

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN

SUO MOTU CASE NO.20 OF 2016 AND HUMAN RIGHTS CASES NO.7094-P, 26591-P, 15518-P/2015, 25917-S AND 26252-S/2016 AND 3910-K, 3911-S, 3912-P, 3913-G AND 3914-P/2018 AND CONSTITUTION PETITION NO.45/2016 AND C.M.APPEAL NO.203/2016 IN CONST.P.NO.NIL/2016 AND CIVIL MISC. APPLICATIONS NO.7394 & 7484/2016 AND 141, 288, 3772, 3374, 892, 1496, 2076, 2655, 2656, 3797, 3912, 3913, 4252, 4253, 4254, 4291, 8234, 9172, 9312, 9313 & 9314/2017 AND 57, 45, 301, 381, 454, 577, 511, 592, 593, 652, 653, 654, 727, 728, 735, 777, 778, 779, 813, 780 & 883/2018

SMC 20/2016:	Suo motu action regarding non-payment of retirement benefits by the relevant departments
HRC 7094-P/2015:	Mehmood-ul-Hassan Vs. Secretary Privatization Commission and another
HRC 26591-P/2015:	Muhammad Hanif (R) District Population Welfare Officer, Multan Vs. Government of Punjab etc.
HRC 15518-P/2015:	Muhammad Hanif (R) District Population Welfare Officer, Multan Vs. Government of Punjab etc.
HRC 25917-S/2016:	Dr. Khawar Ubaid Alvi Vs. Secretary, Local Govt. Sindh
HRC 26252-S/2016:	Syed Imtiaz Ali Vs. Local Government Department, Sindh
HRC 3910-K/2018:	Application by Anwar Khan
HRC 3911-S/2018:	Application by Abdul Shakoor Shaikh
HRC 3912-P/2018:	Application by Muhammad Din
HRC 3913-G/2018:	Application Muhammad Ameer Khan
HRC 3914-P/2016:	Malik Niaz Shami Vs. Malik Fazal Khan Shamir
Const.P.45/2016:	Saif-ur-Rehman and others Vs. Federation of Pakistan and others
C.M.Appeal 203/2016:	Khan Muhammad Khan Vs. Islamic

	Republic of Pakistan through President of Pakistan and others
CMA 7394/2016:	Application for impleadment by Muhammad Ayub
CMA 7484/2016:	Application by Mahboob Ahmed Soomro
CMA 141/2017:	Application by Sultan Mehmood
CMA 288/2017:	Application by Rao Nasim Tehsin
CMA 3772/2017:	Application for impleadment by Mian Muhammad Saleem and others Vs. VC University of Engineering and Technology Lahore and others
CMA 3774/2017:	Application for Impleadment by Mohammad Naseem Tahir & others Vs. VC. University Engineering and Technology Lahore & others
CMA 892/2017:	Application by Hazoor ul Islam Abbasi
CMA 1496/2017:	Application for impleadment by Zahid Amin Khan and others
CMA 2076/2017:	Application for impleadment by Mahmood Ahmed
CMA 2655/2017:	Application for impleadment by Shafaqat Hussain
CMA 2656/2017:	Application for impleadment by Nazar Abbas Shah
CMA 3797/2017:	Application by Bashir Ahmad Lodhi
CMA 3912/2017:	Application for impleadment by Sadiq Masih and other Vs. President Habib Bank
CMA 3913/2017:	Application for impleadment by Muhammad Zareen and others Vs. VC University Engineering and Technology, Lahore
CMA 4252/2017:	Application by Dildar Muhammad Awan
CMA 4253/2017:	Application by Syed Maqsood Hussain Kazmi
CMA 4254/2017:	Application by Muhammad Rafique
CMA 4291/2017:	Application by Rehmat Ali and others
CMA 8234/2017:	Application by Muhammad Farooq

CMA 9172/2017: Application by Zahid Ahmed Barlas
 CMA 9312/2017: Application by Abdul Jabbar and others
 CMA 9313/2017: Application by Walayat Hussain and others
 CMA 9314/2017: Application by Ghulam Hussain and others
 CMA 57/2018: Application by Mumtaz Ahmed
 CMA 45/2018: Application by Muhammad Farooq
 CMA 301/2018: Application by Muhammad Rafique Sohail
 CMA 381/2018: Application by Mubarik Ali
 CMA 454/2018: Application by Muhammad Rafiq
 CMA 577/2018: Application by Mst. Kali Jan
 CMA 511/2018: Application by Nasir Hussain Shah
 CMA 592/2018: Application by Arshad Ali Khan
 CMA 593/2018: Application by Syed Sajid Ali shah
 CMA 652/2018: Application by Rafiq Ahmed
 CMA 653/2018: Application by Arshad Khan
 CMA 654/2018: Application by Abdullah Khan
 CMA 727/2018: Application by Kausar Parveen
 CMA 728/2018: Application Angori
 CMA 735/2018: Application by Saranjam Khan
 CMA 777/2018: Application by Yasmeen Ayaz
 CMA 778/2018: Application by Mohammad Iqbal Khan
 CMA 779/2018: Application by Muhammad Saeed
 CMA 813/2018: Application by Kalsum Lahkar
 CMA 780/2018: Application by Ali Gohar
 CMA 883/2018: Application by Muhammad Anwar etc.

In attendance: Mr. Muhammad Waqar Rana, Addl.A.G.P.
 Mr. Rashid Hafiz, DAG
 Mian Abdul Rauf, A.G. Islamabad
 Mr. Shehryar Qazi, Addl.A.G. Sindh
 Mr. Ayaz Swati, Addl.A.G. Balochistan
 Mr. Farid Dogar, AAG, Balochistan.
 Mr. Zahid Yousaf Qureshi, Addl. AG KPK.

Mr. Tariq Waheed, Dy Accounts Officer for
D.C. RWP

Mr. Nasir Mehmood, LO Finance Dept. Pb.
Syed Afzal Hassan, Accounts Officer AGPR
Mr. Saqib Javed Abbasi, AAO AGPR
Mr. Aziz Ahmed, Director CGA Islamabad
Mr. Sohail Ijaz, AAO
Syed Imtiaz Hussain, AAO CGA
Mr. Fayad Durrani, Accountant General,
Peshawar
Mr. Abid Hussain Channa, SO M/o Finance
Mr. M. Ikram Abbasi, Law Officer, Education
Department, Punjab
Mr. M. Naseem Butt, Accounts Officer Legal
for Accountant General Punjab
Mr. Abdul Razzaq, Asstt. Accountant Officer,
MAG RWP
Mr. Rehan Akhtar, AO for AG Balochistan
Mr. Bakhtiarullah, AO for AG KPK
Rana Amanullah, Dir. (Finance) Local Board
Punjab.
Rana Tariq Shaukat, Dy. Dir. Colleges,
Punjab.
Mr. Tariq Hameed, Dy. Secy. HE Dept.
Punjab.

Mr. Shahid Anwar Bajwa, ASC
(For HBL & ABL)

Mr. Sikandar Bashir Mohmand, ASC
Mr. Tariq Aziz, AOR
(For UBL)

Mr. Hashmat Ali Habib, ASC
(In CMA 288/2017)

Mr. Farrokh Niaz, in person
(In CMA 8404/2016)

Mr. Abdul Raheem Bhatti, ASC
Syed Rifaqat Hussain Shah, AOR
(In CMA 1496/2017, CMA 558/18)

Ms. Ayesha Hamid, ASC
Raja Muhammad Sarfraz, in person
(For retired UBL employees)

Syed Ali Zafar, ASC
Mr. Zahid Nawaz Cheema, ASC
(For HBL)

Mr. Salman Aslam Butt, Sr. ASC
Mr. Mehr Khan Malik, AOR.
(For UBL/Resp.4 in Const.P.45/2016)

Mr. Babar A. Khilji, ASC
(CMA 883/18)

Mr. Shoaib Shaheen, ASC
(in CMA 3797/17)

Mr. Javed Iqbal, ASC
(For PPCBL)

Mr. Umer Aslam Khan, ASC
(In CMA 7394/2016)

Rai M. Nawaz Khan Kharal, ASC
(In CMA 9172/2017)

Mr. Tariq Mehmood Khokhar, ASC.
Syed Rifaqat Hussain Shah, AOR.
(for Allied Bank employees In CMA 8234, 9312-9314/2017)

Raja M. Farooq, ASC
Syed Rifaqat Hussain Shah, AOR
(In CMA 892/2017)

Mr. Ahmed Awais, ASC
Mr. Tipu Salman Makhdoom, ASC
Mr. Mehmood A. Sheikh, AOR
(In Const.P.45/2016)

Syed Rifaqat Hussain Shah, AOR
(In CMA 45/2018)

Raja Muhammad Sarfraz (UBL)

Nazar Abbas (UBL) (CMA 2656/2017)

Muhammad Naseem Qazi (UBL) (CMA 1459/2017)

Mr. Khan Muhammad (WAPDA)
(In C.M. Appeal 203/2016)

Sultan Mahmood
(CMA 141/2017)

Shafqat Hussain
(CMA 2655/2017)

Hazoorul Islam Abbasi (HBL)

Mehboob Ahmed Soomro (HBL)

Dildar Awan, Maqsood Hussain Kazmi, M.

Rafique (ZTBL)

Muhammad Farooq (CMA 8234/2017)

Mian Muhammad Aslam (CMA 3772/2017)

Dr. Khawar Ubaid Alvi (HRC 25917-S/2016)

Dr. Surraya Khawar (HRC 25917-S/2016)

Syed Imtiaz Ali (HRC 26252/2016)

Mian Muhammad Saleem (UET)
M. Ishaque, in-person. (HRC 26252/2016)

Amicus Curiae:

Mr. Makhdoom Ali Khan, Sr. ASC

On Court's notice: Ms. Seema Kamil, President UBL
Mr. Aamir Karachiwala, CFO UBL

Mr. Raymond H. Kotwal, President HBL
Mr. Jamal Nasir, Head HR

Mr. Tahir Hassan Qureshi, President ABL
Mr. Atif Izhar, SVP/Head of HR Deptt. ABL

Date of Hearing: 14.12.2017, 16.01.2018, 17.01.2018,
18.01.2018, 06.02.2018 & 13.02.2018

JUDGMENT

MIAN SAQIB NISAR, CJ.- These Suo Motu proceedings initially arose when a large number of complaints were submitted to the Human Rights Cell of this Court, wherein retired employees of various departments complained about non-payment of their pensionary benefits. We took notice of the same and the case was first heard as SMC No.20/2016 on 14.11.2016.

2. On the said date some of the present applicants/petitioners, retirees of United Bank Limited (hereinafter the "**UBL**") and Allied Bank Limited (hereinafter the "**ABL**") also approached this Court with the grievance that they were receiving meagre amounts by way of pension from the banks and the latter were not granting increases in the pensionary benefits for many years. On the very next date of hearing they were joined by applicants/pensioners of Habib Bank Limited (hereinafter the "**HBL**"); they cited similar grievances. Whilst a whole gamut of grievances to do with pensionary benefits were dealt with separately, we heard the matters relating to the pensioners of the aforesaid three banks together as the facts are so similar as to be almost interchangeable and in all material particulars the three banks and their respective pensioners are similarly placed. Nevertheless, we will give a brief synopsis of the admitted facts pertaining to the three banks.

UBL

3. The UBL was originally a private bank. It was nationalized in 1974 pursuant to the Banks (Nationalization) Act, 1974 (hereinafter the "**Act 1974**"), and came to be wholly owned by the Government of Pakistan. The pensioners of the UBL may be broadly divided into three categories; namely, the 'original retirees', the 'recently retired' and the 'retrenched employees'. The 'original retirees' may be typified by the petitioner in CMA No.1686/2017 who joined UBL on 11.10.1973 and served for 25 years, 1 month, 17 days before retiring on 28.11.1998. His basic pay drawn as on 28.11.1998 was Rs.4,530/- per month. Fifty percent of the gross pension was commuted and paid to him at the time of retirement whereas Rs.1,321/- was held to be payable to him on monthly basis as his pension. Thereafter, 18 years later his monthly pension remains Rs.1,321/-. The pension of 'original retirees' (in clerical cadres) of the bank was calculated on the basis of Memorandum # F:6(1)-REV-I/75, dated 07.01.1977, issued by the Finance Division, Government of Pakistan. It provided that the liberalized pension rules for civil servants were also applicable to employees of nationalized banks. UBL informed its employees in clerical and non-clerical cadres through Staff Circular No.158 dated 25.02.1977 that the aforesaid Memorandum dated 7.1.1977 would be applicable to them. The grievance of these petitioners is that the UBL has illegally withheld increases in their pensionary benefits which ought to have been granted in parity with those given to civil servants over the years.

4. The 'recently retired' category of pensioners may be represented by the likes of petitioners in CMA No.2825/2017 wherein the petitioner No. 1 joined UBL on 09.08.1976, and after thirty-seven (37) years in service retired on 31.10.2013 as Vice President. His last

drawn basic pay on 31.10.2013 was Rs. 93,207/-. However the monthly pension being paid to him in the sum of Rs. 3,823/- has been calculated on the basis of his basic salary as on 30.06.2001 (11 years earlier) in the sum of Rs. 9,930/- . The other five petitioners whose service history with UBL is presented in the said CMA also variously served the bank for 36, 40, 38, 41 and 38 years and all retired when they were drawing handsome salaries between 2011 and 2014. They are however receiving pensions which are linked to the salaries drawn on 30.06.2001. For the 'recently retired' category the pensionary benefits were governed by the Notification No. 17 (9)-IF, XI/77 dated 30.11.1977 addressed to the Chairman, Pakistan Banking Council, the Government of Pakistan, Finance Division (Internal Finance Wing) whereby a scheme of pensions and retirement benefits for bank employees similar to that applicable to civil servants was introduced. In order to give effect to the instructions of the Federal Government, UBL issued Staff Circular No. 192 dated 24.12.1977, informing its officers and executives of the change in the scheme of pension and retirement benefits applicable to them; pursuant to paragraph 3(f) of the Circular No. 192/1977, the pension payable to a retired employee of UBL was to be calculated on the basis of the **"average monthly basic pay plus dearness allowances drawn ... during the last three years of service"** (hereinafter the **"Original Pension Scheme"**). On 18.07.2001, the Human Resource Development department of UBL issued Staff Circular No. 943/2001, to notify the management of an across the board 40% average increase in the gross salaries as on 30.06.2001. At the same time the pensionary benefits were curtailed and it was ordained that henceforth for those employees continuing with the Original pension scheme, *"In such cases, on*

*retirement/death, they will get their pension benefits calculated on the basis of their frozen basic pay admissible to them **as on 30th June 2001**.*". The grievance of these petitioners is two-fold; firstly that UBL could not have illegally pegged their pensionary benefits to the 'frozen' pay as on 30.06.2001 and secondly, that they have received no increases in the pension since 2001.

5. The category of 'retrenched employees' are typified by the petitioners in CMA No.2424/2017. Petitioner No.1 in the said CMA joined UBL on 5.06.1982. Vide Letter Ref: LOR/375128/97 dated 10.10.1997 (hereinafter "**UBL's Retrenchment letter**") UBL terminated his services with immediate effect, after he had served the bank for 15 years. He was paid a total amount of Rs.4,42,682/- as benefits under the Retrenchment Scheme. He was paid no pension. In this category those retrenchees who had served more than 30 years were also given pension. The grievance of these petitioners is two-fold; firstly that the UBL could not have illegally withheld their pensionary benefits once they had qualified for the same upon ten years' service and secondly, in case of those who **did** receive one, that they did not receive any increases in the said pensions.

ABL

6. At that time of enactment of Act, 1974, four (4) banks namely Australasia Bank, Sarhad Bank, Pak Bank and Lahore Commercial Bank were merged into one entity. It was renamed initially as the Allied Bank of Pakistan Ltd. (hereinafter the "**ABL**"). ABL came to be wholly owned by the Government of Pakistan. It was subsequently privatized on 09.09.1991. ABL through Circular no.P-INST-77/47 dated 15.04.1977 informed all employees that Memorandum # F:6(1)-REV-I/75, dated 07.01.1977 and # F.6(1)-REV-I/75 dated 25.01.1977, issued by the Finance Division,

Government of Pakistan, which set out the liberalized pension rules for civil servants were also applicable to employees of nationalized banks. The 'original retirees' of ABL are typified by the petitioner in CMA No.8404/2016 [Farrokh Niaz] who joined ABL on 21.05.1971 and after serving for 26 years, 7 months retired on 28.12.1997. His basic pay drawn on 28.12.1997 was Rs.13,935/- per month. Fifty percent¹ of the gross pension was commuted and paid to him at the time of retirement. Thereafter Rs.5,500/- was held to be payable to him on monthly basis as his pension. In 1991 it was increased to Rs.6,054.75 on the basis of a letter of the President of ABL, 18 years later his monthly pension is still Rs.6,054.75 per month. The grievance of ABL pensioners is the same as that of UBL pensioners.

HBL

7. HBL was nationalized in 1974 pursuant to the Act 1974 and came to be wholly owned by the Government of Pakistan. The Finance Division's Circular # 17(9)-F.XI/77 dated 30.11.1997 introduced a new scheme of pension and retirement benefits for the officers and executives of nationalized banks and financial institutions along the same lines as those pertaining to civil servants. Letter/circular # GN/280 dated 22.02.1978 the Finance Division 1977 Circular *ibid* was circulated to the employees of the HBL. In terms thereof, at the time of retirement the pension of the employees of the HBL was to be calculated @ 70% of the average emoluments on completion of 30 years of qualifying service. However, vide Bank's Circular # STF/98/90 dated 30.12.1998 [hereinafter "**HBL 1998 Circular**"] the Board of HBL introduced a new pension regime whereby the aforesaid pensionary benefits were reduced from 70% to 33% whereas gratuity and Provident Fund contribution (own plus

¹ Rs.16,23,663/- paid in 1997.

bank) was also reduced by almost 50% of the basic pay. Thereafter vide Circular # STF/2005/16 dated 04.03.2005 [hereinafter "**HBL 2005 Circular**"] the Board of HBL once again curtailed the pensionary benefits and ordained that pension would be henceforth calculated on the basis of the salary of the employees as on 31.03.2005. In addition, the option of commutation of the pension was discontinued and medical facilities were curtailed. Thereafter vide Circular # STF/20/2/30 dated 31.03.2012 [hereinafter "**HBL 2012 Circular**"] the Board of HBL once again revised the pensionary benefits such that the gross pension would again be calculated on the basis of the last drawn basic salary. Vide Circular # STF/2014/063 dated 26.09.2014 [hereinafter "**HBL 2014 Circular**"] the Board of HBL again revised the basis for calculating pensionary benefits such that they would be calculated on the basis of last drawn salary as on 31.03.2014 and the number of years of service for the purposes of calculation would be till 31.03.2005. The pensioners of the HBL who were originally governed by the terms of the Finance Division's 1977 Circular *ibid* and subsequently found their pensionary benefits curtailed under successive HBL circulars joined common cause with the 'original retirees' and the 'recently retired' categories of pensioners of UBL.

8. Ms. Ayesha Hamid, ASC represented the first three categories of UBL pensioners set out hereinabove. She argued that Notification No. 17 (9)-IF, XI/77 dated 30.11.1977 issued by the Government of Pakistan, Finance Division (Internal Finance Wing) [hereinafter the "**1977 Notification**"] introduced a scheme of pensions and retirement benefits for bank employees similar to that introduced for civil servants. It was given effect by the UBL Staff Circular No. 192 dated 24.12.1977, informing its officers and

executives of the change in the scheme of pension and retirement benefits applicable to them. This 1977 Notification pertained to the officers/executives of the bank. With respect to the bank employees in clerical and non-clerical cadres a similar regime obtained whereby Memorandum # F:6(1)-REV-I/75, dated 07.01.1977, issued by the Finance Division, Government of Pakistan was given effect by the UBL Staff Circular No. 158 dated 25.02.1977, informing its clerical and non-clerical staff of the change in the scheme of pension and retirement benefits applicable to them. Circular Nos. 158 & 192/1977 were therefore statutory instruments with the backing of the 1977 Notifications which were also statutory. In this regard she relied on a recent judgment rendered by this Court in the case of **Bahadur Khan and others Vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and others (2017 SCMR 2066)** in which this Court held that the 1977 Notification is a statutory instrument. She stated that the pensioners devoted the best years of their lives in the service of the banks. The purpose of pension is, in consideration of their past services, to enable employees who are past their working lives to be maintained in a dignified and a comfortable manner. A pension therefore is an instrument of socio-economic justice and economic security². It is self-evident that the pensioners cannot possibly maintain themselves on the pensions of e.g. Rs.1321/- per month which are illusory and offend against the dignity of man promised to them in terms of Article 14 of the Constitution of the Islamic Republic of Pakistan (**Constitution**). She argued that whilst a right to pension may not be a fundamental right per se, once an employee has worked for a number of years and fulfilled the requisite criteria for obtaining pension then the right to a

² D.S. Nakara v Union of India (AIR 1983 SC AIR 130) = [1983 (2) SCR 165]

reasonable pension becomes perfected and such right once having accrued becomes a vested right and cannot be abridged by UBL as later done through decisions that set at naught the pensionary benefits earned under the 1977 Notification. She argued that pensioners are entitled to pension which ought to have been increased in terms of the cost of living to ensure that they received a minimum living wage; to deny them increases in their pension is to deny them a right to a livelihood which constitutes denial of their right to life in terms of Article 9 of the Constitution. She stated that vide Declaration of Trust dated 13.06.1995 (hereinafter the "**Trust**") the UBL established a trust for the purposes of managing and distributing the Pension Fund created by UBL for the benefit and welfare of its employees. Clauses 3 and 14 of the Trust provided that, the privatization of the UBL would not in any way affect the objects of the Trust, and entitlement of employees to receive pensionary benefits from the Fund. The pensioners, according to her, are entitled to the monies held in the Pension Fund. Despite the fact that the UBL was privatized through Agreement for Sale dated 19.10.2002 [**"Privatization Agreement"**] whereby the Privatization Commission and State Bank of Pakistan agreed to sell, and the Bestway Group agreed to purchase the shareholding of 51% of the total issued and paid up capital of UBL, for the total sum of Rs.12.35 billion, upon the terms and conditions stipulated in the Agreement; UBL remained liable for the pensions due to the pensioners. They (the private owners) bought UBL after a process of due diligence and on "as is, where is" basis. Therefore UBL cannot be allowed to walk away from its responsibilities to the pensioners. With respect to 'retrenched employees' she stated that there was no element of voluntariness to their retrenchment which was simply imposed on the 5416

employees who were retrenched. This was an unconscionable contract imposed upon them by an all-powerful employer and was liable to be set aside on this count too. She relied on Ora Lee Williams v Walker Thomas Furniture Company [350 F .2d 445 (1965)], Marybeth Armandariz v Foundation Health Psychcare [99 Cal.Rptr.2d 745 (2000), Supreme Court of California], Cresswell v Potter [(1978) 1 WLR 255 (note)], The Port Caledonia and The Anna [(1903) P 184 Probate Division], Fry v Lane [(1888) 40 Ch D 312, 322], Portman Building Society v Dusangh [(2000) 2 All ER (Comm) 221, Court of Appeal] and Boustany v Pigott [(1995) 69 P & CR 298 Privy Council]. When questioned about maintainability of the petitions she argued that a writ could issue to UBL in terms of Article 199(1)(c) of the Constitution as it was a matter of enforcement of fundamental rights but that her primary argument was that the increase in the pensionary benefits of the pensioners was the bank's liability in terms of the Privatization Agreement whereby they stepped into the shoes of the Federal Government. And the question of public importance arose out of the fact that the Federal Government had made a sovereign commitment to the pensioners in the form of the 1977 Notification and this Court was liable to enforce the same. In this regard she relied upon Dewan Salman Fibre Ltd. and others Vs. Federation of Pakistan, through Secretary, M/O Finance and others (2015 PTD 2304).

9. Mr. Ahmed Awais, ASC also appeared for pensioners of UBL in Constitutional Petition No.45/2016. He stated that he had appended with his petition the complete list of those employees of the 'recently retired' category whose pensions were pegged to their salaries as frozen on 30.06.2001. Petitioner No.1 (in CP 45/2016) retired when he was earning Rs.150,000/- per month but his pension per month

today is only Rs.4,400/-; which is below even the minimum wage. The 40% increase in salaries given at the same time as the 'freezing' of the pension was not unusually generous as it was given after a period of 8.5 years and was the result of a bank-wide strike in 2001. At the time of the privatization it was the Government which failed to protect the rights of the employees.

10. Mr. Hashmat Ali Habib, ASC appeared on behalf of some of the HBL Retired Executive Officers Association in CMA No.288/2017. He stated that pension was a right of the persons who had rendered services in banks and that the 1977 Notification was still in force. As the petitioners retired before privatization of HBL in 2004, the bank was liable to honour commitments made by it under the 1977 Notification. He adopted the arguments of Ms. Ayesha Hamid, ASC.

11. Rai M. Nawaz Kharal, ASC appearing in CMA No.9172/2017 on behalf of Mr. Barlas, pensioner of HBL adopted the arguments of Ms. Ayesha Hamid, ASC.

12. Mr. Abdul Rahim Bhatti, ASC appeared in CMA No.1496/2017 on behalf of HBL pensioners. He apprised us of the family pension being paid to one Khushal Bibi in the sum of Rs.243.72/- per month. Another pensioner Mst. Manzoor Fatima was being paid the "handsome" amount of Rs.360/- per month by way of pension. He stated that as per the provisions of the 1977 Notification an employee became eligible for pension after service of 10 years in the bank. As per this Notification a valid contract existed between the employees and the then nationalized HBL. On 30.12.1998 HBL arbitrarily and unilaterally changed the terms and conditions provided under the statutory 1977 Notification. This was illegal and could not have been done to the detriment of the employees. He referred to **I.A. Sharwani and others Vs. Government of Pakistan through**

Secretary, Finance Division, Islamabad and others (1991 SCMR 1041), and Ms. Shehla Zia and others Vs. WAPDA (PLD 1994 SC 693).

13. Mr. Mahboob Ahmad Soomro, petitioner in person in CMA No.7484/2016 stated that a different criterion for calculation of pensions of officers and clerical staff was being used which was discriminatory. [However, on reading his CMA it appears that the petitioner had not even retired at the time of filing the same and therefore he does not fall the category of pensioners that we are considering. As and when he retires, his pensionary benefits will be determined and affected by this judgment, in terms of his class wise entitlement and not on the basis of his individual petition].

14. Mr. Tariq Mehmood Khokar, ASC appeared for the pensioners of ABL in CMAs No.8234, 9312, 9313 and 9314/2017. He made three allegations against the bank, that it failed to grant increases in pension, the pension fund was worth Rs.5.6 billion at the time of privatization and the bank has 'reversed' this amount and illegally misappropriated this money and, lastly, when ABL was privatized in 2004 it was required to make contributions to pension fund but it did not do so.

15. Mr. Salman Butt, ASC appeared on behalf of the UBL. He stated that UBL was established in 1959 as a private bank and a Trust Deed was executed to set up a Provident Fund on 27.8.1960. The Staff as well as UBL were to contribute to this Provident Fund. He referred to Article 260 of the Constitution and the definition of "pension" given therein to argue that this was the definition which would apply in this case. He argued that as certain pensioners had taken a major portion of their pension in commuted form this too would count as pension and it would be simplistic to say that the UBL was only paying, for

example only a sum of Rs.4000/- per month to a pensioner. Coming to the 1977 Notification he stated that it was NOT a statutory instrument as it was never notified in the official gazette: at best it was a policy guideline. In this regard he relied on Saghir Ahmed through Legal Heirs Vs. Province of Punjab through Secretary, Housing and Physical Planning Lahore and others (PLD 2004 SC 261 @ 266), Muhammad Suleman etc. Vs. Abdul Ghani (PLD 1978 SC 190), Government of Sindh through Secretary Agriculture and Livestock Department and others Vs. Messrs Khan Ginners (Private) Limited and 57 others (PLD 2011 SC 347) and Chief Administrator Auqaf Vs. Mst. Amna Bibi (2008 SCMR 1717). He also submitted a comparative chart and stated that the 1977 Notification in the case of UBL was slightly different in its terms and conditions. The Notification upheld as statutory in the Bahadur Khan's case (supra) was different. He argued that all banks were nationalized in terms of the Act 1974 which was to have overriding effect in terms of Section 16 thereof. He categorically stated that privatization also took place under the same Act 1974. The Act 1974 was amended in 1991 and Sections 5A and 5B were added. In terms whereof once UBL was privatized the Act 1974 ceased to apply to it and no obligations under the said law would continue to operate against UBL. The Act 1974 was amended through Banks (Nationalization) (Amendment) Act XVIII 1997 and the Pakistan Banking Council stood dissolved. Thereafter the Board of the UBL was authorized to take decisions with respect to the pensionary benefits of the pensioners. It validly did so in the form of Staff Circular 943 dated 18.07.2001 (when UBL had not yet been privatized) whereby the employees were given an unprecedented 40% increase in gross salary as on 30.06.2001 which they accepted and benefited from, that the revision of pensionary benefits was a part of

this overall package. With respect to pension, the employees could have opted for 'Option II' i.e. joining the Provident Fund and the Gratuity Scheme and opting out of the Original Pension Scheme altogether. But as the employees/pensioners did not do so they were deemed to have opted for 'Option I' whereby they remained in the Original Pension Scheme but their pensionary benefits were to be calculated on the basis of the 'frozen' pay due to them as on 30.06.2001. The UBL's pensioners were therefore estopped from claiming additional benefits. At this juncture it is also pertinent to mention that the learned counsel also mentioned a number of petitioners who had originally opted to remain in the 1960 Provident Fund scheme and on that count were not liable to be treated under the 1977 Notification in any event. He also cited the principles of waiver and acquiescence as operating against the aggrieved petitioners. He made submissions with respect to lack of maintainability of the petitions, and stated that Article 184(3) would be regulated by Article 175(2) of the Constitution. The learned counsel stated that the UBL being a private bank was not amenable to issuance of a writ. It did not even remotely pass the function test to qualify as a person performing functions in connection with the affairs of the Federation or the Provincial Government and therefore no action against UBL could be taken in exercise of constitutional jurisdiction. He relied on the case of **Abdul Wahab & others Vs. HBL & others (2013 SCMR 1383)** to state that this Court had already held that a matter involving the benefits of 310 employees of HBL was not a matter of public importance. Theirs was a private grievance and the bank being a private entity was not amenable to writ jurisdiction. In this case the relationship inter se the pensioners and the UBL was one of master and servant and our entire jurisprudence has developed to hold that the petitioners cannot invoke the jurisdiction of this Court. He

provided a detailed chart to aid a comparison of Articles 184 and 199 with similar provisions of the Indian Constitution. He also relied on Muhammad Ashraf and others Vs. United Bank Limited and others (2015 SCMR 911), The Commissioner of Income-Tax, Rawalpindi Zone, Rawalpindi Vs. Messrs Haji Maula Bux Corporation Limited Sargodha (PLD 1990 SC 990 @ pg. 1006 & 1024), Regarding Pensionary Benefits of the Judges of Superior Courts from the date of their respective retirements, irrespective of their length of service as such Judges (PLD 2013 SC 829 @ pg. 944 & 1002), State Life Insurance Employees Federation of Pakistan, Karachi Vs. Federal Government of Pakistan through, Secretary Commerce, Islamabad and 2 others (1994 SCMR 1341), Ardeshir Cowasjee and 10 others Vs. Karachi Building Control Authority (KMC), Karachi and 4 others (1999 SCMR 2883 @ pg. 2912), All Pakistan Newspapers Society and others Vs. Federation of Pakistan and others (PLD 2004 SC 600@ pg. 621), Syed Zulfiqar Mehdi and others Vs. Pakistan International Airlines Corporation through M.D., Karachi and others (1998 SCMR 793 @ pg. 801), S.M. Waseem Ashraf Vs. Federation of Pakistan through Secretary, M/o Housing and Works, Islamabad and others (2013 SCMR 338 @ pg. 345). He concluded his arguments by stating that the revised composite scheme introduced in 2001, as implemented in 2003, acted upon and benefited from, cannot be challenged by the petitioners. In this behalf he relied on State Bank of Pakistan Vs. Khyber Zaman and others (2004 PLC (CS) 1213), State Bank of Pakistan through Governor and another Vs. Imtiaz Ali Khan and others (2012 SCMR 280), M.C.B. Bank Ltd., through Authorized Representative Vs. State Bank of Pakistan through Governor and 2 others (2010 CLD 338), Trustees of the Port of Karachi Vs.

Organization of Karachi Port Trust Workers and others (2013 SCMR 238), Pakistan International Airlines Corporation Vs. Aziz-ur-Rehman Chaudhry and another (2016 SCMR 14) and Wali-ur-Rehman and others Vs. State Life Insurance Corporation and others (2007 PLC (CS) 836).

16. Mr. Ali Zafar, ASC appeared on behalf of the HBL. He stated that HBL was owned by the Agha Khan Foundation which was at the forefront of charitable work and would like to help the pensioners but within the law. There is no legal basis to foist the responsibilities of the Government onto HBL in a post-privatization scenario. His submissions with respect to the 1977 Notification were that it was issued by the Finance Division to the Pakistan Banking Council who would in turn instruct the bank. Therefore it has to be read with Section 9 of the Act 1974. When the Pakistan Banking Council stood dissolved through the Banks (Nationalization) (Amendment) Act XVIII 1997 in terms of Section 11 of the Act 1974 the powers previously vesting in the Council now came to vest in the Board of HBL. HBL's Board consequently offered a new 'deal' to its' employees whereby they benefitted by receiving enormous increases in their salaries while the pensionary benefits were changed. He submitted that after 1998 no employee was given any benefits under the original dispensation of the 1977 Notification and after HBL was privatized in 2004 the pension scheme was abandoned altogether in favour of more beneficial Provident and Gratuity Funds. He stated that pension is not a fundamental right, but at best a contractual right and therefore the grievance of the pensioners is a private grievance. When questioned, he conceded that pension may be a statutory right too. The learned Counsel stated that the pensioners' demand for increase in their pensions is not maintainable in terms of Article 184(3) of the

Constitution. HBL is not owned/controlled by the Government and the functions test does not apply. The relationship inter se the HBL and the pensioners is of master and servant. Therefore relying on the ratio of the Abdul Wahab case (supra) the jurisdiction of Article 184(3) of the Constitution would not be attracted. He stated that even if, without conceding, the 1977 Notification is taken as a statutory instrument then it would not apply in perpetuity and certainly not after dissolution of the Pakistan Banking Council. If at all this Court decides that the pensioners are entitled to increase in their pensions it would be for the Government to make good on its commitments and on no account could a private bank such as HBL be burdened with the liabilities of the Government in a post privatization scenario. The government could fund such a liability through deficit financing funding and borrowing. However the bank required its capital for generating further income through giving out loans. He pointed out that particular petitioners being habitual litigants were disentitled to relief. He relied on **Muhammad Zaman and others Vs. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others (2017 SCMR 571)**.

17. Mr. Sikandar Bashir Mohmand, ASC on behalf of UBL submitted a detailed written note and chose not to make oral submissions on account of the fact that he would be repeating himself as Mr. Salman Butt, also appearing on behalf of UBL had earlier made the same arguments. His contentions will be reflected at relevant points of this opinion.

18. Mr. Shahid Anwar Bajwa, ASC appeared on behalf of ABL in CMA No.8200/2016. He stated that ABL was originally established as the Australasia bank in 1942 having its head office in Shah Chiragh Building in Lahore. It was nationalized in 1974 and denationalized on

9.9.1991. Before nationalization there was a Contributory Provident Fund available for the employees of the bank to which they contributed 8.33% of their salaries. The bank matched these contributions. There was also gratuity equal to one month's salary for each year of completed service. When the 1977 Notification (which he referred to as the 1977 "Letter") came about there was no longer any contribution by the bank. It introduced a pension and a General Provident Fund scheme, with no contribution by the bank. Employees were repeatedly given the choice of joining the later schemes. This "Letter" is addressed to the Pakistan Banking Council. The "Letter" was not a statutory instrument notwithstanding Bahadur Khan case (supra). This Court had according to him, failed to consider certain provisions of the Act 1974; it failed to consider section 11 and also the position that the government had 100% control of the bank and could anyway issue this Letter by way of instructions. When confronted with the fact that there was a judgment in the field (Bahadur Khan's case), he adopted a novel approach. He stated that since this Court had failed to consider certain provisions of law in deciding the case, even a Civil Judge, 3rd Class would be entitled to ignore the same. We will not dignify this argument with so much as a rebuttal other than to say that we expect a better standard of arguments from counsel of this Court. Mr. Bajwa further stated that assuming, the "letter" was statutory it was repealed once the bank was privatized. In view of Section 5A of the Act 1974 the "letter" would cease to have any effect. No rights would accrue to the pensioners after privatization in 1991. In ABL's case the freezing of salaries for pensions took place in 2002 (post-privatization). He referred to Muhammad Tariq Badr and another Vs. National Bank of Pakistan and others (2013 SCMR 314) as well as Saeed Ahmad Vs. The State (PLD 1964 SC 266 @ 290) to submit that repeal and

amendment have the same effect. He also relied on **Federation of Pakistan Vs. Muhammad Siddiq (PLD 1981 SC 249 @ 261)** in this regard. He maintained that those who accepted VSS (Voluntary Separation Scheme) were not entitled to pensionary benefits on the basis of the ratio of **State Bank of Pakistan through Governor and another Vs. Imtiaz Ali Khan and others (2012 P L C (C.S.) 218 @ para 28)**. Besides, according to him, the right to pension only accrues at retirement and not after ten years' service. The learned counsel took similar grounds as the other counsels representing UBL and HBL with respect to lack of maintainability of the claims of the pensioners by urging that receiving pension was not a fundamental right.

19. We had appointed Mr. Makhdoom Ali Khan, Senior Advocate Supreme Court as Amicus Curiae in these matters to assist this Court and he very kindly agreed. He argued that there appeared to be consensus between both sides with respect to the fact that the jurisdiction of this Court would only be attracted in terms of Article 184(3) of the Constitution if and when a matter involved both a question of fundamental rights and a question of public importance. The Abdul Wahab judgment (supra) calls these the two foundational principles. He then drew our attention to different fundamental rights enshrined in Chapter II of the Constitution. He stated that certain fundamental rights impose a duty on the state to do something or abstain from doing something (as defined in Article 7). These are therefore by their very nature enforceable against the State. As an example of this category of fundamental right he cited Article 8(2) which imposes upon the State a duty not to make any laws that may take away or abridge the rights of its citizens. Were the State to make such a law, this fundamental right would be enforceable against the State. Similarly the duty to ensure that citizens are afforded due

process of law, or not subjected to double punishment; are duties which by their very nature are imposed on the State. This may be contrasted and compared with Article 9 or 14, where no person, including an individual and not just the State alone is barred from infringing a citizen's right to life and liberty or dignity. The learned Amicus stated that this subtle difference may be better appreciated by comparing our Constitution with that of the US. In their system it is the Congress which is responsible for granting/ensuring fundamental rights. This means that in certain cases their Supreme Court has had to come up with novel and inventive ways to increase the amplitude of their reach. When we speak of right to life, is the only remedy available to a citizen lies under Article 199 or 184 for enforcement of the same? If it not available the court will not say that the right is not available, it will only say that the forum is wrong, approach the right forum. The question whether the person has locus standi to put the machinery of law into motion has never been a question of jurisdiction since the case of Col. **Lt. Col. Nawabzada Muhammad Amir Khan Vs (1) the Controller of Estate Duty etc. (PLD 1961 SC 119 @ 127)**, followed by **The Murree Brewery Co. Ltd. Vs. Pakistan through the Secretary to Government of Pakistan, Works Division and 2 others (PLD 1971 SC 279 @ 287)**, this Court said that the clauses relating to who is entitled to bring the case do not oust jurisdiction of the Court. Such clauses are procedural in nature and used by courts to regulate their own jurisdiction.

20. Referring to the **Wattan Party through President Vs. Federation of Pakistan through Cabinet Committee of Privatization, Islamabad and others (PLD 2006 SC 679 @ 717)**, Mr. Makhdoom Ali Khan stated that in that matter he had argued that when a larger bench of this Court had heard a matter relating to a

large number of people it would by itself be treated as a matter of public importance. Mr. Makhdoom Ali Khan then turned his attention to the language of Articles 199 (1) (a) (i) and 199 (1) (c) and stated that in terms of the latter there is no restriction per se on the power of this Court to issue a writ, only to a person performing functions in connection with the affairs of the Federation, Province etc. The writs of mandamus and prohibition can only be issued to a person performing functions in connection with the affairs of the Federation, Province or a Local Authority. A writ of declaration is similarly limited in its scope. But this is in marked contrast to the "person" envisaged in Article 199 (1)(c) where there is per se no apparent restriction on the power of Court to issue a writ only to a person performing functions in connection with the affairs of the Federation , a Province or a Local Authority. In terms of Article 199 (1) (b) the Court does not require an aggrieved person to relate to the Court that a person is being held in illegal custody where a writ of habeas corpus is contemplated. The same rule applies to a writ of quo warranto. He has pointed out the language of each of the sub-articles is different, in keeping with what is to be achieved.

21. Mr. Makhdoom Ali Khan, referred to **Human Rights Commission of Pakistan and 2 others Vs. Government of Pakistan and others (PLD 2009 SC 507 @ 527)**, relating to bonded labour being detained by a private party. Relying on the said judgment he stated that Article 199 and 184 confer a special jurisdiction on the High Court as well as this Court regarding enforcement of fundamental rights. Article 199 (1) (c) allows the Court, according to this judgment to issue a writ, even to a private person where another's fundamental rights may otherwise be violated. He then referred to the definition of person as given in Article 199 (5) to argue that the words 'body

corporate' are to be read disjunctively with the words 'authority under the control of the government'. He maintained that natural person was not excluded from this definition. With respect to whether pension is a fundamental right he submitted that the question before this Court was not whether pension is or is not a fundamental right. According to him it was an admitted position that all the respondent banks were paying a pension were obviously doing so because they recognized the right of the employees to receive pension. Therefore the question **then** arises that once it is accepted that the pension is to be paid after an employee has put in a particular period of service, can the employer pay him a pension which denies him a right to life and livelihood? If pensioner can establish that the pension being given to him falls below a minimum threshold then a case for enforcement of fundamental rights is made out. He apprised us of the concept of minimum, fair and living wages and how these concepts may relate to pension. He went on to point out that as per a 2014 Notification by the Federal Government the minimum pension for a civil servant is Rs. 6000 per month whereas the minimum pension paid by EOBI to retired workers who are registered with the Employees Old-Age Benefits Institution (EOBI) is Rs. 5,500 per month. Similarly the norm in most other departments is that after commutation about 60% of the pension is paid to a retiree and therefore 60% of the minimum wage established by the Federal government may be taken as another benchmark of the minimum threshold of pension to be set by the Court. The cases of termination from service were however distinguished by the learned counsel as being those where the nature of the grievance was a personal one. He pointed out the Abdul Wahab case (supra) may be distinguished on this basis. He stated that the matter of payment of pensions **was** a national issue, and it needs to be determined if an employer can freeze

pension at a level which denies the employee the right to life? If the answer is in the negative, then the matter crosses both thresholds of being a matter of fundamental rights and being one of public importance.

22. The learned Amicus submitted that in this particular case, this Court may not need to go as far as the area covered in **Human Rights Commission of Pakistan and 2 others Vs. Government of Pakistan and others (PLD 2009 SC 507)**. This is for the reason that if at all new parameters have to be determined, it may be more appropriate for a larger bench to do so. He further submits that this matter may be decided without taking an overly expansive view of Article 199 (1)(c). He maintains that in suitable and appropriate cases this Court may apply the functions test **even to a private person/entity who performs a public function**. He submits that in applying the function test the court can take into consideration the fact that the current majority shareholders, at the time of signing the privatization agreement with the State, purchased the shares of the government at a price which they were or should have been aware (being savvy businessmen), factored in the value of the assets as well as the possible liabilities. Having made the offer at that time, they took over the public liabilities/obligations of the State which included obligations with respect to payment of pensions in terms of the 1977 Notification. Having taken over all rights and liabilities they cannot now be allowed to keep the assets but walk away from the liabilities and obligations. He argues that another possible test is that where a private person takes over a public obligation/duty/liability to which the State was committed, such private person cannot later on say when it is true to discharge the obligation that it should be treated as a private person and hence beyond the scope of writ jurisdiction of the court. When the

privatization agreements were examined, it was apparent that the banks took over assets and assumed the liabilities as well; had liabilities been excluded perhaps the government would have priced the shares differently. He relied on Shri Anandi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust and others Vs. V.R. Rudani and others (AIR 1989 SC 1607) to support his contention. Relying on the Bahadur Khan case (supra) he argued that the 1977 Notification was statutory in nature; but **even if** it is taken as non-statutory, it was still a solemn commitment by the employer (the State) to its employees for nearly twenty years. Since then the employer (Limited Company) has not changed. Only the shareholders have changed. The sovereign shareholder has sold its shareholding to private shareholders. Had the government sold only the assets a case could have been made out that the liability remained with the government which is clearly not the case. Referring to the concept of judicial engagement, the learned counsel submitted that the instant set of cases, in their peculiar set of facts and circumstances provided a perfect opportunity for judicial engagement. The court can and should exercise jurisdiction and engage with the respondent banks to ease the genuine miseries of the petitioners. He submits that a reasonable formula can be agreed upon with mutual consultation to ameliorate the miseries of the petitioners. He however stated that any increase (if) granted to the pensioners ought to be prospective.

23. Mr. Waqar Rana, Additional Attorney General, addressed us briefly and stated that the government remains a shareholder in these banks and its liability is limited only to the extent of its shareholding. The claim to a pension is a right to property in terms of Article 23 and 24 in addition to right to life in terms of Article 9.

Therefore the petitions are maintainable in law. However, he states that the Federation takes no stance with respect to the merits of the case.

24. We heard the learned counsels at great length and perused the voluminous record. During the course of the hearing of the case we called the presidents/chief executives of the banks who appeared before us: they independently apprised us that all the banks are before us engaged in many separate charitable endeavors and take their corporate social responsibility very seriously. They sought time to come up with a scheme to address the grievances of the pensioners.

25. The question is once pension is being paid, whether under statutory provision, common law or contract, can it be in an amount so modest that it denies the pensioner a decent living, thereby denying him/her the right to life? Article 14 of our Constitution provides protection to the citizens of our country. Dignity of man shall be inviolable as envisaged in Article 14 of the Constitution. If a man serves his employer for a number of years, during the prime of his life and gives of his honest labour to his employer and where he is promised pension, whether under statute, common law or contract then he should be able to plan his financial future for his declining years keeping in mind such promises of a pension. When that pension is given but is of a sum which is illusory and by no amount of prudent budgeting can it be used to sustain a man independently, and forces him to turn to his children or other relatives/sources for 'help', offends against his dignity. To subject a pensioner to a life of penury and impoverishment, is a clear violation of his fundamental rights to life and dignity as enshrined in Articles 9 and 14 respectively. The entitlement to pension is not a fundamental right but must be duly earned. Once that right has been perfected and earned, as has been by the petitioners, it is no longer a question

whether they are entitled to the pension or not. The fundamental right that is to be enforced is that the pension given to such pensioners must be of a level which allows them to keep body and soul together.

26. We are happy to note that on being called upon and encouraged by us the boards of the banks showed generosity, magnanimity, great sense of corporate social responsibility to come up with a scheme whereby there will be an immediate and substantial increase in the minimum pension paid to the pensioners. The minimum amount voluntarily offered by the banks was Rs.5,250/- per month. The offer is without prejudice to the legal stance taken by the banks in this case and without prejudice to their objections as to the maintainability etc. of the present petitions. We therefore refrain from recording any finding on the merits of the case or the question of maintainability or the question whether a writ can be issued against a private/privatized bank/party/entity leaving these matters to be examined in some appropriate case. However, using our discretion in the matter, we enhance the aforesaid amount voluntarily offered by the banks and we direct as follows:

1. With **immediate** effect the minimum pension paid to any pensioner (including their widows, where applicable) of UBL, HBL and ABL will be Rs. 8,000 (rupees eight thousand) per month.
2. The payments will be prospective, that is, from the date of this judgment.
3. There will be an increase of 5% in the aforesaid pension every year, effective on the 1st of January every year.
4. The aforesaid pension will be paid to all three categories of pensioners mentioned above, i.e. the "original retirees", those whose pensions were linked to basic pay "frozen" in past years, and in the case of UBL to retrenched employees **including** those who had served the bank for more than ten years on the date of retrenchment. For

avoidance of doubt it is clarified that the pension of employees who are receiving sums in excess of Rs.8,000/- shall continue to do so, and those whose pension would fall below the minimum pension (after 5% annual increase, effective on the 1st of January) they shall be paid the minimum pension with 5% annual increase. However, those who have availed the benefit of VSS (*Voluntary Separation Scheme*) or Golden Handshake Scheme will not be benefitted by this judgment.

27. We would like to take this opportunity to express our heartfelt gratitude to Mr. Makhdoom Ali Khan, Sr. ASC for his able assistance and valuable input which greatly helped us in deciding this matter.

28. In view of the above, the matter stands disposed of.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
13th of February, 2018
Approved for reporting
Waqas Naseer