

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**(JUDICIAL DEPARTMENT)**

**C.R. No.104/2013**

Javed Qamar Raza

*versus*

Habib Bank Limited through its President

Petitioner by: Syed Kazim Hussain Kazmi, Advocate.

Respondent by: Mr. Tariq Mahmood, Advocate.

Date of Decision: 16.03.2020

**MOHSIN AKHTAR KAYANI, J:** Through the captioned civil revision petition, the petitioner has called in question concurrent findings of learned Civil Judge 1<sup>st</sup> Class, Islamabad as well as of the learned Additional District Judge, Islamabad, passed vide impugned judgments and decrees dated 21.04.2011 and 30.01.2013, respectively, whereby suit filed by the petitioner has been dismissed.

2. Brief facts referred in the instant civil revision petition are that the petitioner while serving in the Habib Bank Limited had opted Voluntary Separation Scheme (VSS), 2001. The petitioner being paid less terminal benefits filed an appeal under Section 2-A of the Service Tribunal Act, 1973 and during pendency of the said appeal, the apex Court in its judgment passed in Mubeen-us-Salam's case declared said Section 2-A as partly *ultra vires* to the Constitution of the Islamic Republic of Pakistan, 1973, which constrained the petitioner to file a suit for redressal of his grievance. Accordingly, the petitioner filed a suit for recovery of Rs.2,247,166/- at Civil Court, Islamabad, which was contested by the respondent Bank by filing their written statement and the learned trial Court after recording of pro and contra evidence dismissed the suit vide impugned judgment and decree dated 21.04.2011. Feeling aggrieved thereof, the petitioner preferred an appeal before learned Additional District Judge, which was also dismissed vide impugned judgment and decree dated 30.01.2013. Hence, the instant civil revision petition.

3. Learned counsel for petitioner contends that both the Courts below while adjudicating upon the suit have erroneously appreciated the oral and

documentary evidence put forward by the petitioner; that the petitioner has brought on record ample evidence to prove his case but both the Courts below have brushed aside the same and dismissed the suit in hasty manner and as such, the question of limitation has also wrongly been interpreted in the instant case as the suit was filed within the timeframe allowed by the apex Court, therefore, the impugned judgments and decrees being illegal maybe set-aside and the suit of the petitioner may be decreed.

4. Conversely, learned counsel for respondent HBL while opposing the instant civil revision petition contends that the petitioner himself voluntarily separated and received all the benefits under the VSS, therefore, he is estopped by his conduct to agitate the grievance by filing of suit; that the petitioner has not come to this Court with clean hands as he has not presented the facts in its true perspective and as such, both the Courts below have rightly appreciated the facts and law on subject while passing the impugned judgments and decrees.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner is mainly aggrieved with the Voluntary Separation Scheme, 2001 introduced by the HBL/Respondent, referred as Exh.D1, whereby the petitioner agreed to separate from the services of the respondent Bank on receiving certain benefits incorporated in the said VSS document. However, the petitioner after availing the said VSS package had challenged the same before the Federal Services Tribunal mainly on the ground that he being a civil servant could not be deprived of his hard earned benefits by compellingly executing the VSS, 2001, even otherwise, the assured benefits of the VSS have also not been extended to the petitioner.

7. During pendency of service appeal before the FST, the Supreme Court of Pakistan while rendering judgment in case reported as PLD 2006 SC 602 (Mubeen-us-Salam vs. Federation of Pakistan) declared Section 2-A of the Service Tribunal Act, 1973 partly *ultra vires* to the Constitution of Pakistan, 1973, whereby the petitioner was excluded from the definition of civil servant.

Consequently, the petitioner within the prescribed time of 90 days filed instant civil suit before the learned Civil Court on 25.09.2006 and claims the following benefits.

5) That the Voluntary Separation Scheme 2001 on the face of it was paradoxical. Although by nomenclature it was voluntary yet the same was discriminatory and mandatory in practice. Particularly for the persons in the category of the plaintiff there was no criteria/formula and the same was in fact based upon personal liking, disliking and a policy of pick and choose and this fact is evident from the recital of the policy and paragraph 1 of the same.

6) That the plaintiff was pressurized to opt for the Voluntary Separation Scheme 2001, however he did not want to get premature retirement from service as he is quite healthy and could work till the age of superannuation. Particularly in the circumstances that his record of service remained meritorious and above board.

7) That while calculating the emoluments of VSS, the Defendant and other officers at the helm of affairs transgressed from all norms of justice, principle of equity, fair-play and they with ulterior motives fancifully calculated the emoluments of plaintiff on the lower side. The brief description of which is herein-below given:-

	<u>Amount Due (Rs.)</u>	<u>Paid (Rs.)</u>	<u>Payable (Rs.)</u>
1. <u>Gratuity</u>	834400/-	417200/-	417200/-
2. <u>S.P.F.</u>	1380113/-	1113915/-	266198/-*

\* 1.1.99 to 31.12.2000

Rs.248318.00

1.1.01 to 30.6.2001

Rs.17880.00

**Rs.266198.00**

### **3. Sale of Car**

(app. Original cost=

Rs.330000/-)

Recovered

Rs.148000/-

10% of O.C.

Rs.33000/-

Refundable

Rs.115000/-

115000/-

### **4. Leave Encashment**

Balance (730 days) due

Rs.1027284/-

P.L. 1116 (180 days) paid

Rs.256821/-

Sick Leave:	54	
C. Leave:	20	
	<u>1090</u>	770463/-
<b>5. Bonus</b>		
1999-2001		
(29800x6)=		
	Rs.178800/-	178800/-
(paid half instead of full)		
<b>6. Damages</b>		500000/-
On account of mental torture		
	<b>Total:</b>	<b>2247661/-</b>

8. Conversely, the respondent Bank contested the suit and denied the contentions of the petitioner by taking the stance that the petitioner had willfully opted for the VSS, 2001 and he was not forced to accept the same and as such, during execution of the VSS the calculation of all benefits was mentioned along with the Scheme, which were carefully considered by the petitioner and after due understanding the same was accepted, therefore, the instant suit is not maintainable, even otherwise, the suit is barred by time.

9. On the basis of pleadings of the parties, the learned Trial Court has framed the following eight issues vide order dated 20.06.2007.

1. *Whether the suit is incompetent and not maintainable? OPD*
2. *Whether the suit is barred by law? OPD*
3. *Whether the plaintiff has no cause of action, to invoke the jurisdiction of this Court and suit is liable to be dismissed on this score as well? OPD*
4. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
5. *Whether the plaintiff has approached this Court with un-clean hands? OPD*
6. *Whether the suit of the plaintiff is false, frivolous and vexatious, hence the defendant is entitled for compensatory costs U/S 35-A of CPC? OPD*
7. *Whether the plaintiff has intentionally undervalued the suit for purpose of Court fee and jurisdiction and plaint is liable to be rejected? OPD*
8. *Whether the plaintiff is entitled to the decree for recovery of Rs.22,47,661/- on account of less paid emoluments/terminal benefits and also damages on account of voluntary separation scheme 2001, on the basis of reasons mend in the plaint? OPP*
9. *Relief.*

10. In order to discharge the onus, the petitioner appeared as PW-1 in his own favour and recorded his evidence in the following manner:

"VSS سکیم مخصوص افراد کیلئے تھی اور عمومی طور پر نہیں تھی۔ مذکورہ بالا سکیم اختیاری نہ تھی بلکہ جبری تھی۔ مجھ پر انتظامیہ کا دباؤ تھا کہ واجبات دیئے گئے انکی تفصیل Mark-E ہے۔ Mark-E کی رو سے مجھے کم واجبات ادا کئے گئے۔ مثلاً Gratuity اور مہی ادا کی گئی۔ SPF بھی کم ادا کیا گیا۔ Staff Provident Fund, leave encashment بھی کم ادا کی گئی اور car sale کے متعلق واجبات بھی مجھ سے زیادہ وصول کئے گئے۔"

11. The petitioner has calculated the total benefits and claimed to have been paid less to the tune of Rs.1,747,661/-, whereas the petitioner also claims additional amount of Rs.500,000/- as compensation. During the course of cross-examination, the petitioner has acknowledged the following facts:

بینک پالیسی VSS 2001 کا لیٹر VSS/PD/180 مورخہ 2.6.01 کا تھا۔ جو دو تین دن بعد ملا۔ میں نے ExD1 اچھی طرح پڑھا تھا۔ سرکولر کے ساتھ جو تفصیل تھی وہ میں نے پڑھ لی تھی۔ جو VSS سکیم کے تحت جو واجبات کی ادائیگی بینک نے مجھے کی۔ وہ میں نے وصول کر لی تھی۔ یہ درست ہے کہ VSS کا مطلب رضاکارانہ ہوتا ہے۔ یہ درست ہے کہ VSS/PD/180 کی شرائط کو قبول کر لیا تھا۔ از خود کہا کہ میں نے دباؤ کے تحت قبول کیا تھا۔

12. On the other hand, the respondent Bank has produced Muhammad Feroz, Manager, HBL as DW-1, who stated before the Court that the plaintiff/petitioner had voluntarily accepted the VSS having full knowledge that the brochure of Scheme was appended with list of dues, which was also voluntarily accepted by the plaintiff/petitioner without any objection. All the benefits were calculated on the basis of respondent Bank's policy prevailing at that time and the dues claimed by the petitioner in body of plaint could only be given to those employees who are in service and as such, the petitioner is not entitled to claim those benefits being a retired personnel, nor he is entitled for any compensation. However, during the course of cross examination, DW-1 Muhammad Feroz, Manager, HBL acknowledged that:

VSS سکیم کو اردو میں رضاکارانہ سکیم کہتے ہیں۔ رضاکارانہ میں option دیا جاتا ہے جبکہ جبری میں اس کی ضرورت نہ ہے یہ بات درست ہے کہ جس پالیسی کے تحت مدعی کو ریٹائرڈ کیا گیا وہ منتخب شدہ لوگ تھے۔ یہ selected لوگوں کے لئے رضاکارانہ تھی مجھے لیٹر کی تاریخ یاد نہ ہے جس کے تحت مدعی نے VSS سکیم کو قبول کیا تھا مجھے یاد نہ ہے کہ اس سکیم کا دورانیہ کتنا تھا۔

DW-1 Muhammad Feroz, Manager, HBL also acknowledged that when VSS was announced, the Bank was already taken over by the Government rendering it to be a non-private institution and as such, the entire Scheme was completed under the Rules of the respondent Bank.

13. Taking into account the above referred position, the petitioner is under onus to prove the factum of duress and coercion in terms of Article 117 of the Qanun-e-Shahadat Order, 1984 that as to whether the VSS, 2001 was forcibly imposed upon the petitioner, but surprisingly, the petitioner has not discharged his onus through any independent evidence to assume that he was not willing to accept the offer, and even though, the petitioner himself acknowledged that the VSS, 2001 means "رضاكارانه" basis. Similarly, the document of VSS, 2001 (Exh.D1) contains the wordings that, *"We Announce Voluntary Separation Scheme for Selected Employees of the Bank"*. Even otherwise, another document on letterhead of the respondent Bank, dated 05.07.2001, referred as Mark-D/1, has been placed on record, whereby the petitioner's request for exercising his option in favour of Voluntary Separation Scheme, 2001 was accepted and the entire liabilities calculated in his favour have also been brought on record by the petitioner himself through Mark-E.

14. Keeping in view the above background and facts of the case, the following facts have been surfaced on record:

- a) VSS, 2001 was a voluntary separation scheme, which was opted by petitioner himself.
- b) There is no element of duress and coercion imposed upon the petitioner, nor the same has been proved by the petitioner on record.
- c) No evidence has been brought on record to justify the plea raised by the petitioner in Paras 5, 6 & 7 of the plaint.
- d) The petitioner has failed to submit any bank policy or rules through which he can justify the difference of payments in any manner.

15. I have also gone through the concurrent findings of both the Courts below with able assistance of the learned counsel for the parties and observed that both the Courts below have rightly appreciated the evidence in its true perspective and no illegality has been observed, nor demonstrated by the petitioner on record.

16. In the light of above discussion, it is settled that once VSS has been accepted by the petitioner in furtherance of an offer made by the respondent Bank, it becomes a promise and at the same time when financial benefits have been received, the VSS is converted into a legally binding contract, whereas all rights and benefits have to be governed under the said contract, even otherwise, the petitioner has failed to discharge his onus to prove that Voluntary Separation Scheme, 2001 was executed by him under duress and coercion by the respondent Bank. The petitioner has not substantiated his claim in terms of Qanun-e-Shahadat Order, 1984 and the relief claimed by him is not even justified through any bank policy, manual, rules or regulation, therefore, both the Courts below have rightly dismissed the suit, hence, the instant civil revision petition is hereby **DISMISSED** for being meritless.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

Khalid Z.