

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.41/2020

Aftab Ahmed

versus

Regional Head/Director, Employees Old-Age Benefits Institution (EOBI),
Islamabad, etc.

Petitioners by: M/s Raja Muhammad Rafiq Janjua, Syed Amir Kazmi, Ch. Ali Abbas, Waheed Akhtar, Muhammad Shahid Kamal Khan, Advocates in respective writ petitions.

Respondents By: M/s Khurram Mehmood Qureshi and Mr. Abdul Rauf Qureshi, Tariq Bilal, Muzammil Aftab, Shahzadi Samreen Tariq and Ansar Advocates for respondents in respective writ petitions.

Raja Muhammad Aftab Ahmad, AAG.

Abdul Rehman, A.D. (Legal), EOBI.

Date of Hearing: 24.11.2020.

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- Through this common judgment, I intend to decide the captioned writ petitions as well as writ petitions listed in "Annexure-A" attached herewith as common questions of law and facts are involved in the same.

2. For the sake of brevity, the brief and consolidated facts are that petitioners registered themselves with Employees Old-Age Benefits Institution ("*EOBI*") and started making contributions towards their EOBI funds with the latter institution. However, the petitioners have not been granted pensionary benefits in violation of Section 22(2)(ii) of the EOBI Act, 1976, as such, appeals filed thereto by the petitioners have been dismissed

by the Appellate Board/Board of Trustee, EOBI, Islamabad. Hence, captioned writ petition as well as petitions listed in Annexure-A.

3. Learned counsel for respective petitioners contended that amendments made in EOBI Act, 1976 through Finance Act, 2008 have been declared illegal by the superior Courts, even same have not been passed by the Parliament House and Senate of Pakistan, as such, petitioners are liable for monthly pension, gratuity and other benefits in terms of Section 22(2)(ii) of the EOBI Act, 1976 keeping in view the length of service of the petitioners and their contributions towards the EOBI funds.

4. Conversely, learned counsel for respondents opposed the filing of writ petitions on the grounds that petitioners have approached this Hon'ble Court with unclean hands as they have concealed material facts in order to get benefit from this Hon'ble Court, as the petitioners have less than 14 years of insurable employment to become entitled for the pensionary benefits, rather they are entitled for old-age grant under Section 22-A of the EOBI Act, 1976, which has already been paid to them; that learned Appellate Board/Board of Trustee, EOBI, Islamabad has rightly appreciated the petitioners' cases while deciding the matters, as such, instant writ petitions have no merits and are liable to be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that all the petitioners in their respective petitions have assailed the orders passed by adjudicating authority or by the EOBI in some of the cases principally on one ground that EOBI has interpreted the concessionary clause under Section 22(2) of the EOBI Act, 1976 on the basis of Circular No.3/2017-18, dated 02.08.2017, in a wrong manner. The petitioners are also seeking concessionary benefits of Section

22(2) of the EOBI Act, 1976 with the claim that if they have served for more than five (05) year being insured person under the EOBI Act, 1976 and less than fifteen (15) years of service, even then they are entitled for the pensionary benefits provided under Section 22 of the EOBI Act, 1976.

7. In order to resolve this controversy, it is necessary to reproduce provision of Section 22 of the EOBI Act, 1976, which is as under:

22. Old-Age Pension.

(1) *An insured person shall entitled to a monthly old-age pension at the rate specified in the schedule.*

Provided that:-

- (a) *he is over sixty years of age, or fifty-five years in the case of a woman; and*
- (b) *contributions in respect of him were paid for not less than fifteen years.*

Provided further that the age specified in clause (a) will be reduced by five years in the case of an insured person employed in the occupation of mining for at least ten years immediately preceding retirement:

Provided also that where the employee was insured under the provisions of this Act on or before 30th June 2002, and contributions payable under the Act by the employer prior to 30th June, 2002, in respect of said insured person had not been paid, the insured person shall enjoy the rights under this Act as if for the word "payable" the word "paid" were not substituted:

"Provided further that where the contribution under section 9B is paid regularly by the insured person himself in accordance with prescribed procedure, his entitlement to the benefit shall not be affected by default in payment of employer's share of contribution under section 9"; and

(2) *If an insured person was on the first day of July, 1976, or is on any day thereafter on which this Act becomes applicable to an industry or establishment;*

- (i) *over forty years of age, or thirty-five years in the case of a woman, clause (b) of sub -section (1) shall have effect as if for the word "seven" were substituted: or*

(ii) *over forty-five years of age or forty years in case of a woman, clause (b) of sub-section (1) shall have effect as if for the word "fifteen" therein the word "five" were substituted.*

(2A) *Notwithstanding anything contained in sub-section (1), an insured person -*

(a) *who was insured under the provisions of this Act on or before the 30th June, 1986, and will attain the age of (fifty-five years in the case of woman) on or before the 30th June, 1991, and*

(b) *in respect of whom contributions were payable to the Institution for the period required under the provision of this Act, shall be entitled to old-age pension at the age of fifty-five years (fifty years in the case of woman).*

(2B) *An insured person already in receipt of an old-age or invalidity pension, or entitled to an old-age pension under the provisions of sub-section (2A), shall be entitled to a minimum pension at the rate specified in the Schedule.*

(2C) *An insured person who retired from insurable employment before attaining the age of sixty years (fifty-five years in the case of woman) but after attaining the age of fifty-five years (fifty years in the case of a woman) shall be entitled to a reduced old-age pension on fulfilling the following conditions, namely: -*

(a) *the Institution is satisfied through documentary evidence that the employer has a definite established retirement age of less than sixty years (fifty-five years in the case of woman);*

(b) *the employer certifies that the insured person has been retired by him on attaining the age of superannuation; and*

(c) *the contributions in respect of him were paid for the period required under the provision of this Act.*

(2D) *The old-age pension shall be reduced by one half per cent of the Old-Age Pension specified in the Schedule for each completed month by which the age falls short of sixty years (fifty-five years in the case of woman) and the minimum old-age pension shall be reduced in the aforesaid manner in the case of retirement from insurable employment before attaining the age of sixty years (fifty-five years in the case of woman).*

(2E) The reduction in old-age pension specified in sub-section (2D) shall be for life and shall not be restored on the insured person's attaining the normal pension age.

(3) Subject to regulations, the old-age pension shall commence as from the month following that in which the insured person satisfies the condition for entitlement thereto, provided that no [Benefit] shall be payable retro-actively for more than six months preceding the month in which an application for old-age pension is submitted.

(4) Insurable employment of a person for the purposes of this Act shall commence on the date from which the first contribution in respect of him becomes payable.

(5) The old-age pension payable to an insured person shall be terminated at the month in which the death of such persons occurs.

8. While considering the above referred provisions, the primary interpretation qua Section 22 of the EOBI Act, 1976 has to be considered with reference to insured person defined in Section 2(i) of the EOBI Act, 1976, which means that the employee who is or was in insurable employment, which has to be read in conjunction with Section 22 of the EOBI Act, 1976, which deals with benefits of the EOBI Act, 1976 and provides concept of monthly old-age pension at specified rate at schedule only to insured person if their age is over 60 years in case of man and 55 years of age in case of woman, with particular condition that *contribution in respect of him were paid for not less than 15 years*. Such plain language discloses the concept of minimum requirement of 15 years of insurable service, in which an insured person has contributed qua his share in the contribution / benefit recorded by the EOBI along with contribution made by the employer in terms of insurable employment provided in Section 2(j)

of the EOBI Act, 1976. However, a proviso to Section 22 gives interpretational dispute in the present cases, whereby Section 22(2)(ii) of the EOBI Act, 1976 has been interpreted by the respondent department in terms of their Circular No.3/2017-18, dated 02.08.2017.

9. Before going into interpretation of Section 22(1) *vis-a-vis* Section 22(2) of the EOBI Act, 1976, it is necessary to understand the basic provision when the law has been enacted. The plain reading of original text of Section 22, which was enacted in the year 1976, it appears that Sections 22(1) and 22(2) are the principal provisions at the time of enactment, whereafter Sections 22(2A)(2B)(2C)(2D) & (2E) were added through Finance Act, 1986 on 29.06.1986, whereby certain benefits have been extended on the basis of age factors of the employees and even the employees have been given benefits who have been registered in insurable employment but failed to complete minimum period of five years, they shall also be entitled to reduced old-age pension on fulfillment certain conditions provided in Section 22(2C) due to their age short fall of sixty years. All these aspects have been included to accommodate and facilitate all kinds of employees irrespective of their age and even the legislative intent is to accommodate maximum persons in this backdrop.

10. The provision of Section 22(1) demonstrates that word "*shall*" has been used, which has given a mandatory effect. While considering the case as to whether a provision of law is mandatory or directory depends upon the intention of legislation envisaged by plain reading of its language in which the provision is couched. As a general rule the statute is understood to be directory when it contains matter merely of direction, but it is mandatory when directions are followed by express provision that in

default to follow them, the acts shall be null and void. Reliance is placed upon 2012 YLR 126 Peshawar (Khalid Nabi Khan v. Haq Nawaz). The Maxwell Interpretation of Statutes has also laid down a principle that if the words of statute are precise and unambiguous, nothing more is necessary than to expound those words in their natural and ordinary sense. The words in themselves in such case best declaring intention of the legislation. Similar principle has also been highlighted in 2000 SCMR 1305 (Nur-ul-Haq v. Ibrahim Khalil). It is also settled principle that statute must be read as a whole and one provision cannot be interpreted in isolation of other. Provision of section / statute or rule, must be read as a whole and to be interpreted in a manner to harmonize its various sections and sub-sections while determining its nature. Reliance is placed upon 2007 CLC 281 Shariat Court Azad Kashmir (Mst. Kousar Begum v. Matloob Hussain Shah). It is settled law that irrespective of language and phraseology used by legislation, the legislative intent and end result to be attained is to be discovered in order to reach the conclusion that particular provision is mandatory or of directory nature. Reliance is placed upon PLD 2007 Lahore 141 (Sahibzada Muhammad Nazeer Sultan v. Saima Akhtar Bharwana).

11. While going through Section 22(2) of the EOBI Act, 1976 in the above referred interpretational context, it appears that there are two different phrases used in said provision i.e. *firstly, if an insured person was on the first day of July, 1976*, which means that the petitioners have to be insured on said date i.e. 1st July, 1976, in the EOBI department and as such, it is a cut-off date for the purpose of registration, but the said date has not been mentioned in earlier part of Section 22(1), per se, such difference in same

provision extends different meaning as the earlier part of Section 22(1) is a substantive portion and considered to be a general provision, which is applicable to all kinds of employees/persons irrespective of their age, whereby the employees have to pay their contributions for not less than 15 years. However, there is a second part of said provision i.e. *or is on any day thereafter on which this Act becomes applicable to an industry or establishment*, which demonstrates that if any of the employer not providing insurable employment in terms of Section 2(j) of the EOBI Act, 1976, it has to be registered with the EOBI for such purposes and on that particular date of its registration with the EOBI or the date on which the Act applies to it i.e. that may be determined by the EOBI on the basis of some evidence qua other eligibilities and qualification provided / enumerated under the law. In such eventuality, any person over the age of 40 years in case of man, or 35 years in case of woman, the insurable period of service would be considered seven (07) years instead of fifteen (15) years as provided in Section 22(2)(i) of the EOBI Act, 1976. Similarly, Section 22(2)(ii) further reduced the same period to all employees over the age of 45 years, or 40 years of age in case of woman, the word fifteen used in Section 22(1)(b) of the Act is substituted with the word "five" (05).

12. I have considered the substantive provision of Section 22(1) in juxtaposition with Section 22(2)(i)(ii) of the EOBI Act, 1976 and comes to an irresistible conclusion that the plain language of Section 22(2)(i) extends benefit of old-age pension to all insured person, whereby the proviso is considered to be the exclusion, which has to be interpreted strictly and it has now been settled under the rules of canon of interpretation that where the language of main enacting part is clear and unambiguous, the proviso

cannot by implication exclude from its purview what clearly falls within the express terms of main enacting part. The proviso only limits the operation of main enacting part to the extent it is indicated in proviso, meaning thereby that but for the proviso the case would fall within the ambit of enacting part. Reliance is placed upon 1999 SCMR 563 (Commissioner of Income Tax v. Nasir Ali). The above mentioned interpretation given by the apex Court to the context of proviso clearly defines that every insured person is entitled for monthly old age pension if he fulfills two conditions i.e. (a) over 60 years of age or 55 years of age in case of woman and (b) contributions in respect of him/her were paid for not less than 15 years. Now comes the second part, which is Section 22(2), which itself is a substantive provision and it does not fall within the concept of proviso, rather it gives a different meaning with reference to qualification of age, where certain exceptions have been created through substantive provision, however it has not been denied that Section 22(2) of the EOBI Act, 1976 has to be read along with the principal provision of Section 22(1), where an insured person is entitled to monthly old-age pension. Sub-Section 2 defines that if the person is already insured on 1st July, 1976, or any date thereafter when the Act becomes applicable to an industry or establishment, he would further be entitled to enjoy with certain exceptions on the basis of an age factor i.e. if he is not registered as an insured person with reference to Section 2(i) of the Act, but he becomes registered after 1st July, 1976, simultaneously when the Act also becomes applicable to an industry or establishment in which he is employed, on that two eventualities he would be extended a benefit of old-age pension, excluding the general provision of contribution in respect of him where

he/she would have to pay the same for 15 years. If he/she is over 40 years of age and the Act was applied to an industry or establishment in which he is performing his duties, means that his employer or the industry or establishment is providing insurable employment in terms of Section 2(j) of the EOBI Act, 1976, he would only be liable to pay contribution for 07 years and similarly, he has further been given extended benefit if he is more than 45 years of age, as he/she would pay contribution for only 5 years.

13. The entire scheme of this Section creates the following three groups:

- *Firstly*, general group under Section 22(1), any person who becomes registered as insurable employee in terms of Section 2(i) of the EOBI Act, 1976 within the age of 18 years till 40 years of age, he has to pay the contributions for 15 years in terms of Section 22(1)(b);
- *Secondly*, if the employee is over 40 years of age, but less than 45 years of age at the time of his/her registration under Section 2(i) of the Act, he has to pay the contribution for next 07 years; and,
- *Thirdly*, if an employee is over 45 years of age at the time of his/her registration under Section 2(i) of the Act, he/she has to pay the contributions for the period of 05 years.

The above referred simple interpretation creates three categories, to which a beneficial interpretation has to be given in favour of employees under the mandate and scope of law as the EOBI Act, 1976 has been enacted with reference to *old-age benefits for the persons employed in industrial, commercial and other organizations*, therefore, it is settled that beneficial statute is intended to provide security and benefits to old age employees. In this

view of the matter a liberal and wide interpretation should be extended to the meaning of the Act to advance the remedy and not to throttle it. Reliance is placed upon PLD 1977 SC 197 (Shahbaz Hassan v. Muhammad Hussain).

14. I have gone through the impugned circular No. 03/2017-18, which creates an interpretation disputes qua the rights of the petitioners, when Section 22(2) of the EOBI, 1976 interpretation in the following manner:-

“Say if, the date of Applicability to any establishment is 01/10/1995 & insured Persons’ date of first joining the scheme is also 01/10/1995 with the same employer and his/her age is greater than 45/40 years, then concession in insurable employment may be allowed. If his/her date of joining is any date after the date of applicability to the establishment then his/her age shall not be calculated for any concession. In other words, age bracket shall only be checked for those insured persons whose date of joining is same as that of the date of applicability of the scheme to the establishment. Any age calculation in isolation of the date of applicability of the establishment shall be an illegal extension of law & unwarranted under the EOB Act, 1976.”

15. I have gone through the above circular, it appears that the EOBI Authorities have not considered the language of section 22 of EOBI Act, which gives a premium to the employee for the benefit of the pension on the concept of date of registration with reference to his date of birth. The different timelines provided in the said provision are with reference to the date of registration and the age has to be calculated on the said date, whereby every category has not required to complete 15 years of insurable service as explained in Para-13 of the judgment, where 18-40 years of age are required to complete 15 years of insurable service, rest of the two categories have been protected and given a beneficial effect of reduction of

insurable period of contribution from 15 years to 07 and 05 years, respectively, on the touchstone of rule of literal construction which is the first principle of interpretation, according to this rule, the words of an enactment are to be given their ordinary and natural meaning, and if such meaning is clear and unambiguous, effect should be given to a proviso of a statute whatever may be the consequences. Where wordings of the statute are absolutely clear unambiguous; rule of literal construction is to be applied and recourse to other principles of interpretation is not required. Reliance is placed *AIR 2004 SC 4219 (Swedish Match AB vs. Securities and Exchange Board, India)*. Even otherwise, the wisdom laid down behind EOBI Act, 1976 has to be considered as a beneficial legislation, which provides its own scheme without any vagueness and doubt therein, therefore, the respondent Authority would not travel beyond the same, rather beneficial legislation should be given widest possible interpretation in favour of the subject. Reliance is placed *AIR 1994 SC 1154 (Employees State Insurance Corporation vs. R.K. Swamy)*.

16. If on the application of rule of beneficent or benevolent construction the Court finds that it would be doing justice within the parameters of law, there appears to be no reason why such constructions be not applied, hence this Court while applying principle of interpretation where language is plain and unambiguous nothing can be read by implication as referred in impugned circular No. 03/2017-18. Reliance is placed upon *AIR 2003 SC 1140 (Dayal Singh & Ors. v. Union of India & Ors.,)*. At this point of time, if the choice between two interpretations is to be made, this Court has to rely upon the words of "Viscount Simon L.C. in *Nokes v. Doncaster Amalgamated Collieries, Ltd.*" that the narrower of which would fail to achieve the

manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that parliament would legislate only for the purpose of bringing about an effective result". Reliance is placed upon *Balram Kumawat vs. Union of India and Others [(2003) 7 SCC 628]*. Hence, the interpretation given by the respondent Department in Circular No.03/2017-18 is an incorrect view, which could not be considered against the rights of the petitioners, hence the same is hereby set-aside.

17. Besides the above referred position, alternate remedy in majority of the cases is available which has not been exercised in terms of Section 34 (Review of Decision) and Section 35 (Appeal to the Board) of the EOBI Act, 1976, therefore, the captioned writ petition together with the petitions listed in "Annexure-A" are hereby **DISPOSED OF** with the direction to the respondents Department to decide the same and extend the benefits to the petitioners in the light of Para-13 of the instant judgment, whereby three categories have been referred.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 23.12.2020

Khalid Z.

JUDGE

Writ Petition No.41/2020

Aftab Ahmed
versus
Regional Head/Director, EOBI, Islamabad, etc.

ANNEXURE-A

S.No.	Case Number / Title
1.	W.P. No.1916/2018 (Muhammad Bashir vs. FOP, etc.)
2.	W.P. No.4455/2018 (Ghulam Safdar vs. FOP, etc.)
3.	W.P. No.452/2019 (Khalid Mehmood vs. FOP, etc.)
4.	W.P. No.1745/2019 (Muhammad Sajid Jamal Khan vs. FOP, etc.)
5.	W.P. No.2313/2019 (Muhammad Aslam vs. FOP, etc.)
6.	W.P. No.3186/2019 (Mirza Raees Baig v. FOP, etc.)
7.	W.P. No.408/2020 (Muhammad Raees v. EOBI, etc.)
8.	W.P. No.906/2020 (Sajjad Hussain vs. EOBI, etc.)
9.	W.P. No.1538/2020 (Malik Muhammad Khan v. Adjudicating Authority-III, EOBI, etc.)

(MOHSIN AKHTAR KAYANI)
JUDGE