

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.1528-P/2007

Date of hearing:- 09.02.2017

Date of announcement: 13.04.2017

Petitioner(s):- Mosam Khan by Mr. Waseem ud Din Khattak,
Advocate.

Respondent (s):-Pakistan Atomic Energy Commission Mr. Ijaz
Anwar, Advocate and Federation by

JUDGMENT

ROOH-UL-AMIN KHAN, J:- By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, **(the Constitution)**, petitioner Mosam Khan, has asked for issuance of a writ to direct the respondents to allow/issue/release his pension in respect of period of his service in Frontier Corps.

2. In essence, the grievance of the petitioner is that, initially in the year 1961 he was inducted in service of Frontier Corps (Pashin) Balochistan. After attaining pension qualifying service, he got retired as Subedar on 08.05.1982, consequently, he was granted pension. The petitioner then joined Pakistan Atomic Energy Commission “PAEC”, as a Security Supervisor against the quota of Ex-Serviceman, vide appointment order dated 08.05.1982, on the terms and conditions enumerated

therein. On attaining the age of superannuation, the petitioner got retired from PAEC on 31.03.2005. For the second period of his service, he too was granted pension vide letter No.REO2(77)99 dated 23.11.2004 by the PAEC, but PAEC Headquarters Islamabad objected to his pension on the ground that since the petitioner is already receiving pension from FC Balochistan, and as per rules, second pension was not permissible to Civil Armed Forces, therefore, the case of the petitioner was referred to FC Balochistan by PAEC for clarification and decision on the issue. The PAEC, vide letter No.SEO-VI EXEC HQ dated 04.07.2007, directed the petitioner to opt for receipt of one of the two pensions. The matter was explained before the PAEC, and they were persuaded through various letters including a letter issued by the Government of Pakistan Finance Divisions, whereby the petitioner has been held entitled for the 2nd pension and so is the opinion of the Government of Pakistan Interior Ministry. Similarly, placed employees have also been granted 2nd pension and this fact has not been denied by the respondents. At the moment the petitioner has been granted both pensions, but the pension of F.C. is being deducted by the respondents from his pension which he is receiving from PAEC, thus, the act of the respondents being against the law and clear direction and CSR 356(b) note 2, is liable to be struck down.

3. Respondents filed their Para-wise comments wherein they did not deny pensionable service tenures of the petitioner in two departments, however, they assert that the claim of the petitioner for grant of 2nd pension was referred to the Government of Pakistan Ministry of Finance, in response to which, vide Letter U.O. No.F-1(2)-Reg-7/2007-172 dated 20.03.2007, it has been clarified that second pension to pensioners of Civil Armed Forces, who got re-employed in strategic organizations is inadmissible, rather they can count their previous service towards new service for enhancing pension for their entire service i.e. combined for both spells after obtaining Government sanction in terms of Article 529 read with Ministry of Finance's O.M.No.F.12(33)R-I/59 dated 25.04.1960. The petitioner was accordingly intimated for the required option and on receipt of his voluntary option, the admissible share of his pension/commutation was released for the service rendered by him to PAEC vide PAEC pension Order No.4301. The respondents categorically denied refusal of second pension to the petitioner.

4. Arguments of learned counsel for the parties heard and record perused with their valuable assistance.

5. From the record, particularly, the comments of the respondent, it is manifest that the respondents have not denied the tenure of pensionable service of the petitioner in the two separate Departments, whilst their stance is that the

petitioner being ex-employee of Pashin Scouts Balochistan is entitled to the pension for the period of service rendered by him falls under the Civil Armed Forces, and in absence of any Provision in the existing rules regarding grants of second civil pension to such employee, he is not entitled to raise claim for two concurrent pensions, rather, the service tenure of his first spell in Frontier Corps shall be counted towards the second service rendered in **PAEC** and after grand total and accumulation of services of both the terms, he will be entitled to get only one enhanced pension for the two tenures. Record depicts that the case of the petitioner was referred to Lt. Col. For IGFC Bln, by the Directorate of Security Pakistan Atomic Energy Commission, Islamabad vide letter No.5(2)/2004 (Misc) dated 27.05.2005, which was responded in the following words:-

“The individual is not entitled for pension or gratuity with their re-employed service, if he is already drawing monthly pension in light of Para-74 Note-2 of Army Pension Regulation, 1999”.

Thereafter, the case of the petitioner was sent to the Government of Pakistan Finance Division (Regulations Wing) vide letter No.NESCOM/C&P/Policy-1(1) dated 15.08.2006 on the subject **“Grand of Second pension to re-employed Employees”**, which was responded in the following manner:-

“The case was referred to the Office of Military Accountant General, Rawalpindi to furnish their views in the matter. That Office vide their letter No.39/80/Pen/3278-XXXI dated 21st November, 2006

(copy enclosed) has informed that 2nd pension is not admissible to pensioners of Civil Armed Forces who have got re-employed in strategic organizations rather they can count their previous service towards new service for enhancing pension for their entire service i.e. combined for both spells after obtaining Government sanction in terms of Article 529 CSR read with Ministry of Finance's O.M. No.F12 (33)R-I/59 dated 25.04.1960".

6. The petitioner was intimated the aforesaid options, in response to which he vide Annexure R-3, submitted his voluntary option in Urdu. For the sake of convenience we would like to reproduce its translation:-

"It is submitted that petitioner before appointment in PAEC has retired from Pashin Scout; that he has no objection if the amount of commutation and pension pertaining to his first service is deducted and that he will be responsible to pay PAEC if any amount is outstanding against him".

So far as the relevant rules on the subject are concerned, rule 9.1 of the West Pakistan Civil Services (Pension) Rules 1963) contemplates that where a person obtains civil re-employment, temporary or permanent, it shall be incumbent upon him to declare before the appointing authority the amount of gratuity, pension etc in respect to previous employment. Similarly, according rule 9.3 such a person can either retain his pension, in which case he shall not have his former service counted or ceased to draw pension/refund any gratuity and have his service counted towards the new employment. Under rule 6 Pension Regulations, Volume 1(Army) 1997, a military pensioner, re-employed in a civil capacity or granted a pension while

in such a capacity under either the Federal or Provincial Government, his pension shall be subject to the provisions laid down by the government from time to time. In essence, the pension is classified into four classes i.e.

- i. Compensation pensions.
- ii. Invalid pensions.
- iii. Superannuation pensions and,
- iv. Retiring pensions.

The Compensation Pension is defined and described by Section-1, Article-426 to 440 of the Civil Service Regulations (C.S.R), according to which if an officer is selected for discharge owing to the abolition of permanent post, he shall have the option, of taking any compensation pension or gratuity to which he may be entitled for the service, he has already rendered, unless he is appointed to another post the conditions of which are deemed by the authority competent to discharge him to be atleast equal to those of his own post. The another kind i.e. Invalid pension is awarded on retirement of an employee from public service, who by physical or mental infirmity is permanently incapacitated for the public service or for a particular branch of it to which he belongs. Likewise, Superannuation pension is granted to an officer in superior service entitled or compelled, by rule, to retire at a particular age. The ministerial officer who has attained the age of 60 years may be required to retire, save in very

exceptional circumstances and with sanction of government. For the fourth kind viz retiring pension, an employee/officer would be entitled who is permitted to retire after completing qualifying superannuation service for 30 years or such less time as may for any special class of officers be prescribed.

7. Section-III comprising Article-525 to 528 (b) applies to the matter of pension of military officers. Article-526 enumerates that when a person formerly in military service obtains employment in the civil department after having been granted a military pension, he shall continue to draw his military pension, but the authority competent to fix the pay and allowances of the post in which he is re-employed shall have power to take into account the amount of pension, including such portion of it as may have been commuted. Article 526 (b) runs as under:-

“A military officer, departmental officer, warrant or non-commissioned officer or soldier who is granted a pension under military rules while he is in civil employ, shall draw such pension while he is in civil employ, but the authority competent to fix the pay and allowances of the post in civil employ, may, with effect from the date from which the pension is granted, reduce such pay and allowances with reference to such officer or soldier by any amount not exceeding the amount of such pension.”

8. Bare reading of the above quoted Articles of the Civil Service Regulations would divulge that when a person formerly in military service got retired and thereafter obtained employment in a civil department after having been granted a military pension, he shall continue to draw his military pension but the authority competent to fix the pay and allowances of the post in which he is re-employed shall have power to take into account the amount of pension, including such portion of it as may have been commuted. However, initially on re-employment, no increase was allowed to the pension holder which clause was omitted vide Notification No. F 4(1)-Reg.6/2012-1144 dated 2nd July, 2012 and the increase during employment was made admissible on the pensions. The crux of the above discourse is that under Article 526 (a) of the CSR, a military retired employee is entitled to get two pensions separately i.e. one from Military Accountant General for his services rendered in Armed Forces and the second for the civil services from the AGPR.

9. As per comments of the respondents, the petitioner is not entitled for second pension, firstly because he is an ex-employee of Pashin Scouts and under the existing rules no second pension is admissible to him as the services of Pashin Scouts do not fall under the

definition of employee of Armed forces. Secondly under the provision of Article 529 CSR, if an officer who having been discharged with a pension is subsequently re-employed may not count his new service for a separate pension (if any) is admissible only for the new service combined with the old, the whole being counted as one service.

10. We are not in agreement with the submissions of learned counsel for the respondents for the reason that no doubt, if an officer completed pensionable civil service and subsequently employed in another government department his subsequent employment would not entitle him for second separate pension rather his earlier service shall be counted towards the subsequent and the employee shall get one pension like an employee getting the same of attaining the age of superannuation, but Article 529 CSR excludes the retired employee of Armed forces who under Article-525 to 528 is entitled to get two pensions separately i.e. one from the military Accountant General on account of his pensionable service in Armed forces and another from the AGPR for the pensionable period served in Civil services. However, the employer/authority competent to fix the pay and allowances of the post in which he is re-employed shall have, power to take into account the amount of pension, including such portion of it as may have been commuted.

So far another contention of counsel for respondents that the petitioner has got retired from Pashin Scouts which is not part of Armed forces is concerned, suffice it to say that Pashin Scouts is a unit of Frontier Corps and under the Ordinance-XXVI of 1959 the Frontier Corps shall be maintained by the Central Government in the 1st schedule, primarily for the better protection and administration of the external frontier of Pakistan within the limits of or adjoining the special area of Pakistan. Likewise at serial No.8 of the schedule-1 of the Ordinance ibid, the Pashin Scouts has been shown the part of Frontier Corps force, being maintained by the Central Government.

11. In view of the above discussion, the petitioner being retired from Frontier Corps as an armed personnel is entitled for two pensions under the provision of Article 526 CSR. Resultantly this writ petition is allowed. The impugned order dated 04.07.2007 and 02.8.2007 are set aside and the petitioner is held entitled for getting second pension strictly in accordance with the provisions of Article 526 CSR.

Announced:

Dated. 13.04.2017

JUDGE

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