

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MAQBOOL BAQAR

CIVIL APPEAL NO.1313 OF 2014

(Against the judgment dated 15.5.2014 of the Peshawar High Court, Peshawar passed in W.P.No.1882-P/2013)

Muhammad Zaman etc.

...Appellant(s)

VERSUS

Government of Pakistan through Secretary, Finance Division
(Regulation Wing), Islamabad etc.

...Respondent(s)

For the appellant(s): Mr. Abdul Rahim Bhatti, ASC
Mr. Abdul Rehman Khan, ASC

For respondent No.1: Syed Nayab Hassan Gardezi, Standing
Counsel
Mr. M. S. Khattak, AOR
Abid Hussain Channa, S.O. Finance

For respondents 2 to 4: Kh. Muhammad Farooq, Sr. ASC
Raja Abdul Ghafoor, AOR

Date of hearing: 14.12.2016

...
JUDGMENT

MIAN SAQIB NISAR, J:- This appeal with the leave of this Court is to decide whether the State Bank of Pakistan Officers (Pension-cum-Gratuity) Regulations, 1980 (*the Regulations*) are statutory or non-statutory after the amendment whereby the phrase “*subject to the approval of the Federal Government*” was omitted.

2. The brief facts of the case are that the appellants are retired employees of the State Bank of Pakistan (*SBP*). Following the direction of the Federal Government issued on 30.11.1977, SBP introduced a pension scheme for its employees *vide* letter dated

10.1.1978. Thereafter, the Central Board of Directors of SBP (*Board*), in exercise of its powers under Section 54 of the State Bank of Pakistan Act, 1956 (*the Act*), framed the Regulations with the approval of the Federal Government. The appellants, being aggrieved of SBP's failure to grant them periodical increases in pension in line with those granted by the Federal Government since 1997, filed representations before SBP but to no avail. The petitioners then filed a constitutional petition before the learned High Court which (*petition*) was dismissed *vide* impugned judgment. Leave was granted on 3.10.2014 for the reasons recorded in the order dated 2.9.2014, the which latter order reads as under:-

“The petitioners before us are retired employees of the State Bank of Pakistan. They claim to be entitled to the same retirement benefits, which are applicable to Federal Government employees of similar nature. The petitioners, however, have been non-suited by the High Court vide impugned judgment dated 15.05.2014. It has been observed by the High Court as under:-

*“Initially, the Central Board had been vested with powers to make regulations consistent with the Act to provide for all matters which are necessary and for the purpose of giving effect to the provision of the Act but subject to the approval of the Federal Government by virtue of section 54 of the Act. In compliance therewith, the SBP Officers (Pension-cum-Gratuity) Regulations 1980 were framed in exercise of power conferred by section 54 of the *ibid* Act, by the*

Central Board of Directors of SBP, with the approval of the Federal Government. In view of this statutory backing and support, the said Rules were statutory which were in vogue since its coming into force till amendment effected in section 54 of the Act. The phrase “subject to the approval of the Federal Government” was omitted from Section 54 of the Act, vide Act-ii of 1994. After the omission of the said phrase, the absolute power has been vested in the Central Board of the Bank to make Regulations for giving effect to the provisions of the Act without any approval of the Government.”

2. *Learned counsel for the petitioners has argued that in view of the law laid down by this Court in the cases of Oil and Gase (sic) Development Company v. Nazar Hussain (2010 SCMR 1060) and Masood Ahmed Bhatti v. Federation of Pakistan (2002 SCMR 152) the reasoning of the High Court is erroneous.*

3. *Let notice issue to the respondents for a date after 30 days.”*

3. Learned counsel for the appellant argued that in the light of the judgments reported as Muhammad Tariq Badrah²⁹ and another Vs. National Bank of Pakistan and others (2013 SCMR 314), Shafique Ahmed Khan and others Vs. NESCOM through Chairman, Islamabad and others (PLD 2016 SC 377), Pakistan Defence Officers’ Housing Authority and others Vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), Zarai Taraqiat

Bank Limited and others Vs. Said Rehman and others (2013 SCMR 642) and Pakistan Telecommunication Employees Trust (PTET) through M. D., Islamabad and others Vs. Muhammad Arif and others (2015 SCMR 1472) the Regulations were statutory and thus the learned High Court had wrongly dismissed the appellants' writ petition. In this context he also relied upon Section 6 of the General Clauses Act, 1897 (*the General Clauses Act*) and Article 264(c) of the Constitution of the Islamic Republic of Pakistan, 1973 (*the Constitution*) to argue that omission of the phrase "*subject to the approval of the Federal Government*" did not render the earlier statutory Regulations non-statutory. He further submitted that the learned High Court could not non-suit the appellants on the ground of *laches* as the denial of pension is a recurring cause of action. In this regard he relied upon the judgments reported as S. A. Jameel Vs. Secretary to the Government of the Punjab, Cooperative Department and others (2005 SCMR 126), Umar Baz Khan through L.Hrs. Vs. Syed Jehanzeb and others (PLD 2013 SC 268), Masooda Begum through Legal Heirs Vs. Government of Punjab through Secretary Forest, Lahore and 9 others (PLD 2003 SC 90), State Bank of Pakistan and others Vs. Mst. Mumtaz Sultana and others (2010 SCMR 421), Ali Muhammad Vs. Commissioner Afghan Refugees, N.W.F.P. and another (1995 SCMR 1675) and Chief Executive Progressive Paper Limited/The Chairman National Press Trust, Islamabad Vs. Sh. Abdul Majeed and another (2005 PLC(CS) 1439).

4. Learned counsel for the respondent stated at the very outset that to follow the pension rates of the Federal Government is not a part of the Act or the service/pension rules/regulations

framed pursuant thereto and there is no obligation on SBP to follow and abide by the rules of increase given by the Federal Government to its employees. While referring to the circular dated 30.11.1977, he stated that initially there was a Banking Council constituted under Section 9 of the Banks (Nationalization) Act, 1974 which controlled the banks on behalf of the Federal Government. The Banks (Nationalization) (Amendment) Ordinance, 1996 brought about a sea change which eventually matured into the Banks (Nationalization) (Amendment) Act, 1997 (*the Amendment Act*) pursuant to which the banks were made almost completely autonomous: the Banking Council was abolished and the boards of directors of the banks were made independent. From 1977 to 1997 though SBP abided by the directions of the Federal Government but every circular received from the Federal Government was either republished or adopted through a separate circular issued by the Board. The Federal Government's directives did not *ipso facto* become effective unless given effect through a board resolution. Further, that after the Amendment Act, SBP devised its own wage structure which it announced on 1.6.1999. Learned counsel put forward the following propositions:-

- i. After the amendment in Section 54 of the Act, the new Regulations could be framed without the sanction or permission of the Federal Government;
- ii. The instructive direction given by the Federal Government in 1977 that in future all increases in wages or pension in the case of civil servants or Federal Government employees would apply to SBP employees does not enjoy the status of a rule/regulation having a binding effect because the regulation-making power under Section 54 of the Act

vests exclusively with the Board. Therefore the provisions of Section 54 would be relevant for determining whether any change brought about by the Regulations could be examined in light of the directive issue by the Federal Government in 1977;

- iii. With regard to determination of quantum, learned counsel relied upon **Akram Ul Haq Alvi Vs. Joint Secretary (R-II) Government of Pakistan, Finance Division, Islamabad and others (2012 SCMR 106)** to argue that SBP was vested with the power to fix the amount of, or increase in pension;
- iv. Regarding the appellants' claim that SBP ceased to increase their pension in line with the Federal Government since 2003, whereas the writ petition was filed in 2014 – he stated that it is not a recurring cause of action – when they stood retired, pension or commuted portion of their pension was paid to them immediately in 2004, 2005 and 2006 and that was the time the cause of action accrued because they knew precisely the rate they were being paid;
- v. Notwithstanding the change in law, the Regulations are statutory, as according to the **Pakistan Defence Officers' Housing Authority**'s case, the approval of the Federal Government has ceased to be a relevant factor in order to determine whether rules/regulations are statutory or non-statutory.

5. Heard. In order to answer the proposition identified in the opening paragraph of this opinion, we find it expedient to first discuss the object and purpose of SBP. After the creation of Pakistan in 1947, SBP was created as the central bank of Pakistan to take over the management of the currency from the Reserve Bank of India (*Section 3(1) of the Act*). The Preamble of the Act postulates the reasons for the constitution of SBP as the regulator

of the monetary and credit system of Pakistan and to foster its growth in the best national interest with a view to securing monetary stability and fuller utilisation of the country's productive resources. The business and functions of SBP have been provided for in detail in Chapter IV of the Act (*Sections 17 to 40*). Broadly speaking, SBP's functions include, amongst other things, issuance of notes, regulation and supervision of the financial system, to act as the Government's bank, to conduct the monetary policy of Pakistan, management of public debt and foreign exchange, advising the Government on policy matters, liaising with international financial institutions, development of a financial framework for Pakistan and institutionalization of savings and investment.

SBP is a body corporate having perpetual succession and a common seal and the ability to sue and be sued [*Section 3(2) of the Act*]. The Board has been entrusted with the general superintendence and direction of the affairs and business of SBP and its (*Board's*) functions and responsibilities have been provided in detail in Section 9A of the Act. The Board comprises of a Governor (*Chairman of the Board*), the Secretary, Finance Division, Government of Pakistan and eight directors (*at least one from each Province*) who are eminent professionals from the field of economics, finance, banking and accountancy (*Section 9 of the Act*). There is also a Board for the co-ordination of fiscal, monetary and exchange-rate policies (*See Section 9B of the Act*) and the Monetary Policy Committee (*See Sections 9D and 9E of the Act*).

6. Like many other statutory bodies, SBP has also been given the power to frame regulations. In this regard Section 54 of the Act is relevant which reads as follows:-

“54. Powers of the Central Board to make regulations.

(1) The Central Board may make regulations consistent with this Act to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of this Act:

Provided that the terms and conditions of service of Governor and Deputy Governor shall be determined by the Federal Government.

(2) In particular and without prejudice to the generality of the foregoing provision, such regulations may provide for all or any of the following matters, namely:-

:

(j) recruitment of officers and servants of the Bank including the terms and conditions of their service, constitution of superannuation, beneficial and other funds, with or without bank's contribution, for the officers and servants of the Bank; their welfare; providing amenities, medical facilities, grant of loans and advances, their betterment and uplift;

:

(3) ”

According to Section 54(1) of the Act, the Board is empowered to make regulations consistent with the Act to provide for all matters for which provision is necessary or convenient for the purpose of

giving effect to the provisions of the Act. It is pertinent to mention that previously SBP could only make regulations with the approval of the Federal Government, however by virtue of Act II of 1994, the words “*subject to the approval of the Federal Government*” were omitted. We are of the view that this omission is significant, conferring greater autonomy on the Board as the Federal Government was removed from the regulation-making process, and full authority came to vest in the Board to make such regulations. Indeed this was the view of a two-member bench of this Court in the judgment reported as **Chief Manager, State Bank of Pakistan, Lahore and another Vs. Muhammad Shafi** (2010 SCMR 1994) wherein, while considering whether the State Bank of Pakistan Staff Regulations, 1999 were statutory or non-statutory, it was held as follows:-

“7. The words “subject to the approval of the Federal Government” were omitted vide Act II of 1994. The regulations were framed under section 56 in the year, 1999 as is evident from the source on the basis of which the said regulations were framed which is to the following effect:-

“In exercise of the powers conferred by section 54 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956) the Central Board of Directors, hereby makes the following Regulations, to define the conditions of service of the employees of the Bank.”

8. The omission of the aforesaid words subject to the approval from section 54 is meaningful. Rules framed by the Central Board of Directors which does not require approval of the Government, therefore aforesaid regulations may be termed as internal

instructions or domestic rules/regulations having no status of statutory rules/regulations as law laid down by this Court in various pronouncements...”

We are of the opinion that the above view applies to and is correct vis-à-vis the Regulations in the instant matter as well. Furthermore, as matters stand (*since the omission by Act II of 1994*), and as mentioned above, the regulation-making power lies solely in the hands of the Board with no intervention or approval of the Federal Government, and this reflects the intention of the Legislature. In this context, as highlighted above, even the structure of the Board as provided for in the Act renders it autonomous, with the Members, save for the Secretary, Finance Division, Government of Pakistan, being private individuals, independent from the Federal Government. In fact, where the legislature wanted the intervention of the Federal Government, it has specifically provided for the same, and in this regard the proviso to Section 54(1) of the Act is relevant which states that “*the terms and conditions of service of Governor and Deputy Governor shall be determined by the Federal Government*”, clearly suggesting that the Legislature’s intention was to exclusively clothe SBP with the power to frame regulations to carry out the objects and purpose of the Act. Furthermore, Section 46B(2) of the Act [*inserted by the State Bank of Pakistan (Amendment) Act, 1997 (Act No.XIII of 1997)*], provides that “*the Bank, the members of the Board or the staff of the Bank, shall not take instructions from any other person or entity, including the government or quasi-government entities. The autonomy of the Bank shall be respected at all times and no person or entity shall seek to influence the members of the Board and Monetary Policy Committee or the staff of the Bank in the performances of their functions or interfere in the activities of the Bank.*” It may

be added that to give maximum autonomy to SBP, Section 52(1) of the Act which empowered the Federal Government to supersede the Board and entrust the general superintendence and direction of the affairs of SBP to such agency as it (*Federal Government*) may determine was omitted by the State Bank of Pakistan (Amendment) Act, 2012 (Act No.IX of 2012 dated 13.3.2012). All the above aspects point towards the growing autonomy of SBP.

7. According to the judgment delivered in Civil Appeal No.654/2010 etc. titled **Shafique Ahmed Khan, etc. Vs. NESCOM through its Chairman, Islamabad, etc.** the test of whether rules/regulations are statutory or otherwise is not solely whether their framing requires the approval of the Federal Government or not, rather it is the nature and efficacy of such rules/regulations. It has to be seen whether the rules/regulations in question deal with instructions for internal control or management, or they are broader than and are complementary to the parent statute in matters of crucial importance. The former are non-statutory whereas the latter are statutory. In the case before us, the Regulations were made pursuant to Section 54(1) of the Act and Section 54(2) thereof goes on to provide the particular matters for which the Board can frame regulations [*while saving the generality of the power under Section 54(1) of the Act*]. Out of all the matters listed in Section 54(2) of the Act, clause (j) is the most relevant which pertains to the “*recruitment of officers and servants of the Bank including the terms and conditions of their service, constitution of superannuation, beneficial and other funds, with or without bank’s contribution, for the officers and servants of the Bank; their welfare; providing amenities, medical facilities, grant of loans and advances, their betterment and uplift*”. A perusal of the Regulations

suggests that they relate to pension and gratuity matters of the employees of SBP and therefore it can be said that the ambit of such Regulations is not broader but narrower than the parent statute, i.e. the Act. Thus the conclusion of the above discussion is that the Regulations are basically instructions for the internal control or management of SBP and are therefore non-statutory. Hence the appellants could not invoke the constitutional jurisdiction of the learned High Court which was correct in dismissing their writ petition.

8. Since it has been held above that the Regulations are non-statutory, therefore we do not find it necessary to dilate upon the point of *laches*.

9. In light of the above, this appeal is dismissed.

JUDGE

JUDGE

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Announced in open Court
on **21.2.2017** at **Islamabad**
Approved For Reporting
Ghulam Raza/*