JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 4642 OF 2022

MUHAMMAD ARSHAD

Vs

ZARAI TARAQIATI BANK LIMITED (ZTBL)
THROUGH ITS PRESIDENT, ETC

Petitioner by	**:**	**Rana Abid Nazir Khan, Advocate.**
Respondents by	**:**	**Mian Imran Masood, Advocate.** (For Respondents No. 1 and 2) **Mr. Muhammad Younas, AVP, ZTBL.**
Date of hearing	**:**	**30.04.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution"),** Muhammad Arshad **("Petitioner")** has challenged the Office Memorandum No.HROD/ESM/20(01)/2022/10817 dated 28.09.2022 **("Impugned Memorandum")** issued by the Respondents.

2. Brief facts of the case, as per the contents of the petition, are that the Petitioner, who initially joined the erstwhile Agricultural Development Bank of Pakistan, was transferred on 14.12.2002 to the Respondent Bank on the same terms and conditions and subject to some rules and regulations as provided in Section 6 of the ADBP (Re-organization and Conversion) Ordinance, 2002. The Respondent Bank introduced the Contributory Provident Fund and Gratuity Scheme on 31.12.2005 under the newly framed Staff Service Regulations, 2005 **("SR-2005")**. Under this scheme, the Petitioner was paid 100% commutation of his pension for the period of service in ADBP by placing his services under SR-2005, whereunder proceeding on 6 months LPR is mandatory. That SR-2005 was held inconsistent with the provision of Section 6 of the Ordinance, 2002 by the Peshawar High Court in its unreported judgment in writ petition No. 327/2008 decided on 28.10.2010. Appeal against the said judgment was dismissed by the Supreme Court vide its judgment dated 15.02.2013 reported as 2013 SCMR 642. In the light of the above judgment of

the august Supreme Court, the Respondent Bank reverted all transferred employees who opted SR-2005 in 2006 & 2008 and were on the payroll of the Bank as on 11.12.2014, back to SSR-1961 across the board vide Circular No. HRD/45/2014 dated 11.12.2014. However, those employees who wished to continue under SR-2005 for all intent and purpose were asked to execute an undertaking on non-judicial stamp paper as per annexed format latest by 26.12.2014. The Petitioner who opted for SR-2005 in 2008 accordingly executed the undertaking as required under the above Circular dated 11.12.2014. Vide O.M dated 30.12.2016, the services of one of the transferred employees who had executed the above-referred undertaking under Circular dated 11.12.2014, was converted by the Respondents from SR-2005 to SSR-1961 on fulfillment of the terms and conditions of Clause 4. The Petitioner requested the Respondents on 11.01.2018 to convert his services from SR-2005 to SSR-1961 in the light of Para-4 of the undertaking under Circular No. HRD/45/2014 dated 11.12.2014 but the Respondents relieved the Petitioner on 09.02.2018 for mandatory Leave Preparatory to Retirement vide their orders referred above, without communicating any decision on his above request for conversion to SSR-1961. Being aggrieved from the orders No.HROD(C&RB)/8(727)18/135 dated 26.01.2018 read with O.M. HOAD/1(2)/2018/564 dated 09.02.2018, the Petitioner filed writ petition No.865/2022. The said writ petition was clubbed with another writ petition No. 3648/2017, both mentioned petitions were decided with the common judgment dated 07.03.2022, whereby this Court was pleased to dismiss the writ petition No. 3648/2017, whereas the writ petition 865/2018 filed by the present Petitioner was disposed of with the following observation: -

> *"Perhaps there is no impediment for the Petitioner, in WP No. 865/2018, to go back in regime of SSR-1961 as was argued by learned counsel for the parties, however, in case the grievance of the Petitioner persists, he may agitate the matter again. Writ petition No. 865/2018 accordingly disposed of".*

3. After passing the judgment referred above, the Petitioner approached the Respondent on 18.04.2022 with the written "request for conversion from SR-2005 to SSR-1961 in terms of the circular dated 11.12.2014". The said written request of the Petitioner was replied to by the Respondent through Office Memorandum No. HROD/ESM/20(01)/2022/10817 dated 28.09.2022 (hereinafter referred to as the impugned O.M), whereby the Petitioner's request was declined, thereafter another

written application dated 12-10-2022 was addressed to the Respondent No. I by the Petitioner by praying therein that the order dated 07.03.2022 passed by this Court in connection with the W.P. No. 865/2018 may kindly be implemented in its true letter and spirit, but after the lapse of more than two months, the Respondent did not pay any heed to the matter, hence the instant Petition.

4. Learned counsel for the Petitioner submits that there is no other alternate efficacious remedy available to the Petitioner. That the grievance of the Petitioner regarding conversion of his status of his employment from SR-2005 to SSR-1961 was initially agitated by the Petitioner before this court through earlier writ petition No. 865/2018, this court was pleased to admit the referred petition on 07-03-2018 and summoned the para wise comments from the Respondents, prior to filling the same, the respondent issued an office memorandum No. HROD/ESM/18(54590)/2018/4542 dated 10-04-2018, whereby the request for conversion of the status from SR-2005 to SSR-1961 was accepted and few codal formalities were advised to fulfill, but unfortunately, another office memorandum No. HROD/ESM/18(54590)/2018/4793 dated 13-04-2018 was issued by the respondent to the Petitioner just after two days of the issuance of the earlier OM, and through the O.M dated 13-04-2018 the implementation of the earlier OM dated 10-04-2018 was held in abeyance till further orders passed by this court. In this way it is safely concluded that the status of the Petitioner employment has already been converted and same fact is reflecting in the para No. 7 of the written comments filed by the respondent in W.P No. 865/2018. That in furtherance of O.M. dated 10-04-2018 another O.M No. HROD/C&RB/(PF)2(54590)/2018 dated 12-04-2018 was issued whereby the Petitioner's pay was re-fixed (ab-initio) on account of conversion of service regulation from SR-2005 to SSR-1961. That the lame excuses taken by the respondent in the impugned OM is not justified as the same objection regarding retirement of the Petitioner was not raised by the respondent during the adjudication of earlier W.P No. 865/2018, furthermore the order dated 07-03-2022 has attained finality as the same was not challenged by the Respondents before appellate forum. That the Petitioner was ready in past and is also ready to comply with the advice set forth in O.M dated 10-04-2018 (deposit the difference of salary with effect from 11-12-2014 to 28-03-2018 along with 100% commutation availed by him). It is settled principle of law that no one should be suffered due to the acts of others including the act of the courts. In the preposition in hand the status of the employment of the

Petitioner was already converted vide O.M dated 10-04-2018 but due to the pendency of the Writ Petition No. 3648/2017 the further process was held in abeyance till the final decision of the court but after the decision on 07-03-2022 and in the light of clear observation made by this court in respect of the Petitioner case, the refusal by the respondent to proceed in the matter further is totally illegal, unlawful, unprecedented, arbitrary and alien to the settled norms and principle of law, hence liable to be struck down. That besides the legal questions involved in the matter, the jurisdiction of this Hon'ble court is also being sought on humanitarian grounds too because the Petitioner's wife who is a person with disability wants more care and caution by the state and the sole purpose of the conversion Petitioner's employment status is to enable the disable wife to live her life with ease with the pension benefits of the Petitioner even after the life of the Petitioner, hence the petition merits to be allowed on this score too. That the refusal by the respondent to proceed further in the Petitioner's matter is also tantamount to a willful and deliberate defiance to the court order dated 07-03-2022, for which the Respondents are also liable to proceed in accordance with the provision of Article 204 of the Constitution of Islamic republic of Pakistan read with all enabling provisions of the contempt of court Act, if this Hon'ble court may deem it appropriate. Lastly, learned counsel prayed that by accepting the instant Petition, the impugned office memorandum No. HROD/ESM/20(01)/2022/10817 dated 28-09-2022 may very humbly be struck down on the grounds mentioned above and consequentially, the respondent may very graciously be directed to finalize the process of the conversion of the Petitioner's employment status from SR-2005 to SSR-1961 in the best interest of justice

5. On the other hand, the learned counsel for the Respondents argued that the Petitioner has no *locus standi* to file the instant Petition, hence, the same is liable to be dismissed. That the matter pertains to the non-statutory rules regarding the service of an employee of the ZTBL Company; hence, this Court lacks jurisdiction to entertain the instant Petition, and the same is liable to be dismissed. That the Petitioner was the ex-employee of the Agricultural Development Bank of Pakistan. The ADBP was converted into a Public Limited Company by the promulgation of Ordinance No. LX of 2002. The Petitioner's services were transferred to the ZTBL Company and he became the employee of the ZTBL Company after the promulgation of Ordinance No. LX of 2002 on the same terms and conditions mentioned in ADB (Staff) Service Regulations, 1961 under Clause 6 of the

Ordinance, 2002. In the year 2005, the Board of Directors of the ZTBL Company made new ZTBL Staff Regulations 2005 to define the terms and conditions of the employees of the Bank. The Petitioner voluntarily opted to transfer his service to CP Fund and Gratuity Scheme under Rule 5 of the said ZTBL Staff Regulations 2005 on 22.04.2008 and received 100% of commutation of pension and all other benefits against his previous service rendered under the former Regulations 1961. It is pertinent to mention here that the Petitioner again submitted an undertaking/option on 26.12.2014 in pursuance of Circular No. HRD/45/2014 dated 11-12-2014, thereby reaffirming his earlier consent to be governed under ZTBL Staff Regulations, 2005. The Petitioner categorically undertook that he has received the full and final settlement amount from the ZTBL Company as on the date of his conversion option and he will not lodge further claim thereto on any ground. The Petitioner further undertook that he will refund all additional benefits amount drawn by him from the date of circular to date including the amount of 100% commutation and/or any other financial benefits with up-to-date markup before seeking enforcement of any of the terms & conditions of service as Staff Service Regulations, 1961. It is worth mentioning here that the Petitioner himself opted and submitted undertakings to continue his services under the ZTBL Staff Regulations, 2005 and availed all kind of benefits under the ZTBL Staff Regulations, 2005, hence, the instant Petition is liable to be dismissed. That the Petitioner attained the age of superannuation on 10.08.2018, and the ZTBL notified the Petitioner through Circular No. HRD/11/2017 dated 03.02.2017 in this respect, hence, the instant Petition merits dismissal. That after receiving the superannuation Notice dated 03-02-2017, the Petitioner filed an application for conversion from ZTBL Staff Regulations, 2005 to ZTBL (Staff) Service Regulations, 1961 on 11.01.2018 and an application on 08.02.2018, irrespective of the fact, that the Petitioner has already given the above-said undertakings. It is pertinent to mention here that at that time, the Petitioner was attaining the age of superannuation on 10.08.2018 and in this respect, the Respondent Bank sent a Letter No. HROD(C&RB)/8(727)/18/135 dated 26.01.2018 to the Petitioner to avail Mandatory Leave Preparatory to Retirement (LPR) with effect from 12.02.2018 to 10.08.2018 in terms of Para-D, of employees Leave Policy under Staff Regulations, 2005 vide Circular No. HRD/24/2012 dated 28.03.2012. The Petitioner was relieved from service on 09.02.2018, hence, the instant Petition is liable to be dismissed. That the Respondent Bank accepted the request of the Petitioner for conversion of his service regulations from Service

Regulations, 2005 to Staff Service Regulations, 1961 subject to fulfillment of terms & conditions, agreed by him in Clause-6 of undertaking dated 26.12.2014 vide letter dated 10.04.2018. That the Petitioner did not refund back the benefits amount drawn by him from date of circular to date, including the amount of 100% commutation and/or any other financial benefits with up-to-date markup before seeking enforcement of any of the terms & conditions of service as SSR 1961 and even, after issuance of Letter dated 10.04.2018; whereas, the Petitioner filed a Writ Petition No.865/2018 before this Court. The instant Petition is liable to be dismissed as the Petitioner failed to comply with the terms & conditions of his undertaking and Letter dated 10.04.2018. The Petitioner again filed an application to the Respondent Bank for conversion of terms & conditions of his service from Staff Regulations, 2005 to the Staff Service Regulations, 1961 on 18.04.2022, which was declined by the Respondent Bank vide Letter dated 28.09.2022 on the sole ground that the Petitioner was retired from the Bank on 10.08.2018 and is no more in service of the Respondent Bank, hence, the instant Petition merits dismissal. That it is held by the apex Court that since the option exercised by the employees of the ZTBL, was voluntary and pursuant thereto they also received 100% commutation of pension and all other benefits against their previous service rendered under the former Regulations 1961 and started their job afresh under new regulations SR 2005, therefore, they are not entitled for pension or other benefits against their previous service which have already been received by them while opting for the new service regulations. Hence, the instant Petition is liable to be dismissed. That the instant Petition is barred by law. The Petitioner neither has any right nor any ground to file the titled petition against the Respondents. That the instant Petition has been filed against the employees of the ZTBL Company, against whom neither any kind of legal proceedings is maintainable nor any kind of order or decree/judgment could be passed according to the provisions and well-settled principles of law, as the employees of the ZTBL have no legal status; hence, the petition is liable to be dismissed. That the Petitioner is stopped by his words and conduct to file the instant Petition as the Petitioner for the first time exercised his option to accept new service regulations, i.e. SRO 2005 on 22.04.2008. Thereafter, the Petitioner again submitted undertaking/option on 26.12.2014 in pursuance of Circular No. HRD/45/2014 dated 11.12.2014, thereby, reaffirming his earlier consent to be governed under SR-2005, therefore, the instant Petition is liable to be dismissed. That the instant Petition has been filed by the Petitioner just to harass, blackmail the Respondents and to achieve

the ulterior motives just to grab money from the Respondents; hence, the same is liable to be dismissed. That the Petitioner has come to the Court with sullied hands and is not entitled to any discretionary relief from this Court. That the instant Petition is not maintainable in its present form. That the instant Petition is false, frivolous, and vexatious and the Respondents are entitled to Special Cost.

6. I have heard arguments of learned counsel for the parties and perused the record with their able assistance.

7. The Petitioner being the employee of the then Agriculture Development Bank of Pakistan and was transferred in Zarai Tarqiati Bank/respondent No.1 on 14.12.2002 on the same terms and conditions and subject to some rules and regulations as provided in Section 6 of the ADBP (Re-organization and Conversion) Ordinance, 2002. A Contributory Provident Fund and Gratuity Scheme on 31.12.2005 under the newly framed "Staff Service Regulations" 2005 was introduced and under the said scheme, the Petitioner was paid 100% commutation of his pension for the period of service in ADBP by placing his services under SR-2005, whereunder proceeding on 6 months LPR is mandatory.

8. The Petitioner was given option for move over to CP Fund and Gratuity scheme under SR-2005 on 22.04.2008 which he accepted and gave his voluntary consent and in this regard, an Option Form was also executed which was duly signed and confirmed by Abdul Hameed Bhatti, Senior Vice President Zari Tarqiati Bank Limited, Head Office Islamabad, and later on, an undertaking has also been executed by the Petitioner Ch. Muhammad Arshad on a stamp paper dated 26.12.2014 in which he undertook that he has voluntarily and with his own volition requested ZTBL Management to opt to be governed by the provisions of SR-2005 with mandatory LPR and he will not revert to SSR-1961, as he has already taken the benefits of services rendered under SSR-1961. He further undertook that amount of 100% commutation already received by him for his service as on the date of his option (already tendered) is full and final settlement and no further claim thereto will be lodged by him subsequently on any ground.

9. Petitioner applied to the Respondent Bank for conversion of service regulations from SR-2005 to SSR-1961 subject to fulfilments of terms and conditions, which was accepted by the Respondent Bank vide letter No.HROD/ESM/18(54590)/2018/4543 dated 10.04.2018. After three days i.e. on

13.04.2018, the said offer was held in abeyance due to the subject matter got subjudice before this Court in Writ Petition No.865/2018 filed by the present Petitioner and another Writ Petition No.3648 of 2017 filed by Muhammad Iqbal Khattak. Both the writ petitions were decided by this Court on 07.03.2022 in which it is held "*in view of the foregoing, writ petition No.3648/2017 is accordingly dismissed as being without merit. Since the said writ petition stands dismissed perhaps there is no impediment for the Petitioner, in writ petition No.865/2018, to go back in the regime of SSR-1961 as was argued by learned counsel for the parties, however, in case the grievance of Petitioner persists, he may agitate the matter again. Writ petition No.865 of 2018 is accordingly disposed of.*" The Petitioner then moved another application/request for conversion on 18.04.2022, from SR-2005 to SSR-1961 addressed to the Head HR Division ZTBL Head Office, Islamabad. He then again made a similar request through an application to President Zarai Tarqiati Bank Limited on 12.10.2022. The Petitioner then moved the instant Writ Petition for redressal of his grievance.

10. I seek guidance from a ruling of august Supreme Court of Pakistan cited in "*Muhammad Rafiullah and others Vs. Zarai Taraqiati Bank Limited (ZTBL) through President, Islamabad and another*" reported as **(2018 SCMR 598)** in which the it is held in a similar circumstance that once an employee of ZTBL availed the benefits under SR-2005, his services cannot be converted to SSR-1961. The relevant portion of the said judgment is reproduced hereunder: -

> *"6. It is a well settled principle of law that the terms and conditions of service cannot be unilaterally altered by the employer to the disadvantage of the employees. Such protection is also recognized under section 6 of the Agricultural Development Bank of Pakistan (Reorganization and Conversion) Ordinance, 2002 and section 13 of the Banks (Nationalization) Act of 1974. However, where an employee voluntarily accepts and receives benefits under some arrangement with the employer out of his own free will then he cannot turn around and seek benefits that were ordinarily applicable to other employees.*
>
> *7. In the present case the Petitioners in all the connected petitions belong to such categories of ex-employees of respondent No.1 who left their jobs long ago after opting either under the Golden Handshake Scheme of 2002 or under Zarai Taraqiati Bank Limited (Staff Regulations), 2005 and received all benefits including pensionary benefits as provided in the scheme under which they exercised their option. The Petitioners on account of their own voluntary act considered the most beneficial option, which disentitled themselves from claiming pensionary benefits under Agricultural Development Bank Employees Pension and Gratuity Regulations, 1981.*

They can be categorized distinctly from the employees who had not opted either under the Golden Handshake Scheme of 2002 or under Zarai Taraqiati Bank Limited (Staff Regulations), 2005. The plea of discrimination was, therefore, not available to the Petitioners being of distinct class, the Division Bench of the High Court rightly declined them the relief. Judgments of this Court rendered in the cases of National Bank of Pakistan v. Nasim Arif Abbasi (2011 SCMR 446) and State Bank of Pakistan v. Taraqiati Ali Khan (2012 SCMR 280), which have upheld similar kind of classification can be referred with considerable advantage. In paragraph 13 of the National Bank of Pakistan supra case, it is held that "a reasonable classification in terms of the law laid down by this Court in I. A. Sharwani v. Government of Pakistan (1991 SCMR 1041) did exist between the two categories of employees, i.e. those who had exercised the option and those who had not exercised the option. As such, the learned counsel for the Respondents failed to point out discrimination prohibited under Article 25 of the Constitution." Hence, the question of discrimination does not arise."

11. Similarly, in a reported judgment of the Lahore High Court cited in **(2017 PL C(C.S.) Note 89)** titled as "***Ghulam Nazik and 4 others Versus Zarai Taraqiati Bank Limited through President and 2 others***" which is on a similar point that option once exercised within the prescribed period was irrevocable and could not be withdrawn---Employees opted the scheme which was accepted by the Bank---Employees were debarred to withdraw the option even if they withdrew the same before its acceptance.

12. The Respondent Bank vide Circular No.HRD/45/2014 dated 11.12.2014, once again gave option to the employees to make a conscious choice to remain on either side in toto so that issue is settled once for all without any ambiguity and all transferred employees on payroll of the Bank, who opted SR-2005 in 2006 & 2008 stand reverted to SSR-1961 across the board but those who wish to continue under SR-2005 for all intents and purposes, may do so by executing an undertaking on non-judicial stamp paper for value of Rs.100/- as per annexed format latest by 26.12.2014. The undertaking, once submitted, was to be considered final, and the last date for submission had been set as 26.12.2014. The Petitioner filed the undertaking in response to the said Circular on 26.12.2014, which means that his consent and option are voluntary and the said option cannot be reversed in the light of the dictum laid down by the superior courts mentioned *supra*. The Petitioner has voluntarily accepted the option under SR-2005 Scheme and now he cannot go back from his earlier option after availing/receiving the benefits under the said scheme.

13. For the foregoing reasons, the instant Writ Petition being misconceived and devoid of any merits, is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____.

JUDGE

Sajid/--