JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. 3355 of 2019

Azhar Mehmood Ahmed Qureshi
Versus

Zarai Taraqiati Bank Ltd through its Presidnet, etc.

Date of Hearing :-	20.05.2022
Petitioner by :	Zaheer ud Din Babar Advocate
Respondents by:	Syed Asad Abbasi Naqvi Advocate with Muhammad Younas SVP, ZTBL

ARBAB MUHAMMAD TAHIR, J. Through the instant writ petition, petitioner prays for a direction to the respondents-Zarai Taraqiati Bank Ltd. (‘**respondent-bank’**) to disburse pensionary benefits together with monthly pension, admissible to him since May, 2017.

2. Precisely, relevant facts are that petitioner joined the respondent-bank on 18.09.1984 and after rendering 33 years’ service, stood retired on 18.05.2017 as Vice President. According to the petitioner, his pension papers had been compiled well in time, however, due to deliberate non-submission of the No Demand Certificate (**N.D.C**) by the respondents 4 & 5, he has been deprived of his legitimate right as under the rules, NDC had to be issued at least one month prior to the date of retirement while in his case, the same was issued after more than two years but despite that inordinate delay, respondent No.3 in league with respondents 4 & 5 have not yet acted upon the NDC in terms of the Rules of Business of the respondent-Bank. It is further averred that the retention of pensionary emoluments is based upon wrong assumption of facts as the respondent-bank has not sustained any monitory loss at the hands of the petitioner while the audit paras, being made basis to hold the pensionary benefits, are with respect to procedural lapses/mistakes carried out by the Branch. Further maintained that the impugned action is also violative of standing

instructions of the respondent No.2 contained in Circular No. HRD/3/2018, dated 08.01.2018.

3. It is further maintained that petitioner is running from pillar to post since **18.05.2017** for the release of his pensionary benefits for no fault on his part even in absence of any inquiry or investigation which necessitated this petition in terms of Article 199 of the Constitution.

4. On the other hand, The learned counsel representing the petitioner has placed reliance upon the case of "*Haji Muhammad Ismail Memon Advocate Complaint" (**PLD 2007 SC 35**), "Secretary, Government of Punjab, Finance Department and 269 others v. M. Ismail Tayer and 269 others" **(2015 PLC (CS) 269**), "Mrs. Riffat Sattar v Government of Punjab through Secretary and 6 others" **(2016 PLC (CS) 472)*** and "*Mst. ShahnazBano v Chairman WAPDA and 2 others"***(2017 PLC(CS) 643**.

5. The response of the respondent-bank is to the effect that the petitioner on attaining the age of superannuation stood retired on 18.05.2017 under SSR-1961; that as per instructions and procedure in-vogue, NDC from all the concerned departments/offices where the petitioner remained posted were requisitioned that includes Zonal Officer Muzaffarabad; that Special Audit of Muzaffarabad Branch for the period 01.01.2013 to 31.12.2015 had been conducted wherein 47 observations of different categories i.e. fraudulent transactions through debit cash vouchers, fraudulent closure of accounts, fake recovery through deposit account etc, were found; that the Zonal Office Muzaffarabad had submitted report through letter dated 06.05.2019 by stating that NDC of the petitioner cannot be issued until and unless special audit paras are settled by the competent authority; that on consideration of the report so received with the approval of the competent authority, the Pension Payment Order (**PPO**) of the petitioner was issued on 05.07.2019 to the Chief Manager, HO Modal Branch, Islamabad through which bank liability worth Rs.19,61,305/- had to be recovered besides personal agricultural loan to the tune of Rs.681,000/- had been retained;

that after the issuance of PPO, the Zonal Chief, Muzaffarabad requested the Head Office to stop the payment of the retiring benefits to the petitioner till the settlement of Audit Paras; that the Zonal Chief further reported that 72 Special Audit Paras were pending and the ex-employee (petitioner) is involved in almost all the paras; that the Audit Zone also advised to stop the payment of retiring benefits till the clearance/settlement of all Audit Paras outstanding against the petitioner.

6. It is significant to note that pursuant to observations contained in order dated 08.04.2022, the respondent-bank submitted Special Report by contending therein that the impugned action is in accordance with Regulations 35 of the ADBP Employees Pension and Gratuity Regulations, 1981 where under petitioner had undertaken to refund/adjustment of the bank dues coming to the notice within one year after the issuance of the PPO; that the respective Audit Zone had retained the said amount in the light of instructions contained in Circular dated 08.01.2018 and on the basis of serious nature Audit Paras where the bank sustained loss that the respective Audit Zone had submitted the latest position of serious nature outstanding Audit Paras with involved amount against the petitioner as pointed out by Special Audit Reports for the period 01.01.2013 to 30.09.2017.

7. Heard, record examined.

8. It is by now well settled that the pension is not a bounty or an ex-gratia payment but a right acquired in consideration of past services. It is a vested right and a legitimate expectation of retiring employee, the same being a right conferred by law, could not be arbitrarily abridged or reduced except in accordance with law. The Hon'ble apex Court in the case of ***Haji Muhammad Ismail Memon***(supra) while deprecating the hardships being faced by the retired employee in receiving their pensionary benefits, had issued directions/guidelines to all Government Departments not to cause unnecessary hurdle or delay in finalizing the payment of pensionary/retirement benefits in future otherwise any dereliction of these instructions shall amount to criminal negligence.

9. In the present case, admittedly petitioner stood retired from the service of respondent-Bank in May 2017 and for the last five years waiting forpayment of pensionary benefits which is a vested righton account of some Audit Paras, allegedly pertains to the period of his service rendered in Muzaffarabad.

10. The instructions contained in Circular dated 08.01.2018 of the respondent-bank also emphasizes upon timely finalization of pension cases of its employees and the gracious directions of the Hon'ble Apex Court have duly been depicted in paragraph No.2 of the said Circular. Paragraph 5 of the Circular provides that in order to determine and prepare proper NDCs in respect of retiring/deceased employees, guidelines were prepared with the approval of the competent authority for adherence that includes (A) *amounts/liability recommended to be recovered*, (B)*amount against the Audit Paras that may be retained* (C) *amount against the Audit Paras may not be retained*.

11. After having examined the case from every angle, it appears that petitioner is waiting for his vested right of pensionary benefits for the last five years. The grounds being pressed including the one i.e. *case being within the ambit of Paragraph 5(C) of Instructions/Circular dated 08.01.2018* warrant consideration by the respondent-department. The withholding of pension of an employee for a period of more than five years for clearance of Audit Paras/report relating to his tenure of posting appears to be unfair unless the personal involvement of the employee is established. It is also noted with great concern that Audit Paras pertaining to the year 2013-2017, allegedly involving huge public exchequer, are still unsettled which, *prima facie*, reflects irresponsible attitude of the officials in performance of their duties that not only attracts disciplinary but criminal action as well against the responsible/s.

12. In view of above, it would be just to transmit the matter to the respondent-bank to decide the same by treating it as representation on the grounds highlighted above after giving due hearing to the petitioner with a right to adduce any other ground, if so desires, through a speaking order, within a period of one month

of the receipt of this judgment under intimation to this Court through the Registrar for perusal in Chambers as the matter is with respect to provision of pensionary benefits and cannot be kept in lurch for indefinite period. Copy of this Judgment be immediately transmitted to the respondents for information and compliance.

13. The instant writ petition is accordingly **disposed of** in above terms with no orders as to costs.

ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____.05.2022.

JUDGE

A.R.Ansari