

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, MINGORA BENCH
(DAR-UL-QAZA), SWAT
(Judicial Department)

W.P. No.567-M/2015

Muhammad IbrahimPetitioner.

Versus

*Chairman Board of Trustees Employees Old Age Benefit Institution
Head office Karachi and two others. Respondents.*

Present: *Mr. Fayaz Muhammad Qazi, Advocate for Petitioners.*

Mr. Raza Uddin AAG for official Respondents..

*Mr. Mukhtar Ahmad Maneri, Advocate for EOBI Respondents
through Video Link.*

*M/s Sher Muhammad Khan & Ali Asghar Advocates for FDC
Respondents.*

Date of hearing: **24.05.2022.**

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- This common judgment in the instant petition shall also decide **W.P No.558-M of 2019** titled **(Saranzeb and 05 others versus Government of Khyber Pakhtunkhwa through Chief Secretary and 4 others)**, **W.P No. 368-M of 2019** titled **(Karim Bakhsh and 34 others versus Government of Khyber Pakhtunkhwa through Chief Secretary and 4 others)** **W.P No. 154-M of 2021** titled **(Muhammad Fazli Haq Sabir and 33 others versus Government of Khyber Pakhtunkhwa through Chief Secretary and 4 others)** and **W.P No. 277-M of 2021** titled **(Gul Muhammad and 5 others versus Government of Khyber Pakhtunkhwa through Chief Secretary**

and 4 others) because an identical question of law and fact is involved in all these petition.

2. Mr. Fayaz Muhammad Qazi, Advocate learned counsel for petitioners contended that the petitioners are ex-employees and some of them are the legal heirs of ex-employees of Khyber Pakhtunkhwa Forest Development Corporation, which has registered its all employees with the institution i.e., Employees Old Age Benefit Institution Government of Pakistan in term of Employees Old Age Benefit Act 1976. He added that a dispute arose between the establishment of FDC and EOBI pertaining to non-payment of contribution for which the establishment was served with the notice dated 18.12.2003 by the respondent institution regional office Peshawar demanding the payment of outstanding arrears, which was challenged before adjudicating Authority EOBI, Peshawar Zone but the same was dismissed on 22.06.2005. Being aggrieved respondent FDC filed an appeal before Appellate Authority, Board of Trustees of institution but the same too failed 28.08.2007. Still aggrieved, FDC respondents filed Writ Petition before this Court which was dismissed on 20.10.2010 and then they approached to the Hon'ble Supreme Court but their petition for leave to appeal dismissed and leave was refused on 04.10.2011. He added that despite the decisions against the respondent No. 5, he has failed to extend the statutory benefit to the petitioners.

3. Conversely, Mr. Mukhtar Ahmad Maneri Advocate, learned counsel for respondent/EOBI contended that the petitioners are not insured persons in accordance with Chapter II section 3 of the Act of 1976; that it is the internal dispute between the establishment of FDC and its employees; that no contribution was paid by the petitioners in consonance with the provisions of section 9B of the Act and that the petitioners have bypassed the forum available to them for redressal of their claims in term of chapter No. VII of the Act of 1976. Lastly, he added that the petitioners have signed agreement with respondent/FDC management through Collective Bargain Agent (CBA) on 20.12.1997 and would have been paid considerable amount through Golden Handshake Scheme, as such, they are not entitled for any benefit from the institution. M/s Sher Muhammad Khan & Asghar Ali, Advocates appeared for respondent (FDC) and contended that there were 1728 regular employees in the establishment of FDC who have given Golden Handshake under the policy on 20.12.2997 after the acceptance of petitioners through their representative i.e., Collective Bargain Agent (CBA) and the petitioners have received their entire financial benefit from the respondent/FDC, as such, no writ can be issued against respondent No.5, they prayed for the dismissal of these petitions. Learned AAG for Provincial Government contended that Government of Khyber Pakhtunkhwa was a signatory where the

terms and conditions between the FDC, its employees and the CBA were settled, the memorandum of agreement was agreed and signed by all concerned, therefore, the case of the petitioners shall be subject to the settled terms and conditions.

4. Arguments heard and record perused.

5. It is indisputable that the petitioners and some of them are legal heirs of the ex-employees of the respondent/FDC. It is not denied that the respondent/FDC has challenged the notice issued for recovery of contribution by the respondent institution/EOBI before the Adjudicating Authority, which was dismissed and the order of the Authority was maintained even by the Apex Court when the petition for leave to appeal was dismissed and leave to appeal was refused. It is also not disputed that all the employees for whose benefit these petitions were filed have been awarded golden handshake in terms of MOU signed by the President Collective Bargaining Agent, Secretary to the Government of Khyber Pakhtunkhwa Industries and Labour, Additional Secretary Finance etc., where amongst others it was agreed that:

- a) 9th of July shall be the cut-off date, on which date, services of surplus seasonals/technical staff including the employees of HRTF and WPPH have been dispensed with. Emoluments and dues of the above-mentioned employees shall be worked out on the basis of their salaries as on the above-the date.
- b. These agreements shall be binding on all the signatures hereto and the workers/employees of FDC/ HRTF and

WPPH and shall be treated as a settlement arrived at between the parties in terms of 26 of the Industrial Relation Ordinance 1969 and the copy thereof shall be sent to the conciliator for record, as required by law.

- c.** If in future the FDC management require to employee staff for the completion of the remaining required activities of the corporation, the ex-employees will be given preference for contractual employment according to their suitability, qualification and experience for the said job. The CBA union undertake not to object upon the procedure for employment to be carried out by the FDC management.

6. Accordingly, on the basis of agreed terms and condition, the services of the petitioners and others were dispensed with. Self-operating mechanism was provided in the MOU in terms of section 26 of the Industrial Relation Ordinance, 1969, which reads as under:

“26. Negotiations relating to differences and disputes. -

- (1) If at any time an employer or a collective bargaining agent finds that an industrial dispute has arisen or is likely to arise, the employer or, as the case may be, the collective bargaining agent, may communicate his or its views in writing either to the Works Council or to the other party so, however, that, where the views are so communicated to the Works Council, a copy of the communication shall also be sent to the other party.
- (2) On receipt of the communication under sub-section (1), the Works Council or the party receiving it shall try to settle the dispute by bilateral negotiations within ten days of the receipt of the communication or within such further period as may be agreed upon by the parties and, if the parties reach a settlement, a memorandum of settlement shall be recorded in writing and signed by both the parties and a copy thereof shall be forwarded to the Conciliator and the authorities mentioned in clause (xxiv) of section 2.
- (3) Where a settlement, is not reached between the employer and the collective bargaining agent or, if the views of the employer or collective bargaining agent have been communicated under sub-section (1) to the Works Council, there is a failure of bilateral

negotiations in the Work Council, the employer or the collective bargaining agent may, within seven days from the end of the period referred to in sub-section (2), serve on the other party to the dispute a notice of lock-out or strike, as the case may be, in accordance with the provisions of this Ordinance.”

The petitioners could move for resolution of their grievance but they did not opt to get their grievance resolved through the mode agreed by them.

7. Adverting to the Employees' Old-Age Benefits Act, 1976 (Act No. XIV of 1976), which relates to old-age benefits for the persons employed in industrial, commercial and other organizations. Though the respondent/FDC once again agitated some of the points, which have already been resolved when the dispute was between Forest Development Corporation and the institution in term of section 47 of the Act and the same was decided against the respondent (FDC), as then they were. Thus, there objection to that extent has no force being decided against FDC. Another objection on the ground that as the petitioners were retired on the policy of golden handshake, therefore, they are not entitled for the benefit under EOBI, this objection too is of no help to them on the analogy of the dictum laid down by the Hon'ble Supreme Court in the case of "Chief Manager, State Bank of Pakistan and 2 others Versus Ghulam Rasool and others" (2011 SCMR 313), wherein it was held that under the scheme, the staff and officers would be entitled to the

retirement benefits and in addition to normal retirement benefits, bank would provide certain financial and benefit package under Golden Handshake Scheme to all its employees. Similarly, section 3 of the Act of 1976 requires compulsory insurance but at the same time it was provided that all persons employed in an industry or establishment under a contract of service or apprenticeship, whether written or oral, express or implied, shall be insured in the manner provided by or under this Act but the mode and manner for insurance has been provided in Registration of Employers & Insured Persons under Employees' Old-Age Benefits Rules 1976 where rule 3 has explained that: (1) An employer shall before expiration of thirty days from the day on which the Act becomes applicable to the industry or establishment in respect of which he is the employer, communicate to the Institution the name and particulars of the industry or establishment in Form PR-01 and of every insured person employed therein in Form PE-01 and, in the case of Form PE-01, give the receipt appended to the Form to the insured persons. (2) An insured person may also communicate his name and other particulars to the Institution in Form PE-02. (3) On receipt of the requisite particulars in Forms PR-01 and PE-01 from an employer, the Institution shall register the name of the industry or establishment in respect of which he is the employer and of the insured person and issue to

the employer a Certificate of Registration in Form PI-02 and to each insured person a Registration Card in Form PI-03. In the same manner under section 32 of the Act of 1976, any amount outstanding may be recovered as an arrear of land revenue.

8. Moreover, none of the petitioners have provided the details about the length of his service, his employment in the establishment, his registration with the institution in term of section 11 (1) or (2) of the Act, 1976, the details of contribution by the employees under section 9B, the details of the length of their services for determination of Old Age Pension or for old age grant or for survivors' pension in view of section 22, 22A or 22B of the Act. These are the questions requiring probe into which exercise cannot be done in writ jurisdiction under Article 199 of the Constitution, especially when all the petitioners were retired or their services were dispensed with in the year 1997, therefore, for how long they remained in service is also a question requiring inquiry for determination of each individual. In this respect reliance is placed on cases reported as "Mushtaq Ahmad Vs S.H.O and others" (2004 MLD 1502), "Syed Asif Akhtar Hashmi Vs. Malik Muhammad Riaz and 3 others" (PLD 2008 Lahore 235) and "Pakcom Limited and others Vs. Federation of Pakistan and others" (PLD 2011 SC 44). Wisdom may also be drawn from the case titled "Fida Hussain and another vs. Mst.

Saiqa and others" (2011 SCMR 1990). It is well settled that disputed questions of facts cannot be adjudicated upon in writ jurisdiction in accordance with the dicta laid down by the august Supreme Court in case titled *Government of Punjab Vs Ghulam Nabi (PLD 2001 SC 415)*.

9. An equal significance aspect is the appropriate forum for redressal of their grievance as provided under chapter VII sections 33, 34 & 35 of the Act of 1976 read with Employees' old age benefits (determination of complaints, questions and disputes) Regulations, 1980, where a complete mechanism was provided for solution of all disputes. The Hon'ble Supreme Court in the case of "*Allah Ditta and others v. Malik Ijaz Hussain*" (1986 S C M R 959), has held that:

"Accordingly, we are of the opinion that if in any case the High Court considers that a writ petition should not be entertained on account of the failure of an aggrieved party to avail of another adequate remedy such a decision is not only entirely legitimate but is indeed in furtherance of the intendment of Article 199 of the Constitution. In fact, in the present case, since the case was remanded by the Federal Land Commission to the Chief Land Commissioner for decision afresh in the light of the directions given by it, it was all the more appropriate that a revision petition should have been filed before the said authority to enable it to verify if its directions had indeed been carried out."

Reliance may be placed on the cases of "*William Lawrence v. Government of Pakistan and others*" (1986 S C M R 1077), "*Munir Ahmad Munir v. The Province of Punjab through the Secretary, Home Department, Lahore*" (1987

SCMR 396), "Allah Bakhsh and another v. Muhammad Ismail and others" (1987 SCMR 810) "Muhammad Aslam v. Member Colonies, Board of Revenue, Punjab, Lahore and another" (1988 S C M R 1803). and "Mubarik Ali & Sons versus Employees' Old-Age Benefits Institution and others" (1994 PLC 686).

10. In all the petitions, the petitioners have sought the following prayer:

"i. To take necessary and timely steps to process the payment of old age benefits to the petitioners, who have not yet been paid and to ensure the arrears of the benefits of those who have been paid partially in accordance with the parameters and formula laid down in the Act of 1976 and by laws, rules made and notifications issued thereunder.

ii. Any other relief this Hon'ble Court may deem just and proper."

Learned counsel for the petitioners could neither point out the violation of any statutory provisions of law nor the infringement of fundamental rights, thus, for the reasons discussed above, the petitioners are not entitled for issuance of writ in consonance with the dicta laid down by the Supreme Court in the case of "Asif Fasihuddin Khan Vardag v. Government of Pakistan" (2014 SCMR 676) has observed the power of review wherein it was held:

"It is also to be noted that the duty of the Court is to confine itself to the question of legality. Its concern should be whether a decision-making authority exceeded its powers; committed an error of law; committed a breach of the rules of natural justice, reached a decision which no reasonable tribunal would

have reached; or abused its powers. Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly, put, there are three grounds upon which an administrative action is subject to control by judicial review; namely illegality which means the decision-maker must understand correctly the law that regulates his making power and must give effect to it; irrationality which means unreasonableness; and procedural impropriety".

11. When so, all these petitions are dismissed being without any substance, however, the petitioners may resort to the forum provided under the law, if so advised.

Announced

24.05.2022



JUDGE



JUDGE

Office
31/5/2022