

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

W.P. No.6814-P/2019

Samar Gul

Vs.

The Regional Director, Employees Old Age Benefits
Institution, Peshawar and others

JUDGMENT

Date of hearing **14.12.2020**

Petitioner(s) by: **Muhammad Ashfaq, Advocate.**

Provincial Government by: **Muhammad Sohail, AAG.**

Respondent No.1 by: **Mr. Mukhtar Ahmad Maneri,
Advocate.**

Respondent No.5 by: **Mr. Bilal Ahmad Kakaizai,
Advocate.**

IJAZ ANWAR, J. This writ petition

under Article 199 of the Constitution of
Islamic Republic of Pakistan, 1973, has been
filed by Samar Gul, petitioner herein, with
the following prayer:-

*“It is, therefore, most humbly prayed
that on acceptance of this writ petition,
this Hon’ble Court may very graciously
be pleased to:-*

- 1. Declare the impugned order dated
26.08.2019 passed by the
respondent No.2 as illegal, void ab-
initio, unconstitutional and
unwarranted upon the rights of the
petitioner.*



2. *Direct the respondents to pay the petitioner the monthly Old Age Pension in accordance with Section 22 of the EOB Act with effect from superannuation date.*
3. *Any other remedy which this august Court deems fit and has not been specifically asked that may also be awarded in favour of the petitioner”.*

2. In essence, as per the petitioner, he served the respondent No.4/Factory from 08.12.1976 to 17.07.1998 as Sulph Helper and respondent No.5/Factory from 01.07.1976 to 15.11.1986 and his total length of service comes to 15 years, and despite filing appeal before the Appellate Board, Employees Old Age Benefits Institutions (EOBI), Islamabad, as per the directions of this Court, he was denied the old age pension. Hence, this writ petition.

3. In view of the averments made in the instant writ petition, comments were called from respondents No.1 and 2, who furnished the same accordingly; wherein, they opposed the issuance of desired writ as prayed for by the petitioner.

4. Arguments heard and record perused.



5. Perusal of the record reveals that after exhausting the remedies available to the petitioner under the Employees Old-Age Benefit Act, 1976 (hereinafter to be referred as "the EOB Act"), different petitions were filed, where the main grievance of the petitioner was that he is eligible and entitled for payment of old age pension in view of his length of qualified service, albeit, he is denied. I have examined the orders of the Adjudicating Authority of the EOBI and find that the issue is merely regarding the calculation of service rendered by the petitioner in the respondents No.4 and 5/Factories. Admittedly, as per the details given by the respondents/Factories and duly confirmed by them, petitioner served M/S Khazana Sugar Mills from 08.12.1976 to 14.07.1998 as seasonal worker. Similarly, he also worked with M/S Philip Morris (Pakistan) Limited, Mardan from 01.07.1976 to 15.11.1986. Section 22 of "the EOB Act" prescribes the qualified service to become eligible for pension. It, being relevant, is reproduced as under:-



“22. Old-Age pension. (1) An insured person shall be entitled to a monthly old-age pension at the rate specified in the Schedule:

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

Similarly, if an insured person does not have insurable employment then he is awarded old age grant under Section 22A of “the EOB Act”. The same, being relevant in the present controversy, is reproduced as under:-

22A. Old-Age Grant:- If an insured person, not otherwise entitled to old-age pension, retires from insurable employment after attaining the age of sixty years, or fifty-five years in the case of a woman and a mine workers, and contributions in respect of him were paid for less than fifteen years, but not less than two years, he shall be entitled to an old-age grant paid in a lump sum equal to his one month's average monthly wages for every completed year of insurable employment or part thereof in excess of six months

Provided 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".

6. Since, in both these Sections, old age pension is admissible only to insured persons; as such, the definition provided under Section 2(i) of "the EOB Act, being relevant, is also reproduced as under:-

"2(i) "insured person" means an employee who is or was in insurable employment".

7. There is, however, no controversy regarding the petitioner being insured person and it is also confirmed that he was having insurable employment which means that in respect of whom, contributions are regularly paid under "the EOB Act".



8. The service certificates provided by the respondents/Factories clearly depict that petitioner served the respondent No.5/Factory for total 1654 days, while, the respondent No.4 for 1835+1282 days. Thus, as per their calculation, service of the petitioner comes to 13 years, which is not covered under Section 22 of "the EOB Act", as such, he is denied pension. Section 2(q) of "the EOB Act" defines the word "year", which, being relevant in resolving the present controversy, is reproduced as under:-

2(q). "year", with respect to insurable employment means, a total of three hundred and sixty-five days for which contribution are payable, or, in the case of insured persons who are not paid for weekly holidays, a minimum of three hundred and twelve days.

9. Since, petitioner was not a permanent workman who served throughout the year in the Factories but was a seasonal worker, whose length of service was counted for the days he served the respondents/Factories, as such, it is the case of the petitioner that respondents have misapplied the formula for considering his length of service in terms of 365 days in a year,



because, they, themselves, for certain period, considered his length of service as 312 days for a complete year, while, for another portion, 365 days are considered as complete year. The respondents are, however, required to have applied Section 2(q) of "the EOB Act" for calculating his length of service by dividing the total days he served by 312 days.

10. The only issue, involved in the instant case, regarding calculation of the days of length of service of the petitioner, as such, this Court, while applying the definition given in Section 2(q) of "the EOB Act", finds that his service, being in a seasonal factory, wherein, there is no concept of weakly holidays and as per the record, the season is merely for about four months in a year, as such, the calculation, so made by the respondents, is not in accordance with law and after calculating the total days served by the petitioner in both the Factories divided by 312 days as a year, it comes to more than 15 years of length of service and is, thus, perfectly eligible for the grant of pension.



11. For the reasons recorded hereinabove, this Court finds that petitioner has made out a case for the indulgence of this Court. Accordingly, this writ petition stands allowed. Consequently, petitioner is held entitled to the grant of pension alongwith its arrears in accordance with Section 22 of "the EOB Act".

Announced
Dt:14.12.2020



JUDGE

(SB) Hon'ble Mr. Justice Ijaz Anwar

Muhammadullah