

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-3376 of 2021
(*Ghulam Mustafa Supro v National Bank of Pakistan & others*)

Date _____ Order with signature of Judge _____

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Abdul Mobeen Lakho

Date of hearing and order:- 20.01.2026

Mr. Abdul Sattar Mughal advocate for the petitioner.

Mr. Fahad Akbar advocate for the respondents.

ORDER

Adnan-ul-Karim Memon, J. – The petitioner has filed the captioned Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- a. To hold, declare, and direct that the petitioner is legally and lawfully entitled to receive the provident Fund amount of his own contribution, along with the contribution provided by the Bank and the best profit/interest accrued on the said amount after deducting the amount already paid.*
- b. To hold, declare, and direct that the petitioner is legally and lawfully entitled to receive financial /pensioner benefits on superannuation after counting the entire service of 32 years or the remaining 23 years, and Re-fixation of basic pay according to the total service of 32 years rendered in the Bank.*
- c. To hold, declare and direct that the petitioner, after Re-fixation of his basic pay after counting his entire service of 32 years in the Bank, is legally and lawfully entitled to receive all allowances on the re-fixation of his basic pay after counting his*
- d. entire service of 32 years and also the difference thereof, if any.*
- e. To hold declare and direct that the petitioner is legally and lawfully entitled to receive and recover salaries and all other allowances and benefits for the period from 07.08.2000 to 05.12.2003, Amounting to Rs. 1,375,272/- while reinstated him by the learned FST after setting aside dismissal order dated 07.08.2000, which have not yet been paid without any legal cause, reason or hurdle as Honorably acquittal and exonerated under De Novo Inquiry Report dated 19.02.2004.*
- f. Grant any other relief deemed just and proper in the circumstances.*

2. The case of the Petitioner is that he initially joined the former National Development Finance Corporation (NDFC) as Officer Grade-III on 26-03-1989 and was confirmed as a permanent employee on 25-03-1990. He was promoted to OG-II w.e.f. 01-01-1993 and posted as Branch Manager, NDFC Larkana, where his performance from 1996 to 2000 was repeatedly appreciated by senior management. On 20-07-2000, the Petitioner was issued a show-cause notice on frivolous allegations of lack of supervision, allegedly instigated by union office-bearers. Despite no charge being proved and without reference to any applicable law or rules, the Petitioner was dismissed

from service on 07-08-2000. Aggrieved, the Petitioner filed Service Appeal No. 706(K)/2000 before the Federal Service Tribunal (FST), which was allowed vide judgment dated 01-10-2003. The dismissal order was set aside, and the Petitioner was reinstated w.e.f. 07-08-2000, with directions for a De Novo Inquiry and determination of back benefits. Meanwhile, NDFC was merged into the National Bank of Pakistan (NBP) in 2001, and NBP was made a party to the proceedings. In compliance with the FST judgment, NBP reinstated the Petitioner vide order dated 03-12-2003. The De Novo Inquiry culminated in a report dated 19-02-2004, fully exonerating the Petitioner of all charges. Despite accepting the Inquiry Report, NBP acted maliciously, issued an unwarranted final show-cause notice, and coerced the Petitioner to opt for the severance scheme, which he lawfully refused. Ultimately, on 14-12-2005, the Petitioner was again dismissed on the same unproven allegations. Subsequent litigation before the FST and the Honorable High Court involved jurisdictional complications. Eventually, pursuant to High Court directions and under coercion, the Petitioner filed a mercy appeal, resulting in an order dated 23-09-2011, whereby he was reinstated in NBP service w.e.f. that date. The intervening period from 14-12-2005 to 20-11-2011 was unlawfully treated as extraordinary leave without pay, though counted for pension only, despite the availability of leave and prior exoneration. The Petitioner thereafter served continuously, was promoted to OG-I w.e.f. 01-01-2015, and retired on attaining superannuation on 01-12-2020 after rendering approximately 32 years of total service (NDFC + NBP). However, upon retirement, NBP unlawfully restricted pensionary and provident fund benefits to only 9 years, ignoring the Petitioner's prior service, reinstatement orders, FST judgment, De Novo Inquiry Report, and even its own reinstatement order dated 23-09-2011. Neither the employer's contribution nor profit on the provident fund for NDFC service was paid, and promotion-related benefits were also forfeited without justification. The Petitioner filed departmental appeals dated 13-01-2021 and 01-03-2021, but no response was given. Having exhausted all departmental remedies, the Petitioner has been left with no alternate remedy except to invoke the constitutional jurisdiction of this Honorable Court for the enforcement of his lawful service and pensionary rights. In support of his contention, the learned counsel for the petitioner has relied upon the cases of National Bank of Pakistan v Sindh Labour Appellate Tribunal and others **1990 PLC 593**, National Bank of Pakistan and another v Punjab Labour Appellate Tribunal and others **1993 SCMR 105**, Muhammad

Ilyas Khokhar and others v Federation of Pakistan & others **2006 SCMR 1240**, Muhammad Farooq v Engineering-In-Chief ENC Branch Rawalpindi and another **2012 PLC (C.S) 1335**, Inspector General of Police Punjab v Tariq Mahmood **2015 SCMR 77**, Pakistan Telecommunication Employees & others v Muhammad Arif and others **2015 SCMR 1472** and Tikka Khan & others v Syed Muzafar Hussain Shah **2018 SCMR 332**. He lastly prayed for allowing the instant petition.

3. At the outset, the learned counsel for the Respondents submits that the instant constitutional petition is not maintainable. The NBP (Staff) Service Rules, 1973, which were statutory in nature, have been repealed by the Federal Government pursuant to the decision of the Cabinet Committee, communicated to the Bank vide letter dated 19-05-2021. Consequently, the NBP Staff Service Rules, 2021 have been framed by the Board of Directors under Byelaw 51 of the NBP Byelaws, 2015, which are non-statutory, whereby the Federal Government has delegated authority to the Bank to determine its own personnel policies and service rules. It is further contended that the petition raises disputed questions of fact, which cannot be adjudicated in constitutional jurisdiction under Article 199 of the Constitution. The Petitioner is also alleged to have approached this Hon'ble Court with unclean hands, and having already received his end-of-service benefits, is neither aggrieved nor entitled to invoke constitutional jurisdiction. On merits, it is admitted that the Petitioner was dismissed from NDFC service on 07-08-2000 after issuance of a show-cause notice. His service appeal before the Federal Services Tribunal was allowed vide judgment dated 01-10-2003, whereby the dismissal order was set aside and a De Novo Inquiry was ordered. During this period, NDFC was merged into the National Bank of Pakistan, and the Petitioner was reinstated without prejudice to the outcome of the inquiry and proceedings before the Hon'ble Supreme Court. Following the De Novo Inquiry, the competent authority dismissed the Petitioner again on 14-12-2005. Subsequent litigation before the Federal Services Tribunal and the Hon'ble High Court involved jurisdictional issues, and ultimately, the matter was remanded for appropriate decision. Thereafter, the Petitioner filed a Mercy Appeal, furnished an undertaking on stamp paper, and accepted reinstatement on humanitarian grounds with effect from 21-11-2011. The intervening period was treated as extraordinary leave without pay, counting only for pensionary purposes, subject to the Petitioner's undertaking not to claim seniority, promotion, back benefits, or initiate future litigation against

the Bank. The Respondent's counsel asserts that the Petitioner expressly undertook not to dispute the terms of reinstatement, nor to claim any benefit for the period of unemployment, and waived all claims regarding seniority, promotion, and back benefits. It is further stated that the Petitioner retired on 01-12-2020 upon attaining superannuation and was duly paid all admissible end-service benefits, including provident fund refund, pension commutation, monthly pension, benevolent fund, medical allowance, and final settlement. The Respondents maintain that bank contribution to the provident fund stands discontinued since 1977, the Petitioner is not entitled to any employer contribution. Pensionary benefits, according to Bank policy, are calculated on the last drawn basic salary, and any previous service has no monetary impact on pension fixation. In view of the Petitioner's undertaking and applicable policies, he is not entitled to claim any further benefits. In support of his contention he relied upon the cases of National Bank of Pakistan and other v Zahoor Ahmed Mengal **2021 SCMR 144**, Wali-Ur-Rehman and others v State Life Insurance Corporation and others **2006 SCMR 1079**, Asrar Ahmed and others v Chairman Pakistan Aeronautical Complex Board & others **2023 SCMR 1427**, Sardar Ali Khan v State Bank of Paksitan & others **2022 SCMR 1454**, Ahmed Ali and others v Government of NWFP & others **1998 PLC (C.S) 496** and unreported order in **C.P. No. D-228 of 2022**. Accordingly, the Respondents' counsel submit that the Petitioner has no outstanding dues, the petition is not maintainable, and is liable to be dismissed with costs.

4. After hearing learned counsel for the parties and perusing the record, it is noticed that the core controversy does not pertain to disputed facts, but to the legal consequences flowing from admitted events, prior judgments, reinstatement orders, and the manner in which the Respondent Bank calculated pensionary and retirement benefits.

5. The preliminary objection regarding maintainability is misconceived. It is a settled principle that non-statutory service rules do not oust constitutional jurisdiction where the employer is a statutory body performing public functions and the grievance pertains to violation of lawful rights, past judgments, and arbitrary denial of pensionary benefits. The National Bank of Pakistan, notwithstanding the framing of Staff Service Rules, 2021 under byelaws, remains a public sector entity amenable to constitutional jurisdiction. It is well settled that "Even where service rules are non-statutory, constitutional jurisdiction may be invoked if the action complained of is arbitrary, mala fide, discriminatory, or violative of settled legal rights."

Similarly, Public functionaries cannot evade judicial review merely by characterizing their rules as non-statutory. Accordingly, the objection to maintainability is overruled.

6. It is an admitted fact that the Federal Service Tribunal vide judgment dated 01-10-2003 set aside the dismissal order dated 07-08-2000, and ordered reinstatement w.e.f. the date of dismissal, and directed a De Novo Inquiry with determination of back benefits. The De Novo Inquiry fully exonerated the Petitioner vide report dated 19-02-2004. Once an employee stands exonerated, the stigma of dismissal is obliterated, and the employee is entitled to continuity of service unless lawfully curtailed. It is well settled that when an order of dismissal is set aside, the legal effect is that it never existed, and the employee stands restored to the position as if no such order was ever passed.

7. NBP's subsequent dismissal on the same unproven allegations, despite exoneration, was therefore void, coram non judice, and without lawful authority. The Respondents heavily rely upon the undertaking furnished with the mercy appeal. However, such reliance is legally untenable. It is well-settled that Fundamental and vested service rights cannot be waived under coercion, and an undertaking extracted as a condition for reinstatement cannot override statutory rights or prior judicial determinations. It is well settled that An undertaking obtained under economic duress or unequal bargaining power does not bar an employee from claiming lawful service benefits. Likewise, Consent obtained under compulsion or necessity has no legal sanctity." The record itself reflects that the Petitioner was compelled to accept reinstatement after years of litigation, rendering the undertaking non-voluntary and unenforceable to the extent it extinguishes accrued service rights.

8. The Respondents' assertion that previous service has "no monetary impact" is contrary to the law. Pension is not a bounty, but a vested right, earned by length of qualifying service. Primarily, pension is a right attached to service rendered and cannot be denied through executive fiat. Further, once continuity of service is restored, all consequential benefits, including pension, must follow."

9. The Petitioner's service from 1989 to 2020, including periods covered by reinstatement orders and exoneration, constitutes qualifying service, and its exclusion is arbitrary, discriminatory, and violative of Articles 4, 9, 14, and 25 of the Constitution.

10. The Respondents' plea regarding discontinuation of employer contribution since 1977 cannot override the Petitioner's accrued rights during NDFC service, and the obligation to account for lawfully earned contributions and profit thereon, particularly where service continuity stands restored by judicial orders. It is well settled accrued financial rights cannot be taken away retrospectively.

11. The plea of "unclean hands" is unsupported by any concealment or misrepresentation. Conversely, the record shows persistent litigation caused by the Respondents' repeated unlawful actions. Denial of pensionary benefits for over 23 years of service itself constitutes a continuing cause of action.

12. In view of the above discussion, the petition is maintainable. The Respondents' actions restricting pensionary and provident fund benefits to 9 years are illegal, arbitrary, and without lawful authority. The Federal Service Tribunal judgment, De Novo Inquiry Report, and reinstatement orders restore continuity of service. The undertaking obtained on mercy appeal does not bar enforcement of vested service and pensionary rights. The Petitioner is legally entitled to re-fixation of pension and retirement benefits after counting his entire qualifying service and to payment of consequential financial benefits.

13. Accordingly, the impugned actions are set aside, and the Respondents are under a legal obligation to recalculate and release all lawful retirement and pensionary benefits in accordance with law.

14. The aforesaid exercise shall be undertaken within one month. The petition stands disposed of in the above terms.

JU DGE

JUDGE