

**IN THE HIGH COURT OF SINDH AT  
KARACHI**

**Suit No.1979 of 2019**

**[Syed Sulaiman Jafri versus United Bank Limited and others]**

Date of hearing : 22.03.2022

Plaintiff  
[Syed Sulaiman Jafri] : Through Mr. Imtiaz Ali Effendi,  
Advocate.

Defendant No1.  
[United Bank Limited  
through its President Head  
Office, I.I. Ghundrigar  
Road, Karachi] : Through Mr. Suleman Hudda,  
Advocate.

Defendant No.2  
[Federation of Pakistan]

Defendant No.3  
[State Bank of Pakistan] : Nemo

**ORDER**

**Muhammad Faisal Kamal Alam, J:-** Plaintiff has filed this  
suit against Defendants, *inter alia*, claiming all retirement benefits.

Plaint contains the following Prayer \_

- “1. To pass Judgment and Decree and direct the Defendant  
No.1 to pay up-to-date all retirement benefits and dues  
from the date of compulsory retirement i.e. 12.09.1997  
Pak Rs.827,44,583.00 as per admissibility and  
entitlement to the Plaintiff in view of revised working  
payout prepared by the Plaintiff without fail with 20%  
profit per annum thereon till its recovery.

2. *To pass Judgment and Decree and declare that the Plaintiff was a bona fide employee of Defendant No.1 and is entitled for the retirement / pensionary benefits and all other eligible benefits / dues as per admissibility and entitlement as prayed in (1) above.*
3. *To permanently restrain the Defendants No.1, 2 and 3 and its Executives, Officers, employees, servants, agents, representatives, assignees and any other person or persons acting on their behalf from any harassment in any manner whatsoever on their part to the plaintiff and his family in future.*
4. *Cost of the suit.*
5. *Any other relief which this Hon'ble Court may deem fit and proper under circumstances of the case."*

2. Admittedly, the Plaintiff was the employee of Defendant No.1- United Bank Limited [UBL]. It is averred in the plaint that the dismissal of service of Plaintiff was converted into compulsory retirement and in this regard, he made hectic efforts and finally when the Plaintiff was paid his service dues, he realized that a lesser amount has been paid. The Payout Letter dated 21.11.2016 is at page-21 of the Court file. He has filed this Suit thereafter seeking recovery of purported dues of Rs.82,744,583/- (*eighty-two million seven hundred forty-four thousand five hundred eighty-three only*).

3. On the other hand, besides filing Written Statement, an Application under Order VII Rule 11 of CPC has been filed by Defendant No.1-United Bank Limited, wherein it is mentioned that service of Plaintiff was terminated on account of misconduct, on

12.09.1997, which was challenged before the Federal Service Tribunal but without any success and finally when the Plaintiff filed an Appeal before the Hon'ble Supreme Court, it met the same fate. After eight years, he made a Representation to Defendant-Bank for reconsideration of his case on humanitarian grounds.

4. The Representation dated 16.04.2007 is appended with the Application under Order VII Rule 11 of CPC, which is undisputed. Learned counsel has also referred to an Undertaking / Affidavit, which is available at page-19, given by Plaintiff on 15.08.2007, *inter alia*, that since on Plaintiff's request his dismissal is converted into compulsory retirement, therefore, he will not claim any further benefits. In the Counter-Affidavit to the Application under Order VII Rule 11 of CPC, the factum of the above Undertaking / Affidavit is not disputed, except that it was forcibly taken from Plaintiff.

5. Learned counsel for the Defendant has stated that the present *Lis* is time barred in view of the Articles 56 and 64 of the Limitation Act, 1908. He has relied upon case law-PLD 1985 SC-153 [*Hakim Muhammad Buta and another vs. Habib Ahmad and others*] and an unreported Order [**Order**] of this Court in Suit No.635 of 2009 [*Mirza Asghar Baig vs. National Refinery Limited*].

6. On the other hand, learned counsel for Plaintiff has stated that Plaintiff has filed this case because he has a recurring cause of action as he has not paid the actual and correct amount of dues and hence this suit is not time barred nor barred by any other law. He has cited the following case law\_

1. 2002 PLC (C.S) 1388  
[*Muhammad Hasnain Shah vs. The Deputy Inspector-General of Police, Multan Multan and 27 others*]

2. PLD 1992 Supreme Court 825  
[*Muhammad Masihuzzaman vs. Federation of Pakistan* ]

7. Arguments heard and record perused.

8. The facts about previous unsuccessful litigation by Plaintiff relating to his termination on ground of misconduct, as mentioned in the Application under Order VII Rule 11 of CPC, has been concealed by Plaintiff, because, in his Counter Affidavit to the above Application he has not denied this fact; rather, stated that the history of ‘past legal proceedings’ is irrelevant. The employment of Plaintiff ended with Defendant No.1 way back in the year 1999, **eight years where after**, he made the above Representation, which was accepted and in lieu of the above Undertaking, he was paid the dues of Rs.613,444.02 (*rupees six hundred thirteen thousand four hundred forty-four and two paise only*) by the Letter dated 21.11.2016, which he has challenged in this **Lis** on 03.12.2019, that is, after three years and two weeks.

9. The relationship between Plaintiff and Defendant No.1 was that of master and servant and it came to an end in the year 1999, and his request in the form Letter/Representation dated 16-8-2007, was considered on sympathetic ground. Plaintiff cannot turn around and take a different stance than what he mentioned in his Representation.

10. The Judgment of Hon’ble Supreme Court relied upon in the above Order of this Court, viz. Muhammad Rafiullah - 2018 SCMR 598 is relevant; whereas, those cited by Plaintiff’s counsel is distinguishable, because in the first case [2002 PLC (CS) 1388], the issue related to his confirmation in Police Service and not dismissal on the ground of misconduct [as is the present Case] and the second case [PLD 1992 SC 825] though is of retirement of a civil servant but again he was not earlier terminated for the misconduct, which was upheld up

to Hon'ble Supreme Court [as is the present Case]; conversely, in the reported case the compulsory retirement was held to violative of statutory provisions; and in this context it is held that limitation period would not run against a continuing wrong.

11. The present suit is time barred, in view of Article 64 of the Limitation Act, prescribing a time limit of three years, but, in addition to this, the Plaintiff lacs legal character in terms of Section 42 of the Specific Relief Act, and does not have any right or interest for bringing such a proceeding after on his Representation, his termination in the year 1999 was converted into compulsory retirement on compassionate ground, that too after eight years, followed by settlement of his dues on 21.11.2016. In fact, to the admitted facts of present case, what is applicable is the principle of estoppel more than the Limitation Act, which otherwise ceased when the above Letter/Representation of 16.04.2007 was made by Plaintiff to Defendant Bank. Acceptance of the said Representation on compassionate grounds and making payment in lieu thereof, cannot either give rise to or revive any cause of action, which ended with the Decision of the Hon'ble Supreme Court, maintaining the termination of present Plaintiff, who cannot set up a new case in the present *Lis* for recovery of his purported dues. No one should be allowed to resile from his stance and allow to abuse the process of Court.

12. In view of the above, Application under Order VII Rule 11 of CPC is accepted and plaint is rejected. Office to draw up a Decree accordingly.

Dated: 22.03.2022

M.Javid.P.A.

**JUDGE**