

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Amin-ud-Din Khan  
Mr. Justice Syed Hasan Azhar Rizvi

**Civil Petition No.2537 of 2020**

[Against the judgment dated 20.07.2020 of the Peshawar High Court,  
Peshawar passed in Civil Revision No.399-P of 2020]

Allied Bank Limited

...Petitioner(s)

**Versus**

Habib-ur-Rehman and others

...Respondent(s)

\* \* \* \* \*

For the Petitioner(s) : Mr. Makhdoom Ali Khan, ASC  
Syed Rifaqat Hussain Shah, AOR

For Respondent No.1 : In person

Date of Hearing : 03.05.2023

**JUDGMENT**

**Syed Hasan Azhar Rizvi, J.** Allied Bank Limited (ABL), through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution), has impugned the legality of the order dated 20.07.2020 of the Peshawar High Court, Peshawar whereby the Civil Revision filed by the present petitioner against the order of learned first Appellate Court was dismissed. By its judgment, the first appellate court had reversed the judgment/decree of the trial court and had decreed the suit of the respondent No.1 (Dr. Habib-ur-Rehman) for declaration, permanent injunction, and recovery of benevolent funds, etc.

2. The brief facts necessary to appreciate the controversy in the present petition are that the respondent No.1/plaintiff (the respondent No.1) has filed a suit for declaration, permanent injunction, and recovery of the benevolent fund, etc. with the assertions as per averments of the plaint: that he joined the Bank as a probationary officer; later on, he was elevated and promoted gradually to the position of the Vice-President and served with the petitioner/Bank as such w.e.f. 01.01.1995 till his retirement on 13.07.2007. After his retirement, he received a letter dated 20.08.2007 to inform him that his pensionary dues had been calculated and approved as his retirement benefits based on his basic pay which he was drawing as on 30.06.2002 and not from his last pay drawn on the date of his retirement.

3. On an inquiry, the respondent No.1 found that his retirement benefits had been calculated arbitrarily on the basis of circular No.P/Ins/2002/121 dated 04.09.2002 and against the existing rules of the ABL with the intention to deprive him of the benefits those occurred to him on account of rise in his salary during the period from 30.06.2002 till his retirement on 13.07.2007. The respondent No.1 further asserted that the pension to an employee of the Bank is to be granted on the basis of the "last drawn pay" and not on the basis of some previous presumptive date, in view of Article 4.6(3) of Pension Fund Rules 1990 duly approved by the Board of Trustees and further updated and developed vide letter dated 14.12.1993; the said rules have not been amended or modified so far.

Besides, the respondent No.1 also agitated disparity against the grant of the following other benefits admissible on retirement:

1. *that the petitioner bank has been paying benevolent fund @ Rs.4500 PM., but the same has been allowed to the respondent No.1 @ Rs.2021;*
2. *that the petitioner bank has been releasing the car which is in the custody of a retiring executive/Officer at the time of his retirement @ 10% of its purchase price but the same facility has been given to the respondent at a higher rate of 33%; thereby subjecting him to the discrimination and loss of Rs.1,75,030/-;*
3. *that under the Policy/Office Note dated 16.08.1989, approved by the Executive committee, the retiring Executives were allowed house rent and utility bills and petrol facility for six months after their retirement. The respondent has also not been provided the same, which amounts to Rs.1,89,282/-; and*
4. *that the petitioner bank has not attended to the legitimate claims of the respondent No.1 regarding his promotion as S.V.P along with the allied financial benefits,for which he is eligible since 01.01.2003.*

4. The suit of the respondent No.1 was dismissed by the learned trial court/civil Court, vide judgment/decreed dated 29.11.2013. Being aggrieved, the respondent No.1 filed an appeal which was allowed by the learned Additional District Judge/first appellate court, vide its order dated 16.03.2020 and the suit of the respondent No.1 was decreed in his favour "as prayed for". Though the ABL, the petitioner, challenged the legality of the order of the first

appellate court by filing a Civil Revision before the Peshawar High Court, Peshawar yet remained unsuccessful; hence, this petition.

5. Mr. Makhdoom Ali Khan, Sr. ASC learned counsel appearing for the petitioner has contended that as per the circular, the new policy applied to all employees of ABL. Each employee, however, had the option to remain on the old pension scheme if he communicated it, in writing, to the ABL before 30.09.2002. An employee who chose to remain on the old pension scheme could receive a pension on the "Frozen Basic Pay as on June 30, 2002" along with General Provident Fund (GPF). Such an employee was not entitled to receive Contributory Provident Fund (CPF) and gratuity.

6. That any employee who did not opt, in writing, to continue with the old pension scheme stood automatically transferred to the new scheme. The old pension scheme was superseded by the new scheme. Further asserted that under the new scheme, the pension up to 30.06.2002 was protected. And, the other retirement benefits in the shape of CPF and gratuity were introduced from 01.07.2002. Pension and GPF under the old scheme were substituted by CPF and gratuity under the new scheme. The old pension scheme ceased to exist.

7. Further asserted that three factors were and continue to be taken into account for the calculation of pension: salary, service, and age. Under the new scheme, all eligible employees are entitled to receive a pension on the basis of salary, service, and age as on 30.06.2002. With effect from 01.07.2002, they were entitled to receive benefits instead of pension such as CPF and gratuity. On the other hand, persons who opted, in writing, to remain on the old pension

scheme were entitled to receive pension on the basis of pay as on June 30, 2002. Other factors such as service and age continued to run till the date of retirement along with GPF.

8. Learned Sr. ASC further asserted that the revised salary structure and new scheme were more beneficial for the employees of ABL than the old system. It, therefore, made no financial sense for any employee to opt to remain on the old pension scheme. This option was available for employees of ABL who were about to retire, soon after the introduction of the circular, and would gain no benefit from the new scheme. However, employees of ABL with more than one year of service after the introduction of the new scheme could not avail benefit from opting to remain on the old pension scheme. As per the circular, an employee of ABL who chose to remain on the old pension scheme would receive a pension on basic pay as on 30.06.2002, at the time of retirement. Choosing to remain on the old pension scheme did not mean that the employee would receive a pension on the basis of the last drawn salary at the time of retirement. The basic pay was as on June 30, 2002. This is evident from a bare reading of the circular.

9. On the other hand, Dr. Habib-ur-Rehman (respondent No.1) has submitted that the learned Courts below on detailed discussion and consideration of the material evidence on record concurrently found that he is entitled to the pensionary benefits on the basis of the old scheme of the ABL. Further submitted that the learned Civil Judge, Peshawar had also dismissed another suit titled Muhammad Zafar & 21 others v. Chairman Board of Directors Allied Bank Private Limited (earlier suit) on the same cause of action and on

the same date, vide judgment/decreed dated 29.11.2013. A Civil Appeal No.02/2013 filed against the said judgment/decreed was also dismissed by the learned first appellate court/Additional District Judge, vide order dated 07.07.2015. However, a Civil Revision No.634-P of 2015 against the order of learned first appellate court/Additional District Judge was allowed by the Peshawar High Court, vide order dated 22.01.2018 and the suit of the twenty-two (22) plaintiffs was decreed, accordingly. ABL, being aggrieved of the order of the Peshawar High Court, filed a Civil Petition No.920 of 2018 before the august Supreme Court of Pakistan wherein leave was granted vide order 16.05.2018, and the petition was converted into a Civil Appeal (C.A. No. 793 of 2018) but the same was dismissed vide order 17.01.2020 while upholding the order of the Peshawar High Court. Finally submitted that as a case of similar nature based on the same cause of action has already been decreed by the Peshawar High Court and upheld by a bench of similar strength of the august Supreme Court of Pakistan, the instant petition is, therefore, liable to be dismissed.

10. We have heard the arguments of the learned counsel for the petitioner as well as the respondent No.1 appearing in person and perused the relevant record.

11. Allied Bank of Pakistan Limited was originally a company registered under the Companies Act, 1913 (VII of 1913) transacting the business of banking. By virtue of the Banks Nationalization Act, 1974 (XIX of 1974) the said bank was nationalised, and its ownership, management and control thenceforth vested in the Federal Government. At the 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. ("ABL"). ABL came to be wholly owned by the Government of Pakistan. It was subsequently privatized on 09.09.1991. See Suo Motu Action regarding non-payment of retirement benefits by the relevant departments (2018 SCMR 736). It would not be out of context to state that the memorandum of association is the document that sets up the company and the articles of association set out how the company is run, governed, and owned. The articles include the responsibilities and powers of the directors and the means by which the members exert control over the board of directors. So, clause 132 of the Article of Association of Allied Bank of Pakistan Limited enumerates certain powers of directors of the ABL, and clause 132(q) thereof, empowers the directors to give away and allow any bonus, pension, gratuity, or compensation to any employee of the Company or his widow, children, or dependents that may appear to the Directors just or proper, whether such employee, his children or dependents have or have not a legal claim upon the Company. In the exercise of this power, the ABL has introduced a new scheme on the subject: "Restructuring of Salaries of Executives and Officers" vide the circular No.P-INST/2002/121 dated 04.09.2002 (the circular). However, the respondent No.1, through his suit, did not challenge the competence of the ABL to issue the circular, rather the case of the respondent No.1 was that the said circular has not correctly been applied by the ABL while calculating his pension as well as other benefits, etc. and thereby caused him heavy financial loss and

damage. Therefore, the present controversy revolves around the true import and interpretation of the circular supra as well as application thereof to the case of the respondent No.1. The relevant portion of the circular relating to the present controversy is reproduced hereunder for ready reference:

*"4. REVISED RETIREMENT BENEFITS SCHEME*

*Effective from 01.07.2002, existing Pension Scheme is revised and Gratuity and Contributory Provident Fund benefits are being introduced as per the following details:-*

- A) For the service upto 30th June 2002, Pension and Commutation to be allowed, subject to eligibility, on the basis of current formula, on basic salary, service and age as on 30.6.2002 payable on retirement.*
- B) General Provident Fund balance as on 30.6.2002 including accrued profit and future profit thereon.*
- B) Contributory Provident Fund at 8.33% of the Monetized Basic Pay with effect from 1.7.2002. The employees contribution shall be equally matched by the Bank and the employee is to be entitled to profit on both the contributions as well.*
- C) Gratuity at one month's Monetized Basic Pay last drawn for each completed year of service after 01.07.2002. Gratuity to be paid in the event of resignation from employment, death, retirement, retrenchment or termination of service for any reason other than dismissal for misconduct.*

*Employees who want to continue with the Pension Scheme will have to opt for the same and in such a case they will be entitled to pension on the frozen Basic Pay as on 30.06.2002 payable at the*



time of retirement along with the General Provident Fund. They will not be entitled to CPF or Gratuity.

The following points, however, are to be noted in connection with the above:

- I) Revised Retirement Benefits Scheme will be applicable to all employees unless an employee submits written option for the pension on frozen basic pay, upto 30<sup>th</sup> September 2002.
- II) Contribution to General Provident Fund will be at the revised rate of 6% of the Revised Basic pay but it shall not be less than the actual contribution as on 30.06.2002.
- III) Provision pertaining to the above shall be implemented subject to the permission of the Commissioner of Income Tax under the Income Tax Ordinance, 2001"

(Emphasis supplied)

12. The afore-quoted portion of the circular has been read and examined carefully, and it has been found that an employee, under the new scheme, is entitled to the benefits *vis-à-vis* pension and commutation for service up to 30.06.2002 on basic salary, service and age as on 30.06.2002, payable at the time of retirement; ii) GPF balance as on 30.06.2002 including accrued and future profit thereon, iii) CPF with effect from 01.07.2002 and iv) gratuity for each completed year of service after 01.07.2002. It is vivid from the plain reading of the circular that the new revised scheme was made effective from 01.07.2002 and it, generally, was applicable to all the employees of the ABL unless an employee submits a "written option" for the pension on frozen basic pay by 30.09.2002. And, in case of non-submission of such a written option by the cut-off date, the employee would be governed by the new revised scheme.

13. By introducing the new revised scheme, the pension up to 30.06.2002 was protected and new retirement benefits in the shape of

CPF and gratuity were introduced from 01.07.2002. In other words, the Pension and GPF under the old scheme were substituted by CPF and gratuity through the new revised scheme. In our understanding, the revised scheme appears to be more beneficial for all the employees as compared to the old one and it, definitely, would make no sense to opt for the old scheme. The option to opt for the old scheme may be utilized by or more beneficial for those employees who were going to be retired within a day or soon after the introduction of the new revised scheme, as the case may be. But, merely opting for the old scheme does not, in any manner, mean that the retiring employee would get a pension to be computed on the basis of his last drawn pay. As the new revised scheme clearly provides: *"[E]mployees who want to continue with the Pension Scheme will have to opt for the same and in such a case they will be entitled to pension on the frozen Basic Pay as on 30.06.2002 payable at the time of retirement along with the General Provident Fund."* (Emphasis supplied). Meaning thereby that the new revised scheme, unequivocally, froze the basic pay as on 30.06.2002 for the purpose of the calculation of pension for an employee of ABL who opts for the old scheme.

14. Even otherwise, the respondent No.1, being an officer in high a position as Vice-President of the ABL, was fully conversant with the command as well as the operation of the new revised scheme and it is a matter of record that he had already received the retirement benefits in accordance with the new revised scheme and did not raise any objection thereto at the relevant time. Having received the benefits

under the newly revised policy, he is now estopped to question the legality of the said new scheme.

15. Moreover, the impugned circular has already been upheld by this Court in a somewhat similar case in a Civil Petition No.142-L of 2009 vide order dated 28.05.2009, and a subsequent Civil Review Petition No.88-L of 2009 filed there against was also dismissed by this Court vide order dated 23.12.2009.

16. In this case, the respondent No.1, admittedly, did not submit a "written option" to opt for the old scheme, and as such his case is to be dealt with in accordance with the new revised pension scheme. Along similar lines, the learned trial court has rightly dismissed the suit of the respondent No.1 while observing that his claim for calculation of his pension on the basis of his last pay drawn is unfounded and ground-less. We find the judgment of the learned trial court to be a well-reasoned and judiciously crafted decision. The learned trial court, in its meticulous analysis of the evidence as well as the relevant legal principles, has arrived at a sound and reasoned conclusion that is both legally sound and just.

17. Whereas the learned first appellate court/Additional District Judge did reverse the judgment of the learned trial court not on merits but on the basis of the order of learned Peshawar High Court passed in Civil Revision No.634-P of 2015 dated 22.01.2018 subsequently upheld by this Court in Civil Appeal No. 793 of 2018 vide order dated 17.01.2020 passed in another suit titled Muhammad Zafar & 21 others v. Chairman Board of Directors Allied Bank Private Limited filed by other twenty-two employees of the ABL with respect to

the same revised scheme. The decision of the learned first appellate court/Additional District Judge was also upheld by the Peshawar High Court *vide* the impugned order. However, the Peshawar High Court too did not consider the circular in its true perspective and wrongly interpreted the same while holding that: "*the respondent-employee has never given option to continue with the introduced Revised Retirement Benefits Scheme and, therefore, respondent cannot be deprived of his pensionary benefits from the date of his superannuation.*" (see para 7 of the impugned order). The Peshawar High Court, as such, has failed to accurately grasp the true intent and meaning of the circular leading to a flawed decision that could have far-reaching implications.

17. Now coming to the important aspect of the matter that this two-member bench is bound by the view already taken by an earlier equal bench of this Court in Civil Appeal No. 793 of 2018, in view of the principle of stare decisis. No doubt, a somewhat similar question qua interpretation of the same circular was involved in the suit titled Muhammad Zafar & 21 others v. Chairman Board of Directors Allied Bank Private Limited and in that case, the plaintiffs too did not submit written option to opt the old scheme. In that case, the learned High Court *vide* its order dated 22.01.2018 passed in a Civil Revision No.634-P of 2015 has set-aside the concurrent findings (dismissing the suit) of the lower courts i.e. trial court as well as the first appellate court and decreed the suit of the plaintiffs while holding as under:

*"14. In the case of the petitioners, it is evident from the record that they have not opted for the retiring benefits on the basis of impugned notification which fact is also proved on the record by the mouth of their*

own witness i.e. DW-1 Syed Muzaffar Jamil, who in respondent to a question has categorically stated that:

محمد ظفر کی طرف سے سرکلر 4-9-2000 کے متعلق option موجود نہ ہے۔

15. In such clear cut admission of the witness of the respondents, nothing else is required to prove the stance of the petitioners, so the learned Courts below while deciding the lis in hand have totally ignored the evidence available on the file and have rather adjudged the matter on extraneous ground. Secondly, the judgments referred to by the learned counsel for the petitioners are supportive to the stance of the petitioners as the dicta laid down in the said judgments is that only those persons who have opted for impugned circular dated 04.09.2000 are disentitled to the pensionary benefits solicited by the present petitioners

16. As discussed above, the only point of issue for determination is the impugned notification to which the present petitioners have never opted and the respondents could not prove their stance specifically taken and pleaded by them. So, in the circumstances, the petition in hand is allowed, judgments and decrees of both the courts below are set aside and the suit of the petitioners is decreed as prayed for."

(Emphasis supplied)

18. The learned Peshawar High Court in that case misconstrue the circular despite its clear and unambiguous language; its observation that the plaintiffs/petitioners, in that case, did not opt for the circular; hence, their cases were to be governed under the old scheme is contrary to the spirit of the circular. This misinterpretation has resulted in a distorted understanding of the circular's purpose and

the intended scope of its application. Consequently, the Peshawar High Court's order not only undermines the original intention behind the notification but also creates confusion and ambiguity in its implementation. But, that order was affirmed by a two-member bench of this Court in Civil Appeal No. 793 of 2018 vide order dated 17.01.2020.

19. This Court is fully aware of the legal position that a Bench of co-equal strength cannot deviate from the view held by an earlier Bench, and if a contrary view has to be taken, then the proper course is to request the Hon'ble Chief Justice for constitution of a larger Bench to reconsider the earlier view. At the same time, the law declared by this Court should be clear, certain, and consistent, as it is binding on all other courts of the country, under Article 189 of the Constitution of Pakistan, 1973. The doctrine of binding precedent promotes certainty and consistency in judicial decisions, and ensures an organic and systematic development of the law as has been held in the cases of the Province of East Pakistan v. Dr. Azizul Islam (PLD 1963 Supreme Court 296); the Province of East Pakistan v. Abdul Basher Cohwdhury (PLD 1966 Supreme Court 854); Multiline Associates v. Ardeshir Cowasjee (PLD 1995 Supreme Court 423); Ardeshir Cowasjee v. Karachi Building Control Authority (1999 SCMR 2883); Gulshan Ara v. the State (2010 SCMR 1162); Zahid Rehman v. the State (PLD 2015 Supreme Court 77); WAK limited Multan Road v. Collector Central Excise and Sales Tax (2018 SCMR 1474); Shafqat @ Shafaat v. the State (PLD 2019 Supreme Court 43); and Mst. Samrana Nawaz v. M.C.B. Bank Ltd. (PLD 2021 SC 581).

20. It would not be out of place to observe here that not every statement or observation in a judgment of this Court creates a precedent to become binding on courts. In this regard reference may be made to Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 (the Constitution), reproduced hereunder: Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan. Moreover, where this Court deliberately and with the intention of settling the law, pronounces upon a question, the such pronouncement is the law declared by the Supreme Court within the meaning of Art.189 of the Constitution and is binding on all Courts in Pakistan. Reference here may be made to the judgments in the cases of Justice Khurshid Anwar Bhinder v. Federation of Pakistan (PLD 2010 Supreme Court 483) & Muhammad Shifa v. Meherban Ali (2022 SCMR 647). This Court in Civil Appeal No. 793 of 2018 did not decide the question of whether the employee who did not submit a “written option” was to be governed by the old scheme or the new revised scheme. Even, the decision in that case, with due respect, fell short of articulating the underlying principle of law on which the decision was based.

21. A decision not expressed, not accompanied by reasons, and not proceeding on conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 189 of the Constitution. In this regard, reference may be made to the observation made by the Supreme Court

of India in the case of Arnit Das v. the State of Bihar (AIR 2000 SC 2264).

22. In this view of the matter, we convert this petition into an appeal and allow the same. The impugned order dated 20.07.2020 of the Peshawar High Court not being sustainable in the eyes of law is set-aside. Resultantly, the Civil Revision filed by the petitioner is accepted while setting-aside the order dated 16.03.2020 of the learned first appellate court/Additional District Judge and the judgment/decreed dated 29.11.2013 of the trial court is restored. No order as to costs.

**JUDGE**

**JUDGE**

**Announced in open Court**  
on 25.05.2023 at Islamabad  
Approved for reporting  
Ghulam Raza/\*