

2016 P L C 367

[Islamabad High Court]

Before Aamer Farooq, J

PAKISTAN TELECOMMUNICATION COMPANY LIMITED----Petitioner

Versus

MOHAMMAD DILPAZEER ABBASI and others----Respondents

Writ Petition No.1691 of 2015, decided on 29th April, 2016.

(a) Industrial Relations Act (X of 2012)---

---Ss. 33, 54 & 2 (xxxiii)---Grievance petition---Limitation---Grievance notice by workman---Scope---Employer company floated Voluntary Separation Scheme for its employees---Petitioners-employees received dues as provided under the Voluntary Separation Scheme---Petitioners-employees filed grievance petition that their date of commencement of employment had erroneously been mentioned---Grievance petition was accepted concurrently---Validity---Voluntary Separation Scheme had been opted by the employees voluntarily without any coercion or duress and terms and conditions mentioned therein were accepted---Employees had not proved coercion/inducement and they were estopped from challenging/ questioning the terms of Voluntary Separation Scheme---Employees were not dismissed/retrenched, laid off due to industrial dispute rather had voluntarily opted to leave the employer company---Employees were not worker/workman to invoke the jurisdiction of National Industrial Relations Commission nor could serve grievance notice on the employer company---Impugned orders were set aside and grievance petition dismissed---Constitutional petition was allowed in circumstances. **A, B, C, D, E & F**

Mustehkum Cement Limited through Managing Director v. Abdul Rashid and others 1998 PLC 172; Chief Executive Officer Quetta Electric Supply Company and others v. Rana Shamim Akhtar and others 2010 PLC 489; Sahibzada K.A.K. Afridi v. Pakistan International Airlines Corporation and another 1992 SCMR 1379; Senior Vice President (G.M.) National Bank of Pakistan Zonal Office Lahore v. Muhammad Javed Khan and 2 others 1981 SCMR 542; Ms. Zaib un Nisa Khan Lodhi v. Messrs Avari International Hotel through General Manager and 3 others 2006 PLC 164; National Bank of Pakistan v. Muhammad Javed Khan 1982 PLC 380; Pakistan Telecommunication Company Limited v. Yasmeen 2014 PLC 176; Pakistan Telecommunication Company Limited through President and 5 others v. Azhar Ali Babar and 2 others 2013 PLC 345 and Pakistan Telecommunication Employees Trust PTET through MD. Islamabad and others v. Muhammad Arif and others 2015 PLC (CS) 1417 ref.

Pakistan Telecommunication Company Limited through President and 5 others v. Azhar Ali Babar and 2 others 2013 PLC 345; Pakistan Telecommunication Company Limited and others v. Yasmeen Tabassum and others 2014 PLC 176; State Bank of Pakistan v. Khaibar Zaman 2004 PLC (CS) 1213; National Bank of Pakistan v. Nasim Arif Abbasi 2011 SCMR 446; State Bank of Pakistan v. Imitaz Ali Khan 2012 SCMR 280; Mustehkum Cement Limited through Managing Director v. Abdul Rashid and others 1998 SCMR 644; Board of Governors Aitchison College, Lahore v. Punjab Labour Appellate Tribunal and others 2001 PLC 589; Messrs CoCa Cola Beverage Pakistan Limited through Authorized Office/Industrial Relations Manager v. Registrar Trade Unions Sindh and 3 others 2010 PLC 48; Khushal Khan v. Muslim Commercial Bank Limited 2002 PLC (C.S.) 907; Allied Bank of Pakistan Limited v. M. Iqbal Sipra 2007 PLC Labour Cases 398; Abdul Rauf v. Muhammad Shafiq 2006 PLC Labour Cases 135 and Chief Executive Progressive Paper Limited/The Chairman National Press Trust, Islamabad v. Sh. Abdul Majeed and another 2005 PLC (C.S.) 1439 rel.

(b) Industrial Relations Act (X of 2012)---

---S. 33---Grievance petition---Limitation---Grievance petition could be filed within six months of communication of decision by the employer or after lapse of period of 15 days within which decision was to be passed by the employer. **D**

Shahid Anwar Bajwa and Sabir Sardar for Petitioners.

Raja Farrukh Arif Bhatti, Kh. Muhammad Arif, Mirza Muhammad Afzal and Sajid Ameen for Respondents.

Date of hearing: 12th February, 2016.

JUDGMENT

AAMER FAROOQ, J.--- This consolidated judgment shall decide the instant petition as well as petitions mentioned in the schedule attached to the judgment as common questions of law and facts are involved.

2. Respondent No.1 in all the petitions were employees of Pakistan Telecommunication Company Limited (the petitioner). The petitioner is a company registered under the Companies Ordinance, 1984 providing telecommunication services in all the four Provinces as well as Federal Capital Territory and Azad Jammu and Kashmir. The petitioner is successor in interest of Pakistan Telecommunication Corporation Limited which in turn was successor of Pakistan Telephone and Telegraph Department (T&T), a Government owned entity. In November, 2007 the petitioner floated a Voluntary Separation Scheme for its employees, who were given an option to avail the same and sever their employment with the Petitioner Company against lump sum compensation. The Scheme was optional and was circulated amongst all the employees. The private respondents in all the petitions opted Voluntary Separation Scheme. In pursuance of exercise of the option by the referred respondents they were circulated the personal details and the calculation worksheet i.e. the amount to which they were entitled as compensation under the Scheme. The Scheme was circulated in Urdu as well as

English. In this regard the date of joining service of the employees/private respondents was given as the date after the completion of the training period. Moreover, the employees who had minimum period of 20 qualifying years were eligible for early retirement and were to receive pension. Under the Scheme any employee who was not satisfied with the Scheme could urge his grievance by filing an appeal before Voluntary Separation Scheme Support Centre and the matter could be reviewed by Appeal Committee. Furthermore, the employees could also contact Voluntary Separation Scheme Support Centre to report any errors. All the private respondents received the dues as provided under the Scheme. The Scheme also contained waiver and acknowledgement whereby the employees undertook that they are signing the Scheme voluntarily and would not retract from the same after signing it. The referred private respondents i.e. the employees of the petitioner filed a grievance petition before respondent No.2 on or about 09.01.2012 alleging therein that their date of commencement of employment has erroneously been mentioned as from the completion of the training period whereas under the Pakistan Telecommunication Company Limited Regulations the same is to be taken from regular appointment i.e. before the training period and on the basis thereof, it was claimed, that they have completed 20 years of service and are entitled to pensionary benefits. The petitioner entered appearance before respondent No.2 and raised factual and legal objections. The main objection raised by the petitioner was that the petition is barred by limitation; the respondents are estopped from challenging the date of appointment; respondent No.2 does not have the jurisdiction in the matter and that the remedy of appeal was provided under the Voluntary Separation Scheme which was not availed. It was also contended that after leaving the employment of the petitioner the respondents are no longer workmen; hence could not invoke the jurisdiction of National Industrial Relations Commission. The grievance petition was allowed by the Single Member of respondent No.2 vide order dated 17.03.2014. The petitioner preferred appeal before the Full Bench of respondent No.2 which was dismissed vide order dated 12.05.2015 which has been assailed in the instant petition as well as afore-noted petitions.

3. The learned counsel for the petitioner inter alia submitted that respondent No.2 did not have jurisdiction in the matter. In this behalf it was contended that under section 33 of the Industrial Relations Act, 2012 (the Act) jurisdiction of the Commission i.e. respondent No.2 can only be invoked for enforcement of any law, settlement or award; since Voluntary Separation Scheme is neither law nor settlement or award, therefore, respondent No.2 did not have jurisdiction in the matter. It was further contended that the private respondents since are no longer workmen, therefore, could not have invoked the jurisdiction of respondent No.2; that only a workman can agitate the jurisdiction of National Industrial Relations Commission. In this behalf reliance was placed on the cases titled *Mustehkum Cement Limited through Managing Director v. Abdul Rashid and others* (1998 PLC 172), *Chief Executive Officer Quetta Electric Supply Company and others v. Rana Shamim Akhtar and others* (2010 PLC 489). With respect to the question of jurisdiction reliance was placed on the cases titled *Sahibzada K.A.K. Afridi v. Pakistan International Airlines Corporation and another* (1992 SCMR 1379), *Senior Vice President (G.M.) National Bank of Pakistan Zonal Office Lahore v. Muhammad Javed Khan and 2 others* (1981 SCMR 542), *Ms. Zaib un Nisa Khan Lodhi v. Messrs Avari International Hotel through General Manager and 3 others* (2006 PLC 164) and *National Bank of Pakistan v. Muhammad Javed Khan* (1982 PLC 380).

Learned counsel also submitted that the separation took place in January, 2008 and respondents/ex-employees of the petitioner approached National Industrial Relations Commission in January, 2012, almost after four years, therefore, the petition was barred by limitation which fact has not been taken into consideration by respondent No.2. Finally it was submitted that respondents are estopped from questioning the details mentioned in Voluntary Separation Scheme as it was Voluntary Scheme and under the same an option was given for correction which was not exercised and acknowledgement and waiver were also signed by all the employees. Learned counsel pointed out that the respondents in support of their claim placed reliance upon cases titled Pakistan Telecommunication Company Limited through President and 5 others v. Azhar Ali Babar and 2 others (2013 PLC 345) and Pakistan Telecommunication Company Limited and others v. Yasmeen Tabassum and others (2014 PLC 176) to substantiate their claim that the period of service shall be counted from completion of the training; however, it was contended that in the judgment relied upon by the respondents the question of jurisdiction as well as estoppel was neither raised nor addressed by the Hon'ble High Courts.

4. Learned counsel for the respondents inter alia submitted that the matter already stands decided and settled in case titled Pakistan Telecommunication Company Limited v. Yasmeen (2014 PLC 176) and Pakistan Telecommunication Company Limited through President and 5 others v. Azhar Ali Babar and 2 others (2013 PLC 345). It was further contended that there is ample case-law to the effect that a worker/workman even after the retirement continues to enjoy the referred status for the purposes of invoking jurisdiction of the National Industrial Relations Commission. Learned counsel contended next that in 2014 PLC 176 supra it has been categorically held that the date of appointment of the employee in Pakistan Telecommunication Company Limited shall be from the date of initial appointment i.e. before start of training. It was contended next that it is also an established principle that a cause of action vis-a-vis the pensionary rights is recurring in nature and the law of limitation would not be a hurdle in this behalf; that the respondents are entitled to pension as their date of employment is from the initial appointment and therefore, have completed 20 years of service making them eligible for such benefit under Voluntary Separation Scheme. Reliance was placed on the case titled Pakistan Telecommunication Employees Trust PTET through M.D., Islamabad and others v. Muhammad Arif and others (2015 PLC (CS) 1417) to substantiate that the pension was part of a civil servant's retirement benefit and was not a bounty or an ex-gratia payment but a right acquired in consideration of his past service which was a vested right with legitimate expectation; right to pension was conferred by law which could not arbitrarily be abridged or reduced except in accordance with law.

5. The private respondents instituted individual grievance petitions under section 33 of the Act for claiming the pensionary benefit under Voluntary Separation Scheme. In this behalf it was claimed that the date for commencement of the employment was erroneously mentioned by the petitioner as date after the completion of the training, hence the period of 20 years were not completed for eligibility of pensionary benefits. The Hon'ble Supreme Court of Pakistan in case titled State Bank of Pakistan v. Khaibar Zaman (2004 PLC (CS) 1213) determined the status of Golden Handshake Scheme and it was observed that it is a Scheme which is totally voluntary in nature and

was optional for the employees of State Bank of Pakistan to accept it or otherwise. Similarly in case titled National Bank of Pakistan v. Nasim Arif Abbasi (2011 SCMR 446) the Hon'ble Supreme Court of Pakistan held that respondents having exercised option to retire from service on and from cutoff date and on such score could not be treated at par with those employees who did not exercise such option. It was also observed that respondents were paid emoluments in full for the period they worked after they had opted for retirement under Golden Handshake Scheme and had received benefits accordingly. In the instant case as well the respondents were given option to sever their ties from the petitioner company by way of Voluntary Separation Scheme. The terms and conditions of the Scheme were circulated amongst the employees/private respondents in English as well as Urdu and reservations/errors were invited; it is only after the referred fact that respondents executed Voluntary Separation Scheme. The bare reading of the terms and conditions of the Scheme shows that it is opted by the employees voluntarily without any coercion or duress and the terms/clauses mentioned therein are accepted. At the end of the Scheme there is also an acknowledgement and waiver to the effect that the employee acknowledges and accepts the terms and conditions and waives the right to challenge the same.

6. In the grievance petitions filed by the private respondents it has been alleged that the option was exercised by the private respondents under duress/coercion, therefore, they had no option but to accept the terms. During the course of proceedings before the Single Member of National Industrial Relations Commission a categorical statement was made by the counsels for the private respondents as well as the petitioner that the matter can be adjudicated on the basis of documents appended and no evidence shall be led. Coercion/inducement is a question of fact which was required to be proved by the private respondents which they did not do so, hence they are estopped from challenging/questioning the terms of Voluntary Separation Scheme. In similar circumstances the Hon'ble Supreme Court of Pakistan in case titled State Bank of Pakistan v. Imitaz Ali Khan (2012 SCMR 280) observed that Voluntary Separation Scheme was voluntary and was not imposed upon employees and no one was compelled or was under duress, pressure or coercion to opt for the same and in such like cases the employee who opts for the Scheme is bound by it and could not claim the pensionary benefits to which he is entitled on retirement as he does not retire under the regular term of service. Similarly, in State Bank of Pakistan v. Khaibar Zaman Khan Supra the Hon'ble Supreme Court of Pakistan observed that where the employee opted for Golden Handshake Scheme the Supreme Court could not make any deletion, amendment, addition or insertion in the Scheme when the same was free from ambiguity and did not call for scholarly interpretation.

7. The Hon'ble Sindh High Court in case titled Pakistan Telecommunication Company Limited v. Yasmeen Tabassum (2014 PLC 176) held that the respondents established in evidence that they had put in more than 20 years of service and became entitled to pensionary benefits under the Voluntary Separation Scheme. Moreover, it was also observed that Labour Court had jurisdiction in the matter as right had accrued to a workman during or at the time of termination of his service. Similarly, the Hon'ble Peshawar High Court in case titled Pakistan Telecommunication Company Limited v. Azhar Ali (2013 PLC 345) held that the Labour Court had jurisdiction in the matter and had proved through evidence that they had more than 20 years of service.

Moreover, it was also held that an employee begins his service from the date of assumption of charge of the office to which he has been appointed and training should be part and parcel of the service which should be counted for calculating pension. However, in both the judgments the matter had been filed before the learned Labour Court and a trial with respect to the allegations/claims was properly conducted. In the instant case no such trial took place as the parties never led evidence rather, relied on the material available before it.

8. The petitioner raised objection regarding the jurisdiction of respondent No.2 on the ground that the private respondents are not workmen/workers. In this behalf the definition of workmen/workers is provided in section 2(33) of the Act and is as follows:

"(xxxiii) "worker" and "workman" mean person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment are express or implied, and, for the purpose of any proceedings under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity."

The bare examination of the definition shows that a workman/worker is a person who does not fall within the definition of employer and is not in employment as a supervisor or as apprentice in an establishment or industry for higher or reward and also includes a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or as consequence of industrial dispute or whose dismissal, discharge, retrenchment, lay off or removal has led to that dispute. In the instant case the private respondents filed a grievance petition under section 33 of the Act on the ground that they are worker/workman. As noted above a person even who has dismissed from service qualifies as a worker/workman if he has been dismissed, retrenched, laid off, due to industrial dispute. In the present case the private respondents were not dismissed/retrenched, laid off as a result of industrial dispute rather, voluntarily opted to leave the petitioner company hence, are not worker/workman for the purposes of the Act and invoking the jurisdiction of National Industrial Relations Commission. In this behalf reliance is placed on the case titled *Mustehkum Cement Limited through Managing Director v. Abdul Rashid and others* (1998 SCMR 644) wherein the Hon'ble Supreme Court of Pakistan held that a person who had been dismissed, discharged in connection with or in consequence of industrial dispute could seek redressal of his individual grievance in respect of right guaranteed to him. However, such right would not be available where employee had been dismissed, discharged or removed from service otherwise then in connection with or as consequence of industrial dispute. Similarly, in the case titled *Board of Governors Aitchison College, Lahore v. Punjab Labour Appellate Tribunal and others* (2001 PLC 589) the Hon'ble Supreme Court of Pakistan held that to invoke the jurisdiction of a Labour Court the employee has to satisfy that he is worker or workman either under

the provision of West Pakistan Industrial and Commercial Employment Standing Orders, 1968 or Industrial Relations Ordinance, 1969 and his grievance relates to industrial dispute. Similar view was taken by the Hon'ble Sindh High Court in case titled Messrs CoCa Cola Beverage Pakistan Limited through Authorized Office/Industrial Relations Manager v. Registrar Trade Unions Sindh and 3 others (2010 PLC 48).

9. The petitions were filed by the private respondents under section 33 of the Act and in this behalf the petitioner raised objection that the same could not have been done inasmuch as the provisions of section 33 *ibid* can only be invoked for redressal of grievance with respect to any right guaranteed or secured to a worker by or under any law or any award or settlement for the time being enforced; under section 54(h) of the Act the Commission has the power/jurisdiction to deal with cases of individual grievance in the manners prescribed in section 33. In this behalf the individual grievance of a worker/workman can be exercised in the manner/mode provided in section 33 *ibid*. Moreover, under section 54 (i) respondent No.2 also has exclusive jurisdiction over establishment or group of establishment situated in Islamabad Capital Territory and which are trans-provincial, therefore, in view of the referred position of law the objections by the petitioners that the jurisdiction of respondent No.2 could be invoked by worker/workman only vis-a-vis enforcement of any right/settlement or award is without any substance. A worker/ workman can file a petition for redressal of grievance in the mode or in accordance with the procedure provided in section 33 of the Act. In this behalf a worker/workman is required to bring to the notice of his employer in writing the grievance within 90 days of the cause by which grievance arises and if the employer, under subsection (4) of section 33 fails to make/communicate decision within 15 days of the grievance or the decision rendered is not satisfactory then the matter can be agitated before the Commission. Under proviso to subsection (4) a worker/ workman who desires to take the matter to the Commission shall do so within a period of 60 days from the date of commencement of the employment or as the case may be from expiry of the period mentioned in subsection (2) or subsection (3) as the case may be. In the instant case the private respondents opted for Voluntary Separation Scheme in January, 2008 whereas the jurisdiction of respondent No.2 was invoked in January, 2012. Moreover, there is nothing on record to establish that the ex-employees served a grievance notice on the petitioner company and reply thereto was communicated to them. Even otherwise, the grievance petitions have been filed much after the cause having arisen to them. Under proviso to subsection (4) the grievance petition could be filed only within 6 months of communication of the decision by the employer or of lapse of period of 15 days within which the decision was to be passed by the petitioner, therefore, the petition is patently barred by limitation. Even otherwise the procedure prescribed under section 33 *ibid* has not been followed as no grievance notice was served. In case titled Khushal Khan v. Muslim Commercial Bank Limited (2002 PLC (C.S.) 907) the Hon'ble Supreme Court of Pakistan held that the petitioners had initiated incompetent proceedings against respondents as no notice under section 25-A Industrial Relations Ordinance, 1969 had been served. Similar view was taken by the Hon'ble Lahore High Court in case titled Allied Bank of Pakistan Limited v. M. Iqbal Sipra (2007 PLC Labour Cases 398) and it was observed that since no valid grievance notice was given therefore grievance petition was liable to be dismissed. Reliance is also placed on the case titled

Abdul Rauf v. Muhammad Shafiq (2006 PLC Labour Cases 135). It has been vehemently argued by the learned counsel for the respondents that since the petition was filed for enforcement of the pensionary benefits which is recurring cause of action, therefore, limitation period did not apply and in support of the referred contention reliance was placed on case titled Chief Executive Progressive Paper Limited/The Chairman National Press Trust, Islamabad v. Sh. Abdul Majeed and another (2005 PLC (C.S.) 1439). The case law relied upon by the respondents is not relevant under the facts and circumstances of the case inasmuch as cause of grievance, if any, accrued to the private respondents on execution of Voluntary Separation Scheme and a grievance notice had to be served within a period of 3 months therefrom and on expiry of 15 days from service of notice the petition could be filed within 6 months or if the decision was rendered within 6 months of the same. In the instant case neither grievance notice was served nor the petition was filed within the prescribed time period, therefore, the same was filed without fulfilling the requisite requirements and also was barred by limitation. The referred aspect has not been taken into consideration by respondent No.2 while adjudicating the matter in the first instance as well as in appeal. Respondent No.2 has held that since the respondent No.1 i.e. employees are workers and the petitioner is an establishment, therefore, it has the jurisdiction in the matter under Industrial and Commercial Employment (Standing Orders) Ordinance, 1968. I am afraid the referred view of respondent No.2 is not tenable in light of discussion above. Moreover, in a recent judgment titled P.T.C.L. and others v. Masood Ahmed Bhatti and others (Civil Review Petitions Nos.247 to 249 of 2011 in Civil Appeals Nos.239 to 241 of 2011) the august Apex Court held as follows:

"A fleeting glance at the provisions quoted above would reveal that the departmental employees on their transfer to the Corporation became employees of the Corporation under Section 9 of the Act of 1991 and then of the Company under Section 35 of the Act of 1996. Their terms and conditions of service were fully protected under Section 9(2) of the Act of 1991 and 35(2) of the Act of 1996. None of the terms and conditions could be varied to their disadvantage as is provided by the sections reproduced above. Not only that the legislature also bound the Federal Government to guarantee the existing terms and conditions of service and rights including pensionary benefits of the transferred employees. Since they by virtue of the aforesaid provisions became employees of the Corporation in the first instance and then the Company, they did not remain Civil Servants any more. But the terms and conditions of their service provided by Sections 3 to 22 of the Civil Servants Act and protected by Section 9(2) of the Act of 1991 and Sections 35(2), 36(a) and (b) of the Act of 1996 are essentially statutory."

All the private respondents in the instant case were initially employees of Pakistan Telephone and Telegraph Department and hence their terms of service are statutory. The Industrial and Commercial Employment (Standing Order) Ordinance, 1968 does not apply when terms of service are statutory.

10. In view of the foregoing reasons, the instant petition as well as the connected petitions, listed in the schedule attached herewith, are allowed and the impugned orders

are set aside; consequently the grievance petitions of the private respondents/ex-employees stand dismissed.

ZC/92/IsI Petition allowed.

