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Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No: **ICA No.118 of 2009**

Additional Accountant General

Versus

A.A. Zuberi.

JUDGMENT

Dates of hearing	15.06.2010 and 16.06.2010
Appellant by	Mr. Muhammad Ashraf Khan, DAG.
Respondent by:	Syed Abrar Hussain Naqvi, Advocate.

Syed Mansoor Ali Shah, J:- ICA No.118/09 and ICA No.215/09 are being decided through this consolidated judgment.

2. Brief facts are that the respondents in both the appeals are retired civil servants. In ICA 118/2009, the respondent is A.A. Zuberi, who retired as Member, Income Tax Appellate Tribunal on 31.5.1993. While in ICA No.215/2009 the respondent is Abrar Hussain Naqvi, who retired as Chairman, Income Tax Tribunal on 31.12.1993. After retirement, both the respondents opted for 50% commutation of pension for a period of 15 years which was allowed and, therefore, 50% of the pension of the respondent was commuted while the remaining 50% was paid to the respondent on monthly basis. After the lapse of 15 years the full pension of the respondents was restored.

3. The precise question for determination before this Court is the quantum of 50% pension that is restored at the end of the commutation period. Is it the amount of pension payable at the time of commutation in the year 1993 or is it the current amount of pension, which is inclusive of all

the increments granted over the last 15 years (which is also reflected in the amount of 50% pension being paid to the respondents monthly)?

4. To fully appreciate the contention of the parties it is important to provide a snapshot of the pension details of the respondents as collected from the writ petition and its annexures:-

Sr no	Name	Gross pension in 1993 in Rs Per month	50% pension payable per month in Rs	50% pension commuted for 15 years in Rs	50% pension payable in 2008 in Rs Per month	50% pension restored + 20% increase on the restoration amount in Rs	Total Restored Pension in Rs Per month	Claim of total pension in 2008 in Rs	Differential in Rs Per month
1	A.A.Zuberi	11176.83	5588	887, 128	17426	6674	24100 (17426 + 6674)	34852	10752
2	Abrar Hussain Naqvi	5490.60	2745.34	599,079.91	13736	3873	17610 (13736 + 3874)	27472	9862

5. The writ petition was allowed vide impugned order dated 11.2.2009 and according to the respondents they were held entitled to the full pension as it stood in the year 2008 alongwith all the increments that accrued over the period of 15 years. The judgment of the learned Single Judge is not clear and, therefore, the operative part is reproduced hereunder:-

“13. For the reasons mentioned above, I see the impugned action by the authorities as highly indiscriminate and violative of the rights of the civil servants and therefore declare the same without lawful authority, having no legal effect, and direct the respondents to calculate the petitioner’s revived pension amount reflecting the total increases from the date of expiry of period of 15 years i.e. with effect from 31.05.2008 and pay the arrears of the said period to the petitioner. However, the petitioner shall not be entitled for any

increase prior to 31.05.2008 i.e. the period of 15 years maturity.”
(*emphasis supplied*).

6. Learned counsel for the appellant submitted that the word “COMMUTATION” means “alteration, change, substitution; the act of substituting one thing for another” and referred to Black’s Law Dictionary, 5th Edition in this regard. He relied on the said meaning to submit that the respondent was not getting any pension during the period of commutation, therefore, the increments over the said period cannot accrue to the respondents. The counsel relied on clause 9.39 of Chapter IX of the Financial Rules of the Federal Government (ref: Ministry of Finance O.M. no. F 10(8)) Reg.(6)/85 dated 25.6.1985) which states:

“9.39 The commuted amount of pension equal to 1/4th of the gross amount of pension **shall be restored on completion** of the number of years for which commuted value was paid.

7. He also referred to F.D.O.M No. F.10(8)-Reg.(6)/845 dated 25.6.1985 subject:- RESTORATION OF COMMUTED PORTION OF PENSION (ref: Compendium of Pension Rules and Orders) which states:-

“The undersigned is directed to state that under the existing rules a pensioner on his option can get his pension commuted upto a maximum of 50 per cent. In such cases Government pays commuted value of such portion of pension for a number of years according to age next birthday after retirement as shown in the Commutation Table. The President has been pleased to decide that commuted portion of pension to the extent of 1/4th of gross pension shall be resorted w.e.f. 1st July, 1985 in the case of such civil pensioners including those paid from Defence Services Estimates who have already completed the number of years for which commuted value of pension was paid. The 1/4th commuted portion of pension shall also

be restored in the case of those retiring in future on completion of the number of years for which commuted value is paid.

2. In restoring the commuted portion of pension fraction of a year shown in the Commutation Table which is less than 6 months will be ignored and that of 6 months and more will count as one year.

3. No arrears on account of restoration of commuted portion of pension will be payable in those cases in which the number of years paid for had been completed before 1st July, 1985.”

8. He also referred to Office Memorandum dated 29.2.2008 which is also reproduced hereunder for ready reference:-

Government of Pakistan Finance Division (Regulations Wing)	

No.F.13(16)-Reg.6/2003	Islamabad the 29th February, 2008.
<u>OFFICE MEMORANDUM</u>	
Subject:- <u>RESTORATION OF PENSION SURRENDERED IN LIEU OF COMMUTATION/GRATUITY.</u>	
<p>The undersigned is directed to refer to Finance Division's O.M. No.F.5(2)-Reg.6/2002 dated 2nd July, 2002 on the above subject and to state that in pursuance of the Judgment dated 21.4.2007 passed by Federal Service Tribunal in civil petition No.495(R)/CS/2003, it has been decided that increase in pension admissible in the respective financial year be allowed on the restored commuted portion of pension to all those Government servants who retired on or before 30.06.2001 with effect from the date on which the commuted value of pension has been restored.</p>	
Sd/- (MUHAMMAD SALEEM SALEEMI) Deputy Secretary (R.III)	

9. Counsel for the appellant relying on the above submitted that the pension on the date of commutation will be restored plus the increase of 20% granted in the year 2008 (the year when the 15 years period lapsed). He

argued that no pension during the period of commutation can be extended to the respondents.

10. The contention of the respondents is that during the period of commutation increase in pension was granted ranging from 5% to 20% and therefore restoration of pension means the pension inclusive of increments granted over the last 15 years. Therefore, pension in the year 2008 should be double of the 50% pension received by the respondents per month. The counsel argued that the increase has been in the “pension” and, therefore, the respondents cannot be deprived of the said increments. In support of his arguments, he referred to Section 19 of the Civil Servants Act, 1973 and I.A. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041 (at 1096).

11. Arguments heard. Record perused.

12. It is important to first understand the meaning and scope of “Pension”. Pension has been defined in Rule 9.1 (vii) of the Pension Rules, Chapter IX of the Financial Rules of the Federal Government as:-

“(vii) *Pension*.- (-) a periodical payment made by Government in consideration of past services rendered by a Government servant. Except when the term “Pension” is used in contradistinction to Gratuity “Pension” includes Gratuity.”

13. Section 19 of the Civil Servants Act, 1973 provides that on retirement from service, a civil servant shall be entitled to receive such pension as may be prescribed.

14. Pension as defined in Black's Law Dictionary means "a fixed sum paid regularly to a person by an employer as a retirement benefit." August Supreme Court of Pakistan has extensively dealt with the meaning and scope of "Pension" in I.A. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041). The relevant extracts are as follows:

"...we may first refer to the definition and *raison d'être* of the term "pension" and the nature of right in respect thereof. In this regard, reference may be made to Encyclopaedia Britannica, Volume 17, 1963 Edition, page 488, Corpus Juris Secundum, Volume 67, pages 763 and 764, Corpus Juris Secundum, Volume 70, page 423, American Jurisprudence, Volume 40, pages 980 and 981, and para. 29 from the judgment in the case of D.S. Nakara and others v. Union of India (*supra*), which read as follows:-

Extract from Encyclopaedia Britannica, Vol. 17, 1963 Edition, page 488 ---"Pensions are periodic payments, usually for the natural life of a person who retires because of age or disability. Sometimes the term refers to periodic payments to wives, widows or children of a primary or deceased person or pensioner; occasionally, a pension will be conveyed solely as an honour for conspicuous service or valour. Pensions are provided by Government in three guises: (1) as compensation or recompense to war veterans and families for old age or for disability or death, usually from service causes; (2) as disability or old age retirement benefits for civilian employees of government; (3) as social security payments for the aged, disabled or deceased citizenry based on past employment history or subject to current evidence of need. Pensions are also provided by many non-Governmental employers as a means of protecting workers retiring for age or disability and for relieving the payroll of superannuated personnel. They are sometimes provided by union-management welfare funds, associations or trusteeships. Only rarely do employees in groups, associations or unions undertake their own pension programme without employer or Government assistance."

Extract from Corpus Juris Secundum, Vol. 67, pages 763-764. - --"Except as limited by the Constitution the establishment of a pension system is within the scope of the legislative power. The

granting of pensions to public officers or public employees serves the public purpose, and is designed to induce competent persons to enter and remain in the public service or employment, and to encourage the retirement from public service of those who have become incapacitated from performing their duties as well as they might be performed by younger or more vigorous persons. It has also been stated that pension system is intended to promote efficient, continued and faithful service to the employer and economic security to the employees and their dependents, by an arrangement under which, by fulfillment of specified eligibility requirements, pensions become property of the individual as a matter of right upon the termination of public service.”

Extract from Corpus Juris Secundum, Vol. 70, page 423. ---“A pension is a periodical allowance of money granted by the Government in consideration or recognition of meritorious past services, or of loss or injury sustained in the public service. A pension is mainly designed to assist the pensioner in providing for his daily wants, and it presupposes the continued life of the recipient.”

Extract from American Jurisprudence, Vol. 40, pages 980 and 981. ---“The right to a pension depends upon statutory provisions therefore, and the existence of such right in particular instances is determinable primarily from the terms of the statute under which the right or privilege is granted. The right to a pension may be made to depend upon such conditions as the grantor may see fit to prescribe. Thus, it has been held that it may be provided, in a general Pension Act, that any person who accepts the benefits thereof shall forfeit his right to a special pension previously granted.”

Para. 29 from the judgment in the case of D.S. Nakara and others v. Union of India (supra). ---“Summing-up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowances or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension

payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation for service rendered. In one sentence one can say that the most practical *raison d'être* for pension is the inability to provide for oneself due to old-age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon.”

15. “Pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an *ex gratia* payment. It is a payment for the past service rendered. It is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. The most practical *raison d'être* for pension is the inability to provide for oneself due to old age. It creates a vested right and is governed by the statutory rules such as the Central Civil Services (Pension) Rules which are enacted in exercise of power conferred by Articles 309 and 148(5) of the Constitution. [Central Services (Pension) Rules, 1972, Rule 34].” Reliance is placed on *D.S. Nakara v. Union of India*, (AIR 1983 SC 130).

16. In *Smt. Poonamal v. Union of India*, (AIR 1985 SC 1196), it was held:-

“Pension is not merely a statutory right but it is the fulfillment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old-age, disablement or similar other cases of underserved want. Relevant rules merely make effective the constitutional mandate. Pension is a right not a bounty or gratuitous payment. [Labour and Services].”

17. Pension is, therefore, a post retirement benefit of a civil servant which is earned by a civil servant by giving the best years of his life in the service of the country. This post retirement monetary allowance is geared to comfort and protect a civil servant in the post retirement days when he ordinarily has no other source of income, is infirm and of old age. Pension is, therefore, the very life-line of a civil servant in the post retirement days and, therefore, an integral part of his livelihood and perhaps more dearer than the salary received during his service.

18. Pension cannot be a static amount as it has to provide for the rising cost of living and escalating inflation which the retired civil servant has to face and survive in. Therefore like salary, pension is a real time concept. In the present case the pension of the respondents was increased every year in the range of 5% to 20%. The 50% pension of the respondents in the year 2008 is much higher than the one in the year 1993 as shown in the table above. The increase most clearly covers for the inflationary tendencies over the years.

19. Respondents commuted their 50% pension for a period of 15 years, which means that a lump sum payment of 50% of the pension on the basis of the pension as it stood in the year 1993 was worked out over a future period of 15 years and handed over to the respondents. Therefore, during these 15 years benefit of increase in pension was enjoyed by the respondents only to the extent of 50% i.e., the pension received by them monthly.

20. Under the Rules the pension stands RESTORED at the end of the commutation period. This means that the respondents are once again entitled to 100 % pension as it stands on that day. The best index to gauge the pension due on the said date is the amount of 50% pension being received monthly by the respondents on the said date. The pension due will be double the said amount. It is preposterous to imagine that a civil servant be given pension in the year 2008 which he was entitled to draw in 1993 (15 years ago). Such action offends the right to livelihood of the respondents guaranteed under Article 9 of the Constitution. It also fails to meet the test of economic justice which is also an integral part of right to life as provided in the preamble and the Objective Resolution to the Constitution. Depriving a civil servant of his lawful pension is also discriminatory when compared to equally placed retired civil servants who are drawing the current rate of pension. This offends Article 25 of the Constitution. No civilized system can provide for such an unreasonable and uneconomic post retirement benefit to their employees who have given their golden years for the public service of this country.

21. The interpretation of the appellant on the accounting side also appears to be unreasonable. It will be odd for a civil servant to draw two different slabs of pensions i.e., 50% at the rate prevalent in the year 1993 and the remaining on the current rate inclusive of increments.

22. We, therefore, hold that under Rule 3.29 of the Pension Rules (supra) the restoration of pension means the pension due to a retired civil servant in

that year inclusive of all the increments till that time (i.e., accumulated over the last 15 years in this case). In other words it would simply be double the amount of 50% pension the respondents are already drawing. These appeals are, therefore, dismissed. The order of the learned Single Judge is modified/clarified in the above terms.

(Muhammad Yawar Ali)
Judge

(Syed Mansoor Ali Shah)
Judge

APPROVED FOR REPORTING.

S. Zahid