

IN THE HIGH COURT OF SINDH AT KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-53 of 2019

Mohammad Ibrahim *versus* Post Master General and 04 others.

Date of hearing

& decision : **14.01.2020.**

Petitioner present in person.

Mr. Muhammad Nishat Warsi, DAG along with Mr. Ateeq-ur-Rehman, Assistant Director, Law, Post Master General.

ORDER

ADNAN-UL-KARIM MEMON, J:- Basically the petitioner is seeking declaration to the effect that the deduction of Rs.8000/- from his salary /now pensionary benefits on account of purported outstanding rent amount is illegal and against the decision rendered by the Hon'ble Supreme Court of Pakistan.

2. Petitioner, who is present in person, was put on notice to satisfy this Court as to maintainability of this petition on the ground that the deduction of an amount of Rs.8000/- out of 88000/- from his salary is/was basically on account of audit para dated 29.9.2017 available at page No.59 of the court's file, on the premise that he failed to deposit his share of rent of the rented premises used for Divisional Superintendent Postal Services' (DSPS) office Malakand at Batkhela Peshawar.

3. Petitioner has replied that he stood retired from the office of the Director General, Pakistan Post Office Department vide office order dated 01.01.2019 and during his service tenure, the Audit office opined to recover an amount of Rs.88,000/- w.e.f. 01.11.2016 to 30.09.2017 from his salary. Petitioner added that he protested to the aforesaid recovery proceedings by moving various applications to the competent authority and clarified his position to the extent of residing in the DSPS office rented premises and also enclosed oath statements regarding his tenancy but to no avail and in the meanwhile he stood retired from government service on 01.01.2019. He further added that pension cannot be retained to recover Government dues if any; that Government has no right to deduct the amount of purported share of rent from the pensionary benefits of the petitioner; that once a government employee is retired his

pension cannot be withheld on any account, thus the findings of audit para during his service tenure is unlawful; that the finding adversely affecting the pension of the petitioner in any manner is not justified; that he had never been provided official accommodation during his posting as a DSPS Malakand Division; that this is hardship case and the amount is being deducted from his pensionary benefits, therefore this petition is maintainable.

4. Mr. Muhammad Nishat Warsi, learned DAG has referred to the statement dated 24.4.2019 filed on behalf of respondents 1 to 4 and raised the question of maintainability of the instant petition and argued that the petitioner was residing in office rented building under administrative control of DSPS Malakand in Batkhela; that he was not paying rent and utility bills; that an amount of Rs.88000/- was due against him and recoverable as rent bills on the premise that the petitioner was getting house rent; that irregular stay in office premises was in violation of Rule 8 of GFR Volume-I; that if he is at all aggrieved against the recovery of amount from his salary /pension, he may file an appropriate proceedings before the competent forum in accordance with law. He lastly prayed for dismissal of the instant *lis*.

5. We have heard the petitioner who is present in person as well as learned DAG and perused the material available on record.

6. During the course of arguments, much emphasis has been laid on the audit para dated 29.9.2017, which explicitly show the following factual position of the case:-

"OM No.CAIP-10/GPO/Batkhela/2017-18/06

Dated: 29.09.2017

NON-RECOVERY OF SHARE OF RENT OF DSPS OFFICE RENTED BUILDING-RS 232,000

According to Rule 26 to 38 of GFR Vol-I the departmental officer have to ensure that all sums due to government or regularly and promptly assessed realized and duly credit to the public account. No account due to the government should be left outstanding without sufficient reasons.

Contrary to the above, review of office rented building file of DSPS Malakand, physical verification of the building, inquiries, photographs and other relevant documents/records it was observed that the building was consisting of four rooms, one kitchen, courtyard and garden. The monthly rent of the building except Utility Bills was Rs.30,000. Various Officers/Official stayed in office rented building and occupied one or more rooms at different times but did not pay share of rent and utility bills Rs.232,000 as detailed in the Annexure____. Furthermore, house rent of officer/official was not deducted. This statement of affairs tantamount towards management override and loose internal controls. Non-recovery of share of rent was violation of Rules and caused loss to public exchequer.

Sd/-

Muhammad Hanif
Audit Officer
O/O D.G. Audit
PT&T Lahore"

Prima-facie the aforesaid excerpt of the audit para explicitly shows that this matter can be disposed of on the premise that respondents have not provided a single document to substantiate their claim that the petitioner was provided the official accommodation during his posting as DSPS Malakand Division, and have also not disclosed whether petitioner was residing in the subject premises, in absence of office order for the aforesaid purpose, no recovery proceedings can be initiated against the petitioner on the basis of audit para as discussed *supra*.

7. We have noted that the Divisional Superintendent, Postal Services has disclosed that the petitioner was not residing in the subject office premises which factum was communicated to the audit department but the audit department could not agree and converted the audit para into proposed draft para No.205-2018

8. In view of the above factual position of the case, we do not see any substance in the claim of the respondent-department to initiate the recovery proceedings of share of rent from the account of petitioner. Since substantial amount has already been deducted from the salary of the petitioner on account of audit para during his service which *prima-facie* does not show any justification to initiate recovery proceedings from the salary of petitioner.

9. Record reflects that petitioner has attained the age of superannuation in the year 2019, therefore, no further recovery can be initiated from his pensionary benefits. The respondents are directed to adjust the deducted amount in the pensionary benefits of the petitioner accordingly.

This petition stands disposed of in the above terms with no order as to costs.

JUDGE

JUDGE

Nadir/-