

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

**W.P No.3145 of 2013**

Shahid Gul  
*Versus*  
NIRC & others

Petitioner By: Khawaja Muhammad Arif, Advocate.  
Respondent No.3 Mr. Riaz Hussain Haleem, Advocate.  
Date of Hearing: 22.10.2020

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**Ghulam Azam Qambrani, J:** Through this petition, the petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

*"Through this petition, the petitioner prayed that this writ petition may kindly be accepted, order dated 26.02.2013 passed by Respondent No. 1 and order dated 09.07.2012 passed by respondent No. 2 may kindly be set aside and the case be remanded to the respondent No. 2 for its decision on merits."*

2. Briefly stated facts per filing of instant petition are that the petitioner joined the Muslim Commercial Bank (MCB) on 10.10.1969 and after serving the bank for 36 years, he was retired on 23.10.2009. According to the petitioner he was entitled for payment of Rs.10,87,989/- as commutation but the respondent No.3 denied him this benefit. The petitioner filed an application under Section 15(2) of Payment of Wages Act, 1936 before the respondent No.2/ Authority under the Payment of Wages Act, 1936 for payment of the amount of Rs.1087989/-.

3. That the respondent No.3/ MCB contested the application by filing written reply. The respondent No. 2/ Assistant Commissioner City/ Authority under Payment Wages Act, ICT, Islamabad, framed issues and recorded the evidence of petitioner. The application was being fixed for recording the evidence of Respondent No.3, when the respondent No. 3/MCB filed an application under Order 7, Rule

11 CPC for rejection of the application. The petitioner contested the application by filing written reply. Learned Respondent No.2 after hearing the arguments of the parties, dismissed the main application filed under Section 15 (2) of the Payment of Wages Act vide order dated 09.07.2012. Thereafter, the petitioner filed an appeal under Section 17(1) of the Payment of the Wages Act before the learned NIRC. However, the same was withdrawn by the petitioner vide order dated 26.02.2013, as he wanted to avail appropriate remedy. Thereafter, the petitioner filed instant petition on 19.06.2013 challenging both the orders 09.07.2012 and 26.02.2013.

4. Learned counsel for the petitioner contended that the application under Section 15(2) of Payment of Wages Act was fixed for recording of evidence of respondent No. 3/MCB; that it was incumbent upon the respondent No. 2 to decide the main application after completion of evidence of respondent No. 3. That on the contrary, passed the order dated 09.07.2012 in a hasty manner; that infact arguments were heard on the application under Order VII Rule 11 CPC and dismissed the main application arbitrarily. That the order dated 26.02.2013 is not a lawful order, as the respondent No. 1 failed to exercise its jurisdiction properly and the order was passed in slipshod manner. Further contended that due to illegal and arbitrary exercise of authority by the respondent No. 1 & 2, the petitioner has suffered irreparable loss, therefore, both the impugned orders are not sustainable and lastly prayed that the case may be remanded to the respondent No. 2 to decide the application under Section 15(2) of the Payment of Wages Act.

5. Conversely, learned counsel for the respondent No. 3 vehemently opposed the contention of learned counsel for petitioner contending that the petitioner was retired from service after completing 36 years of service with effect from 23.10.2009; that the petitioner was paid full benefits on retirement according to his entitlement. That the petitioner kept silent for 3 years, and then abruptly filed an application under Section 15(2) of the Payment of Wages Act before the respondent No. 2, which was not

maintainable, as such, the learned respondent No.2 rightly dismissed the same vide order dated 09.07.2012; that the petitioner could file an appeal under Section 17(1) of the Payment of Wages Act before the competent Labour Court, but he preferred to file an appeal before the wrong Forum; that when this error came into knowledge of the petitioner that filing of such application before the NIRC was not correct then during hearing before the learned respondent No. 1/NIRC he withdrew the appeal vide order dated 26.02.2013 and filed instant petition; that neither the application under Section 15(2) of the Payment of Wages Act before the respondent No. 2 nor appeal under Section 17(1) of Payment of Wages Act before the respondent No.1 was maintainable. Lastly, prayed for dismissal of the petition.

6. Arguments heard, record perused.

7. Perusal of the record reveals that the petitioner has agitated his grievance under the Payment of Wages Act, 1936, therefore, it will be appropriate to reproduce definition of term " Wages" as described in Section 2 (VI) of the Act, which is as under :-

*"Wages means all remuneration, capable of being expressed in terms of money, , which would if the terms of the contract of employment, express or implied, were fulfilled, be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other additional remuneration of the nature aforesaid , which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include---*

- a. The value of any house accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the provincial Government;*
- b. Any contribution paid by the employer to any pension fund or provident fund;*
- c. Any travelling allowance or the value of travelling concession;*
- d. Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment;*
- e. Any gratuity payable on discharge.*

Above definition of the terms 'Wages' reflects that it does not include the term 'commutation of pension'. At the time of retirement employee has option either to get pension per month according to a fixed or prescribed rate or he may surrender his whole or some portion of pension to the employer and get a lump sum amount. This benefit enables the pensioner to get a handsome amount at the time of his retirement instead of some prescribed amount of pension for the rest of his life.

8. As the term 'commutation' is also a form of pension or pensionary benefit, therefore, the application under Section 15(2) of the Payment of Wages Act was rightly dismissed by the learned respondent No. 2.

9. That if the petitioner felt aggrieved of the order dated 09.07.2012, proper course available with the petitioner was to file an appeal under Section 17(1) of the Payment of Wages Act before the learned Labour Court. To the contrary the petitioner preferred appeal before respondent No.1. Realizing this error, he withdrew the appeal unconditionally from the respondent No.1 vide order dated 26.02.2013. Hence, after withdrawn of the appeal he cannot agitate any grievance against the order, which was passed on his own request. That the petitioner is also estopped to challenge the order dated 26.02.2013. That thereafter petitioner filed instant petition by invoking the constitutional jurisdiction of this Court, which is extraordinary and discretionary in nature. It is settled principle of law that when law requires an act to be done in a particular manner it must be done in that particular manner. The petitioner has not availed the remedy as was available to him under the law and he is not authorized by law to seek the same remedy by invoking constitutional jurisdiction of this Court. Further writ jurisdiction cannot be invoked to seek the remedy, which has become barred by law. Guidance in this regard has been solicited from the judgment of the Hon'ble Supreme Court of Pakistan titled as "Muhammad Azhar Khan and another Versus Assistant Commissioner/ Collector Toba

Tak Singh and others" (2006 SCMR 778), wherein it has been held as under:-

*"It is to be noted that once the appeal was not filed in time before the Appellate Authority how the writ or review petition was competent because before approaching the High Court for redressal of the grievance by invoking its Constitutional Jurisdiction under Article 199 of the Constitution, it was incumbent upon the respondents to have availed alternative remedies according to law."*

10. For the foregoing reasons I do not see any illegality or infirmity in both the impugned orders therefore, this petition is **dismissed**.

~~(GHULAM AZAM QAMBRANI)~~  
JUDGE

*Announced in open Court on this 31<sup>st</sup> day of December, 2020.*

~~JUDGE~~

"Kamran Shahzad"