

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**Present**

**Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon.**

**C.P. No.D-628 of 2014**

Rasool Bux Shar .....Petitioner

Vs.

Federation of Pakistan & Others .....Respondents

Dated of hearing: 10.01.2019.

Petitioner present in person.

Mr. Orangzeb Talpur, Advocate for respondent / Port Qasim Authority.

Mr. Fazal Qadir Memon, Assistant Attorney General for Pakistan.

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

**ADNAN-UL-KARIM MEMON-J:** - Through the captioned petition, the petitioner is seeking the following relief(s):-

- (a) **To direct the Respondents to grant pension / GPF / commutation and other allied retirement benefits for qualifying service rendered in Port Qasim Authority (PQA) and make payment of arrears on the basis of last pay drawn at the time of retirement from service on attaining the age of superannuation from 07.12.2008 at the earliest.**
- (b) **To direct the Respondents to grant increase in the rate of pension and other retirement benefits as allowed by the Federal Government from time to time.**
- (c) **Any order or orders that this Honourable Court may deem fit to pass in the circumstances of the case keeping in view the inordinate delay caused by PQA in granting pension violating specific orders of the Federal Government.**

2. The basic claim of the Petitioner is for grant of pension for the period of 15 years' service, he rendered in Port Qasim Authority (*hereinafter referred to as PQA*) w.e.f 20.11.1973 to 10.02.1988 and other allied retirement benefits.

3. Brief facts of the case, as per pleadings of the parties are that the Petitioner was appointed as Assistant in PQA vide appointment letter dated 16.11.1973. Petitioner has averred that his service was confirmed and promoted to the post of Superintendent BPS-16 with effect from 15.8.1984, thereafter, he was granted Move Over in BPS-17. Petitioner has submitted that he rendered the service of more than 14 years with PQA w.e.f 20.11.1973 to 10.02.1988, which is a qualifying service for the purpose of pensionary benefits. Petitioner has submitted that in response to the letter dated 19.11.1987 issued by the PQA, he opted for pensionary benefits in the year 1985, much prior to his being relieved from PQA to join his new assignment in Korangi Fisheries Harbour Authority (*hereinafter referred to as KoFHA*), as Deputy Director, which is part and parcel of the same Ministry. Per Petitioner, neither had he tendered his resignation nor his services were terminated nor was his option for pension cancelled by PQA, due to his confirmed services against substantive permanent post in PQA. Petitioner has averred that PQA approved the summary for grant of lien in PQA for a period of two years w.e.f 11.02.1988. Petitioner has further averred that he was selected by KoFHA against the post of Deputy Director (Admn.) BPS-18 in the year 1988 and he was relieved by PQA with the understanding that his lien with PQA would be considered and decided by PQA Board in due course of time. Petitioner has submitted that upon selection as Deputy Director Administration in KoFHA, he was relieved by PQA vide Board Resolution dated 9<sup>th</sup> February, 1988. Petitioner has submitted that he joined KoFHA w.e.f 11.02.1988, thus his service rendered for 14 years two months and twenty days in PQA, without interruption and he rendered more than 20 years spotless service with KoFHA without break even for a single day in both the Organizations and was subsequently retired on attaining the age of superannuation on 07.12.2008, thus was/is entitled for pensionary benefits from PQA for the aforesaid period. Petitioner has added that upon his

retirement, the retirement benefits for the aforesaid period served with KoFHA, he was granted Contributory Provident Fund (CPF) as per rules, as the pensionary benefits for the period he served for PQA lies on the shoulder of PQA for which the petitioner had been all along reminding PQA for grant of pension but PQA is reluctant to accede to his request on the baseless grounds of claiming that PQA had transferred his retirement pensionary benefits to KoFHA, but the KoFHA denied receipt of such payment, which had certified in negation. Petitioner being aggrieved by and dissatisfied with the inaction on the part of PQA filed the instant petition on 8.4.2014.

4. Upon notice, para-wise comments were filed by the Respondent No. 1(i) (ii) (iii).

5. Petitioner, who is present in person, has submitted that the service of PQA is pensionable and the liability of acceptance of proportionate share of pensionary charges and CPF for the period of services rendered by the Petitioner in PQA is to be borne by PQA according to Revised Pension Table as the Petitioner has qualifying service of pension under the law; that since, the service of the Petitioner with PQA is more than 10 years and that the Petitioner fulfills all the conditions of qualifying the service for pension as provided under Civil Service Regulation 361; that the Petitioner on attaining the age of superannuation after rendering more than 35 years continuous and spotless service without interruption in PQA and KoFHA stood retired on 07.12.2008; that the KoFHA accepted the liability for payment of retirement benefits for the period from 11.02.1988 to 06.12.2008 and paid CPF as per rules, whereas the PQA has denied the benefits of 14 years two months and twenty days service rendered by the Petitioner, which is illegal, unlawful and without lawful justification; that service book of the Petitioner explicitly shows that for the period he served with PQA is liable to be paid for his retirement dues; that the Petitioner has been highly discriminated in the matter

as the other persons, who had rendered three years and five years' service had been paid the pensionary benefits. In this regard, he cited the names of S.D Mengal Ex-General Manager and Mr. Naveed Ashraf, Deputy Manager of Computer Department of PQA. He lastly prayed for allowing the instant petition.

6. Mr. Orangzeb Talpur, has filed Vakalatnama on behalf of PQA, which is taken on record and has raised the question of maintainability of the captioned petition. However on merits he has refuted the claim of the Petitioner and argued that the Petitioner is not entitled for pensionary benefits from PQA as he was appointed afresh in KoFHA and retired on attaining the age of superannuation in the year 2008, therefore, no payment on the part of PQA is required to be paid to the Petitioner. In support of his contention, he relied upon the para-wise comments already filed by him and DAG on 29.08.2018 and order dated 24.9.2010 passed by this court in C.P No. 850 of 2009 and argued that the petition is suffering from serious laches; that the lien of the Petitioner with PQA was declined upon confirmation of his service in KoFHA; that the Petitioner had been paid admissible amount on account of GP Fund (then CPF) amounting to Rs.52,052.91 vide endorsement in the official record dated 28.2.1989, therefore he is not liable to be paid any more amount on account of pensionary benefits by PQA. He concluded his arguments by submitting that the Petitioner has no qualifying service to claim pensionary benefits from PQA and prayed for dismissal of the instant petition. At this stage, the Petitioner has denied the claim of the PQA and submitted that nothing has been paid to him on account of pensionary benefits for the aforesaid period.

7. Mr. Fazal Qadir Memon, Assistant Attorney General for Pakistan has filed statement alongwith parawise comments on behalf of respondent No.1 (iii), which are taken on record and has relied upon the comments wherein

reply to the prayer clauses, it has been contended that the Petitioner is entitled for pension from PQA for a period of 14 years' service in PQA.

8. We have heard the parties and perused the material available on record.

9. First and foremost, we would address the question of the jurisdiction of this Court to entertain the petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

10. We have noted that the Port Qasim Authority Employees Service Regulations, 2011 are statutory, because the same were framed by the Board of Directors of Port Qasim Authority with the prior approval of the Federal Government, pursuant to Section 51 of the Port Qasim Authority Act No. XLIII of 1973. As such, we are of the opinion that this petition can be heard and decided on merits by this Court exercising its Constitutional jurisdiction under Article 199 of the Constitution, even otherwise the case in hand is for enforcement of pensionary benefits, which is a fundamental right of pensioner, thus the objection regarding maintainability of the instant petition is not sustainable, which is hereby repelled.

11. From the pleading of the parties, the following pivotal question of law is involved in the subject petition:-

**Whether the Petitioner is entitled to payment of pensionary benefits of his 14 years' service in PQA in addition to Contributory Provident Fund received by the Petitioner from KoFHA upon his retirement in the year 2008?**

12. A perusal of record explicitly shows that the Petitioner had applied for the post of the Deputy Director (Administration) in KoFHA, through proper channel, his application was forwarded to KoFHA vide PQA letter dated 13.06.1987. On his selection against the above post, PQA relieved him to join his new assignment as a fresh appointee in KoFHA. Record further reflects

that he made a request to PQA to retain his lien for a period of two years vide application dated 01.02.1988. His case was placed before the Board for approval of the proposal as made in the paragraph No.5 of the summary. An excerpt of the same is reproduced as under:-

**“Mr. Rasool Bux, Supdt (B-16) may be released from Port Qasim Authority and allowed to retain his lien in Port Qasim Authority for a period of two years, to take up his new assignment as Dy. Director (Admn) in Korangi Fisheries Harbour Authority, Karachi, on the terms and conditions as allowed in the case of M/s A. Stattar Dero (ex-XEN), A. Razaq Bhugio (XEN), M.A. Khan Sherwani, (Assistant Manager, Establishment) and Khuda Bux Mandro (Welfare Officer).”**

We have noticed that his request for retention of his lien was declined by PQA with the following observations:-

**“129. Mr. Rasool Bux Shar has contended that in terms of FR 9 (13) (b) and FR.14 (a) – (1992 SCMR 435) he holds lien in PQA as the lien of permanent Civil Servant could not be terminated even with his consent. Same could, however, be terminated only where he was confirmed against some other post. The officer in his earlier application dated 06.02.2008 had requested PQA for re-absorption on his substantive permanent post reckoning seniority with other officers of his class/ cadre considering his services in Koraning Fisheries Harbour Authority as if on deputation which could not be materialized.**

**130. If is however, a matter of record that two officers of PQA were relieved of their duties to join their assignments in Korangi Fisheries Harbour Authority and both have been retired on attaining the age of superannuation. They were Mr. Iqbal Ahmed Turk DGM (Works) BPS-20 and Mr. Rasool Bux Superintendent (BPS-17 by move over). Mr. Turk has however, not claimed any anticipatory provisional payment of pension, may be due to his sound financial condition, whereas, Mr. Rasool Bux has submitted a request for the same as per clause 19 (4) of the Civil Servants Act, 1973 which reads hereunder:-**

**‘If the determination of the amount of pension or gratuity admissible to a Civil Servant is delayed beyond one month of the date his retirement (or death) he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according the length of service of a Civil Servant which qualifies for pension or gratuity; and any overpayment consequent on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such Civil Servant or his family’.**

**131. Accordingly there is no harm to accede to his request based on the declaration to repay the excess amount if any (SL-199/C).**

**132. In view of the above, case file is forwarded for views / comments by Finance Division/ IA Department after perusal by the Chairman.”**

13. Perusal of record further reveals that the Petitioner on attaining the age of superannuation on 07.12.2008 stood retired from the service of KoFHA after rendering more than 20 years services and after his retirement he filed C.P. No.D-850/2009 on 13.05.2009 before this Court which was disposed of with the following observations:-

**“8. This Court, even otherwise, cannot embark upon question of such lien in respect of an employee who admittedly is not a civil servant in exercise of writ jurisdiction nor could a writ be issued for enforcement of a policy of allotment of a plot, which is not statutory in nature. Accordingly, the petition is dismissed. The petitioner may, however, avail all such remedies as may otherwise be available to him in accordance with law.”**

14. We have further noticed that the Petitioner had approached the learned Federal Ombudsman, who vide order dated 01.07.2014, dismissed the complaint of the Petitioner being not entertain-able on the point of jurisdiction.

15. We have scanned the comments filed on behalf of KoFHA, which prima facie suggest that the Petitioner had served in PQA for more than 14 years; therefore, he was/is entitled for pension from the PQA for the aforesaid period. The learned counsel representing PQA has referred to letter dated 22<sup>nd</sup> September, 2011 attached with the statement dated 29.08.2018 filed by learned Assistant Attorney General-III and at Para-07 it is disclosed that the legitimate dues for the period he served in PQA has already been transmitted to KoFHA, from where Petitioner retired. Petitioner, however, has refuted the claim of PQA and pointed out that the Manager (Administration) KoFHA, Ministry of Ports and Shipping, Government of Pakistan vide letter dated 20.10.2011 certified that no payment whatsoever including pension

contribution has been received by this Authority in favor of the Petitioner for the period of employment with PQA prior to joining KoFHA.

16. We are clear in our mind that Pension is not a bounty from the State / employer to the servant / employee, but is fashioned on the premise and the resolution that the employee serves his employer in the days of his ability and capacity and during the formers debility, the latter compensates him for the services so rendered. Therefore, the right to pension has to be earned and for the accomplishment thereof.

17. In the foregoing legal position of the case, we are not convinced with contention of the learned Counsel for the Respondent-PQA that the Petitioner is not entitled to service benefits i.e. for a period of 14 years in PQA for the simple reason that at the one hand they are saying that the legitimate dues for the period the Petitioner served in PQA has already been transmitted to KoFHA and on the other hand in the comments they have stated that the Petitioner was paid an amount of Rs.52,052.91/- on account of GP Fund (then CPF). *Prima facie*, the contrary stance of the PQA cannot be appreciated.

18. Perusal of Civil Service Regulation -361 which provides for conditions of qualifying service for the pension, stated that firstly the service must be under Government, secondly the employment must be substantive and permanent and lastly the service must be paid by Government. The Civil Service Regulation- 467 is clear in its terms, which provides as under:-

**467. An officer holding two or more separate appointments may not, save with the express sanction of the Government of Pakistan Ministry of Finance, or if pensions are a Provincial charge, of the Provincial Government, resign one or more of such appointments on a pension, without retiring from the public service altogether. There is no objection to his being relieved from one or more of such appointments at any time without being compelled to leave the service altogether; but in such case, any pension admissible to him for service in the office or offices from which he is relieved, will be deferred until he finally retires.**

19. There is no cavil to the effect that a retiring pension is granted to a Government Servant who is permitted to retire after completing qualifying service of 25 years. However, the question involved in the present proceedings is with regard to the pensionary dues for a period of 14 years' service rendered by the Petitioner in PQA and as per record KoFHA has denied to have received the pensionary dues of the Petitioner from PQA and claimed in the comments that the Petitioner is entitled for pension from PQA.

20. In the light of aforesaid, we feel that the Petitioner has rendered his service for more than 14 years' in PQA, which service can be counted for pensionary benefits for the simple reason that there is no interruption in the service of the Petitioner as provided under Civil Service Regulation-420, when he joined KoFHA in the year 1988 till his retirement in the year 2008 from KoFHA, therefore, the dues for such period be counted afresh and paid to the petitioner alongwith allied benefits not later than 03 months of this judgment.

21. The petition stands disposed of in the above terms.

**JUDGE**

**JUDGE**

Irfan Ali