

## IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1347 of 2006

*[Asadullah Khawaja vs. Investment Corporation of Pakistan (ICP)]*

Dates of hearing : 09.05.2019, 17.05.2019 and  
29.05.2019.

Plaintiff  
*[Asadullah Khawaja]* : Through M/s. Khalid Mehmood  
Siddiqui and Mateen Ahmed,  
Advocates.

Defendant  
*[Investment Corporation of  
Pakistan (ICP)]* : Through M/s. Nabeel Kolachi and  
Muhammad Ilyas, Advocates.

### **Case law cited by learned counsel for Plaintiff**

1. 2015 SCMR page-1472  
*[Pakistan Telecommunication Employees Trust (PTET) through  
M.D., Islamabad vs. Muhammad Arif].*
- 1A. PLD 2006 Supreme Court 602  
*[Mubin-ul-Islam and others versus Federation of Pakistan]*
2. 2015 PLC (CS) page-296 (Supreme Court)  
*[Secretary, Government of Punjab, Finance Department vs. M.  
Ismail Tayer].*
3. 2014 SCMR page-1336  
*[Secretary, Government of Punjab, Finance Department vs. M.  
Ismail Tayer].*
4. 2014 SCMR page-949  
*[Syed Mubashir Raza Jaffri vs. Employees Old-Age Benefits  
Institutions (EOBI)].*
5. 2013 SCMR page-1062  
*[Nadeem Ahmed vs. Federation of Pakistan].*

6. 2013 PLD page-829  
*[Application by Abdul Rehman Farooq Pirzada vs. Begum Nusrat Ali Gonda vs. Federation of Pakistan]*
7. 2008 SCMR page-544  
*[Federation of Pakistan through Secretary, Government of Pakistan Establishment Division, Islamabad vs. FLt. Lt. Farrukh Rashid].*
8. 2018 PTD page-621  
*[Inbox Business Technologies Ltd., vs. Pakistan through Secretary Revenue Division].*
9. 2008 PLC (CS) page-220  
*[Salman Adil Siddiqui vs. Province of Sindh].*
10. 2018 SCMR page-1792  
*[Al-Noor Sugar Mills Limited vs. Federation of Pakistan].*
11. 2017 SCMR page-206  
*[Shahid Pervaiz vs. Ejaz Ahmad].*
12. 2013 PLC page-374  
*[Muhammad Kashif vs. Karachi Dock Labour Board through Chairperson].*

**Case law relied upon by learned counsel for Defendant**

1. PLD 1972 Lahore page-41  
*[Abdul Samad alias Dadda vs. Khan Iqbal Ahmad Khan Lodhi, P.C.S., District Tribunal, Lahore and another]*
2. PLD 1985 Supreme Court page-376  
*[Idrees Ahmad and others vs. Hafiz Fida Ahmad Khan and 4 others].*
3. PLD 1996 Supreme Court (AJ&K) page-25  
*[Said Hussain Khan vs. Muhammad Hussain Khan and another].*
4. PLD 1957 (W.P.) Lahore page-400  
*[Abdul Rashid vs. The State].*
5. 2016 CLD page-2025 (Supreme Court of Pakistan)  
*[ShahidBibi and others vs. Habib Bank Limited and others]*
6. PLD 2016 Supreme Court page-398  
*[Zila Council Jehlum through District Coordination Officer vs. Messrs Pakistan Tobacco Company Ltd., and others].*

7. 2015 CLC page-1640 [Lahore]  
*[Mst. Alia Riaz vs. Government of Punjab and others].*

**Other Precedent:**

- i. **2014 SCMR page-1573**  
*[Ministry of IPC through Secretary and others vs. Arbab Altaf Hussain and others],*
- ii. **2002 CLC page-166 (Karachi)**  
*[Messrs Dadabhoy Cement Industries Limited and others vs. Messrs National Development Finance Corporation].*
- iii. **2002 SCMR page-1761**  
*[Messrs Dadabhoy Cement Industries Limited and others vs. Messrs National Development Finance Corporation].*

- Law under discussion:
- (1). Banks (Nationalization) (Amendment) Act, 1997. [**Bank Law**].
  - (2). Investment Corporation of Pakistan Ordinance, 1966. [**ICP Law**]
  - (3). Code of Civil Procedure, 1908 (**CPC**).
  - (4). Qanoon-e-Shahadat Order, 1984. [**Evidence Law**].

**JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** The present *lis* has been instituted by Plaintiff for recovery of service dues. Plaint contains the following prayer clause\_

***“1. To declare that the impugned letter dated 20.04.2001 issued by the Defendant is discriminatory, unfair and illegal and has no legal force and the Plaintiff is entitled to the benefits under the VRS notified through Circular No.32/97 dated 31.10.1997 and in accordance with Board’s decision taken in its meeting No.174 held on 09.03.2000.***

*2. To pass judgment and decree for the remaining balance amount of Rs.28,626,598 with 15% mark-up from 08.06.2000 till the satisfaction of the decree.*

*3. Cost of the suit.*

*4. Any other relief as the Court may deem fit.”*

2. The case of Plaintiff in a nutshell is, when the latter (Plaintiff) availed the Voluntary Retirement Scheme (**VRS**) of Defendant as its Managing Director, he was not paid the actual service dues and benefits in terms of VRS and despite sending reminders, Defendant failed to give correct computation of salary and other dues payable to Plaintiff. Legal team for Plaintiff has argued that the calculation of VRS benefits was to be done on the basis of salary of Plaintiff as of 30.11.1997, which was Rs.1,25,000/- (rupees one hundred twenty five thousand) per month and not Rs.19,899/- (rupees nineteen thousand eight hundred ninety nine). In support of their arguments, numbers of judicial precedents are relied upon, which are mentioned in the opening part of this Judgment.

3. On the other hand, the claim of Plaintiff has been controverted by Defendant in its Written Statement. Mr. Nabeel Kolachi, Advocate, for Defendant has argued that at the relevant time when the above mentioned salary of Plaintiff was fixed by the Board of Defendant, it had no authority, as the provisions of Bank (Nationalization) (Amendment) Act, 1997 (**Bank Law**), were not applicable to the case of Plaintiff whose terms and conditions of employment was to be settled as per the mandate given to the Federal Government under the Investment Corporation of Pakistan Ordinance, 1966 (**ICP Law**), which is a special law. He has further argued

that the controversy was already settled in the 164<sup>th</sup> Board Meeting of Defendant in which Plaintiff also participated and Minutes whereof are produced in the evidence as Exhibit-D/24.

4. From the pleadings of the parties, following Issues were framed by the Court vide order dated 08.03.2010\_

- “1. *Whether the plaintiff was retired under the Voluntary Retirement Scheme notified vide circular No.32/97 dated 31.10.1997 and is entitled to his retirement benefits on the basis of salary drawn on cutoff date i.e. 30.11.1997?If so, its effect.*
2. *Whether the revision of fixation of salary in scale M-1 by the Federal Government and ICP Board prospectively w.e.f. 6/6/1998 through FD’s letter dated 6/6/1998 and Board’s 164<sup>th</sup> Meeting held on 4/8/1998 has any effect on the retirement benefits of the plaintiff? If so, its effect.*
3. *Whether any revision of the salary could be effected retrospectively or otherwise?*
4. *Whether the Plaintiff has been paid all retirement benefits in accordance with law, rules and regulations applicable thereto?*
5. *Whether the Plaintiff has been paid any amount in excess of his legitimate dues? If so what amount?*
6. *Whether the Plaintiff is liable to refund any amount to IDBP?*
7. *To what relief, if any, the parties are entitled?”*

5. Both Plaintiff and Defendant led the evidence. Plaintiff examined himself and was cross-examined; whereas, on behalf of Defendant, Mr.

Muhammad Naeem Khalid (Assistant Vice President) testified and cross-examined.

6. Vide orders dated 10.05.2016 and 17.08.2016 issue about maintainability of the present *lis* is to be decided, because the Defendant's counsel has argued that this suit was filed after expiry of prescribed time of 90 days, as mentioned by the Hon'ble Supreme Court in the well-known case of **Mubin-ul-Islam versus Federation of Pakistan**, reported in PLD 2006 Supreme Court page-602.

7. To address the above Issue, the learned counsel for Plaintiff has referred to Exhibit-**P/29**, a correspondence dated 03.04.2001, from present Plaintiff to Defendant, wherein he challenged the computation made by Defendant about settlement of service dues. He then referred to the reply of Defendant dated 20.04.2001, to Plaintiff in which claim of latter was disputed. It is argued that this correspondence dated 20.04.2001 (**Exhibit P/30**) of Defendant has incorrectly calculated the service dues/retirement benefits of Plaintiff which has adversely affected his interest, therefore, this was challenged before the Service Tribunal, which was a competent jurisdiction at the relevant time. More so, admittedly, as also evident in this correspondence of Defendant, that an amount of Rs.613,624.23 (*rupees six hundred thirteen thousand six hundred twenty four and twenty three paise*) has been withheld by the Defendant, in view of some purported audit objection, therefore, this correspondence is basically the cause of action for Plaintiff.

8. Undisputedly, at the relevant time, the employees of Government owned statutory Organizations / Corporations, such as Investment

Corporation of Pakistan / Defendant, for redressal of their grievances, used to avail remedy before the Federal Service Tribunal (in terms of Section 2-A of the Federal Service Tribunal Act, 1973, as in existence at the relevant time). Consequently, present Plaintiff also filed an Appeal No.878 (CE) /2001 in the Federal Service Tribunal, within time, Memo whereof is produced in the evidence as Exhibit-**P/3**. In the prayer clause of this memo, the Plaintiff has sought implementation of decision taken by Defendant's Board of Directors in its 174<sup>th</sup> Meeting of 09.03.2000, while challenging the decision dated 20.04.2001 (as stated above) mentioned in the above correspondence of present Defendant-Exhibit-**P/30**. This Appeal was filed on 19.05.2001. Subsequently after the pronouncement of Judgment in Mobin-ul-Islam case (*ibid*) by the Hon'ble Apex Court, *inter alia*, proceedings of such kind of Appeals were abated and aggrieved persons were allowed 90 days time to seek their remedy before the competent fora. The order of abatement of above Service Appeal is of 30.06.2006 produced in the evidence as Exhibit-**P/2** and plaint of the present *lis* was presented on 25.09.2006, that is, within 87 days the *present Lis* was instituted from the date/time of above correspondence of Federal Service Tribunal. Hence in view of the time prescribed by Hon'ble Supreme Court in the above case of Mobin-ul-Islam, the present suit is within time. **Secondly**, fact of the matter is that an amount of Rs.613,624.23/- (rupees six lacs, thirteen thousand and six hundred and twenty four) is still unpaid, as mentioned in the above Correspondence of 20-4-2001 (of Defendant itself), thus, cause of action still subsists. **Thirdly**, record of the present *lis* shows that vide order dated 31.01.2011, the Application filed by Defendant under Order VII Rule 11 of CPC, for rejection of the plaint, was also dismissed with cost of Rs.10,000/-

(rupees ten thousand), thus, earlier too, this Court was of the view that present Lis is not barred by any law. Hence, subject to the findings on other Issues, the present suit as framed / instituted is maintainable.

9. Findings on the above Issues are as under:-

ISSUE NO.1	As under.
ISSUE NO.2	As under.
ISSUE NO.3.	As under.
ISSUE NO.4	Negative.
ISSUE NO.5	Negative.
ISSUE NO.6.	Negative.
ISSUE NO.7	Suit is partly decreed.

### REASONS

#### ISSUES NO.1 AND 2.

10. Both these Issues are interlinked. The gist of arguments of learned counsel for Plaintiff is that the correspondence of 20.04.2001 (Exhibit-**P/30**) is violative of decision taken in earlier 174<sup>th</sup> Board Meeting of Defendant, held on 09.03.2000, whereas, the crux of the arguments of learned Advocate for Defendant is that the above impugned correspondence of 20.04.2001 is in line with the decision taken by the Board of Directors of Defendant in its 164<sup>th</sup> meeting held on 04.08.1998, produced in the evidence by Defendant's witness, as Exhibit-**D/24** and subsequent Board Meetings.

11. It is clarified that since authenticity of documents produced by Plaintiff as well as witness of Defendant in their evidence are not disputed and many documents are common, hence, reference to any of these

(documents) does not mean that the same produced by the other side, is excluded from consideration.

12. Admittedly, Plaintiff became Managing Director of Defendant Organization vide Notification dated 23.02.1995, issued by Finance Division of Government of Pakistan, which is produced in the evidence by the Plaintiff as Exhibit-**P/5**.

13. It is pertinent to mention that a Memorandum No.50 / 95 (Exhibit-**D/4**) dated 24-4-1995, from the present Plaintiff was placed before the Board of Directors of Defendant, that is, after his appointment as Managing Director, proposing that Plaintiff should be allowed a job package with effect from 27.02.1995, which would include his last pay he was drawing in Defendant together with other facilities and fringe benefits. This Memorandum was approved in the 148<sup>th</sup> Meeting of Defendant, and Minutes whereof are produced in the evidence by Defendant's witness as Exhibit-**D/5**, according to which the Plaintiff was entitled to all privileges and benefits which were allowed to previous Managing Director. Consequently an inter-departmental letter was addressed by Administration Department of Defendant to its Accounts Department (dated 25.05.1995), Exhibit-**D/6**, mentioning the salary package and other fringe benefits of Plaintiff. In this Missive it is clearly stated that present Plaintiff will be entitled to all privileges and benefits that were allowed to the previous Managing Director; it is also an undisputed fact that the predecessors of present Plaintiff were given M-I service grade, as decided by the Federal Government way back in 1980 vide its Notification / Circular Dated 30.04.1980 produced in the evidence as Exhibit-**P/4**.

14. The undisputed record shows that vide a letter of 02.04.1995, produced by the Plaintiff as Exhibit-P/6, Defendant sought confirmation from the Finance Division (Government of Pakistan) for allowing Management Grade 'M-I' to Plaintiff as the post of Managing Director falls in the said grade. Subsequently, by another correspondence of 14.12.1996, that is, after more than 16 (sixteen) months, Defendant again sought confirmation about the above query with a further note that no response was received till such time from the Finance Division. This correspondence is produced in the evidence as Exhibit-P/7. Due to this typical red tapism on the part of Government of Pakistan (Finance Division), the Board of Directors of Defendant in its 159<sup>th</sup> Meeting held on 08.10.1997, after deliberation decided that financial package given to the incumbent Managing Director of National Investment Trust (NIT) should also be made applicable to the Plaintiff, subject to seeking legal opinion, about the applicability of above Banking Law to the affairs of Defendant Bank. In the Evidence File opinion from a Law Firm is available, which was also considered in the subsequent meeting of Board of Directors of Defendant, in which it is opined, that Board of Directors of Banks and Financial Institutions, including Defendant, are empowered to fix the terms and conditions of service of Managing Director.

In subsequent Annual General Meeting held on 07.11.1997, Defendant approved the terms and conditions of the Plaintiff as Managing Director of Defendant in the following terms\_

***“His basic pay shall be Rs.1.5 million per annum with effect from 8<sup>th</sup> October, 1997 @ an annual increase of 15% or the official rate of inflation whichever is higher plus allowances, perquisites, service benefits as per ICP (Service)***

***Regulations and / or duly approved by the Board of Directors from time to time.”***

161<sup>st</sup> Meeting held on 14.02.1998, Defendant's Board approved the Memorandum No.18 of 1998 dated 13.02.1998 relating to perquisites of Plaintiff as Managing Director of Defendant. Relevant extract of Minutes of meeting is produced in evidence by Plaintiff as Exhibit-P/14 along with Memorandum No.18 of 1998. It is pertinent to mention that the Plaintiff voluntarily decided to forego certain benefits.

15. Few weeks later, the Finance Division (of Federal Government) vide their correspondence of 04.12.1997 (Exhibit-P/12) objected to the last mentioned decision of fixing the terms and conditions of Plaintiff, *inter alia*, maintaining that the Banks (Nationalization) (Amendment) Act, 1997, is not applicable to the case of Plaintiff and his employment terms and conditions are to be decided by the Federal Government. Record shows that on different dates, letters exchanged between the Defendant and Ministry of Finance (of Federal Government) about exercising the authority to fix the salary package, perquisites and other fringe benefits (of Plaintiff as Managing Director). It was vehemently argued by Mr. Khalid Mehmood Siddiqui, Advocate for Plaintiff, the Defendant Organization in terms of Section 11(A) of the said Bank Law was competent to decide about employment terms of Plaintiff as Managing Director, *inter alia*, as this subsequent legislation (Bank Law of 1997) has impliedly repealed those provisions of ICP Law relating to fixing terms and conditions of Managing Director by the Federal Government.

16. Conversely, Mr. Nabeel Kolachi, Advocate for Defendant has argued that the above referred Bank Law was not applicable to the case of

present Plaintiff as his appointment as Managing Director (MD) was governed by the ICP Law and particularly its Section 14, and it is the Federal Government, which is vested with power to appoint a Managing Director (MD) on such salary and terms as may be determined.

17. To resolve the above controversy, in my considered view, the most important document is the Minutes of 164<sup>th</sup> Meeting of Board of Directors of Defendant held on 04.08.1998 at Karachi. The record of this meeting has been produced by the Defendant's witness as Exhibit-D/24, which is minutely examined. Plaintiff also participated in the said meeting as Managing Director, whereas it was chaired by Mr. Rasheed Chaudhry. Quorum was complete in which various Agenda Items were discussed including **Agenda Item No.18** relating to the terms and conditions of appointment of Plaintiff as Managing Director. Record of meeting further shows that present Plaintiff withdrew from the meeting in order to eliminate any conflict of interest, which is an appreciable conduct on the part of present Plaintiff. One of the Directors representing the Finance Division, Government of Pakistan reiterated his stance that Plaintiff is entitled to **M-I** service grade as applicable to the post of Managing Director, which was also highlighted in the correspondence of 06.06.1998 of Finance Division; this correspondence of 06.06.1998 is also on record as Exhibit-P/18. Finally, the Board of Defendant decided to implement the Government decision in the light of its last mentioned correspondence. Relevant portion of the Minutes of Meeting is reproduced herein under\_

*“After some discussion, the Board agreed to implement Government’s decision regarding grant of M-I to the Managing Director as contained in Finance Division’s letter dated 6<sup>th</sup> June, 1998 and decided to offer the following: -*

- i) *the basic pay of incumbent Managing Director (Mr. Asadullah Khawaja) be fixed at the maximum of the M-I Pay Scale with effect from June 06, 1998.*
- ii) *the revised basic pay of Rs.125,000/- per month and perks (as voluntarily reduced) drawn by him during the period from 8<sup>th</sup> October, 1997 to 5<sup>th</sup> June, 1998 be treated as valid payments and a past and closed transaction.*
- iii) *he shall continue to draw/avail allowances and perks as approved by the Board in its meeting held on 14<sup>th</sup> February, 1998.”*

18. Subsequently, Defendant vide its correspondence of 05.03.1999 addressed to the Finance Division (Government of Pakistan) has stated that the Board of Directors of Defendant **finally resolved** the issue in its 164<sup>th</sup> Board meeting held on 04.08.1998 and communicated the decision in the following words\_

- “i). *the basic pay of incumbent Managing Director (Mr. Asadullah Khawaja) be fixed at the maximum of the M-I pay-scale with effect from June 6, 1998.*
- ii) *the revised basic pay of Rs.125,000/- p.m. and perks (as voluntarily reduced) drawn by him during the period from 9<sup>th</sup> October, 1997 to 5<sup>th</sup> June, 1998 be treated as valid payments and a past and closed transaction.*
- iii) *he shall continue to draw/avail allowances and perks as approved by the Board in its meeting held on 14<sup>th</sup> February, 1998.*

*The Board’s decision mentioned above necessitated adjustment of the amount drawn from 6<sup>th</sup> June, 1998 onwards and that admissible to him under Board’s decision. Accordingly recovery is being made from his salary every month.”*

19. Plaintiff in paragraphs-21 and 22 of his Affidavit-in-Evidence (Examination-in-chief) has stated that Defendant’s Board approved above decision in its 167<sup>th</sup> Meeting and Ministry of Finance endorsed above decision on 30.04.1999 and confirmed the Minutes of 167<sup>th</sup> meeting of

Defendant's Board. The relevant extract of 167<sup>th</sup> Board meeting is exhibited as Exhibit-P/21 and the approval of Federal Government dated 30.04.1999 is exhibited as Exhibit-P/22. Exhibit P/21 endorsed the above correspondence of 05.03.1999 (of Defendant to Federal Government) about the terms and conditions of appointment of Plaintiff as Managing Director, the relevant portion whereof already reproduced in the foregoing paragraph, whereas the Federal Government in its letter of 30.04.1999 (Exhibit-P/22) conveyed its confirmation of the minutes of 167<sup>th</sup> meeting. It means that decision made in the 164<sup>th</sup> Board meeting (*ibid*), which was communicated in the correspondence of 05.03.1999 (Exhibit-P/20), attained finality, accordingly to which the Plaintiff was given **M-I Management Grade** from 06.06.1998, but the revised Basic Pay of Rs.125,000/- (rupees one hundred twenty five thousand), which was earlier given to Plaintiff **and he was drawing the same from 06.10.1997 to 05.06.1998 (for 10 months)** was considered as valid payment, in order to avoid any further complication in the matter.

20. Now adverting to the Minutes of 174<sup>th</sup> (emergent) meeting of Board of Directors of Defendant held on 09.03.2000 under which the Plaintiff is making his claim. This document has been produced by Plaintiff in his evidence as Exhibit-P/23 and by Defendant's witness as Exhibit-D/25 (at pages-491 and 251, respectively, of the evidence file). Items No.3 is relevant, relating to the request of Plaintiff for retirement through VRS (*Voluntarily Retirement Scheme*). Record shows that request of Plaintiff was considered and he was also called in the meeting and it was decided that an employee (in the present case, Plaintiff) would be entitled for retirement benefits, as of cutoff date, that is, 30.11.1997, irrespective of the

fact that an employee would retire at some subsequent date. Board members also appreciated the services rendered by Plaintiff to Defendant. The next important document is Minutes of Meeting dated 29.04.2000 of which the Plaintiff is aggrieved, as in this Meeting, the criteria to calculate the VRS package of Plaintiff was decided. This document, that is, the Minutes of 175<sup>th</sup> Meeting (impugned) are compared with 174<sup>th</sup> Meeting, upon which the Plaintiff is relying. In the subsequent 175<sup>th</sup> Meeting, the case of Plaintiff was discussed in detail and basis of calculation of VRS package was *primarily* based on the decision taken in 164<sup>th</sup> meeting of 04.08.1998, which was earlier approved by the Federal Government, and never objected to by Plaintiff. In this 175<sup>th</sup> Meeting, it was observed and decided that Plaintiff was drawing a monthly salary of Rs.1,25,000/- (Rupees One Hundred Twenty Five Thousand only) as on 30.11.1997 (cut-off date of VRS) but since the same was subsequently withdrawn by the Board and his salary was fixed as per **M-I Management Grade** at Rs.19,143/- (Rupees Nineteen Thousand One Hundred Forty Three only) with effect from 06.06.1998, therefore, his dues / benefits under the VRS would be calculated accordingly. The relevant portion of the decision of the Board of Defendant is reproduced herein under\_

***“1) Basic Pay of Rs.19,899/- fixed as of 30<sup>th</sup> November, 1997 for the purpose of computing Voluntary Retirement Scheme dues.***

***2) Sale of Cars under his use i.e. one 1300 CC plus one 1000 CC approved as admissible under Voluntary Retirement Scheme.***

***3) 45 days (Ex-Pakistan) Leave with effect from 24<sup>th</sup> April, 2000 to 7<sup>th</sup> June, 2000 approved against his available LFP Balance and during above leave period he will be entitled for pay and allowances as availed by him as Managing Director, ICP.***

4). *Due to approval of above 45 days LFP the Board extended the period of 45 days expired on 23<sup>rd</sup> April, 2000 upto 7<sup>th</sup> June, 2000 to review his decision to avail retirement under Voluntary Retirement Scheme. In case he does not agree with the suggestion of the Board to review his decision to avail Voluntary Retirement, he shall stand relived under VRS after expiry of extended 45 days period i.e. on 8<sup>th</sup> June, 2000. Hence the letter No.Admin/FF/11220 dated 27<sup>th</sup> April, 2000 issued to Mr. Asadullah Khawaja regarding his retirement under VRS with effect from 30.04.2000 may be withdrawn.”*

21. Learned counsel for Plaintiff has referred to the cross-examination of Defendant's witness in which he has admitted that on the cut-off date of 30.11.1997, Plaintiff was drawing his monthly salary of Rs.125,000/- (rupees one hundred and twenty five thousand), therefore, the entire VRS calculation of Defendant is baseless and Plaintiff is entitled to the claim as mentioned in the plaint. To further substantiate his arguments, the learned counsel for Plaintiff has relied upon the case law (ibid). This argument of learned counsel for Plaintiff cannot be accepted, for the reasons that *firstly*, in terms of Articles 102 to 104 of the Evidence Law, the documentary evidence excludes the oral testimony. Even though the Defendant's witness has admitted this fact that Plaintiff was drawing a monthly salary of Rs.125,000/- (rupees one hundred and twenty five thousand) as on 30.11.1997, but he has also voluntarily stated that the same was disallowed with effect from 06.06.1998 and salary was fixed at Rs.19,143/- (rupees nineteen thousand, one hundred and forty three), which he continued to draw till his retirement on 08.06.2000 under VRS. This piece of evidence is substantiated by the undisputed documentary evidence, particularly decision taken in 164<sup>th</sup> meeting (*supra*) and its communication by the Defendant to Federal Government vide correspondence of 05.03.1999, which position was accepted by the Plaintiff himself; *secondly*, in

consideration of unblemished service record of Plaintiff, the Board of Defendant in its 164<sup>th</sup> meeting and subsequent Board meetings (as referred above), particularly of 175<sup>th</sup> Meeting (impugned meeting) it was decided that higher salary package already drawn by Plaintiff during such time when he was not entitled for the same, should be treated as past and closed transaction, so that any other controversy detrimental to the interest of Plaintiff should be avoided; *thirdly*, once it has been decided by the Board of Directors of Defendant, agreed to by the Finance Division and it was subsequently reiterated in different Board decisions, which were never challenged by the Plaintiff, then latter (Plaintiff) cannot turn around and claim that for calculation of his retirement benefits under VRS, his salary of Rs.125,000/- (rupees one hundred and twenty five thousand) should be considered as a base and not Rs.19,143/- (rupees nineteen thousand one hundred and forty three), which was applicable to him as per decision of Federal Government as well as Board of Directors of Defendant. *Fourthly*, Plaintiff in his cross-examination has acknowledged a suggestion that subsequent to letter dated 06.06.1998 (by Ministry of Finance) salary of Plaintiff was reduced from Rs.1.5 Million per annum to Rs.19,143/- (rupees nineteen thousand, one hundred and forty three) per month. Even though he has disputed the question in his cross-examination that Plaintiff continued to draw the above reduced salary and other benefits after the above date, but fact of the matter is that no representation or objection by Plaintiff was made to Ministry of Finance (Federal Government) or Defendant till 09.06.2000, when the Plaintiff accepted a cheque dated 09.06.2000 of Rs.4.973 Million, from Defendant vide its correspondence of 09.06.2000 (Exhibit-P/28), containing handwritten endorsement of Plaintiff that the

payment was received without prejudice to his future claim. Even in his cross-examination, the Plaintiff has not refuted this fact that his predecessor (Mr. Mateeur Rehman) was enjoying pay, allowances and perquisites of **service grade M-I**.

22. Accordingly, **Issues No.1 and 2** are answered that even though the Plaintiff was retired under VRS notified vide Circular No.32 / 1997 and was also entitled to the retirement benefits as of 30.11.1997, but those retirement benefits were/are to be calculated on the basis of **M-I Management Grade** as decided in the 164<sup>th</sup> Meeting of Defendant Board (dated 04.08.1998).

#### **ISSUES NO.3 AND 4.**

23. Admittedly in its 164<sup>th</sup> Meeting dated 04.08.1998, Board of Directors of Defendant for the first time was of the view that Government decision with regard to terms and conditions of Plaintiff as Managing Director as contained in Finance Division letter dated 06.06.1998 be implemented (as already discussed in the foregoing paragraphs). It is a matter of record that at the relevant time the Plaintiff was Managing Director of Defendant, although he withdrew himself from the meeting, in order to avoid any conflict of interest. The letter dated 06.06.1998 of Government of Pakistan (Finance Division) addressed to Plaintiff about his terms and conditions of appointment as Managing Director, is available in the evidence file as Exhibit-**P/18**, mentioning that Management Grade **M-I**

was granted to the Plaintiff with immediate effect. As already mentioned herein-above that the decision of 164<sup>th</sup> meeting (of 04.08.1998) was communicated to the Ministry of Finance vide a letter dated 05.03.1999 (Exhibit P/20). The impugned letter of 20.04.2001 (Exhibit-P/30) which led to the initiation of litigation between Plaintiff and Defendant, has been produced in the evidence as Exhibit-P/30, and perusal whereof leads to the conclusion that this letter was not a negation of earlier decision taken in the 164<sup>th</sup> Meeting or 175<sup>th</sup> Emergent Meeting (of 29.04.2000) because this purported impugned correspondence is based on the decision taken in the 164<sup>th</sup> Meeting, **wherein, salary package of Plaintiff was rectified** as his earlier higher salary did not commensurate to his position as Managing Director; *whereas*, 175<sup>th</sup> Meeting of 29.04.2000 is reiteration of the above 164<sup>th</sup> Meeting and in this subsequent 175<sup>th</sup> Meeting no modification or alteration was made by the Board of Directors of Defendant in its earlier decision taken in the 164<sup>th</sup> Meeting. This is a case of rectification of a salary package of Plaintiff and not its revision retrospectively. Hence, Issue number 3 is decided accordingly.

24. Withholding of Rs.613,624.23 (*rupees six hundred thirteen thousand six hundred twenty four and twenty three paise*) by Defendant, was due to the audit objection as contained in this impugned correspondence of 20.04.2001, because the Government commercial auditors were of the view that Plaintiff received ‘an irregular payment of Rs.1.798 million covering the period of October, 1997 to June, 1998’. However, this portion of the impugned correspondence is illegal, because it was already decided in the 164<sup>th</sup> Meeting and reiterated in subsequent correspondences and 175<sup>th</sup> Meeting (as stated above) that the amount

received by Plaintiff of this period will be treated as a valid payment and past and closed transaction.

In addition to this, Suit No.1087 of 2007 filed by present Defendant Bank against Plaintiff for recovery of excess amount, was subsequently withdrawn (by the present Defendant). This fact has been admitted by the Defendant's witness in his cross-examination. Even in the present *lis*, no counterclaim has been made by the present Defendant. More so, the Defendant in order to show its *bona fide* and adherence to good management practices, should have deposited the above unpaid amount of Rs.613,624.23 (*rupees six hundred thirteen thousand six hundred twenty four and twenty three paise*) with the Nazir of this Court, but the same has not been done. There was / is no justification for withholding this payment for such a long period of time. This act of Defendant reflects poor management and *mala fide* act.

25. The gist of case law of Plaintiff's Advocate relates to right of pension of a retired employee, principle of legitimate expectation as developed through judicial pronouncements, fair trial being a fundamental right and benefits extended to an employee under a certain settlement cannot be taken back. It is an admitted fact that no issue of pensionary benefit is involved in the present case because retirement of Plaintiff under VRS itself provides 100% (hundred percent) computation of pension. Undisputed document, viz. Exhibit-D/20 is evident of this fact, which is Minutes of 160th (Emergent Board Meeting) held on 25.10.1997 and chaired by the Plaintiff himself; as per decision of the Board on agenda item number 5, *inter alia*, one hundred percent commutation of pension

was allowed to all employees irrespective of length of service. As far as rule of legitimate expectation is concerned, it does have a limited applicability to the facts of present case, as admittedly, till date even after passage of so many years, Defendant has not paid the entire VRS benefits to Plaintiff, which is illegal. With regard to the case law relied upon by the Plaintiff's counsel about benefits once awarded cannot be taken back, are distinguishable, because in the cited case of Al-Noor Sugar Mills case (2018 SCMR page-1792) (*supra*), the issue involved was about withdrawing of exemption from excise duty. It is a settled principle by now that executive authorities cannot withdraw a benefit retrospectively, through some executive instrument or a notification. However, this reported Judgment is not relevant to the facts of present case, as no issue of fiscal notification is involved here. Similarly, the other cited case of **Muhammad Kashif** (2013 PLC page-347) (*ibid*) is also distinguishable, for the reason that in the said reported case, certain benefits were extended to workmen of Karachi Dock Labour Board (KDLB) under a settlement between Management and Collective Bargaining Agent, which has a statutory backing under the relevant Labour Law; *whereas*, in the present case, Plaintiff was not a workman but retired as a Managing Director of Defendant and his service was not governed under any Labour statute. Similarly, the case law, particularly, relating to doctrine of 'implied repeal' and retrospective operation of statutory amendments, as cited by the legal team of Defendant, (mentioned in the opening part of this Judgment), do not have relevancy, in view of the aforementioned discussion. What is applicable to the facts of present case is, is the *principle of acquiescence*. This doctrine has been evolved, amongst other, also through the

interpretation of Article 114 of the Evidence Law. The crux of which is that if an individual does not assert his known right or remain quite by way of his conduct or otherwise, then it will be construed that he has waived / relinquished such right. This rule is explained in various Judgments, including **2014 SCMR page-1573** (*Ministry of IPC through Secretary and others vs. Arbab Altaf Hussain and others*), **2002 CLC page-166** (Karachi) (*Messrs Dadabhoy Cement Industries Limited and others vs. Messrs National Development Finance Corporation*), which was handed down by the learned Division Bench of this Court and upheld by the Hon'ble Supreme Court and the decision is reported in **2002 SCMR page-1761** (*Messrs Dadabhoy Cement Industries Limited and others vs. Messrs National Development Finance Corporation*). Relevant portion of the Judgment is reproduced herein under\_

*“Article 114 of the Qanun e Shahadat Order deals with waiver or acquiescence and describes it as intentional relinquishment of a known right or such conduct as would warrant an inference of relinquishment of such right; implying consent to dispense with or forgo something to which a person is entitled; an agreement to release or not to assert a right; to constitute waiver there must be some conscious giving up of a r right and a person cannot be held bound unless he is aware of what exactly he was waiving and what right he was giving up with knowledge of all the facts.”*

26. Accordingly, **Issue No.3 is answered in view of the above discussion**, whereas, **Issue No.4 is answered in Negative** because till date Defendant has not paid a sum of Rs.613,624.23 (*rupees six hundred thirteen thousand six hundred twenty four and twenty three paisa*)

**ISSUES NO.5 AND 6.**

27. In the light of discussion in the foregoing paragraphs, **Issues No.5 and 6 are decided in Negative**, because it was already decided in the 164<sup>th</sup> Meeting, which was reaffirmed in subsequent Meeting(s) that salary and other benefits, which Plaintiff had received from October, 1997 till June, 1998, was considered as valid payment and a past and closed transaction; thus, the audit objection of Defendant in this regard was baseless.

Conversely, as already determined herein-above that Defendant is liable to pay the above unpaid amount of Rs.613,624.23 (*rupees six hundred thirteen thousand six hundred twenty four and twenty three paise*). Since this amount was illegally withheld and Plaintiff was deprived from his legitimate service dues for almost two decades, therefore, considering the inflation factor also, Defendant is liable to pay the above amount of Rs.613,624.23 (*rupees six hundred thirteen thousand six hundred twenty four and twenty three paise*) along with a markup of 10% (ten percent) per annum from the date of institution of this suit till realization of the amount.

**ISSUE NO.7.**

28. The suit is partly decreed in the above terms.

Dated: \_\_\_\_\_

M.Javaid P.A.

**JUDGE**