

**IN THE SUPREME COURT OF PAKISTAN**  
**(Appellate Jurisdiction)**

**Present:**

Mr. Justice Muhammad Ali Mazhar  
Mr. Justice Athar Minallah  
Mr. Justice Salahuddin Panhwar

**C.P.L.A.Nos.573-K to 575-K/2023**

(Against the impugned consolidated judgment dated 16.01.2023 in CP No. D-3105/2017, CP No. D-8295/2018 and CP No. D-4321/2020, rendered by the High Court of Sindh, Karachi)

M. Asghar Janjua and others (CP.573-K/2023)  
Tariq Mehmood and others (CP.574-K/2023)  
Zahid Akhtar Siddique & others (CP.575-K/2023)

Petitioner(s)

Versus

Federation of Pakistan & others Respondent(s)

For the Petitioner(s) : Mr. Muhammad Haseeb Jamali, ASC  
Mr. K. A. Wahab, AOR

For the Respondent(s) : Mr. Mohsin Qadir Shahwani, Addl. AGP  
Agha Zafar Ahmed, ASC

Date of hearing : 2<sup>nd</sup> September, 2025

**Judgment**

**Muhammad Ali Mazhar, J.:-** The aforesaid Civil Petitions for leave to Appeals are brought to challenge the impugned consolidated judgment dated 16.01.2023 passed by the High Court of Sindh, Karachi in Constitution Petitions No. D-3105 of 2017, D-8295 of 2018 and D-4321 of 2020, whereby the said petitions were dismissed.

2. According to the facts pleaded in the aforesaid Civil Petitions, all the petitioners are officers/employees of Pakistan Steel Mills Limited (**PSM**) in various service groups, however, the petitioners Nos. 19, 44, 52, 57, 62 & 202 have been recently retired from PSM. The Gratuity Fund Trust for PSM employee (respondent No.4) was created on 20th January, 1976 for managing and administering the gratuity fund by means of

Trust Deed and Gratuity Fund Rules. In fact, the petitioners approached the High Court against the alleged withholding of lawful financial relief including grant of increments as well as promotions. They also challenged the amendments made in the Gratuity Rules whereby, the employees of PSM who were represented by CBA being paid gratuity on gross pay, whereas the petitioners were being paid gratuity on basic pay basis.

3. The learned counsel for the petitioners argued that while rendering the impugned consolidated judgment, the learned Divisional Bench of the High Court failed to take into consideration that the refusal to pay/release financial benefits since year 2009 was illegal and discriminatory. It was further contended that a crucial question of non-payment of ad-hoc relief was also raised which was not considered by the High Court which was announced/approved by the Federal Government and made applicable to the autonomous, Semi-autonomous bodies and corporations controlled by the Federal Government and main reason of denying this benefit by the High Court was financial constraints, ignoring the material fact that at least 11,000 workers of PSM got similar relief through two charters of demand of Collective Bargaining Agent. He further argued that on one hand, the ad-hoc relief claimed was denied to the petitioners on the pretext of financial crunch but on the other hand about 5000 daily wages and contract employees were regularized in service. Last but not least, the learned counsel pointed out the memo of constitution petition filed in the High Court (CP.No.D-3105 of 2017) and argued that various pleas were raised in the memo of petition with manifold prayers but the impugned judgment of High Court is only confined to the issue of adhoc allowance while all other pleas and the arguments made in support thereto have been ignored by the High Court.

4. The learned counsel for the respondents argued that due to financial crunch, PSM applied for the permission of closedown of establishment and already retrenched a certain ratio of the

employees with the permission of Labour Court and at present only 900 employees have been retained in service. He further argued that PSM also introduced a Voluntary Separation Scheme (**VSS**) which was opted by many employees. However, he admitted that though various pleas were raised and argued before the High Court by the petitioners counsel, the judgment of the High Court is only confined to the payment of the adhoc relief/allowance.

5. Heard the arguments. To begin with, we skimmed through the memo of constitution petition as pointed out by the learned counsel for the petitioners which deciphered that the petitioners raised multifarious claims such as non-payment of gratuity; unlawful amendments in the gratuity rules; non-payment of special allowance and adhoc allowance. At one fell swoop, paragraph No.3 of the impugned judgment brings into sight the arguments advanced before the High Court which were seemingly not circumscribed or constricted to the non-payment of the adhoc allowance solitarily but many other pleas were taken *inter alia* discriminatory treatment and challenge to the amendments in the Gratuity Rules with specific prayer that Clause 12 of the Gratuity Fund Rules should be brought in line with the decision No.156, as reflected in the PSM's Circular dated 19.05.2009. The impugned judgment also ricochets vide paragraph 11 that the petitioners were not non-suited on any constitutional or legal ground, but it has been observed in the impugned judgment that since PSM is suffering financial loss, therefore, it is not conducive to grant any financial benefits to the petitioners. In our considered view, every employee is entitled to the payment of his full and final settlement on his superannuation. The nonpayment of gratuity has nothing to do with losses or financial crunch, quite the reverse, the amount of gratuity, provident fund and pension is an inherent/vested right of every retired employee which is deep-seated in the Industrial Relations and Civil Service Laws. Every employer without any pretext or deferment is bound to pay off this liability

immediately on the eve of retirement rather than delaying or shelving this vested right for an indefinite period or result in this obligation in a state of uncertainty. Many crucial questions of law were raised by the petitioners which were not considered by the High Court but the substrata of decision paid attention only to the alleged financial crunch rather than adverting to the spectrum of plea of vires of amendment in the Gratuity Rules including the other claims/benefits on the touchstone of applicable laws. In this scenario, the impugned judgment is also hit by the doctrine of "*Sub Silentio*".

6. In fact, the expression "gratuity" delineates a lump-sum/consolidated amount of money remunerated by an employer to an employee leading up to formal retirement, which is always regarded as significant milestone that marks the end of employee's career and starting of a new chapter in his life. The gratuity is a financial benefit provided as a token of gratitude for an employee's loyalty, efficient service and completion of certain years of service and depending upon the terms and conditions of employment, it becomes a legal obligation rather than a voluntary benefit. Sometimes it may be classified as bounty but if its payment obligation is structured and regulated by legal provisions/rules or regulations, then its payment turns into indispensable and mandatory rather than considering it mere bounty. In the present case while claiming other benefits, it was also asserted that amendments made in the gratuity rules have severely affected the interest of the petitioners so they also challenged the vires of amendments which was neither considered nor were any findings recorded by the High Court in the impugned judgment. Whether the amendments made in accordance with law or not and whether it affected or prejudiced the vested rights accrued in favour of the petitioners? What is the effective date of amendment and whether it is retrospective or prospective? All such questions should have been taken into consideration by the High Court and decided with some definite findings rather than leaving

such crucial issue in limbo or nonsuiting the petitioners on the anvil of alleged financial crunch which plea does not suffice to compromise, negate or deprive the accrued dues if payable in accordance with law to the petitioners. So far as the plea of acceptance of VSS is advanced by the learned counsel for the respondent, neither the counsel for the petitioners nor counsel for the respondents have provided the relevant details to substantiate how many petitioners have been retrenched and how many petitioners have accepted the VSS which could only be proved on vetting of record which was not available before us and obviously if some petitioners even otherwise accepted the alleged VSS, then their fate will be decided in accordance with law after vetting whether despite accepting VSS, be that as it may, any further claim survive or stay alive along the lines of VSS schematic or not?

7. In the case of Inspector General of Police, Quetta and another Versus Fida Muhammad and others (2022 SCMR 1583), it was held by one of us that the doctrine of vested right upholds and preserves that once a right is coined in one locale, its existence should be recognized everywhere and claims based on vested rights are enforceable under the law for its protection. A vested right by and large is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances. In fact, it is a right independent of any contingency or eventuality which may arise from a contract, statute or by operation of law. Whereas in the case Annoor Textile Mills Ltd. vs. Federation of Pakistan (PLD 1994 SC 568), this Court with the aid and assistance of *Black's Law Dictionary; Ballantine's Law Dictionary and Mokal's Law Terms and Phrases: Judicially Interpreted with Legal Maxims and Foreign Legal Words and Phrases in Ordinary Usage*, dilated upon the expression "bounty" and defined as "a gratuity or an unusual or additional benefit conferred upon or compensation paid to a class of persons, a gift or favour bestowed as expression of liberality or kindness, money paid or a premium

offered to encourage or promote an object, an amount offered for services performed or to be performed". It was further held that the word 'bounty' has varied meaning according to the circumstances or as defined under the legislation. It may be a premium, a favour or a liberal increase to persons working or for the work performed or as an incentive for better results and creating good working conditions. When any person in his personal capacity makes such favorable concession, it becomes a gift, kindness or liberality, but when it is given by a legislation, it is based on certain valid considerations and acquires legality conferring a legal right on the person to-whom it is to be paid and imposing a liability and duty on the person who is required to pay. While in the case of Army Welfare Sugar Mills Ltd and others versus Federation of Pakistan and others (1992 SCMR 1652), this Court while referring to the dictums laid down in the case of Sheikh Fazal Ahmed v. Raja Ziaullah Khan (PLD 1964 SC 494); Works Cooperative Housing Society and another v. Karachi Development Authority (PLD 1969 SC 430); Collector of Central Excise and Land Customs v. Azizuddin Industries (PLD 1970 SC 439); Commissioner of Sales Tax (West) Karachi v. Kauddsons Ltd. (PLD 1974 SC 180) and Muhammad Suleman and others v. Abdul Ghani (PLD 1979 SC 190), held that notification which purports to impair an existing or vested right or imposes new liability or obligation cannot operate retrospectively in the absence of legal sanction, however the notification which confers benefit can operate retrospectively. It was further held that doctrine of promissory estoppel is pressed into service in order to prevent the exercise of legal rights where it would be un-conscionable for the possessor of those rights to do so.

8. Recently, one of us speaking for the bench has dilated upon the doctrine of "***sub-silentio***" in the case of Syed Saad Ali & another vs. Federation of Pakistan through Secretary Ministry & others (2025 SCP 318), wherein it was held that the doctrine of "*sub-silentio*" accentuates a legal principle where a judgment is

rendered without specifically and precisely avowing or attending to the exact question of law raised for determination. In fact, *sub silentio*, a Latin term, literally translates to "under silence" or "in silence". In legal milieus, it points towards an incidence where the Court decides a *lis* without appreciating or deliberating the particular point of law raised before it, which disturbs the precedential value of the judgment. This doctrine often denotes that if the court, in its judgment, overlooked or dispensed with a crucial point of law raised before it, then the precedential value of such decision is seriously disturbed. A decision is not binding if it was reached at without argument, without reference to the critical terms of the law, and without citation of authority. Such a decision, taken as *sub silentio*, lacks authoritative weight. In the case of Lancaster Motor Co. (London) Ltd. v. Bremith Ltd., **(1941) 1 KB 675**, Sir Wilfrid Greene, M.R., said that he could not help thinking that the point raised had been deliberately passed *sub silentio* by counsel so that the point of substance may be decided. He went on to say that the point had to be decided by the earlier court before it could make the order, which it did; nevertheless, since it was decided without argument, without reference to the crucial words of the rule, and without any citation of authority, it was not binding and would not be followed.

9. It is a renowned elucidation of law that each case has to be decided on its own facts. Along these lines, each litigant ought to have been provided a fair chance of hearing to present and plead his case and the decision of the court must be founded and structured on the merits of the case. The *vires* of law, rules, or regulations can be challenged if its provisions are *ex facie* discriminatory, in which case actual proof of discriminatory treatment is not required to be shown, but there is also a presumption in favour of the constitutionality of the enactments, unless it is *ex facie* violative of a constitutional provision. Reference can be made to the judgment of this Court

rendered in the case of Lahore Development Authority v. Ms. Imrana Tiwana and others (2015 SCMR 1739).

10. In the wake of the above discussion, these Civil Petitions are converted into appeals and allowed. As a consequence thereof, the impugned judgment passed by the High Court is set aside and the matter is remanded to the High Court to decide all issues raised in accordance with law after providing ample opportunity of hearing to the parties, preferably within period of three months after receipt of the copy of this judgment.

Judge

Judge

Judge

KARACHI

02.09.2025

Khalid

Approved for reporting.