

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

High Court Appeal Nos.74 and 75 of 2010

Date

Order with signature of Judge

Present

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Abdul Maalik Gaddi

High Court Appeal No.74 of 2010

M/s. Industrial Development Bank
of Pakistan.....Appellant

Vs.

Agha Saiyed Khursheed Alam Shah.....Respondent

High Court Appeal No.75 of 2010

M/s. Industrial Development Bank
of Pakistan.....Appellant

Vs.

Nisar Ahmed Akhoond.....Respondent

Dates of hearing: 07.11.2016 & 22.11.2016

Mr.Manzoor Hameed Arain, Advocate for the
Appellants.

Ms.Umaima Khan, Advocate for the Respondents.

Muhammad Ali Mazhar, J: These High Court Appeals have been directed against the judgment and decree passed by the learned single judge of this court original side on 08.03.2010 in Civil Suit No.1199/2006 [*Agha Saied Khursheed Alam Shah versus Industrial Development Bank of Pakistan (judgment is impugned in H.C.A. No.74/2010)*] and Civil Suit No.1221/2006 [*Nisar Ahmed Akhoond versus*

Industrial Development Bank of Pakistan (judgment is impugned in H.C.A. No.75/2010). Both the plaintiffs in their separate suits raised the common question of law and facts. Indeed they prayed for the declaration that they are entitled for all the benefits under the Golden Handshake Scheme announced by the defendant with the benefit of merger of Adhoc Relief vide Circular No.444/1999 dated 15.04.1999. They also sought the directions to recalculate the amount payable to them on account of the Golden Handshake Scheme after merging the effect of Adhoc Relief in line with the calculation make up by the plaintiffs and attached as Annexure P/26 in Suit No.1199/2006 and Annexure P/27 Suit No.1221/2006.

2. The ephemeral facts of the lawsuits are that the respondents in both appeals are the ex-employees of appellant, which is a statutory corporation, constituted under the provisions of Industrial Development Bank Ordinance, 1961. The appellant vide Office Staff Circular No.435/1997 dated 03.11.1997 announced voluntary "Golden Handshake Scheme" (GHS) and invited the options from the employees of all cadres. The respondents accepted the option. However the appellants vide Circular No.439/1998 dated 02.01.1998 made some occasional changes in the benefits announced earlier by means of which the commutation amount was reduced to 50%. The employees who completed 25 years' service or more were also allowed monthly pension as per normal retirement benefits. The respondents had also availed the said modified scheme vide their separate letters of option dated 09.01.1998 and 03.01.1998. Although the appellant accepted the option of G.H.S but appellant's management persuaded the respondents to continue their service in view of exigency and also issued letter on 21.08.1998 to the

respondent Agha S.K.Alam Shah (HCA.NO.74/2010) and the letter dated 30.10.1998 to the respondent Nisar Ahmed Akhund (H.C.A No.75/2010). Vide letter dated 30.10.1998, the appellant assured the respondent Nisar Ahmed Akhoond to retire him under GHS on 30.06.1999 but he was relieved on 30.04.1999 while the respondent Agha Saiyed Khursheed Alam requested the Bank to relieve him from service with immediate effect in pursuance of Bank's assurance made in its letter dated 21.08.1998 but the appellant released him 23.04.1999. Admittedly, both the respondents opted GHS but despite accepting their option they were not released by the appellant and they were asked to continue their services due to exigency. When they were released the benefit of adhoc relief was not added in their full and final settlement dues therefore both the respondents filed separate suits with the prayer that they are entitled for all the benefits under the Golden Handshake Scheme announced by the Defendant vide Staff Circular No.435/1997 dated 03.11.1997 and 439/1998 dated 02.01.1998 as well as the benefit of merger of Adhoc Relief with pay and allowance vide Circular No.444/1999 dated 15.04.1999 and/or other incidental reliefs which have been accrued until their retirement.

3. The learned single judge (O.S) had framed the following issues:

“1.Whether the suit is maintainable according to law?

2.Whether the retiring benefits have been incorrectly calculated by the defendants, if yes what is the correct calculation of the same?

3. Whether the plaintiff is entitled to any relief?

4. What should the decree be?

On 06.02.2009 by consent one more issue was added as Issue No.3 (a) as under:

Whether the plaintiff is entitled for the merger of adhoc relief with pay and allowances and revision of pay scale granted before his retirement/release from his service”.

4. The learned single judge recorded the evidence of the parties and decreed the suit in terms of prayer clause (a) and (b) and by dint of which both the respondents have become entitled to all benefits under the Golden Handshake Scheme announced vide Staff Circular No.435/1997 dated 03.11.1997 and 439/1998 dated 02.01.1998 as well as the benefit of merger of Adhoc Relief with pay and allowance vide Circular No.444/1999 dated 15.04.1999. The appellant was also directed by the learned single judge of this court to recalculate the entire amount payable on account of Golden Handshake Scheme after revising the Pay Scale by merging the Adhoc Relief with Salary and allowances accordingly.

5. The learned counsel for the appellant argued that the learned single judge failed to appreciate and scrutinize the documents and evidence in its true perspective. The court failed to consider that Adhoc Relief was not admissible for the purpose of benefits under the Golden Handshake Scheme announced by the appellants. The Circular bearing No.444/1999 dated 15th April, 1999 was not applicable to the respondents. The respondents were relieved from the service under the GHS a day before the date of superannuation and admissible payments were made to both the respondents on their retirement under Golden Handshake Scheme in full and final satisfaction of their claim. It was further averred that the learned single judge misconstrued the letter dated 16.04.1999 which was meant for those employees who were in service and had not opted G.H.S. He further argued that entire amount was paid in accordance with the understanding reached with the appellants/Bank under the scheme. The respondents were

relieved from the service prior to the date of superannuation at their own request and appellants/Bank fulfilled all obligations and made all payments admissible to the respondents/plaintiffs. It was further averred that respondents were only entitled for the prospective commutation of pension of basic pay which they were drawing at the time of their retirement wherein Adhoc Relief was not adjusted/merged. We have also noticed some additional grounds raised in the memo of appeal with regard to non-tendering the Notice under Section 80 of C.P.C and alleged misjoinder and nonjoinder. The learned counsel for the appellant in support of his argument referred to **2011 SCMR 446 (National Bank of Pakistan vs. Nasim Arif Abbasi & others)**.

6. The learned counsel for the respondents argued that most of the grounds taken in the memo of appeal are whimsical and misconceived. The Circular No.439/1998 dated 02.01.1998 was introduced to make only one change/amendment in the Golden Hand Shake Scheme announced by Circular No.435/1997 dated 03.11.1997 that the benefit of Commutation of pension was reduced from 100% to 50%. The payment of the dues of the respondents were calculated without merging the Adhoc Relief and Revision of Scale of Pay & Allowances granted during the interim period and before final release of the respondents. The claim of the respondents is based on understanding as well as the vested right created under the Golden Hand Shake Scheme. She further argued that the respondents are entitled for all benefits and advantages announced before their final release and they cannot be deprived of any such benefit under any unilateral conditions. The respondents successfully established their claim in the suits through documentary as well as oral evidence and the learned single

judge passed well-reasoned judgment with proper application of mind. The court also strenuously and carefully scrutinized the evidence and discussed all the issues in judicious manner. The learned counsel for the respondents in support of her contention referred to **2001 SCMR 884 (Abdul Qadir Ismail vs. State Bank of Pakistan & others), unreported judgment of apex in Civil Petition No.350/2003 (National Bank of Pakistan vs. Siddique Akbar), unreported judgment rendered by the apex court in Civil Review Petition No.169/2003 (National Bank of Pakistan vs. Siddique Akbar).**

7. The bone of contention or sticking point more exactly is the letter of Human Resources Department issued to the Respondents then the Staff Circular No. 440 of 1998 dated 03.05.1998 and Staff Circular No. 444 of 1999 dated 15.04.1999. For the ease of reference, the aforesaid letter and Staff Circulars are reproduced as under:-

1. Letter Issued to the respondents:

“(HUMAN RESOURCES & ESTT. DEPTT.)

NO.HR&ED/HO/STAFF/98/225

August 21, 1998

**Agha S.K. Alam Shah,
Vice President,
Law Department,
IDBP, Head Office,
Karachi**

SUB: VOLUNTARY GOLDEN HANDSHAKE SCHEME

Dear Sir,

With reference to your option for availing Golden Handshake Scheme as contained in Head Office, Staff Circular No.435/97 dated 3rd November, 1997 as amended vide Circular No.439/98 dated 2nd January, 1998 and the subsequent discussions held with you we have to advise you as under:-

That in view of the exigencies of service it is not possible at present for the Bank to relieve you. However, Bank hereby agrees and undertakes that all amounts and facilities admissible under the Golden Handshake Scheme and severance benefits deemed to be your

entitlement (prevailing on the date on which you had intimated the option to take the Golden Handshake) such as computation of pension at the time of your request for Golden Handshake Scheme, encashment of earned leave in balance, encashment of medical allowance, reward and all other benefits accruing as per above referred scheme OR revised benefits accruing/admissible under the normal service regulations i.e., without Golden Handshake, whichever is higher shall be allowed to you at the time when Bank relieves/retires you. For Golden Handshake Scheme purposes, you will be relieved before the date of your retirement even if it is one day before the actual date of retirement.

The arrangement set-forth in this letter will remain in full force and effective, unless it is expressly superseded by mutual agreement in writing between you and the Bank.

This letter is being issued to you in duplicate. You are advised to please date and sign the duplicate copy in token of your acceptance of the arrangement set-forth above and return the duplicate copy to HR&ED., Head Office.

Yours faithfully,

Sd/-
(WAJID ALI KHAN)
DEPUTY MANAGING DIRECTOR”

[Since the language of the letter is same in the case of both the respondents therefore, the letter issued to Agha S.K.Alam Shah has been reproduced only]

2. Staff Circular for Adhoc Relief

“INDUSTRIAL DEVELOPMENT BANK OF PAKISTAN
HEAD OFFICE, KARACHI
(HUMAN RESOURCES & ESTT. DEPTT.)

No.HR&ED/HO/1206/98

May 13, 1998

STAFF CIRCULAR NO.440/98

Sub: GRANT OF ADHOC RELIEF TO THE IDBP EMPLOYEES

In order to provide relief to the employees of the Bank against the erosion of real earnings due to inflation since 1993, when the salaries were last revised, the Bank's Board of Directors at their meeting held on 28th April, 1998 has allowed Adhoc Relief effective May 01, 1998 at the following rates:-

- | | |
|--------------------------------------|-----------------------|
| 1) Officers & Executive | 100% of the Basic Pay |
| 2) Clerical & Non-Clerical Employees | 120% of the Basic Pay |

The aforesaid Adhoc Relief has been allowed subject to following conditions:-

- The Adhoc Relief will be admissible to the permanent employees of the Bank and will be adjusted/consolidated against the revised salary structure, as and when announced.
- The employees whose options under the Golden Handshake Scheme have been accepted and the acceptance/relieving letters have been issued to them pursuant to which they have been relieved from the service of the Bank on or before the effective date of this Adhoc Relief, will not be entitled for this relief. [Emphasis added]
- Adhoc Relief will not be admissible for the purpose of benefits under the Golden Handshake Scheme announced by the Bank.
- The employees against whom disciplinary action is pending will not be entitled to receive the adhoc relief till such time they are exonerated.
- Those employees who are unauthorizedly absent or are on extra ordinary leave without pay will be eligible for the increase from the date they report back for the duty.

The performance of officers/staff will be closely monitored and the employees will have to show good performance to receive the adhoc relief.

Sd/-

(MASOOD A. TARIQ)
SENIOR VICE PRESIDENT"

3. Staff Circular for merger of Adhoc Relief

“INDUSTRIAL DEVELOPMENT BANK OF PAKISTAN
HEAD OFFICE, KARACHI

(HUMAN RESOURCES & ESTABLISHMENT DEPARTMENT)

No.HR&ED/HO/STAFF

Dated 15.04.1999

HEAD OFFICE STAFF CIRCULAR NO.444/99

RE: MERGER OF ADHOC RELIEF WITH PAY &
ALLOWANCE

The Board of Directors at its meeting held on 9th April, 1999 has been pleased to adjust the adhoc relief by merging the same with pay and allowances of Executives, Officers and staff of the Bank with effect from 1st April, 1999. Accordingly, pay of the employees is being fixed in the revised pay scales and will be advised to all concerned.

The benefit of adjustment/merger of adhoc relief with basic pay will not be admissible to those employees who have opted for Golden Hand Shake Scheme and have not

so far been relieved from the service of the Bank.
[Emphasis added]

In case the Regional Offices/Branches come across with any anomaly or error during the course of re-fixation of pay in the revised pay scales or if there are any points which are not clear, the same should immediately be referred to Human Resource and Establishment Department, Head Office, Karachi for clarifications.

Sd/-
(AMIRULLAH SYED)
VICE PRESIDENT"

8. In terms of Order 41, Rule 31 CPC, the sole point for determination in the present appeals is as under:

“whether the respondents are entitled for the payment of adhoc relief according to the Staff Circular No.440/1998 made effective from 01.05.1998 and whether this right could be annulled or rescinded unilaterally by means of Staff Circular No.444/1999 dated 15.04.1999 regardless of discernable understanding/covenant with the respondents to continue their services in order to meet the exigencies notwithstanding of availing GHS option?”

9. In our understanding, the matter was altogether based on the documentary evidence rather than the oral evidence. The suits being short cause could have disposed of by means of admitted documents available on record. However, the parties opted to continue the suits as a long cause and the learned Single Judge framed various issues and also allowed equal opportunity to the parties to lead evidence and ultimately the suits were decreed. The option of availing Golden Hand Shake Scheme by the Respondents was never remained in wrangle or altercation but the core and fundamental area under discussion was regardless of availing the option of Golden Hand Shake Scheme the Respondents were not relieved of their duties but the management retained both the Respondents due to exigency and at that moment in time it was not conceivable or

feasible for the appellant to relieve the respondents. While keeping hold of the respondents over and above the cutoff or severance date, the appellant undertook that all amount and facilities admissible under the Golden Hand Shake Scheme and severance benefits shall be paid to the respondents prevailing on the date on which they had intimated the option such as computation of pension, encashment of earned leave would be rewarded and other benefits admissible under the normal service regulation with Golden Hand Shake whichever is higher shall be allowed to the respondents at the time when the appellant will relieve and retire the respondents. In the same letter, a supplementary stipulation was assimilated that the arrangement set-forth in this letter will remain in full force and effective, unless it is expressly superseded by mutual agreement in writing. The language of this letter unequivocally demonstrates that the respondents though accepted and availed the option of Golden Hand Shake Scheme but it was the appellant which retained them to continue their services in order to meet some exigencies with unconditional reassurance that the arrangement of retaining them after cutoff date will not be changed or superseded except by mutual agreement in writing. What we comprehend that the benefits of the Golden Hand Shake Scheme were made admissible to the respondents with other benefits admissible to other employees whichever is higher at the time when the appellant will retire the respondents. The appellant announced the adhoc relief vide Staff Circular No. 440 of 1998 dated 13.05.1998. According to this adhoc relief, the basic pay of the officers and executive was raised up to 100% and 120% increase was allowed in the basic pay of clerical and non-clerical employees. This relief was subject to the adjustment/consolidation against the revised salary structure as and when announced. One more

condition was attached to this office circular that the employees whose option under Golden Hand Shake Scheme have been accepted and the acceptance/relieving letters have been issued to them pursuant to which they have been relieved from the service of the bank on or before the effective date of this ad hoc relief will not be entitled for the said relief. Fact remains, both the respondents were conveyed explicit understanding that all amount and facilities admissible under Golden Hand Shake Scheme and all other benefits accruing/admissible in the normal service regulation with Golden Hand Shake whichever is higher shall be paid to them at the time when bank will relieve the respondents.

10. Nevertheless another Office Circular No. 444 of 1999 was issued on 15.04.1999 with reference to the merger of adhoc relief with pay and allowances with effect from 01.04.1999 with the qualification and rider that the benefit of adjustment/merger of adhoc relief with basic pay will not be admissible to those employees who have opted Golden Hand Shake Scheme and have not so far been relieved from the service of the Bank. This Circular made effective from 01.04.1999 while respondent Khursheed Alam was relieved on 23.04.1999 whereas Nisar Ahmed Akhund was relieved on 30.04.1999. Indeed this Circular raised up the dispute and turn out to be an instrumental of preventing accurate calculation of full and final settlement dues of the respondents when they were relieved from service. One more rudimentary facet cannot be overlooked that the conditions laid down in the letter issued to respondents on 21.08.1998 could not be modified unilaterally at least in the case of present respondents which is somewhat obvious on account of laid down conditions that the arrangement will remain in full force and effective unless it is expressly superseded by mutual agreement in writing. In this special

arrangement/agreement certain assurance were given so the appellant cannot break a promise or resile unilaterally rather than they are obligated to remain faithful to the terms and conditions on which the respondents were retained in job.

11. The GHS is also an agreement where an offer was given by the management, the offer was accepted against some consideration as in this case offer was accepted by the respondents but by separate letter with some assurances and safeguard the management asked them to continue so it was genus of innovation of contract as on the one hand the general terms and conditions of Golden Hand Shake Scheme were available to all including respondents but when they submitted their option like other employees, the respondents were called upon to continue. Novation is an act of either replacing an obligation to perform with another obligation; or adding an obligation to perform; or replacing a party to an agreement with a new party so in our view retaining the respondents for further period through separate letters to continue seems to have been added obligations to perform over and above the cutoff date.

12. Learned counsel for the appellant referred to the case of **2011 SCMR 446(National Bank of Pakistan vs. Nasim Arif Abbasi & others)** in which apex court held as under:-

“12. Correct, that a 2-Member Bench of this Court in Siddique Akbar's case directed the appellant-Bank to calculate the retirement benefits of the employees up to the date when they were actually relieved from service and review petition against the said order was also dismissed, but it is noteworthy that in the said case, only leave was declined and no binding law in terms of Article 189 of the Constitution was laid down. On the other hand, this Court in the cases of S.M. Tanveer Nusrat v. National Bank of Pakistan (CPLA No. 2461-L of 2002), Rana Abdul Ghafoor v. President, National Bank of Pakistan. (C.P.L.A. No. 3378-L of 2001) and Naseem Arif Abbasi v. National Bank of Pakistan (C.P.L.A. No. 1028-K

of 2001) held that after having executed discharge and no demand certificate the employees were not entitled to prefer any further claim against the Bank. It is noteworthy that the judgment in S.M. Tanveer Nusrat (supra) was rendered by a 3-Member Bench while the judgments/orders granting relief to the employees were rendered by 2-Member Benches. The 3-Member Bench, in Para 3 of the judgment, held as under:--

"The petitioner being entitled to monetary benefit from the cut-off date, i.e. 31-10-1997 would not be entitled to claim such benefit from 5-12-1998 considering that he himself stated that he would have no further claim against the respondent whatsoever financial or otherwise. The petitioner before the Tribunal has also accepted the judgment pronounced earlier as mentioned in the impugned judgment, therefore, he could not be permitted to approbate and reprobate."

The said 3-Member Bench judgment was prior in time but was not referred to in any of the subsequent judgments. It is well-settled that in case of conflict between judgments of Supreme Court, the judgment of larger Bench prevails. If any authority is needed, reference may be made to *Atta Ullah v. Mst. Surraya Parveen* (2006 SCMR 1637), *Sardar Muhammad Nawaz v. Firdous Begum* (2008 SCMR 404), *Chairman, State Life Insurance Corporation v. Hamayun Irfan* (2010 SCMR 1495), etc. Even otherwise, the learned Division Bench of the High Court of Sindh in the impugned judgment misread the judgment of this Court in *Khyber Zaman's* case (supra). In the said case, the respondents had opted for GHS floated by the appellant-State Bank on 23-10-1997 and on acceptance thereof, they were relieved from service on 15-12-1997. On 7-11-2000, the Bank issued Circular No.20 whereby the employees were allowed increased monthly grant under the State Bank of Pakistan Employees Benevolent Fund Scheme. The respondents who had retired with effect from 15-12-1997 after exercising option under the GHS requested the Bank to pay them the benefits of increased Benevolent Fund Grant (BFG) as admissible under Circular No.20. It was held that Circular No.20 could not be given retrospective effect, which could be invoked only by those employees who were entitled to get such BFG on 1-9-2000 when admittedly the respondents were not in service and stood retired w.e.f. 15-12-1997. It was further held that once the option was exercised by the employees of the State Bank under the GHS, they would have no concern whatsoever with the subsequent changes and amendments in the policy/rule qua BFG, especially after 15-12-1997, i.e. the date of their retirement. The respondents should not have exercised their option for GHS if they were interested in getting BFG for fifteen years. The respondents had not only exercised the option but had also received the amount as well without any protest worth the name. In such

circumstances, the ratio of the judgments of this Court in Hameed Akhtar Niazi and Tarachand (supra) would also not be applicable in the instant cases, which are to be decided on the basis of their own facts and circumstances.”

13. Why the dictum laid down supra is distinguishable in our outlook to the facts and circumstances of this case? In the case in hand both the respondents were issued letters containing various terms and conditions to continue their service in exigency and certain assurance were given to them for some benefits over and above the Golden Hand Shake Scheme or whichever is higher. The apex court held that the High Court in the impugned judgment misread the judgment of Khyber Zaman's case (supra) in which the respondents had opted GHS on 23-10-1997 and on acceptance thereof, they were relieved from service on 15-12-1997. On 7-11-2000, the Bank issued Circular No.20 whereby the employees were allowed raise in the monthly grant under the State Bank of Pakistan Employees Benevolent Fund Scheme. The respondents who had retired with effect from 15-12-1997 after exercising the option under the GHS requested the Bank to pay them the benefits of increased Benevolent Fund Grant (BFG) as admissible under Circular No.20. So it was held that Circular No.20 could not be given retrospective effect, which could be invoked only by those employees who were entitled to get such BFG on 1-9-2000 when admittedly the respondents were not in service and stood retired w.e.f. 15-12-1997. However in the instant case the matter is not merely confined to the GHS and its acceptance/payment but this case has been built up on explicit undertaking and assurance given to the respondents.

14. The learned counsel for the respondents referred to following judicial precedents:

1. 2001 SCMR 884 (Abdul Qadir Ismail vs. State Bank of Pakistan & others). Exercise of option by the employees in favour of the Scheme was accepted by the Competent Authority and by virtue of the said acceptance the employees were directed to be relieved from service with effect from the close of business on 15-12-1997---Bank had informed all its employees that the Central Board of the Bank in its meeting held on 22-10-1997 had approved a revised salary package for its employees effective from 1-12-1997 in respect of specified scales---Policy of revised salary of each employee was fixed in the new scales on the basis of his/her respective position in the present scale in accordance with the approved formula---All the aggrieved employees were in the employment of the Bank on 1-12-1997 when the revised salary structure became effective notwithstanding the fact that they had earlier opted for Golden Handshake Scheme and the same was accepted by the Bank on 3-12-1979---All the aggrieved employees were paid the revised salary for the period 1-12-1997 to 15-12-1997 i.e. up to the date when they were relieved from the service under Golden Handshake Scheme---Supreme Court, converted the petitions for leave to appeal and disposed of the same by modifying the impugned judgment of the Service Tribunal to the extent that pension admissible to the employees shall be calculated after bringing same to bear upon such calculation the number of days spent by them in service after their Volition to abide by Voluntary Golden Handshake Scheme i.e. that all the pensionary benefits shall be calculated by taking into account the period between 1-12-1997 to 15-12-1997.

2. Unreported judgment of apex in Civil Petition No.350/2003 (National Bank of Pakistan vs. Siddique Akbar). The hon'ble Supreme Court referred to the order passed by its full bench in Crl.Orig Petitions No.46/2001 etc. and also quoted relevant portion of it and relying upon the observations made therein held as follows:

“...As evident from the preceding paragraphs, the appellant had opted for G.H.S.S. on 13.10.1997, he was not relieved of his duties earlier than 31.5.2000, benefits under the said scheme were finalized by the respondent bank vide their letter dated 20.9.2000 and the amount was paid to him as per respondent bank's clearance certificate dated 9.10.2000. Thus the appellant will be deemed to be in service up to 31.5.2000 the date when he was actually relieved from the service of the respondent and would be entitled to the financial benefits which became available to other employees of the bank by that date.”

3. Unreported judgment rendered by apex court in Civil Review Petition No.169/2003 (National Bank of Pakistan vs. Siddique Akbar). The hon'ble Supreme Court held that the only point to be considered is whether pensionary benefits were to be given from the date an

employee opted for the Golden Handshake Scheme or from the date he was relieved from duty. The petitioners had floated above scheme for which the respondent opted on 13.10.1997, but he was relieved from his duties on 31.5.2000. Learned counsel for the petitioners contends that the benefits shall be calculated from the date the respondent opted for such scheme. In various cases, including Khyber Zaman vs. Governor, State Bank of Pakistan (PLJ 2004 SC 839), this Court has laid down a rule that the employees shall be paid financial benefits till they were actually relieved from service. In this case, admittedly the respondent was relieved on 31.5.2000. It being so, the claim of the respondent for pensionary benefits up to just above date, is justified. This point has been discussed elaborately in the judgment under review. Nothing substantial has been brought on record to take a contrary view.”

15. In the case of Abdul Qadir Ismail (supra), the aggrieved employees were paid the revised salary up to the date when they were relieved from service under Golden Hand Shake Scheme, the Apex Court converted the petition for leave to appeal and disposed of the same by modifying the judgment of the Service Tribunal to the extent that pension admissible to the employees shall be calculated after bringing the same to bear upon such calculation the number of days spent by them in service after their volition to abide by voluntary Golden Hand Shake Scheme i.e. when all pensionary benefits shall be calculated by taking into account the period between 01.12.1997 to 15.12.1997. In an unreported judgment in **Civil Petition No. 350 of 2003, “National Bank of Pakistan Vs. Siddique Akbar”**, the Apex Court quoted the relevant portion of the order passed by its full bench in Criminal Original Petition No. 46 of 2001 in which the court held that the appellant opted G.H.S.S on 13.10.1999 but he was not relieved from his duties therefore, it was held that the appellant will be deemed to be in service up to 31.02.2000 the date when he was relieved from the service of the Respondent and would be entitled to the financial benefits which became available to other employees of the bank by that date. While in the unreported

judgment in **Civil Review Petition No. 169 of 2003** “**National Bank of Pakistan Vs. Siddique Akbar**” (supra) the Apex Court dilated upon the question as to whether pensionary benefits were to be given from the date when the employee opted for Golden Hand Shake Scheme or from the date he was relieved from duty. The Apex Court while reiterating its earlier view in the case of Khyber Zaman held that the employee shall be paid pensionary benefits till they were actually relieved from service.

16. So far as the grounds raised vis-à-vis Section 80 of C.P.C, we are not persuaded as being a statutory corporation having perpetual succession, the appellant may be sued without following the rigors and exactitudes of Section 80 C.P.C, which has no application in our view and this point was already dealt with by the trial court properly. Even though non-tendering the notice is not fatal to the suit except that in such situation court shall allow not less than three months to submit the written statement. So far as plea of misjoinder or nonjoinder of parties is concerned, nothing was argued to demonstrate any defect nor do we on our own motion feel any defect in the suit on this account where the employer was rightly sued. We have noticed from the impugned judgment that before filing the suit the matter was pending in FST but the appeals were abated by the apex court on 27.6.2006 which was communicated by the Assistant Registrar FST vide letter dated 30.6.2006 thereafter the suit was filed in this court therefore we also feel no issue of limitation though raised in written statement. We have also gone through the evidence recorded by the learned Single Judge in the suit but there is nothing in the evidence or the cross-examination which may suffice to decline the benefit of adhoc relief to the respondents. There is no denial of the option availed by the respondents

with regard to Golden Hand Shake Scheme nor there was any dispute that they were not asked to continue their service despite acceptance of their option nor there was any controversy that the adhoc relief was not announced or in view of last circular, the respondents were deprived of the adhoc relief. There was also no disagreement that the benefit of adhoc relief was not included in the full and final settlement dues of the respondents for which claim they filed the suit and their suits were decreed. We have also scanned the impugned judgment and in our considerate vision and evaluation, the learned single judge dealt with all issues and rightly decreed the suits in terms of prayer clause (a) and (b) of the plaint therefore the impugned judgment does not call for any interference. At this juncture we would like to denote the order dated 2.12.2010 passed by learned division bench at the time of admission of these appeals to regular hearing which divulges that the appellant was directed to deposit decretal amount with the Nazir of this court with further observations that in case appeal fails, the appellant bank shall pay the amount as may be adjudicated together with prevailing mark-up at the rate specified by the State Bank of Pakistan therefore in our point of view the respondents are also entitled for the payment of mark-up from the date of decree and we order the appellants to pay it accordingly.

17. The appeals were dismissed vide our short order dated 22.11.2016 and these are the reasons of our short order.

Karachi:-
Dated.17.2.2017

Judge

Judge