

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN.
MR. JUSTICE MAQBOOL BAQAR.
MR. JUSTICE IJAZ UL AHSAN.

CIVIL APPEAL NO. 353 OF 2015 AND CMA NOS. 1493 AND 2079 OF 2015
AND CIVIL APPEALS NO. 632 TO 673 OF 2017

(On appeal against the judgment dt. 03.06.2014 passed by the Peshawar High Court, Peshawar in W. P. No. 3324 of 2011 and the judgment dt. 16.01.2017 passed by the Lahore High Court, Lahore in Intra Court Appeals No. 120 to 146 and 148 to 156 of 2016 and 460 to 464 and 991 of 2016).

Bahadur Khan and others.
(in CA.353/15).

National Bank of Pakistan thr. its President/
Board of Directors, Lahore.
(in CAs.632-673/15).

...Appellant(s)

Versus

Federation of Pakistan thr. Secy., M/o Finance,
Islamabad and others.

Iftikhar Rasool Anjum and others.
Badar-uz-Zaman and another.
Ch. Muhammad Mushtaq Cheema and others.
Muhammad Arshad Sheikh and another.
Abdul Waheed and others.
Muhammad Sharif and others.
Saif ullah Khan and others.
Javed Akhtar Khan and others.
Riaz Ahmad Malik and another.
Muhammad Nawaz Farooqi and others.
Umar Hayat Khawaja and others.
Mrs. Bushra Khanum and others.
Shaukat Ali Bhatti and others.
Sardar Muhammad Ahmad and others.
Muhammad Sharif Ch. And others.
Muhammad Shamim Akhtar and others.
Muhammad Rashid Butt and another.
Syed Ijaz Hussain and another.
Muhammad Iqbal Qadar and others.
Muhammad Rafique Goraya and others.
Asad Ullah Khan Leghari and others.
Muhammad Afsar Khan and others.
Furrukh Sair Ahmad and others.
Ghulam Rasool Shai and others.
Ihsan Ul Haq and another.
Syed Iqbal Hussain Shah and others.
Asif Saeed and others.
Muhammad Ilyas Ch. And others.
Jan Muhammad and another.
Shafqat Mehmood and another.
Ateeq Qamar and others.

Kokab Iqbal and others.
Mushtaq Ahmed and others.
Allah Ditta and others.
Afzal Anwar and others.
Nisar Ahmed and another.
Muhammad Nawaz Cheema and others.
Muhammad Saeed and others.
Abdul Samee Khan and others.
Muhammad Riaz Raza and another.
Munir Ahmed and others.
Agha Bilal Ahmed Khan and others.

...Respondent(s)

For appellant No. 1:	Mr. Abdul Rahim Bhatti, ASC. Mr. Abdul Rehman Khan, ASC. Syed Rafaqat Hussain Shah, AOR. (in CA.353/15).
For appellant No. 2:	Mr. Salman Akram Raja, ASC. (in CA.353/15) Mr. Khalid Anwar, Sr. ASC Kh. Muhammad Farooq, Sr. ASC Syed Rafaqat Hussain Shah, AOR. (in CAs.632-673/17).
For the respondent(s):	Mr. Sohail Mehmood, DAG. Munir Ahmed, J.S. M/o Finance. Abid Channa, S.O. M/o Finance.
For respdt. No. 1 :	Mr. Salman Akram Raja, ASC. (in CA.632/17) Mr. Hashmat Ali Habib, ASC. Mr. M. S. Khattak, AOR. (in CAs. 633, 634, 636, 638, 639, 643, 646, 649, 650, 652, 653, 654, 656, 658, 659, 660, 662, 666, and 670 of 2017). Mr. Faiz Rasool Jalbani, ASC. (in CAs. 644, 645, 648, 657, 661, 664, 667, 669 and 671 of 2017).
In person :	Umer Hayat Khawaja. Akbar Ali. Syed Jehangir.
In CMAs. 1493 & 2079/15:	Mr. Abdul Rahim Bhatti, ASC. Mr. Abdul Rehman Khan, ASC. Syed Rafaqat Hussain Shah, AOR.
Date of Hearing:	14.06.2017, 15.06.2017 & 16.06.2017. (Judgment Reserved).

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J U D G M E N T

EJAZ AFZAL KHAN, J.- These appeals with the leave of the Court have arisen out of the judgment dated 16.01.2017 of a Division Bench of the Lahore High Court whereby it dismissed the Intra Court Appeals filed by the appellants and thus upheld the judgment dated 15.01.2016 of the said High Court whereas C. A. No. 353 of 2015 has arisen out of the judgment dated 03.06.2014 of a Division Bench of the Peshawar High Court whereby it dismissed the petition filed by the appellants.

2. Learned Sr. ASC appearing on behalf of the National Bank contended that neither the letter dated 30.11.1977 issued by the Finance Division, Government of Pakistan nor the Circular No. 228(C) dated 26.12.1977 issued by the National Bank of Pakistan implementing the terms and conditions set out in the letter dated 30.11.1977 could be said to have been issued in exercise of the rule making powers under Section 20 of the Banks Nationalization Act, therefore, they have no statutory sanction behind them. He next contended that where the notification and the circular stating terms and conditions of service appear to be purely administrative or executive instructions, they cannot be treated as statutory instruments, the more so when, they have not been published in the official gazette. Whatever attire, the learned ASC maintained, the respondent may put on the notification it could not have a statutory status if seen in the light of the judgment rendered in the case of **Mustafa Impex. Vs. Government of Pakistan** (PLD 2016 SC 808). He next contended that with the dissolution of Pakistan Banking Council through Banks (Nationalization) (Amendment) Act XVIII of 1997 the Board of the Bank became more autonomous and independent and as such they shaped policies and determined the terms and conditions of service of their officers and executives keeping in view the emerging competitive environment. The Board, the learned Sr. ASC maintained, accordingly issued Circular No. 3799 dated 16.06.1999, revised the pay structure and the pension factor of

the officers and executives of the Banks; that the circular was accepted and acted upon by the officers and the executives without any qualms for more than a decade; that once it was accepted and acted upon, it could not be questioned by them under any canons of law and propriety and that neither the Single Judge hearing the writ petitions nor the Division Bench of the Lahore High Court hearing the Intra Court Appeals appreciated the content and the context of the Circular while handing down the impugned judgments. Writ petitions of the respondents, the learned Sr. ASC argued are also hit by the principle of approbation and reprobation inasmuch as they damn the decrease in the pension factor without refunding what they received consequent upon the revision of the pay scale. Such petitions, the learned Sr. ASC argued, are hit by the principle of laches when they were instituted ten years after the issuance of the circular dated 16.6.1999. The learned Sr. ASC lastly argued that where the notification dated 30.11.1977 nor the Circular dated 26.12.1977 can be held to be statutory by any attribute, the writ petitions filed by the respondents merited outright dismissal. The learned Sr. ASC to support his contentions placed reliance on the case of **Muhammad Zaman and others. Vs. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others (2017 SCMR 571).**

3. Learned ASC appearing on behalf of the appellant in CA. No. 353 of 2015 and respondents in CA. Nos. 632 to 673 of 2017 contended that the letter dated 30.11.1977 issued by the Finance Division, Government of Pakistan and the Circular No. 228(C), dated 26.12.1977 issued by the National Bank of Pakistan having all the traits and trappings of statutory rules are binding on the National Bank of Pakistan, therefore, any departure from either of them would be amenable to the constitutional jurisdiction of the High Court. The learned ASC to support his contention placed reliance on the case of **Khawaja Abdul Hameed Nasir and others. Vs. National Bank of Pakistan and others (2003 SCMR 1030).** Learned ASC next contended that appointment of the Pay Commission for Banks and Financial

Institutions, issuance of notification dated 30.11.1977 of the Finance Division, Government of Pakistan, issuance of orders by the Banking Council to the Bank and finally issuance of Circular No. 228(C), dated 26.12.1977 in compliance with the order of the Banking Council have a statutory backing, therefore, it is beyond the power and competence of the Board of Directors of the National Bank of Pakistan to change any of the terms and conditions governing the pay and pension of its officers and executives to their disadvantage. The learned ASC to support his contention placed reliance on the case of **Muhammad Tariq Badar and another. Vs. National Bank of Pakistan and others** (2013 SCMR 314). The learned ASC further contended that the notification issued by the Finance Division Government of Pakistan and Circular No. 228(C) issued by the Bank could be treated at par with the statutory rules when they have been acted upon for decades and decades together. The learned ASC to support his contention placed reliance on the cases of **Pakistan. Vs. Sheikh Abdul Hamid** (PLD 1961 SC 105), **Dr. Habibur Rahman. Vs. The West Pakistan Public Service Commission, Lahore and 4 others** (PLD 1973 SC 144), **Khan Faizullah Khan. Vs. Government of Pakistan through the Establishment Secretary, Cabinet Secretariat and another.** (PLD 1974 SC 291). Reduction in pension factor, the learned ASC added, from 70% to 33% cannot be justified under any principle of law and jurisprudence when the recommendations of the Pay Commission, orders of the Banking Council, notification issued by the Finance Division, Government of Pakistan and the Circular issued by the Bank nowhere limited their efficacy in terms of time. Failure to have the notification published in the official gazette, the learned ASC maintained, cannot shear it of its efficacy or make it non-statutory. To support his contention learned ASC placed reliance on the cases of **Saghir Ahmed through legal heirs. Vs. Province of Punjab through Secretary Housing and Physical Planning, Lahore and others** (PLD 2004 SC 261), **National Bank of Pakistan. Vs. Manzoorul Hassan.** (1989 SCMR 832) and **Pakistan. Vs. Sheikh Abdul Hamid** (PLD 1961 SC 105). Learned ASC in the

alternative argued that even if the terms and conditions regulating pension have their origin in a contract, the Board of Directors could not unilaterally amend them without the consent of the stakeholders. In support of his contention learned ASC placed reliance on the case of **Nighat Yasmin. Vs. Pakistan International Airlines Corporation, Karachi and another (2004 SCMR 1820)**. The learned ASC lastly argued that where pension is not only a vested but a recurring right, laches or any other inaction for a short span of time cannot extinguish it. The learned ASC to support his contention placed reliance on the cases of **Pakistan Telecommunication Employees Trust (PTET) through M. D., Islamabad and others. Vs. Muhammad Arif and others. (2015 SCMR 1472)**, **Secretary, Government of Punjab, Finance Department and 269 others. Vs. M. Ismail Tayer and 269 others (2015 PLC(CS) 296)**, **Constitution Petition No. 127 of 2012, decided on 11.04.2013 regarding Pensionary Benefits of the Judges of Superior Court (PLD 2013 SC 829)**, **Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A. and others. Vs. Federation of Pakistan through Secretary Ministry of Interior and others (PLD 2007 SC 642)**, **Pakistan Tobacco Company Ltd. and another. Vs. Federation of Pakistan through Secretary, Ministry of Commerce, Islamabad and 3 others (1999 SCMR 382)**, **Civil Aviation Authority, Islamabad and others. Vs. Union of Civil Aviation Employees and another (PLD 1997 SC 781)**, **Shahid Pervaiz. Vs. Ejaz Ahmad and others, etc. (2017 SCMR 206)**, **Muhammad Mubeen-us-Salam and others. Vs. Federation of Pakistan through Secretary Ministry of Defence and others (PLD 2006 SC 602)** and **I. A. Sharwani and others. Vs. Government of Pakistan through Secretary Finance Division, Islamabad and others. (SCMR 1991 1041)**.

4. We have carefully gone through the record and considered the submissions of the learned Sr. ASC/ASCs for the parties as well as the learned DAG.

5. The background culminating in the issuance of the notification dated 30.11.1977 and the circular dated 26.12.1977 is that a

Pay Commission through a resolution dated 28.05.1977 was constituted by the Government of Pakistan with the following terms of reference:

(i) To examine:-

(a) the existing salary structure and all other types of allowances, amenities and facilities, including post-retirement benefits, and all such increase therein as may have been sanctioned recently, admissible to all categories of staff and employees in the nationalized banks including State Bank of Pakistan and financial institutions;

(b) the principles on which they are based and the basic terms and conditions governing their admissibility;

(c) the inter-se relationship of the salaries and allowances and other amenities, facilities and benefits and the underlying principles and justification of the same; and

(d) the problems that may arise and the adjustments that may be necessary as a consequence of the scheme of merger of the nationalized banks already approved by the Government.

(ii) To make recommendations:-

(a) on the need, if any, and the manner in which the existing salary structure and other emoluments and the terms and conditions governing them should be rationalized or otherwise modified taking into account the qualifications and experience required for each grade or scale of pay and the allowances and perquisites attached thereto; the responsibilities which to be discharged at various levels; and the prospects of promotion or vertical mobility in each nationalized bank and financial institution;

(b) on the treatment that may be given and the adjustments that should be made in the pay and emoluments of the staff and employees of a nationalized bank which is to be merged with another;

(c) on the need if any, and the extent to which the existing emoluments and other conditions of service require modification, taking into account the economic conditions in the country and the terms of conditions of service in general and those incomparable undertakings in particular, the size, financial sources and viability of each nationalized bank or financial institution, the role assigned to each in the national economy, the socio-economic goals and all such other relevant factors;

(d) on the ways and means of keeping the terms and conditions of service in the banking sector in line with changes in the national economy, considering the need of all times for an efficient and smooth banking service to the community; and

(e) on any other matter which the Commission may consider relevant to its terms of reference."

The commission having considered the socio-economic conditions, the size, financial resources and viability of each nationalized Bank and financial institution made recommendations. The Federal Government following the

recommendations issued the notification dated 30.11.1977 while the Bank following the notification issued circular No.228(c) dated 26.12.1977.

6. What did the Banking Council stand for, what powers did it exercise and what functions did it perform under the Banks Nationalization Act before its amendment are the questions which have been answered by Section 9 of the Act itself which reads as under:-

“9. Pakistan Banking Council. –(1). *This section and section 11 shall apply to the banks mentioned in the Schedule and any new bank which may be constituted after the commencing day, whether by merger or reorganization of the said banks or under the Companies Act, 1913 (VII of 1913).*

(2) *The Federal Government shall, by notification in the official Gazette, constitute a Council to be called the Pakistan Banking Council and consisting of –*

(i) *A Chairman;*

(ii) *A Deputy Governor of the State Bank;*

(iii) *An official of the Ministry of Finance, Government of Pakistan; and*

(iv) *Not more than five and not less than three members;*

Provided that not less than three members shall be full time members one of whom shall be appointed by the Federal Government to be the Secretary of the Council.

(3) *The Council shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, and shall be the name given to it by subsection (2) sue and be sued.*

(4) *The functions of the Council shall be—*

(i) *making policy recommendations to the Federal Government for directing banking activities towards national socio-economic objective;*

(ii) *formulating policy guidelines for the banks;*

(iii) *laying down performance criteria for banks, and taking steps for ensuring their observance;*

(iv) *evaluating the performance of the banks in the context or national socio-economic objectives and policy guidelines issued to the banks;*

(v) *determining the areas of coordination of the banks;*

(vi) *formulating schemes under Section 15;*

(vii) *making recommendations to the Federal Government for the appointment of the President and members of an Executive Board;*

(viii) analyzing and appraising financial statements, including Balance sheets and Profit and Loss Accounts, of the banks and appointment of auditors of the banks;

(ix) conducting such surveys, inquiries and appraisals as may be necessary for the purposes of this Act; and

(x) exercising and performing such powers and functions of the Federal Government under this Act, and such other functions, as the Federal Government may assign to it.

(5) For the proper exercise of its functions, the Council may require information, returns or periodical and special reports from banks.

(6) The Council may appoint such officers, employees, experts and consultants as it may deem fit."

The Council as is evident from the provisions reproduced above had a role in making policy, exercising such powers and performing such functions of the Federal Government and other functions as the Federal Government assigned. Even the President and members of an Executive Board were appointed on the recommendations of the Council. But what bearing its dissolution and other amendments in the Act would have on the fate of this case is a question we propose to discuss in the latter part of the judgment.

7. Now the question arises what is the status of the notification dated 30.11.1977 and what is status of the Circular dated 26.12.1977. Before we answer the question it is worthwhile to refer to the notification and the circular which read as under :-

"No.17(9)-IF.XI/77

Government of Pakistan
Finance Division
(Internal Finance Wing)

Islamabad, the 30th Nov, 1977

From: Shafat Ahmad,
Section Officer,
Phone 21545

To

Mr. M. A. K. Yousufi,
Chairman,
Pakistan Banking Council,
8-Habib Bank Plaza,
Karachi.

Sub: PENSIONS AND RETIREMENT BENEFITS FOR OFFICERS/EXECUTIVES OF
BANKS AND FINANCIAL INSTITUTIONS.

Dear Sir,

I am directed to say that with a view to provide better social security, it has been decided to introduce pension and retirement benefits for the

officers/executives of the banks including the State Bank of Pakistan and financial institutions as have been introduced by the Federal Government for Civil Servants. The pension scheme also includes the benefit of family pension to the officers, executive's wife and or to his children in the case of demise of the pensioner. The existing scheme of pension in the case of the National Bank of Pakistan. Contributory Provident Fund and Gratuity shall be discontinued.

2. The previous continuous service of officer/executive shall count as qualifying service for pension. The contribution made by the bank and financial institution towards the Contributory Provident Fund/shall be withdrawn as the service shall now count for the purpose of pension. The contribution of the officers/executives plus interest thereon standing in their respective Provident Fund Account shall be transferred and credited to the Provident Fund Accounts to be established under the now Provident Fund Scheme.

A. DATE OF EFFECT

3. These benefits shall be admissible with effect from May, 1977 and shall be determined in accordance with the following provisions:-

B. PATE AND SCALE OF PENSION

4. (a) Pension shall be payable if the total service of an officer/executive at the time of retirement or death is 10 years or more. Gratuity shall be payable if the service of an officer/executive at the time of retirement or death is more than 5 years but less than 10 years.

(b) Pension shall be calculated at the rate of 70% of emoluments on completion of 30 years qualifying service. Where qualifying service is less than 30 years but not less than 10 years proportionate reduction in percentage shall be made. Any amount of pension in excess of Rs.1000/- shall be reduced by 50% on Pension Table regulating all the four pensions, namely, Compensation Pension, Superannuation Pension, Invalid Pension and Retiring Pension is enclosed as Annexure-I.

(c) If, for a pensioners with qualifying service of 30 years or more, the amount of a pension calculated under sub-para (b) above falls short of the amount to pension inclusive of dearness increases) which would have been admissible to a Government servant under the Federal Government rules prior to 1.2.1977, or exceeds it by less than Rs.45/-, the amount under the formula mentioned herein shall be so increased as to make such difference one of 1.45/-. Where qualifying service is less than 30 years but not less than 10 years proportionate reduction at the rate of Rs.1/50 for each year short of years shall be made while working out the amount of minimum increase mentioned above.

(d) All spells of continuous service of one year or more rendered by an officer/executive shall count and qualify for pension or gratuity as the case may be. In calculating the total length of service for the purposes of the admissibility of pension or gratuity the period of interruption of service and leave without pay shall be excluded. Total service thus calculated be refunded off to the nearest full year. A period of less than six months shall be ignored for this purpose and of more than six months counted as full year.

(e) The term "emoluments" i.e. pensionable pay, shall also include dearness allowances sanctioned from time to time.

(f) Pension shall be calculated on the basis of the average monthly basic pay plus dearness allowances drawn by an officer/executive during the last three years of service including the period of leave but excluding the extraordinary leave without pay.

G. Gratuity for Service of less than 10 years but not less than 5 years.

5. In case of an officer/executive who has rendered service of 5 years or more but less than 10 years a gratuity equal to one month's emoluments for each completed year of service may be granted to him on retirement. If, however, retirement is due to invalidation or if officer/executive dies in service, the rate shall be 1/1.... Months emoluments for each completed years of service. In the case of death of such an officer/executive, it shall be payable to his legal heir(s).

B- Gratuity and Commutation for Pensioners Retiring After 10 years service.

6. (a) A pensioner shall be allowed to draw full gross-pension for one fourth of the pension under this scheme need not compulsorily be paid in the form of gratuity. If, however, a pensioner so wishes, he may, at any time before expiry of one month from the date of his retirement, ask for gratuity upto 25% of his gross pension together with the remaining net amount of pension; the gratuity shall be paid at the following rates :-

If qualifying service is 10 years or more but less than 15 years.	Rs.187 for every rupee of pension surrendered.
If qualifying service is 15 years or more but less than 20 years.	Rs.173 for every rupee of pension surrendered.
If qualifying service in 20 years or more.	Rs.160 for every rupee of pension surrendered.

(b) Commutation of 25% of the gross pension shall be further admissible in accordance with the Civil Pensions (Commutations Rules) as applicable to the Federal Government employees. Commutation shall, however, not be subject to medical certification if it is asked for within one year of retirement. The payment in such cases shall become absolute on the date of application by the pensioner. This concession of commutation without medical certification is not admissible to those officers/executives who retire on invalid pension.

E- Family Pension

7. (a) In the case of death of an officer/executive while in service, gratuity in lieu of one fourth of the gross pension will be allowed at the rates shown in para 6(a). In addition, family pension shall be admissible for a period of 10 years at 50% of the gross pension.

(b) In the case of death within 10 years of retirement, family pension for unexpired period of 10 years at 50% of the pension (not, or gross, as the case may be) shall be admissible.

(c) Subsidiary rules and procedure in connection with the sanction and receipt of pension shall be framed by the institution concerned.

F. Pensions/Gratuity for Injury or Death in course or consequence of duty.

8. The classification of disabilities and the criteria for determining their attributability to service shall be as detailed in Annexure III. The rate and scale of disability/death pension and gratuity shall be as under :-

DISBILITY PENSION/GRTUITY

Class of Injury	Pension	Gratuity	Child without own mother	Child with one mother living
A	20% of pay subject to a maximum of Rs.600 and a minimum of Rs.100 p.m. (Note: After death it will devolve on the widow).	6 months pay.	5% of pay, subject to a maximum of Rs.100 & minimum of Rs.50/- per child.	2 ½ of pay subject to a maximum of Rs.50/- and a minimum of Rs.25/- per child.
B	15% of pay subject to a maximum of Rs.450 and a minimum of Rs.75 p.m.	Nil	4% of pay, subject to a maximum of Rs.80/- & Minimum of Rs.40/- per child.	2% of pay subject to a maximum of Rs.40/- and a minimum of Rs.20/- per child.
C	-do-	Nil	Nil	Nil

DEATH (SPECIAL FAMILY) PENSION/ GRATUITY

1.	20% of pay subject to a maximum of Rs.600 and a minimum of Rs.100 p.m.	6 months pay.	5% of pay, subject to a maximum of Rs.50 per child.	2 ½ of pay subject to a maximum of Rs.50/- and a minimum of Rs.25/- per child.
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Note :- The pensions/gratuities mentioned in this para will be in addition to the pensions and/or gratuities mentioned in paras 3 to 6 above.

9. An Officer who was in non-pensionable service on 1st May, 77 and who was entitled to the benefits of contributory Provident Fund, shall, unless the amount of the Contributory Provident Fund has been paid be allowed to opt) for the new scheme of Pension, Gratuity and Provident Fund, in lieu of the existing retirement benefits admissible to him. This option shall be exercised in writing and communicated to the competent authority within 6 months from the date of the issue of these orders. Those offices who do not exercise and communicate the options for the pensionary benefits sanctioned in this letter within the prescribed time limit, shall not be entitled to the benefits thereof and shall continue on their existing terms.

Since the rates of pension and gratuity given above have been fixed by the Pay Commission for banks and financial institute the same lines as obtaining on the side of the Federal Government and existing provisions and any changes or revision in the scales of pension or gratuity that may hereafter be made by the Federal Government shall also apply to the officers/executive including the State Bank of Pakistan and financial institution.

Yours faithfully

Sd/-
Shafat Ahmed
Section Officer

Encl: 3 Annexure."

8. While the Circular dated 26.12.1977 reads as under :-

"National Bank of Pakistan
Head Office Karachi
Instruction Circular No. 228 (C). December 26, 1977

Establishment
Pensions and Retirement Benefits
for Officers/Executives of Banks.

1. Further to our Circular No. 228 (B), it is advised that the Finance Division, Government of Pakistan, Islamabad has decided to introduce Pensions and retirement benefits for the officers/executives of the Banks as have been introduced by the Federal Government for Civil Servants. The pension scheme also includes the benefit of family pension to the officers/executive's wife and or to his children in the case of demise of the pensioner.
2. The previous continuous service of officer/executive shall count as qualifying service for pension. The contribution made by the bank towards the Contributory Provident Fund shall be withdrawn as that service shall now count for the purpose of pension. The contribution of the officers/executives plus interest thereon standing in their respective Provident Fund Account shall be transferred and credited to the Provident Fund Accounts to be established under the new Provident Fund Scheme.

A- Date of Effect

3. These benefits shall be admissible with effect from 1st May, 1977 and shall be determined in accordance with the following provisions :-

B- Rate and Scale of Pension

4. a) Pension shall be payable if the total service of an officer/executive at the time of retirement or death is 10 years or more. Gratuity shall be payable if the service of an officer/executive at the time of retirement or death is more than 5 years but less than 10 years.

b) Pension shall be calculated at the rate of 70% of average emoluments on completion of 30 years qualifying service. Where qualifying service is less than 30 years but not less than 10 years, proportionate reduction in percentage shall be made. Any amount of pension in excess of Rs.1,000/- shall be reduced by 50%. A Pension Table regulating all the four pensions, namely, Compensation Pension, Superannuation Pension, Invalid Pension and Retiring Pension is enclosed as Annexure I.

c) If, for a pensioner with qualifying service of 30 years or more, the amount of a pension calculated under sub-para (b) above falls short of the amount of pension (inclusive of dearness increases) that would have been admissible to a Government servant under the Federal Government rules prior to 1.2.1977, or exceeds it by less than Rs.45/-, the amount under the formula mentioned herein shall be so increased as to make such difference one of Rs.45/-. Where qualifying service is less than 30 years but not less than 10 years, proportionate reduction at the rate of Rs.1/50 for each year short of years shall be made while working out the amount of minimum increase mentioned above.

d) All spells of continuous service of one year or more rendered by an officer/executive shall count and qualify for pension or gratuity as the case may be. In calculating the total length of service for the purposes of the admissibility of pension or gratuity, the periods of interruption of service and leave without pay shall be excluded. Total service thus calculated be rounded off to the nearest fully year. A period of less than six months shall be ignored for this purpose and of more than six months counted as full year.

e) The term “emoluments”, i.e. Pensionable pay, shall also include dearness allowances sanctioned from time to time.

f) Pension shall be calculated on the basis of the average monthly basic pay plus dearness allowances drawn by an officer/executive during the last three years of service including the period of leave but excluding the extra-ordinary leave without pay.

C- Gratuity for Service of less than 10 years but not less than 5 years.

5. In case of an officer/executive who has rendered service of 5 years or more but less than 10 years a gratuity equal to one month’s emoluments for each completed year of service may be granted to him on retirement. If, however, retirement is due to invalidation, or if an officer/executive dies in service, the rate shall be 1 ½ months of emoluments for each completed year of service. In the case of death of such an officer/executive, it shall be payable to his legal heir(s).

D-Gratuity and Commutation For Pensioners Retiring After 10 years Service.

6. a) A pensioner shall be allowed to draw full gross pension i.e. one forth of the pension under this scheme need not compulsorily be paid in the form of gratuity. If, however, a pensioner so wishes, he may, at any time before expiry of one month from the date of his retirement, ask for gratuity upto 25% of his gross pension together with the remaining net amount of pension; the gratuity shall be paid at the following rates :-

If qualifying Service is 10 years or more but less than 15 years.	Rs.187 for every rupee of pension surrendered.
If qualifying service is 15 years or more but less than 20 years.	Rs.173 for every rupee of pension surrendered.
If qualifying service is 20 years or more.	Rs.160 for every rupee of pension surrendered.

b) Commutation of 25% of the gross pension shall be further admissible in accordance with the Civil Pensions (Commutations Rules) as applicable to the Federal Government employees. Commutation shall,

however, not be subject to medical certification if it is asked for within one year of retirement. The payment in such cases shall become absolute on the date of application by the pensioner. This concession of commutation without medical certification is not admissible to those officers/executives who retire on invalid pension.

E-Family Pension

7. a) In the case of death of an officer/executive while in service, gratuity in lieu of one forth of the gross pension will be allowed at the rates shown in para 6(a). In addition, family pension shall be admissible for a period of 10 years at 50% of the gross pension.
- b) In the case of death within 10 years of retirement, family pension for unexpired period of 10 years at 50% of the pension (net, or gross, as the case may be) shall be admissible.
- c) Subsidiary rules and procedure in connection with the sanction and receipt of pension shall be framed by the institution concerned.

F-Pensions/Gratuity for Injury or Death in course or consequence of duty.

8. The classification of disabilities and the criteria for determining their attributability to service shall be as detailed in (annexure III). The rate and scale of disability/death pension and gratuity shall be as under :-

Class of Injury	Pension	Gratuity	Child without own mother	Child with one mother living
A	20% of pay subject to a maximum of Rs.600 and a minimum of Rs.100 p.m. (Note: After death it will devolve on the widow).	6 months pay.	5% of pay, subject to a maximum of Rs.100 & minimum of Rs.50/- per child.	2 ½ of pay subject to a maximum of Rs.50/- and a minimum of Rs.25/- per child.
B	15% of pay subject to a maximum of Rs.450 and a minimum of Rs.75 p.m.	Nil	4% of pay, subject to a maximum of Rs.80/- & Minimum of Rs.40/- per child.	2% of pay subject to a maximum of Rs.40/- and a minimum of Rs.20/- per child.
C	-do-	Nil	Nil	Nil

DEATH (SPECIAL FAMILY) PENSION/ GRATUITY

1.	20% of pay subject to a maximum of Rs.600 and a minimum of Rs.100 p.m.	6 months pay.	5% of pay, subject to a maximum of Rs.100 & A minimum of Rs.50/- per child.	2 ½ of pay subject to a maximum of Rs.50/- and a minimum of Rs.25/- per child.
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Note :- The pensions/gratuities mentioned in this para will be in addition to the pensions and/or gratuities mentioned in paras 3 to 6 above.

9. An officer who was in non-pensionable service on 1st May, 1977 and who was entitled to the benefits of Contributory Provident Fund, shall, unless the amount of the Contributory Provident Fund has been paid be allowed to opt for the new scheme of Pension, Gratuity and Provident Fund, in lieu of the existing retirement benefits admissible to him. This option shall be exercised in writing and communicated to the competent authority within 6 months from the date of the issued of these orders. Those officers who do not exercise and communicate their options for the pensionery benefits sanctioned in this circular within the prescribed time limit, shall not be entitled to the benefits thereof and shall continue on their existing terms.

10. *Since the rates of pension and gratuity given above have been fixed by the Pay Commission for banks and financial institutions on the same lines as obtaining on the side of the Federal Government, the existing provisions and any changes or revision in the rates or scales of pension or gratuity that may hereafter be made by the Federal Government shall also apply to the officers/executives of the Bank.*

11. *The existing schemes of Pension, Contributory Provident Fund and Gratuity shall be discontinued.*

Sd/-
(HUMAYUN AKHTAR ADIL)
EXECUTIVE VICE PRESIDENT
PERSONNEL DIVISION

Sd/-
(MOHAMMAD USMAN)
SENIOR EXECUTIVE VICE PRESIDENT
ADMINISTRATION."

9. A look at the notification reproduced above would show that it provided a comprehensive basis for determination of rate and scale of pension. This notification has not been termed as the one notifying the rules but it in its tone and tenor possesses all such attributes from whatever angle it is looked at. It has not been stated in the notification that it has been issued under Section 20 of the Banks Nationalization Act but the fact is that no other provision of the Act could enable the Federal Government to issue a notification dealing with the matters envisaged by Section 20 of the Act. The words used in para 1 to 10 of the notification leave no doubt that it was issued under Section 20 of the Act. Issuance of the circular, which is almost replica of the notification confirms its status as a statutory instrument. Para one of the notification rescinding and replacing the existing scheme of pension, the Contributory Provident Fund and Gratuity by providing in para 1 that *"the existing scheme of pension in the case of National Bank of Pakistan, the Contributory Provident Fund and Gratuity shall be discontinued"* amply and overwhelmingly proves its statutory status. It would be rather unjust and even unrealistic to treat such notification as an administrative or executive instruction when it admittedly rescinded and replaced the existing scheme of Pension Contributory Provident Fund and Gratuity having their origin in the NBP's employees Pension Provident and Gratuity Rules, 1958 made with the prior approval of the Central Government and the N.B.P. (Staff) Service Rules, 1973 made with the prior approval of the Federal Government. It cannot be looked at as a bolt from the blue either when it was preceded by an extensive spadework of the Pay Commission and succeeded by the circular dated 26.12.1977. In this

context the notification cannot be construed as an event independent of Section 20 of the Act or isolated therefrom. It also does not appear to be deficient on any score when examined in the light of the criteria laid down in the case of **Mustafa Impex. Vs. Government of Pakistan (supra)**, when nothing has been brought on the record to show that any of the provisions of the Rules of Business, 1973 was ignored or violated. We, therefore, have no hesitation to hold that the notification dated 30.11.1977 having been issued by the Federal Government in terms of Section 20 of the Act is statutory in nature and violation of any of its provisions is amenable to the constitutional jurisdiction of the High Court. The case of **Muhammad Zaman and others. Vs. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others (supra)** has therefore no relevance to the case in hand.

10. Next comes the question as to what are the functions of the Board and whether the Board after the dissolution of the Pakistan Banking Council has the power to rescind, replace or repeal the notification issued by the Federal Government of Pakistan in terms of Section 20 of the Act. To answer these questions we have to see the relevant provisions of the Act dealing with the powers of the Board. It thus reads as under :-

“11. General provisions pertaining to management of banks.—(1) Subject to Subsection (2), a bank shall have a Board consisting of—

(a) a President, who shall be its Chief Executive; and

(b) not less than five and not more than seven other members 5[including one or more directors whose election by the private shareholders, removal and other matters shall be governed by the Companies Ordinance, 1984 (XLVII of 1984)].

(2) The Federal Government may, if it deems necessary, appoint a Chairman of the Board in respect of a bank.

(3) The Chairman, the President, and other members of the Board 1[representing the Federal Government’s direct and indirect shareholding”]___

(a) shall be appointed by the Federal Government, in consultation with the State Bank, for a term of three years, on such terms and conditions as may be fixed by the General Meeting of the bank: provided that the Chairman and the President shall be appointed from amongst professional bankers whose names are included in a panel of bankers qualified to be the Chairman or the President,

which panel shall be determined, maintained and varied, from time to time, by the State Bank ;

(b) may be removed for misconduct or physical and mental incapacity before the expiry of the three years term by the Federal Government in consultation with the State Bank;

(c) shall stand removed if he becomes ineligible on any of the grounds specified in subsection (12); and

(d) may be reappointed by the Federal Government, in consultation with the State Bank of Pakistan, 2[for such further term or terms as may be determined.".]

(4) The general direction and superintendence of the affairs and business of a bank, and overall policy making in respect of its operations, shall vest in its Board.

(5) The Board shall determine—

(i) the credit policies of the banks ;

(ii) evaluation criteria for the performance of the employees of the bank other than the President;

(iii) personnel policies of the bank, including appointment and removal of officers and employees ;

(iv) guidelines for entering into any compromise with borrowers and other customers of the bank ; and

(v) any other policy matter.

(6) The Chief Executive and other officers of the bank shall act in accordance with the policies, criteria and guidelines determined by the Board.

(7) The Board shall appoint committees from amongst the executives of the bank, and determine the powers, functions and duties of such committees.

(8) Where the Federal Government has appointed a Chairman, he shall preside over the meetings of the Board, and in case a Chairman has not been appointed, then the President shall preside over the meetings of Board. In the absence of the Chairman or the President, as the case may be, the directors may elect one of the member to preside over the meetings.

(9) The President, subject to the control and directions of the Board, shall exercise powers of management of the affairs of the bank.

(10) All selections, promotions and transfer of employee of banks except the President and decisions as to their remuneration and benefits shall be made by the President in accordance with the evaluation criteria and personnel policies determined by the Board.

(11) The Board, the President and other officers shall exercise their powers and discharge their duties in accordance with sound banking principles and prudent banking practices and shall ensure compliance with regulations and directions that may be issued by the State Bank from time to time.

(12) No person shall be eligible for appointment as the Chairman, the President, or a member of the Board if—

(a) he is or has at any time been adjudged insolvent or has suspended payment or has compounded with his creditors ; or

(b) he is a minor or is found a lunatic or of unsound mind ; or

(c) he is not citizen of Pakistan ; or

(d) he was at any time in the service of the Federal Government or a corporation controlled by any such Government or in the service of a bank and was dismissed ; or

(e) he is a person against whom any action has been taken or any proceedings are pending under section 412 of the Companies Ordinance, 1984, (XLVII of 1984) or section 83 of the Banking Companies Ordinance, 1962 ; (LVII of 1962) or

(f) he is, or has been, convicted for tax evasion under any law for the time being in force ; or

(g) he is a member of the Senate, National Assembly, any Provincial Assembly or an elected Member of a local council constituted under any law relating to local councils ; or

(h) he is holding an office in a political party.]”

11. A careful reading of the provisions reproduced above would reveal that the Board with the dissolution of the Pakistan Banking Council became more autonomous and independent in managing the Bank and determining the terms and conditions of services of the officers and executives of the bank. It, in exercise of such powers, introduced circular No.3799, dated 16.6.1999 revising the pay structure bringing substantial increase in the salaries of the officers and executives of the bank. It, however, has not been given a power by any of the provisions in general and Section 11 of the Act in particular to rescind, replace or repeal a statutory dispensation already in force. In the case of **Muhammad Tariq Badr and another. Vs. National Bank of Pakistan and others** (2013 SCMR 314) this Court while dealing with a similar controversy held as under :-

*“It is an admitted position that 1980 Rules have not been framed as per the mandate of law *ibid*, inasmuch as these rules are neither made by the Federal Government nor published in the, official gazette. There is also no cavil/quibble that the said rules have not been composed/enforced with the prior approval of the Government or any subsequent benediction was conferred to those by the Government. Rather (admittedly) the rules have been formulated by the Board of the respondent-bank constituted under section 11 of the Act, 1974 which stipulate the general power of the Board pertaining to policy making and the administration and management of the nationalized banks. Subsection (4) thereof specifically provides "The general direction and superintendence of the affairs and business of a bank, and overall policy making in respect of its operations, shall vest in its*

Board". Furthermore, as per subsection (5) of the Act, 1974 the Board shall determine "personal policies of the bank, including appointment and removal of officers and employees" and in accordance with subsection (10) "All selections, promotion and transfer of employees of banks except the President and decisions as to their remuneration and benefits shall be made by the President in accordance with the evaluation criteria and personnel policies determined by the Board". From the above it is unequivocally clear that the 1980 Rules have been framed by the Board of the bank pursuant to its authority in the nature of management/ superintendence of the affairs of the bank and/or the policy making power; however for all intents and purposes, it is so done in the exercise of an executive authority under the statute, but having even no remote or possible or permissible connection and nexus to any statutory jurisdiction, these rules thus can at best be termed, understood, comprehended and construed merely as the guidelines or the domestic instructions of the N.B.P., for the purposes of highlighting, elucidating or beneficially revamping the service structure of bank's employees for their advantage, provided the same do not in any manner contravene the 1973 Rules, but nothing more than that can be imputed to those; and in any case the rules do not enjoy the status of a statutory instrument."

12. Now a question arises where Section 20 of the Act provided that the Federal Government may by notification in the official gazette, make rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act, what would be the consequence of its failure to have it published in the official gazette? The answer to the question was given in detail in the case of **SAGHIR AHMED through Legal Heirs. Vs. PROVINCE OF PUNJAB through Secretary, Housing and Physical Planning Lahore and others** (PLD 2004 SC 261) in the words as follows:-

10. Even otherwise, the provisions of a statute for the publication or a notification in official Gazette are generally regarded by the Courts as directory and where their strict non-compliance does not provide any consequences. The legal certainty also requires that ordinarily a statutory instrument should not be treated as invalid because of a failure on the part of public functionaries to publish it in the official Gazette. There may be many things done on the basis of such an instrument. It would seem unfortunate were these things held to be invalid if it were at some stage discovered that there had been a failure by a public authority to go meticulously by the manner and mode of publication of an instrument or notification in the Official Gazette. In the case of *Multiline Associates v. Ardeshir Cowasjee and 2 others* (PLD 1995 SC 423) this Court took the view that even if Karachi Building and Town Planning Regulations, 1979 were not published in the official Gazette under section 21-A(3) of the Sindh Buildings Control Ordinance, 1979, they could be construed and acted upon as regulations for the purpose of the said Ordinance. In *Pakistan through Secretary, Ministry of-Defence and others v. Late Ch. Muhammad Ahsan* (1991 SCMR 2180), the factual acquisition of land had not been denied and same had been acted upon for nearly 50 years and there was an airfield in the land for such a

long time. The notice/notification although had been signed and issued to all concerned but had not been gazetted. In other words, the purpose of the publication in the ordinary sense was practically served almost contemporaneously when the acquisition took place and in fact it was more substantial publication insofar as the owners were concerned than if it would have been in the official Gazette. It was further observed that mere fact that publication in the Gazette was delayed, would not invalidate the notification. A somewhat similar view was taken in Muhammad Siddique v. Market Committee, Tandlianwala (1983 SCMR 785). In the case of Manzur-ul-Haq v. Controlling Authority, Local Councils, Montgomery and others (PLD 1963 SC 652) it was held, by reference to the provisions of Article 26 of the Basic Democracies Order, 1959, and section 17 of the Municipal Administration Ordinance, 1960, that mere provision in a statute for notifying name of holder of office in Gazette was not a condition precedent to the holding of the office. In Chief Commissioner, Karachi v. Jamil Ahmed and another PLD 1961 SC 145 the Court held that the provision in section 280(1) of the City of Karachi Municipal Act, (1933) relating to general elections being notified in official Gazette was directory and not mandatory and a substantial compliance with that would be enough. In Regina v. Sheer Metalcraft Ltd. and another (1954 1 QB 586), Lord Streatfeild, J., took the view that "a statutory instrument, made by a Minister or other competent authority was valid and effective as soon as it was made, notwithstanding that the provisions of the Statutory Instruments Act, 1946, and the regulations, made thereunder relating to the printing and issuing of statutory instruments had not been complied with".

We, agreeing with the dictum reproduced above, reaffirm that failure to have the notification published in the official gazette would not shear it off its statutory status.

13. The argument of the learned Sr. ASC for the appellant that where Circular No. 3799 dated 16.06.1999 bringing substantial increase in salaries of the officers and executives of the bank and reducing the pension factor was accepted and acted upon by the officers and the executives of the bank without any qualms for more than a decade, they could not have turned around to question it so long as they do not refund the increase in the salary, does not have much force firstly because the respondents never sat idle or slept over their rights emanating from the circular dated 30.1.1977 as is evident from their correspondence at different levels and secondly because there could be no estoppel against the statute or the rules having statutory force. The argument that such petitions are also hit by the principle of laches when they were instituted more than ten years after the issuance of the circular dated 16.06.1999 is

also devoid of force when the respondents have been questioning the circular reducing the pension factor at different fora and stages. Even otherwise, the principle of laches cannot be over emphasized when pension is a recurring right as has been held in the cases of Pakistan Telecommunication Employees Trust (PTET) through M. D., Islamabad and others. Vs. Muhammad Arif and others, Secretary, Government of Punjab, Finance Department and 269 others. Vs. M. Ismail Tayer and 269 others, Constitution Petition No. 127 of 2012, decided on 11.04.2013 regarding Pensionary Benefits of the Judges of Superior Court, Pakistan Muslim League (N) through Khawaja Muhammad Asif, M.N.A. and others. Vs. Federation of Pakistan through Secretary Ministry of Interior and others, Pakistan Tobacco Company Ltd. and another. Vs. Federation of Pakistan through Secretary, Ministry of Commerce, Islamabad and 3 others, Civil Aviation Authority, Islamabad and others. Vs. Union of Civil Aviation Employees and another, Shahid Pervaiz. Vs. Ejaz Ahmad and others, etc., Muhammad Mubeen-us-Salam and others. Vs. Federation of Pakistan through Secretary Ministry of Defence and others and I. A. Sharwani and others. Vs. Government of Pakistan through Secretary Finance Division, Islamabad and others (supra).

14. The argument of the learned ASC for the respondents that the notification issued by the Finance Division, Government of Pakistan and Circular No. 228(C) issued by the Bank could be treated at par with the statutory rules when they have been acted upon for decades and decades together would loose its relevance and so would the judgments rendered in the cases of Pakistan. Vs. Sheikh Abdul Hamid, Dr. Habibur Rahman. Vs. The West Pakistan Public Service Commission, Lahore and 4 others, Khan Faizullah Khan. Vs. Government of Pakistan through the Establishment Secretary, Cabinet Secretariat and another(supra), once we have held above that the notification dated 30.11.1977 having been issued by the Federal Government in terms of Section 20 of the Act is statutory in nature.

15. As a sequel to what has been discussed above, we allow Civil Appeal No. 353 of 2015 alongwith the CMAs. No. 1493 and 2070 of 2015, set aside the judgment of the Peshawar High Court whereas we dismiss the Civil Appeals No. 632 to 673 of 2017 filed by the National Bank of Pakistan and maintain the judgment of the Lahore High Court, dismissing the Intra Court Appeal.

JUDGE

JUDGE

JUDGE

Announced in open Court at Islamabad on_____.

JUDGE

'Not Approved for Reporting'
M. Azhar Malik