

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1258 of 2010

[Dr. Ishaque Muhammad Shah vs. National Bank of Pakistan)

Dates of hearing : 30.09.2019 and 10.10.2019

Plaintiff

[Dr. Ishaque Muhammad Shah] : Through M/s. Abrar Hassan
Mehreen Ebrahim and S. Masroor
Ahmed Alvi, Advocates.

Defendant

[National Bank of Pakistan] : Through Chaudhry Muhammad
Ashraf Khan, Advocate.

Case law cited by learned counsel for Plaintiff

1. 2005 SCMR page-100
[Ikram Bari and 524 others vs. National Bank of Pakistan through President and another]
2. 1999 SCMR page-2557
[Izhar Ahmed Khan and another vs. Pubjab Labour Appellate Tribunal Lahore and others]
3. 2018 SCMR page 325
[Board of Intermediate and Secondary Education, DG Khan and another vs. Muhammad Altaf and others]
4. 2018 SCMR page-1405
[Board of Intermediate and Secondary Education and others vs Tanveer Sajid and others]

Case law relied upon by learned counsel for Defendant

1. 2013 SCMR page-314
[Muhammad Tarim Badr and another versus National Bank of Pakistan and others.
2. 2006 MLD 207
[Nazeer Ahmed and others vs. Haji Nazeer Ali and others].

Other Precedents.

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- Law under discussion:
- (1). National Bank of Pakistan (Staff) Service Rules, 1973 [**Service Rules 1973**].
 - (2). National Bank of Pakistan (Staff) Service Rules, 1980 [**Rules 1980**].
 - (3). Code of Civil Procedure, 1908 [**CPC**].
 - (4). Qanoon-e-Shahadat Order, 1984. [**Evidence Law**].
 - (5). Tort Law.

JUDGMENT

Muhammad Faisal Kamal Alam, J: Plaintiff has instituted the present *Lis* challenging the correspondence dated 30.06.2007 (**impugned**), relieving the Plaintiff from service of Defendant Bank, besides claiming other service benefits. Plaintiff contains the following Prayer Clause_

“The plaintiff, therefore, prays that this Hon'ble Court may be pleased to:-

a) Declare that the act of the defendant for separation of the Plaintiff without giving any notice is illegal and against principle of natural justice.

b) declare that the Plaintiff is entitled to the following benefits:

- 1. Medical facility for self-spouse for life time.*
- 2. Bank Car be sold to him (as allowed to other retired executive) as a special case.*
- 3. Petrol ceiling for six months (as allowed on Retirement to regular employees) of EVP cadre.*
- 4. House Rent / utility for six months as allowed to retired executive.*
- 5. Honorarium in Lieu of Pension / benevolent fund Rs.one million in lump sum.*

c. Pas decree of Rupees five crores towards damages in favour of

the Plaintiff.

d. Any other relief which this Hon'ble Court deem fit and proper.”

2. Upon issuance of summons, Defendant Bank (National Bank of Pakistan-NBP) has filed a Written Statement, *inter alia*, questioning the maintainability of present *lis*, while disputing the averments of plaintiff.

3. From the pleadings of the parties, following Issues were framed by the Court vide order dated 17.04.2015_

- “1. *Whether the separation / removal of the Plaintiff from Defendant Bank’s service as per letter dated 30.06.2007 was regular and legal?*
2. *Whether the Plaintiff is entitled to the claims as indicated in prayer (b)?*
3. *Whether the Plaintiff is entitled to liquidated as well as special damages. If so, what would be the amount?*
4. *Whether National Bank of Pakistan Staff Rules & Regulations, 1980 are applicable to all the employees Full / Part time?*
5. *Whether the Plaintiff has any cause of action to file the instant suit?*
6. *Whether the Plaintiff was a regular and confirmed employee of the Bank?*
7. *Whether the Plaintiff is entitled to any of the relief(s) claimed by him?*
8. *What should the decree be?”*

4. Both Plaintiff and Defendant led the evidence. Plaintiff (Dr. Ishaque Muhammad Shah) testified as PW-1, whereas his wife Mrs. Gul Afroz

Shah deposed as PW-2 and corroborated the testimony of PW-1. On behalf of Defendant their Vice President led the evidence as DW-1.

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

ISSUE NO.1	Affirmative.
ISSUE NO.2	Has already been decided in Constitution Petition No. D-2184 of 2008.
ISSUE NO.3	Negative.
ISSUE NO.4	Redundant.
ISSUE NO.5	Negative.
ISSUE NO.6	Has already been decided in Constitution Petition No. D-2184 of 2008.
ISSUE NO.7	As under.
ISSUE NO.8	Suit dismissed.

REASONS

ISSUES NO.1 AND 5.

6. Since these Issues go to the root of the controversy, therefore, they are to be determined first.

7. Succinctly case of Plaintiff as averred in the plaint is that he joined the Defendant Bank vide an Appointment Letter dated 06.02.1988, as part time Bank Medical Officer for providing medical treatment to executives, officers, clerical and non-clerical Staff and their family members of the Bank as per the medical facility scheme. Necessary retainer-ship fee of Plaintiff was fixed at Rs.1500/- (rupees fifteen hundred only) without payment of any allowance, fringe benefits and facilities. With the passage of time, monetary benefits of Plaintiff increased.

8. Mr. Abrar Hassan, Advocate along with Ms. Mehreen Ebrahim, Advocate, argued that for all practical purposes, employment of Plaintiff (Dr. Muhammad Ishaque Shah) in Defendant Bank was of permanent nature, because his service was to be governed under the National Bank of

Pakistan (Staff) Service Rules, 1980 (**Rules 1980**), which does not make any distinction between part time and permanent employees. Learned Advocates have referred to Exhibit-**P/10**, (appended with the Affidavit-in-Evidence / Examination-in-chief of PW-1). This document dated 23.01.1996 issued by the Treasury Division Staff Benefits Department of Defendant Bank, whereby bonus was paid to the Plaintiff on the ground that his case differs with other Medical Officers appointed on retainership basis. The legal team of Plaintiff has referred to another document of Defendant Bank, which is produced by PW-1, viz. Exhibit-**P/13** dated 25.09.1999, where under employment package of Plaintiff was revised and he was provided with additional fringe benefits. It is necessary to reproduce the relevant portion of this undisputed correspondence_

“1. <i>Retainership Fee.</i>	<i>Rs.20,827.00 p.m.</i>
2. <i>House Rent 40% of Retainership Fee</i>	<i>Rs. 8,330.00 p.m.</i>
3. <i>Utility 10% of Retainership Fee</i>	<i>Rs. 2,082.00 p.m.</i>
4. <i>Medical Allowance.</i>	<i><u>Rs. 1,041.00 p.m.</u></i>
	<i>Rs.32,280.00 p.m.</i>
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In addition to above the following fringe benefits will also be admissible to you.

1. *Petrol Ceiling 230 liters (Super) p.m. on reimbursement basis.*
2. *Bank Car (already provided).*
3. *Consultation & Lab. Tests 4% of Monthly Retainership Fee.*
4. *Bonus @ 55% of Monthly Retainership Fee along with other employees of the Bank. Necessary instruction in tis regard will be issued by T.M.D. Head Office, Karachi.*
5. *Leave: 15 days Casual Leave + 30 days Privilage Leave in a year. (Leave will not accumulated or encashed).”*

9. Exhibit-**P/24**, which is a legal opinion of Legal Advisor of Defendant Bank dated 01.08.2006 is also referred, to advance the case of Plaintiff, as in this Legal Opinion it is stated that services of Plaintiff be made on permanent basis from retrospective effect, that is, 07.02.1998, as was done in the case of another Doctor, namely, Dr. K.B. Mody, who served the Defendant Bank till the age of 86 years. Correspondence dated 24.07.2006, at page-217 of the evidence file, was referred by the learned

Advocates of Plaintiff, to prove the fact that Plaintiff in recognition of his meritorious service, was given the status of Senior Vice President (SVP) of present Defendant Bank. It is argued that a discriminatory treatment was meted out to Plaintiff when his service was abruptly ended by the impugned communication of 30.06.2007 (at page 223 of the Evidence File, though apparently due to *bona fide error* was not exhibited, but it is an undisputed document); that the services of Plaintiff was ended illegally and in violation of Rules 1980 and particularly Rule 17. The National Bank of Pakistan (Staff) Service Rules 1980 (**Rules 1980**) is produced in the evidence as Exhibit-P/5. It is contended that under Rule-17 it is provided that even a retired employee can be reemployed by Defendant Bank, as is done in the case of above named Dr. K.B Mody, but the Plaintiff was not given this option. On a specific query about the decision handed down by learned Division Bench of this Court in Constitution Petition No.D-2184 of 2008, earlier filed by present Plaintiff against the Defendant Bank, in which plea of present Plaintiff was not accepted and the Petition was dismissed, Ms. Mehreen Ebrahim, Advocate has vehemently argued, that *firstly* the earlier litigation was on different facts and grounds and *secondly* the above decision cannot legally bar the present proceeding because it (above Decision in C.P. No.D-2184 of 2008) was per incurium, in view of principle laid down in number of precedents, including those cited and mentioned in the opening part of this Judgment (*supra*).

10. Mr. Choudhary Ashraf, Advocate, representing Defendant Bank, has argued that recognizing services of Plaintiff and on its various representations, Management of Defendant Bank considered the request of Plaintiff within the parameters of relevant Service Rules and granted him status of senior Vice President along with the revised emoluments and benefits. He has referred page-217 of the Evidence File in which vide a correspondence dated 24.07.2006, the Plaintiff was granted status of SVP,

but it is specifically mentioned in its letter (of Defendant Bank) that other terms and conditions will remain unchanged. He has argued that Plaintiff upon attaining retirement age was retired and the impugned Correspondence of 30.06.2007 does not bear any illegality. It is further contended that relevant Service Rules are National Bank of Pakistan (Staff) Service Rules, 1973 {**Service Rules 1973**}, which have a statutory status, whereas, the afore referred Service Rules of 1980 carry instructive status, as clarified by the Apex Court in the reported case of Muhammad Tariq Badar vs. National Bank of Pakistan-2013 SCMR page-314. He has argued that since no illegality is committed by the Defendant Bank in the matter of Plaintiff, therefore, the claim of damages is baseless. In support of his contention he has referred to a Division Bench Judgment of learned Lahore High Court reported as 2006 MLD 207 (Nazeer Ahmed and others vs. Haji Nazeer Ali and others). The main line of arguments of Defendant is that all these issues were already decided and laid to rest in the above referred Judgment of learned Division Bench.

11. The rival submissions of learned Advocates have been considered and with their able assistance record of the case has been perused.

12. Primarily these two Issues can be answered on the basis of undisputed record produced in the evidence and the case law cited by both the learned Advocates for Plaintiff and Defendant, therefore, appraisal of evidence if required will be done while deciding other Issues.

13. Except for *Tanveer Sajid case* (2018 SCMR page-1405, which is discussed separately in the following paragraphs, as it is on somewhat different footing), the précis of the reported decisions relied upon by the legal team of Plaintiff is reiteration of consistent view that if persons working as drivers, clerks, security guards, godown supervisors and in

other posts, which are of permanent nature and in order to create an artificial service break with the object to frustrate the provisions of The West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, in particular relating to ‘**permanent workman**’, so that these persons cannot complete their 90 days probationary period and nine months in service doing work of a permanent nature, which otherwise qualify them for regularization in permanent posts, then such acts of employer/ management is illegal and if there is no other complaint against such persons / employees, then their services are required to be regularized. In one of the cited Decisions (2005 SCMR 100) above Rules 1980 of present Defendant has been discussed, in particular, relating to Category II employees, which include, stenographer, senior cashier, godown keeper, electricians, sweeper. They were regularized in service as posts falling in this Category II were/are for permanent employees.

The case law cited on behalf of Plaintiff is distinguishable, because it pertained to daily wagers and ‘workman’ as defined in The West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 and the ‘staff’ as classified in Category II in the above Rules 1980 of Defendant Bank, but Plaintiff does not fall in any of the categories mentioned in the reported cases as he was a senior qualified Doctor (Medical Practitioner), **admittedly** with an equivalent status of Senior Vice President of Defendant Bank. In his cross examination Plaintiff has admitted that he was employed as a part time doctor and not a workman or a member of any Union of Defendant. To a question he has replied in affirmative that whatever he demanded in Exhibit P/14 was given vide Exhibit P/18. Exhibit P/14 (at page 159 of the Evidence File) was the Representation of Plaintiff to Defendant about enhancement of his employment package, including upgrading him to a status of Senior Vice

President, which was recommended vide Exhibit P/18 and was granted through Correspondence of 24-7-2006 (**Exhibit P/23, at page 181** of the Evidence File), with a specific clarification that other terms and conditions of the employment will remain unchanged. This last letter which is a Decision/Order on behalf of Management of Defendant was never challenged by Plaintiff and hence no new grievance is agitated in the present proceeding.

Adverting to the above decision of Board of Intermediate and Secondary Education vs. Tanveer Sajid (2018 SCMR page-1405), which has been carefully examined. This decision relates to the grievances of daily wage workers so also contract employees of the appellant department (of the reported case), whose contracts were renewed from time to time usually after expiry of 89 (eight nine) days, in order to create an artificial break in service. While considering the earlier Judgments on the issue, it was held_

“9. It is now well established that right to life as envisaged by Article 9 of the Constitution, includes the right to livelihood and as laid down in the case of Abdul Wahab (supra), the “right to livelihood, therefore, cannot hang on to the fancies of individuals in authority.” Certainly, as has further been held in the said judgment; “It shall unmistakably be permissible that the employment of an employee can be brought to an end, but obviously in accordance with law”, whereas in the present case, and as observed earlier, there was/is no justification for not making their employment permanent, and for keeping their entire career, rather livelihood exposed and susceptible to the whims of the authorities, which also hurts the dignity of the appellants.”

[Underlined to add emphasis].

14. In the present case also the Plaintiff employment came to an end upon attaining retirement age, as provided in Rules-17 and 18 of both the afore referred Service Rules of Defendant Bank; thus, the above

Tanveer Sajid case is also not relevant to the undisputed facts of present case. Main reason for granting relief to employees/persons of the cited reported Decisions (*supra*) was due to the fact that their cases were either governed by the statute viz. The West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, or, specific provisions of Service Rules relating to permanent posts, whereas, Plaintiff was on retainership.

15. In the above context the Judgment of learned Division Bench of this Court is also perused.

16. The Plaintiff in the above Constitutional Petition has sought the following relief_

“It is most respectfully prayed that this Hon’ble Court may graciously be pleased to declare that the Order passed on 30.06.2007, separating the Petitioner from the service of the Bank is illegal, void, unconstitutional and against principle of Law and violating of the Rule of the National Bank of Pakistan, Staff Service Rules 1980.

(2) Direct the respondents to grant extension of service and permit the Petitioner to continue his service beyond 30.06.2007;

(3) Direct the respondents to pay gratuity, pension and other facilities to the Petitioner as are admissible to other employees of the Bank.

(4) Direct the respondents to pay encashment of Leave for one year as given to other employees.

(5) Pass any other order/s which this Hon’ble court deems fit and proper under the circumstances of the case.”

17. The Prayer Clause of present *Lis* and that of the above referred Constitutional Petition are not different in nature, but only in words with an addition of prayer for damages (in the present Suit). In earlier round of litigation, that is, in the above Constitution Petition, the present Plaintiff has sought the declaration that the impugned notice of 30.06.2007, whereby his

employment ended with Defendant Bank, should be declared illegal and unconstitutional and against the Staff Service Rules of 1980, *whereas* in the present *lis*, the Plaintiff has sought similar relief but using a different phraseology. Similarly in the earlier Petition and *in* the present Suit, the Plaintiff has claimed retirement dues. The learned Division Bench while handing down the Judgment dated 7.4.2010, has also considered the plea of discrimination as agitated by Plaintiff in the present *lis*, vis-à-vis Dr. K.B Mody, another Medical Officer of Defendant Bank, but did not agree with this contention and held, *“Such document is attached by the petitioner with the petition at page 39 and apparently petitioner has raised no grievance at the time when such age of separation of doctor was fixed by the respondent. Merely allowing Dr. K.B. Mody to serve as Senior Medical Officer upto the age of 86 years in itself will not furnish ground to the petitioner either of claiming discrimination or for extension of his own service as the employment of the petitioner being purely of temporary nature or of contractual nature did not confer upon him any right of being provided extension in service. In any case it is within the domain and discretion of the management to grant extension in service to a particular employee, which domain and discretion of the management cannot be questioned; more so, where the case is of a temporary /contractual employee.”* The learned Division Bench has also given a finding of fact that the Plaintiff **was adequately compensated as far as additional benefits are concerned.** The arguments of legal team of Plaintiff about confirmation in service, has also been addressed in the above Judgment, *inter alia*, by observing that he was on retainership with the status of Senior Vice President. It has been clearly held [in the above referred Judgment in Constitution Petition], that Plaintiff could not cite any Service Rule, which was violated by the present

Defendant, while holding that the Staff Service Rules, 1973, has a statutory status. The contention of learned counsel for the Plaintiff does not carry any force, that the above Judgment of learned Division Bench in Constitution Petition No. D-2184 of 2008 is per incuriam. The reported precedents cited by the learned Advocates for Plaintiff have not laid down any principle, which was not considered by the learned Division Bench while handing down the Judgment in above Constitution Petition, which was between the same Parties hereto.

18. Rules 17 and 18 from both the afore referred Staff Rules of 1973 and 1980, respectively, have been perused, which simply provide, *inter alia*, that upon attaining sixtieth years (of his age) an employee's employment comes to an end. Admittedly, the impugned notice ended the employment of Plaintiff as he attained the retiring age, for which no prior notice is required, because every employee knows his retirement age. **Secondly**, Plaintiff has not been separated from Defendant Bank as a result of any disciplinary proceeding, for which any prior Show Cause Notice or any domestic proceeding relating to misconduct was required to be issued or initiated. Conversely, Plaintiff was paid post retirement dues as per his entitlement.

19. In view of the above discussion, answer to **Issue No.1 is in Affirmative**, that the impugned letter dated 30.06.2007 was legal; *whereas*, **Issue No.5 is answered in Negative**, that Plaintiff does not have any cause of action to file the present suit.

ISSUES NO.2, 3 AND 6.

20. These Issues have already been decided in the above referred Judgment of 07.04.2010 in Constitution Petition, that Plaintiff was paid the service dues and benefits and hence is not entitled to any claim as

mentioned in Prayer Clause (*b*) because Plaintiff has failed to prove that under which Service Rules he was / is entitled for such benefits. It is not proven that any Service Rule has been violated by Defendant Bank due to which Plaintiff is deprived of any of his service / employment dues and suffered mental torture and trauma (as claimed), particularly relating to post retirement period. When neither any illegality was committed nor wrong was done by Defendant to Plaintiff, then there is no question to award liquidated or special damages against Defendant. Thus, **Issue No.3 is also answered in Negative. Issue No.6 has already been decided in the above Constitution Petition** and nothing new was brought on record in the testimony of Plaintiff that the latter (Plaintiff) was a regular and confirmed employee of the Bank.

ISSUES NO.4, 7 AND 8.

21. In view of the above discussion, **Issue No.4 is redundant, *whereas*** Plaintiff is not entitled for any relief and the present suit is dismissed. **Issues No.7 and 8 are answered accordingly.**

22. Parties to bear their respective costs.

Karachi.

Dated : 06.07.2020

JUDGE