

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1456 of 2010

Date	Order with Signature of Judge
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Present: **Mr. Justice Nazar Akbar**

Plaintiff : Ashiq Ali through Ms. Naheed Parveen, Advocate.

Versus

Defendant No.1 : Federation of Pakistan.

Defendant No.2 : Pakistan National Shipping Corporation

Defendant No.3 : The General Manager (Personnel) PNSC.
Through Mr. Khalid Javed & Ms. Farkhanda Shaheen, Advocates.

Date of hearing : **07.04.2021**

Date of Decision : **02.06.2021**

JUDGMENT

NAZAR AKBAR, J. The Plaintiff on **22.09.2010** has filed this suit against the Defendants for Declaration, Recovery of salary / service benefits and Damages. The plaintiff has sought following relief(s) against defendants No.2 & 3.

- a) Judgment and decree declaring the act of the Defendants No.2 and 3 for withholding/not releasing the salaries and the allowances and other benefits, etc., as admissible under the law and service rules of the Defendant Corporation, to the Plaintiff for the period w.e.f June 2000 till 24.06.2002 (the date of superannuation of the Plaintiff) is malafide, arbitrary, illegal and colourful exercise of powers and thus not warranted by law.
- b) Judgment and decree declaring the act of the Defendants No.2 and 3 for not releasing the dues to the Plaintiff ordinarily payable to him in consequence of his retirement from service of the Defendant Corporation covering the post retirement period as per his entitlement under the rules/law of the Defendant Corporation, is malafide, arbitrary, illegal and colourful exercise of powers and thus not warranted by law.

- c) Judgment and decree directing the Defendants to release an amount of Rs.1,58,22,856/- (as detailed in Schedule 'A' hereto) towards the salaries and the allowances, etc., to the Plaintiff for the period w.e.f. June 2000 till 24.06.2002 and the dues ordinarily payable to the plaintiff in consequence of his retirement from service of the Defendant Corporation covering the post retirement period as per his entitlement under the rules/law of the Defendant Corporation along with mark-up on compound interest basis.
- d) Judgment and decree directing the Defendants No.2 and 3, to reimburse an amount of Rs.200,000/- (Two lacs) incurred by the plaintiff on his hospitalization and medical treatment as stated in para 12 while the plaintiff was confined in the jail and pay the same along with interest @ 18% per annum on compound interest basis.
- e) Judgment and decree directing the Defendants No.2 and 3 to pay mark-up @ 18% per annum on compound interest basis from the date when the said amount was due to be paid till its realization, the details whereof is given in Schedule 'A' annexed hereto.
- f) Judgment and decree directing the Defendants to issue Job Certificate to the Plaintiff as required by him vide Letter dated 01.06.2010 (Annexure 'H').
- g) Judgment and decree in favour of the Plaintiff against the defendants No.2 and 3 jointly and severally in the sum of Rs.100,00,000/- (Rupees One Crore) towards mental shock, distress, agony, and damaging the reputation, honour and dignity of the plaintiff by wrongfully implicating him in false cases as a result of which the plaintiff had to suffer ordeal of illegal confinement in Jail.
- h) Award costs of suit.
- i) Any other relief(s), which this Hon'ble Court may deem fit and proper under the circumstances of the case.

2. Brief facts of the case are that the Plaintiff joined the shipping field in 1962 with Pakistan National Shipping Line Limited which was nationalized and merged with National Shipping Corporation in 1974 forming the same to be Pakistan National Shipping Corporation (PNSC). Consequently services of the Plaintiff were transferred to the said Corporation and since then the Plaintiff held various offices in the management of defendant No.2 and lastly in **June 2000** when he

was posted as Manger Accounts/ General Manager (Internal Audit), a false case was registered against him and others of misappropriation in the Provident Fund Account in their official capacity. Consequently the Plaintiff was placed under suspension and his salaries and other service benefits were withheld. On **04.09.2000** the Plaintiff was arrested in the said case (FIR No.03/2000) by the FIA and remanded to the jail custody. The I.O filed six different References against the Plaintiff and others in the Accountability Court No.1, Karachi. The Plaintiff by order dated **19.5.2004** was convicted by the Accountability Court only in one out of six bearing **Reference No.29/2003**. On appeal by the plaintiff the said conviction order was set aside by this Court by judgment dated **07.11.2005** in Spl. CrI. A.A. No.6 and 7 of 2004. The State through the Chairman, NAB filed **criminal petition No.79-K of 2006** against the appellate order of acquittal of plaintiff by the Hon'ble High Court before the Hon'ble Supreme Court. The Hon'ble Supreme Court also dismissed the said criminal petition by order dated **18.5.2006**. The Plaintiff in all other References was also acquitted under **Section 265-K**, Cr.P.C by the Accountability Court No.1, Karachi by order dated **03.3.2009**. It was further averred that when the Plaintiff was confined in jail and facing criminal charges, he was retired from the service of Defendant No.2 w.e.f **24.6.2002** on attaining the age of superannuation by order dated **23.5.2002**. The plaintiff's dues ordinarily payable in consequence of retirement from service were withheld by defendant No.2 pending the court proceedings. It is further averred that during the period of his captivity, the plaintiff fell seriously ill and he was admitted in custody in Aga Khan Hospital for treatment. The Plaintiff incurred a sum of Rs.200,000/- on his treatment but nothing was paid by the Defendants. The Plaintiff during suspension and pendency of the court proceedings, moved several

applications/representations requesting the Defendants for release of service benefits to him including salaries, but to no avail. It is further averred that after acquittal of the Plaintiff upto the level of Hon'ble Supreme Court, he again approached the Defendants for release/ payment of salaries, allowances and other benefits from June, 2000 to 24.6.2002 and also sent a representation dated **23.4.2009** but neither such dues/benefits were released to the Plaintiff nor the said representation was even responded by the Defendants. Thereafter the Plaintiff filed Constitutional Petition No.D-2163/2009 before this Court seeking direction to the Defendants No.2 and 3 to release the salaries and other benefits as well as the dues ordinarily payable to the Plaintiff in consequence of his retirement from service. In the meanwhile, the Plaintiff also sent a letter dated **01.06.2010** through his counsel, requesting the Defendants for issuance of service certificate and so also sent a legal notice on **29.6.2010** for release of his salaries and other benefits but neither the said correspondence was responded by the Defendants nor the benefits were paid to the Plaintiff. Subsequently, the Plaintiff withdrew the said petition to file civil suit for release of his outstanding salaries and retirement benefits. Therefore, the plaintiff had filed the instant suit for the relief(s) reproduced in para-1 above.

3. Notices of the instant suit were sent to the Defendants and Defendant No.1 filed written statements wherein they denied the claim of the Plaintiff against them by stating that neither any relief is sought by the Plaintiff against Defendant No.1 (Federation of Pakistan) nor any act of answering Defendant No.1 is complained of in the plaint. They further stated that the Plaintiff was employee of Defendant No.2 which is statutory corporation.

4. Defendant No.2 also filed their written statement and raised counterclaim. Defendant No.2 also denied the claim of the Plaintiff by stating therein that the plaintiff had worked in Defendant No.2 corporation for gain for his own interest and was found to be involved in misappropriation of Corporation's Employees Contributory Provident Fund to the tune of Rs.50 million. Therefore, an inquiry committee comprising of 5 senior officers of Defendant No.2 was formed to conduct a full-fledged inquiry in to the said charges. The departmental inquiry was carried out and a report was submitted whereby the Plaintiff and other co-accused were found guilty of gross misconduct. Separate investigation under criminal laws was conducted by FIA followed by submission of challans before the NAB Court and six references were filed against the accused persons. It was further averred that it is a matter of record that no disciplinary action was taken against the plaintiff during the course of suspension with regard to the reported charges of embezzlement in Contributory Provident Fund. In their counter claim, Defendant No.1 averred that as per provident fund record, the plaintiff has a debit balance of Rs.10,971,107 in his own contribution account and a credit balance of Rs.596,459.81 in his corporation contribution account, hence a net debit balance is of Rs.10,374,647.19. Besides this the plaintiff also has a debit balance of Rs.35,216,755/- in special codes and since the plaintiff has a debit balance in his account, the salaries, benefits, facilities allegedly owed to him cannot be paid till the debit balance outstanding in his account is recovered from him. Therefore, as per counter claim the Plaintiff is liable to pay total amount of Rs.46,187,862.00 to Defendant No.2.

5. On **20.03.2013** from pleadings of the parties, followings issues were framed:-

1. Whether the suit is maintainable in law?
2. Whether the suit of the plaintiff is time barred?
3. Whether the plaintiff is entitled for retirement benefits including ancillary reliefs i.e. salaries, allowances, etc? If so, to what extent?
4. Whether the plaintiff is not entitled to the dues ordinary payable to him in consequence of his retirement from the service of the defendant corporation covering post-retirement period as per his entitled under the rules/law of the defendant corporation alongwith mark-up on compound interest basis?
5. Whether the plaintiff was found to be involved in misappropriation of Corporation's Employees Contributory Provident Fund to the tune of Rs.50 million or for any other amount thereby causing loss to the said fund?
6. Whether the plaintiff is entitled for damages?
7. Whether the defendants are entitled to the Counter Claim or any part thereof as claimed?
8. What should the decree be?

6. Thereafter Plaintiff filed an application (CMA No.4436/2013) for framing additional issue relating to reimbursement of medical expenses. The said application was allowed by order dated **23.5.2013** and the following additional issue was framed:-

“Whether the plaintiff is entitled to the reimbursement of the amount of Rs.2 lacs, incurred by the plaintiff on his hospitalization and medical treatment, as stated in para-12 of the plaint, when the plaintiff was confined in jail, with interest 18% per annum on compound interest basis?”

7. The plaintiff filed his own affidavit-in-evidence and he was cross-examined by the learned counsel for the Defendants. Defendant No.2 examined one Syed Wahid Ali Rizvi, Secretary Provident Fund, PNSC, who was also cross-examined by learned counsel for the Plaintiff.

8. I have heard learned counsel for the parties and perused the record. My findings with reasons on the issues are as follows:-

ISSUES NO.1 & 2.

9. This is an admitted position that the plaintiff has been an employee of defendant No.2 corporation since 1962 and he has been retired from service with effect from 24.6.2002. This fact has been acknowledged by the defendants in their letter dated **23.05.2002** wherein while admitting that the plaintiff is entitled to salaries and other dues payable to him by virtue of his service in the defendant No.2 corporation. The only excuse advanced for non-payment of salary and other dues was pendency of cases initiated by the defendants against the plaintiffs. This letter and its contents are enough to hold that the suit is maintainable under the law. As far as the question of litigation is concerned, it is also an admitted position from the record and even by defendants and their counsel that the plaintiff has already been acquitted in all the References filed by FIA in NAB Courts and the last acquittal of the plaintiff is dated **03.3.2009** in References No.12/2003, 13/2003, 14/2003, 15/2003 and 16/2003 (Ex:5/4 to 5/8). Criminal accountability acquittal appeals No.8 to 12 of 2009 had also been dismissed by the Division Bench of High Court. Copies of orders in acquittal appeals are available at Ex:5/12 to 5/16, therefore, in view of letter dated **23.5.2002** of the defendant themselves the excuse advance by the defendants to withhold service benefits of the plaintiff pending these References came to an end on **03.3.2009**. Then the plaintiff on **22.09.2010** after sending legal notice filed the instant suit was within time. It is pertinent to note that the service benefits as explained and detailed in their own letter dated 23.5.2002 one available at page 307 of the evidence file and the defendants have not

disputed the veracity of this document nor its contents, therefore, the suit cannot be held to be time barred. Learned counsel for the defendants has not referred to any document or otherwise any provision of law to dispute the maintainability of the suit and challenged limitation of filing of the suit. Therefore, issue No.1 is decided in affirmative and issue No.2 is decided in negative.

ISSUES NO.3 AND ADDITIONAL ISSUE.

10. These issues are interconnected and therefore decided jointly. The very letter of the defendants dated 23.5.2002 is a clear-cut admission of the defendants that *“In consequences, dues ordinarily payable to Mr. Ashiq Ali in consequence of the retirement from service shall be withheld till such time as the pending court proceedings are concluded and the Corporation is able to take disciplinary action against Mr. Ashiq Ali as aforesaid”*. As already discussed in issue No.1 all the proceedings pending in Courts have already been concluded by the time the suit was filed and the defendants have not taken any action against the plaintiff, therefore, the defendants unable to claim any lawful justification for withholding the service benefits of the plaintiff. The burden of proof was on the defendants to establish that the plaintiff for any reason whatsoever was not entitled to the service benefits. In this context the evidence of the witness of the defendant DW-1 Wahid Ali Rizvi is reproduced below:-

“.....It is correct to suggest that there is no other lis filed against Ashiq Ali except the above mentioned cases/references. It is correct to suggest that PNSC vide letter dated 23.5.2002, at completion of sixty years, had retired him from the services.....
.....It is correct to suggest that since the reply to the charge sheet from Ashiq Ali, **no disciplinary proceedings carried out against Ashiq Ali till his retirement**.....

In view of the overwhelming evidence that the plaintiff has already been cleared by the Courts of law and defendants at their own end have never proceeded against him nor found him guilty of any breach of service rule which may entail withholding of his service benefits from the date of his suspension till his retirement, the plaintiff cannot be deprived of his legitimate dues. The plaintiff has filed the details of his service dues as schedule "A" to the plaint and the defendants neither in their written statement nor in their evidence have been able to dispute the figures nor they have placed on record their own figures as to be payable by the defendants to the plaintiff, if at all. Regarding service benefits payable to the plaintiff, DW-01 Wahid Ali Rizvi, who happened to be Senior Audit Officer in the defendant corporation has admitted that:

".....It is correct to suggest that on retirement/resignation by an employee, **gratuity** is payable to him as per rules.....It is correct to suggest that at the time of retirement of Ashiq Ali, the **gratuity** was payable at the rate of one month salary per completed year of services. It is correct to suggest that the amount which was deducted from the employees salary as **provident fund (PF)**, equal amount was payable by the company. It is correct to suggest that both amounts are invested and thereafter profit on the same is also payable to the employee concerned. It is correct to suggest that at the time of retirement employee is also entitled for the payment against the **balance leaves**.....It is correct to suggest that **telephonic re-imbursement** for telephonic charges is payable during the services. It is correct to suggest that **car maintenance** and **cost of fuel** is also payable to the Manager Category is payable during service tenure. It is correct to suggest that after retirement, for four years, retiring employee is entitled to claim **medical facility for himself and for family members**. It is correct that manager category is entitled for **entertainment re-imbursement** during his services tenure. It is correct that **medical allowance** for four years in lump sum is payable to the retiring officer at the time of retirement. It is correct to suggest that plaintiff was **entitled for Rs.72000/-** at the time of his retirement for medical allowance.....I say that it is not in my knowledge that any intimation in respect of outstanding against Ashiq Ali is intimated to him by PNSC.....It is correct that in special cases, employees is allowed by the competent authority to refer to any hospital other than

the hospitals on the panel of corporation for treatment.....It is correct to say that PNSC has not given anything in relation to retirement benefits after his retirement till yet.”

In view of above evidence of defendant's witness on record, these issues are decided in favour of the plaintiff and the plaintiff is fully entitled to all retirement benefits including ancillary relief i.e salary allowance etc. as well as post-retirement benefits as per his entitlement under the rules and laws of the defendants' corporation.

11. The defendants have not disputed the fact that the plaintiff was entitled for medical benefits and PNSC Medical Facilities Regulations, 1979 wherein in Regulation No.5(2) pertains to the hospitalization and expenses incurred by the employees during service shall be payable by the Corporation and obviously the medical expenses incurred by the plaintiff during the period at Aga Khan Hospital were incurred in presence of jail authorities and has not been disputed by the defendants, therefore, it is held that the plaintiff is also entitled to the medical benefits. In view of evidence discussed above issue No.3 and additional issues are decided in the affirmative.

ISSUES NO.4 & 5

12. The burden of these issue was squarely on the defendants. Learned counsel for defendants in his written arguments has not been able to refer to any documentary proof showing the misappropriation by the plaintiff. The orders and judgments of the Accountability Courts have already declared that false allegations of misappropriation of funds against the plaintiff was false and incorrect. The defendants, who have failed to establish allegation of misappropriation of funds to the tune of Rs.50 million before the Courts of law obviously have not produced any tangible evidence to substantiate the allegation before the Court. The plaintiff has relied

on the findings of the Courts, particularly referred to the findings of Hon'ble Mr. Justice Rahmat Hussain Jaffery (as he then was), who has acquitted the plaintiff/appellant in Criminal Accountability Appeals No.6 & 7 of 2004 and the said judgment has been produced by the plaintiff as Ex:5/2. The defendants have not and of course cannot dispute the findings of the said judgment. In view of the repeated failure of defendants to establish the allegation of misappropriation before the Accountability Courts and appellate Courts the defendants have also failed to produce any evidence in support of issue No.4 and 5, therefore, these issues are answered in negative.

ISSUES NO.6

13. The plaintiff in the suit has claimed damages on accounts of various adverse actions taken by the defendant against the plaintiff from the date of his suspension in June 2000 till the date of filing of the suit. In paragraph 16 of the plaint he has stated that he is entitled to damages as compensation for such humiliation, mental torture, injuries etc. as under:-

- | | |
|--------------------------------------|------------------------|
| 1. Metal shock, distress, and agony: | Rs.50,00,000.00 |
| 2. Damages to the Reputation: | Rs. 50,00,000.00 |
| | Total Rs.100,000,00.00 |
| | Rupees One Crore |

These damages are general in nature. The plaintiff has repeated his claim in his affidavit-in-evidence and the only cross-examination was a suggestion of documentary proof in respect of claim of damages and it has been answered by plaintiff in the following words:-

“ I have not produced any document in respect of my claim for damages in the sum of Rs one crore, pleaded by me in para 16 of my plaint in the instant suit. Vol.says that I did not find it necessary to support such claim with the documents; Court has to decide the same.”

Then it was not suggested that the plaintiff has not suffered any mental torture, agony owing to the action taken by the defendant. Learned counsel for the plaintiff has categorically suggested to the witness of the defendant that the plaintiff has suffered mental torture and agony and it has been replied in the affirmative by D.W-1 that yes the plaintiff has faced mental torture and agony. However, the learned counsel for the defendant while contesting the damages claimed by the plaintiff has tried to equate the damages with the compensation for malicious prosecution. He has referred to several case law, without appreciating that the plaintiff in his plaint has not use the word malicious prosecution at all. The reasons for metal torture and agony suffered by the plaintiff since June 2000 may include criminal cases as one of the several factors such as denial of legitimate salary and other benefit to which the plaintiff was otherwise entitle. Therefore, I am not impressed with the arguments of the counsel for the defendant that the claim of damages raised by the plaintiff should be dismissed out rightly.

14. Looking at the facts of the case the plaintiff has admittedly served defendants' institution for 39 years from 1961 to June, 2000 when he was for the first time suspended and he had to face several criminal cases. Beside lodging false criminal cases the defendants has not been able to justify denying service benefits to the plaintiff by referring to any of the PNSC Service Rules. The defendants without referring to any service rule withheld salary and pension benefits on the ground of pendency of criminal cases. The criminal litigations against the plaintiff initiated by the defendants have been concluded in **2009** and the defendants backed out of their own admitted undertaking dated **23.5.2002** whereby they have decided to withhold service related benefit till the decision of cases against the plaintiff.

This conduct of the defendants with their senior staff member was definitely a continuous source of humiliation amongst the staff and society. Beside, whatever humiliation the plaintiff has suffered during Court proceedings initiated on improper and unlawful reports of auditors, the defendant in their written statement to set up a counterclaim have relied on the same allegations. The defendants have failed to establish false allegation against the plaintiff not only before the court dealing with criminal cases but also before this Court. In ordinary cases mere failure to prove the counterclaim does not entail damages but in the case in hand since the counterclaim was based on the documents which the defendants, prior to filing of the suit have used in criminal cases and failed, their conduct to rely on same frivolous allegations again in civil suit to deny service benefits without cogent evidence cannot be termed as anything short of deliberately causing mental torture and humiliations to the plaintiff. It cannot be said the plaintiff has not suffered any mental torture and agony. The question of damages to the reputation is also established from the very fact that the plaintiff having served in the defendant corporation for more than 31 years and after suspending in June 2002 on charges of involvement in criminal cases, he was denied salaries and pension benefits on retirement. He was made to face criminal trial till his superannuation and on his acquittal honorably after seven years trial, the defendants have denied his lawful salary and pension etc. The defendants have never found the plaintiff guilty of any breach of PNSC Service Rules and yet his salary and service benefits have been denied to him for almost twenty years.

15. The plaintiff has claimed general damages and not any specific or special damages. It is a settled law that loss of reputation and mental agony of a person and other non-pecuniary losses cannot be accurately calculated, however, merely for this reasons alone Court

cannot decline to grant damages. Such damages need not to be proved by strict application of evidence law whereby Court may ask for cogent evidence supported by documents to answer such issue. In such cases, ordinarily just, fair and reasonable compensation is assessed in awarding damages to the victim. The Court in absence of any method to determine a fair assessment of damage for the aggrieved complainant to redress his grievance is under an obligation to decide an amount of money as compensation keeping in view the facts and circumstances placed on record by the injured to show that how torturous was the conduct of the aggressor and how long he remained under mental stress. Therefore, while applying Rule of Thumb in assessing a fair amount to be awarded to the Plaintiff, the conscience of the Court should be satisfied that the damages to be awarded, if not completely, satisfactorily compensate the aggrieved party / the Plaintiff as laid down by the Hon'ble Supreme Court in the case of SUFI MUHAMMAD ISHAQUE ..VS.. THE METROPOLITAN CORPORATION, LAHORE through Mayor (**PLD 1996 SC 737**) and reiterated in the case of Malik GUL MUHAMMAD AWAN ..VS.. FEDERATION OF PAKISTAN through Secretary M/o Finance and others (**2013 SCMR 507**). I have discussed in detail the evidence to satisfy my conscience in awarding damages to compensate the Plaintiff for the mental torture suffered by him. Therefore in my humble view the 78 years old Plaintiff waiting for his salary for the period from June 2000 till his retirement on 24.6.2002 and also his pension since 2002 till date with other service related benefits according to PNSC Service Rules. In the circumstances by application of Rule of thumb, I hold the plaintiff is entitled to a sum of Rs.25,00,000/- towards damages in compensation for losses on mental torture, agony, distress as claimed in para-16 of the plaint.

ISSUES NO.7

16. The burden of issue No.7 was on the defendants and their counsel has not specifically discussed this issue in his arguments nor any cogent evidence has been produced to show that when and how the plaintiff has become liable for the counterclaim of such a huge amount. The defendants have filed audit reports and details regarding provident fund to show criminal misappropriation has already been discarded by competent courts. The report do not establish that the plaintiff has become liable to refund the said amount or that it is liable to be adjusted from the salary and other service benefit payable to the plaintiff at the time of his retirement.. The defendants have allegedly prosecuted the plaintiff and other staff of the corporation for so called misappropriation of funds in the Provident Fund Account has already been discussed in the earlier issues. The judgments of the NAB Court, High Court and Supreme Court, which are undisputed have already established that nothing was proved to have been misappropriated by the plaintiff and the case of the defendants is based on some allegation therefore, the defendants are not entitled to any counterclaim. In view of these facts and the discussion on other issues, the issue No.7 is answered in negative.

ISSUES NO.8

17. In view of the above discussion and my findings on issues No.1 to 7 the suit of the plaintiff is decreed as prayed in prayer clause (a) to (f) with simple markup only @ **10% per annum** not compound from the date of his retirement (**24.6.2002**). The plaintiff is also entitled to the decree in the sum of rupees twenty five lac (Rs.25,00,000/-) only towards compensation of sufferings claimed in para-16 of the plaint. The plaintiff has been denied his lawful salary

and other service benefits since the date of his superannuation on **24.06.2002** and after almost twenty years no further delay can be afforded in disbursement of money due and payable to the plaintiff, therefore, the defendants No.2 & 3 are directed to release the decretal amount within 30 days from today and in case of failure the Nazir of this Court should attach bank accounts and properties of the defendants No.2 and 3 forthwith after notice to the defendants.

JUDGE

Karachi, Dated: 02.06.2021

Ayaz Gul