

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:** MR. JUSTICE MIAN SAQIB NISAR, HCJ  
MR. JUSTICE SARDAR TARIQ MASOOD  
MR. JUSTICE FAISAL ARAB

**CIVIL PETITIONS NO.3078 TO 3130, 3163 TO 3180, 3184 TO 3203,**  
**3244 TO 3258, 3263, 3285 AND 3286 OF 2016 AND CIVIL MISC.**  
**APPLICATIONS NO.6624 TO 6626 OF 2016 AND 5569 OF 2017**

(Against the judgment dated 29.06.2016 of the Islamabad High Court, Islamabad, passed in ICAs No. 29, 30, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 170/2014, 994, 995/2013 & 181/2015)

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Zarai Taraqiati Bank Ltd. (ZTBL) through its President, Islamabad and another	In C.P. Nos.3191 to 3203, 3244 to 3258, 3263, 3285 and 3286/2016
	...Petitioner(s)

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	<b>...Respondent(s)</b>

For the Petitioner(s):	Mr. Abdur Rehman Khan, ASC (In C.Ps.No.3078, 3079, 3083, 3085 to 3091, 3093 and 3123 to 3130/2016)
	Mr. Muhammad Ikram Chaudhry, Sr. ASC (In C.Ps.No.3094 to 3121/2016)
	Mr. Abdul Rahim Bhatti, ASC (In C.Ps.No.3092, 3080 to 3082, 3084, 3122, 3163 to 3180, 3184 to 3190/2016)
	Mr. Muhammad Shoaib Shaheen, ASC (In C.Ps.No.3191 to 3203, 3244 to 3258, 3263, 3285 & 3286/2016)

For the Applicant(s):	Mr. Muhammad Ikram Chaudhry, Sr. ASC (In C.M.As.No.6624 to 6626/2016)
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Ch. Imtiaz Ahmed, ASC  
(In C.M.A.5569/2017)

For the Respondent(s):	Mr. Muhammad Shoaib Shaheen, ASC (In C.Ps.No.3078 to 3130, 3163 to 3180, 3184 to 3190/2016)
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Date of Hearing:	22.11.2017
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## **JUDGMENT**

**FAISAL ARAB, J.-** In the year 2002, the Government of Pakistan decided to reorganize Agricultural Development Bank of Pakistan, a state run enterprise and convert it into a public limited company. The first step that was taken by the respondent bank towards its reorganization was the revision of pay scales of all its employees. This was done under Circular Nos. PD/33/2001 and PD/34/2001 dated 05.12.2001 whereby new pay scales were introduced increasing the salaries of the bank employees substantially. While revising the pay scales, it was made clear that the pension and retirement benefits shall be decided after actual study. The next step that was to be taken was revising the pensionary and retirement benefits. A decision in this regard was taken by the Board of Directors, which is reflected in Circular No. PD/26/2002 dated 10.08.2002. The pension that was earlier being calculated on the basis of the factor of 2.33% payable in terms of the Agricultural Development Bank Employees Pension and Gratuity Regulations, 1981, after revision of the pay scales was brought down to factor of 1.15%. This decision of the Board was duly circulated.

2. After revising the pay scales and pensionary benefits as stated above, the next step towards reorganization was launching of the voluntary Golden Handshake Scheme on 19.08.2002 for all its regular employees offering pension, gratuity, compensation, leave encashment, general provident fund, benevolent fund, medical facilities and other benefits in terms thereof. As regards the pensionary benefits, which are the subject matter of the controversy in these proceedings, it was made clear in the Scheme that the same

shall be calculated on the basis of the Circular No. PD/26/2002 dated 10.08.2002 which provided calculation on the basis of the revised pension factor of 1.15%. Being well aware that the new pension factor stated in the scheme would be on the basis of pension factor 1.15%, many employees opted for the Golden Handshake and left their jobs. Subsequently, on 04.10.2002, the President of Pakistan promulgated Agricultural Development Bank of Pakistan (Re-organization and Conversion) Ordinance, 2002 whereby the Agricultural Development Bank of Pakistan was converted into a public limited company and was named as Zarai Taraqiati Bank Limited and duly registered under the Companies Ordinance, 1984. Then in 2005 another set of employees, who voluntarily left their jobs after availing benefits under Zarai Taraqiati Bank Limited (Staff Regulations) 2005, their pensionary benefits too were computed on the basis of pension factor of 1.15%.

3. The employees of the respondent bank, who had neither opted under the Golden Handshake Scheme of 2002 nor under Zarai Taraqiati Bank Limited (Staff Regulations), 2005, upon their retirement were also given pensionary benefits under the Circular No. PD/26/2002 dated 10.08.2002 i.e. on the basis of the revised pension factor of 1.15%. They protested by taking the stand that their terms and conditions cannot be revised unilaterally to their disadvantage and claimed pension to be computed on the basis of pension factor of 2.33% payable under the Agricultural Development Bank Employees Pension and Gratuity Regulations, 1981 which were applicable when they joined service. Upon such challenge, the two sets of employees who had earlier opted severance of their

employment under the Golden Handshake Scheme of 2002 as well as under Zarai Taraqiati Bank Limited (Staff Regulations) 2005 also joined in to seek the same relief. When denied, they challenged the same in constitutional jurisdiction before the Islamabad High Court taking the plea that the reduction of pension factor from 2.33% to 1.15% amounts to adversely affecting their terms and conditions of service and hence be declared without lawful authority and of no legal effect. The learned Single Judge allowed the writ petitions vide judgment dated 16.05.2013 granting relief to all employees including those who opted under Golden Handshake Scheme of 2002 and Zarai Taraqiati Bank Limited (Staff Regulations), 2005. Being aggrieved by such decision, the respondent bank filed Intra Court Appeals before the Division Bench of the Islamabad High Court, which were allowed to the extent that except for those employees who opted under any of the two schemes stated above the rest were held to be entitled for computing their pension on the basis of factor 2.33%. It was held as follows:-

15. *We, therefore, hold that the employees who had accepted the terms and conditions of Voluntary Golden Handshake Scheme offered vide Circular dated 19.8.2002 and had accepted the payments are not entitled to claim the benefits under the Regulations of 1981. To their extent the terms and conditions stipulated in Circular dated 19.8.2002 and in the other related documents have attained finality and thus have become past and closed transactions. As far as the employees who had voluntarily accepted the option given for adopting the Regulations of 2005 are concerned they are also at par with those who had accepted the terms and conditions and had availed the benefits under the Voluntary Golden Handshake Scheme. The option having been exercised voluntarily and out of free will has a contractual status and, therefore, is not covered*

*under section 6 of the Ordinance of 2002 or section 13 of the Act of 1974. However, whether or not an employee had accepted the offer made by the appellant Bank vide Circular dated 30.12.2005 to adopt the Regulations of 2005 voluntarily and out of free will or it was a fait accompli raises disputed questions of fact which could not have been decided in exercise of powers vested in this Court under Article 199 of the Constitution. Nevertheless it shall be open for the respondents or other employees to approach the competent authority of the appellant Bank if it is their case that they had not adopted the Regulations of 2005 voluntarily or that it was a fait accompli. The competent authority in each case shall afford an opportunity of hearing and thereafter pass a speaking order. In case of voluntary acceptance and adoption of the Regulations of 2005 the employee shall not be entitled to claim any benefit under the Regulations of 1981.*

4. As in the Intra Court Appeals, relief was not granted to those retired employees who neither opted under the Golden Handshake Scheme of 2002 nor under Zarai Taraqiati Bank Limited (Staff Regulations), 2005, they preferred these petitions seeking leave to appeal.

5. Learned counsel for the petitioners contended that in terms of proviso to Section 39 (2) of the Agricultural Development Bank Ordinance, 1961, no regulation relating to matters stated in clauses 'e' and 'f' shall take effect until it has been approved by the Federal Government. He stated that as the Voluntary Golden Handshake Scheme does not have the backing of Federal Government's approval, it is not enforceable in law. He next contended that while the relief of pensionary benefit in terms of pension factor 2.33% has been granted to other employees of the

respondent Bank in the impugned judgment, denial of such relief to the present petitioners is discriminatory and their pensionary benefits also ought to have been calculated on the basis of factor of 2.33% instead of 1.15%. Learned counsel for the respondents, on the other hand, has defended the impugned judgment.

6. It is a well settled principle of law that the terms and conditions of service cannot be unilaterally altered by the employer to the disadvantage of the employees. Such protection is also recognized under section 6 of the Agricultural Development Bank of Pakistan (Reorganization and Conversion) Ordinance, 2002 and Section 13 of the Banks (Nationalization) Act of 1974. However, where an employee voluntarily accepts and receives benefits under some arrangement with the employer out of his own free will then he cannot turn around and seek benefits that were ordinarily applicable to other employees. This principle has been recognized by this Court in the case of Zarai Taraqiati Bank Limited Vs. Said Rehman and others (2013 SCMR 642). In paragraph 14 it was held as follows:-

14. *Notwithstanding the legal status of the impugned Circular we concluded that the employees who were protected under section 6 of the Ordinance of 2002 i.e. who were in service prior to conversion of the appellant Bank into an incorporated company and thus were governed under the Regulations of 1981 would not be affected in any manner whatsoever nor the Circular dated 10.8.2002 shall have any relevance to their extent. However, the case of the employees who had voluntarily and out of free will accepted and adopted the Regulations of 2005 or the offer of Golden Handshake Scheme vide Circular dated 19.8.2002 and pursuant thereto had accepted and received the benefits and payments there under are not entitled to claim protection either*



*under section 6 of the Ordinance of 2002 nor under section 13 of the Act of 1974. Both the said statutory provisions are a clog or restraint on the employer not to alter or change the terms and conditions to the disadvantage of an employee. The protection under section 6 of the Ordinance of 2002 or section 13 of the Act of 1974 by no stretch of imagination can be extended to such employees who consciously, out of their free will and voluntarily accept or adopt altered or changed terms and conditions of service. If this was not the case then a person tendering his resignation out of free will could also turn around later and seek protection under section 6 of the Ordinance of 2002. When an employee accepts an offer voluntarily and the same is acted upon then he or she is estopped from resiling from the commitment later. The legislative intent behind section 6 of the Ordinance of 2002 or section 13 of the Act of 1974 is to ensure that the terms and conditions of the transferred employees remain protected and they are not altered or varied to their disadvantage unilaterally and without their consent. Consent, conscious decision or acting out of free will would obviously not attract the protection contemplated under section 6 of the Ordinance of 2002 or section 13 of the Act of 1974.*

***(Underlined to lay emphasis).***

7. In the present case the petitioners in all the connected petitions belong to such categories of ex-employees of respondent No.1 who left their jobs long ago after opting either under the Golden Handshake Scheme of 2002 or under Zarai Taraqiati Bank Limited (Staff Regulations), 2005 and received all benefits including pensionary benefits as provided in the scheme under which they exercised their option. The petitioners on account of their own voluntary act considered the most beneficial option, which disentitled themselves from claiming pensionary benefits under Agricultural Development Bank Employees Pension and Gratuity Regulations,

1981. They can be categorized distinctly from the employees who had not opted either under the Golden Handshake Scheme of 2002 or under Zarai Taraqiati Bank Limited (Staff Regulations), 2005. The plea of discrimination was, therefore, not available to the petitioners being of distinct class, the Division Bench of the High Court rightly declined them the relief. Judgments of this Court rendered in the cases of National Bank of Pakistan Vs. Nasim Arif Abbasi (2011 SCMR 446) and State Bank of Pakistan Vs. Imtaiz Ali Khan (2012 SCMR 280), which have upheld similar kind of classification can be referred with considerable advantage. In paragraph 13 of the National Bank of Pakistan supra case, it is held that *"a reasonable classification in terms of the law laid down by this Court in I.A. Sharwani v. Government of Pakistan (1991 SCMR 1041) did exist between the two categories of employees, i.e. those who had exercised the option and those who had not exercised the option. As such, the learned counsel for the respondents failed to point out discrimination prohibited under Article 25 of the Constitution."* Hence, the question of discrimination does not arise.

8. Insofar as the restriction that no regulation relating to matters stated in clauses 'e' and 'f' shall take effect until it has been approved by the Federal Government contained in proviso to Section 39(2) of the Agricultural Development Bank Ordinance, 1961 is concerned, it suffices to say that the Voluntary Golden Handshake Scheme has been recognized in various judicial pronouncements and the same was not challenged by any of the petitioners at the time of opting benefit thereunder. Hence, the same cannot be gone into at this stage of the proceedings.

9. The above are the detailed reasons of our short order dated 22.11.2017 whereby we dismissed all these connected petitions.

**CMA's NO. 6624 TO 6626 OF 2016 AND 5569 OF 2017**

10. As we have dismissed the main petitions, these CMA's for impleadment as party have become infructuous and are accordingly dismissed.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the  
22<sup>nd</sup> of November, 2017  
Approved For Reporting  
**Khurram**