

**Judgment Sheet**

**IN THE LAHORE HIGH COURT, LAHORE**  
JUDICIAL DEPARTMENT

**I.C.A. No.120/2016**

**JUDGMENT**

**National Bank of Pakistan vs. Iftikhar Rasool Anjum and others**

**Dates of hearing:** 21,22,26,27&28 December 2016

**Appellant by:** Khawaja Haris Ahmad, Senior Advocate  
Kh. Muhammad Farooq Mehta, Senior Advocate.  
Mr. Isaam Bin Haris, Advocate.  
Mr. Ghulam Subhani, Advocate  
Mr. Abid Hussain, Advocate.

**Respondents by:** Mr. Salman Akram Raja, Advocate.  
Ch. Muhammad Akhtar, Advocate.  
Mr. Umar Hayat Khawaja, Advocate.  
Mr. Adnan Ahmad Khawaja, Advocate.  
Sardar Faiz Rasool Khan Jalbani, Advocate.  
Ms. Tabinda Islam, Advocate.  
Mr. Tariq Bashir, Advocate.  
Mr. Bilal Bashir, Advocate.  
Ch. Zulfiqar Ali, Advocate.  
Mr. Anis Ali Hashmi, Advocate

**JAWAD HASSAN, J:-** Through this Intra Court Appeal, the Appellant, namely the National Bank of Pakistan (NBP), has called in question judgment rendered in Constitutional Petitions, including W.P. No. 8260/2014, W.P. No. 31187/2013, W.P. No. 19765/2010, W.P. No. 13400/2010, W.P. No. 13401/2010, W.P. No. 21843/2010, W.P. No. 22757/2010, W.P. No. 8730/2013, W.P. No. 8731/2013, W.P. No. 25207/2013, W.P. No. 27942/2013, W.P. No. 28452/2013, W.P. No. 29211/2013, W.P. No.29217/2013, W.P. No. 29717/2013, W.P. No. 30704/2013, W.P. No. 32081/2013, W.P. No. 1111/2014, W.P. No. 1112/2014, W.P. No. 2588/2014, W.P. No. 2590/2014, W.P. No. 3209/2014, W.P.

No. 3209/2014, W.P. No. 5903/2014, W.P. No. 5907/2014, W.P. No. 7246/2014, W.P. No. 8724/2014, W.P. No. 8798/2014, W.P. No. 8956/2014, W.P. No. 8958/2014, W.P. No. 9029/2014, W.P. No. 9551/2014, W.P. No. 10590/2014, W.P. No. 10925/2014, W.P. No. 2259/2013 and W.P. No.19091/2015, which were heard on 30.7.2015 and 15.10.2015, and a consolidated judgment was pronounced on 15.01.2016 by the learned Single Judge in Chamber (the “**Impugned Judgment**”), whereby Constitutional Petitions filed by the Respondents/ Petitioners were allowed and the Appellant/Respondent was directed to release pensionary benefits of the Respondents/Petitioners in accordance with Circular No.228 (C) dated 26.12.1977 issued by the Appellant/Respondent within two months from the date of the decision.

2. This judgment shall also render decision on connected Appeals bearing numbers I.C.A. No.121/2016, I.C.A. No.122/2016, I.C.A. No.123/2016, I.C.A. No.124/2016, I.C.A. No.125/2016, I.C.A. No.126/2016, I.C.A. No.127/2016, I.C.A. No.128/2016, I.C.A. No.129/2016, I.C.A. No.130/2016, I.C.A. No.131/2016, I.C.A. No.132/2016, I.C.A. No.133/2016, I.C.A. No.134/2016, I.C.A. No.135/2016, I.C.A. No.136/2016, I.C.A. No.137/2016, I.C.A. No.138/2016, I.C.A. No.139/2016, I.C.A. No.140/2016, I.C.A. No.141/2016, I.C.A. No.142/2016, I.C.A. No.143/2016, I.C.A. No.144/2016, I.C.A. No.145/2016, I.C.A. No.146/2016, I.C.A. No.148/2016, I.C.A. No.149/2016, I.C.A. No.150/2016, I.C.A. No.151/2016, I.C.A. No.152/2016, I.C.A. No.153/2016, I.C.A. No.154/2016, I.C.A. No.155/2016, I.C.A. No.156/2016, I.C.A. No.460/2016, I.C.A. No.461/2016, I.C.A. No.462/2016, I.C.A. No.463/2016, I.C.A. No.464/2016, I.C.A. No.991/2016.

3. Brief facts for the disposal of instant Intra Court Appeals filed under Section 3 of Law Reforms Ordinance, 1972 are that

the Respondents/Petitioners are retired officials/officers of Appellant/Respondent which was constituted under the National Bank of Pakistan Ordinance, 1949 and was governed by the NBP Employees Pension Provident and Guarantee Rules, 1958 and the National Bank of Pakistan (Staff) Service Rules, 1973 made thereunder, duly approved by the Federal Government of Pakistan. During their service with the NBP, the Federal Government launched a new pension scheme which was circulated by NBP vide Instruction Circular No.228 (C) dated 26.12.1977. As per Clause 4(b) of the said Circular, the pension of the retired employees of NBP was to be enhanced at the rate of 70% of average emoluments on completion of 30 years qualifying service. The Respondents/Petitioners opted for the aforesaid Scheme. In para-10 of the aforesaid Scheme it was further mentioned that any change or revision in rates/scales of pension or gratuity that may thereafter be made by the Federal Government shall also apply to the officers/executives of the Bank. In the year 1999, the Management of the NBP issued another Instruction Circular No.37/1999 dated 16.06.1999, whereby the pension was reduced to almost 33% as against 70% and basic pay was increased, which was assailed in the Constitutional Petitions, which ultimately were allowed through the Impugned Judgment. Hence, this Intra Court Appeal.

4. After hearing the arguments of the parties at length on 21.12.2016, 22.12.2016, 26.12.2016, 27.12.2016 and 28.12.2016 following moot points arising out of instant Intra Court Appeals requiring determination upon which through this judgment, the decision shall be rendered by us:

**A. Whether the Instruction Circular No.228 (C) dated 26.12.1977 is a statutory instrument, having backing of law, or merely executive instrument issued by the Federal Government?**

- B. Whether the Instruction Circular No.37/1999 dated 16.06.1999 issued by the Board of Directors of NBP repeals and overrides the Circular No. 228(C) dated 26.12.1977?**
- C. Whether the principle of Estoppel is attracted in the instant appeal?**
- D. Whether the petitions suffer from Laches and are liable to be dismissed?**

5. Before proceeding further with the matter for determination of above-mentioned points, it is essential to briefly have a look upon the legislative history of entire NBP laws, rules, regulations and circulars:

**A. THE ESSENTIAL HISTORY OF LAWS RELATING TO THE NATIONAL BANK OF PAKISTAN:**

- (i) On 09.11.1949, the first legislation in respect of the National Bank of Pakistan (NBP) was promulgated, namely National Bank of Pakistan Ordinance, 1949 (the “**1949 Ordinance**”), to extend banking facilities generally and under Section 3 of the 1949 Ordinance, NBP was constituted to carry on the business of banking. Under Section 12 of the 1949 Ordinance, “*the general superintendence and direction of the affairs and business of the Bank shall be entrusted to the **Central Board**, which may exercise all powers and do all such acts and things as may be exercised or done by the Bank and are not by this Ordinance expressly directed or required to be done by the bank in general meeting.*” Further, under Section 26(A)(2) of the 1949 Ordinance, the NBP was authorized to “*grant or subsidise, from*

*time to time, pensions, gratuities, bonuses or other funds created for the benefit of its officers and staff or their dependents*". Further, under Section 32 of the 1949 Ordinance, the Central Board was authorized, with the previous approval of the Federal Government (Central Government at that time), to make bye-laws not inconsistent with this Ordinance. It was made clear in Section 32(2)(xxviii) of the 1949 Ordinance that such bye-laws may provide for *"the recruitment of officers and staff of the bank including the terms and conditions of their service, and the constitution and management of staff and superannuation funds for the officers and servants of the Banks"*.

- (ii) In 1958, the NBP Employees Pension Provident and Guarantee Rules, 1958 (the "**1958 Rules**") were made by the Central Board under Bye-Law 18(a)(V) of the NBP Bye Laws, with the prior approval of the Central Government. The 1958 Rules created 'the National Bank of Pakistan Employees' Pension Fund', with the objective to provide every employee, who was a member of the Fund with a pension, the amount of which was to be ascertained according to 1958 Rules. Importantly, Rule 17 of the 1958 Rules stated that the pension shall be payable at the rate of one seventieth part for every year's service of the average monthly pay drawn during the last three years of service on the date of retirement. Further, Rule 18 of the 1958 Rules put a ceiling by declaring that the maximum pension shall in no case exceed Rs. 650/- per mensem.

- (iii) Thereafter, in 1973, the National Bank of Pakistan (Staff) Service Rules, 1973 (the “**1973 Rules**”) were made by the Central Board under Bye-Law 18(a)(iii) of the National Pakistan Bye-Laws, with prior approval of the Central Government. Importantly, under Rule 4 of the 1973 Rules, the Central Board was given powers to amend, modify or omit all or any of the 1973 Rules, with the prior approval of the Federal/Central Government, as may be found necessary from time to time. As per Rule 41 of the 1973 Rules, all employees in the permanent service of NBP became members of the Bank’s Provident and Pension Funds excluding those who (i) were on contract basis, (ii) had attained age of 35 years at the time of appointment (iii) were in permanent service of NBP and drawing pension from another source.
- (iv) However, on 11.03.1974, the Banks Nationalization Act, 1974 (the “**1974 Act**”) was enacted in public interest to provide for nationalization of the banking business in Pakistan, and Section 9 of the 1974 Act constituted/established the **Pakistan Banking Council (PBC)**, having functions under Section 9(4) of the 1974 Act, including to make policy recommendations to the Federal Government for directing banking activities towards national socio economic objectives and for formulating policy guidelines for the banks. Section 11 of the 1974 Act provided that the Bank shall have an Executive Board consisting of a President and not less than two and not more than four other members to be appointed by the Federal Government, for general direction and superintendence of the affairs and

business of the banks. Section 13 of 1974 Act provided that “... *all officers and other employees of a bank, shall continue in their respective offices and employments on the same terms and conditions, remuneration and rights as a to pension and gratuity, as were applicable to them immediately before the commencing day*”. Further, Section 20 of the 1974 Act provided that “*The Federal Government may, by notification in the Official Gazette make rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provision of this Act.*”

- (v) On 31.11.1977, the Government of Pakistan Finance Division (Internal Finance Wing), vide letter No.17(9)-IF.XI/77 (the “**1977 Notification**”), addressed to Chairman Pakistan Banking Council conveyed the decision to introduce pension and retirement benefits for the officers/executives of banks along the lines of those introduced by the Federal Government for civil servants and to discontinue the existing scheme of pension in NBP Contributory Provident and Gratuity Fund. The date of effect of these new Pension and retirement benefits was stipulated as May, 1977 at the replica rate and scale mentioned in below 1977 Circular.
- (vi) On 26.12.1977, an Instruction Circular No. 228(C) (the “**1977 Circular**”) was issued, in respect of ‘Establishment of Pensions and Retirement Benefits for Officers/Executives of Banks’ (as have been introduced by the Federal Government for Civil Servants) and it was provided in para 2 of the 1977

Circular that “ ... *The contribution made by the bank towards the Contributory Provident Fund shall be withdrawn as that service shall now count for the purpose of pension ...*” Further, Clause 4, 10 and 11 of the 1977 Circular reads as follows:

**“B- RATE AND SCALE OF PENSION**

4. a) *Pension shall be payable if the total service of an officer/executive at the time of retirement or death is 10 years or more. ....*

b) *Pension shall be calculated at the rate of 70% of average emoluments on completion of 30 years qualifying service. Where qualifying service is less than 30 years but not less than 10 years, proportionate reduction in percentage shall be made. Any amount of pension in excess of Rs. 1000/- shall be reduced by 50%...*

.....

**C- GRATUITY FOR SERVICE OF LESS THAN 10 YEARS BUT NOT LESS THAN 5 YEARS**

5. ....

**D- GRATUITY AND COMMUTATION FOR PENSIONERS RETIRING AFTER 10 YEARS SERVICE**

6. ....

**E- FAMILY PENSION**

7. ....

**F- PENSIONS/GRATUITIES FOR  
INJURY OR DEATH IN COURSE OR  
CONSEQUENCE OF DUTY**

8. ....

9. ....

10. *Since the rates of pension and gratuity given above have been fixed by the Pay Commission for Banks and Financial Institutions on the same lines as obtaining on the side of the Federal Government, the existing provisions and any changes or revision in the rates or scales of pension or gratuity that may hereinafter be made by the Federal Government shall also apply to the officers/executives of the Banks.*

11. *The existing schemes of Pensions, Contributory Provident Fund and Gratuity shall be discontinued.”*

- (vii) On 18.08.1979, the Bank (Nationalization) (Amendment) Ordinance, 1979 (the “**1979 Amendment**”) was enacted to amend Section 9, whereby further functions of overseeing foreign operations, establishing a Research Department, establishing a Central Training Institute, acting as arbiter in inter-bank disputes, appointing lead banks in respect of consortium loans, watching the progress of the implementation of the rulings made in SPB’s inspection report were entrusted to the Pakistan Banking Council. Through the 1979

Amendment, Section 11 was also amended and sub-section 4-A, 4-B and 4-C were inserted as follows:

*“4-A. A bank shall have a Board of Directors consisting of the President and all the other members of the Executive Boards, one member of the Council to be nominated by the Council and an official of the Ministry of Finance to be nominated by the Federal Government.*

*4-B. The Board of Directors shall be responsible for overall policy making in respect of the bank’s operations.....*

*4-C.....”*

- (viii) On 01.01.1980, the National Bank of Pakistan Staff Service Rules, 1980 (the “**1980 Rules**”) were made by the Executive Board under bye-law 18(a) (iii) and (iv) of NBP Bye-Laws, read with Section 11(4) of the 1974 Act. While the 1980 Rules did not provide any formula for pension fixation, Rule 41 of the 1980 Rules provided that *“All employees in the permanent service of the Bank shall become members of Bank’s provident Fund, Benevolent Fund, Pension/Gratuity and Group Insurance Scheme”*.
- (ix) On 12.01.1983, the Respondent No. 1 opted for the Item No. 2, the new retirement benefits w.e.f. 01.05.1977/01.07.1977, in exercise of the option afforded under the announcement of Instruction Circular No. 228(I) dated 03.07.1978 regarding ‘Retirement Benefits of Officers/Executives’.

- (x) On 08.09.1983, another amendment vide Banks (Nationalization) (Amendment) Ordinance, 1983 (the “**1983 Amendment**”), was introduced by which Section 11(7-A) was inserted and it was provided that “*the Chairman and a member of the Council and the President and a member of an Executive Board shall be liable to such disciplinary action and penalties, to be awarded in such manner and by such authorities, as may be prescribed*”.
- (xi) On 24.07.1985, an Instruction Circular No. 804(N) (the “**1985 Circular**”) was issued, in respect of ‘Further Liberalization of Pensions Rules, Indexation of Pension and other Allied Matters – Officers/Executives and Clerical/Non-Clerical Staff of the Bank’.
- (xii) On 9.9.1986, an Instruction Circular No. 804(ZD) (the “**1986 Circular**”) was issued, in which further concession in pension were granted to all categories of Officers/Executives and Clerical/-Non-Clerical staff of NBP.
- (xiii) On 22.09.1988, another amendment vide Banks (Nationalization) (Amendment) Ordinance, 1988 (the “**1988 Amendment**”) was promulgated and Section 5(6) was inserted highlighting that “*the Federal Government or a corporation owned or controlled by the Federal Government may from time to time, sell all or any of its shares in the capital of a bank, other than the State Bank, to such persons, and on such terms and conditions, as it may determine.*” Further, Section 9 of the 1974 Act was

amended to give more power to the Banking Council, and Section 11 of 1974 Act was amended by substituting subsection (1) through which composition of Board of Directors of every bank was changed by adding, inter alia members of Banking Council and eminent persons from private sector. Further, a new subsection 1-A was inserted which provided that *“the Board shall have an Executive Committee consisting of its President, three Directors and such other senior executives of the banks as the Board may, from time to time, decide and the Executive Committee shall exercise such powers, and perform such functions as may be delegated to it by the Board from time to time.”* Moreover, subsection 4-A to 4-C (earlier inserted vide 1979 Amendment) were deleted.

- (xiv) On 24.01.1989, the Banks (Nationalization) (Amendment) Ordinance, 1989 (the “**1989 Amendment**”) was promulgated whereby section 9 was amended and functions of Banking Council were added, while by amending Section 11. Board of Directors was constituted for every bank consisting of Executives of Banks, Chief Executives of development financial Institutions, members of Pakistan Banking Council, eminent persons from private sector and Directors from Federal Government.
- (xv) On 23.11.1991, the Banks (Nationalization) (Amendment) Act, 1991 (the “**1991 Amendment**”) was promulgated, whereby new Sections 5-A (Sale of Shares) and 5-B (Section 5-A to have effect

notwithstanding any other law etc) were inserted. Further, functions of the Council under Section 9 were revised and Section 11 was substituted, whereby Section 11(1) provided that “*A bank shall have a Board of Directors consisting of the President and six other members to be nominated by the Federal Government*”. Further, Section 11(2) also provided that “*the general direction and superintendence of the affairs, and business of a bank, and overall policy making in respect of its operations, shall vest in the **Board** which may exercise all such powers and do all such acts, deeds and things as the bank was competent....to exercise or do in a meeting of the Board of Directors*”.

- (xvi) On 19.08.1996, an Instruction Circular No. 73/96 (the “**1996 Circular**”) was issued, in respect of Pension Benefits after Retirement, and it was specified that it has been decided in meeting of Presidents of NCB at PBC on 18.04.1996 to allow some benefits of revision of pay scales in pension/commutation to those Banks employees, who have retired one year preceding the revision of pay scales in Banks.
- (xvii) On 10.06.1997, the Banks (Nationalization) (Amendment) Act, 1997 (the “**1997 Amendment**”) was enacted whereby Section 9 was replaced to dissolve Pakistan Banking Council forthwith, and all assets, properties, rights of the Council, all liabilities and encumbrances were transferred to State Bank. Further, Section 11 was also substituted, under which subsection 4 provided that “*the general*

*direction and superintendence of the affairs and business of a bank, and overall policy making in respect of its operations, shall vest in its **Board**.”*

Importantly, new subsection 10 of section 11 provided that *“All selections, promotions and transfers of bank except the President and decisions as to their remuneration and benefits shall be made by the President in accordance with the evaluation criteria and personnel policies determined by the Board”*.

- (xviii) On 16.06.1999, an Instruction Circular No. 37/99 (the **“1999 Circular”**) was issued, through which the Board of Directors of the NBP approved revised pay structure of executives and officers effective from 01.01.1999, and it was further stated that parameters of revised pay scales would be periodically revised to reflect the market movements and costs of living changes. (Note: this revision of pay structure entailed drastic increase in basic pay e.g. SEVP’s existing pay scale was Rs.9070 to 15375 which was revised to 43,500 to 108,750) Further, as per Part V of the 1999 Circular, it was stated that *“Monthly Gross Pension under the new retirement benefits will be calculated on the basis of Revised Basic Pay (x) Number of years of Service (x) 1.10%. However, the amount of gross pension on the basis of existing Basic Pay and existing formula is protected and will not adversely affect the present amount of pension as on 31.12.1998 with this change in the formula. Other terms and conditions of pension scheme will continue to be the same.”*

- (xix) On 8.5.2000, the NBP issued Instruction Circular No. 28/2000 to sanction w.e.f 1.7.1999 an increase in pension to the retired Executives/Officers and Clerical/Non-Clerical staff.
- (xx) On 15.7.2002, the NBP issued Instruction Circular No. 43/2002 to sanction w.e.f. 1.1.2002 an increase in pension to all the retired Executives/Officers and Clerical/Non-Clerical staff.
- (xxi) On 21.5.2004, the NBP issued Instruction Circular No. 54/2004 to grant approval of increase in pension being drawn by Bank's retired Executives/Officers and Clerical./Non-Clerical Staff including family Pensioners with effect from 1-1-2004.
- (xxii) On 1.02.2005, the NBP issued an Instruction Circular No. 23/2005 and 24/2005 to approve revision of pay, allowances and other benefits of Clerical, Non-Clerical Staff, and executives/officers.
- (xxiii) On 24.04.2006, Instruction Circular No. 27/2006 was issued whereby BOD approved grant of increase in Gross Pension plus increases from time to time to the Bank's retired Executive Officers and Clerical/Non-Clerical staff at the following rates w.e.f. 1.1.2006.
- (xxiv) On 10.07.2006, the NBP issued an Instruction Circular No. 53/2006 (the "**2006 Circular**") in which it was highlighted that the Bank's management is pleased to approve the revision pay, allowances and other Clerical and Non-Clerical staff

for the year 2006 to 2007, after having detailed meeting with authorized representative of CBA's and in pursuance of settlement reached with them all over Pakistan.

- (xxv) On 10.07.2006, the NBP issued an Instruction Circular No. 54/2006 to approve revision of pay, allowances and other benefits of executives and officers.
- (xxvi) On 30-11-2007, Instruction Circular was issued by NBP to approve grant of increase in Net Pension of NBP pensioners w.e.f. 1-7-2007.
- (xxvii) Another amendment in Section 11(1) and 11(3) was introduced vide the Banks (Nationalization) Amendment Ordinance 2007 (the "**2007 Amendment**").
- (xxviii) On 15.02.2008, Instruction Circular No. 15/2008 and 16/2008 was issued by NBP after detailed discussion with the representatives of CBAs, the Bank's Management was pleased to revise pay, allowances and other benefits to clerical/non-clerical staff, executives and officers.
- (xxix) On 01.07.2008, Circular No.58/2008 was issued through which the Management of the NBP revised the aforementioned pension factor from 1.10% to 1.25% for service after 01.01.2004. Moreover, it was decided to reduce the monthly contribution of 2.5% of the basic pay of each employee to 18% per month employee basic pay.

- (xxx) On 12.08.2008, through the Information Circular No. 205/2008, NBP constituted the high powered committee of four Group Chiefs to look into the issues raised by employees representatives with regard to revision of pension formula and some other related matters.
- (xxxii) On 1.4.2009, the committee hold meeting with employee representative and after due deliberations recommendations were prepared for a settlement which recommendations were prepared for a settlement which recommendations were duly signed by the President of CBAs.
- (xxxiii) On 1.4.2010, all CBAs functioning in all provinces signed a MoU and a revised formula for pension was prepared which was to take affect from 1.1.2010.
- (xxxiiii) On 3.4.2010, an office note based on the said formula was duly issued by the Bank vide Circular No. 33/2010 revising the rate/formula of pension agreed upon between the parties. With effect from 01.01.2010 pension of retired employees is being calculated on the basis of said formula.
- (xxxv) On 18.9.2008, the President CDA (Trade Unions Federation) wrote a letter to the President of NBP to uphold the legitimate rights of the bank employees and restore the pension and the benefits since reduced vide Instruction Circular 32/99 dated 17.5.1999 and No. 37/99 dated 16.6.1999 and continue allowing the pensions/benefits as allowed

to the employees of NCBs in line with government servants besides restoring all their benefits protected vide Section 13(1) of 1974 Act. It was further requested that the management should increase the pension of the employees in proportion to the present inflationary and economic hardship.

- (xxxv) On 11.11.2009, the Respondent No. 1 sent a letter to the President of NBP requesting that his pension may fairly and graciously be fixed according to the Pension Rules of 1977 as reflected in 1977 Circular.
- (xxxvi) On 3.04.2010, NBP issued another Instruction Circular No. 33/2010 whereby it was intimated that management is pleased to announce the revision in Pension Formula for the calculation of Gross Pension of employees who have retired or shall be retiring on or after 1.1.2010.
- (xxxvii) Furthermore, clauses (i), (ii) and (iv) were omitted in Section 11-A vide the Banks (Nationalization) Amendment Act 2011 (the “**2011 Amendment**”).
- (xxxviii) On 16.11.2012, the Instruction Circular No. 97/2012 was issued by NBP to announce increase in Net Pension to all NBP Pensioners/Families of deceased NBP Pensioners retired on or before 31-12-2011.

6. In view of the above mentioned history of the NBP and banking laws and keeping in view the arguments advanced by the learned counsels for the parties, the issues mentioned in paragraph 4 were considered which mostly are interlinked,

hence, we will deliberate and decide these issues by merging them into following issues (**A & B**) and then (C&D):

- A. Whether the Instruction Circular No.228 (C) dated 26.12.1977 is a statutory instrument, having backing of law, or merely executive instrument issued by the Federal Government?**
  
- B. Whether the Instruction Circular No.37/1999 dated 16.06.1999 issued by the Board of Directors of NBP repeals and overrides the Circular No. 228(C) dated 26.12.1977?**

**APPELLANT'S SUBMISSIONS:**

7. The arguments on behalf of the Appellant were led by Khawaja Haris Ahmad, Senior Advocate Supreme Court and Kh. Muhammad Farooq Mehta, Senior Advocate Supreme Court, who argued that the 1977 Circular was neither issued by Federal Government, nor it was published in Official Gazette, therefore, the same could not be presumed to constitute statutory rules under Section 20 of the 1974 Act. Further, it was argued without prejudice, that the 1977 Circular was relied upon by the learned Single Judge for granting the relief of increase in pension at the same rate as is admissible in case of Civil Servants, the learned Single Judge in Chamber has failed to take note of the fact that the 1977 Circular had become an archaic document and had lost its legal efficacy and was not in effective operation since the 1980s as it was superseded by NBP's own circulars prescribing increase in pension and supervening acts and events delinking the Bank from Federal Governments' administrative control on account of amendments made in the 1974 Act and offering of its shares to public for sale. The direction given in the impugned judgment is bound to adversely affect the interest of the private share-holders.

8. The learned counsel of the Appellant further argued that the 1999 Circular consisted of two parts; one relates to enhancement of basic pay of writ petitioners including other financial benefits, while the other relates to reduction of the percentage of pension. It was submitted that the Petitioners/Respondents have gained benefit of this huge enhancement of the amount pertaining to basic pay scale under the said Circular and could not complain of reduction in “percentage of basic pay scale” on which Pension was to be calculated pursuant to the said circular, in that this is not inequitable, it is violative of the principle that a person cannot be allowed to approbate and reprobate at the same time.

9. It was further argued by the learned counsel of the Appellant that the 1977 Circular was not the only document, relating to the terms and conditions of service or pension of the NBP's Employees, which was neither made/promulgated by the Federal Government, nor published in the official Gazette, rather a number of other Circulars dealing with the terms and conditions of its Employees were also similarly issued by the NBP, both prior as well as subsequent to the date of issuance of the said Circular, and that the Petitioners/Respondents, having taken advantage of the benefits given by the said Circulars, could not be permitted to challenge any portion of any one of the very same Circulars at their whims by pleading that the same was not made or notified in accordance with the Statutory provisions.

10. It was argued that as a matter of fact the increase in the pension amount was brought about by the 1999 Circular was considerably more than the increase in the amount of Pension payable to Federal Government Employees during the corresponding period. Further, the NBP had, through 1999 Circular introduced a new package of terms and conditions of

service benefits for its employees. The learned counsel of the Appellant submitted that numerous increases in rates of pension by NBP from 1999 onwards have been totally omitted from consideration though duly brought on record. Hence, the impugned judgment suffers from perversity for non-reading of the record, and may be set aside.

### **RESPONDENTS' SUBMISSIONS:**

11. The arguments on behalf of the Respondents were led by Mr. Salman Akram Raja, Advocate Supreme Court, who argued that on nationalization of Banks in the year 1974, service terms and conditions of the Respondents were protected and secured under Section 13 of the 1974 Act and as per Section 20 of the 1974 Act, the Federal/Central Government was authorized to make rules by notifying in Official Gazette. In exercise of these powers, the Federal Government issued 1977 Notification, whereby new rules of pension and gratuity were introduced. Further, in pursuance of the 1977 Notification, NBP, with a view to give effect to the 1977 Notification, issued its own 1977 Circular, whereby the Pension and Gratuity Rules were adopted and implemented. Hence, the 1977 Circular was a statutory instrument, having backing of 1977 Notification. The learned counsel of the Respondent relied on **Saghir Ahmed v. Province of Punjab and others (PLD 2004 Supreme Court 261)** to establish that provisions of a statute for the publication of a notification in official Gazette are generally regarded as directory where their strict non-compliance does not provide any consequence.

12. The learned counsel for the Respondents argued that 1999 Circular was issued arbitrarily by management of NBP and without sanction and approval of the Federal Government. As such, reduction in pension could not be made a part of this

circular. This indicates *mala fide* on the part of NBP management and the officers/executives/employees of NBP have protested against this decision (1999 Circular) of the Bank's Board of Directors being without jurisdiction and detrimental to the benefit of the retiring employees. He relied on **Muhammad Tariq Badr and another v. National Bank of Pakistan and others (2013 SCMR 314)**, in which it was held that the Board having powers of policy making, superintendence and managing the affairs and business of the bank, could not rescind, replace, substitute and/or vitiate 1973 Rules, being statutory instruments. He further relied on **Rasheed Baig and others v. Zarai Taraqati Bank Limited (2013 PLC (C.S.) 1444 [Islamabad])**, and argued that Board of Directors of Bank had reduced the pension factor to the disadvantage of employees vide 1999 Circular, even though Board of Directors of Bank was not competent to alter statutory terms and conditions of service to the disadvantage of employees. Further, statutory regulations namely 1977 Circular relating to pension and gratuity still held the field and decision of Board of Directors carried no value in presence of statutory provisions and guarantees. Hence, the decision of Board of Directors of NBP reducing pension factor must be set aside. He further relied on the case titled **Khawaja Abdul Hameed Nasir and others v. National Bank of Pakistan and others (2003 SCMR 1030)** and **Akram Ul Haq Alvi v. Joint Secretary (R-II) Government of Pakistan, Finance Division, Islamabad and others (2012 SCMR 106)**.

13. Ch. Muhammad Akhtar, Advocate Supreme Court, while appearing in ICA 120, 129, 133, 153 on behalf of the Respondents, emphasized on **Tariq Badar** and **Khawaja Abdul Hameed Nasir** cases *supra* and further relied on **Siddiq Akbar, A.S.I. and others v. Sandbar Khan, A.S.I. and**

**others, (1998 SCMR 2013)**, in which it was held that standing order issued by the Inspector-General of Police having not been approved by the Provincial Government was devoid of its legal status and was of no legal authority. He further cited the case titled **Muhammad Ilyas Khokhar and 24 others v. Federation of Pakistan and others (2006 SCMR 1240)**, in which it was held that the Auditor-General in his capacity has got no lawful authority to lay down the policy unless it is approved by the Establishment Division, in accordance with the Rules of Business as well as the relevant law on the subject. He further relied on **I.A. Sharwani and others v. Government of Pakistan and others (1991 SCMR 1041)** and stated that the right to a pension depends upon statutory provisions and therefore, the existence of such right in particular instances is determinable primarily from the terms of the statute under which the right or privilege is granted. The right and extent of the pension amount depends on the language of the relevant statute or the rules framed thereunder. The right to receive pension flows directly out of the rules applicable and not out of any order of any officer or authority. He further stated that the alleged scheme of pension in 1999 Circular is discriminatory as among the same category of retired employees, one group received pension @ 70% and other @ 33%, and presently NBP is paying pension to retired employees at four different rates.

14. Ms. Tabinda Islam, Advocate Supreme Court, while appearing in ICA 145 on behalf of the Respondent, cited the **Rasheed Baig** case *supra* and relied on its principle. Rest of the learned counsels appearing in their respective ICAs adopted the arguments of Mr. Salman Akram Raja, Advocate to the extent that the conclusion of the learned Single Judge was right but reasoning was wrong.

**DETERMINATION:**

15. We have considered the contentions of both the parties and gone through the impugned judgment as well as record appended with these appeals. We have noticed that the Respondents/Petitioners are retired officials/officers of NBP, constituted under 1949 Ordinance, and were governed by the statutory 1958 Rules and 1973 Rules, duly approved by the Federal Government of Pakistan at that time.

16. However, the Federal Government passed the 1974 Act, whereby all the Banks were nationalized in public interest and the Pakistan Banking Council was established under Section 9 of the 1974 Act for directing Banking activities towards national socio economic objectives and for formulating policy guidelines for the banks. Importantly, the officers and employees of NBP were in true sense and spirit secured and protected, without shadow of any doubt, under Section 13 of 1974 Act on the same terms and conditions, remuneration and rights in regard to pension and gratuity, as were applicable to them. Further, the Federal Government was empowered under Section 20 of the 1974 Act to make rules by notification in the Official Gazette to provide for all matters for the purpose of giving effect to the provision of the 1974 Act. It is suffice to state that according to the provisions of section 20 of the 1974 Act, the rule making power is conferred upon the Federal Government in the terms as under:

*"Powers to make Rules. The Federal Government may, by notification in the official Gazette, make*

*Rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act."*

17. It is evident from the record that the Government issued the 1977 Notification, addressed to Chairman of the Pakistan Banking Council, to convey the decision to introduce pension and retirement benefits for the officers/executives of banks along the lines of those introduced by the Federal Government for civil servants and to discontinue the existing scheme of pension in NBP Contributory Provident and Gratuity Fund. However, the 1977 Notification was not published in Official Gazette.

18. Further, this Court also find force in the arguments of the learned counsel of the Respondent in highlighting the case titled **Saghir Ahmed v. Province of Punjab and others (PLD 2004 Supreme Court 261)**, in which it was clearly established that publication of the notification in the official Gazette was not sine qua non for its legal validity, efficacy and its non-publication was of no consequence. In this respect, Para 10 of the Saghir Ahmad case may be relied upon, which is reproduced hereunder:

*"10. Even otherwise, the provisions of a statute for the publication of a notification in official Gazette are generally regarded as directory where their strict non-compliance does not provide any consequences. The legal certainty also requires that ordinarily a statutory instruments should not be treated as invalid because of a failure on the part of public functionaries to publish it in the official Gazette. There may be many things done on the basis of such an instrument. It would seem unfortunate where the things so done were held to be invalid if it was at some stage discovered that there had been failure by a public Authority to go meticulously by the manner and mode of publication of an instrument or notification in official Gazette...."*

19. In view of *Saghir Ahmad* case *supra*, it is essential to note that under Section 20 of the 1974 Act, no consequence for non-publication of the notification of the Federal Government in Official Gazette was provided and 1977 Notification has also been implemented in letter and spirit in many instances. Further, the Appellant has also not highlighted any prejudice if caused to the Respondents/Petitioner, for non-publication of the notification. Therefore, we find no cavil to the preposition that the 1977 Notification and 1977 Circular, being statutory in nature, cannot be set aside or not to be implemented merely on the ground of non-publication in the Official Gazette, being a procedural formality.

20. At this point, it is essential to see the definition of 'pension' and the root through which such rights arises in light of the case cited by the Respondent, titled **I.A. Sharwani and others v. Government Of Pakistan and others (1991 SCMR 1041)**. Importantly, the relevant excerpt of this case is reproduced hereunder:

*“Pensions are periodic payments, usually for the natural life of a person who retires because of age or disability. Sometimes the term refers to periodic payments to wives, widows or children of a primary or deceased person or pensioner; occasionally, a pension will be conveyed solely as an honour for conspicuous service or valour. Pensions are provided by Government in three guises: (1) as compensation or recompense to war veterans and families for old age or for disability or death, usually from service causes; (2) as disability or old age retirement benefits for civilian employees of government; (3) as social security payments for the age, disabled or deceased citizenry based on past employment history of subject to current evidence of need. ...*

Except as limited by the Constitution the establishment of a pension system is within the scope of the legislative power. The granting of pensions to public officers or public employees serves the public purpose, and is designed to induce competent persons to enter and remain in the public service or employment, and to encourage the retirement from public service of those who have become incapacitated from performing their duties as well as they might be performed by younger or more vigorous persons. It has also been stated that a pension system is intended to promote efficient, continued and faithful service to the employer and economic security to the employees and their dependents, by an arrangement under which, by fulfilment of specified eligibility requirements, pensions become property of the individual as a matter of right upon the termination of public service.

.....

*The right to a pension depends upon statutory provisions and therefore, the existence of such right in particular instances is determinable primarily from the terms of the statute under which the right or privilege is granted. The right to a pension may be made to depend upon such conditions as the grantor may see fit to prescribe.*

.....

*A person who enters Government service has also something to look forward after his retirement, to what are called retirement benefits, grant of pension being the most valuable of such benefits. Pension like salary of a civil servant is no longer a bounty but is a right acquired after putting in satisfactory service for the prescribed minimum period. A fortiori, it cannot be reduced or refused arbitrarily except to the extent and in the manner provided in the relevant rules. Conversely full pension admissible under the rules is not to be given as a matter of course unless the service rendered has been duly approved. If the*

*service has not been thoroughly satisfactory, the authority sanctioning the pension is empowered to make such reduction in the amount as it may deem proper. This power is however exercisable only before pension is actually sanctioned.”*

21. While considering the above definition of pensions, it was held in **I.A. Sharwani** case *supra* that a Government employee's claim to pay and allowances is regulated by the rules in force at the time in respect of which the pay and allowances are earned, whilst his claim to pension is regulated by the rules in force at the time when he retires, resigns, or is invalided, or is compulsorily retired, or is discharged from service, or is injured, or sudden death whilst in service, depending upon the type of pension claimed. In respect of superannuation pension, the amount of pension payable is determined by the length of completed years of qualifying service put in by the Government servant, subject to the formula then in existence providing the mode of calculation of pension as prescribed by the rules. The right to receive pension flows directly out of the rules applicable and not out of any order of any officer or authority, though for the purposes of determining or quantifying the amount it may be necessary for the authorities to pass such order. The right to receive pension by a Government servant is property so as to attract Articles 23 and 24(1) of the Constitution and any illegal denial to a Government servant to receive the same would affect his fundamental right guaranteed under the said provisions of the Constitution.

22. This Court finds force in the argument of the learned counsel of the Respondents that to give validating effect to the 1977 Notification of the

Government, the NBP issued the 1977 Circular, terms and conditions of which were replica of the 1977 Notification in respect of establishment of pensions and retirement benefits for officers/executives of NBP. Under Clause 4(b) of the 1977 Notification and 1977 Circular, the pension of the officers was to be calculated at the rate of 70% of average emoluments on completion of 30 years qualifying service. Further, it was made clear in Clause 10 of the 1977 Notification and 1977 Circular that since the rates of pension given above have been fixed by the Pay Commission for Banks and Financial Institutions on the same lines as obtaining on the side of Federal Government, the existing provisions and any change or revision in the scale of pension may hereafter be made by the Federal Government, which shall also apply to the Officers/Executives of NBP. Clause 10 of the 1977 Notification and 1977 Circular reads as follows:

*“10. Since the rates of pension and gratuity given above have been fixed by the Pay Commission for banks and financial institutions on the same lines as obtaining on the side of the Federal Government, the existing provisions and any changes or revision in the rates or scales of pension or gratuity that may hereinafter be made by the Federal Government shall also apply to the officers/executives of the banks.”*

23. From the perusal of above arguments and discussion, it is clear that the 1977 Circular of NBP was issued in pursuance to the 1977 Notification of the Government, which was issued under Section 20 of the 1974 Act, thus, had statutory backing of law and enjoys the status of a statutory instrument. Further, the Federal

Government was only authorized to change or revise the said formula for grant of pension to the officers/executives of NBP. Importantly, 1977 Notification and/or 1977 Circular has not been expressly set aside or repealed by any other instrument of the Government till today.

24. As a baseline question, it must be determined as to what status must be conferred on the 1977 Notification. If the Federal Government issued the 1977 Notification, it must necessarily have a legal pedigree. NBP followed and implemented the tenor of 1977 Notification without demur for the next twenty years and it is not NBP's case that these were invalid or incompetently issued. The Federal Government did not issue 1977 Notification in the air and the document surely had a basis in law. Section 9 of 1974 Act relates to the powers of the Banking Council and not of the Federal Government. The only powers that resides in the Federal Government is entrusted by Section 20 of 1974 Act to make rules. Thus it follows logically that the Federal Government was exercising its powers under Section 20 of 1974 Act while issuing the 1977 Notification. Here, we are concerned with the source of the powers and not the form of document that emerged ultimately. The source is the rule-making powers and therefore, the document must, in the fiscal analysis, be termed as rules and nothing else.

25. Hence, 1977 Notification is the legislative command of the Government under the delegated powers to make rules and sovereign commitment, and in absence of repeal of 1977 Notification and 1977 Circular, the provisions of 1977 Notification and 1977 Circular shall prevail and anything inconsistent thereto, even through

any other non-statutory instrument in respect of pension shall be subservient to them and has to give way.

26. For the purpose of highlighting the importance of the sovereign commitment, the principle highlighted and established in the case of **Dewan Salman Fibre Pvt. Ltd. V. Federation of Pakistan and others (2015 PTD 2304 Islamabad)** may be borrowed, which states at Para 19 that:

*“19. We lay great stress on the impotence of the Government adhering to sovereign commitments made by it, whether in the form of the statutory orders or notification issued by it or in the shape of policies announced by it. The commitments made on behalf of the Government of the Islamic Republic of Pakistan should neither be lightly disregarded nor deliberately ignored. The orderly development of a civilized society requires that citizens should be entitled to place implicit faith and confidence on representations which are made by or on behalf of the duly constituted governmental authorities. The importance of this underlies the sustained thrust towards the industrialization of the country in which both the nationals of Pakistan as well as nationals of foreign countries should have complete confidence that official commitments will be duly honored and acted upon in letter and spirit.”*

27. In order to strengthen this argument, the case titled **Shafique Ahmad Khan and others v. NESCOM and others (PLD 2016 SC 377)** may also be relied upon, which established the principle as follows:

*“certain Rules or Regulations were framed without the approval of the Federal Government was not the sole criteria to term them as non-statutory in nature. It was indeed their nature and area of efficacy which were determinative of their status.*

*Rules dealing with instructions for internal control or management were treated as non-statutory while those whose area of efficacy was broader and were complementary to the parent statute in the matters of crucial importance were statutory.”*

28. Therefore, this Court is of the view that the provisions of 1977 Notification and 1977 Circular are commitments made on behalf of the Government of Pakistan and cannot be lightly disregarded nor deliberately ignored to shatter the implicit faith and confidence of the Respondents/Petitioner, upon which these provisions are applicable. Similarly, the 1977 Notification and 1977 Circular have broader efficacy and were not merely for internal control or management of NBP. The 1977 Notification and 1977 Circular were statutory in nature on all accounts and by every attribute and were also efficacious, effective and complementary to the 1974 Act in matters of crucial importance. Further, it is also essential to note that acts performed by the Government while using statutory powers deserve due regard by the Courts and every possible explanation for their validity should be explored and the whole gamut of powers in pursuance of which the Government act or perform their functions and discharge its duties should also be examined.

29. At this point, it is also important to observe case law in hand and to rely on **Muhammad Tariq Badr and another v. National Bank of Pakistan and others (2013 SCMR 314)**, in which it was held at Para 8 that

*“... it is not only the legal position, but has also been conceded by the counsel for both the sides that, if the rules of a statutory establishment/body are statutory in nature, the employees (who are covered by the*

*rules) of such organization may invoke the constitutional jurisdiction of the High Court for the redressal of their service grievance.”*

It was further held at Para 9 that:

*“... the Board of N.B.P. constituted under section 11 of the Act, 1974, at the most was conferred with the power of managing the affairs of the bank in terms of the policies etc. to be formulated by it on the subjects enumerated in the section, but by no express command of law (section 11) was empowered to make service rules, which can be termed as statutory in nature, with the further authority to annul the statutory rules already in force. In any case, the Board in the garb of its general empowerment of policy making, superintendence and managing the affairs and business of the bank, by no stretch of legal comprehension and principle of interpretation could, rescind, replace, substitute and/or vitiate the [statutory] 1973 Rules. This undoubtedly could not be done by a non-statutory instrument, which has come into being through simpliciter account of the exercise of executive authority of the Board; and it is a fundamental rule of jurisprudence that the executive has no empowerment to annul or in any manner invalidate or vitiate the command of the statute. Therefore, I am constrained to hold that 1980 Rules have not replaced or rescinded the earlier rules of 1973.”*

30. The counsel of the Respondent further relied on **Rasheed Baig and others v. Zarai Taraqati Bank Limited (2013 PLC (C.S.) 1444 [Islamabad]**, in which it has been held that Board of Directors of Bank was not competent to alter terms and conditions of service to the disadvantage of employees because statutory regulations relating to pension and gratuity still

hold the field. Decision of Board of Directors carried no value in presence of statutory provisions and guarantees, and Board of Directors had no authority under the law to assume the legislative role. No decision detrimental to the interest of employees could have been taken without bringing amendments in the statute and Board of Directors of the Bank through arbitrary, colourable and illegal exercise of authority surprised and shocked the employees by reducing pension factor and started paying the same even without approval from the Federal Government. Decision of Board of Directors for all practical intents and purposes resulted into structural change in the accrued rights of pension of the employees, for which approval of the Federal Government was also not granted. Decision of Board of Directors was unprecedented, polluted, offensive to the Constitutional guarantees and was in violation of principles of natural justice and fanciful. Hence, decision of Board of Directors of Bank reducing pension factor was set aside.

31. It was held in the case of **Akram Ul Haq Alvi v. Joint Secretary (R-II) Government Of Pakistan, Finance Division, Islamabad and others (2012 SCMR 106)** that government under S. 19 of Civil Servants Act, 1973 had powers to fix an amount of pension, increase the same, bring about changes therein from time to time and prescribe method for its calculation. In absence of any bar or restriction, Government was free to decide whether to grant increase in pension on gross or net pension. Previous mode of increase on gross pension could not restrain Government from changing same. While defining pension, it was held as follows:

*“Pension was part of a civil servant’s retirement benefit and was not a bounty or an ex-gratia payment but a right acquired in consideration of his past service which was a vested right with legitimate expectation. Right to pension was conferred by law which could not be arbitrarily abridged or reduced except in accordance with law.”*

32. Hence, the employees of NBP are entitled to the same pension as is announced by the Government of Pakistan through 1977 circular and the Board of Directors of NBP is bound to follow such announcement of the Government in respect of such employees, rather than reducing the same through their own order.

33. Another case, titled **Siddiq Akbar, A.S.I. and others v. Sandbar Khan, A.S.I. and others, (1998 SCMR 2013)**, was also highlighted by the counsel for the Appellant which established that under section 12 of the Police Act, the Inspector-General of Police may, from time to time, and subject to the approval of the Provincial Government, frame such orders and rules as he deems expeditious relating to the organization, classification and distribution of police force and for rendering such force efficient in the discharge of its duty. Power of Inspector-General to make rules is subject to the “approval” of the Provincial Government. Standing Order 11 of 1987 issued by Inspector-General of Police having not been approved by the Provincial Government is devoid of its legal status and is, therefore, of no legal authority. It was further held which is reproduced as follows:

*“the word ‘approval’ occurring in section 12 of the Act implies the act of passing*

*judgment, the use of discretion, and a determination as a deduction therefrom, to confirm, rectify, sanction or to consent to some act or thing done by the Inspector-General of Police. The word 'approval' implies exercise of sound judgment, practical sagacity, wise discretion and final direct affirmative action. Merely because a Standing Order has held the ground for a number of years is not sufficient to assume the grant of 'approval' of the issuance of the Standing Order by the Provincial Government."*

34. The counsel for the Respondents has also cited case titled **Muhammad Ilyas Khokhar and 24 others v. Federation Of Pakistan and others (2006 SCMR 1240)** in which it was held that Departmental Circular varying the terms and conditions of service was in violation and in conflict with Ss.3(ii) & 9(b), of Civil Servants Act, 1973 as department had no lawful authority to lay down policy, unless the same was approved by the Establishment Division in accordance with the Rules of Business as well as the relevant law on the subject. Ex-post facto approval to such circular by the Establishment Division would not make the circular valid and legal which had no legal backing. It was held at Para 7 which is reproduced below and as follows:

*"... It may be noted that as far as the Auditor-General is concerned, he in his capacity has got no lawful authority to lay down the policy unless it is approved by the Establishment Division, its accordance with the Rules of Business as well as the relevant law on the subject."*

35. It is manifest to note that no notification, backing 1999 Circular, has been placed on record by any of the party. It is an admitted position that 1999 Circular has

not been issued as per the mandate of law *ibid*, particularly Section 20 of 1974 Act, and inasmuch no notification was issued by the Federal Government, it was neither made by the Federal Government nor published in the official gazette. Hence, 1999 Circular had not been composed/enforced with the prior approval of the Government nor subsequent benediction was conferred to them by the Government. 1999 Circular had been formulated by the Board of the Bank pursuant to its authority in the nature of management/superintendence of the affairs of the Bank and/or policy making power. Hence, 1999 Circular, at best could be termed as guidelines or domestic instructions of the bank for the purpose of highlighting, elucidating or beneficially revamping the service structure of Bank's employees for their advantage. Further, 1999 Circular did not enjoy the status of a statutory instrument, hence Board of the Bank in the garb of its general empowerment of policy making, superintendence and managing affairs of business could not rescind, replace, substitute and/or vitiate 1977 Circular and 1977 Notification.

36. There is also no cavil/quibble that the 1999 Circular have not been composed/enforced with the prior approval of the Government or any subsequent benediction was conferred to those by the Government. Rather (admittedly) 1999 Circular has been formulated by the Board of NBP constituted under Section 11 of the 1974 Act, which stipulates the general power of the Board pertaining to policy making and the administration and management of the nationalized banks.

37. Section 11(4) thereof specifically provides as follows:

*“The general direction and superintendence of the affairs and business of a bank, and overall policy making in respect of its operations, shall vest in its Board”. Furthermore, as per Section 11(5) of the 1974 Act, the Board shall determine “personal policies of the bank, including appointment and removal of officers and employees” and in accordance with Section 11(10) of 1974 Act, “All selections, promotion and transfer of employees of banks except the President and decisions as to their remuneration and benefits shall be made by the President in accordance with the evaluation criteria and personnel policies determined by the Board”.*

38. From the above, it is unequivocally clear that the 1999 Circular has been issued by the Board of the Bank pursuant to its authority in the nature of management/superintendence of the affairs of the bank and/or the policy making power; however for all intents and purposes, it is so done in the exercise of an executive authority under the statute, but having even no remote or possible or permissible connection and nexus to any statutory jurisdiction, 1999 Circular thus can at best be termed, understood, comprehended and construed merely as the guidelines or the domestic instructions of the N.B.P., for the purposes of highlighting, elucidating or beneficially revamping the service structure of bank’s employees for their advantage, provided the same do not in any manner contravene the 1977 Notification and 1977 Circular, but nothing more than that can be imputed to those; and in any case the 1999 Circular does not enjoy the status of a statutory instrument. This has not been disputed by the parties, therefore, the legal

question which eminently calls for the resolution, is that whether non-statutory rules (though we have herein construed these as mere instructions etc.) have, and/or can repeal, rescind or displace the statutory rules of 1977 Notification and 1977 Circular?

39. It is an admitted and undisputed factual reality that after the commencing day of 1977 Notification and 1977 Circular, they were validly in force and for all intents and purposes were serving as the conclusive terms and conditions in regard to pension of the NBP Officers etc. Further, it is clear from a bare reading of the 1999 Circular as a whole that the intention behind issuing the same was to discontinue the existing schemes of pension, implemented through 1977 Notification and 1977 Circular, and was to be made them inoperative qua the employees of the NBP. Such instrument (1999 Circular) is to be constructed keeping in view the real intention behind them for taking such decision which should be explored by scrutiny of the attending circumstances and in particular the instrument as a whole. It is clear from the 1999 Circular that the board of NBP has tried to discontinue legislative instrument (1977 Notification) by their own operation, while it was not dependent upon the exercise of option by them in their favour and while service of employees was already pensionable under 1977 Notification and were given benefit to the same as per its own force.

40. It is to be noted that only the Government had powers to fix an amount of pension, increase same, bring about changes therein from time to time and prescribe method for its calculation in absence of any bar or restriction. Hence, the respondents, who were the employees of NBP, will be entitled to the same pension

as is announced by the Government of Pakistan and the Board of Directors of NBP was bound to follow such announcement of the Government in respect of such employees, or could have given backing to 1999 Circular through approval of the Government, as was done through 1977 Notification. The approval implies the act of passing judgment, the use of discretion, and a determination as a deduction therefrom, to confirm, rectify, sanction or to consent to some act or thing done by the government. It further implies exercise of sound judgment, practical sagacity, wise discretion and final direct affirmative action and merely an executive instrument is not sufficient to assume the grant of 'approval' by the Government.

41. On account of opinion of this Court in view of the applicable law and case law discussed above, there does not seem much difficulty in providing an answer that 1999 Circular having not been approved by the Government is devoid of its legal status and is, therefore, of no legal authority as to the 1977 Notification and 1977 Circular. Further, 1999 Circular varying the terms and conditions of service was in conflict with 1977 Notification and 1977 Circular as department had no lawful authority to lay down policy, unless the same was approved by the Government in accordance with the relevant law on the subject. It may also be noted that as far as the Board of Directors is concerned, they in their capacity have got no lawful authority to rescinded earlier statutory decision without following the course of law.

42. If the 1997 Notification is to be labeled as rules, properly enacted by the Federal Government, then this begs the question: can the 1999 Circular issued in the

executive authority of the Board of NBP cast aside and undo the statutory rules issued by the Federal Government? The answer is clearly in the negative. Here, the ratio of *Muhammad Tariq Badar case supra*, would come into play and define the outcome of these appeals. The nub of the conclusion in these case was that the Board of NBP in its general managerial powers could not rescind or substitute statutory rules. This is the essence of this case as well. The powers of the Federal Government under section 20 of 1974 Act remains intact to this day and any act accomplished in the exercise of the powers would continue to occupy the field and the Board cannot conceivably have the powers to override that act of the Federal Government. If this were permitted, it would be tantamount to making a mockery of the exercise of statutory powers by the Federal Government. There is no cavil that the Board will have all the powers conferred upon it and the 1997 Amendment merely applies only to the limit that they do not come in conflict with the powers of the Federal Government.

43. It is candidly held that 1977 Notification and 1977 Circular are applicable, as they have been considered and construed herein to be the rules envisaging the terms and conditions of pension of NBP employees throughout in force, because these were not repealed, replaced or annulled as held earlier. Therefore, it shall be ludicrous and discriminatory to hold that the Respondents/employees should not enjoy the benefit, protection and security of statutory rules and instead be deprived and governed through an executive instrument being 1999 Circular,

44. Therefore, in view of the above, it has been sufficiently established that the argument of the learned

counsel for the Appellant in this context have no force, which are hereby repelled; and the proposition is accordingly answered.

- C. Whether the principle of Estoppel is attracted in the instant appeal?**
- D. Whether the petitions suffer from Laches and are liable to be dismissed?**

**APPELLANT'S SUBMISSIONS:**

45. The learned counsel of the Appellant argued that the Writ Petitions were disposed of by one common judgment suffered from laches and were liable to be dismissed on that ground alone. The respondents had retired from the service of the Bank more than 10 years prior to the filing of the Writ Petitions during which period they kept on receiving pensionary benefits in accordance with the various circulars issued by the appellant from time to time after the 1977 Circular. The 1977 Circular was never challenged prior to filing of the Writ Petitions decided through the impugned judgment. Thus the Writ Petitions suffered both from laches and also exhibit acquiescence on the part of the respondent in new rates of pension prescribed by the appellant from time to time during the period of more than 10 years.

46. It was further argued that the claim for pension at the rate prescribed under the 1977 Circular was not a recurring cause of action as observed by the learned Judge in chamber in the Impugned Judgment. The amount of pensionary benefits payable to the respondents was worked out at the time of retirement and payment was duly received by them. The cause of action, if any arose

at the time of respondents on retirement had come to the knowledge of the Respondents when payment of commuted portion of pension was received by him. Therefore, the concept of recurring cause of action is not applicable to the facts and circumstances of the case.

47. It was argued that the Apex Court has ruled that if a petition suffers from laches the Court is fully competent to dismiss the same without proceeding to decide the merits of the case. It was further argued that the learned Single Judge in Chamber has failed to appreciate that a party which has not been vigilant about its rights is not entitled to invoke the discretionary jurisdiction under Article 199 of the Constitution. For this purpose, the counsel relied on **Muhammad Din v. Abdul Ghani and another (2012 SCMR 1004)**; **Dilawar Hussain and others v. Province of Sindh and others (PLD 2016 Supreme Court 514)**, and **State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others, (2012 SCMR 280)**.

48. The learned counsel of the Appellant, while relying on **MCB Bank, Ltd. v. State Bank Of Pakistan and 2 others (2010 CLD 338 [Lahore])**, argued that pay package of 1999 Circular was acted upon and employees derived all benefits under said package, they were estopped on principle of estoppel by conduct, acquiescence and waiver to challenge the package. Further, the learned counsel of the Appellant, while relying on **Allied Bank Ltd. V. Muhammad Ilyas (2010 PLC 13 [Lahore])** argued that in this case with a disadvantage, a major advantage was also given to the employees in shape of major jump in their salary package. It was held that it could not be allowed to

partly accept the Scheme and partly disown to the portion which was disadvantageous to him although he had taken all the benefits in shape of increased pay. While relying on the judgment titled, **Pakistan International Airlines Corporation v. Aziz-Ur-Rehman Chaudhry and another (2016 SCMR 14)**, the counsel of the Appellant argued that where the Respondents accepted the terms and condition of his/their re-employment and continued in service for 13 years and accepted and received retirement benefits his/ their claim for back benefits was hit by the doctrine of past and closed transaction.

#### **RESPONDENTS' SUBMISSIONS:**

49. The learned counsel for the Respondents submitted that the matter of restoration of pension formula in accordance with the policy of Government had been a disputed matter and demand of the Officers was under consideration when at last final decision was made on 03.04.2010 which was too not in accordance with the Government policy. As such the writ petition was filed well in time and there is no question of limitation raised by the counsel of the Respondents at the time of writ petition. Further the principle as laid down by the apex courts of law is that in case of pay and pension no question of limitation arises. The counsel of the Respondents relied on judgments titled, **Managing Director, Sui Southern Gas Company Ltd. v. Ghulam Abbas and others (PLD 2003 Supreme Court 724); Chief Executive Progressive Paper Limited v. Sh. Abdul Majeed and another (2005 PLC (C.S.) SC 1439)** and **Amjad Hussain v. Secretary, Finance Division,**

**Ministry Of Finance, Islamabad and 2 others (1998 SCMR 1442)**. It was further argued by the counsel of the Respondents by relying on a case, NLR 1993 TD (Service) 190 that limitation time would not run against an order which is without jurisdiction. It was further stated that although the Respondents accepted the pay increase, however, they have been raising the issue of pension with the Appellant from time to time and had also raised objection in respect of the pension.

50. Mr. Salman Akram Raja, Advocate has also filed applications, (CM No.9795/2016 and C.M. No.9796/2016) to place on record certain documents. Learned counsel submitted that the documents of the applicant established that after the 1999 Circular, these issues were agitated with the Appellant and various meetings were held on this issue from 1999 till 2010 the timing of filing the writs, and further, the Appellant has also issued various letters by showing that they were looking into this matter and considering the issue.

**DETERMINATION:**

51. We have considered the contentions of both parties and have gone through the impugned judgment as well as record appended with the appeal. This Court has noticed that while there is plenty of case law on the contention supported by the learned counsel of the Appellant, some of which has also been highlighted by the counsel of the Appellant, stating that High Court on finding Constitutional petition to be barred by laches, would not be required to decide on merits the issue raised therein. Reliance is placed on (**Muhammad Din v. Abdul Ghani and another (2012 SCMR 1004)**) It was also held in the case of **Dilawar Hussain and others v.**

**Province Of Sindh and others (PLD 2016 Supreme Court 514)** that if the land owners thought they were entitled to the additional amount of compensation, they should have moved the Collector to give them such compensation and this could have been done within the time prescribed by law, and if not so prescribed, then within a reasonable period of time. In fact, the respondents kept silent and slept over their rights for over fourteen years whereafter they decided to invoke the Constitutional jurisdiction of the High Court directly which was discretionary in nature. Rule of laches was duly attracted to the matter in hand because the respondents had been unable to explain as to what steps they took to ascertain and agitate their right on the basis of the Section 28-A (since repealed) before the competent authority before the filing of the Constitutional petition. It was also held in the case of **State Bank Of Pakistan through Governor and another v. Imtiaz Ali Khan and others, (2012 SCMR 280)** which is reproduced below:

*“laches is a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its enforcement, if it is found by the court of a law that its case is hit by the doctrine of laches/limitation. Right remains with the party, but he cannot enforce it. The limitation is examined by the Limitation Act, 1908 or by special laws which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if party aggrieved does not approach the appropriate forum within the stipulated period/time, the grievance though remains, but it cannot be redressed because if on the one hand there was a right with a party which he could have enforced against the other, but because of principle of*

*limitation/laches, same right then vests/accrues in favour of the opposite party.”*

52. However, in the case in hand, it is clear that the matter of pension under 1977 Circular and 1977 Notification was agitated by the Respondents before the Appellant bank and was pending till 2010 before the Appellant. Hence, the question of laches does not arise because the petition was filed within time. Learned counsel for the Respondents Mr. Salman Akram Raja, Advocate through C.M. No.9795/2016 and C.M. No.9796/2016 has placed certain documents i.e. the letters written by the Respondents to the Appellant Bank and the Appellant made commitment to them that it is considering the issue of pension. In this regard while examining the file we have noticed that Mark-II is the letter written by the Respondents to the Appellant on 29.11.1999 and then on 13.10.2001. Mark-III is a letter dated 01.02.2005 by the Appellant Bank in which in clause 15 it was written as follows:

“15) **BENEVOLENT FUND GRANT AND PENSION:**

*The demand raised by the NBP Officers Association regarding enhancement in Benevolent Fund Grant and Pension will be discussed separately.”*

53. Mark-IV and V are also the letters written by the Appellant whereas Mark-VI is the letter dated 12.08.2008 of the Appellant through which it constituted a Committee to resolve the issue of pension raised by the Respondents. Thereafter, from Mark-VII to Mark-X are Minutes of the

Meeting and other letters written by the Appellant. Hence, the issue of laches does not come as these were the correspondence between the Appellant and the Respondents regarding the issue of pension. When the compliance of the commitment by the Appellant was not made to the Respondents, they filed the Writ Petitions in the year 2010 and onward which do not suffer from any legal infirmity in this regard.

54. Even otherwise, we tend to accept this stance put forth by the learned counsel for the Respondents in relying on the judgment of **Managing Director, Sui Southern Gas Company Ltd. v. Ghulam Abbas and others (PLD 2003 Supreme Court 724)**, in which it was held that the only limitation on the powers of the Service Tribunal is that it should satisfy the test of reasonableness, and if an employee of the company had filed a departmental appeal or representation, and if some delay had been caused due to waiting the result of representation the same period was liable to be condoned. It was also held that decision of the cases on merits always to be encouraged instead of non-suiting the litigants for technical reasons including on limitation. Further, it has been decided that where the cause of grievance was continual and of financial nature, the limitation could not be applied.

55. It was also held in the case of **Amjad Hussain v. Secretary, Finance Division, Ministry of Finance, Islamabad and 2 others (1998 SCMR 1442)** that the Respondents should not raise such technical objection when the question of payment of salary of a civil servant is involved. The salary which a civil servant is entitled to cannot be denied on any technical ground. On the other

hand, it is the duty of the Government to pay the salary as per rules. Since the status of the appellant remained as that of a civil servant in view of the above judgments rendered by this Court, he was entitled to invoke Fundamental Rule 22(A)(i) for protection of his salary which he was drawing in his parent department.

In the case of **Muhammad Azram v. National Institute of Health and others**, (2015 PLC (C.S.) 537 [Islamabad]), it was held that Constitutional jurisdiction of High Court was discretionary and same would rest on the foundation of equity. Law of limitation was not attracted and no time was prescribed for invoking the extraordinary jurisdiction of High Court. Jurisdiction under Art.199 of the Constitution was subject to the bar known as laches. High Court had to decide whether discretionary relief should be granted or refused keeping in view various facts of the case when there was a delay. Laches would not be a bar in granting the relief when there was a continuous wrong. Similarly, in the case of **Nanik Ram and 3 others v. Jurio Mal and 7 others** (2014 Y L R 2508 [Sindh]), it was held at Para 10 which is as follows:

*“As far as question of laches is concerned, as raised by the learned counsel for respondents, I may observe that in matter of filing of constitutional petition, lapse of time or question of laches is to be examined on equitable principle for the reason that exercise of constitutional jurisdiction is always discretionary with the Court and the relief so granted is always in the nature of equitable relief. It is settled principle that in case the High Court comes to a conclusion that equity leans in favour of the petitioner, the Court must exercise discretion in favour of such party. Issue of delay or laches is to be considered with reference to the facts of each case and no hard and fast rule can be laid down in this behalf.”*

Moreover, in the case of **Muhammad Mustafa v. Syed Azfar Ali and 3 others (PLD 2014 Sindh 224)**, it was held as follows:

*Constitutional jurisdiction is discretionary and extraordinary which has not been restricted by time factor. Issue of limitation is not attracted in matters involved in constitutional jurisdiction, however question of laches has to be examined but it does not deny grant of right or remedy unless grant of relief in addition to being delayed must also perpetuate injustice to another party.”*

56. Even otherwise, the rule of laches has been evolved by courts and has to be weighed in each case. It is a discretion vesting in the superior courts and has to be construed accordingly. The decisive factor is whether the person invoking the constitutional jurisdiction of this court has been utterly indolent in agitating his rights and has slept over them. Yet if he has been raising his voice in any manner and at any forum, he cannot be shut out on the plea of laches. The question as to condonation of delay being in the discretion of the Court, the findings cannot be set aside on technical grounds alone. This court would, therefore, refrain from disturbing the findings of the single Judge in Chambers. Even otherwise, the question was not raised before the learned Single Judge and hence, cannot be raised at this appellate forum.

57. Learned counsel for the Respondents Mr. Salman Akram Raja, Advocate shown his agreement with the conclusion of the decision of the learned Single Judge in Chamber but not with the reasoning because it did not discuss the issue in detail.

58. In view of the above discussion, we are of the opinion that the impugned judgment by the learned Single Judge in Chamber has been passed in consonance with the spirit of law and does not suffer from any legal infirmity, as such the same is hereby upheld. Consequently, the instant Intra Court Appeal as well as the abovementioned connected Appeals are hereby dismissed.

(SHAHID KARIM)  
JUDGE

(JAWAD HASSAN)  
JUDGE

*Announced in open Court on the 16<sup>th</sup> day of January, 2017.*

APPROVED FOR REPORTING

JUDGE

JUDGE