JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2920/2011
Khalid Mahmood
Versus
Pakistan Telecommunication Company Limited and another

Date of Hearing:	14.11.2019
Petitioner by:	M/s Abdul Rahim Bhatti, and Yasser Rahim Bhatti, Advocates
Respondents by:	Mr. Ali Nawaz Kharal, Advocate and Mr. Raheel Zafar, Manager, P.T.C.L.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner (Khalid Mahmood) has sought the following relief against the Pakistan Telecommunication Company Limited) **("P.T.C.L.")**:-

> *"Direct respondent to immediately release the payment of VSS benefits to the petitioner forthwith as per written commitment and in case that is not possible due to any reason, then make payment of pensionary benefits to the petitioner for the service rendered by him on regular basis in the respondent-Company."*

2. The facts essential for the disposal of the instant petition are that vide letter dated 22.08.1990, the Pakistan Telegraph and Telephone Department informed the petitioner that he had been selected for training as Engineering Supervisor (BPS-11) in the said department. In the said letter, it is clearly mentioned that after successful completion of the training, the petitioner would be appointed as Engineering Supervisor on probation for a period of one year. On 31.10.1992, the petitioner was appointed as Engineering Supervisor (BPS-11) and posted under the Divisional Engineer (Digital), Quetta, after successfully completing his training. This is apparent from Pakistan Telecommunication Corporation's letter dated 10.08.1993.

3. On 15.11.2007, while the petitioner was working as Engineer Supervisor (BPS-11), Voluntary Separation Scheme **("V.S.S.")** was introduced by P.T.C.L. It is not disputed that the petitioner was given the option to opt for V.S.S. As per V.S.S. Calculation Worksheet, the petitioner's estimated settlement amount came to Rs.1,508,937.21. On 09.01.2008, the petitioner submitted

option/waiver form for the benefit under V.S.S. to be granted to him. Vide letter dated 08.04.2008, P.T.C.L. turned down the petitioner's application for V.S.S. The petitioner was informed that his contributions were essential to P.T.C.L.'s continued success and that it was imperative to retain the services of the highest performing employees.

4. Vide letter dated 05.05.2008, P.T.C.L. informed the petitioner that he had been selected for secondment in M/s Etisalat in accordance with the agreement dated 25.10.2007 executed between P.T.C.L. and M/s Etisalat. The petitioner was supposed to travel to the United Arab Emirates ("U.A.E.") on 08.05.2008 to serve in M/s Etisalat. On 07.05.2008, P.T.C.L. relieved the petitioner from his duties as Engineering Supervisor (BPS-11). Vide letter dated 24.09.2008, M/s Etisalat informed the petitioner that he had been selected for permanent employment as Senior Technician with Engineering/Northern Emirates Region.

5. In February 2009, the petitioner submitted an appeal before P.T.C.L. and asked for payments under V.S.S. to be made to him. Vide e.mails dated 23.04.2009 and 13.08.2009, the petitioner again asked P.T.C.L. for the payments under V.S.S. to be made to him.

6. Vide e.mail dated 08.09.2009, P.T.C.L. informed the petitioner that in order to accept permanent employment in M/s Etisalat, the petitioner had to resign from P.T.C.L.'s service. The petitioner was required to tender his resignation. Annexed at page 44 of the instant petition is the petitioner's undated resignation from P.T.C.L. Vide e.mail dated 09.09.2009, the petitioner informed P.T.C.L. that he had resigned.

7. Vide e.mail dated 07.10.2009, P.T.C.L. informed the petitioner that *"the matter of acceptance of V.S.S. has been closed".* Thereafter, the petitioner submitted another undated appeal to P.T.C.L. for payments under V.S.S. to be made to him. Vide e.mail dated 18.03.2010, the petitioner requested P.T.C.L. that his resignation should be considered as having taken effect from 01.01.2009, i.e. the date of his appointment in M/s Etisalat. P.T.C.L., vide letter dated 20.03.2010, accepted the petitioner's resignation with effect from 01.01.2009.

8. On 09.09.2011, a legal notice on behalf of the petitioner was issued to P.T.C.L. requiring the latter to pay the former all the monetary benefits under V.S.S. Having not received any plausible response from P.T.C.L., the petitioner filed the instant writ petition.

9. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that P.T.C.L. had treated him most unfairly; that P.T.C.L., after rejecting the petitioner's application for V.S.S. on the ground that it was imperative to retain the highest performing employees sent him on secondment to M/s Etisalat; that after sending the petitioner to M/s Etisalat, P.T.C.L. required the petitioner to tender his resignation from P.T.C.L.; that the petitioner's resignation from P.T.C.L. was not voluntary and was procured as a result of coercion; that P.T.C.L. had sent the petitioner on secondment in order to avoid making payments under V.S.S. to him; that P.T.C.L. has not just unlawfully deprived the petitioner of his V.S.S. payments but is also refusing to pay pensionary benefits to him; that the petitioner's service with P.T.C.L. entitles him to the payment of pension under the applicable pension rules; and that since the petitioner had resigned from service in P.T.C.L. in order to take up employment with M/s Etisalat, his service with M/s Etisalat should also be counted in determining his pension. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sough therein.

10. On the other hand, learned counsel for P.T.C.L. submitted that since the petitioner had not completed twenty years of service with P.T.C.L., he was not entitled to the payment of pension; that under Section 13 of the Civil Servants Act, 1973, the petitioner had to have twenty years of service in order to be entitled for pension; that since the petitioner's resignation was accepted with effect from 01.01.2009, he did not have the twenty years of service to entitle him the payment of pension; that the petitioner had about nineteen years of service in P.T.C.L.; that in his resignation letter, the petitioner admitted that his application for V.S.S. had been turned down; and that the petitioner had not been forced to go on secondment to M/s Etisalat, rather he had applied and had

appeared in an interview in order to be selected for service in M/s Etisalat. Learned counsel for P.T.C.L. prayed for the writ petition to be dismissed.

11. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

12. It is not disputed that the petitioner's application for V.S.S. was turned down by P.T.C.L. on 08.04.2008. In the instant petition, the petitioner had prayed for the relief of payments under V.S.S. to him. First question that needs to be determined is whether a writ petition could be filed by a former employee of P.T.C.L. for a direction to release payments under V.S.S. It was not obligatory on P.T.C.L. to accept every option for V.S.S. exercised by its employees. Even otherwise, the question whether P.T.C.L. was bound to accept the option for V.S.S. exercised by the petitioner cannot be adjudicated upon in the Constitutional jurisdiction of this Court. In holding so, I derive guidance from the law laid down by the Hon'ble Supreme Court in the case of Pakistan Telecommunication Co. Ltd. Vs. Iqbal Nasir (PLD 2011 SC 132), wherein it has been held *inter alia* as follows:-

> ***"29. As to the case of the employees seeking the benefit of VSS, no relief could be granted to them by the High Court in view of the non-maintainability of their writ petitions on the ground that their services were not governed by any statutory rules and even the VSS was not offered under, or in terms of, any statutory provisions."***
> **(Emphasis added)**

13. As regards the alternative prayer made by the petitioner for the grant of pensionary benefits, it is not disputed that the petitioner served with P.T.C.L. until 01.01.2009, i.e. the date with effect from which his resignation was accepted. As regards the date when the petitioner was employed with P.T.C.L. and/or its predecessor organization, vide letter dated 22.08.1990, the Pakistan Telegraph and Telephone Department had selected the petitioner for training as an Engineering Supervisor in the Telephone Department. In the said letter, it is clearly mentioned that the completion of training would not mean definite appointment in the Department. Furthermore, it is provided that the

appointment would be subject to the availability of post. The petitioner's appointment letter in the Pakistan Telegraph and Telephone Department has not been brought on the record. However, letter dated 10.08.1993 from Pakistan Telecommunication Corporation shows that on 03.11.1992, after the petitioner had completed his training, he was appointed as Engineering Supervisor (BPS-11) and posted under the Divisional Engineering (Digital) Quetta. Learned counsel for P.T.C.L. did not dispute the authenticity of the said letter dated 10.08.1993. Be that as it may, V.S.S. Calculation Worksheet prepared by P.T.C.L. for the petitioner shows his *"date of joining"* to be 19.09.1990. Accordingly, the petitioner would be entitled to the protection afforded to him under Section 9 of the Pakistan Telecommunication Corporation Act, 1991 and Sections 35 and 36 of the Pakistan Telecommunication (Reorganization) Act, 1996.

14. The contention of the learned counsel for the petitioner that the petitioner's resignation from P.T.C.L. was not voluntary and that it was procured through coercion does not appeal to me. After the petitioner was sent on secondment to M/s Etisalat, and was offered a lucrative pay package by the said company, he was indeed asked to tender his resignation from P.T.C.L.'s service. The petitioner could have declined to submit the resignation and rejoined his service at P.T.C.L. This, he did not do. Therefore, the petitioner cannot expect from this Court to simply ignore his resignation from P.T.C.L. As mentioned above, the petitioner's resignation was accepted by P.T.C.L. with effect from 01.01.2009.

15. Since the petitioner's service was from 19.09.1990 to 01.01.2009 (i.e. 18 years, 03 months and 12 days), it needs to be determined as to whether he would be entitled for pension from P.T.C.L. The petitioner's service in M/s Etisalat, which is a private foreign company, cannot be counted as a continuation in his service with P.T.C.L. in determining whether the petitioner had served for a period as would entitle him to the payment of pension by P.T.C.L. The petitioner's break in his service with P.T.C.L. was brought about by the acceptance of his resignation and not by his retirement on superannuation.

16. Section 13(1)(i) of the Civil Servants Act, 1973, provides *inter alia* that a civil servant shall retire from service on such date as he completed twenty years of service qualifying for pension or other retirement benefits as the competent authority may, in public interest, direct. Additionally Section 19(1) of the said Act provides that on retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed. Since the petitioner's resignation was accepted prior to his completing twenty years of service in P.T.C.L. and its predecessor organization, he cannot be held to be entitled to the payment of retiring pension.

17. In view of the above, the instant writ petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

*Qamar Khan**

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