a calculation sheet, before restoration and after restoration according to the pensioner’s data provided by the SESSI. Only one increase remains unchanged i.e. 20% w. e. f. 01.07.1999 which has been allowed by the Sindh Government on gross pension and its cumulative impact creates the difference between revised pension and double.”

3. Mr. Abdul Salam Memon, learned counsel for the petitioner, has argued that restoration of commuted portion of pension with increases ought to have been allowed from the date of restoration of commuted period and arrears ought to have been paid to the petitioners from the date of such restoration; that alleged contemnors have violated the basic spirit of the order passed by the Hon'ble Supreme Court on the premise that respondents have not determined the increases from the date of restoration of the commuted portion of the pension, rather from 01.07.2017, which is illogical and the respondents have not determined the quantum of increase on the restoration of commuted portion of pension. He, however, disputed the statement of Accountant General regarding recalculation of their pensionary benefits; that given the judgment of learned Lahore High Court, upheld by the Hon'ble Supreme Court of Pakistan, the amount of pension (only) drawn on the date of restoration should have been doubled. He lastly prayed for a direction to the respondents to pay the petitioners their pension benefits as per calculation made by them.

4. Conversely, Mr. Jamal Bukhari, learned counsel for the respondent-SESSI, has refuted the claim of the petitioners and argued that the petitioners have been paid full and final payment and nothing is left on their part to be paid to the petitioners. He next pointed out that SESSI is self-generated statutory body having its own rules of service; that the financial directives contained in the Office Memorandums issued by the Government of Sindh from time to time are not stricto-sensu applicable in the petitioners' case; that SESSI adopted the West

Pakistan Civil Service Pension Rules, 1963, on 09.03.1987 for providing pension to its pensioner employees; and, the respondents are making payment of the pension through their account according to the rates admissible to them in the light of decisions rendered by the Hon'ble Supreme Court of Pakistan regarding restoration of commuted portion of pension. He lastly prays for dismissal of the listed application being meritless.

5. The controversial points involved in the present proceedings have already been settled by the Honorable Supreme Court in the cases of Federation of Pakistan V/S Ghulam Mustafa and others, 2012 SCMR 1914, and Secretary Government of Punjab V/S M. Ismail Tayer and others, 2014 SCMR 1336. The Hon'ble Supreme Court of Pakistan has held as under:

“9. In the light of judgments of the Lahore High Court confirmed by the apex Court and the judgment of the Punjab Services Tribunal we accept the appeals. The respondents are directed to determine the pension of the appellants from the date of restoration of their commuted pension at the rate at which they were drawing 50% remaining pension. The arrears shall also be paid to them. It is also clarified that the appellants shall not be entitled to claim arrears from the period prior to restoration of their commuted pension.” (Emphasis Added)

6. In the former case the Honorable Supreme Court has held as under:

“16. Thus, under section 18 of the Act of 1974, a retired Civil Servant is entitled to receive pension as may be prescribed. In case a portion of the pension is commuted for a particular period of time, he surrenders his right to receive full pension in lieu of lump-sum payment received by him and on expiry of the commuted period, his right and entitlement to receive a full pension, as prescribed, is restored and re-vested in him. The restoration of the right to receive a pension in terms of Rule 8.12 of the Rules of 1963, is without any rider and upon re-vesting of such right, the status of such retired Civil Servant in law is brought at par with the other retired Civil Servants, who had not exercised their option of seeking commutation of their pension. Such is the obvious effect of the term "restoration" as used in the Rules in question. In the circumstances, a retired Civil Servant, on expiry of the period of commutation, cannot be discriminated against by being paid less pension, than his colleagues, who had not sought commutation, as there was no valid classification available in law between the two. If the Government were to adopt such a course of action as has been attempted to be done, it would offend against Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. Such right in terms of section 18 of the Act of 1974 would obviously mean the pension, as prescribed by the Rules payable on the date of restoration and would obviously include any increase in pension granted by the Government during the intervening period of commutation, as such, increase is envisaged by the Rules.

17. The reliance attempted to be placed by the learned Additional Advocate General, Punjab, in the case, reported as Akram ul Haq Alivi (supra) is misconceived. By way of the said judgment, the law as laid down by this Court in Civil Appeals Nos. 1305 to 1327 of 2003, has been reiterated and reproduced in-extenso. The dictum, as laid down is merely that a retired Civil Servant is entitled to the pension as may be prescribed and a decision

granting increase in pension has been interpreted by upholding the legal fiction of a net-pension created for the purpose of calculating the increase as granted by the decision under consideration.

18. With regards to Civil Servants in the service of the Federation, an attempt was made to press the judgment, reported as Akram ul Haq Alvi (supra) to deprive the said Civil Servants of the increases sanctioned during the commuted period of pension. Such argument was resoundingly repelled by this Court in its judgment, reported as Federation of Pakistan v. Ghulam Mustafa and others (2012 SCMR 1914).

19. The afore-said are the detailed reasons of our short Order dated. 31-3-2014, which is reproduced hereunder:--

"For reasons to be recorded later in the detailed judgment; we are persuaded to hold that the interpretation being accorded to Rule 8.1 read with 8.12 of the Punjab Civil Services Pension Rules vide the office memorandum issued by the Government of Punjab dated 22-10-2001 is not only violative of those Rules but also of Article 25 of the Constitution of Islamic Republic of Pakistan. These appeals and petitions are, therefore, dismissed with no orders as to costs."
(Emphasis Added)

7. We have considered the calculation chart prepared by the Deputy Accountant General as per ratio of the judgment of the Hon'ble Supreme Court of Pakistan as discussed supra and opined that only one increase remains unchanged i.e. 20% with effect from 01.07.1999, which has been granted by the Sindh Government on gross pension and its cumulative impact creates the difference between revising pension and double.

8. As per record, the petitioner No.2 stood retired on 10.02.1994. He claims that his gross pension on retirement was Rs.7537.32. He commuted his 50% pension for 15 years i.e. 11.02.2009 (date of restoration) and his pension became Rs.14105.51 on the date of return. He also claims that in the year 1999 pension increased, hence the restoration amount with a commuted portion of Rs.3768.66 and increases of Rs.10336.85 would be Rs.14105.51 equal to the amount he was drawing on 11.02.2009 making the pension amount to Rs.28211.03, whereas the revised order issued by the respondent-department shows Rs.24176.85 a difference of Rs.4034.18. His assertion is that if the error is corrected subsequent calculation would be adjusted accordingly.

9. Prima facie, the calculation made by the respondent No.2 is not correct for the reason that the Hon'ble Supreme Court of Pakistan directed to determine the pension from the date of restoration of their commuted pension at the rate at which they were drawing 50% remaining pension which means that the petitioner at the time of his retirement commuted his 50% pension and that portion of pension is to be increased after a period of 15 years (commuted period). As per record, the increases made on commuted pension have already been drawn by him, therefore, his claim that at the time of restoration of his commuted portion

he was drawing Rs.28211.03 and increases to be made in that amount is misconceived. The calculation prepared by respondent as well as Accountant General Sindh is in accord with the judgment passed by the Hon'ble Supreme Court of Pakistan, therefore, we are satisfied with the same.

10. In view of the facts and circumstances of the case and for the reasons alluded above, we are satisfied with the explanation offered by the respondent-department that compliance of the judgment of the Hon'ble Supreme Court of Pakistan has been made in its letter & spirit. Accordingly, the listed application is dismissed with no order as to costs.

JUDGE

JUDGE

Nadir*