

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 8984 of 2018

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Farzana Shafique V/S Federation of Pakistan and 02 others.

Date of hearing
& decision : 17.03.2020

Mr. Muhammad Kamran Mirza, advocate for the petitioner.
Mr. Muhammad Asghar Malik, advocate for respondents 2 and 3.
Mr. Muhammad Nishat Warsi, DAG.

ORDER

Adnan-ul-Karim Memon, J. When petitioner's late husband died on 20.01.2017, he was working as Producer, Programs in Group-6 in Pakistan Television Corporation Limited (PTVC). By then he had served the PTVC for about 28 years, so his tenure in office was qualifying service which has made his widow eligible to claim family pension under the PTVC pension scheme. Having failed to seek family pension on the basis of the family assistance package, the petitioner has invoked the constitutional jurisdiction of this Court seeking directions to the management of PTVC to grant her family pension.

2. Her claim is resisted by Mr. Muhammad Asghar Malik, learned counsel for the respondent-PTVC, on the ground that service of petitioner's deceased husband was hired on a temporary basis against programme budget estimate to assist the producer in production of programs in 1989. His services were regularized in the year 2010 without back benefits. He passed away during his service on 20.01.2017 as such he has no length of service as a regular employee to claim family pension. The PTVC employees whose services have been regularized from 2008 onwards are entitled to Contributory Pension Fund Scheme and not the regular Pension Scheme. The Board of Directors of PTVC in its meeting held on 04-03-2008, decided to cease the regular pension scheme and to create the Contributory Pension Fund Scheme for those PTVC employees whose services were to be regularized with effect from 01.07.2008 onwards; and, that since Contributory Pension Fund Scheme has been introduced to those employees whose services have been regularized from 2008 and onwards, there is no such proposal under consideration of the PTVC to extend regular pension

scheme to such category of employees. It is further contended that PTVC has its own assistance packages for its employees who die during service as such petitioner was paid 200000/- (Rupees Two Hundred Thousand) as death grant and Rs.600000/- (Rupees Six Hundred Thousand) as insurance claim and leave encashment. He prayed for dismissal of the instant petition.

3. The assertion of the respondent-PTVC is totally misconceived for the reason that the petitioner's husband was appointed in the year 1989, his temporary services were regularized in the year 2010 pursuant of the order passed by the Honorable Supreme Court in the case of Aijaz Kbar Kanshi and others vs. Ministry of information and others, **2011 PLC CS 367**.

4. We have noticed that petitioner's late husband's previous service in the respondent-PTVC on a temporary basis is protected for the purposes of fixation and counting of previous service for pension under Fundamental Rule 22-A, which is fully applicable in the case of PTVC. It is a well-settled law that right to claim pension is a right connected with the tenure of service which under the applicable pension rules has to be served by an employee in order to make him eligible for pension. So in order to claim pension, a minimum qualifying service is the threshold; prima-facie that has been crossed by the petitioner to entitle her to claim pensionary benefits of her late husband for the period he served for PTVC. On the aforesaid proposition, we are fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Sakina Riaz V/S University of Karachi and others, **2018 SCMR 1272**.

5. Prima facie, the petitioner's late husband has twenty eight (28) years' service to his credit which is qualifying length of service for family pension. However, the temporary period of the petitioner had already been brought on a normal budget by regularizing his previous service by the order of the Hon'ble Supreme Court of Pakistan as discussed supra which entitled the petitioner to claim pensionary benefits of her late husband. To add further, Article 371-A of Civil Service Regulations is clear in its terms that a government servant, not employed in a substantive permanent capacity who has rendered more than five years continuous temporary service counts such service for the purpose of pension or gratuity excluding broken periods of service, if any, rendered previously. Continuous temporary and officiating service of less than five service immediately followed by confirmation shall also count for gratuity or pension, as the case may be.

6. Record reflects that petitioner' husband was appointed in the year 1989 on temporary basis against a substantive post and he continuously served as such and then his temporary employment was converted into regular service in the year 2010 with retrospective effect, and therefore, according to Articles 358, 371-A, 423 and 474 (b) of Civil Service Regulations, his previous service is countable to his regular service for the purpose of service / pensionary benefits and other fringe benefits, therefore, petitioner-widow is entitled to claim family pension. On the aforesaid proposition, we are fortified with the decisions of the Hon'ble Supreme Court in the cases of Nafees Ahmad V/S Government of Pakistan and others, 2000 SCMR 1864, Ch. Muhammad Azim V/S The Chief Engineer, Irrigation and others, 1991 SCMR 255, and Chairman, Central Board of Revenue and others V/S Nawab Khan and others, 2010 SCMR 1399. Since the petitioner's late husband served with the respondent-PTVC in the year 1989 and his service was regularized by the Hon'ble Supreme Court of Pakistan, the principle set forth by the Hon'ble Supreme Court of Pakistan in the case of Messrs State Oil Company Limited V/S Bakht Sidique and others, 2018 SCMR 1181, is providing guidance on the issue involved in the matter, excerpt whereof is as under:

“3..... However, at this stage, we would like to observe that the employment of the respondents shall be regularized with effect from the date when they approached the learned High Court through the Constitution petition but for their pensionary benefit and other long term benefits, if any, available under the law, they would be entitled from the date when they have joined the service of the petitioner. All the petitions are accordingly dismissed.” [Emphasis added]

7. In view of the above discussion, this petition is allowed with no order as to costs and the competent authority of respondents is directed to include temporary employment of petitioner' late husband as his substantive service as regular for the purpose of service dues and other allied pensionary benefits. The competent authority of respondents are further directed to complete the entire exercise and recalculate and settle the pensionary / service dues of the petitioner' late husband within sixty (60) days from the date of this order.

JUDGE

JUDGE

Nadir*