JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 2948 of 2019

MST. FARIDA BEGUM
Vs
LEARNED FULL BENCH MEMBERS, NATIONAL INDUSTRIAL RELATIONS COMMISSION, ISLAMABAD, ETC.

Petitioner by	**:**	**Chaudhry Bilal Ahmed, Advocate.**
Respondents by	**:**	**Mr. Ali Nawaz Kharal, Advocate for Respondents No.2 to 4.** **Mr. Nauman Ahmed, Manager Legal PTCL.**
Date of hearing	**:**	**05.05.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**, Mst. Farida Begum **("Petitioner")** has assailed the Order dated 23.07.2019 **("Impugned Order")** passed by the learned Full Bench, NIRC, Islamabad.

2. Brief facts of the case, as per the contents of the petition, are that the Petitioner was initially appointed as a Telephone Operator in the PTCL Department on 05.09.1988 as a regular employee. As per the service book, the Petitioner was granted annual increments from 05.09.1988. Thereafter, the Petitioner was served a letter under the Voluntary Separation Scheme **("VSS")**, wherein the length of service of the Petitioner was shown as 17 years instead of 19 years and 7 months actually served by the Petitioner with the Respondent department. The Petitioner, after availing departmental remedies, approached the Punjab Labor Tribunal by way of Petition No.71/2010, which was accepted, and the Respondents were directed to calculate the actual length of service of the Petitioner and to pay the pensionary benefits. The Respondents did not comply with the directions of the Labor Court, which constrained the Petitioner to file Contempt of Court proceedings against the Respondents. The Respondents approached the Honorable Labor Appellate Tribunal by way of Appeal No.RI-755/2011, which was dismissed. The Respondents partially implemented the order of the Honorable Labor Court and, vide letter dated 03.06.2011, partially addressed the grievance of the Petitioner. Along with the Letter

dated 03.06.2011, the Respondents also issued Pay Order No.AO682969 amounting to Rs.120,745/-. The Respondents then approached the Lahore High Court, Rawalpindi Bench, through Writ Petition No.32/2012 against the order of the Punjab Labour Appellate Tribunal. The said writ petition was accepted in terms that "the order passed by the Punjab Labor Court as well as order passed by Punjab Labour Appellate Tribunal are set aside; however, respondent employees may approach the appropriate forum for redressal of their grievance strictly in accordance with law." Thereafter, the Petitioner filed a petition before the National Industrial Relations Commission, which was contested by the Respondents by filing a written statement. The learned Single Member, NIRC, after recording evidence produced by both parties and after hearing arguments, accepted the petition filed by the Petitioner, vide order dated 10.07.2017. Thereafter, Respondent/PTCL preferred an appeal before the learned Full Bench of NIRC against the order dated 10.07.2017 passed by the learned Single Member, NIRC. The learned Full Bench, NIRC, after hearing arguments of the parties, vide Impugned Order, accepted the appeal and set aside the Order dated 10.07.2017 of the learned Single Member, NIRC. Being aggrieved by the Impugned Order, the Petitioner has filed the instant writ petition.

3. Learned counsel for the Petitioner argued that the Impugned Order is merely based on a technical knockout, i.e., on the point of limitation; that there are a plethora of judgments of the apex Courts wherein, time and again, it has been held that no limitation runs against matters pertaining to pay or pension; that in the instant case, the Petitioner is claiming pension which has been pending since 2008, and the Respondents had partially redressed the grievance of the Petitioner by making payment of the benefits for the period that was not calculated toward the length of service of the Petitioner; that the Petitioner joined the Respondent department on 05.09.1988 and opted for the VSS offer of the Respondents, after which she was relieved on 10.03.2008. The exact calculation of the Petitioner's service is 19 years and 06 months; that one of the clauses of the VSS Scheme states that if the length of service of any employee is six months or more, the same shall be calculated as a complete year; that a number of colleagues of the Petitioner have been extended the pensionary benefits under the same policy by calculating the six months as a whole year, but the same benefit is being denied/delayed to the Petitioner, which is a glaring discrimination against the Petitioner; that even otherwise, in the present case, the requisite length of service was calculated, and the benefits were extended to the

Petitioner and the pension book was also prepared, but the due pension has never been released to date; that calculation of length of service as per the terms and conditions of the VSS and payment of pension is not a discretionary or unilateral action on the part of the Respondents, but a right due to the Petitioner upon fulfillment of criteria which she satisfies in all respects; that the departmental authorities are bound to exercise discretion in a fair and just manner while dealing with such cases, which have great social and financial impact, and should not be led by personal whims and wishful thinking. Lastly, the learned counsel prayed that the Impugned Order of the learned Full Bench, NIRC, may kindly be set aside and the Respondents may be directed to pay the pensionary benefits to the Petitioner without any further delay.

4. Learned counsel for Respondents No. 2 to 4 argued that the learned Full Bench, NIRC, has rightly passed the Impugned Order which needs no interference by this Court; that the Impugned Order is well-reasoned and has been passed keeping in view the evidence available on the record; that there is no illegality or irregularity in the Impugned Order. Finally, it is prayed that the instant Writ Petition may kindly be dismissed.

5. I have heard the learned counsel for the parties and perused the available record with their able assistance.

6. Perusal of the record shows that the Petitioner had joined the Respondent/PTCL on 05.09.1988, and was admittedly released from service under the VSS on 10.03.2008. The sole purpose of agitating the matter was to get pensionary benefits under the VSS package. Furthermore, the Petitioner prayed to obtain the VSS amount after correct calculation of her dues from the date of her joining. It is a settled principle of law that VSS, once entered into by the parties, is a binding contract regulated under the Contract Act, 1872. Reliance in this regard is placed on a judgment titled *"Sajjad Rabbani Versus Pakistan Telecommunication Corporation Limited and others"* **(2023 P L C (C.S.) 953)**, wherein the Lahore High Court observed as under:-

> *"The Petitioner, after reading and understanding the terms and conditions, has consciously opted "VSS" which, under the plethora of judgments, is a binding contract regulated under the Contract Act, 1872 and there is nothing to prevent him from entering into a*

> *contract in bargain with his post-retirement or pensionary benefits which he could have availed, for any prompt gain. The record available is silent about any compulsion by the Respondents to sign the "VSS" rather it is admitted position that the Petitioner himself opted it. The Hon'ble Supreme Court of Pakistan has already dilated upon the said issue in the case of "State Bank of Pakistan v. Imtiaz Ali Khan" (2012 SCMR 280) and has observed that "Voluntary Separation Scheme was voluntary and was not imposed upon employees and no one was compelled or was under duress, pressure or coercion to opt for the same and in such like cases the employee who opts for the Scheme is bound by it and could not claim the benefits to which he is not entitled".*

The Petitioner had duly opted for the VSS on 15-11-2007, wherein she had received all the benefits, such as severance pay, separation bonus, medical payouts, leave encashment, housing allowance, etc., before retiring on 10.03.2008. It is pertinent to mention here that the Petitioner was forwarded a Circular dated 15-11-2007, wherein the Respondent/PTCL had specifically mentioned that *"Your decision either to participate or not to participate is voluntary and at your own will"*. Being aware of all the terms and conditions of the VSS, the Petitioner willfully and knowingly opted for the Scheme, therefore, the Petitioner cannot be allowed to take a somersault on her earlier decision. The august Supreme Court of Pakistan in "*Muhammad Rafiullah and others v. Zarai Taraqiati Bank Limited (ZTBL) through President, Islamabad and another*" **(2018 SCMR 598)** has held as under:

> *"where an employee voluntarily accepted and received benefits under some arrangement with the employer out of his own free will then he could not turn around and seek benefits that were ordinarily applicable to other employees."*

7. Furthermore, in *Sajid Rabbani's case (supra)*, the Lahore High Court further held that: -

> *"Importantly, the Petitioner himself opted for the "VSS" without any coercion or duress and accepted the terms and conditions mentioned therein. Even for the sake of arguments, if the stance taken by the Petitioner is admitted as correct that his acceptance of the "VSS" was conditional as he specifically mentioned in option form about pension benefits and separation bonus even then before the signing of the "VSS", he was advised vide letter dated 15.11.2007 to understand the terms and conditions incorporated in the "VSS" and in case of any inconvenience to discuss with family, friends, colleagues before making any decision and additionally, VSS Support Centre were established by the Respondents for*

> *assistance but the Petitioner, having and availing full opportunities, opted to the "VSS" and he was fully aware of clause (viii) of the terms and conditions of the "VSS" which makes it abundantly clear that "there can be no conditional acceptance of VSS" meaning thereby the "VSS" was not conditional or at the option of the Petitioner to incorporate his own wishes or will rather it has either to accept or reject by him strictly as per terms and conditions settled by the Respondents in the "VSS". The Petitioner after accepting the terms and conditions of "VSS" opted for it and now cannot be resiled therefrom at this belated stage. So, in view of the law laid down in aforesaid judgment, the Petitioner, who himself opted for the "VSS", cannot deviate from the terms and condition mentioned therein."*

8. The next contention raised by the Petitioner was related to the exact calculation of service rendered by the Petitioner in PTCL Company, i.e., from 05.09.1988. According to the Petitioner, the commutation from 05.09.1988 will make the time duration 19 years and 06 months. However, the date of joining of the Petitioner, as per the VSS, is written as 19.05.1990, which makes the time duration 17 years. As already observed above, the Petitioner knowingly opted for the VSS, wherein the date of joining was duly mentioned. As per the terms and conditions of the VSS, the eligibility criteria for availing the Pension Benefit was prescribed as "minimum of 20 qualifying years of service", whereas the Petitioner had only 17 years of service at her credit as on 15.11.2007, which the Petitioner had also accepted by opting the VSS. Furthermore, after availing all the benefits such as Severance Pay, Separation Bonus, Medical Payouts, Leave Encashment, etc., the Petitioner cannot resile therefrom at this belated stage. Reliance is placed upon judgments of the august Supreme Court, passed in *Civil Petitions No. 68-K, 116-K to 130-K, 149-K to 153-K, 157-K to 184-K* and *1101 to 1110 of 2020*, wherein it is held as under: -

> *"We have heard the learned counsel for the parties at length and find no illegality in the impugned judgment.* ***Essentially, the Petitioners voluntarily, of their own free-will accepted the terms and conditions of the VSS thereby severing their relationship with PTCL on obtaining a financial package as consideration for this severance****.* ***The Petitioners have been paid their severance pay, separation bonus, medical benefits, leave encashment and housing allowance based on the length of their service, as computed under the VSS****.* ***The terms of the VSS are contractual and the Petitioners are bound by the accepted terms and conditions of the VSS as the Petitioners contractually agreed to avail the financial benefits under the VSS and sever their***

> ***ties with PTCL in the year 2008***. ***Having availed the benefits, the Petitioners could not have subsequently challenged the VSS on the ground that they wish to avail their pensionary benefits. Furthermore, the grievance that they are entitled to their statutory pensionary benefits or that their training period should be calculated as part of their length of service are all afterthoughts. At the time of agreeing to the terms of the VSS, they were aware that they would opt out of statutory benefits and that training period is not calculated in the length of service. In fact, the objective of taking the VSS was that they will no longer be eligible for statutory benefits, pensionary or otherwise***." *(Emphasis added)*

The apex Court in its latest judgement dated 18-03-2019 passed in similar cases of PTCL employees in *Civil Appeal Nos.2506 of 2016 to Civil Appeal No.2551 of 2016* held as under: -

> *"If the appellants genuinely believed that their training period should have been counted towards their length of service, and consequently, they were entitled to pension then they were not entitled to receive the Separation Bonus amount. And, even if we presume that the Separation bonus was paid to them by mistake it was incumbent upon them to have stated this and to have returned/refunded it to the Company before proceedings to claim a pension on the ground that they had served the Company for twenty years or more. Significantly, the appellants at no stage, including before us, have submitted that they were not entitled to receive the Separation Bonus, let alone offering to return it. The appellants actions are destructive of their claim to pension, because if they had twenty years or more of service they should not have received the Separation Bonus."*

9. Moreover, the contention raised by the Respondent/PTCL qua limitation has great force. The Petitioner had received all the benefits upon release on 10.03.2008, however, the grievance petition was filed before the Labor Court on 06.05.2010, after a lapse of two years. Under Section 33 of the Industrial Relation Act, 2012 (hereinafter referred to as the **"IRA, 2012"**) the Petitioner had to send a grievance notice to the employer / PTCL within ninety days of the day on which the cause of such grievance had arisen. For ready reference, the provision has been reproduced as hereunder: -

> ***"33. Redress of individual grievances.—*** *(1) A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent* ***within ninety days of the day on which the cause of such grievance arises***.

> *(2) Where a worker himself brings his grievance to the notice of the employer, the employer shall, within fifteen days of the grievance being brought to his notice, communicate his decision in writing to the worker.*
>
> *(4) If the employer fails to communicate a decision within the period specified in sub-section (2) or, as the case may be sub-section (3), or if the worker is dissatisfied with such decision, the worker or the shop steward may take the matter to his collective bargaining agent or to the Commission or, as the case may be, the collective bargaining agent may take the matter to the Commission, and where the matter is taken to the Commission, it shall give a decision within seven days from the date of the matter being brought before it as if such matter were an industrial dispute:*
>
> ***Provided that a worker who desires to so take the matter to the Commission shall do so within a period of sixty days from the date of the communication of the employer*** *or, as the case may be, from the expiry of the period mentioned in sub-section (2), or sub-section (3), as the case may be."*

It is pertinent to mention here that the Petitioner had failed to do the needful under Section 33 of the IRA, 2012. In terms of the law, a workman must submit a written grievance to the employer within 90 days of the cause of the grievance. If the employer fails to respond within 15 days, or the response is unsatisfactory, the matter may then be brought before the Commission. As per the proviso to sub-section (4) of Section 33, such a grievance petition must be filed within 60 days from the expiry of the aforementioned periods. In the instant case, the Petitioner had opted for the VSS in 2008, but the jurisdiction of Respondent No. 2 was invoked only in 2010. There is no evidence attached to the instant Petition to show that any grievance notice was served on the Respondent/PTCL. In this regard, reliance is placed upon *"Pakistan Telecommunication Company Limited Versus Mohammad Dilpazeer Abbasi and others"* **(2016 P L C 367),** wherein the Court has held that: -

> *"In the instant case the private respondents opted for Voluntary Separation Scheme in January, 2008 whereas the jurisdiction of respondent No.2 was invoked in January, 2012. Moreover, there is nothing on record to establish that the ex-employees served a grievance notice on the petitioner company and reply thereto was communicated to them. Even otherwise, the grievance petitions have been filed much after the cause having arisen to them. Under proviso to subsection (4) the grievance petition could be filed only within 6 months of communication of the decision by the employer or of lapse of period of*

> *15 days within which the decision was to be passed by the petitioner, therefore, the petition is patently barred by limitation. Even otherwise the procedure prescribed under section 33 ibid has not been followed as no grievance notice was served….It has been vehemently argued by the learned counsel for the respondents that since the petition was filed for enforcement of the pensionary benefits which is recurring cause of action, therefore, limitation period did not apply and in support of the referred contention reliance was placed on case titled Chief Executive Progressive Paper Limited/The Chairman National Press Trust, Islamabad v. Sh. Abdul Majeed and another (2005 PLC (C.S.) 1439). The case law relied upon by the respondents is not relevant under the facts and circumstances of the case inasmuch as cause of grievance, if any, accrued to the private respondents on execution of Voluntary Separation Scheme and a grievance notice had to be served within a period of 3 months therefrom and on expiry of 15 days from service of notice the petition could be filed within 6 months or if the decision was rendered within 6 months of the same. In the instant case neither grievance notice was served nor the petition was filed within the prescribed time period, therefore, the same was filed without fulfilling the requisite requirements and also was barred by limitation."*

Similarly, the august Supreme Court of Pakistan in reported judgment *"Wali ur Rehman versus State Life Insurance Corporation"* (**2006 SCMR 1079)** has held as under: -

> *"In addition to it, it is also to be borne in mind that after having served their connection with the respondent-Corporation, the petitioners legitimately cannot claim monitory benefits which respondent-Corporation is extended to its employees from time to time, depending upon the changed circumstances, by the afflux of time and if the proposition put forward by the petitioners is accepted, then there would be no end to litigation. Therefore, we are of the opinion that petitioners are stopped by their conduct to claim the benefit of revised pay scales in view of the binding undertaking, which they have furnished at the time of accepting extra benefits on their premature retirement. Thus, for the foregoing reasons, we see no merit in these petitions, as such same are dismissed and leave declined."*

10. In view of the foregoing discussion, this Court is of the considered opinion that the Impugned Order is in consonance with the law and established legal principles and hence, warrants no interference. The main grievance petition is hopelessly barred by time, and the Petitioner is estopped by her own words and conduct. As observed by the superior Courts, employees of PTCL who voluntarily accepted benefits under the VSS are not entitled to challenge the same. The deduction of the training period from the total length of service was accepted by the

Petitioner without objection, and any subsequent challenge, particularly after opting for the VSS, appears to be an afterthought. The Petitioner cannot now resile from her earlier position to claim additional benefits, which is legally untenable. Accordingly, the instant Petition is **dismissed** with no order as to costs.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of May 2025.

JUDGE

Sajid/--