

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.1203 OF 2006

Plaintiff : Syed Niaz Ahmed,
through Mr. Agha Zafar advocate,
Mr. Hummul Zubedi, advocate.

Defendants : National Refinery Limited and another,
Through Mr. Javed Asghar advocate.

Date of hearing: 04.02.2016.

Date of Judgment: 22.04.2016.

JUDGMENT

SALAHUDDIN PANHWAR, J: Succinctly, facts as set out in the plaint are that plaintiff filed a suit for Recovery of Pension Commutation & other benefits wherein pleading that defendant No.1 (company) is incorporated under the Companies Ordinance 1984 and defendant No.2 is a pension fund out of which defendant No.1 was required to pay full pension of plaintiff taking the full service of the plaintiff as pensionable service. Plaintiff was appointed as Assistant Supervisor Class II by M/s National Motors Ltd at Karachi, a *nationalized* unit under Ministry of Production, Government of Pakistan, formerly and M/s Ghandara Industries Ltd. Karachi. After successful completion of probationary period service of plaintiff was confirmed by National Motors Ltd. Plaintiff served in the said National Motor Ltd. till 1991 when he was transferred from National Motors Ltd to the defendant (company), a unit of the State Petroleum Refining &

Petrochemical Corporation (Pvt) Ltd. under the Ministry of production & industries, Government of Pakistan. The transfer of the plaintiff from the said National Motors Ltd. to the defendant company was initiated through proper channel and was approved by the State Petroleum Refining & Petrochemical Corporation (Pvt) Ltd. Ministry of Production & Industries, Government of Pakistan. Such approval was communicated to the plaintiff vide corporation's letter dated 09.10.1991. Plaintiff was relieved on 20.10.1991 from National Motors Ltd. and he joined the defendant (company_ with effect from 21.10.1991 hence there was no break in service even for a single day. The plaintiff was confirmed as Senior Management Executive by defendant company w.e.f 21.10.1991 and such decision was communicated to him vide letter dated 08.3.1992. The service benefits of plaintiff were also transferred from national Motors Ltd. to the defendant (company) which includes gratuity, annual leave and provident fund etc. Since there was no pension in National Motors Ltd and instead thereof there was a gratuity provided to the officers as such the whole amount of gratuity of the plaintiff for the entire period of 18 years of service with National Motors Ltd. was transferred by the National Motors Ltd to the defendant (company). The defendant (company) was maintaining pension facilities as such gratuity amount of the plaintiff in National Motors Ltd was adjusted in the pension account with the defendant No.2 fund managed by defendant No.1 Company. Plaintiff served faithfully with an unblemished service record in the defendant (company) from 21.10.1991 till the date of his retirement i.3 10.9.2000. Decision of retirement on attaining the age of superannuation was communicated by defendant company vide their letter dated 03.8.2000. It is pertinent to note that in the said decision nothing was mentioned about the

amount of pension. A letter dated 29.9.2000 was issued by defendant company alongwith a cheques dated 25.9.2000 of Rs.10,43,866 towards pension commutation and further informing that the monthly pension would be Rs.6425/- . A calculation sheet was also attached with the letter showing that the pensionable service of the plaintiff is 13 years instead 27 years. Thereafter, vide letter dated 07.11.2000, two other cheques were given to the plaintiff on 07.11.2000 on account of provident fund and final settlement which were also received by the plaintiff under protest. It is pertinent to note that in the similar circumstances, other employees were transferred from other units under the same Ministry of Production, the Defendant Company has granted full pension benefits and made full pension amount on the basis of entire length of service to many other officers of the defendant company. It is further stated that this practice was also continued even recently one Managing Director, Qaisar Jamal was also given full pension despite the fact that he was not transferred from any nationalized unit be on the contrary the same benefit has been denied to the plaintiff which is clear case of discrimination and malafide on the part of defendant company. Plaintiff also pleaded that as many as *eight* ex-officers were granted full pension benefits in the similar circumstances as that of plaintiff; officers lastly named Muhammad Younus had received payment of gratuity from his old employer i.e PIDC at the first instance but after joining his transfer to defendant company he was allowed to deposit the amount of gratuity making him eligible to avail the pension related benefits in full for his entire length of service. On the other hand the plaintiff's case is on better footing as the amount of gratuity was not received by the plaintiff and it was

transferred by his previous organization to the defendant (company) on his transfer.

2. Plaintiff further claimed that he was entitled to have a company maintained car plus driver's salary of Rs.1800 per month plus 270 liters petrol per month however, car was not given to him on plea that same was not available. Thereafter a loan was granted to him along with two other officers of Defendant Company for purchase of cars. Plaintiff and these officers had accordingly purchased the cars/ through defendant (company). Thereafter plaintiff and said two officers were advised by defendant (company) to repay the loans and they will be provided company's car as per their entitlement. All these officers including plaintiff refunded the loans after selling their respective cars. Defendant company provided cars to other two officers but the plaintiff was kept on promises as the retirement of the plaintiff was about to reach. Finally no car was given to the plaintiff during his tenure of services. If the car had been provided to plaintiff, he should have taken the same on book value as per company's policy and practice in the case of officers of defendant (company). As such the plaintiff has been made to suffer on this account also and plaintiff claimed himself entitled to be compensated while claiming cost of such car as Rs.500,000/-. Being aggrieved of such decision whereby service of the plaintiff was reduced to 13 years from 27 years he submitted a departmental appeal/grievance petition to the defendant (company) praying that retirement benefits may be given to him keeping in view his entire length of service of 27 years in government owned/controlled organization without break. In reply to departmental appeal, defendant company vide letter dated 12.4.2001 rejected his

department appeal/grievance petition by holding that no further action is necessary. Plaintiff therefore filed service appeal No.1056/2001 before learned Federal Service Tribunal under section 4 of the Federal Service Tribunal Act, 1973; company submitted their reply stating that the pensionable service of the plaintiff was reduced as per decision dated 06.2.1997 of the Board of Directors of defendant No.1. In a similar case on the same question of law before Federal Service Tribunal bearing appeal No.1642(k)/1998 filed by another employee against the defendant company, the Federal Service Tribunal allowed the appeal vide order dated 17.6.2005 and appeal filed against such decision was dismissed for non-prosecution by Hon'ble Supreme Court of Pakistan. After decision dated 27.6.2006, pronounced by Honourable Supreme Court of Pakistan, service appeals, including that of plaintiff was found not competent before Federal Service Tribunal hence was advised to take legal action against defendant before appropriate forum.

In such back ground, the plaintiff prayed as follows:-

- i) *Pass decree and judgment for the recovery Rs.3,726,976 along with interest @ 12 % per annum against the defendants, jointly and severally;*
- ii) *Grant cost of this suit from the defendants;*
- iii) *Any other relief or relieves being fit or proper may be granted.*

3. Defendant Nos.1 and 2 filed their respective *written statements*. The defendant No.1 raised preliminary legal objections that no cause of action accrued to plaintiff; several causes of action against different

defendants have been joined together as suit is bad for misjoinder of causes of action and liable to be rejected; M/s PERAC i.e. State Petroleum Refining & Petrochemical Corporation (Pvt.) Ltd is a necessary party as its Board of Directors had decided the case of plaintiff for equivalent service for the purposes of pension and as communicated to plaintiff therefore suit is bad for non-joinder of necessary party and liable to be rejected.

4. The defendant No.1 denied and disputed that defendant No.1 was liable or required to pay full pension of the plaintiff taking full service of the plaintiff into account. The factual position is that plaintiff was employed by defendant No.1 with effect from October 21, 1991 as Senior Management Executive vide letter of appointment (annexure C of plaint); entire service of plaintiff with answering defendant was taken into consideration for purposes of calculation of pension of the plaintiff. Defendant No.1 claimed itself to be a separate juristic person. At the relevant time plaintiff was appointed with the answering defendant against a vacancy and in terms of the appointment plaintiff was offered much better terms and conditions of employment which were accepted by him. Plaintiff was / is liable to be dealt with terms and conditions of his employment with the defendant. Defendant claimed that plaintiff himself joined the pension fund of his own free will as it was better suited to him. It was in these circumstances the gratuity amount of plaintiff with his previous employers and amounting to Rs.103,140.00 was transferred to defendant No.2. For the amount of gratuity received from the previous employers of the plaintiff i.e Rs.103,140.00 for the purpose of pension, the plaintiff was offered an equivalent service period of 4.5 years vide letter dated June 20, 1997. This offer was made on the basis of the

computation made by actuaries and approved by the Board of Directors of PERAC i.e State Petroleum Refining & Petrochemical Corporation (Pvt) Ltd; that defendant No.2 i.e Pension Fund is managed by defendant No.1. It was further pleaded that there was no point to communicate to plaintiff of the pension amount as till time of issuance of letter the pension was not computed. In fact only after issuance of retirement letter the defendant No.2 could calculate the pension account of the plaintiff. Defendant No.1 claimed that it (defendant No.1) just passed on cheques and calculation sheet received from defendant No.2. The period of service for purposes of pension has been correctly shown in the calculation sheet and is based upon the communication made to the plaintiff as early as June 20, 1997. Defendant No.1 pleaded that plaintiff had no occasion to receive the said full and final settlement under protest. Regarding case of Mr. Qaisar Jamal it was pleaded that he (Qaisar Jamal) was appointed as Managing Director of answering defendant against a contract of employment by Government of Pakistan. His terms and conditions of employment were accordingly governed under the contract of his employment. A copy of letter of appointment issued to him by government of Pakistan was attached. Regarding other, *referred persons*, the defendant No.1 pleaded that M/s M.C. Chaudhry, M.T. Siddiqui, M. Mausuf, M.Y. Butt have never been in the employment of defendant No.1 as alleged by plaintiff. Lt. Col. (T) M. Ashraf, being a retired Army Officer was not in the employment of the answering defendant at the time of his retirement and was working with M/s State Petroleum Refining & Petrochemical Corporation (Pvt.) Ltd. (PERAC). Similarly Mr. Muhammad Younus was not extended any such benefit. Case, filed by Mr. Muhammad Younus, was claimed to be pending before Authority under payment of

Wages Act being case No.142 of 2006. On application of plaintiff for car loan he was provided the same as he was not entitled for a company maintained car. Plaintiff was to retire only after 2 working days hence a car could not be provided to him. Claim of the plaintiff was denied. Defendant No.1 denied that in reply it was stated that pensionable service of plaintiff was reduced as per decision of Board of Directors of the defendant No.1. The application of judgment of Federal Service Tribunal to case of the plaintiff was denied.

5. Defendant No.2 in its written statement while taking similar legal objections denied entitlement of the plaintiff. It was denied that defendant No.1 was required to pay full pension to plaintiff taking into account his full service as pensionable service; that pension is paid to only those employee of defendant No.1 who opt to become members of pension fund and pension is paid to the entitled employees of the defendant No.1 at the time of their retirement in line with the contribution received from their employer towards the pension fund. It was pleaded that an amount of Rs.1,03,140 was received by answering defendant towards the pension fund of plaintiff at the time of his joining the pension scheme. On the basis of amount an equivalent service period of 4.5 years was determined for the purpose of pension and the same was communicated to the defendant No.1. The period was determined by Actuaries of defendant No.2 and was communicated to defendant No.1 the employer of plaintiff vide letter June 11, 1997. Defendant No.1 claimed itself a separate juristic person managed by its Board of Trustees. Defendant No.2 claimed that date of retirement of plaintiff was communicated by defendant No.1 on basis whereof the pension

amount was prepared; cheques were sent to plaintiff through his employer, the defendant No.1.

6. Out of the pleadings of the parties following issues were framed on 21.01.2008:-

- 1) *Whether the actual service of the plaintiff i.e 27 years is to be taken for calculating lump sum payment as retirement benefit?*
- 2) *Whether the pensionable service period of the plaintiff is 27 years or 13 years?*
- 3) *Whether the plaintiff is entitled for cost of the car not provided during the tenure of service with the defendant No.1?*
- 4) *Whether the plaintiff is entitled for long service award of Rs.25,000/-?*
- 5) *Whether the written statement filed by the defendant No.2 not on Oath and solemn affirmation can be taken on record?*
- 6) *What should the judgment and decree be?*

Later, on 08.9.2008 following issue was added as *additional issue*:

'Whether the suit of the plaintiff is time barred?

The said additional issue be treated as '*issue No.6*' while the issue already existed at S.No.6 be taken and treated as issue No.7.

7. Commissioner was appointed for purpose of recording of evidence.

8. During evidence, on application of the plaintiff the Commissioner through office of this court summoned the Managing Director of the defendant No.1 as witness in relation to issue No.5 settled by the court.

The defendant No.1 subsequently moved application (CMA No.9775/2008) to set aside the summons already issued to the Managing Director of the defendant No.1 on the ground that defendant No.1 is not pressing the written statement filed by it and defendant No.1 will not lead any evidence and its side may be closed. Vide order dated 24.10.2008, the application of the defendant No.1 was allowed.

9. The plaintiff examined himself whereas the defendant No.1 led no evidence. The defendant No.2 examined Mr. Khawaja Zafar Javed, Secretary Pension Fund.

10. Learned counsel for plaintiff *inter alia* contends that sufficient evidence has been brought on record by the plaintiffs to substantiate the onus *probandi* according to issues; other employees were granted same relief in identical situation; it was a case of *transfer* of services hence services of the plaintiff were to be taken as continue. Reliance was placed on case laws, reported as 2001 SCMR 116; 2000 SCMR 1864; 2003 SCMR 1128; 2011 PLC (CS) 1257; 2010 SCMR 1399.

11. On the other hand, learned counsel for the defendant(s) argued that plaintiff was taken into employment of defendant No.1 w.e.f 21.10.1991 as *fresh employment*; earlier employer of plaintiff and defendant No.1 are two *separate* and *distinct* entities; there was no practice, prevailed in defendant No.1, for *pension fund 'back-funding'* nor it was approved in the Board Meeting dated 06.02.1997. It was argued that case laws, relied by the plaintiff, were not applicable to case of the plaintiff hence it was concluded to dismiss the suit of the plaintiff.

FINDINGS.

Issue No.1	Affirmative.
Issue No.2	as discussed.
Issue No.3	Negative
Issue No.4	Affirmative.
Issue No.5	abandoned.
Issue No.6	Negative.
Issue No.7.	Suit is partly decreed.

ISSUE NO.1 & 2

‘1. Whether the actual service of the plaintiff i.e 27 years is to be taken for calculating lump sum payment as retirement benefit?

2. Whether the pensionable service period of the plaintiff is 27 years or 13 years?’

12. A bare *reading* of both the above issues make it unambiguous that both these issues are strongly *interlinked* with each other hence should be discussed and decided *together* .

Before start of the discussion, I *without* hesitation would say that following facts are not disputed:

- i) *Plaintiff was serving with National Motors Ltd.*
- ii) *Plaintiff applied for his consideration against post of Manager with defendant No.1.;*

iii) *Plaintiff was selected and his services were transferred from National Motors Ltd. to defendant No.1.*

The *only* controversy / dispute was a denial of the defendant No.1 to claim of the plaintiff that his service was *transferred* while defendant No.1 claimed it as '*fresh employment*'. To properly appreciate, it would be relevant, proper and just to have a *direct* reference to letter dated 6th August 1991, addressed to Chairman, State Petroleum Refining & Petrochemical Corporation Ltd. and a reply thereto from State Petroleum Refining & Petrochemical Corporation Ltd. which are:

"The Chairman,
State Petroleum Refining &
Petrochemical Corpn. Ltd.,
Merewenther Road,
Karachi.

APPLICATION FOR THE POST OF MANAGER
IN PERSONNEL & ADMIN DIVISION.

Dear sir,

We are forwarding herewith application of Mr. S. Niaz Ahmed, Manager, Industrial Relations & personnel, National Motors Ltd. for consideration against the post of Manager (IR&Pers) in your Corporation.

He will be relieved of his duties if selected.

Thanking you,

Yours faithfully

Sd/-
(WILAYAT H. RIZVI)
GENERAL MANAGER (A &P)"

.....

"Col (R) Wilayat. H.Rizvi,
General Manager, A&P
Pakistan Automobile Corporation,

2nd Floor,
Finance & Trade Centre Tower 'B'
Sharea Faisal,
Karachi.

SUB:TRANSFER OF MR. S. NIAZ AHMED, MGR. I/R & PER
TO NLR

Dear sir,

Reference your Letter No.4305/NLR of August 06, 1991 regarding transfer of Mr. S. Niaz Ahmed to NRL, a unit of PERAC. We are pleased to write that Chairman, PERAC has approved his transfer with immediate effect.

You are requested to intimate Mr. S. Niaz Ahmed, issue **transfer order** and dispatch **his personal file and financial record** at your earliest convenient. He should be directed to see the Managing Director, NRL.

Regards.

Yours faithfully
For STATE PETROLEUM REFINING &
PETROCHEMICAL CORPORATION LIMITED

Sd/-
MUHAMMAD N. HUSSAIN
General Manager
Personnel & Administration"

From above, it is *quite* patent that it was not a case of '*fresh employment*' but was that of '*transfer of services*' as is evident from the letter of defendant No.1, referred *above* which is titled as '**transfer of Mr. S. Niaz Ahmed, MGR. I/R & PER to NRL**'. Further, in the same letter the earlier department of the plaintiff was directed by the defendant No.1 to 'issue **transfer order** and dispatch **his personal file and financial record** ' which seems to be for no other purpose but to '*continue the service* ' of the plaintiff or *least* consideration thereof for *service benefits* . The term '*transfer of services*' *prima facie* give no other meaning but a sense of continuity so it appears from

definition of 'transfer' , provided by Black's Law Dictionary (*Seventh Edition*)

as:

'To convey or remove from one place or one person to another; to pass or hand over from one to another, esp. to change over the possession or control of.'

I am quite conscious that 'appointments' are made through three modes *i.e.*:

- i) *Recruitment by initial appointment;*
- ii) *Appointment by promotion;*
- iii) *Appointment by transfer.*

An appointment by way of *transfer*, if made through proper procedure and course, shall not prejudice the right of the *employee* to claim continuity of services if not *otherwise* prohibited by the law *itself*. This legal position was appreciated and decided by honourable Supreme Court in the case, relief upon by the counsel for the plaintiff.

National Investment Trust Ltd. v Sami Ullah & another (2001 SCMR 116)

*'9. As to the right and entitlement of the respondent, we are of the view that he is entitled to count his service with the Federal Government in the Ministry of Finance for the purpose of his retirement and settlement of dues pursuant to the Voluntary Separation Scheme of the petitioner in view of**as he had applied for his appointment through proper channel; that there is no break in his service and he is entitled to service benefits on voluntary retirement.***

The defendant No.1 has placed much weight on to the decision of Board in its meeting dated 06.02.1997. A portion thereof, insisted by the defendant No.1, is:

'In order to allow them full benefits of their past service as per PERAC Pension Fund rules, PERAC is required to pay around Rs.6.5 million into PERAC Pension Fund. One of the Directors

pointed out that in the past, it was a **regular practice** that the employees working in other corporations/agencies get themselves transferred to PERAC before retirement in order to avail of the higher benefits. **Board decided not to make any payment on this account.**

From above portion, it is quite obvious that *admittedly* at such time there was prevailing a '**regular practice in PERAC**' which *however* was decided to stop in said meeting of the Board. I have no hesitation in saying that the defendant No.1 and *even* the Board was not competent to take away an available right *retrospectively* when it was is of *penal consequences/effects*, more particularly when :

- i) *plaintiff's transfer to defendant No.1 was much prior to such meeting;*
- ii) *it was moved for a post hence prima facie not appearing to be a simple case of transfer of services;*
- iii) *plaintiff was never heard in such meeting;*
- iv) *plaintiff was never communicated the decision of the meeting and decision therein, if any;*

Even otherwise, the decision '*not to make any payment on this account*' cannot be *legally* as a sword for an *existing right or regular practice* particularly when the status of *pensionary* benefits the honourable Supreme Court observed in the case of 'Secretary, Govt. of Punjab v. M. Ismail Tayer (2014 SCMR 1336), as:

'10. The afore-said dictum makes it clear and obvious that with regard to a retired Civil Servant, pension forms a part of his retirement benefits. It is not a bounty or an ex-gratia payment but a right acquired in consideration of past services. Such right

to pension is conferred by law and cannot be arbitrarily abridged or reduced except in accordance with such law, as it is a vested right and legitimate expectation of a retiring Civil Servant.'

A *vested right* cannot be denied or with-held with reference to some *ex-parte* proceedings or decision *even*. Further, to avoid much debate on these issues which *otherwise* are legal, I would take a *sigh* to refer the observation of Honourable Supreme Court of Pakistan in the case, reported as 2009 SCMR - 1 that:

'Administration of justice---If a Tribunal or the Supreme Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum.'

Since in the instant case the plaintiff has insisted for same treatment as was granted to Dr. Abdul Aziz by Federal Service Tribunal, Islamabad vide judgment , passed in Appeal No.1642(K)/1998 the application thereof has *however* been denied by defendant No.1.

The perusal of the *judgment* would show that sole point for determination was:

'Whether the appellant is entitled to pensionary benefits for his entire service of about 33 years.'

The reference to para-16 of the said judgment shall not only make it *clear* that case of appellant is identical to that of Dr. Abdul Aziz but also the conclusion, which is reproduced hereunder:

"16. We have thoughtfully considered the entire case of the parties. Though shortfall in back funding is not covered under rules of the Respondents in cases of transferees from the organizations other than the organizations under PERAC, but shortfall in back funding had all along been provided by the Respondents and that was done under the decision of PERAC Board in the meeting held on 04.8.1987. There appears to be confusion in the management of the Respondents about payment or non-payment of shortfall in back funding and it appears that no specific and clear-cut decision had been taken by the Respondents in the matter. We find that the Appellant has been subjected to discrimination. We are conscious that if rules do not permit payment of any amount, plea of discrimination cannot be availed of, but in the instant case the matter is otherwise. The Learned Counsel for the Respondents denied any provision of back funding to the employees whose names had been given by the Appellant, but this denial is not correct, which is evident from the fact that T. H. Siddiqui, Haider Zaman and Mausoo/ Maroof (whose names had been mentioned by the Appellant in the memo of appeal) were the complainants before the Hon'ble Federal Ombudsman. The reason for stopping payment of back funding or shortfall in back funding was apparently financial constraints on the Respondents' organization due to transfer of other organizations to PERAC for obtaining heavy benefits offered by such organizations to their employees. The Board was competent to take such decision, but its application retrospectively by the Secretary of Pension Fund or any other Members of Management was illegal especially in the absence of any such prohibition in the minutes of the meeting. Moreover, in the circumstances of this case, as held in 2004 PLC (CS) 1375 (*Ilahi Bux vs. Sindh Sugar Corporation Ltd. through Chairman and 2 others*) 'lack of resources or a decision by the Board of Directors of Corporation not to pay any of such dues would not be valid ground for their refusal'. **In our opinion the proper decision in the matter by the PERAC Board should have been the stoppage of induction of the employees of other organizations into the PERA /NRL by way of transfer, and the decision should have been made applicable prospectively and not retrospectively."**

(Underlining is supplied for emphases)

From above operative portion, it becomes quite clear and evident that:

- i) *case(s) of transfer from other organization(s) to defendant No.1 was specifically addressed;*
- ii) *the application of decision of the **Board** was specifically held to be not applicable **retrospectively**;*

iii) *financial constraint was held to be no ground to deny a legal right;*

Thus, I can safely conclude that said *dicta* shall have its applicability for decision of the *issues*, under discussion. Accordingly, in view of what has been discussed above, I answer both the issue Nos.1 and 2 as '*affirmative*'.

ISSUE NO.3.

Whether the plaintiff is entitled for cost of the car not provided during the tenure of service with the defendant No.1?

13. The burden to prove this issue *squarely* fell upon the plaintiff. It is necessary to add here that plaintiff was required to prove his entitlement with reference to the company's policy. It be kept in view while discussing this issue that it has never been the claim of the plaintiff that such car was to be retained by him (*plaintiff*) even after retirement or that such facility was not subject to service with the defendant No.1. The plaintiff has *no where* denied that his date of retirement was '**10.9.2000**' as is evident from para-6 of the *plaint itself* i.e:

'6. That the plaintiff served faithfully with an unblemished service record in the Defendant company from 21.10.1991 till the date of his retirement i.e 10.9.2000. The...

It is also not disputed that the plaintiff returned the car loan on 06.9.2000 i.e only a few days before his date of *retirement* hence I am not inclined that he (*plaintiff*) should have been given a company maintained car for just *four days*. Thus, I answer this issue in *negative*.

ISSUE NO.4.

'Whether the plaintiff is entitled for long service award of Rs.25,000/-?'

Since, in result of the *answer* to issue Nos.1 and 2, it needs no more discussion that the length of the service of the plaintiff is 27 years hence without going into any further discussion I answer this issue in '*affirmative*'.

ISSUE NO.5.

'Whether the written statement filed by the defendant No.2 not on Oath and solemn affirmation can be taken on record?'

14. The above issue needs *no more* discussion in view of the order dated 24.10.2008 , passed in HCA No.312 of 2008 which is:

'By consent listed appeal is disposed off with an observation that the Respondent No.1 will not lead any evidence in the suit and will not rely in support of his contention on the written statement filed by him, however, if any admission is made in written statement beneficial to the Appellant then he can point out the same as an admission binding upon the Respondent No.1.'

hence the above issue be taken as *abandoned*.

ISSUE NO.6.

Whether the suit of the plaintiff is time barred?

15. The burden to prove this issue lies upon the defendants. Needless to add that mere allegations to the effect of active knowledge and notice of the plaintiff regarding decision, taken by the Board in its meeting, was never sufficient to establish such '*fact*' but it was obligatory upon the defendants to have brought on record such material *either* in shape of oral or

documentary evidence. The perusal of the record *speaks* otherwise. An order, causing effect upon certain rights of an individual, should be properly communicated before taking an *adverse* presumption against such person else the object and scheme of universally acknowledged principles of law i.e 'no body should be condemned unheard' & 'due process' shall lose their validity. The term 'due process' is defined by honourable Supreme Court in the case of Babar Hussain Shah & another v. Mujeeb Ahmed Khan and another (2012 SCMR 1235) as:

'As for as due process is concerned, this Court in the case of 'New Jubilee Insurance Company Limited, Karachi v. national Bank of Pakistan Karachi (PLD 1999 SC 1126)' while summarizing the term due process of law relied on the judgment of this Court in the case of Aftab Shahban Mirani v. President of Pakistan (1998 SCMR 1863) wherein this Court held as under:-

- 1) A person have notice of proceedings which affect his rights;
- 2) He shall be given reasonable opportunity to defend;
- 3) That the Tribunal or Court before which his rights are adjudicated is so constituted as to give reasonable assurance of his honesty and impartiality, and
- 4) That, it is a Court of competent jurisdiction. Above are the basic requirements of the doctrine 'due process of law' which is enshrined, inter alia, in Article 4 of the Constitution. It is intrinsically linked with the right to have access to justice which is fundamental right. This right, inter alia, includes the right to have a fair and proper trial and a right to have an impartial Court or Tribunal . A person cannot be said to have been given a fair and proper trial unless he is provided a reasonable opportunity to defend the allegation made against him.'

(emphasis provided)

Further, *prime facie*, the grievance of the plaintiff started from the moment he (*plaintiff*) received the service benefits '**under protest**' as main grievance of

the plaintiff is revolving round the calculation of his *length* of service. The order, *passed* on the grievance petition of the plaintiff *no where* speaks that his (*plaintiff's*) representation was *time barred* rather it says as:

*'Your grievance **petitioner dated February 22, 2001**, was reviewed by the Management, who are the view that since your separation benefits were paid to you in accordance with company rules and policies, no further action is considered necessary.'*

Since final settlement was received on 07.11.2000 and grievance petition, so filed by plaintiff, was declined without any objection towards question of *limitation* rather it was dismissed on merits.

16. Besides, it is also a matter of record that the plaintiff filed the appeal before the Service Tribunal within Ninety (90) days from date of order onto grievance petition therefore, *technically* the defendant No.1 is not legally justified to claim it (*lis*) as time barred. The appeal of the plaintiff was also not declined by the Service Tribunal on count of *limitation* but it was *abated* in view of judgment, reported as PLD 2006 SC 602 wherein it was held that:

*'109(c) The cases or proceedings which are not protected or covered by this judgment shall be deemed to have abated and the aggrieved person may approach the competent forums for redressal of their grievance **within a period of 90 days and the bar of limitation provided by the respective laws, shall not operate against them till the expiry of stipulated period.***

The suit, *in hand*, was filed/presented on 16.9.2006 within said period. Since, the bar of the limitation was *itself* relaxed by the honourable Supreme Court through the *very* judgment whereby the appeal of the present plaintiff *undeniably* was abated, hence such relaxation cannot be taken away by lower

forum, including this Court. I would insist that the issue of *limitation* was not *even* raised before the Federal Service Tribunal nor grievance petition was declined on this count, therefore, it would not be *legally* justified to decline a legal right on this count, *particularly* when the plaintiff appears to be entitled for such relief on count of decision of the Federal Service Tribunal which has got application in the instant case.

17. In view of above discussion, I am not inclined to agree with the plea of the counsel for the defendant No.1 that the suit of the plaintiff is barred by law of *limitation* hence I answer the issue as '**negative**'.

ISSUE NO.7.

18. In result of the discussion, I am of the view that the plaintiff is entitled for pensionary benefits of his service as 27 years and calculation of his service benefits as such. The defendant No.1 shall accordingly calculate the *pensionary benefits* of the plaintiff as such and *benefits*, whereas already received benefits by the plaintiff, shall be deducted. This exercise shall be completed in three months; in case of failure, Nazir of this Court shall call entire service record of the plaintiff and calculate the pensionary benefits of plaintiff and ensure compliance. Let such decree be drawn.

J U D G E