

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No.1680 / 2018

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA No. 12306/2018.

03.10.2018.

Mr. Muhammad Asif Malik Advocate for Plaintiff.
Mr. Aamer Latif Advocate for Defendant No. 1.
Mr. Muhammad Khan Khoso representative of Defendant No. 1.

This is a Suit for Declaration and Injunction and the Plaintiff seeks the following prayer(s):-

- a) To declare that Impugned Office Order No. HRD-98 dated 24.05.2016 vide E&DT No. HRD(SC-2) F-26/2063/2016 dated 18.05.2018 passed by the defendant No.1 are illegal, void, ab-initio, and of no legal effects as such the same may be set-aside.
- b) To restrain the defendant or their representatives from interfering into his performance of duty and reinstate the plaintiff on state/status as was performing his duties before dated 24.05.2018, i.e. before issuance of Office Order No. HRD-98 dated 24.05.2016 and further be directed to extend financial benefit as to pay and allowances as per his duty/grade.
- c) To direct the defendant to restore the plaintiff on the same position as was working prior to the issuance of Office Order No. HRD-98 dated 24.05.2016 alongwith financial benefits as to pay and allowances.
- d) To suspend the operation of Office Order No. HRD-147 dated 18.05.2018 till final disposal of the instant petition.
- e) Any appropriate relief for enforcement of fundamental rights of the plaintiff, which this Hon'ble Court may deem fit and proper in the circumstances of the case."

Through listed application (**CMA No.12306/2018**) the Plaintiff seeks suspension of the impugned orders so mentioned in the application. Notice was ordered on 05.09.2018 on the listed application and on 26.09.2018 following order was passed:-

"Mr. Ali Azam, Advocate holds brief for Mr. Muhammad Asif Malik, learned counsel for the plaintiff, who is reportedly busy before another bench, whereas, Mr. Manzoor-ul-Haq, Advocate has effected appearance on behalf of State Bank of Pakistan/defendant No.1. *He has [been] confronted with the judgment of Hon'ble Supreme Court of Pakistan in **Suo Moto Case No.03 of 2017 (PLD***

2018 SC 703), wherein Hon'ble Supreme Court of Pakistan has been pleased to hold that compromise under Section 345(2) and (6), Cr.P.C., is an honorable acquittal, whereas, plaintiff has been terminated for being involved in murder charge, which stands compromised. He is directed to call concerned official on the next date and come with complete instructions.

To come up on 03.10.2018 at 11:00 a.m.”

Today another Counsel namely Mr. Aamer Latif has affected appearance and has filed Vakalatnama along with counter affidavit and legal objections. He requests for adjournment on the ground that his senior Counsel is not available; however, considering the facts of this case as discussed hereinafter, the exigency in the matter and for the fact that on the last date another Counsel had affected appearance and was confronted as to the order passed and reproduced hereinabove; such request is declined. Thereafter, Counsel has made his submissions.

The primary grievance of the Plaintiff appears to be that pursuant to a charge sheet dated 18.08.2017 he has been compulsory retired from service of State Bank of Pakistan through order dated 18.05.2018, hence instant Suit. Learned Counsel for the Plaintiff submits that the only ground raised in the charge sheet was to the effect that Plaintiff was involved in some criminal case of murder of his mother, whereas, the matter stands compromised under Section 345(2) and (6) Cr.P.C vide Judgment dated 30.11.2016 passed by the trial Court, and notwithstanding this compromise, the impugned order of compulsory retirement has been passed which is against the law declared by the Hon'ble Supreme Court in cases reported as **Chairman Agricultural Development Bank of Pakistan and another V. Mumtaz Khan (PLD 2010 SC 695)**, and recently in **Suo Moto Case No.03 of 2017 (PLD 2018 SC 703)**.

On the other hand, learned Counsel for the Defendant No. 1 submits that instant Suit is not competent and maintainable, whereas, the Plaintiff has been compulsorily retired on the basis of departmental proceedings; hence, no relief as prayed for can be granted. He further submits that the Civil and Criminal proceedings can take place side by side, and even if the matter has been compromised, the same does not apply on the departmental proceeding; hence, Plaintiff is not entitled for any relief. According to him matter is listed for hearing of application and Defendant intends to file a written statement as well, therefore, matter be adjourned. In the counter affidavit various other objections have been raised including maintainability of this Suit as well as the relief as is being sought and in support thereof reliance has been placed on various authorities of the Hon'ble Supreme Court as well as this Court and other Courts of the country. It has been further stated in the counter affidavit that Plaintiff earlier approached a Division Bench of this Court through C.P.No. D-4268/2018 which stands dismissed, hence instant Suit is not maintainable on this ground as well. It has been further stated that the rule of Master and Servant applies in this matter, therefore, no relief by way of an injunction can be granted, whereas, damages is the only remedy for the plaintiff.

I have heard both the learned Counsel and perused the record including the counter affidavit filed on behalf of the Defendants. As to filing of a Constitutional petition bearing No. D-4268/2018, it would suffice to observe, that order dated 31.5.2018 passed in that petition clearly reflects that the said petition was dismissed on the ground that State Bank of Pakistan has not statutory service rules, whereas, while dismissing the same, the learned Division Bench was pleased to observe that petitioner is at liberty to seek appropriate remedy in accordance

with law. Therefore, this objection is completely misconceived. As to the objection regarding maintainability and the relief being sought, it may be observed that admittedly and as per the stance of Defendant No.1 itself, there are no statutory rules of service of State Bank of Pakistan and are in fact non-statutory, therefore, in my humble view, the only remedy available to the plaintiff is by way of a Civil Suit; hence it is competent. As to the objection of Master and Servant, and the relief being sought by way of an injunction, it may again be observed that this objection is also misconceived, inasmuch as State Bank is not a private organization or company even. It is an autonomous body under the State Bank of Pakistan Act, 1956, and is controlled by the Government of Pakistan, and to that there appears to be no dispute. Further it has to be understood that there is a marked difference insofar as employment with a Government and/or a Statutory Corporation and a private organization is concerned. There may be a situation that an employee of a Corporation can be aggrieved of the conduct and the manner in which his employment has been or is being terminated. The element of governance should be there as after all a Corporation / Department / Autonomous body working under the control of the Government has an element of public duty to perform and to act within the mandate of its rules be it statutory or otherwise. However, an employee of a private concern cannot be imposed upon his employer by taking shelter in the garb of case law (though very little) which has been developed in respect of Corporation(s), whereby, it has been held that management of a Corporation cannot exercise powers at their own discretion in contravention of infringement of fundamental rights envisioned under the Constitution and that there is no concept of unfettered discretion in public law, whereas, all public power is in the

nature of trust and is to be exercised reasonably, honestly, fairly and justly. (See ***Federation of Pakistan v. Muhammad Aslam-1986 SCMR 916, Shahid Mahmood v. Karachi Electric Supply Corporation Ltd-1997 CLC 1936 & Sadiq Amin Rahman v. Pakistan International Airlines Corporation-2016 PLC (CS) 335***). In this matter, the issue has been decided up to the level of Hon'ble Supreme Court way back in 2010 (See ***Chairman Agricultural Development Bank of Pakistan***), whereas, it has been once again reiterated in the case reported as ***Suo Moto Case No.03 of 2017 (PLD 2018 SC 703)***. Therefore, I am of the view, that State Bank ought to have been more cautious and vigilant while passing the impugned order(s) as apparently they are in defiance of the above judgment of the Hon'ble Supreme Court (more specifically of the case of ***Chairman Agricultural Development Bank of Pakistan***). They instead of abiding by these judgment in letter and spirit have acted contrary. In fact it is also the onerous duty of their legal Counsel to assist them in this regard. However, it is unfortunate that in this matter, not only the issue already decided by the Hon'ble Supreme Court is being contested; but an effort has been made to non-suit the plaintiff with flimsy, frivolous and frothy objections. This is not be appreciated by the Court; rather must be deprecated. In terms of Article 189 of the Constitution the decisions of the Hon'ble Supreme Court shall to the extent that it decides a question of law or is based upon or enunciates a principle of law, is binding on all other courts in Pakistan. Therefore, the judgments as above, are binding upon this Court as well the Government of Pakistan and all other functionaries as well.

As to the objection regarding the principal of Master and Servant it may be observed, that without prejudice, it may be case for consideration in respect of employees working with private

organizations; but at least this principle must not be taken into consideration in respect of Government Organization / departments; rather they have to be dealt with on case to case basis. As discussed hereinabove, State Bank has not statutory rules, whereas, it is predominantly controlled by the Government, therefore, the rule of master and servant, whereby, an employer can engage in hire and fire policy, will not strictly apply on State Bank. In fact even otherwise this concept of Master and Servant in the present day age, should be reworded as relation between “an employer” and “employee”. A learned Single Judge of this Court in the case reported as **Sadiq Amin Rahman v Pakistan International Airlines Corporation (2016 PLC 335)** has dealt with the issue of Master and Servant and its applicability on Government owned Corporations including PIA and it has been observed as follows;

21. The exploration and analysis lead to the finale that even the creator and inventor of this phrase have changed the niceties and minutiae of this colonial tenet and precept and they brought amendments to ventilate the ordeals and miseries of their employees/servants and part with various harsh and punitive provisions. So in my view instead of espousing rigid and inflexible application of this phrase some expansion and development of law is required to redress and recompense the grievance and cause of distress. The relationship of master and servant cannot be construed in the sagaciousness that the master i.e. the management of a statutory corporation or the corporation and or company under the control of government having no statutory rules of service may exercise the powers at their own aspiration and discretion rather in contravention or infringement of fundamental rights envisioned under the Constitution. The statutory bodies and the corporation under the control of Government are not above the law and Constitution. At the same time the principle of good governance are equally applicable and cannot be ignored. The object of good governance cannot be achieved by exercising discriminatory powers unreasonably or arbitrarily and without application of mind, but such objective can only be achieved by following rules of justness, fairness and openness in consonance with command of constitution enshrined in different Articles of the Constitution including Articles 4 and 25 which is supreme law of this country. By misapplication of phrase master and servant, management feels that the employee cannot raise the voice for his rights even though an oppressive attitude or behavior of management which in my view not a correct exposition of law. Nobody is sacred cow in this country but growing tendency demonstrates that master feels as if it is above the law and servants have no right to raise the voice....”

As to the merits of the case it is not in dispute that the charge sheet which was issued to the Plaintiff was primarily based and premised on the fact that Plaintiff was involved in FIR No. 106/2016 under Section 302 PPC and was allegedly involved in the murder of his mother. There is no other allegation of whatsoever nature. Therefore, in these circumstances, the objection that civil and criminal proceedings go together and discharge in one has no bearing on the other, is not relevant, as this is a case of acquittal on the basis of compromise and not of preponderance and sifting of evidence, which could be viewed differently in civil and criminal matters independently. It would be relevant to refer to the operative part of the charge sheet which reads as under:-

- “1. The Sr. Superintendent Police, Investigation-1, South Zone, Karachi vide Letter No.SSP/INV/South/RDR/4059/2016 dated March 14, 2016 reported to SBP that you were found involved in the murder of your mother and had been arrested by Boat Basin Police Station on February 18, 2016 and FIR No.106/2016 under Section 302 of Pakistan Penal Code, dated February 18, 2016 had been lodged against you. This was largely reported in press and media. However, you yourself never reported the incident to the Bank even until your release upon bail on June 13, 2016.
2. Your alleged involvement in the murder of your mother, confinement in jail till June 13, 2016 and your subsequent apology-based acquittal from the case have been viewed seriously. Under the decision of honorable Court of Additional Sessions Judge-IX, Karachi South [Session Case No.385/2016 dated November 30, 2016], your acquittal has resulted through mercy-based compromise between you and the bereaved family. However, we understand that your acquittal does not prove you innocent and discharge you from alleged murder. The above mentioned act has not only tarnished the image of this august institution but it is also a sheer violation of the code of conduct and staff regulations of SBP. Further, the above-mentioned violent behavior can severely jeopardize the working environment of the Bank and would be a continuous source of concern and potential threat to bank staff in case you resume your duties.
3. Since your detention in the murder case, you were seen giving interviews to multiple electronic channels without prior information to and approval from the Bank. You exhibited atypical actions in the electronic news talks, vehemently accepting the murder of your mother on one or other excuse which tarnished the image of the Bank and is deemed as misconduct under SBP Staff Regulations, 2005.”

Perusal of the aforesaid charge sheet and the order of compulsory retirement reflects that though departmental proceedings were initiated under State Bank of Pakistan Regulations (2005) of Defendant No.1; however, the only basis as narrated hereinabove was to the effect that Plaintiff was involved in the murder of his mother. The charge sheet even went to the extent that the decision of the Court of Additional Sessions Judge in Sessions Case No. 385/2016 dated 30.11.2016 was as a result of a mercy based compromise between the Plaintiff and bereaved family; therefore, according to the Defendant's understanding, the acquittal does not prove that he was innocent and was discharged from the alleged murder. This in my view is not only fallacious and misconceived but so also contemptuous in that it defies the dicta laid down by the Hon'ble Supreme Court in the case of **Chairman Agricultural Development Bank of Pakistan and another**. This is the only ground which has prevailed upon Defendant No.1 for passing order of compulsory retirement on the basis of charge sheet. Learned Counsel for the Defendant No.1, including the representative of Defendant No.1 were confronted as to whether there was any other ground which was raised and for which the Plaintiff was charge sheeted; and the answer was in negative. Even otherwise, the charge sheet as reproduced hereinabove clearly states that it is only to that extent and not otherwise.

The issue that whether an acquittal on the basis of a compromise is honourable or not, and further, whether a compromise or compounding of an offence could validly be treated as acquittal or not for the purpose of reinstatement in service came before the Hon'ble Supreme Court in the case of **Chairman Agricultural Development Bank of Pakistan and another** (supra). In that case the facts were

that an employee namely Mumtaz Khan (respondent) was working with Agricultural Development Bank of Pakistan and was implicated in a murder case and was convicted by the Trial Court. His appeal was dismissed by the Peshawar High Court and no further challenge was made; however, after some time a compromise was filed before the trial Court which was allowed by the trial Court and he was acquitted of the charge on the basis of compromise. On the departmental side he was issued a show cause notice, and before the compromise and his acquittal, he was removed from service on the basis of his conviction. After being acquitted he filed a departmental appeal which was dismissed, and thereafter he approached the Service Tribunal and his appeal was allowed by ordering his reinstatement in service with all back benefits. The judgment of Service Tribunal was assailed before the Hon'ble Supreme Court and it was held as follows:-

“7. After hearing the learned counsel for the parties and going through the record of this case with their assistance and after perusing the precedent cases cited before us we, have entertained no manner of doubt that the majority verdict delivered by the Federal Service Tribunal, Islamabad reinstating the respondent in service with all the back benefits was quite justified both on facts and in law. We may observe that prior to introduction of the Islamic provisions in the Pakistan Penal Code, 1860 an acquittal of an accused person could be recorded when the prosecution failed to prove its case against him beyond reasonable doubt or when faced with two possibilities, one favouring the prosecution and the other favouring the, defence, the Court decided to extend the benefit of doubt to the accused person and an acquittal could also be recorded under section 249-A, Cr. P. C. or section 265-K, Cr. P. C. when the charge against the accused person was found to be groundless or there appeared to be no probability of his being convicted of any offence. After introduction of the Islamic provisions in the Pakistan Penal Code, 1860 it has now also become possible for an accused person to seek and obtain his acquittal in a case of murder either through waiver/Afw under section 309, P.P.C. or on the basis of compounding/Sulh under section 310, P.P.C. In the case of waiver/Afw an acquittal can be earned without any monetary payment to the heirs of the deceased but in the case of compounding/Sulh an acquittal may be obtained upon acceptance of Badal-i-Sulh by the heirs of the deceased from the accused person. In the present case the respondent had been acquitted of the charge of murder by the learned Sessions Judge, Lakki Marwat as a result of compounding of the offence and such compounding had come about on the

basis of acceptance of Badal-i-Sulh by the heirs of the deceased from the respondent. It is true that Diyat is one of the forms of punishment specified in section 53, P.P.C. but any discussion about Diyat has been found by us to be totally irrelevant to the case in hand because the respondent had not paid any Diyat to the heirs of the deceased but he had in fact paid Badal-i-Sulh to them for the purpose of compounding of the offence. It goes without saying that the concept of Badal-i-Sulh is totally different from the concept of Diyat inasmuch as the provisions of subsection (5) of section 310, P.P.C. and the Explanation attached therewith show that Badl-i-Sulh is to be "mutually agreed" between the parties as a term of Sulh between them whereas under section 53, P.P.C. C Diyat is a punishment and the provisions of section 299(e), P.P.C. and section 323, P.P.C. manifest that the amount of Diyat is to be fixed by the Court. The whole edifice of his arguments built by the learned counsel for the appellants upon Diyat being a form of punishment has, thus, appeared to be utterly misconceived.

8. The provisions of the first proviso to subsection (1) of section 338-E, P.P.C. clearly contemplate acquittal of an accused person on the basis of compounding of an offence by invoking the provisions of section 310, P.P.C. and the effect of such compounding has also been clarified in most explicit terms by the provisions of subsection (6) of section 345, Cr.P.C. in the following words:--

"The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded."

9. The legal provision mentioned above leave no ambiguity or room for doubt that compounding of an offence of murder upon payment of Badal-i-Sulh is not a result of payment of Diyat which is a form of punishment and that such compounding of the offence leads to nothing but an acquittal of the accused person. It has already been clarified by this Court in the case of Dr. Muhammad Islam v. Government of N.-W.F.P. through Secretary Food, Agricultural, Live Stock and Cooperative Department Peshawar 1998 SCMR 1993 as follows:--

"We are inclined to uphold the above view inasmuch as all acquittals even if these are based on benefit of doubt are Honourable for the reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals? All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals."

The said precedent case also involved a question of reinstatement in service of an accused person implicated in a criminal case who had been acquitted by the criminal Court and this Court had declared that an

acquittal had no shades and there was no concept of Honourable or dishonourable acquittals. It had specifically been noted by this Court in that case that there could also be cases involving acquittals on the basis of compromise between the parties and after raising a query regarding the status of such acquittals this Court had hastened to add that "All acquittals are certainly honourable". If that be the case then the respondent in the present case could not be stigmatized or penalized on account of his acquittal on the basis of compromise. In view of the discussion made above and also in view of the novel situation presented by this case the precedent cases cited by the learned counsel for the appellants have been found by us to be missing the mark, if not irrelevant to the controversy in hand.

10. As regards the submission made by the learned counsel for the appellants based upon the issue of propriety of reinstating in service a person who, by virtue of compounding of an offence of murder, is a self-condemned murderer we may observe that we have pondered over the said issue from diverse angles and have not felt persuaded to agree with the learned counsel for the appellants. Experience shows that it is not always that a compromise is entered into by an accused person on the basis of admission of guilt by him and in many cases of false implication or spreading the net wide by the complainant party accused persons compound the offence only to get rid of the case and to save themselves from the hassle or trouble of getting themselves acquitted from Courts of law after arduous, expensive and long legal battles. Even in the present case the respondent and his brother were accused of launching a joint assault upon the deceased upon the bidding and command of their father and before the learned trial Court the respondent's brother had maintained in unequivocal terms that he alone had murdered the deceased and the respondent and their father had falsely been implicated in this case. Be that as it may, an ultimate acquittal in a criminal case exonerates the accused person completely for all future purpose vis-a-vis the criminal charge against him as is evident from the concept of autrefois acquit embodied in section 403, Cr.P.C. and the protection guaranteed by Article 13(a) of the Constitution of Islamic Republic of Pakistan, 1973 and, according to our humble understanding of the Islamic jurisprudence, Afw (waiver) of Sulh (compounding) in respect of an offence has the effect of purging the offender of the crime. In this backdrop we have found it difficult as well as imprudent to lay it down as a general rule that compounding of an offence invariably amounts to admission of guilt on the part of the accused person or that an acquittal earned through such compounding may have ramifications qua all spheres of activity of the acquitted person's life, including his service or employment, beyond the criminal case against him. We may reiterate that in the case of Dr. Muhammad Islam (supra) this Court had categorically observed that "All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals". The sway of those observations made by this Court would surely also encompass an acquittal obtained on the basis of compounding of the offence. It is admitted at all hands that no allegation had been levelled against the respondent in the present case regarding any illegality, irregularity or impropriety

committed by him in relation to his service and his acquittal in the case of murder had removed the only blemish cast upon him. His conviction in the case of murder was the only ground on which he had been removed from service and the said ground had subsequently disappeared through his acquittal, making him re-emerge as a fit and proper person entitled to continue with his service.”

The Hon’ble Supreme Court in view of the above observations dismissed the appeal of Agricultural Development Bank which was filed against the order of Federal Service Tribunal whereby, the Respondent in that case was reinstated in service by treating the compromise as an honorable acquittal.

Thereafter, this issue once again came up recently before Hon’ble Supreme Court in Criminal Appeal No.328 of 2012, wherein, during pendency of the Appeal, Criminal Misc. Application No.185/2017 for recording compromise and acquittal on such basis was filed and vide order dated 21.3.2017 the said compromise was allowed between the parties, but their lordships differed on how the main appeal was to be disposed of upon acceptance of the compromise and one out of the three Hon’ble Judges (minority view) differed from the majority view, in that *“that I cannot agree that as a consequence the appellant / convicted should be acquitted of the charges and thus completely exonerated”*, and the matter was then referred to the Hon’ble Chief Justice to exercise powers under Article 184(3) of the Constitution and thereafter, the matter was taken up as Suo Moto Case No.03 of 2017 which has been decided on 27.6.2018 and has now been reported as **Suo Motu Case Re: the issue as to whether compounding of an offence under section 345, Cr.P.C. amounts to acquittal of the accused person or not (PLD 2018 SC 703)**. The Hon’ble Supreme Court after following the earlier judgment in the case of **Chairman Agricultural Development Bank of Pakistan and another** (supra) has once again reiterated the same

opinion and after a threadbare examination of the entire case law as well as definition of acquittal and compromise from various international dictionaries, has come to the conclusion that a compromise of a compoundable offence had the effect of an honorable acquittal. The relevant findings of the Hon'ble Supreme Court in the above case reads as under:-

(pg: 718)

“The material mentioned above shows that obliteration and removal of the offence and its erasing and effacing from the record as a result of compounding has the effect of absolving the accused person or convict of the act, acquittal from the charge and clearance from the actual guilt and the legislature in 1898, when section 345, Cr.P.C. was introduced, was aware of the fact that in English language as well as in legal literature the word 'absolve' was synonymous with the words 'acquit' and 'clear'. The legislature was cognizant of the legal position at that time that compounding of an offence ipso facto amounted to absolution which automatically had the effect of acquittal from the charge and clearance from guilt and, therefore, there was hardly any occasion for the legislature to provide in section 345, Cr.P.C. that upon a successful composition of an offence the accused person or convict would be acquitted by the court concerned. It was already understood quite well that compounding of an offence would have an automatic "effect of an acquittal" and that was exactly what was legislated through section 345(6), Cr.P.C. and no need was felt to expressly provide for an order of acquittal to be passed by a court on the basis of compounding.

12.....It may be appreciated in this context that an acquittal or the effects of it in criminal law are necessarily relevant to guilt of a person and criminal jurisprudence and law do not envisage or contemplate removal of punishment while impliedly maintaining a person's guilt. Such an approach may be debated in theological or sociological contexts and that too only in an academic sense but for importing the same into criminal jurisprudence and law one would have to rewrite the same which exercise we are neither ready nor equipped or qualified to undertake.

13. The stance sometimes taken in favour of keeping the relevant person's guilt intact while doing away with his punishment on the basis of compounding of an offence is premised upon considerations other than legal. According to this stance such a person should be kept away from public offices and civil services, etc. because he is an adjudged criminal who was once found guilty of an offence but he got away with his punishment because of compounding of the relevant offence. In his separate note recorded in the case of Mureed Sultan and others v. The State through P. G. Punjab and another (2018 SCMR 756) our learned brother Qazi Faez Isa, J. had raised similar concerns in this regard as had been voiced by his lordship in his lordship's separate note

dated 21.03.2017 recorded in the present matter. In the said case of Mureed Sultan and others our learned brother had observed as under:

"7. Some may question the significance of the entire discussion, and enquire, if a court has accepted the application under section 345 of the Code and the convict has been released from jail what difference would his acquittal make. There are grave consequences. A man who has committed murder but is "acquitted" merely because the legal heirs of the murdered person compound the offence, would enable the murderer, for instance, to honestly declare on a job application that he is not and has never been a convict; he could thus be eligible to apply for government employment, be employed as a teacher, be inducted into the Armed Forces, enter the judicial service or even be appointed as a judge of the superior courts. There is then the religious aspect to the discussion. The person who has committed the sin of murder if he professes his guilt or is convicted in this world, and serves out his sentence or is released as a consequence of the legal heirs forgiving him, may be spared the agony of punishment in the Hereafter."

While appreciating the intensity and sincerity of the sentiment expressed and also the gravity of the concerns voiced by our learned brother in respect of different ramifications of the issue not only in the context of public life in this world but also regarding the Hereafter we have, with utmost respect, not been able to bring ourselves to agree with his lordship so as to interpret the existing law in the light of some hypothetical possibilities in this world and retribution or redemption in the Hereafter. It is not for us to consider as to how such a person would be dealt with by Almighty Allah in the next world or on the Day of Judgment as our job is only to interpret and apply the law of the land as it exists. Our short response to such stance is that it is based upon nothing but good intentions and pious wishes, it stems from mere possibilities conjured up by a noble and public-spirited mind, it involves public policy and it is for the legislature to amend the relevant laws, etc. to keep such a person out of the public life, if it so desires and decides. Without introducing appropriate amendments in the criminal law in vogue in the country there is little scope for canvassing such collateral or incidental punishments for a person and as long as the law of the land stands as it is all the fruits and effects of acquittal have to be extended to such person on the basis of a complete and lawful compounding of the offence with him. Be that as it may, this Court has already rejected a similar argument based upon this very stance in the above mentioned case of Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan (PLD 2010 SC 695).....

16. It may be appreciated in this context that the law of the land permits compounding of some offences and through the act of compounding the victim or his heirs absolve the accused person or convict of the guilt and if such composition is allowed or permitted by the relevant court, where required, then because of a successful and complete composition the offence itself vanishes leaving no issue about guilt or otherwise alive. An offence is generally against the State and the society at large but the legislature has made some of the offences compoundable which is a recognition that wishes of the victims or their heirs have an important role in prosecution of such offences and adjudication regarding guilt and punishment therein, subject of course to permission or leave of the court for composition where required. In some of the precedent cases referred to above it had categorically been held that once a composition is complete in respect of a compoundable offence not requiring permission of the

court the concerned court is divested of its jurisdiction to try the case or the offence. The references made to Black's Law Dictionary and Concise Oxford Dictionary also amply demonstrate that to compound means to agree not to prosecute a crime, to settle a dispute by concession or special agreement, to condone an offence in exchange for money or any other consideration, to forbear from prosecuting a crime and to come to terms with a person for forgoing a claim, etc. for an offence. The decision not to prosecute a person for a compoundable offence allegedly committed by him or the decision to absolve him of his guilt even where it has been judicially determined are decisions which have been given by the legislature in the hands of the victims or their heirs by making the offence compoundable and in cases where permission or leave of a court is required for composition of such offence this spirit of the law is to be kept in view and the requisite permission or leave may ordinarily not be withheld or refused unless the facts and circumstances of the case persuade the relevant court otherwise. Carrying the spirit of composition (forgiveness and reconciliation) forward we may add that grant of the requisite permission or leave by the court in such cases should be a rule and its withholding or refusal an exception. Composition of a compoundable offence is a concession extended by the legislature and also by the religion of Islam to the victims and their heirs and the same may not lightly be taken away or whittled down by the courts.

17. As a result of the discussion made above we declare the legal position as follows:

- (i) As provided by the provisions of section 338-E(1), P.P.C. and the first proviso to the same and as already declared by this Court in the case of **Chairman Agricultural Development Bank of Pakistan and another v. Mumtaz Khan** (PLD 2010 SC 695) as a result of a successful and complete compounding of a compoundable offence in a case of *Ta'zir* under section 345, Cr.P.C., with permission or leave of relevant court where required, an accused person or convict is to be acquitted by the relevant court which acquittal shall erase, efface, obliterate and wash away his alleged or already adjudged guilt in the matter apart from leading to setting aside of his sentence or punishment, if any.
- (ii) In the context of the provisions of section 345(6), Cr.P.C. the effect of an acquittal recorded by a court on the basis of a successful and complete compounding of a compoundable offence shall include all the benefits and fruits of a lawful acquittal.”

The Hon'ble Supreme Court has clearly laid down the law which squarely applies on the present issue as it has been held that as a result of a successful and complete compounding of a compoundable offence under Section 345 Cr.P.C with permission or leave of relevant Court, an accused person or convict is to be acquitted by the relevant Court which acquittal shall erase, efface, obliterate and wash away his alleged or already adjudged guilt in the matter apart from leading to setting aside of a sentence or punishment, if any. It has been further

held that in such eventuality the compounding of a compoundable offence shall include all the benefits and fruits of a lawful acquittal. After having perused the above Judgment of the Hon'ble Supreme Court, I am of the considered view that in fact there is nothing left in this matter further to be adjudicated upon and the Suit could have been decreed even at this stage of the proceedings by framing a legal issue under Order 14 Rule 2 CPC. However, since the Counsel for Defendant No.1 has requested for time to file written statement, the same is being deferred for the time being. But nonetheless, in view of above position, I am of the view that for the present purposes, Plaintiff is fully entitled for the relief prayed for through listed application, as failing which, it would cause serious prejudice and irreparable loss to the Plaintiff as his compulsory retirement from service is merely based on the charge of murder which stands compromised, whereas, balance of convenience also lies in his favor. Moreover, there appears to be no other departmental proceedings pending against the Plaintiff.

In view of such position, listed application is allowed to the extent that impugned order(s) dated 24.5.2016 placing the plaintiff under suspension, charge sheet dated 18.8.2017 and order of compulsory retirement dated 18.05.2018 are hereby suspended till final adjudication of the Suit, and resultantly the Plaintiff stands reinstated into his service with immediate effect.

Before parting it may be of relevance to observe that since this is a case, wherein, the above order has been passed on the basis of the law settled by the Hon'ble Supreme Court, whereas, the Defendant No.1 was already put on notice vide order dated 26.09.2018 to that effect, and instead of withdrawing the impugned order(s) or consenting to the listed application / Suit, very lame, frivolous and pitiable objections

have been raised, which is not expected from a Government department like State Bank of Pakistan. Therefore, let compliance of this order be made within two weeks at the most and report be placed on record for perusal through Mr. Muhammad Khan Khoso departmental representative of Defendant No.1, present in Court today.

Application stands allowed as above.

J U D G E