

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)



PRESENT:

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Aqeel Ahmed Abbasi

Civil Petition No.1174 of 2022

(Against the judgment dated 02.02.2022 of the Islamabad High Court, Islamabad in Writ Petition No.4096 of 2021)

Shakeel Ahmed Kayani

... Petitioner

Versus

The Managing Director/Chief Executive Office, Islamabad and another

... Respondents

For the Petitioner: Mr. Muhammad Bashir Khan, ASC

For the Respondents: Mr. Sultan Mazhar Sher Khan, ASC

Date of Hearing: 17.09.2025

JUDGMENT

Syed Mansoor Ali Shah, J.- Brief facts of the case are that the petitioner joined the erstwhile Oil and Gas Development Corporation ("**Corporation**") established under the Oil and Gas Development Corporation Ordinance, 1961 ("**Ordinance, 1961**") as Accounts Assistant (BPS-14) 02.02.1995, after having earlier served with the Pakistan Military Accounts Department Office, Wah Cantt. During his service, the Oil and Gas Development Corporation (Reorganization) Ordinance, 2001 ("**Ordinance, 2001**") was promulgated, and the Corporation was converted into the Oil and Gas Development Company Limited ("**Company**"). The petitioner, by operation of law, became the employee of the Company and finally retired from service on attaining the age of superannuation as Senior Accountant (E-04) on 17.06.2021, after rendering a total service of 40 years and 10 months.¹

¹ Counting his previous service with Pakistan Military Accounts Department Office of the Controller of Factories Accounts, Wah Cantt of 14 years 05 months and 15 days from 17.08.1980 to 01.02.1995. Reference is made to Office Memorandum of the Company, dated 23.06.2021.

2. The claim of the petitioner is that as per Regulation 15(1A) of the Oil and Gas Development Corporation Pension and Gratuity Regulations, 1985 ("**Pension Regulations**") framed by the erstwhile Corporation, with the prior approval of the Federal Government, he is entitled to 2% of the gross pension for each extra year of service rendered by him beyond 30 years of qualifying service subject to a maximum of 10% of his gross pension. This pension has been referred to in the documents, perhaps for convenience, as *Additional Pension*.

3. The claim of the petitioner was denied vide Office Memorandum dated 20.08.2021 by the Company. The petitioner challenged the said decision before the Islamabad High Court through a constitutional petition which was dismissed vide judgment dated 02.02.2022, hence, the instant petition.

4. Learned counsel for the petitioner argued that the petitioner is entitled to *Additional Pension* under Regulation 15 (1A) of the Pension Regulations and being a former employee of the Corporation, his terms and conditions of service are protected under Section 5 of the Ordinance, 2001. He added that Regulation 265 of the Oil and Gas Development Corporation Employees (Service) Regulations, 1994 ("**Service Regulations**"), which provides that the directives or instructions issued by the Federal Government shall be complied with and carried out by the Company, cannot override the statutory protection extended under Ordinance, 2001. Hence, the Office Memorandum dated 04.09.2001 ("**OM**") issued by the Finance Division, Government of Pakistan, discontinuing *Additional Pension* has no bearing on the petitioner, who is an erstwhile employee of the Corporation. He also referred to letters dated 01.02.2005 and 23.05.2010 issued by the Company declaring that employees of the Company are not civil servants but are employees of an autonomous body governed by its own Regulations.

5. Learned counsel for the respondent Company, while supporting the impugned judgment, submits that under Regulation 265 of the Service Regulations, the Board of Directors of the Company

are bound by the directives and instructions issued by the Federal Government. He referred to the OM dated 04.09.2001 as the directive/instruction of the Federal Government and underlined Clause C of Part-III (Pension and Commutation) of the said OM to point out that *Additional Pension* has since been discontinued - this being binding on the Company - it could not grant *Additional Pension* to the petitioner. Alternatively, he submits that as per the decision of the Board of Directors taken in the 145th meeting of the Board on 17.01.2013, it has been resolved that the maximum scale of gross pension shall continue to be equal to 70% of the pensionable salary upon completion of 30 years or more service at the time of retirement. Hence even for this reason the petitioner cannot be given pension for extra years of service.

6. We have heard the learned counsel for the parties, examined the record of the case and have gone through the law on the subject. The legislative framework, forming the background of this case, provides that Ordinance, 1961 established the Corporation for the purpose of exploration and development of oil and gas resources. It further provided for the Board of Directors of the Corporation, the powers and functions of the Corporation, and the power of the Federal Government and the Corporation to make Rules and Regulations, respectively. It is an admitted position between the parties that no Rules were formulated by the Corporation. However, under Section 30 of the Ordinance, 1961, with the previous approval of the Central Government,² the Corporation made the Pension & the Service Regulations, referred to above. Subsequently, need was felt to convert the Corporation into the Company and therefore Ordinance, 2001 was promulgated on 5 July 2001 (w.e.f. 23 October 1997) whereby the Corporation was converted into a public limited company incorporated under the Companies Ordinance, 1984. Sections 4 and 5 of Ordinance, 2001 provide that the Company shall own all the assets, properties, etc of the Corporation, be entitled to the benefit of all the notifications (including the notified Regulations mentioned above) issued for the working of the Corporation, be liable to pay all liabilities

² Now, Federal Government

and obligations of the Corporation and that the employees of the Corporation shall be deemed to be the employees of the Company on the same remuneration and other conditions of service, rights and privileges including pension, etc. It is an admitted position between the parties that the Pension and Service Regulations made under the erstwhile Ordinance continue to regulate the affairs of the Company. Even otherwise, this Court has already affirmed the continuing enforceability of these Regulations even after promulgation of Ordinance, 2001.³ Besides, under Section 24 of the General Clauses Act 1897, the Regulations are deemed to have been issued under Ordinance, 2001 unless inconsistent with the said Ordinance.

7. Section 5 of the Ordinance 2001 provides that all employees of the Corporation shall on the date of incorporation of the Company be deemed to be the employees of the Company on the same remuneration and other conditions of service, rights and privileges including the pension, provident fund and gratuity as were applicable to them before the conversion of the Corporation into the Company. This provision saves and protects the terms and conditions of the employees of the erstwhile Corporation. Under Regulation 15(1A) of the Pension Regulations, the benefit of *Additional Pension* was extended to the employees of the Corporation on 19.04.1987.⁴ As per the respondents, the benefit of *Additional Pension* has been withdrawn under the OM dated 04.09.2001 which being a directive/instruction of the Federal Government is binding on the Company under Regulation 265 of the Service Regulation.

8. We would first like to examine the OM to see if it is a directive /instruction issued by the Federal Government to the Board of Directors of the Company. The OM is titled: REVISION OF BASIC PAY SCALES AND FRINGE BENEFITS OF CIVIL EMPLOYEES (BPS-1-22) OF THE FEDERAL GOVERNMENT (2001) and provides at the outset that the President has been pleased to sanction a scheme for the civil employees of the Federal Government. Under PART-III of the

³ Syed Tahir Abbas Shah v OGDCL through MD 2012 PLC (C.S.) 885; OGDCL v Nazar Hussain 2010 SCMR 1559

⁴ By amending the Pension Regulations through SRO No. 292(I)/87

OM dealing with PENSION AND COMMUTATION, it provides that the Government has made the following reforms in respect of all pensioners of the Federal Government. In the end, the OM has been copied to all the Ministries, Divisions and Departments of the Federal Government. Nowhere from the reading of the OM can it be shown that it is a directive / instruction issued to the Board of Directors of the Company. There is also nothing on the record to show that the said OM was separately dispatched to the Board of Directors of the Company as a directive/instruction. No receipt of any such directive/instruction has been placed on the record by the Company. The OM was issued by the Finance Division of the Federal Government for the regulation of its own employees. It is an admitted position that the employees of the Company are not civil servants, hence for the OM to be a directive or instruction addressed to the Board of Directors of the Company, special reference had to be made in this regard. In its absence the OM does not purport to operate as a directive or instruction under the law. The assumption in this case that the OM is a directive or instruction issued to the Board of Directors of the Company is seriously misconceived. This aspect of the matter went unnoticed and unexamined by the High Court even in the earlier litigation (*Abdullah* case referred hereunder). Further, the submission of the learned counsel for the respondent Company that twelve years later on 17.01.2013 the Board of Directors of the Company in the 145th meeting of the Board resolved to discontinue *Additional Pension* confirms that no directive/instruction in this regard was ever issued to the Company earlier, otherwise, there was no need for the Board to pass such a resolution a decade later. Hence, the OM dated 04.09.2001 cannot be constructed as a directive or instruction issued to the Company by the Federal Government under Regulation 265.

9. As an alternative, the learned counsel for the Company referred to the decision of the Board of Directors passed in the year 2013 (12 years after the said OM) on 17.01.2013 (reflected in the letter dated 25.02.2013) which without reference to the said OM states that the Board of Directors have resolved that the maximum scale of gross pension shall continue to be equal to 70% of the pensionable salary

upon completion of 30 years or more service at the time of retirement. Any such Board decision is inconsequential as the same is in violation of Section 5 of Ordinance, 2001 read with Regulation 15 (1A) of the Pension Regulations. Other than the statutory protection enjoyed by the employees under Section 5 as discussed above, the said Regulations were framed in the year 1985 (and amended in 1987) after seeking prior approval of the Federal Government in terms of Section 30 of the erstwhile Ordinance, 1961. The said Regulations are still in the field and enjoy a higher statutory force than a Board Resolution of the Company and unless the said Regulations are amended by the Company with the prior approval of the Federal Government, the decision of the Board of Directors cannot override the said Regulations. Hence both the decision of the Board dated 17.1.2013 and its policy announcement through letter dated 25.02.2013 are not sustainable being in violation of Ordinance 2001 and the Pension Regulations.

10. As a last recourse, learned counsel for the petitioner has referred to a judgment passed by the Islamabad High Court dated 08.10.2020 in favour of the Company against which leave was declined by this Court vide order dated 07.04.2023 in *Abdullah v. Managing Director CEO OGDCL*⁵. *Abdullah* upholds the OM, assuming that the OM was a directive issued to the Board of Directors of the Company by the Federal Government – it does not examine the factual and legal status of the directive/instruction as done in this case. *Abdullah* is also silent regarding the scope of statutory protection extended to the employees under Section 5 of Ordinance, 2001 and under the Pension Regulations, hence it is distinguishable from the present case. Further, with respect, *Abdullah* does not decide any question of law or enunciate any principle of law and is a leave declining order, thus it does not pass as a binding precedent.⁶

⁵ Passed in CPLA 2913 of 2020

⁶ *Allied Bank Limited v. Habib-Ur-Rehman and Others*, 2023 P L C (C.S.) 1319; *Syed Hammad Nabi and others v. Inspector General of Police Punjab, Lahore and others*, 2023 SCMR 584; *Muhammad Salman v. Naveed Anjum and others*, 2021 SCMR 1675

11. We have also gone through the decision of the Company whereby claim of the petitioner was declined through an OM dated 20.08.2021. Perusal of this OM shows that the request of the petitioner was turned down on the ground that his claim was allegedly against the *Rules* and *Policy* of the Company. It is an admitted position between the parties that the Corporation or now the Company have not yet come up with any *Rules* and secondly, the *Policy* announcement dated 25.02.2013 by the Company has hereinabove been declared to be violative of Section 5 of the Ordinance, 2001 and the Pension Regulations. Hence, the OM dated 20.08.2021 was issued without keeping in view the statutory framework regulating the working of the Company and is therefore set aside.

12. Having decided that the OM dated 04.09.2001 does not constitute a directive or instruction under Regulation 265 of the Service Regulations and the decision of the Board of Directors dated 17.1.2013 does not hold, as discussed above, we now proceed to discuss the overall scheme of the law to underline that the Company enjoys autonomy in managing its internal governance.

13. The creation of the Corporation under the Ordinance, 1961 was not a mere bureaucratic arrangement but a deliberate legislative choice to insulate a vital sector of the economy from the day-to-day interference of ministerial control. The statute envisaged a Board of Directors empowered to conduct the affairs of the Corporation "*on commercial considerations having regard to public interest*" while federal directives were binding only insofar as they fell within the domain of policy. Significantly, it was the Board itself which was authorised to determine whether a matter constituted "*policy*"⁷. This governance architecture reflected the legislative intent: to endow the Corporation with institutional autonomy so that commercial decisions could be taken in the best interest of the enterprise and the country, free from fluctuating political currents.

⁷ See Section 4 of the Ordinance, 1961

14. The transition of the Corporation into a public limited company in 2001 strengthened, rather than diluted, this autonomy. By registering it as a company limited by shares under the Companies Ordinance, 1984 subject to the fiduciary duties of its directors and the discipline of company law, the legislature shifted the governance model closer to that of the private sector, where independent Boards are entrusted with decision-making in the interests of the company and its stakeholders. This progression underscores a legislative trajectory toward greater independence, transparency, and accountability in the governance of state-owned enterprises. Accordingly, any statutory reference of adherence to government directives/instructions cannot be read as compelling the Board to mechanically implement instructions. Such a reading would negate both the original intent of the Ordinance, 1961 and the autonomy conferred under the Ordinance, 2001 corporate structure. Rather, it is incumbent upon the Board to assess whether a directive is commercially sound, consistent with the fiduciary duty of directors, in furtherance of the company's statutory purpose and in the general public interest. Only if these conditions are satisfied can a directive legitimately become part of the Company's internal governance. To hold otherwise would reduce the Board to a mere rubber stamp, defeating the very rationale for creating autonomous commercial entities under the law. Public corporations are designed not as extensions of government departments but as independent bodies entrusted with bringing efficiency, autonomy, and commercial discipline to vital sectors of economic activity.

15. Commercial autonomy is thus not only a legislative design but also a constitutional necessity for public sector companies engaged in strategic areas of the economy. Strong, independent public institutions are the bedrock of economic development, good governance, and the rule of law. When boards of statutory corporations or public companies are permitted to exercise independent judgment, they advance the twin objectives of commercial viability and public interest, thereby serving the larger purposes of the State. Conversely, when such bodies are reduced to administrative

subordinates of the executive, both economic growth and democratic accountability suffer. In a constitutional democracy committed to the separation of powers and the strengthening of institutions, autonomy of state-owned enterprises is therefore indispensable.

16. We also wish to reiterate that *pension* is not a matter of bounty, charity, or benevolence - it is a right protected under Articles 9 and 14 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") and inseparably linked with the right to life, dignity and livelihood⁸, for without sustenance in old age, these rights ring hollow. It should be taken more seriously for those public servants for whom it is a crystallized return on years of faithful service, a form of deferred wages earned through the sweat, labour, and loyalty of an employee. It embodies the principle that those who serve must not be cast aside in their twilight years. To deny or withhold pension is to strip a person of the security they have justly earned, leaving them exposed to indignity, vulnerability, and want. Therefore this right must be protected in the shape of the grant of pension that is not only adequate but also predictable.⁹ Moreover, an element of respect and empathy is to be maintained while granting pension which would be in consonance with the values that our Constitution espouses with dignity as the highest constitutional value.¹⁰ The law itself stands as a shield to protect the rights of such employees, ensuring that long-earned entitlements are not eroded by institutional caprice. Ordinance, 2001, therefore, not only recognizes but also protects pension by

⁸ Muhammad Yousaf v Province of Sindh, 2024 SCMR 1689; Qazi Khalid Ali v Federation of Pakistan, C.P.L.A.147-K/2023; Province of Sindh through Secretary Government of Sindh, Karachi and Others Vs. Mst. Sorath Fatima and Another, 2025 SCP 278; The Province of Punjab through Secretary, Finance Department, Government of the Punjab, Lahore and Others Vs. Kanwal Rashid and Others, 2021 SCMR 730.

⁹ International Labour Organization, *Universal Social Protection for Human Dignity, Social Justice and Sustainable Development*, International Labour Conference, 108th Session, 2019 (General Survey on the implementation of the Social Protection Floors Recommendation, 2012, No. 202) <https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_673680.pdf>

¹⁰ See Constitution of Pakistan, 1973, Article 38(b), (c), (d); Also affirmed by Pakistan's ratification of the Universal Declaration of Human Rights (UDHR), Article 1; For a detailed discussion on dignity as the highest value in a constitutional system see Ronald Dworkin, *Is Democracy Possible Here?*, Princeton University Press and Ronald Dworkin, *Justice for Hedgehogs*, USA Harvard University Press; Also see Al-Najjar, Sherzad & Saeed, Hemn. (2021), *Ronald Dworkin and Human Dignity as Highest Constitutional Value: Philosophical Theorization of Rights and Human Dignity in a Comparative Perspective*, UKH Journal of Social Sciences, 5, 82-89, <<https://pdfs.semanticscholar.org/b6a7/fe373c7746fcfabdaeca6f3dc562cde869e.pdf>>.

ensuring that the terms and conditions of service of the employees of the erstwhile Corporation, and now of the successor Company, cannot be altered to their disadvantage. To trifle with pension is, therefore, to trifle with constitutional justice itself.

17. For the above reasons, we set aside the impugned judgment and declare that the petitioner is entitled to *Additional Pension* under Section 5 of the Ordinance, 2001 read with Regulation 15(1A) of the Pension Regulations with the direction to the Company to pay the *Additional Pension* to the petitioner in accordance with the Pension Regulations within 30 days from the receipt of this Judgment and submit a compliance report to the Registrar of this Court. In case the compliance report is not received till the first week of November 2025, the case will be put up on the judicial side for necessary orders. This petition is converted into an appeal and allowed in the above terms.

Judge

Judge

Islamabad,
17.09.2025

Approved for Reporting
(Muhammad Ahmad)