IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:
MR. JUSTICE TASSADUQ HUSSAIN JILLANI
MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE ASIF SAEED KHAN KHOSA
MR. JUSTICE SARMAD JALAL OSMANY
MR. JUSTICE GULZAR AHMED
MR. JUSTICE MUHAMMAD ATHER SAEED

Constitution Petition No. 39 of 2007 and
H.R.C. Nos. 14127-S/2009, 13486-S/2010,
14646/2009 and 47811-P/2010
(Petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973)

Abdul Wahab and others	(in Const.P.39/2007)
Mst. Amna Baloch	(in HRC 14127-S/2009)
Amina Ahmed Baloch	(in HRC 13486-S/2010)
Employees & officers of Habib Bank Ltd	(in HRC 14646/2009)
Application by Syed Sohail Bashir	(in HRC 47811-P/2010)

... PETITIONERS/APPLICANTS

VERSUS

HBL and others (in Const.P.39/2007)

... RESPONDENTS

For the Petitioners: Mr. Muhammad Akram Sheikh, Sr. ASC
(Assisted by: Mr. Hassan Murtaza, Advocate, Mr. Sajeel Shahryar Swati, Advocate and Syed Riaz Hussain, Advocate)
Mr. Mehmood A. Sheikh, AOR

For the Respondents: Ch. Aitzaz Ahsan, Sr. ASC
(Assisted by Mr. Gohar Ali Khan, Advocate and Mr. Kashif Ali Malik, Advocate)
Mr. M.S. Khattak, AOR

For the applicants: Mr. Zulfiqar Khalid Maluka, ASC
(in CMA No. 1899/2012)

For the applicants: Mr. Sher Muhammad Baloch, in person
(In HRC 14127-S/2009 & HRC 13486-S/2010)

Dates of Hearing: 15th, 16th & 17th October, 2012.

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JUDGMENT

MIAN SAQIB NISAR, J.- Pursuant to the short order dated 17.10.2012 passed in the noted matter, whereby the said petition(s) was dismissed, the detail reasons are being hereby provided.

2. This petition, under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 *(the Constitution)*, has been initiated by 310 ex-employees *(the petitioners)* of Habib Bank Limited *(HBL)*, respondent No.1 *(the Bank)*, out of whom 308 were early *(compulsorily)* retired, pursuant to a policy decision taken by the Board of Management of the bank; and by invoking the provisions of Rule 17 of the Habib Bank Limited (Staff) Service Rules, 1981 *(the Rules 1981)*. Whereas the services of the two *(petitioners)* have been terminated under Rule 15 *(supra)*, by paying them three months dues. Vide this petition, petitioners have challenged the aforesaid action of the Bank, with the prayer that "*it is, therefore, prayed that this petition may be accepted, orders and decision passed by respondent No.1-bank for termination of services of the employees of the bank may be declared to be without lawful authority and of no legal effect and quashed. Respondent No.1 may be directed to lay down or prescribe for guidance of the officers parameters and criteria in the light of which such decision should be made in-discriminatory to prevent the employees from arbitrary and whimsical exercise of powers. Costs of the petition may also be awarded".* When the instant matter came up for hearing before this Court on 29.11.2010, the following order was passed:-

> *"We have heard learned counsel for the parties at some length and have also considered the law laid down by this Court in cases where issue of a "person" in terms of Article 199 of the Constitution was one of the points in issue or the Banking*

> *company or a corporate body was either a respondent or a petitioner i.e. Airport Support Services Vs. Airport Manager (1998 SCMR 2268), Aithison College Vs. Muhammad Zubair (PLD 2002 SC 326), Pakistan International Airline Corporation Vs. Tanweer-ur-Rehman (PLD 2010 SC 676) & Muhammad Mubeen-us-Salam Vs. Federation of Pakistan (PLD 2006 SC 602). We find that in those cases, the question of distinction between the relief sought by a "person" in terms of Article 199(a)(ii) and Article 199 (1)(c) was not raised which could have a strong bearing in the case we are seized of and similar matters. In these circumstances, we are persuaded to refer this matter to the Hon'ble Chief Justice for constitution of a larger Bench for rendering an authoritative judgment. Since this matter is pending since long, subject to the order of the Hon'ble Chief Justice this may be fixed for an early date. A notice shall also issue to learned Attorney General for Pakistan."*

3. Be that as it may, in the context of the instant matter; the facts of the case are:- that the petitioners were in the employment of the bank *(most of the petitioners were either VP or AVP)* and as per their own case, their services were regulated and governed by the terms and conditions envisaged by Rules 1981, which *(services)* have been dispensed with as stated above and the petitioners are aggrieved of this action of the Bank; it is not the case of the petitioners that such rules were/are statutory in nature; and/or they were civil servants. For the facility of reference, Rules 15 and 17 being the germane rules for the purposes of the present petition, the relevant part thereof is reproduced:-

> *"**15. Termination of Services**:- (1) Services of an employee in Category I may be terminated by the competent authority on 3 months' notice or on payment of a sum equal to his substantive pay for three months in lieu thereof:……."*

> ***"17. Superannuation and retirement*** *– (1) Every employee shall retire from service:-*
>
> *(a) on such date after he has completed twenty five years of service as the competent authority may, in the interest of the Bank, direct or*
>
> *(b) where no direction is given under clause (a) on the completion of the sixtieth year of his age ……."*

Earlier HBL was a private bank and was nationalized under the Banks (Nationalization) Act 1974, however upon its denationalization, according to the petitioners, their performance was duly evaluated, and that being found to be satisfactory, all of them were retained by the Bank. Not only that, some of them were even rewarded. It is averred in the petition that most of the petitioners have excellent service record and in the ordinary course of employment, they were to retire on the completion of sixty years of age under clause (b) of Rule 17 *(reproduced above)*, but the petitioners have been retired/terminated *(in case of two)* from service vide certain order(s)/letter(s) *(note: different letters for different petitioner)*. In case of petitioner No.1, the order/letter is dated 13.1.2007, the relevant part whereof reads as under:-

> *"Dear Mr. Wahab,*
>
> *The management would like to thank you for your services during the past years.*
>
> *Going forward in line with the Bank's changed staffing needs, you are being retired from Bank service with effect from 13th January 2007, in accordance with the rule # 17 of HBL (Staff) Service Rules – 1981.*
>
> *In view of your sincere services to the Bank, the Management is pleased to grant you, in addition to all the benefits payable to you under the terms and conditions of employment, the following additional benefits."*

Almost similar orders/letters were issued with regard to the other petitioners as well *(note: in case of those against whom action is taken under Rule 15, the orders simply are based on that Rule)*. It is the grievance of the petitioners, that the exercise of power under Rule 17(1)(a) *ibid*, for their retirement, is pursuant to the "*changed staffing needs*", but without disclosing and justifying as to what those exigencies were; the petitioners had not been provided with any opportunity of hearing before the impugned action was taken, yet they have been deprived of their vested and fundamental right(s), which action is void being in breach of the rule of natural justice; the power(s) under Rules 15 and 17(1) *ibid* is *(are)* uncontrolled and unbridled and has been exercised not only in violation of the equality clause as enshrined by Article 25 of the Constitution, but in an arbitrary and whimsical manner which again is violative of the said Article; it is also their grouse that through the impugned action their fundamental right to life *(Article 9)* and the rights available to them as per Articles 3, 4, 8, 27, 29, 37 and 38 of the Constitution have been infringed; before taking the impugned decision, the Bank has not adverted to Rule 89 of the amended Habib Bank Limited (Staff) Service Rules, 1989, which reads below:-

> *"Rule 89: Encashment of leave preparatory to retirement*
>
> *1. An employee shall exercise his option either to avail the leave preparatory to retirement or for encashment of the leave preparatory to retirement, (on attaining the age of superannuation or on completion of 30 years qualifying service) inasmuch as no power is vested with the bank to retire the employee under this rule before the attainment of 30 years service."*

4. Furtherance to the petitioners case, Mr. Muhammad Akram Sheikh, their learned counsel, has submitted **(1)** that the

forced retirement of the petitioners is contrary to the Bank's own rules, although such rules are non-statutory in nature, yet those do not empower the Bank to violate the same rules with impunity **(2)** that the petitioners have fundamental right to life and as they have been removed from service and deprived of their livelihood in a forced and coercive manner without following the rules in that regard, thus it tantamounts to depriving them of such right *(to life)*, which action undoubtedly is against the provisions of Article 9 of the Constitution; in this context it is also submitted that the right to life should be given an extended/broader meaning, so as to include the right to livelihood; reliance in this behalf is placed on the judgments reported as ***Delhi Transport Corporation Vs. DTC Mazdoor Congress and others*** ***(AIR 1991 SC 101 paragraph 223 at pages 172 and 173)***, ***Arshad Mehmood and others Vs. Government of Punjab through Secretary, Transport Civil Secretariat, Lahore and others*** *(**PLD 2005 SC 193 at page 232)* **(3)**--; the Bank is a 'person' in terms of Article 199(1)(c) of the Constitution as it is distinct from an *'ordinary private individual'*, because it *(the Bank)* is **owned** and **controlled** by the State, therefore, for all intents and purposes, thus an appropriate writ petition against the Bank is maintainable not only under the Article *supra,* but independently under Article 184(3) as well. In this behalf emphasis has been laid on the *"function test"* and reference has also been made to Articles 97, 141 and 142 of the Constitution in order to substantiate that the executive authority of the Federation is extendable to such matters *(note: see item No.28 of the Federal legislative list)*, in regard to which it has the empowerment to legislate; besides, the Bank statedly is the extended arm of the

State and thus it is claimed to be performing its functions in connection with the affairs of the State/Federation. It may be pertinent to mention here in the context of *function test* it is also argued that the Bank is, under the regulatory control of the State Bank of Pakistan *(SBP)* and therefore amenable to the writ jurisdiction **(5)** It is urged that the present is the era of substantial justice and, therefore, in order to alleviate the sufferings and miseries of the petitioners, this Court should act magnanimously while exercising its jurisdiction/power in order to grant relief to the petitioners in the interest of justice and on humanitarian grounds; **(6)** It is pleaded that the present matter is of immense public importance as it shall affect not only a large number of persons involved in the case, but shall also settle the principles of law in relation to the jurisdiction of this Court under Article 184(3) and the issues involved in the matter, which shall have vital impact on the public-at-large. **(7)** The provisions of Article 184(3) have no trappings and limitations of Article 199 of the Constitution and shall not deter this Court from exercising its jurisdiction under Article 184(3) *(Constitution)* which is an independent provision, and also because of the expression "*without prejudice*" appearing in the said Article should be construed as a non obstante clause to Article 199; *(and)* thus where the fundamental rights of a person(s)/citizen(s) have been violated and the matter is of public importance, appropriate orders can be issued by this Court, by ignoring any constraint of Article 199 *ibid*.

In support of his various contentions, learned counsel for the petitioners has relied upon the judgments reported as **Darshan Masih alias Rehmatay and others Vs. The State (PLD 1990 SC**

513) (5), **Muhammad Yasin Vs. Federation of Pakistan through Secretary, Establishment Division, Islamabad and others (PLD 2012 SC 132)**, **(1993) 4 Law Reports of Common Wealth** and **(1995) 2 Law Reports of Common Wealth), Pakistan Telecommunication Company Limited through General Manager and another Vs. Muhammad Zahid and 29 others (2010 SCMR 253), Pakistan Telecommunication Company Limited through Chairman Vs. Iqbal Nasir and others (PLD 2011 SC 132), Pakistan International Airline Corporation and others Vs. Tanweer ur Rehman and others (PLD 2010 SC 676), Wattan Party and others Vs. Federation of Pakistan and others (PLD 2012 SC 292 at pages 326 and 327, paragraph 35), Miss Benazir Bhutto Vs. Federation of Pakistan and another (PLD 1988 SC 416 at page 488)** and **Mian Muhammad Nawaz Sharif Vs. Federation of Pakistan and others (PLD 1993 SC 473).**

5. To controvert the above, Ch. Aitzaz Ahsan, learned counsel, has joined serious issue about the **maintainability** of this petition, it is argued by him that the **Bank** for all intents and purposes is a private institution. HBL was nationalized in 1974 and was privatized in 2004; the admitted position is, that more than sixty percent of the shares of the Bank are held by Agha Khan Foundation, which were acquired in 2005 and the said foundation has the absolute majority in *(on)* the Board of Management; it is submitted that, it shall be misconceived to argue that the Bank is being owned and controlled by the State/Federation either directly or indirectly, besides, the SBP is only a regulatory authority for all the banks in Pakistan, therefore by virtue of such a status of SBP, no private bank in the country can be said to be a State owned and

a controlled enterprise. It is also argued that the petitioners have no fundamental right(s) which could be said to have been violated by the Bank; they were simply contract employees of a *(private)* Bank, whose services have been dispensed with strictly as per the terms of the contract (i.e.) Rules 1981; the *(noted)* matter absolutely do not involve a question of public importance or of the enforcement of fundamental rights, therefore, the case does not fall within the purview of Article 184(3) of the Constitution.

6. Heard. In our view following are the broader *(important)* questions in the matter, which shall encompass the points in issue between the parties and the answers thereto:

(i) What is the status of the Bank; the status and relationship of its employees *(the petitioners)* viz-a-viz the Bank;

(ii) Whether the petition is maintainable in terms of Article 184(3) of the Constitution;

(iii) Whether there is a violation of any of the fundamental rights of the petitioners, especially in relation to the right to life *(Article 9)*, and right to equality *(Article 25)*. And other Articles of the Constitution, such as, Articles 3, 4, 8, 27, 29, 37 and 38 etc.;

(iv) Whether the Bank's action against the petitioners is arbitrary, whimsical and discriminatory, thus Article 25 of the Constitution should be resorted to in allowing relief to the petitioners.

However, before answering/resolving the aforesaid questions/ propositions, it seems expedient to mention here, that vide short order dated 17.10.2012, we had dismissed the noted petition, holding **(a)** "that the grievances voiced through this petition are

individual in nature" **(b)** "the nature of relationship between the petitioners/employees of the bank and the respondent was contractual" **(c)** "that the impugned order of compulsory retirements were in accord with the Habib Bank Limited (Staff) Service Rules, 1981 which are non-statutory" **(d)** "the bank is not performing any function in connection with the affairs of the Federation or a Province" **(e)** "no question of public importance with reference to enforcement of fundamental rights has been raised and the petition having no merits is accordingly dismissed". As regards the question formulated by this Court vide order dated 29.11.2010, it was held that the same "*shall be addressed in some other appropriate case"* (emphasis supplied).

7. ***Question No.1:*** It is an admitted position that the Bank has been privatized and the majority shareholding thereof, has been acquired and is vested in Agha Khan Foundation, there also is no discord that the Board of Management of HBL is predominantly represented by the said foundation. However, in order to bring the Bank within the purview and the connotation(s) of a *'person'* and '*authority'* appearing in Articles 199, 199(5) and 199(1)(c) of the Constitution and also for the purposes of urging that appropriate order, in the nature of a writ can be issued independently by this Court under Article 184(3) *(Constitution)*, to the Bank, the learned counsel for the petitioners has strenuously relied upon the *'function test';* and in this respect it is submitted that the State/Federation has a considerable, shareholding in the Bank and representation in the managing affairs thereto therefore it shall qualify having the status of a person/authority within the meaning of the law; besides, the Bank is being regulated by and under the authority of

the SBP thus on this account as well it *(Bank)* has the status mentioned above, therefore this Court should exercise its jurisdiction in terms of the Article *supra*. In this context, it may be held that for the purposes of resorting to the *'function test',* two important factors are the most relevant i.e. the extent of financial interest of the State/Federation in an institution and the dominance in the controlling affairs thereof. But when queried, it is not shown if the State/Federation has the majority of shareholding, or majority representation in the Board of Management of the Bank. As regards the authority and the role of the SBP *(in the above context)*, SBP is only a regulatory body for all the banks operating in Pakistan in terms of Banking Companies Ordinance 1962 and suffice it to say that such regulatory role and control of SBP shall not clothe the Bank, with the status of a 'person' or the 'authority' performing the functions in connection with the affairs of the Federation. Rather it shall remain to be a private entity. In support of the above, reliance can be placed on two judgments of this Court reported as **Salahuddin and 2 others Vs. Frontier Sugar Mills and Distillery Ltd, Takht Bhai and 10 others (PLD 1975 SC 244)**, which prescribes that *"regulatory control does not make a person performing functions in relation to the federation or a province";* likewise in **Pakistan Red Crescent Society and another Vs. Syed Nazir Gillani (PLD 2005 SC 806)** it was held *"such control must be particular to the body in question and must be persuasive ……..…… on the other hand, when the control is merely regulatory whether under the statute or otherwise it would not serve to make the body a 'State' "*, therefore, we have no hesitation to hold that the Bank is a private institution for all intents and purposes. And we vide short order dated 17.10.2012 has deferred our

decision on the issue if such a private person is amenable to writ jurisdiction in the context of Article 199(1)(c) of the Constitution.

Attending to the second part of the proposition, it is an admitted position that the petitioners were employed *(promoted)* by the Bank as a result of a prescribed internal process of the Bank and the letters of petitioners appointment *(promotion)* clearly indicate that they were taken into employment on their unequivocal acceptance of the terms and conditions of employment, because in the said letters *(appended by the petitioners themselves with the petition),* it is clearly mentioned that *"you shall be bound by the rules and regulations of the bank for the time being in force"*. Thus when such offer *(of appointment)* was duly accepted by the petitioners, it culminated into a valid and a binding service contract between the parties, which for all intents and purposes was meant to govern and regulate the relationship *inter se* the parties. It may not be irrelevant to mention here *(which may also be reiterated in other parts of the judgment)* that it is not the case of the petitioners that they are governed by any statutory rules of service. It is settled law that, where a service grievance is agitated by a person/employee who is not governed by the statutory rules of service, before the High Court(s), in terms of Article 199 of the Constitution such petition shall not be maintainable; reference in this behalf can be made to PLD 2010 SC 676 *(Pakistan International Airline Corporation Vs. Tanweer-ur-Rehman)* and PLD 2011 SC 132 *(Pakistan Telecommunication Co. Limited Vs. Iqbal Nasir). (note: the question however if that is possible in terms of Article 199(1)(c), we have deferred)*. But the plea that such law shall not prevent this Court while exercising its jurisdiction under Article 184(3); suffice it to say that while exercising the jurisdiction this Court is bound

by the conditions of Article 184(3); and moreover by such rules which are laid by this Court for regulating its jurisdiction, keeping in view the principles of restraints. We find that in the cases of contractual service, where the grievance agitated is against a private person, there is no reason that such restraint should be resorted to by this Court and any exception should be taken to the law laid down in Tanweer ur Rehman case *supra (note: even if it pertains to the writ jurisdiction of High Courts).*

8. ***Question No.2:*** Fundamental rights enshrined in our Constitution have a very significant and pivotal position and are the most sacred of the rights conferred upon the citizens/persons of the country and thus the regard, security and the enforcement of these rights is one of the primary duties of the State and its institutions at all the levels. These are such a primordial rights, that the sanctity and the significance attached thereto can be gauged from the constitutional mandate as prescribed *(envisaged by)* by Article 8 of the Constitution, whereby it is ordained *(specified)* that any law etc. in so far as it is inconsistent with such rights shall to the extent of inconsistency be void. Not only that, under Article 8(2), a complete bar and a prohibition has been placed on the State, in that, *"the State shall not make any law which takes away or abridge the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void."* In view of the sanctity and the importance of these rights and for the safeness and the safeguard *(saving those from a slightest impairment)* thereof the Constitution itself in a noteworthy way, has provided a specific and a special mechanism, in terms of Article 199(1)(c) by virtue whereof notwithstanding the powers of the High Courts under Article

199(1) (a) and (b) an extraordinary power has been conferred on it *"to make an order giving directions to any person etc.……as may be appropriate for the enforcement of the fundamental rights conferred by Chapter I of Part-II"* and moreover a bar has placed on the State in terms of Article 199(2) that subject to the Constitution, the right to move to the High Court(s) for the enforcement of such rights shall not be abridged. And in addition thereto a wider power(s) as per Article 184(3) *of the Constitution)* to this Court has been conferred. Besides, the superior Court of the country has the power, of **judicial review** to examine and adjudge any legislative and/or administrative action of the State on the touchstone of the fundamental rights and, to pass appropriate orders for protecting such rights and enunciating the law in respect thereof. In relation to the jurisdiction of this Court under Article 184(3) though the constraints and limitations, if any of Article 199 may not be *stricto sensu* attracted, in view of the expression *"without prejudice"* appearing at the very opening of the Article, meaning thereby *"without any detriment" (i.e. without being harmed or damaged or hurt).* However, this Court has the power and the jurisdiction to lay down the rules for the purposes of regulating its own jurisdiction and to apply the rules of restraints as mentioned earlier. Besides, Article 184(3) itself has its own limitations and conditions, which are:-

(i) The matter before the apex Court should be for the enforcement of any of the fundamental rights conferred by Chapter I of Part-II of the Constitution *(emphasis supplied)*;

AND

(ii) With reference to the enforcement of such fundamental rights the question involved should be of public importance *(emphasis supplied)*.

The above are the two primary, foundational and fundamental conditions for the exercise of the power vested in this Court under Article 184(3) and are *sine qua non* thereto; Both these *(conditions)* must first be established by the petitioners of the case and shown to co-exist before, enabling the Court to exercise its jurisdiction in terms of the said Article *(obviously subject to its own principles for regulating its jurisdiction and the judicial restraints).*

In the context of the present matter, it is thus expedient to examine if these basic conditions are satisfied. And for this we shall first take up if the requirement regarding ***"question of public importance"*** is fulfilled, qua which some facts and the legal account, needs recapitulation:-

(a) Petitioners are 310 in numbers *(most of them are VP & AVP)*; they are the ex- employees of a Bank, a private organization/institution; they have a personal grievance against their employer of early/compulsory retirement. *(note: in two cases the termination is under rule 15)* in violation of the terms and conditions of their service, which undoubtedly is contractual in nature, and the rules of 1981 admittedly are non statutory. From catenated precedent law laid down by this Court in order to meet the said condition and for the purpose of qualifying the test of "*question of public importance",* the issue involved in a matter before this Court under the said Article must belong and should concern the public at large, the State or the nation. But, if the proposition/matter involves the alleged violation of the rights *(FR)* of an individual or a group of individuals, how

so large it may be, but if it has no concern and affect on the public, then it cannot be termed as *"question of public importance"*. The petitioners are the contractual employees, of a private institution having no statutory rules to safeguard their service. In view of the stance taken by the Bank, all except six of the petitioners have received their dues and no issue has been joined by the petitioners to this fact, therefore virtually it seems to be the grievance of few individuals, which *(grievance)* hardly constitutes the requisite question of law. *(note: especially when we have deferred to decide the point of law which was formulated in our order dated 29.11.2010, vide our short order dated 17.10.2012).* For the purpose of the support of our above view that the instant matter does not qualify the test of the said condition reliance can be placed upon the cases reported as Pakistan Muslim League(N) through Khawaja Muhammad Asif, MNA and others Vs. Federation of Pakistan through Secretary, Ministry of Interior and others (PLD 2007 SC 642), wherein a seven members bench of this Court ordained: *"it is, however, to be kept in view that the earlier petition preferred on behalf of Mian Muhammad Shahbaz Sharif was dismissed being non-maintainable as it was filed in his individual capacity and for the redressal of his individual grievances and the element of public importance which is sine qua non for the invocation of Article 184(3) of the Constitution was missing and it is well established by now that the issues arising in a case, cannot be considered as a question of public importance, if the decision of the issues affects only the rights of an individual or groups of individuals. The issue in order to assume the character of public importance must be such that its decision affects the rights and liberties of people at large. The adjudicative*

'public' necessarily implies the thing belonging to people at large, the nation, the State or a community as a whole. Therefore, if a controversy is raised in which only a particular group of people is interested and the body of the people as a whole or the entire community has no interest, it cannot be treated as a case of public importance". (note: in this context some more precedents from this Court, such as, PLD 2004 SC 600 (APNS Vs. Federation of Pakistan); PLD 1996 SC 632 (Shahida Zahid Abbasi Vs. President of Pakistan); 1995 PLC 1 (Human Right case); 1994 SCMR 2308 (Human Right case) and 1994 SCMR 445 (Ali Gul Khan Vs. Lahore High Court) can be helpful). In another case, 1998 SCMR 793 *(Zulfiqar Mehdi Vs. Pakistan International Airlines)*, the petitioners *(of that case)* were employees of PIA who claimed discrimination on the ground of withholding of back benefits, this court held that the question of back benefits does not involve a question of public importance i.e. it was not a thing that belonged to the people at large, the nation, the State or a community. In PLD 2004 SC 583, where a political figure *(ex-Chief Minister of Province Mr. Shahbaz Sharif)* was not allowed to enter the country and a direct petition was brought before this Court under Article 184(3), it was held that the matter does not relate to the whole community; the grievance of a class or a group could not constitute, public at large; thus, the petition in that case was held not maintainable.

In view of what has been discussed, we are of the opinion that on the basis of the facts and circumstances of the present matter, and the nature of grievance propounded herein, this petition does not

qualify the test and the condition of the "*question of public importance*" and the petition should fail on this score alone *(emphasis supplied)*.

(b) Now attending to the other condition of the Article 184(3) *(supra)* with reference to the violation of the fundamental rights *(if any)* of the petitioners; there seems no room to disagree with the plea/legal position that the right to life of a person/citizen shall include the right to livelihood and right to livelihood, therefore cannot hang on to the fancies of individuals in authority; the employment is not a bounty from them *(individuals in authority)* nor can its survival be at their mercy[1]. But at the same time it cannot be ignored and elided if a person, who is once taken into an employment by the State or any State Controlled institution, or even a private institution/individual has *(such employee/person)* a right in perpetuity *(throughout his life time)* to remain in service, and his services can never be dispensed with by his employer, even though it is so permissible in terms of the service rules *(where statutory)* by which he is governed, despite of his inefficiency, incapacity, misconduct etc. and compulsory **retirement** and more-so, where the employment is of contractual nature and with a private entity. Because such an action *(termination etc.)* shall be an infringement of right to life as envisaged by Article 9 of the Constitution. Upon analysis of the said Article, which stipulates *"No person shall be deprived of life and liberty save in*

[1] AIR 1991 SC 101

accordance with law" and when it is resorted to in respect of the issues having nexus to service matter it shall unmistakably be permissible that the employment of an employee can be brought *(come)* to an end, but obviously in accordance with the **law** *(emphasis supplied),* when there is some **law** regulating such an employment/service. Therefore, if the services of an employee are dispensed with by the employer, either by removal, dismissal, termination or compulsory retirement or any other adverse action is taken against him in connection with his service rights, other than in accordance with law, the employee shall have a right to take recourse to the remedies available to him and provided by or under the relevant law, before the forum of competent jurisdiction. *(note: May it be the termination etc. of one employee of State/Government/institution or the group or bulk of such employees)*. However, in those cases where the employment/service(s) is not regulated by any **law**, as in the present case it is admitted position that Rules 1981 are non-statutory *(emphasis supplied)*, and thus not a law, rather contractual stipulations, and no specific forum is designated for the resolution of such service issues, therefore an infringement of any condition of such a contract shall at the most entitle and clothe the employee to avail his ordinary remedy for the breach of the contract and on account of wrongful action against him, before the court of plenary jurisdiction. In such a situation, it cannot be urged that the fundamental right of the employee has

been violated conferring upon him a right to enforce the same *(in terms of Article 199 and/or)* under Article 184(3) *(supra).* Despite the above, we hereby proceed to examine, whether any alleged fundamental right(s) of the petitioners has/have at all been violated or not; From Rules 15 and 17(a) *(reproduced above),* it is quite obvious that the bank has the due authority to bring to an end to the services of its employees by way of termination/early retirement, likewise, the employee also has the option to give up the employment of the Bank. In this behalf, the relevant rules 16 and 18 of Rules, 1981 are referred to as below:-

> ***"16. Resignation:-(1)*** *An employee in Category I shall not resign from the service of the Bank without giving three months previous notice in writing of his intention to do so, failing which he shall be liable to pay the Bank a sum equal to his substantive pay for three months:* ……."
>
> ***"18. Option to retire:--*** *An employee may retire at his option after completing 25 years continuous service in the Bank."*

It is clear from all the above four Rules, when those are read together, that the true intention and the spirit of the contractual understanding between the employer and the employees was *(is)* that the Bank has the right to finish the employment of its employees under rules 15 and 17, while the employees under rules 16 and 18 have an akin right. These indeed reflect absolute and un-circumvented privilege and prerogative, of the employer and the employee, in the above context. Rule 17(a) when invoked especially for large scale of Bank employees, and pursuant to the decision *(as*

in this case) of the Board it shall be deemed that the decision and the action is primarily founded upon commercial, business, administrative wisdom, the prudence and judgment of a private enterprise for the better interest of the institution, which may involve and be based upon financial constraints and considerations and/or for the restructuring and revamping of the staff *(the ability, efficiency and skill wise)*. Such decisions in our view are not justiciable by this Court, while sitting as a court of appeal over it. Anyhow, coming back to the four rules, to our mind, a balance has been created by allowing both the employer and the employee to finish employment at their option. Be that as it may, considering the plea of right to life propounded by the petitioners from another angle, according to rule 17(b) an employee shall stand retired on attaining 60 years of age, now can an employee on the basis of **right to life** and the **concept of livelihood** attached thereto, plead that being fit for the job, he should not even retire at the age of 60 years; and rule 17 (b) *ibid* should be declared invalid. The answer certainly should be in the negative. Though in this petition to the contrary, the plea urged, is that the petitioners should have been allowed to complete their age of superannuation.

While summing up, in the facts and circumstances of the case, we find that even no fundamental right to life of the petitioners has been violated by the Bank to satisfy the second condition of Article 184(3) warranting interference by this Court. Rather the petitioners have been allowed all the benefits of early retirements, which they were entitled and it seems from the record that the majority of them have even received such amounts, baring a few *(may be six in numbers as avowed by the Bank)*. It may further be

mentioned that where a case is not made out in terms of the said Article, jurisdiction should not be exercised on the plea of pity, compassion and humanitarian reasons only *(alone)*.

9. ***Question No.3:*** Though this question to an extent has been settled while answering question No.2, yet even considering the case of the petitioners independently on the touchstone of Article 25 of the Constitution, there are two main pleas on their part. One, that some of the employees similarly placed as the petitioners were, retained but their *(petitioners)* services have been dispensed with; and second, that the action against them is subjective, as no reasons have been assigned, even the changing needs of the Bank are neither specified nor shown, thus the action is arbitrary, whimsical, capricious and unfair. As far as the first plea is concerned, the petitioners have not provided for the comparison, any dates or material or the particulars of the persons, who were equally placed as them and have been retained. Even otherwise it is for the Bank management to decide about the usefulness of the employees or otherwise. Obviously, it has to be the evaluation of the management as to who is the employee(s) worthy of serving the best interest of the Bank, more suitable, so as to be retained and those who should retire. In regard to the second plea, it may be stated that the petitioners have not challenged the validity of rules 15 and 17 of Rules 1981; they also have not impugned the decision taken by the Board of Management, it is only the adverse action against them by the authority which has been attacked. But as held earlier the rules duly empower the Bank to take action; and the decision impugned in this case has been made pursuant to the Board resolution and seemingly on the basis of the considerations

of the Bank highlighted in the preceding para, therefore, the question of arbitrariness and lack of assigning reasons etc. shall have no relevance to the matter. Thus, we are of the candid view that the provisions of Article 25 of the Constitution does not help the cause of the petitioners and no case of discrimination in terms of said Article has been made out.

10. With regard to the plea that the rights of the petitioners conferred upon them by Articles 3, 4, 8, 27, 29, 37 and 38 be enforced in these proceedings. Without going into the question about the nature of such rights if any, it may be held that Article 184(3) has made a specific reference to the fundamental rights conferred by Chapter 1 of Part-II of the Constitution and nothing beyond; therefore the said Articles can at the most operate as enabling provisions where there is the violation of the rights *(FR)* mentioned in Article 184(3), but *per se* are not enforceable.

11. While dilating upon the plea of the petitioners based upon rule 89 of Rules 1981, we find that both these rules are independent. Rule 89 in no way controls or overrides rule 15 or rule 17(a) and/or obliterates or abridges or circumvents the power and authority of the Bank to take action independently under the said Rules. Therefore, the plea of the petitioners in this context, also has no force.

12. Before parting it may be pointed out that vide short order we have already held that the question formulated by this Court on 29.11.2010 shall be addressed in some other appropriate case, therefore, while giving these reasons, obviously no discussion is warranted on the said point.

13. In the light of the above, the noted petition as held in the short order dated 17.10.2012 stands dismissed. The Human Right Petitions and other miscellaneous petitions therefore are also dismissed.

JUDGE

JUDGE

JUDGE

JUDGE

JUDGE

JUDGE

Islamabad, the
17th of October, 2012
Approved For Reporting
*Ghulam Raza/**