

## IN THE HIGH COURT OF SINDH AT KARACHI

**Present:**

Mr. Justice Syed Hassan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

**C.P No.D-5608 of 2014**

Mansoor-ul-Haq Solangi .....Petitioner

Versus

Federation of Pakistan and others.....Respondents

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**Date of hearings: 15.12.2017, 15.01.2018 & 05.03.2018**

Mr. Imtiaz Mansoor Solangi, Advocate along with Petitioner.  
Syed Ahmed Ali Tariq, Advocate for the Respondent No.2 along  
with Zahid-ur-Rehman Mughal, the Company Secretary.  
Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

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## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-**Through the instant Petition, the  
Petitioner has sought following relief(s).

- i) Declare that the Petitioner is liable to receive entire arrears of salaries and allowances w.e.f 30.06.1986 to 12.01.1993 of the post of Senior Manager/Deputy General Manager grade E.V with 22% interest and markup allowed by the Learned Tribunal in its judgment dated 05.10.2000 and merged into the judgment of the Hon'ble Supreme Court Pakistan reported as 2004 SCMR 1308.***
- ii) Declare that the Petitioner having been reinstated into service w.e.f 13.1.1993 by the Hon'ble Supreme Court of Pakistan is liable to be assigned proper seniority and status over and above Mr. Ghulam Sarwar Baloch, Col. Retried Akbar Hussain, Abdul Bari Khan, Naseem-ul-Haq Satti and Shahid Zubair***

**Managing Director/Chairman of the Respondent No.2 in terms of the proforma promotions w.e.f. 1990, the date the said persons were promoted in grade D-III as General Manager and as Managing Directors/Chairman D-1: and order for the payment of all the arrears of salaries monetary/consequential benefits in pursuance of the judgment dated 05.10.2000 of the tribunal and merged into the judgment of the Hon'ble Supreme Court of Pakistan reported supra.**

- iii) Declare that the Petitioner is fit for regular and substantive promotion of Grade D-1 on the basis of his fitness; eligibility and number one seniority and the length of service; including his qualification as M.A, LL.B and High Caliber experience and knowledge at the Bar as an Advocate of the High Court.**
- iv) Declare that the Respondent No.2 is bound to pay to the petitioner at once the Provident Fund, gratuity w.e.f. 15.10.1970 and other retiring service benefits and golden hand shake and all other reliefs and facilities that were given to its other employees of the respondents w.e.f 30.06.1986 as of his fundamental right in pursuance of 1991 SCMR 1041 and in pursuance of their rules and regulations and under Article 25 (1) of the Constitution of the Islamic Republic of Pakistan 1973.**
- v) Declare that the Petitioner is entitled to receive the entire salaries and allowances w.e.f. 13.01.1993 to 21.12.2005 with proper pay fixation as per his seniority ad status with 22% interest and markup on all the accrued benefits as of his fundamental rights at once.**
- vi) Declare that the application dated 18.01.2005 duly supported by an Affidavit of the petitioner addressed to the respondents has attained finality for the purpose of the genuine of the claims of the petitioner and immediate payment to him with 22% interest and markup on his entire claims through.**

2. Brief facts of the case as per pleadings of the parties are that the Petitioner was an employee of Pakistan Industrial Development Corporation Limited (P.I.D.C) and served in its unit namely, Harnai Woolen Mills limited, from where his services were requisitioned, in the year 1986 to Pakistan Automobile Corporation Company

Limited (PACO)/Respondent No.2.The P.I.D.C in its letter dated 23.6.1986 relieving the Petitioner mentioned that the Petitioner will have no lien with them, which would be maintained by the Respondent No.2, where he was permanently absorbed. However, M/s Naya Dur Motors (Pvt) Ltd terminated the service of the Petitioner on 26.09.1995, and the petitioner impugned this termination letter by filing a Service Appeal No. 773(K) of 1998 before the learned Federal Service Tribunal (FST). The FST vide its Judgment dated 06.10.2000 allowed the Appeal of the Petitioner and directed the Respondent No.2 to reinstate him in service with full back benefits and on 11.10.2000 the Petitioner reported to the Respondent No. 2, and in the meanwhile the Respondent No.2 challenged the Judgment of the FST before the Hon'ble Supreme Court, which vide its Judgment dated 06.05.2004, reported as Pakistan Automobile Corporation Company Vs. Mansoor-ul-Haque and 2 others (2004 SCMR 1308), partly allowed the Appeal. Pursuant to the aforesaid judgment dated 06.05.2004, Petitioner submitted his joining report on 20.5.2004 in the department and claimed arrears of pay and allowances and ancillary benefits vide letters dated 18.1.2005 and 19.5.2005.ThePetitioner has averred that his practice license as an advocate of High Court was suspended by Sindh Bar Council vide letter dated 08.01.2005, having joined the service of Respondent No.2. Petitioner being aggrieved by and dissatisfied with the inaction of Respondent No.2 filed C.P. No.D-688 of 2005 before this Court on 18.6.2005. However on 13.11.2006, the Petitioner filed an application under Section 151 CPC along with certified copy of Misc. Application No. 125 of 2006 filed on 01.03.2006 in his disposed of Service

Appeal No. 773(K) of 1998 before the Federal Service Tribunal, in C.P. No.D-688 of 2005 before this Court, which was converted by this Court into a separate Constitution Petition No.D-315 of 2007. However, in the intervening period, the Petitioner retired on attaining the age of superannuation on 21.12.2005. Both these Petitions were heard by learned Division Bench of this Court and same were dismissed vide a common Judgment dated 01.11.2011. The Petitioner filed two separate Civil Petitions No. 20-K and 22-K of 2012 before the Hon'ble Supreme Court against above cited common Judgment dated 01.11.2011. Besides, in the month of September 2006, the Petitioner filed a Civil Suit No. 1166 of 2007 before the learned Single Judge of this Court against the Respondent No. 2 and others for recovery and damages in the sum of Rs. 1017 Million. During proceedings before the Honorable Supreme Court in the Civil Petitions for Leave to Appeal, the Petitioner himself has filed a concise statement dated 19.08.2012 and has given notice dated 18.06.2012 of the same to the Respondents. The Petitioner attached details of his dues as Statement 'A' to the concise statement. In Civil Petition No. 20-K of 2012 before the Hon'ble Supreme Court, the Petitioner prayed to direct the Respondents to grant all the service benefits including Pension and set aside the Judgment dated 01.11.2011 passed by the Hon'ble Supreme Court. And in the Civil Petition No. 22-K of 2012, the Petitioner prayed to grant him the back benefits/salary and allowances/consequential relief as he was kept out of job illegally w.e.f. 13.01.1993 to 09.01.2005 by the Respondents. Petitioner also filed review application and in the Civil Review Petition No. 08-K and 09-K of 2014, the Supreme Court vide its

Order dated 17.06.2014 observed that the Petitioner has not made claim for pension before High Court and having abandoned and not pressed claim of pension before this Court but despite such position, if he at all is entitled to receive pension from Respondent No.2 he may initiate proceedings for claiming of pension subject to law as there has been no independent determination of claim of pension of the Petitioner in these proceedings. And on 05.11.2014, the Petitioner filed the instant petition pursuant the observation of the Honorable Supreme Court.

3. Upon notice to the Respondents, the Respondent No. 2 filed parawise comments.

4. Mr. Imtiaz Mansoor Solangi, learned Counsel for the Petitioner contended that service of the Petitioner was terminated by the Respondent No.2 vide Order 26.09.1995, which was set aside by the learned Federal Service Tribunal vide its Judgment dated 06.10.2000 and the back benefits were allowed to the petitioner. The Respondent No. 2 challenged this Judgment before the Hon'ble Supreme Court, which did not allow back benefits vide its Judgment dated 06.05.2004, thus, modified the FST Judgment to that extent. The Counsel for the Petitioner further narrated that on 18.06.2005 Petitioner filed C.P. No.D-688/2005 before this Court for service benefits. Besides, the Petitioner filed CMA No. 8236/2006 in C.P No. D-688/2005 along with certified copy of Misc. Petition No. 125/2006 in his disposed of Service Appeal No. 773-K/1998 with the Service Tribunal, which was converted into a separate C.P. No. D-315/2007. In the meanwhile, the Petitioner attained age of superannuation on 21.12.2005 and retired from the

service of Respondent No.2 and as per learned counsel such an order was issued by the Respondent No. 2. However, both these Petitions were dismissed by this Court vide a common Judgment dated 01.11.2011. The learned Counsel for the Petitioner asserted that the Judgment dated 01.11.2011 was impugned before the Hon'ble Supreme Court in Civil Petition No. 20-K and 22-K of 2012, which were dismissed vide Order dated 16.12.2013. He further added that the Petitioner filed Civil Review Petition No. 8-K and 9-K of 2014 before the Hon'ble Supreme Court, which were also dismissed vide order dated 17.06.2014 with permission to the Petitioner to initiate proceedings for claiming of pension if admissible. As such, the Petitioner has approached this Court for redressal of his grievances. Learned counsel for the Petitioner on the legal points involved in the matter stated that the previous orders passed by the Hon'ble Supreme Court stood merged in the order dated 17.06.2014; therefore, the Petitioner has right to claim pensionary benefits from the Respondent Organization, which have been denied to him since 1995 till the age of superannuation in the year 2005. The Petitioner further added that the issue of pension is a fundamental right as enshrined in the Constitution, 1973 and the Respondents cannot deny the rights accrued to the Petitioner. He further narrated that the learned Federal Service Tribunal vide its Judgments dated 06.10.2000 allowed all the back benefits to the Petitioner, which have been denied to him by the Respondent, which according to him is violation of Article 9, 23, 24 and 25 of the Constitution of the Islamic Republic of Pakistan 1973. He further stated that the Respondents, while issuing the reinstatement order in the year 2005, have not decided either to

grant back benefits or treat that period as leave without pay. He further stated that there is no evidence that the Petitioner was gainfully employed; that the Petitioner has given sufficient documentary evidence that he was not gainfully employed anywhere during the intervening period; that the Petitioner has been discriminated by allowing all the back benefits of the intervening period of the colleagues of the Petitioner who retired from their service; that the Respondents have not complied with dated 13.11.2017 passed by this Court directing the Respondents to give the details of the service benefits given to five officials namely Mr. Ghulam Sarwar Baloch, Mr. Abdul Bari Khan, Mr. Naseem-ul-Haque Satti, Mr. Shahid Zubair and Mr. Akbar Hussain of the Respondent-Company; that the Petitioner served the Respondents with effect from 15.10.1970 to 21.12.2005, therefore, is entitled for retirement dues and other ancillary benefits as given to the colleagues of the Petitioner by the Respondent-Company. He lastly prayed for allowing the instant Petition. In support of his contention he relied upon the case of Nayyar Ahmed Mazhari Vs. Board of Intermediate Education (2010 PLC (CS) 151), Muhammad Yaseen Vs. Secretary, Government of Punjab and others (2007 SCMR 1769), Chief Secretary, Government of the Punjab and others v. Muhammad Arshad Khan Niazi (2007 SCMR 1355), Muhammad Sarwar Vs. The Director Administration, FIA, ETC (NLR 1999 Service SC 61), General Manager / Personal, Pakistan Railways H.Qs, Lahore and others v. Sheikh Murtaza (2013 SCMR 695), Lutfi Siddiqui Vs. The Secretary, Establishment Division, Rawalpindi and two others (1991 SCMR 125), Mrs. Munawar Sanni Vs. The Director, Army Education (1991 SCMR 135), Inspector-

General of Police, Punjab Vs. Tariq Mahmood (2015 SCMR 77), Sohail Ahmed Usmani Vs. Director-General Pakistan Civil Aviation Authority and others (2014 SCMR 1843), Khyber Zaman and others Vs. Governor State Bank of Pakistan, Karachi and others (2005 SCMR 235), M.Q.M and others Vs. Province of Sindh and others (2014 CLC 335), Syed Muhammad Mobinul Islam Vs. Federal Government and other (1998 PLC (CS) 400), New Jubilee Insurance Company Ltd, Karachi Vs. National Bank of Pakistan, Karachi (PLD 1999 SC 1126), Tara Chan and others Vs. Karachi Water and Sewerage Board, Karachi and others (2005 SCMR 499), Hameed Akhter Niazi Vs. The Secretary Establishment Division, Government of Pakistan and others (1996 SCMR 1185), Government of Punjab through Secretary Education, Civil Secretariat Lahore and others Vs. Sameena Parveen and others (2009 SCMR 1), Government of Pakistan through Director-General, Ministry of Interior, Islamabad and others Vs. Farheen Rashid (2011 SCMR 1), Abdul Hafeez Abbasi and others Vs. Managing Director, PIA Corporation, Karachi and others (2002 SCMR 1034), General Manager / Circle Executive Muslim Commercial Bank Ltd and other v. Mehmood Ahmed Butt and others (2002 SCMR 1064), I.A Sherwani and others Vs. Govt. of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041), Islamic Republic of Pakistan Vs. Dr. Safdar Mehmood (PLD 1983 SC 100), Muhammad Ilyas and three others Vs. Federation of Pakistan through Secretary, Ministry of Defence Secretariat Building, Islamabad and two others (2005 SCMR 631), Syed Yaqoob Shah Vs. XEN PESCO (WAPDA), Peshwar and another (2002 SCMR 1120), Pakistan through the Secretary, Ministry of



Finance Vs. Muhammad Himayatullah Farukhi (PLD 1969 SC 407), Pakistan, through General Manager, PWR, Lahore Vs. Mrs. A.V. ISSACS (PLD 1970 SC 415), the Province of Punjab through the Secretary, Services and General Administration, Lahore Vs. Syed Muhammad Ashraf (1973 SCMR 304), Syed Sultan Shah Vs. Government of Baluchistan and another (1985 SCMR 1394), Noor Muhammad Vs. The Member Election Commission, Punjab and others (1985 SCMR 1178), Mazhar Ali Vs. Federation of Pakistan / President of Pakistan through the Secretary, Establishment Division, Cabinet Secretariat and two others (1992 SCMR 435), Government of NWFP Vs. I.A Sherwani and another (PLD 1994 SC 72), Mehar Zulfiqar Ali Babi and 3 others Vs. Government of Punjab through secretary, Local Government and Rural Development, Lahore and others (1997 SCMR 117), HAZRA (HILL TRACT) Improvement Trust through chairman and others Vs. Mst. QaisraElahi and others (2005 SCMR SC 678), Syed Sikandar Ali Shah Vs. Auditor-General of Pakistan and others (2002 SCMR 1124), the Federation of Pakistan through the Secretary, Establishment Division, Government of Pakistan Rawalpindi Vs. Saeed Ahmed Khan and others (PLD 1974 SC 151), Utility Stores Corporation of Pakistan Limited Vs. Punjab Labor Appellate Tribunal and others (1987 SC 447), S.H.M. Rizvi and 5 others Vs. Maqsood Ahmed and 6 others (PLD 1981 SC 612), Muhammad Gulshan Khan Vs. Secretary, Establishment Division, Islamabad and others (2003 PLC (CS)201), Muhammad Saleem and two others Vs. Agricultural Development Bank of Pakistan, Islamabad and other (2003 SCMR 251), PIA Corporation Vs. Inayat Rasool

(2003 PLC (CS) 333), Adnan A. Khawaja v. the State(PLD 2012 SC 866).

5. Syed Ali Ahmed Tariq, learned Counsel for the Respondent No.2 narrated relevant facts pertaining to the present controversy in the case (i.e. claim of salary of the Petitioner for the period with effect from 13.01.1993 to 06.5.2004). He has contended that this Court may decide the present matter in the light of various Orders passed by the Hon'ble Supreme Court in respect of the same cause agitated by the Petitioner. He next contended that Hon'ble Supreme Court in its Judgment dated 06.05.2004 reported as Pakistan Automobile Corporation Ltd V/s Mansoor-ul-Haq Solangi & 2 others (2004 SCMR 1308) reinstated the Petitioner in service but disallowed back benefits in Civil Appeal No. 34/2001 filed by the Respondent No. 2 against the Judgment of Federal Service Tribunal in Appeal No. 773(K)/98, dated 06.10.2000. He next contended that the decisions of this Court, as well as, Hon'ble Supreme Court, it could be deduced that the matter of back benefits in shape of salary, self-endowed promotions, leave encashment, medical, etc., have been dealt with once and for all. However, the fact that the Petitioner himself is an advocate has vigorously impleaded the Respondent No.2 (PACO) for past 2 decades and have filed scores of cases, of which several are still pending, wherein he has prayed same relief of back benefits and has dragged Respondent No.2 (PACO) into litigation to gain benefits he is not entitled to as specifically disallowed by the Hon'ble Apex Court not once but twice vide abovementioned Judgments/Orders for the period from 13.01.1993 till 06.05.2004, when the Hon'ble Supreme Court allowed his reinstatement in

service without allowing back benefits; that it has become clear that this petition is frivolous, unwarranted, wastage of time, hence is liable to be dismissed with special costs as all the Petitions and review one after the other are vexatious and amounted to contempt of this Court. The Respondent No.2 (PACO) has incurred huge costs in defending these cases and the Petitioner should be stopped to agitate/file Constitution Petitions for the same matter, which is now a past and closed transaction. He further added that in compliance of the Order of this Court dated 13.11.2017 regarding the calculation of the Petitioner's salary for the above mentioned period, he needs to first establish the exact period or periods for which Petitioner is actually entitled to any salary in the light of the Judgment of the Hon'ble Supreme Court dated 06.05.2004 (reported as 2004 SCMR 1304) wherein back benefits were disallowed; that in this regard reference is made to an Order passed by this Court in C.P. No. D-688/2005 dated 15.11.2006, wherein Petitioner has claimed same relief of back benefits; that it is very much clear from the above Order that the Petitioner was not allowed to get back benefits for the intervening period i.e. from 13.01.1993 to 05.05.2004; hence the salary claimed by the Petitioner as per his statement dated 02.12.2017 is not lawful; that the service of the Respondent-Company is not pensionable, however, is governed by Pakistan Automobile Corporation Ltd Employee Gratuity Fund Rules. Learned counsel for the Respondent No. 2 highlighted the issue regarding the salary/benefits paid to the Petitioner through aforesaid statement, which are as under:-

**1. Period 01.07.1986 to 12.01.1993**

***That Petitioner was an employee of the respondent No.2 (PACO) from 01.07.1986 till 12.01.1993, which is the date of termination of his service by the respondent No. 02, where after he became an employee of Naya Daur Motors Ltd (NDML), which was privatized on 13.1.1993 under the Privatization Policy of the Government of Pakistan. During his employment with Respondent No.2 (PACO) the petitioner received all salaries, allowances, medical and other permissible benefits/facilities allowed to him for this period, as the same were payable on monthly basis, excluding payment of Gratuity & Leave encashment as the same are paid on retirement.***

**2. Period 10.01.2005 to 21.12.2005 (period after reinstatement)**

***Petitioner after reinstatement by the order dated 06.5.2004 passed by the Hon'ble Apex Court; admittedly the petitioner joined the respondent No.2 (PACO) on 10.01.2005. He could not join earlier as he was working as professional Advocate and was directed by the respondent No.2 (PACO) to submit certificate from Sindh Bar Council in respect of suspension of his legal practice license before joining the PACO as per the Rules of the "Sindh Legal Practitioners & Bar Council Rules" which the Petitioner complied and submitted letter of suspension of license of legal practice dated 08.10.2005. The petitioner upon attaining the age of superannuation retired on 21.12.2005 and Total period he worked with the respondent No.2 (PACO) after reinstatement has been calculated as 11 months and 12 days; that the order dated 06.5.2004 passed by the Hon'ble Supreme Court in Civil Appeal No. 34/2001 was complied with and implemented in full letter and spirit. The petitioner was serving as Senior Manager at the time of termination of his service by PACO and was allowed to join accordingly; but his pay was fixed in Grade E.V/ V (i.e. 13651-778-29211) and his basic salary was calculated Rs. 26,877/- per month as per Govt. notification dated 09.5.2002; that the Petitioner was initially paid Rs. 17,000 per month from 10.01.2005 and an amount of Rs. 333,519/- was paid to him towards salary for the period 10.1.2005 to 30.11.2005 and an amount of Rs. 33,181/- was paid to him for the period 01.12.2005 to 21.12.2005; that the petitioner in his affidavit in rejoinder filed against the statement filed by the respondent No.2 on 3.11.2017 in para 11 has stated "I say that the intervening period when I was out of job is w.e.f. 13.01.1993 to 04.10.2000" is truly false and incorrect as he has concealed the fact that from 13.01.1993 till 26.09.1995 the petitioner was an employee of Naya Daur Motors Ltd, a private company, purchased by Tawakkal Group of Companies from Respondent No.2 (PACO) vide Sale Agreement dated***

12.01.1993; that The Private owner (Tawwakal Group of Companies) purchased Naya Daur Motors Ltd. with all its assets and liabilities, including the staff/employees and clause 5 of the Sale Agreement stipulates that the buyer hereby undertakes to indemnify the seller against only claim or liability in respect of any employee whether presently in service or terminated before the date of this agreement. The buyer had further undertaken to ensure that Company (buyer) shall apply all legal dues, such as Provident Fund and Gratuity due to its employees on the existing basis and rates when they eventually retire or leave service. The Petitioner even after privatization remained in the service of private owners and had availed/accepted all the benefits including promotion etc. for 2 years, 8 months and 13 days. He has further contended that the new private owner wanted to reorganize Naya Daur Motors Limited (NDML) which was challenged by 123 employees, including the Petitioner before the Hon'ble Supreme Court through Constitutional Petition No. 138 of 1994 besides Petitioner filed Constitutional Petition No.D-2326/94 and D-759/95 were subsequently dismissed by the Hon'ble Supreme Court through a Judgment, it has been held that the Government cannot be compelled to run any trade business and industry, which it does not want to carry on; that as per Clause 5 of the Agreement, Petitioner has no claimed against Respondent No.2 (PACO) in respect of his terminal dues as it were already paid to the Petitioner by the private employer/owner Tawwakal Group of Companies; that the Petitioner was an employee of a Private Company, Respondent No.2 (PACO) is unable to get the details of such payments made to the Petitioner at the time of his disassociation with NDML after the termination of his services and he should be directed to disclose such information pertaining to dues paid to him by NDML; that the Petitioner was in possession of Corporation's (PACO) arranged accommodation for officers through PIDC and hence Rs. 721,592/- being outstanding occupancy charges, were adjusted out of the Petitioner's retirement dues i.e. gratuity etc.; that the Hon'ble Supreme Court vide their Order on 14.05.2003 in Civil Petition for Leave to Appeal No. 944-K/2002 allowed the Petitioner to retain the possession of the company accommodation (i.e Flat) considering him as an officer of the Corporation and not as a private tenant and wherein the Petitioner himself stated that sufficient amount in shape of G.P Fund etc. is outstanding against the Respondent No.2, which can be adjusted towards the above mentioned dues outstanding against him; that the Hon'ble Supreme Court vide their Order dated 06.2.2004 in Civil Review Petition No. 10-K/2003 on review of its Judgment dated 14.5.2003 passed in C.P. No. 944-K/2002, in para 3 further clarified while advancing detailed reasons for allowing the petitioner to retain the flat in question on

*payment of occupancy charges; that the Hon'ble Supreme Court vide their Order dated 24.11.2008 passed in C.P. No. D-688/2005 filed by the Petitioner against the Respondent No. 2(PACO) for the same relief pertaining to back benefits; that the actual period for which the Petitioner is entitled for Gratuity from the respondent No.2 (PACO) is from 01.7.1986 to 21.12.2005; but out of bonafide gratuity of the petitioner calculated and paid from year 1970 till 2005; that in addition to gratuity leave encashment for 191 days & difference amount of salary for 6 months as arrears of Rs. 34,296/- have also been included in Petitioner's retirement benefits; that the Petitioner's basic salary has been worked out at Rs. 30,915/- per month in the light of the Government's Notification dated 16.1.2006, wherein revised pay scale was provided for grade E-V officer of PACO as (157800-895-33600) and retirement benefits have also been calculated on the basis of revised basic pay applicable in case of the petitioner; that the Petitioner cannot claim promotion as a vested right as the management of employer has to take into account many aspects of service strictly in accordance with the prescribed procedures. Seniority alone or length of service are not the only criteria for promotion, as performance, qualifications and other qualities such as leadership, etc., are also required to be taken into consideration. The Hon'ble Supreme Court in its Judgment dated 20.5.2003 passed in Civil Petition No. 3188 of 2001 titled Amir-Ud-Din versus the Federation of Pakistan and others has held that the promotion is not automatic, but depends upon so many factors, such as, competence, availability of posts and none of these factors is less important than and is within exclusive discretionary domain of the executive authority concerned; that the Petitioner filed an application for withdrawal of his claim to the extent of Rs. 1,61,42,294/- pertaining to the salaries and allowances, prerequisites, promotions and retirement benefits from his Suit No. 1166/2007, firstly on 07.01.2010 when he stated that he is pursuing his remedy for the aforesaid benefits in his two Constitution Petitions Nos. D-688/2005 and C.P. No D-315/2007 filed in this Court; that the application for withdrawal of the claim was dismissed on 18.05.2011, wherein it was held that the plaintiff cannot be permitted to withdraw part of his claim with liberty to bring the said claim for fresh adjudication without first establishing any formal defect whereby his suit would fail or any other sufficient ground within the meaning of Order XXIII rule (2) (a)(b) CPC and the both Constitution Petitions were dismissed on 01.11.2011 through a common Judgment.*

He lastly prayed for dismissal of the instant petition.

6. We have considered the submissions of the parties along with case law and have also gone through the entire record carefully with their assistance.

7. In the first place, we examine the issue of maintainability of instant petition under Article 199 of the Constitution. Perusal of the pleadings and arguments advanced by learned counsel for both the Parties establish that Pakistan Automobile Corporation of Pakistan (PACO)/Respondent No.2 is a subsidiary of Pakistan Industrial Development Corporation (PIDC), which is a Public Sector Company, as defined under Section 2(g) of Public Sector Companies, (Corporate Governance) Rules, 2013, as follows:-

**“Public Sector Company” means a company, whether public or private which is directly or indirectly controlled, beneficially owned or not less than fifty percent of the voting securities or voting power of which are held by the Government or any instrumentality or agency of the Government or a statutory body, or in respect of which the Government or any instrumentality or agency of the Government or a statutory body, has Otherwise power to elect, nominates or appoint majority of its directors, and includes a public sector association not for profit, licensed under Section 42 of the Ordinance.”**

8. A reference may also be made in this regard to the decision of Honorable Supreme Court rendered in the case of Ramna Pipe and General Mills (Pvt.) Ltd v. Sui Northern Gas Pipe Lines (Pvt.) (2004 SCMR 1274), in which it is settled that a Constitutional Petition against a Public Limited Company is maintainable.

9. In view of the facts stated above, the status of PACO/PIDC can ordinarily be regarded as a "Person" performing functions in connection with the affairs of the Federation under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution. Thus, High Court has jurisdiction to entertain a Constitutional Petition against PACO/PIDC. As PACO/PIDC is a Body Corporate and performing functions in connection with the affairs of the State. The functions of Company have element of Public Authority, as such the same will be amenable to the Writ Jurisdiction. Guidance has also been taken from the decision of august Supreme Court in the case of Abdul Wahab and others Vs. HBL and others (2013 SCMR 1383). In this case, the Honorable Supreme Court has held that two factors are most relevant i.e. the extent of financial interest of the State/Federation in an Institution and the dominance in the controlling affairs thereof. Reference may also be made to the decision of Hon'ble Supreme Court in the case of Salahuddin Vs. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244). We are of the considered view that an aggrieved person can invoke the Constitutional jurisdiction of this Court against a public authority. The same principle is also enunciated in the case of Muhammad Rafi and another Vs. Federation of Pakistan and others (2016 SCMR 2146). In view of the above findings of Honorable Supreme Court, this petition can be heard and decided on merits by this Court exercising its Constitutional jurisdiction under Article 199.

10. In the present proceedings, we have noticed that there are three Judgments/ Orders passed by the Hon'ble Supreme Court of Pakistan, as follows:-



**i) First Round of Litigation**

A) The case of Pakistan Automobile Corporation Limited vs. Mansoor-ul-Haq and 2 others, ***(arising out of Appeal from judgment dated 06.10.2000 passed by the learned Federal Services Tribunal, Islamabad, in service Appeal No. 773(K) of 1998, reported in 2004 SCMR 1309)***. The Hon'ble Supreme Court of Pakistan passed the order dated 06.05.2004 as follows:-

***“11. So far as the back benefits awarded by the Service Tribunal are concerned the same are not supported by documentary evidence to the effect that when respondent No.1 was out of service, he did not work anywhere to gain financial benefits.”***

***12. For the facts, circumstances and reasons stated hereinabove this appeal is partly allowed by disallowing the back-benefits as awarded by the Tribunal but the reinstatement of Respondent No.1 in service shall remain intact. The parties are left to bear their own costs.”***

**ii) Second Round of Litigation**

B) The case of Mansoor-ul-Haq Solangi vs. Federation of Pakistan & others. Civil Petitions No. 20-K and 22-K of 2002 along with Cr. Org. Petitions No. 21-K of 2011. ***(Arising out of Appeal from the judgment / order dated 01.11.2011 passed by this Court in Constitution Petition No. 688 of 2005 and 315 of 2007)***. The Hon'ble Supreme Court of Pakistan passed the order dated 16.12.2013, as follows: \_

***“5. We have heard the petitioner and have also thoroughly perused the record. We failed to persuade ourselves to agree with the contention so raised by the petitioner because after dismissal of his review petition before this Court, the issue in question has been decided once for all and that decision has attained finality. The petitioner is now attempting to reopen the same by filing constitution petitions before the High Court of Sindh, Karachi, which of course were not competent. The learned High Court, in this***

*view of the matter has rightly dismissed the constitution petitions in the following terms:-*

***“20. In this view of matter, as admitted by the petitioner himself that the Honorable Supreme Court of Pakistan specifically disallowed back benefit, this Court cannot sit over the judgment of the Apex Court to allow something, which the Honorable Supreme Court disallowed. There is nothing in the judgment of the Honorable Supreme Court that needs implementation, except reinstatement, which admittedly was carried out. This court, as noticed above, cannot enter into the controversy of back benefits, which require resolution of factual controversy, which cannot be undertaken in exercise of writ jurisdiction, therefore, petitions are dismissed.”***

***For the forgoing reasons, we find no merit in these petitions, as such the same are dismissed and leave refused.”***

C) The case of Mansoor-ul-Haq Solangi vs. Federation of Pakistan & others. Civil Review Petition No. 08-K and 09-K of 2014 ***(For review of order dated 16.12.2013 passed in C.P. No. 20-K and 22-K and Cr. Org. Petition No. 21-K of 2012)***. The Hon’ble Supreme Court of Pakistan vide order dated 17.06.2014 passed by the following order:-

***“Review jurisdiction is exercised by the Court under Article 188 of the Constitution read with Rule (1) Order XXVI of the Supreme Court of Pakistan Rules 1980, inter alia on the ground of mistake, error apparent on the face of record and not for examining, adjudicating and determining fresh claims or claim though made in the petitions before this Court but apparently seems to have abandoned and not passed during the course of hearing. Such abandoning and not pressing of claim of pension by the Petitioner preclude him from agitating the same in the Review Petitions as the review jurisdiction of this Court is not attracted in such cases.***

***17. After we have heard the Petitioner and learned counsel for Respondent No.2 through a short order dated 17.6.2014, both the Review Petitions were dismissed. Above are the reasons for the same.***

**18. Although, we have dismissed the two Review Petitions but we feel it necessary to observe that as the Petitioner has not made claim for pension before the High Court and having abandoned and not pressed claim of pension before this Court but despite such position, if he at all is entitled to receive pension from Respondent No.2 he may initiate proceedings for claiming of pension subject to law as there has been no independent determination of claim of pension of Petitioner in these proceedings.”**

iii. **Third Round of Litigation**

D) Pakistan Automobile Corporation Limited Vs. Federation of Pakistan & others. Civil Petition for leave to appeal No. 859-K of 2016 **(arising out of appeal from the judgment/ order 18.11.2011 passed by this Court in C.P.No.D-5608 of 2014).**

The Hon’ble Supreme Court vide order dated 28.12.2016 passed the following order, which reads as under:-

**“By consent, these proceedings are disposed of in the following manner:-**

**The petitioner shall deposit the cheque of the amount with the Nazir, High Court of Sindh at Karachi. The Respondent No.2 present in Court shall furnish security for the withdrawal of cheque and on furnishing security he will be entitled to withdraw the cheque and encash it.**

**The petition is disposed of in the above terms.”**

11. On merits, in pith and substance, prima facie the case of the Petitioner revolves around the issue of back benefits, which has been declined by the Honorable Supreme Court of Pakistan vide judgment dated 06.05.2004 passed in the case of Pakistan Automobile Corporation Company vs. Mansoor-ul-Haque and 2 others (2004 SCMR 1308), on the premise that the back benefits awarded by the learned Service Tribunal are not supported by documentary evidence to the effect that when Respondent No.1 was out of service, he did not work anywhere to gain financial benefits. Therefore the issue of Back Benefits is concerned that has

already been settled by the Order of Hon'ble Supreme Court passed in the above referred case as well as in Civil Petition for Leave to Appeal No. 20-K & 22-K/2011 vide Order dated 16.12.2013. Therefore we will not travel into that question at this juncture.

12. The only point left in the present matter is whether Petitioner is entitled to receive pension from Respondent No.2 in view of the Order dated 17.6.2014, passed by the Hon'ble Supreme Court of Pakistan that the Petitioner has not made claim for pension before the High Court and having abandoned and not pressed claim of pension but despite such position, if he at all is entitled to receive pension from Respondent No.2 he may initiate proceedings for claiming of pension, subject to law.

13. We are cognizant of the fact that the Hon'ble Supreme Court has allowed the Petitioner to initiate the proceedings for claiming his pension if it is at all is admissible under the law. Record reflects that this Court on 18.11.2016 passed the following order:-

***“On last date of hearing, we directed the learned counsel for the respondent No.2 to submit the proper calculation of dues. Last date we observed that at page 305 the calculation sheet is available on the letterhead of respondent No.2 which was worked out for the petitioner’s dues for eleven months and twelve days. In columns B, C and E the Corporation Contribution towards P.F, Leave Fare Assistance and Gratuity were shown payable but these benefits are not reflected in the calculation sheet submitted in Hon’ble Supreme Court, so specific time was given on the request of the learned counsel for the respondent No.2 to resubmit calculation sheet for the services rendered by the petitioner in PACO but today he again requests for some more time as the calculation is under process. However, again we revisit page327 of the case file in which the total dues according to the respondent No.2 were calculated at Rs.2,372,367/- and in the same sheet it was stated that Rs.721,592/- was paid to the PIDC on 05.08.2008 and the total payable shown in Table No.1*”**

**is Rs.1,685,069/-. Since this is an admitted amount which is to be paid to the petitioner though the petitioner raises some dispute on this amount as according to him he is entitled to much more amount than the calculation made by the respondent No.2. be that as it may, the petitioner is also senior Advocate of this Court who needs some money for his eye surgery and for some other medical treatment, therefore, the respondent No.2 during pendency of this petition is directed to pay Rs.16, 85,000/- to the petitioner and also submit the proper calculation sheet after including three benefits as directed earlier by this Court on the next date. We expect that this amount will be paid to the petitioner within ten (10) working days. The petitioner may approach to the Finance Department of respondent No.2 for receiving pay order / cross-cheque in his name. The learned counsel for the respondent No.2 submits that since the respondent No.2 has been merged in the PIDC, the cheque/pay order may be collected from the Finance Department of PIDC. Order accordingly.”**

14. The Respondent No.2 impugned the aforesaid order before the Hon’ble Supreme Court of Pakistan in Civil Petition for Leave to Appeal No.859-K/2016. By consent of the parties, the matter was disposed of vide order dated 28.12.2016 as under:-

**“By consent, these proceedings are disposed of in the following manner:-**

**The petitioner shall deposit the cheque of the amount with the Nazir, High Court of Sindh at Karachi. The Respondent No.2 present in Court shall furnish security for the withdrawal of cheque and on furnishing security he will be entitled to withdraw the cheque and encash it.**

**The petition is disposed of in the above terms.”**

15. We have been informed by the learned counsel for the Respondent No.2 that vide statement dated 06.01.2017 and in compliance of the order dated 28.12.2016 passed by the Hon’ble Supreme Court, a cheque of Rs.1,685,000/- (Rupees one Million six hundred eighty five thousand only) in the name of Petitioner was deposited with the Nazir of this Court but the Petitioner has not withdrawn the said amount.

16. During the course of arguments, we specifically asked the question from Mr. Syed Ali Ahmed Tariq, learned counsel for the Respondent Company, whether the service of employees of the Respondent No.2 is pensionable? And whether as per direction of this Court vide order dated 18.11.2016 passed in the present proceedings, this is full and final calculation of the amount payable by the Respondent-Company to the Petitioner for the period which he claims. He has stated at the bar that the service of Respondent-Company is not pensionable. He further stated that since Petitioner is not contributory to the Provident Fund, on the premise that he was not on the job in the intervening period till he joined the service in the year 2005, thus, not entitled for the pension and other ancillary benefits.

17. From, perusal of the order dated 18.11.2016 passed by this court in the present proceedings, it is crystal clear that this court after perusal of statement dated 21.12.2005, submitted by the Respondent No.2 before the Honorable Supreme Court in Civil Petition No 20-K and 22-K of 2012, we tentatively reached at the conclusion that there were certain admitted retirement /terminal dues of the petitioner owed by the Respondent-Company, which were worked out for eleven months and twelve days. In columns B, C and E the Corporation Contribution towards Provident Fund, Leave Fare Assistance and Gratuity were shown payable but these benefits were not reflected in the calculation sheet submitted before the Hon'ble Supreme Court, so specific time was given on the request of the learned counsel for the Respondent No.2 to resubmit calculation sheet for the services rendered by the petitioner in PACO but no concrete efforts were made on the

premise that the calculation was under process. Therefore, this court was left with no option but to make tentative order for payment of admitted amount of Rs.1,685,069/- to the petitioner, however, the petitioner raised some dispute on this amount as according to him he is entitled to much more amount than the calculation made by the respondent No.2.

18. We are cognizant of the fact that the Hon'ble Supreme Court of Pakistan vide order dated 28.12.2016 directed the Respondent Company to deposit the cheque of the amount with the Nazir of this Court, in compliance of the order dated 18.11.2016 passed by this Court in the present proceedings is clear in its terms and passed with the consent of the Petitioner and the Respondent Company. The said amount has been deposited with the Nazir of this Court. The Petitioner is entitled to receive the amount of Rs.1, 685,000/- (Rupees one Million six hundred eighty five thousand only), in terms of the order dated 28.12.2016 passed by the Hon'ble Supreme Court.

18. Much emphasis has been laid on the issue of Back Benefits. The petitioner has specifically pleaded that after his reinstatement and joining the service, he provided solid evidence through an affidavit to the effect that he remained out of job and without any earnings for the intervening period from removal of service of the Petitioner with effect from 26.09.1995 till he joined the service of Respondent No.2 on 10.01.2005; We are of the considered view that the issue of Back Benefits has been finally settled by the Hon'ble Supreme Court of Pakistan once for all. Therefore, we cannot take contrary view.

19. Reverting to the claim of the Petitioner, regarding those five officials namely Mr. Ghulam Sarwar Baloch, Mr. Abdul Bari Khan, Mr. Naseem-ul-Haque Satti, Mr. Shahid Zubair and Mr. Akbar Hussain of the Respondent-Company, who received all service benefits, whereas Petitioner is denied the same. This claim of the Petitioner is refuted by the learned counsel for the Respondent-Company, the only reason, which has been put forward that the Hon'ble Supreme Court has declined the back benefits to the Petitioner; therefore he cannot be given the same benefits as given to other employees referred to hereinabove. We are of the considered view that this is a discriminatory attitude to refuse the genuine claim of the petitioner, as the order of the Honorable Supreme Court is very clear that at the relevant time petitioner failed to produce any documentary evidence to the effect that when he was out of service, he did not work anywhere to gain financial benefits, therefore, we reiterate the observation of the Honorable Supreme Court made in the Review Petitions as discussed supra that if it is at all the Petitioner is entitled to receive his pensioner dues under the law, for which the Respondent-Company has to decide the case of petitioner for such purpose, without discrimination. In this regard while placing reliance on the dicta laid down by the Honorable Supreme Court in the case of I.A. Sharwani and others v. Government of Pakistan through Secretary Finance Division, Islamabad and others (1991 SCMR 1041). The larger Bench of learned five members Bench of Honorable Supreme Court made exhaustive scrutiny of with respect to granting of pensionery benefits to a class of retired employees of Executive Branch, who had retired within a



particular period, while the same was denied to another class of employees similarly placed, who had retired in another period. Accordingly, while following the principle of law enunciated in I.A. Sherwani's case (ibid), and in view of the peculiar facts and circumstances of the present case while invoking the jurisdiction conferred upon this Court under Article 199 of the Constitution, we hereby conclude that the Respondent-Company cannot fix two separate categories for paying the service benefits, only to be paid to the other employees of the Company, i.e. Mr. Ghulam Sarwar Baloch, Col. Retried Akbar Hussain, Abdul Bari Khan, Naseem-ul-Haq Satti and Shahid Zubair, and excluding the Petitioner is erroneous.

20. We are clear in our mind that Pension is not a bounty from the State / employer to the servant / employee, but is fashioned on the premise and the resolution that the employee serves his employer in the days of his ability and capacity and during the formers debility, the latter compensates him for the services so rendered. Therefore, the right to pension has to be earned and for the accomplishment thereof.

21. In the foregoing legal position of the case, we are not convinced with contention of the learned Counsel for the Respondent-Company that the Petitioner is not entitled to retiring benefits.

22. In the light of above facts and circumstances of the case, the instant Petition is hereby disposed of in the following terms:-

- i) The Competent Authority of Respondent-Company is directed to take fresh decision on the issue of inclusion/calculation of service benefits of the

Petitioner in accordance with law and judgment/orders passed by the Honorable Supreme Court of Pakistan and this Court as discussed at para No.10 and award post-retirement benefits/dues if any outstanding, to the petitioner (strictly excluding back benefits) without discrimination within a period of two months, from the date of receipt of the Judgment of this Court.

- ii) The Petitioner is entitled to receive the amount of Rs.1, 685,000/- (Rupees one Million six hundred eighty five thousand only), if not received earlier, in terms of the order dated 28.12.2016 passed by the Hon'ble Supreme Court.

Karachi

JUDGE

Dated

JUDGE

**Shafi Muhammad /PA**