

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**CP No. D- 3152 of 2018**

**Before:**

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Muhammad Faisal Kamal Alam

Petitioner : Nasiruddin Abbasi  
through Syed Munawar Ali Shah, Advocate

Respondents 1&2 : Federation of Pakistan and others through Aslam  
Pervaiz Khan, Assistant Attorney General.

Respondents 3 to 5 : United Bank Limited through Mr. Faisal  
Mehmood Ghani, Advocate

Date of Hearing : 04.03.2020

Date of Decision :

**JUDGMENT**

**MUHAMMAD FAISAL KAMAL ALAM,-** Through the present petition, the Petitioner is primarily seeking enforcement of Judgment passed by Honourable Supreme Court in Suo Moto Action regarding retirement benefits of the employees of Banks and reported in 2018 SCMR 736 (*retirement benefit case*). Petition contains the following prayer clause:-

- a) *That, this Honourable court may be pleased to direct the official Respondents to adopt the view of the Judgment passed by Honourable Judge Supreme Court of Pakistan and give the pensionary benefits as per the Judgment of Apex Court.*
- b) *That this Honourable Court may be saddled upon the Respondents.*
- c) *Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the Petitioner may be granted.”*

2. Syed Munawar Ali Shah, learned Advocate for Petitioner has argued that after the pronouncement of above retirement benefit case, the Respondents 3, 4 and

5 (United Bank Limited) should have extended the benefit as contained in the above Judgment to the present Petitioner, even though Petitioner was retired on 30.11.2012 after seeking premature retirement on medical grounds. He contends that in view of this changed situation the present Petition is filed.

3. The above arguments were controverted by learned counsel representing the Respondent bank, on the ground that the above retirement benefit case is not applicable to Petitioner, because he has already taken all retirement dues as mentioned in the Final Settlement Sheet, appended with the Counter Affidavit of Respondent Bank, as Annexure R/6a. He has further referred to Column No.1 of this document to point out that an ex-gratia payment of 30 months gross salary of Rs.14,94,690/- (rupees fourteen lacs, ninety four thousand, six hundred and ninety) was also given to Petitioner. After settlement of his entire service and retirement dues, the Petitioner executed `an Undertaking cum Indemnity ` dated 18.2.2013, which is filed as Annexure R/3 with the Counter Affidavit. The learned counsel for the Respondent Bank has raised question of maintainability of present petition and has relied upon the following case law\_

1. 2015 SCMR 911 (*Muhammad Ashraf and others v. United Bank Limited and others*).
2. 2012 PLC (C.S.) 218 (*State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others*).
3. 2014 PLC (C.S.) 393 (*Abdul Wahab and others v. Habib Bank Ltd and others*).
4. NLR 2013 Labour 1 (*Independent Newspaper Corporation (Private) Ltd v. Punjab Labour Appellate Tribunal Lahore and others*).

4. The learned D.A.G. has mainly argued on the basis of concise statement filed by Respondent No.1 (Finance Division, Government of Pakistan), which has basically highlighted the recommendation of State Bank of Pakistan in respect of those employees of Banks who were retired before and after privatization of such Banks.

5. Arguments heard and record perused.

6. Record produced with the Counter Affidavit of Respondent Bank to the main Petition has not been disputed. Learned Advocate for Petitioner has acknowledged that the Petitioner himself had requested for premature / optional retirement by his

letter dated 7.11.2012, addressed to Respondent Bank, which is available in the record as Annexure R/4 (of the Counter Affidavit of Bank). Acceding to his request the Respondent Bank, responded vide their correspondence of 3.1.2013 (Annexure R/5 of Counter Affidavit) by stating, *inter alia*, that considering the long association of Petitioner with the Respondent Bank, the latter has decided to make additional ex gratia payment equal to 30 months gross salary, to the former (Petitioner). As per the Final Settlement Sheet (as referred above) the Petitioner received an amount of Rs.2,468,522.00 (rupees twenty four lacs, sixty eight thousand, five hundred and twenty two only). This document also bears the signature of Petitioner as well as above 'Undertaking cum Indemnity' [Annexure R/3, dated 18.2.2003], acknowledging that all **legal dues**, including retirement / pensionary dues has been received by the Petitioner. Perusal of Final Settlement Sheet shows that entire pension of Petitioner was commuted and in lieu thereof he has received Rs.748,084.00 ( Seven Lac forty eight thousand and eighty four only). Record of this case shows that this amount was paid to the Petitioner under an Early Retirement Scheme, relevant document of which is filed as Annexure R/6 (with Counter Affidavit).

7. The above Judgment of Honourable Supreme Court in retirement benefit case has been carefully examined. Discussion of Respondent Bank starts from page 740. Retired employees of Respondent Bank are divided in three categories; (i) original retirees, (ii) recently retired and (iii) retrenched employees. Petitioner does not fall in any of the categories, because he has availed a premature retirement on medical ground under the afore-mentioned Early Retirement Scheme (dated 16.11.2007), which was not a subject matter in the above retirement benefits case. **Secondly** and admittedly, Petitioner got commutation of his entire pensionary benefits (as stated above) and thus cannot reopen a past and closed transaction through this petition, which is filed after five years of receiving the entire service and retirement benefits. Present petition is also adversely affected by the principle of laches and the Petitioner counsel could not successfully explain this inordinate delay in filing the same. The above referred case of State Bank of Pakistan (2012 PLC (C.S.) 218), *inter alia*, relates to retrenchment scheme of employees of State Bank of Pakistan and grievances arising therefrom. The Apex Court rejected the plea of employees of State Bank of Pakistan who have availed benefit under a Scheme (Voluntary Golden Handshake Scheme). It is held that doctrine of laches is applicable to the employees/respondents (of the reported case) because they could neither demonstrate infringement of any right nor approached the legal forum at a

time when they had a legal and genuine grievance, while observing that once these employees opted to avail benefit under the Scheme after due deliberation, then after six years they cannot start litigation against the organization. Similar is the present case, where admittedly after receiving the above mentioned handsome amount and signing the above document of 'Undertaking cum Indemnity' about receiving the full and final settlement, after passage of so many years, the present petition has been instituted. The entire stance of present Petitioner is misconceived in nature.

*Thirdly*, the reported decisions cited by counsel for Respondent Bank about maintainability of present Petition, is applicable to the facts of present case, because Respondent Bank being a private one, writ of the nature cannot be issued to it. It has been ruled by the Honourable Supreme Court in the case of Muhammad Ashraf (2015 SCMR 911), co-incidentally relating to the present Respondent Bank, that Respondent being a private Bank since having no statutory rules, thus it is not amenable to writ jurisdiction. In this reported case also the issue of pensionary benefits was involved.

8. In view of the above discussion the present petition is devoid of any merit and is dismissed along with the listed applications.

JUDGE

JUDGE