

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.3908 of 2018

Syed Muhammad Zafarullah and others

**Versus**

Federation of Pakistan through Secretary, Finance Division and  
others

<b>Date of Hearing:</b>	16.12.2019
<b>Petitioners by:</b>	Mr. Saeed Ahmed Zaidi, Advocate
<b>Respondents by:</b>	Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General Mr. Rashid Mahmood Ansari, Advocate for respondents No.2 and 3 Mr. Muhammad Yunas, O.G-I, Z.T.B.L.

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**MIANGUL HASSAN AURANGZEB, J:-** Through the instant writ petition, the petitioners, who are retired employees of the erstwhile Agricultural Development Bank of Pakistan (now named as Zarai Taraqiati Bank Limited (“Z.T.B.L.”), impugn Z.T.B.L.’s letters dated 20.08.2018, turning down the petitioners’ request for the grant of increase in pension at the same rate as announced by the Federal Government for civil servants upon the restoration of the commuted portion of their pension. The position taken by Z.T.B.L. in the said letter was that the instructions of the Federal Government were neither applicable nor binding on it.

2. Learned counsel for the petitioners submitted that the petitioners are retired employees of Z.T.B.L.; that 50% of the petitioners’ pension was commuted for a period of fifteen years; that during this fifteen-year period, the petitioners have been paid the increases in pension allowed by Z.T.B.L.’s Board of Directors on the non-commuted portion of their pension; that after the expiry of the fifteen-year commutation period, the petitioners’ restored pension does not include the increases that had been allowed to the pensioners by Z.T.B.L.’s Board of Directors; and that the quantum of the petitioners’ restored pension after the expiry of the commutation period should be at the same rate as the non-commuted portion of their pension. Learned counsel for the petitioners referred to several office memoranda issued by the Finance Division on the

subject of restoration of commuted pension as well as circulars issued from time to time by Z.T.B.L. on the said subject. He further submitted that the said circulars of Z.T.B.L. were in the same terms as the office memoranda issued by the Finance Division and that the Hon'ble Lahore High Court had interpreted the said office memoranda in such a manner that the pensioners' restored pension after the expiry of the commutation period was to be in the same amount as the non commuted portion of their pension. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

3. On the other hand, learned counsel for Z.T.B.L. submitted that Z.T.B.L.'s circulars, dated 15.04.1986 and 03.08.1986 on the basis of which the petitioners are seeking relief from this Court, were non statutory; that all the petitioners had retired prior to the conversion of Z.T.B.L. into a company; that unless Z.T.B.L.'s Board of Directors decides to give the benefit of increases in pension on the commuted portion of the petitioners' pension, they cannot seek the said benefit on the basis of the office memoranda issued by the Finance Division; that such office memoranda were not applicable to the employees of Z.T.B.L.; and that this Court, in its judgment dated 24.10.2018 passed in writ petition No.2354/2017, had held that unless Z.T.B.L.'s Board of Directors had decided to approve/adopt any order or notification issued by the Government of Pakistan, its benefit could not be extended to the employees of Z.T.B.L. Learned counsel for Z.T.B.L. prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The petitioners are retired employees of Z.T.B.L. The dates of their retirement are mentioned in "**Schedule-A**" hereto. It is an admitted position that 50% of their gross pension was commuted for a period of fifteen years. The petitioners have been receiving the other 50% of their gross pension with the increases announced by the Federal Government for its employees and adopted by Z.T.B.L. After the restoration of the commuted portion of their pension, the petitioners have not been given the benefit of the increased amount

on such restored pension. The petitioners are not asking for the arrears in the increased pension for the period that their 50% pension remained commuted. They, however, seek the payment of increased pension after the restoration of the commuted portion of their pension. In other words, they want the payment of the restored 50% pension to be at the same rate as the 50% non commuted portion of their pension.

6. On 28.09.2017, the petitioners had submitted a representation to the President of Z.T.B.L. seeking the restoration of the commuted portion of their pension with the increases in pension allowed by the Federal Government from time to time. Since no response was received to the said representation, the petitioners filed writ petition No.3707/2017 before this Court. The petitioners wanted the restoration of the commuted portion of their pension after the expiry of the fifteen years commutation period at the same rate on which the monthly pension was being drawn. The said writ petition was disposed of vide order dated 26.04.2018 with the direction to Z.T.B.L. to decide the petitioners' pending representation dated 28.09.2017. Pursuant to the said order, Z.T.B.L., vide impugned letter dated 20.08.2018, turned down the petitioners' representation.

7. In exercise of the powers conferred by Section 39(2)(e) of the Agricultural Development Bank Ordinance, 1961, the Board of Directors of Z.T.B.L. made the Agricultural Development Bank Employees' Pension and Gratuity Regulations, 1981. Under Regulation 18, an employee has the option to commute 1/4<sup>th</sup> of his gross pension for a lump sum payment provided he submits an application for this purpose within one year of his retirement.

8. According to Finance Division's O.M. dated 25.06.1985, under the existing Rules a pensioner, on his option, could get his pension commuted up to a maximum of 50%, and in such cases the Government pays the commuted value of such portion of his pension for a number of years according to the pensioner's age on his next birthday after retirement. The President of Pakistan had decided that the commuted portion of the gross pension shall be restored with effect from 01.07.1985 in the case of civil pensioners who had

already completed the number of years for which the commuted value of pension was paid. This decision was conveyed through the said O.M. dated 25.06.1985. It was also clarified that no arrears on account of restoration of the commuted portion of pension will be payable in those cases in which the number of years paid for had been completed before 01.07.1985.

9. On 15.04.1986, the Personnel Policy Department of Z.T.B.L. issued a circular, the essential terms whereof were the same as provided in the Finance Division's O.M. dated 25.06.1985. By virtue of the said circular, the commuted portion of the pension was restored with effect from 01.07.1985 in the cases of such pensioners who had already completed the number of years for which the commuted value of the pension was paid.

10. In the Finance Division's O.M. dated 01.07.1986, it is provided that commutation up to 50% of gross pension shall continue to be admissible at the option of the pensioner. On 03.08.1986, the Personnel Policy Department of Z.T.B.L. issued a circular on the subject of "*revision of rates of commutation*". According to the said circular, a pensioner of Z.T.B.L. was eligible to commute at his option 50% of his gross pension. The said circular is essentially in the same terms as the Finance Division's O.M. dated 01.07.1986.

11. It is an admitted position that 50% of the gross pension was commuted for a period of fifteen years for all the petitioners, and that the fifteen-year commutation period with respect to all the petitioners has been completed. Their 50% commuted pension has been restored, but without the increase which they had been receiving for the remaining 50% non commuted pension. The vital question that needs to be answered is whether their restored pension is to be at the same rate as their non commuted pension. It is also an admitted position that the benefit of periodic increases in pension announced by the Federal Government and adopted by Z.T.B.L. had been paid to the petitioners on the non commuted portion of their pension.

12. Mr. A.A. Zuberi, a retired Member of the Income Tax Appellate Tribunal had filed writ petition No.2147/2009 before the Hon'ble Lahore High Court praying for the 50% of his commuted pension to

be restored on expiry of fifteen years with the increases allowed by the Federal Government. Vide judgment dated 11.02.2009 reported as A.A. Zuberi Vs. Additional Accountant General, Pakistan Revenue, Lahore (2010 PLC (C.S.) 1211), the said writ petition was allowed and the respondents in the said writ petition were directed to *inter alia* “calculate the petitioner’s revived pension amount reflecting the total increases from the date of expiry of period of 15 years... and pay the arrears of the said period to the petitioner”. It was also held that the petitioner was not entitled to any increase prior to the expiry of the fifteen-year commutation period.

13. Intra Court Appeal No.118/2009 filed by the Accountant-General, Pakistan Revenue, Lahore against the said judgment was dismissed by the Hon'ble Lahore High Court vide judgment dated 16.06.2010 reported as Additional Accountant General, Pakistan Revenue, Lahore Vs. A.A. Zuberi (2011 PLC (C.S.) 580). In the said judgment, the Division Bench of the Hon'ble Lahore High Court, after making reference to and interpreting Rule 3.29 of the Pension Rules, held in paragraphs 20 to 22 of the said report as follows:-

*“20. Under the Rules the pension stands RESTORED at the end of the commutation period. This means that the respondents are once again entitled to 100% pension as it stands on that day. The best index to gauge the pension due on the said date is the amount of 50% pension being received monthly by the respondents on the said date. The pension due will be double the said amount. It is preposterous to imagine that a civil servant be given pension in the year 2008 which he was entitled to draw in 1993 (15 years ago). Such action offends the right to livelihood of the respondents guaranteed under Article 9 of the Constitution. It also fails to meet the test of economic justice which is also an integral part of right to life as provided in the preamble and the Objective Resolution to the Constitution. Depriving a civil servant of his lawful pension is also discriminatory when compared to equally placed retired civil servants who are drawing the current rate of pension. This offends Article 25 of the Constitution. No civilized system can provide for such an unreasonable and uneconomic post retirement benefit to their employees who have given their golden years for the public service of this country.*

*21. The interpretation of the appellant on the accounting side also appears to be unreasonable. It will be odd for a civil servant to draw two different slabs of pensions i.e., 50% at the rate prevalent in the year 1993 and the remaining on the current rate inclusive of increments.*

*22. We, therefore, hold that under Rule 3.29 of the Pension Rules (supra) the restoration of pension means the pension due to a retired civil servant in that year inclusive of all the increments till that time (i.e. accumulated over the last 15 years in this case). In*

*other words it would simply be double the amount of 50% pension the respondents are already drawing. These appeals are, therefore, dismissed. The order of the learned Single Judge is modified/clarified in the above terms.”*

14. It is an admitted position that appeals against the above-mentioned judgment of the Hon'ble Lahore High Court were dismissed as time barred. The fact that the appeals were dismissed has also been mentioned in the order dated 24.04.2012 passed by the Hon'ble Supreme Court in civil petition No.549/2012 and connected matters reference to which would be made herein below.

15. A number of civil servants filed appeals before the Federal Service Tribunal, Islamabad (“F.S.T.”) seeking the benefit of periodical increases on the surrendered portion of the commuted value of their pension after its restoration. The F.S.T., after taking into consideration the law laid down by the Hon'ble Lahore High Court in the case of A.A. Zuberi Vs. Additional Accountant General, Pakistan Revenue, Lahore (supra), allowed the said appeals vide judgment dated 05.01.2012. The appellants before the F.S.T. were held to be entitled to the increase in their commuted pension at the same rate at which they were drawing the remaining 50% pension. The Federation of Pakistan assailed the said judgment by filing civil petitions before the Hon'ble Supreme Court. Vide order dated 24.04.2012, the said petitions were dismissed.

16. Retired employees of the Government of Punjab who had been sanctioned commutation of 50% of their pension for a period of fifteen years in terms of the Punjab Civil Service Pension Rules, 1963 had filed appeals before the Punjab Service Tribunal and writ petitions before the Hon'ble Lahore High Court challenging the deduction of the increases in the pension granted by the Government of Punjab during the fifteen-year commutation period from the restored portion of their pension. Their appeals and writ petitions were allowed. The Government of Punjab's appeals against the judgments of the Hon'ble Lahore High Court and the Punjab Service Tribunal were dismissed by the Hon'ble Supreme Court of Pakistan vide judgment dated 31.03.2014 reported as Secretary, Government of Punjab, Finance Department Vs. M. Ismail Tayer etc. (2014 SCMR 1136). The Hon'ble Supreme Court, after making

reference to the judgments in the cases of A.A. Zuberi Vs. Additional Accountant General, Pakistan Revenue, Lahore (supra), and Additional Accountant General, Pakistan Revenue, Lahore Vs. A.A. Zuberi (supra), observed that the said judicial pronouncements had been implemented by the Federal Government vide O.M. dated 10.09.2009, whereby retired civil servants of the Federal Government were being paid their pension inclusive of the increases sanctioned during the commuted period. Reference was also made to Rule 8.12 of the Punjab Civil Service Pension Rules, 1963, which provides that the commuted portion of the pension would be “restored” on completion of the number of years for which the commuted pension was paid. The term “restored” appearing in Rule 8.12 was interpreted to mean “*the restoration of the right to pension with the retired civil servant being re-invested therewith*”. The Hon'ble Supreme Court also referred to Section 18 of the Punjab Civil Servants Act, 1974 and in paragraph 16 of the said report, held as follows:-

*“16. Thus, under section 18 of the Act of 1974, a retired Civil Servant is entitled to receive pension as may be prescribed. In case a portion of pension is commuted for a particular period of time, he surrenders his right to receive full pension in lieu of lump-sum payment received by him and on expiry of the commuted period, his right and entitlement to receive full pension, as prescribed, is restored and re-vested in him. The restoration of the right to receive pension in terms of Rule 8.12 of the Rules of 1963, is without any rider and upon re-vesting of such right, the status of such retired Civil Servant in law is brought at par with the other retired Civil Servants, who had not exercised their option by seeking commutation of their pension. Such is the obvious effect of the term “restoration” as used in the Rules in question. In the circumstances, a retired Civil Servant, on expiry of the period of commutation, cannot be discriminated against by being paid less pension than his colleagues, who had not sought commutation, as there was no valid classification available in law between the two. If the Government was to adopt such a course of action as has been attempted to be done, it would offend against Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. Such right in terms of section 18 of the Act of 1974 would obviously mean the pension, as prescribed by the Rules payable on the date of restoration and would obviously include any increase in pension granted by the Government during the intervening period of commutation, as such, increase is envisaged by the Rules.”*

17. In the judgments reported as Additional Accountant General, Pakistan Revenue, Lahore Vs. A.A. Zuberi (supra) and Secretary, Government of Punjab, Finance Department Vs. M. Ismail Tayer etc.

*(supra)*, the Division Bench of the Hon'ble Lahore High Court and the Hon'ble Supreme Court had interpreted the term “*restored*” employed in Rule 8.12 of the Punjab Civil Service Pension Rules, 1963 and Rule 3.29 of the Pension Rules, 1969 by referring to a catena of case law and treaties. It goes without saying that the Punjab Civil Service Pension Rules, 1963 and the Pension Rules, 1969 are not applicable to the employees of Z.T.B.L. For the present purposes, it is Z.T.B.L.’s circular No.PD/PPD/15/86, dated 15.04.1986 on the subject of “*restoration of commuted portion of pension*”. For the purposes of clarity, the said circular is reproduced in its entirety in **Schedule-B** hereto.

18. Perusal of the said circular shows that Z.T.B.L. had decided to “*restore*” the commuted portion of the pension with effect from 01.07.1985 in the cases of such pensioners who had already completed the number of years for which the commuted value of pension was paid. The terms “*restore*” and “*restoration*” of pension have been employed in the said circular repeatedly. In the said circular, it is also provided that the Finance Division’s O.M. dated 25.06.1985 containing instructions regarding “*restoration*” of commuted portion of pension had been adopted by Z.T.B.L. for its pensioners. Therefore, the interpretation given by the Superior Courts in the above referred judgments to the term “*restore*” or “*restoration*” has to perforce be given to the term “*restore*” or “*restoration*” employed in Z.T.B.L.’s circulars dated 15.04.1986 and 03.08.1986. Consequently, the pensioners of Z.T.B.L. whose 50% pension was commuted for a period of fifteen years would be entitled to the restoration of the commuted portion of their pension inclusive of the periodic increases that were announced by Z.T.B.L. during the fifteen-year commutation period, and which had been paid to the petitioners on the non commuted portion of their pension.

19. It may also be mentioned that in the case of A.A. Zuberi Vs. Additional Accountant General, Pakistan Revenue, Lahore (*supra*), the Hon'ble Lahore High Court had directed the respondents in the said case to calculate the petitioner’s restored/revived pension amount reflecting the total increases from the date of the expiry of the fifteen-year commutation period. In the said case, 50% of the



petitioner's pension had been restored after the expiry of fifteen-year commutation period pursuant to the Finance Division's O.M. dated 25.06.1985, which as mentioned above had been adopted by Z.T.B.L. through circular dated 15.04.1986. Since Z.T.B.L.'s circular dated 15.04.1986 is in *pari materia* in essential terms to Finance Division's O.M. dated 25.06.1985, it has to be interpreted in the same very manner as the said O.M. has been interpreted by the Hon'ble Lahore High Court in the said judgment.

20. It is not disputed that all the petitioners retired after the issuance of circulars dated 15.04.1986 and 03.08.1986 by Z.T.B.L. By dint of the law laid down by the Hon'ble Supreme Court in the case of Zarai Taraqiat Bank Vs. Said Rehman (2013 SCMR 642), these circulars, by virtue of the statutory intervention in terms of Section 6(1) of the Agricultural Development Bank of Pakistan (Reorganization and Conversion) Ordinance, 2002 would have a statutory status. In the said case, it was held that the Agricultural Development Bank Staff Regulations, 1961 (which were non statutory) and the Promotion Policy, 1999 had acquired a statutory status under the new dispensation created through the 2002 Ordinance and the employees had acquired a legal right for their enforcement. Furthermore, it was held that writ petitions which sought the enforcement of the said Regulations were maintainable. The ratio in the said case leads me to hold that the petitioners and the employees of Z.T.B.L. employed prior to the promulgation of the 2002 Ordinance could enforce the circulars and non statutory Regulations of Z.T.B.L. issued or framed prior to the promulgation of the said Ordinance through writ jurisdiction.

21. As regards the contention of the learned counsel for Z.T.B.L. that the instant petition is liable to be dismissed in view of the law laid down by this Court in the judgment dated 24.10.2018 passed in writ petition No.2354/2017, I find the same to be untenable. This is because the said case was on a totally differing footing from the one in the case at hand. In the said case, the petitioners had prayed for the issuance of a direction to Z.T.B.L. to revise the petitioners' pension and pay the arrears in light of the Finance Division's O.M. dated 09.02.2016. It was held by this Court that unless the Board of

Directors of Z.T.B.L. had approved/adopted the increases in the pension made by the Federal Government, the same could not be applied to Z.T.B.L.'s employees. There is no cavil with the law laid down in the said judgment. The petitioners in the instant case are not seeking the benefit of any increases in pension which have not been approved by Z.T.B.L.'s Board of Directors. In other words, the petitioners are seeking the benefit of the increase in their restored pension at the very same rate at which they have been receiving the increases on the non commuted portion of their pension. The increases in the pension that the petitioners have received on the non commuted portion of their pension are obviously with the approval of the competent authority in Z.T.B.L.

22. In view of the above, the instant petition is allowed and the impugned letters dated 20.08.2018 are set aside. It is declared that the petitioners are entitled to receive the restored pension after the completion of the fifteen-year commutation period at the same rate at which the non commuted portion of the pension was paid to them. Z.T.B.L./respondents No.2 and 3 are directed to determine/calculate the pension payable to the petitioners from the date of the restoration of their commuted pension at the rate at which they were drawing the 50% non commuted pension. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_/2019

(JUDGE)

*Qamar Khan\**

**APPROVED FOR REPORTING**

*Uploaded By : Engr. Umer Rasheed Dar*

### **"SCHEDULE-A"**

<b>Sr. No.</b>	<b>Name</b>	<b>Date of retirement</b>
1.	Syed Muhammad Zafarullah	08.11.1993
2.	Muhammad Rafique Chohan	03.04.1997
3.	S. Deedar Muhammad	28.02.1994
4.	Anwar Mubashir	12.11.1994
5.	Abdul Hameed Bajwa	23.11.1996
6.	Chand Muhammad	09.02.1993
7.	Rana Shabbir Ahmed Khan	15.02.1992
8.	Muhammad Aslam Khan	14.11.1995

### **"SCHEDULE-B"**

**AGRICULTURAL DEVELOPMENT BANK OF PAKISTAN  
HEAD OFFICE, ISLAMABAD**

**PERSONNEL DIVISION  
PERSONNEL POLICY DEPARTMENT**

Circular No.PD/PPD/15/86

Dated 15.04.1986

All Regional Managers/Managers,  
Agri. Dev. Bank of Pakistan,

**Subject: RESTORATION OF COMMUTED PORTION OF PENSION**

Please refer to the existing instructions regarding commutation of pension applicable to employees of the Bank.

2. Under the existing instructions a pensioner on his option can get his pension commuted upto a maximum of 50 percent. In such cases, the Bank pays commuted value of such portion of pension for a number of years according to age next birth day after retirement as shown in the Commutation Table (copy enclosed). It has been decided with the approval of the Federal Government that commuted portion of pension to the extent of 1/4<sup>th</sup> of gross pension shall be restored with effect from 1<sup>st</sup> July, 1985 in the cases of such pensioners who have already completed the number of years for which commuted value of pension was paid. The 1/4<sup>th</sup> commuted portion of pension shall also be restored in the case of those retiring in future, on completion of the number of years for which commuted value is paid.

3. In restoring the commuted portion of pension, fraction of a year shown in the Commutation Table which is less than 6 months will be ignored and that of 6 months and more will count as one year.

4. No arrears on account of restoration of commuted portion of pension will be payable in those cases in which the number of years paid for had been completed before 1<sup>st</sup> July, 1985.

5. A copy of Finance Division's Office Memorandum No.F.10(8)Reg.(6)/85 dated 25<sup>th</sup> June, 1985 containing instructions regarding restoration of commuted portion of pension adopted by the Bank for its pensioners is also enclosed.

6. Other instructions on the subject will, however, remain unchanged.

-Sd-  
(A.J. Siddiqui)  
Director Personnel Policy