

Fair Judgment Per Signature of
Nemo
2-11-12

IN THE FEDERAL SHARIAT COURT

(Original Jurisdiction)

PRESENT

**MR. JUSTICE SHAHZADO SHAIKH
MR. JUSTICE DR. FIDA MUHAMMAD KHAN
MR. JUSTICE SHEIKH AHMAD FAROOQ**

SHARIAT PETITION NO.14/I OF 2009

Capt. (Retd) Mukhtar Ahmed Shaikh Petitioner
124- Hina Garden, Gulistan-e-Jauhar,
Block-19 Karachi- Post Code 75290

Versus

Federal Government of Pakistan Respondent

Counsel for the Petitioner Nemo

Counsel for the State Nemo

Counsel for Federal Govt: Nemo

Date of Institution 07.08.1997

Date of hearing 16.10.2012

Date of decision 16.10.2012 ✓

:-

JUDGMENT:-

SHAHZADO SHAIKH, J:- Shariat Petition No.14/I/1997, has been filed by Capt. (Retd) Mukhtar Ahmed Shaikh wherein he has challenged Revised Leave Rules 1980 being repugnant to the Injunctions of Islam. The petitioner Capt. (Retd) Mukhtar Ahmed Shaikh has referred to a hadith of Holy Prophet Muhammad (Peace Be Upon Him) in favour of his appeal.

In his written comments the petitioner Capt. (Retd) Mukhtar Ahmed Shaikh has also discussed a Commandment of the Holy Prophet (Peace be upon him) as referred to in "Mishkat" and Ibn-e-Maja":

مزدور کی مزدوری پسینہ خشک ہونے سے پہلے ادا کرو

The petitioner is of the view that the above Commandment of the Holy Prophet (Peace be upon him) has been violated in Revised Leave Rules 1980. He is also of the view that in these rules, apart from being against the Injunctions of Islam, there are certain provisions which are against equity, justice, fair play and without any rationale. He has highlighted such rules so as to bring these in harmony with Islamic concept, equity and justice:-

RULE-3:-EARNING AND ACCUMULATION OF LEAVE.

1. A civil servant shall earn leave only on full pay which shall be calculated at the rate of four days for every calendar month of the period of duty rendered and credited to the leave account as "Leave on Full Pay"
2. Duty period of fifteen days or less in a calendar month being ✓

ignored and those or more than fifteen days being treated as

a full calendar month for the purpose.

3. If a civil servant proceeds on leave during a calendar month and returns from it during another calendar month and the period of duty in either month is more than fifteen days, the months to be credited for both the incomplete months shall be restricted to that admissible for one full calendar month only.

4. There shall be no maximum limit on the accumulation of such leave.

RULES-5: LEAVE ON FULL PAY:-

The maximum period of leave on full pay that may be granted at one time shall be as follows:-

- | | |
|--------------------------------------|----------|
| a) Without medical certificate | 120 days |
| b) With medical certificate | 180 days |
| c) On medical certificate from leave | 365 days |
- account in entire service.

Note: Under the prescribed Leave Rules, 1955, leave on half average pay could be converted into leave on full pay on the strength of Medical Certificate up to a maximum of twelve months in terms of leave on full pay in the whole service. The account of this kind of leave was separately maintained in column 14(a) of the leave account under the said Rules. Such leave availed of by the civil servants before the introduction of these rules, shall be debited against the maximum limit of 365 days fixed under this rule.

The Petitioner is of the view that the above rule is not based on equity.

Rule-3 allows the accumulation of leave to any extent while availing of leave ✓

on full pay is restricted to 120, 180 and 365 days vide Rule-5. He was, therefore, of the view that that it was not fair, and runs against interest of employees. Facility of accumulation of leave is negated by limiting the days of availing leave on Full Pay. He held the view that grant of leave is at the discretion of the Department and not of the employee. He was also of the view that since accumulation of leave has no limit, the availing of leave should also not have any limit.

RULE-16 LEAVE PREPARATORY TO RETIREMENT.

- 1) The maximum period up to which a civil servant may be granted leave preparatory to retirement shall be three hundred and sixty five days.
- 2) Such leave may be taken, subject to availability, either on full pay, or partly on full pay and partly on half pay , or entirely on half pay, at the discretion of the civil servant.

The petitioner was of the view that employees do not avail all the leave earned by them. Due to exigencies of service, leave is refused and it gets accumulated. However, there is a restriction of availing of 365 days as LPR. Remaining leave lapses and earned leave is denied. It is not fair. Limiting of LPR for 365 days only is a refusal to earnings. Hence limit of LPR to the extent of 365 days should go.

RULE-17. ENCASHMENT OF REFUSED LEAVE PREPARATORY TO RETIREMENT.

1). If incase of retirement on superannuation civil servant cannot, for reasons of public service, be granted leave preparatory to retirement duly applied for insufficient time, he will in lieu thereof be granted lump-sum leave pay for the leave refused to him subject to a maximum of one hundred and eighty days leave on full pay.

2). Such leave can be refused partly and sanctioned partly but the cash compensation shall be admissible for the actual period of such leave so refused not exceeding one hundred and eighty days.

3). The payment of leave pay in lieu of such refused leave may be made to the civil servant either in lump-sum at the time of retirement or may, at his option , be drawn by him month wise for the period of leave so refused.

4). For the purpose of lump-sum payment in lieu of such refused leave only the "Senior Post Allowance" will be included in "Leave Pay" so admissible.

5). In case a civil servant on leave preparatory to retirement dies before completing one hundred and eighty days.

The petitioner was of the view that the employee can encash 180 days if he does not avail LPR and has to work during LPR encashment period. Rest of balance of leave if in balance lapses. Thus leave earned becomes meaningless and is of no avail. This is against teaching /commandment of the Prophet (Peace be upon him) as quoted earlier. ✓

Whenever an employee retires, entire leave in his credit should be encashed and leave earned should be compensated by paying salary in lieu thereof in the light of the spirit of the Hadith. He was of the view that this encashment be allowed any time at the desertion of the employee, specially on Eids for Muslim and on religious festivals of non-Muslims.

RULES-19 IN-SERVICE DEATH.

- 1) In case a civil servant dies while in service, lump-sum payment equal to full pay up to one hundred and eighty days out of the leave at his credit shall be made to his family as defined for the purpose of family pension.
- 2) For the purpose of lump-sum payment to the family of the servant who dies while in service only the "Senior Post Allowance" will be included in the "Leave Pay" so admissible.

The petitioner was of the view that in case of in-service death, lump-sum payment equal to full pay for the balance of leave days at the credit of deceased employee be paid to his family as defined for the purposes of family pension. The leave earned should not lapse or go waste.

Furthermore, he was of the view that when an employee is declared unfit on medical grounds, he is paid 180 days leave salary out of the leave at his credit. This restriction was without any reason. He

should be paid in lieu of full credit balance in his leave account instead of 180 days.

RULE-31 LEAVE TO LAPSE WHEN CIVIL SERVANT QUILTS SERVICE.

All leave at the credit of a civil servant shall lapse when he quits service.

The petitioner was of the view that this rule is against the Injunctions of Islam. Earned leave should not lapse when the employee quits service, as he is deprived of his earnings without any justification. He should be entitled to receive compensation as pay in lieu of leave available in his account when he quits service, Including in case of dismissal, removal, termination, resignation, retirement, invalidation on medical grounds, and in-service death,

Respondent No.2 Ministry of Finance Division, Islamabad has filed para-wise written comments as under:-

Section-18 of the Civil Servant Act-1973 provides that:-

1. "A civil servant shall be allowed leave in accordance with leave rules applicable to him, provided that the grant of leave will depend on the exigencies of service and be at the discretion of the competent authority."

2. Fundamental Rule-67 provides that:-

"Leave cannot be claimed as of right. When the exigencies of the public service so require, discretion to refuse or revoke leave of ✓

any description is reserved to the authority empowered to grant it.”

In accordance with the provisions of Civil Servants Act, this is an accepted fact that a Government servant is entitled to avail the leave, but it *depends upon the exigencies of service and the discretion to grant leave rests with the competent authority*. Leave may be refused or revoked in the interest and in exigencies of public service, which is not in contravention of the Islamic Teachings.

Rule-3: Earning and Accumulation of Leave.

Rule-5: Leave on Full Pay.

In order to facilitate to the maximum, a Government servant, 4 days leave in a month is credited to a Government servant's account as earned leave, without limit on its total accumulation in his career.

In Rule-5 of the Revised Leave Rules-1980 (Annex-1), different types of leave have been framed to further facilitate the grant of leave in order to meet different requirements of the government servant in accordance with the spirit of Act of Parliament and the Fundamental Rules. It is in no way against the Teachings of Islam and commandments of the Holy Prophet (PBUH).

Rule-17: Section-17 of the Civil Servants Act-1973 provides that:-

“A civil servant appointed to a post shall be entitled, in accordance with the rules, to the pay sanctioned for such post; ✓

In pursuance of the above provisions of Act, government servant is paid reasonable remuneration in return for his services. But the leave cannot be claimed as of right. LPR being a kind of leave, cannot, therefore, be availed by a Government Servant at his own will, but it to be granted by the department keeping in view the requirement and exigencies of public service. Thus, in view of the provisions of Act of Parliament and Fundamental Rules, and nature of leave to be in consonance with public service requirements and exigencies, the regulatory frame of leave including LPR is not in contravention of the Teaching of Islam.

Rule-19 of the Revised Leave Rules-1980 (Annex-II) provides a welfare package for a Government servant who dies in service. Human welfare is the spirit of Islamic Teachings, therefore, these rules framed in exercise of the powers of Act of Parliament may not be considered to be in contravention of Islamic Teachings.

Rules-31. As the leave is a facility available to a Government servant, which may not be claimed as of right, then it is not matter of agitation in case leave gets lapsed with the death of Government servant without any compensation. Thus, the provisions of this rule do not contravene with the Islamic Teachings.


In view of the above, the Respondent No.2 Ministry of Finance Division, prayed to dismiss the instant appeal. ✓

Notices were sent to petitioner Capt. (R) Mukhtar Ahmed Sheikh as well as the Secretary Ministry of Law, Secretary Ministry of Finance, Attorney General for Pakistan, Mr. Shabbir Mehmood Malik, Standing Counsel No.II for Attorney General for Pakistan, Mr. M. Nazir Abbasi, Standing Counsel for Federal Government, which were duly served but none of them were present.

We have examined each rule challenged by the Petitioner and his assertions in this regard. We take up the same hereunder:

RULES-3 & 5:

In fact the Petitioner has no observation against Rule-3, but it is against Rule-5, that he pleads for encashment/availing entire earned leave on full pay, without any maximum limit/restriction. Such a plea basically eliminates the very basis for classification of leave into different types, and turns the leave into one type, i.e., earned one only. In other words it cuts at the very root of the concept of 'earning leave' on the basis of actual period of duty during which service is rendered, which qualifies for earning the leave at a certain rate. It will be turned into a sort of add-on to the salary at that rate. Therefore, the very concept, structure and purpose of leave will be affected. At the same time the Petitioner has not referred to any text of the Quran and the Sunnah of Prophet (Peace be upon him) in support of such a proposal for




doing away with the very concept, structure and purpose of leave, in the prescribed manner.

RULES-16, 17, & 19:

The plea against limit on LPR and its encashment, has the potential to discourage the government employee from availing of leave, during service, for a break from work to attend to psychological and health requirements of his own self and his family, besides attending to other social commitments, etc. Keeping in view the present economic consideration, he will try his utmost not to avail any leave during service, and save. This might even encourage some manipulation in this regard. Whereas the purpose and design of leave structure and its classification, particularly with its paid elements, attempts to encourage the employees to avail of the leave in this regard.

The plea that encashment be allowed any time at the discretion of the employee, specially on Eids for Muslim and on religious festivals of non-Muslims, has the negative potential, in addition to the above, that it will convert the so called 'leave encashment' into a sort of bonus, an add-on to the salary, besides taking away the leave-granting authority of the department, who has to take care of exigencies of service and public interest while looking after the employee's individual interest.



Furthermore, Rule-19 of the Revised Leave Rules-1980, in fact, provides a welfare package for a government servant who dies during service

RULE-31:

The plea that all leave in the account of the government employee, should not lapse, in all cases, including dismissal, removal, termination, resignation, retirement, invalidation on medical grounds, and in-service death, and he should be paid in lieu of all such leave, is without any sound reasoning.

Concept of leave should not be considered in isolation. It is an important part of service system, which is intricately integrated with the other components of the service system. One of the most important aspect of system of leave management touches intimately on the administrative and disciplinary aspects also.

Furthermore, it is within the Government right and authority to make rules governing the effective management of services. Apparently no fundamental right is violated and it appears that there is no discrimination.

In this discussion, reference of Respondent No.2, Ministry of Finance Division, Islamabad, to the following law/rules is also important:

Section-18 of the Civil Servant Act-1973:-

1. "A civil servant shall be allowed leave in accordance with leave rules applicable to him, provided that the grant of leave

will depend on the exigencies of service and be at the discretion of the competent authority.”

2. Fundamental Rule-67:-

“Leave cannot be claimed as of right. When the exigencies of the public service so require, discretion to refuse or revoke leave of any description is reserved to the authority empowered to grant it.”

Government servant is entitled to avail of his leave, but it *depends upon the exigencies of service and the discretion to grant leave rests with the competent authority*. Encashment of LPR is part of the retirement benefits also.

Leave may be refused or revoked in the interest and in exigencies of public service. The petitioner has not quoted any Injunctions of Islam, which could be argued to have been contravened.

The wisdom behind not allowing the entire amount of the leave accumulated during the entire service i.e. @ four days per month for each month of effective service, is that the employees are encouraged to proceed on leave and not to ignore their personal/private and family matters, so much so that they used to be compelled to avail of recreation leave also which was subsequently discontinued. It is part of the objective of maintaining socio-psychological balance of an employee with his office/work engagements, through spells/breaks of rest and recreation while attending to his personal and family matters also. ✓

Furthermore, there is no application/petition from general or any class of governments servants to become party to this Sh. Petition No.14/I of 1997. The petitioner himself also does not seem to be interested, who in spite of service, has absented himself on the following dates:-

25.01.2007, 02.04.2007, 07.05.2007,
28.05.2007, 03.09.2007, 22.01.2008,
29.01.2008, 27.03.2008, 08.04.2008,
30.04.2008, 21.05.2008, 23.10.2008,
19.10.2010, 26.03.2012, 25.06.2012

In view of the foregoing discussion, Shariat Petition No.14/I of 1997 is dismissed.

  
JUSTICE DR.FIDA MUHAMMAD KHAN


JUSTICE SHAHZADO SHAIKH


JUSTICE SHEIKH AHMAD FAROOQ

Islamabad, the 16th
October, 2012
Zain/*

Fit for reporting.

 
JUSTICE SHAHZADO SHAIKH



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