

# IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO. 2678 /2016

Plaintiff: Qamar Hussain through Mr. Jam Zeeshan  
Advocate.

Defendant: The National Bank of Pakistan through  
No. 1. Mr. S. Amir Ali Advocate.

- 1) For hearing of CMA No. 17872/2016.
- 2) For hearing of CMA No. 5128/2018.
- 3) For examination of parties / settlement of issues.

Date of hearing: 31.05.2018.

Date of order: 31.05.2018.

## ORDER

**Muhammad Junaid Ghaffar, J.** Through application at Serial No.2 (CMA No. 5128/2018) Plaintiff seeks directions to Defendant No.1 to release the post-retirement benefits of the Plaintiff.

2. Learned Counsel for the Plaintiff has contended that the post-retirement benefits have been unlawfully withheld by Defendant No.1 on a wrong pretext that in view of Section 23 of the NAB Ordinance, 1999 the same cannot be released. According to the learned Counsel, this contention of Defendant is misconceived as the reference in question filed before the NAB Court has no concern with the retirement benefits, and in support he has relied upon the bail order passed in this regard. He further submits that in the case reported as ***Khan Asfandyar Wali and others V. Federation of Pakistan and others (PLD 2001 SC 607)*** Section 23 ibid has been interpreted and therefore, the retirement benefits cannot be withheld and directions be issued for release of the same.

3. On the other hand, learned Counsel for Defendant No. 1 submits that the question that whether Section 23 would apply or not is only within the domain of the NAB Court or for that matter Court exercising Constitutional Jurisdiction and not before this Civil Court. He further submits that the Reference has all the relevance in withholding the pensionary benefits; therefore, the application be dismissed.

4. I have heard both the learned Counsel and perused the record. Primarily this is a Suit for Declaration and Permanent Injunction and the Plaintiff in addition to impugning a Notice dated 11.11.2016, whereby, charge sheet has been issued on different counts, also seeks a declaration that he is entitled for payment of his end service benefits along with markup thereon. Through listed application the same prayer of payment of post-retirement benefits has been reiterated. It appears that through Show Cause Notice / Charge Sheet dated 11.11.2016 there are various charges which have been alleged against the Plaintiff and it is the case of the Plaintiff that such exercise has been initiated after his retirement; hence, they are coram-non-judice and so also unlawful. On 21.12.2016 while issuing notice in this matter the Defendants were restrained from proceeding further with the impugned charge sheet / show cause notice dated 11.11.2016. Counsel for the Plaintiff was confronted as to how this application can be entertained in view of the fact that Defendant No.1 seeks protection under Section 23(b) of the NAB Ordinance, to which the learned Counsel submits that this Court is competent to adjudicate this matter as according to him the Reference has no nexus with the issue raised in this Suit. However, I am not inclined to agree with such contention for the simple reason that Section 23 itself provides a mechanism and authority to the Court for permitting any transfer, right, title or interest or charge and such

Court is either the NAB Court, or for that matter (in some exceptional cases) the Court exercising Constitutional Jurisdiction. This is for the simple reason that if this Court comes to any conclusion in this regard, it may have direct effect on the proceedings before the NAB Court and therefore, this Court must show restraint in passing any such order.

5. Moreover, this is not the only issue in hand. It is also important to note that the Defendant's case, through the charge sheet is that while in service he acted beyond the mandate of his authority and therefore, they intend to initiate some adverse action. Now if such adverse action ends up against the Plaintiff, with any adverse observations, then perhaps, it may also have effect on his service benefits or the quantum of the receivables. Therefore, even otherwise, if the application is allowed it would in fact nullify the charge sheet in question and against which the Plaintiff has itself obtained restraining orders. Further, the relief sought through this application is in fact the entire relief (in pith and substance), in the Suit, and it is settled law that such a relief cannot be granted through interlocutory application; whereas, further action pursuant to show cause / charge sheet is stayed at the request of the plaintiff, and if this application is allowed then the impugned show cause notice / charge sheet would then be meaningless.

6. In view of hereinabove facts and circumstances of this case, I am of the view that the application in question is premature, hence, cannot be granted and therefore, by means of a short order in the earlier part of the day, the same was dismissed and these are the reasons thereof.

**J U D G E**

ARSHAD/