JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO. 3526 of 2023

Muhammad Safdar Iabal
Versus
Federation of Pakistan and others

PRESENT: **M/s Shafqat Abbas Tarrar, Faisal Nawaz, Hassnain Sarwar Awan, Javeria Warraich, Sajid Sindhu, Shoeba Ismail and Malik Qatada Jamal Advocates for Petitioner**
Usman Rasool Ghuman, learned A.A.G.
Ch. Imtiaz Ahmed, Advocate for Respondent No.2
Muhammad Sohail, Assistant Director (Litigation), NHS&RC.
Mr. Amjad Ali, Deputy District Attorney, ICT.

Date of Hearing: **03.9.2026.**

SHAHRUKH ARJUMAND, J. By way of the instant petition the Petitioner [Muhammad Safdar Iqbal] assails the Order dated 13-11-**2018 ("Impugned Order-I")** passed by the Competent Authority whereby the Petitioner was awarded major penalty of Compulsory Retirement and Order dated 2-7-**2019 ("Impugned Order-II")** passed by the Appellate Authority, whereby the penalty of Compulsory Retirement was upheld.

2. Learned counsel for the petitioner contended that the impugned orders have been passed in utter disregard of the mandatory requirements of law and the principles of natural justice. He submitted that impugned orders have been passed without following the procedure for inquiry stipulated in the National Institute of Health Employees (Service) Regulations, 1989. The petitioner was neither supplied with the statement of allegations, copy of the complaint, nor the alleged answer sheets forming the basis of the allegations, and was consequently denied an effective opportunity to defend himself during the inquiry proceedings. It was further argued that, despite the fact that the complainant and other prosecution witnesses, including the students, had made statements which did not support the allegations in their entirety, the petitioner was not afforded an opportunity to cross-examine the complainant or effectively confront the material brought against him,

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rendering the inquiry proceedings legally defective. He maintained that, in the absence of a lawful finding of guilt and in view of the serious procedural irregularities committed throughout the proceedings, the extreme action taken against the petitioner could not legally be sustained. He further contended that the punishment imposed was wholly disproportionate to the alleged misconduct and that the impugned orders were, in substance, an instrument of victimization rather than a lawful exercise of disciplinary jurisdiction. Learned counsel, therefore, prayed that the impugned orders be set aside and, since the petitioner had already attained the date of his normal superannuation, the respondents be directed to release all consequential retirement and service benefits to which he would have been entitled but for the impugned action.

3. Conversely, learned counsel appearing for the respondents controverted the submissions advanced on behalf of the petitioner and maintained that the disciplinary proceedings had been conducted strictly in accordance with the applicable law and after observing the requisite codal formalities. He submitted that the petitioner was duly confronted with the allegations levelled against him and was afforded adequate and reasonable opportunity to explain his position and defend himself during the course of the proceedings; therefore, the allegations of violation of the principles of natural justice were misconceived. He further contended that the petitioner's grievance regarding non-supply of the complaint, alleged answer sheets and inquiry report was an attempt to create procedural irregularities where none existed and that the petitioner had participated in the proceedings without demonstrating any actual prejudice caused to his defence. He further submitted that the inquiry proceedings could not be invalidated merely because the statements of witnesses were recorded in a particular manner or because the petitioner sought to attach a particular interpretation to the findings recorded by the inquiry committee. According to learned counsel, the competent authority, after considering the entire record and the explanation furnished by the petitioner, had duly applied its independent mind and passed the impugned order in accordance with law; the petitioner's assertion that the charges were not proved was, therefore, a disputed factual matter which could not be re-appreciated by this

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Court in exercise of its constitutional jurisdiction. He further submitted that the petitioner was personally heard by the competent authority and was afforded a fair opportunity to present his defence, while the allegation that the appellate authority had denied him an opportunity of hearing was equally unfounded. He further maintained that the petitioner had approached the competent forum after an inordinate delay and had, in the meantime, pursued his remedy before a wrong forum from 25.03.2019 to 07.09.2023. Such period could not be ignored for purposes of determining the question of laches, particularly when the petitioner had failed to furnish any legally sufficient explanation for the delay in invoking the constitutional jurisdiction of this Court. He, therefore, submitted that the petition is not only devoid of merit but was also barred by laches and involved disputed questions of fact, and consequently prayed for its dismissal with costs.

4. Arguments have been heard at considerable length and the record has been perused with the assistance of learned counsel for the parties. At the outset, it would be appropriate to consider the preliminary objections raised by learned counsel for the respondents that the instant petition is hit by laches and, further, that the controversy involved essentially entails disputed questions of fact, which cannot appropriately be adjudicated by this Court in exercise of its constitutional jurisdiction under Article 199 of the Constitution.

5. At the outset, this court is to examine the preliminary objection raised by learned counsel for the respondents that the instant petition is hit by laches. The objection, though founded upon the passage of time, cannot be considered in isolation from the nature of the impugned action, the circumstances in which the delay occurred, the conduct of the petitioner, and the consequences that may ensue if the impugned order is allowed to remain operative. The doctrine of laches is essentially an equitable principle and is not a rigid rule prescribing an inflexible period within which the constitutional jurisdiction of this Court must necessarily be invoked. The mere lapse of time, by itself, therefore, does not invariably extinguish the jurisdiction vested in this Court under Article 199 of the Constitution. The question whether a petition is liable to be declined on the ground of delay and laches has to be determined having regard to the facts and circumstances of each

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particular case and upon an assessment of whether the petitioner has been guilty of such negligence, inaction or acquiescence as would render the exercise of extraordinary constitutional jurisdiction inequitable. The principle is founded on the consideration that a person invoking the extraordinary jurisdiction of this Court must approach it with due diligence and cannot ordinarily be permitted to sleep over his rights and thereafter seek to unsettle matters which have attained finality or in respect of which valuable rights have accrued to others. At the same time, the doctrine cannot be applied mechanically so as to confer legitimacy upon an order which is otherwise patently unlawful, void, or the product of a procedure fundamentally inconsistent with the requirements of law. The constitutional jurisdiction conferred by Article 199 is discretionary in character and is intended, inter alia, to prevent manifest illegality and to secure lawful exercise of public power. Thus, while delay may constitute a relevant consideration in determining whether such discretionary relief ought to be granted, it is not, by itself, an absolute bar to the examination of a grievance which discloses a patent illegality or a serious failure of lawful authority. The Supreme Court has, in this context, recognized that the lapse of time is to be examined on equitable principles and that delay may warrant condonation where the impugned order is patently illegal or void or where grave injustice would otherwise result. The principle enunciated in *Hafiz Muhammad Sharaf-ud-Din vs. District Judge, Khushab,* 2015 MLD 1081, therefore, underscores that the Court is required to examine not merely the length of the delay but its explanation, the conduct of the parties, the nature of the impugned action and the potential consequences of refusing relief. In Judgment supra, the Hon'ble Court Supreme Court held: -

> **"Art. 199---Constitutional petition---Laches, principle of---Scope---Laches per se was not a bar to the invoking of constitutional jurisdiction---Question of delay in filing of constitutional petition would have to be examined with reference to the facts of each case-Lapse of time had to be examined on equitable principles in case of laches---One, should not be restricted by time factor as the jurisdiction under Article 199 of the Constitution was a discretionary and extraordinary relief---Such jurisdiction was not to be exercised in favour of a party who was guilty of gross negligence and of laches---Delay in- filing constitutional**

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> **petition should be condoned if order impugned was patently illegal or void or grave injustice to any party would be caused by such order."**

6. The fact that a petitioner initially approached a forum which ultimately turns out not to be the appropriate forum cannot, in every case and as an immutable proposition, be equated with deliberate abandonment of his legal rights. Where the record demonstrates that the litigant was actively pursuing a remedy and that his conduct was bona fide, the period spent in such proceedings assumes a different character from a case where the litigant remained inactive and allowed the prescribed period to expire without any explanation. Nevertheless, the mere assertion that a remedy was pursued elsewhere does not, in itself, automatically neutralize the effect of delay. The Court must examine whether the recourse to the other forum was bona fide, whether the petitioner acted with reasonable diligence, whether any third-party or accrued rights have intervened during the interregnum, and whether exclusion of such period would occasion prejudice or injustice to the opposite side. The decision relied upon by the respondents, reported as 2007 SCMR 866, has to be understood in the factual and equitable context in which the principle therein was applied. The refusal to condone the period spent in pursuing a review petition instead of an appeal was materially influenced by the circumstance that valuable rights had accrued in favour of the respondents and that such rights could not, after a considerable lapse of time, be taken away merely on the assertion that the appellants had pursued the remedy of review in good faith when an appeal was otherwise available. The underlying principle, therefore, is not that every period spent before a wrong forum must invariably be counted against a litigant irrespective of the circumstances, but rather that the Court, while exercising discretionary jurisdiction, must balance the explanation for delay against the rights and equities that have intervened in the meantime. Where valuable rights have accrued to the opposite party and reopening the matter would cause corresponding prejudice, the Court may legitimately decline relief notwithstanding the explanation offered for the delay.

7. In the present case, the objection of laches, therefore, cannot be determined merely by calculating the period between the date of the impugned order and the

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institution of the instant petition. It is necessary to examine the petitioner's conduct during the intervening period, the proceedings pursued by him before the other forum, the reasons for which the matter remained pending there, and, most importantly, whether the petitioner can reasonably be said to have abandoned his grievance or acquiesced in the impugned action. Equally relevant is the nature of the challenge brought before this Court. The petitioner does not seek reconsideration of a merely discretionary administrative determination; rather, he questions the legality of the action whereby the drastic consequence of compulsory retirement was visited upon him despite the alleged failure of the disciplinary proceedings to establish the charges levelled against him. The challenge thus raises a question concerning the lawful exercise of disciplinary authority and observance of the procedural safeguards which govern such exercise.

8. It is also material that the petitioner has not approached this Court after a period of complete inaction; rather, as asserted by the respondents themselves, he remained engaged in proceedings before another forum during the intervening period. Moreover, the petitioner has already reached the date of his normal superannuation, and the controversy essentially concerns the legal validity of the action which deprived him of the status and consequential benefits that would otherwise have followed from his continued service until superannuation. If the impugned action is ultimately found to be without lawful foundation, refusal to examine the matter solely on the ground of delay may result in perpetuation of an illegality and denial of consequential rights arising from an order which itself may not have been lawfully made. Conversely, if the challenge were found to be devoid of merit, the objection of delay would retain its ordinary significance. It is, therefore, neither necessary nor appropriate at this stage to determine the question of laches divorced from the substantive legality of the impugned action.

9. The constitutional jurisdiction under Article 199 is undoubtedly discretionary and is not intended to provide a substitute for statutory remedies or to encourage belated challenges to concluded matters. However, discretion is required to be exercised judicially and in furtherance of justice. The Court cannot permit the doctrine of laches to become a shield for an action which, upon examination of the

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record, is found to be patently arbitrary, without lawful basis, or violative of mandatory procedural safeguards. The ultimate consideration, therefore, is whether, in the peculiar circumstances of the case, refusal to exercise constitutional jurisdiction would advance the ends of justice or would instead result in perpetuation of a potentially unlawful administrative action.

10. For the foregoing reasons, the court is not persuaded to non-suit the petitioner at the threshold merely on the ground of delay. The period spent by the petitioner before the other forum, coupled with the nature of the challenge raised and the consequences flowing from the impugned action, calls for examination of the matter on its merits. The objection founded upon laches is, accordingly, repelled.

11. It is undisputed fact that petitioner has been awarded a major penalty of compulsory retirement from the service, after a fact-finding inquiry. Before analysis, the "Suggestions/Conclusion' part of the inquiry report is reproduced as under: -

> 1. ***"The admission committee has to devices SOPs for the whole admission process.***
> 2. ***There must be some criteria of induction of examiners for paper marking and the qualification and experience must be considered.***
> 3. ***Chairman admission committee is suggested to supervise the whole procedure of admissions in future to make it flawless/ more transparent.***
> 4. ***There must be some formal meetings of the admission committee for the smooth conduction of test well before the date of written tests.***
> 5. ***Written instructions regarding attempting of papers, use of ball points, answering of all questions without leaving any question blank must be displayed in the examination hall.***
> 6. ***Some conflicts in the statements of Principal and other members are found as according to other members, Mr. Safdar was not directed to stop checking of papers immediately, while the principal stated to do so. Secondly, he distributed papers roll number-vise while principal stated that he was distributing papers selectively.***
> 7. ***Mr. Safdar Iqbal denied the blame of encircling of the right choices with red ball point in the papers checked by him however, he accepted that he might corrected some wrong***

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choices inadvertently in the flow of paper checking. Moreover, all three students accepted the use of red ball points in written tests mistakenly which may neutralize the point of misuse of red ball point by Mr. Safdar to some extent.

8. ***The statements of candidates/students are not supporting the statement of Principal, CMLT regarding main allegation raised by her. However all three pointed out papers encircled with red ball point were checked by Mr. Mohammad Safdar Iqbal, ASO only and this make him suspicious as none of the member gone through any paper encircled with red ball point, Moreover the pattern of circles on MCQs choices with red ball point is different than blue ball point which may support the statement of Principal CMLT regarding incident of misact by Mr. Mohammad Safdar Iqbal, ASO.***
9. ***Keeping in view the facts as mentioned above, authority may direct the Principal CMLT for taking measure to overcome such practices in future and the fate of Mr. Safdar Iqbal may be decided on the facts given above."***

12. The court has carefully examined the findings and recommendations recorded by the Inquiry Committee, which constitute the very foundation of the action subsequently taken against the petitioner. A plain reading of the inquiry report reveals that the Committee did not record any definitive finding that the petitioner had committed the alleged misconduct. On the contrary, the conclusions recorded therein demonstrate that the Committee itself remained uncertain about the occurrence attributed to the petitioner and, instead of recording a categorical finding of guilt on the basis of proved evidence, proceeded largely on the basis of suspicion and circumstances which, according to it, "may" support the allegation. Such a conclusion assumes considerable significance because a disciplinary penalty cannot ordinarily rest upon conjecture, suspicion or the mere possibility of misconduct; it must have its foundation in material which, upon proper inquiry and assessment, establishes the charge against the delinquent official.

13. The recommendations made by the Inquiry Committee at the very outset are also revealing as to the nature of the proceedings undertaken. The Committee identified a number of institutional and procedural deficiencies in the admission and examination process itself. It recommended that the Admission Committee should formulate proper SOPs for the entire admission process; that definite

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criteria should be prescribed for the induction of examiners, keeping in view their qualification and experience; that the Chairman of the Admission Committee should supervise the entire admission process in order to make it more transparent and free from procedural flaws; and that formal meetings of the Admission Committee should be convened sufficiently in advance of the written tests. These recommendations demonstrate that the Committee did not treat the alleged incident as an isolated act attributable, in a conclusively established manner, to the petitioner alone. Rather, the report identified systemic deficiencies in the manner in which the examination and admission process had been organized and conducted. Such deficiencies are relevant because, where the underlying procedure itself suffers from inadequate supervision, absence of SOPs and lack of clearly defined mechanisms for examination and paper checking, the responsibility for an alleged irregularity cannot lightly be fastened upon an individual employee without clear and convincing material establishing his personal culpability. More importantly, the Committee itself noticed material contradictions in the statements of the Principal and other members concerning the alleged conduct of the petitioner. It specifically recorded a conflict as to whether the petitioner had been directed to stop checking the papers immediately and, further, whether he had distributed the papers roll-number-wise or selectively. These were not peripheral matters; they directly concerned the factual circumstances surrounding the alleged misconduct. The existence of material inconsistencies amongst the witnesses on the very manner in which the alleged incident occurred necessarily called for a cautious and critical evaluation of the evidence before any adverse finding could validly be recorded against the petitioner. Yet, the report does not demonstrate that these contradictions were resolved by reference to any independent and reliable evidence so as to establish the allegation against the petitioner conclusively. The Committee also observed that all three students examined during the inquiry admitted having used red ballpoints in the written test, albeit mistakenly. This circumstance substantially weakened the evidentiary value of the mere presence of red-ballpoint markings on the answer sheets as proof of deliberate misconduct on the part of the petitioner. If the use of a red ballpoint by candidates themselves had occurred during the examination, the mere presence of red markings could not, without

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further evidence, conclusively establish that such markings were subsequently made by the petitioner with an ulterior motive. The Committee further recorded that the statements of the candidates/students did not support the version of the Principal regarding the principal allegation levelled against the petitioner. This finding assumes decisive importance. The students were material witnesses to the examination process and, according to the inquiry report itself, their statements did not corroborate the principal allegation in the manner asserted by the complainant. Although the Committee noticed that the papers carrying red-ballpoint circles had been checked by the petitioner and that none of the other members had gone through such papers, this circumstance, at its highest, generated suspicion regarding the petitioner. It did not, by itself, establish that the petitioner had deliberately altered or manipulated the answer sheets. The distinction between evidence giving rise to suspicion and evidence establishing misconduct cannot be lost sight of, particularly where the consequence ultimately imposed is a major penalty carrying serious civil consequences.

14. An inquiry officer is required to examine the allegations, assess the evidence and record a finding as to whether the charge is established or otherwise. A disciplinary authority may thereafter consider the inquiry report in accordance with the applicable law and exercise the powers vested in it; however, the existence of such power does not dispense with the necessity of a legally sustainable factual foundation for the penalty imposed. Where the inquiry report itself does not establish the charge and merely records circumstances which raise suspicion, the competent authority cannot, without independently identifying cogent material establishing the misconduct, convert that suspicion into a conclusive finding of guilt and impose a major penalty upon the delinquent employee.

15. The matter assumes greater significance when viewed in the context of the penalty ultimately imposed upon the petitioner. Compulsory retirement, when resorted to as a consequence of disciplinary proceedings, is a major penalty carrying serious civil consequences, as it brings to an abrupt end the career of a public servant and may materially affect his retirement benefits and the service he has rendered over the years. Such a severe consequence cannot justifiably be

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founded upon suspicion, probability or circumstances which merely raise a possibility of misconduct. Before visiting an employee with a penalty of such gravity, the allegation against him must stand established through clear, cogent and legally sustainable findings based upon the material brought on record. There must be a definite and discernible determination of culpability, rather than an inference resting upon doubt or conjecture. The more severe the penalty, the greater the need for certainty and care in establishing the factual and legal foundation upon which it is imposed. This consideration acquires still greater weight where the employee is at the verge of attaining the age of superannuation, since compulsory retirement at such a stage does not merely interrupt his service but effectively brings to an untimely close the culmination of his entire career, after years of public service, on the basis of an allegation which has not been conclusively established against him. In the present case, the inquiry report itself does not contain any clear or unequivocal finding holding the petitioner guilty of the alleged misconduct; rather, the conclusions recorded therein remain tentative and founded upon circumstances which, at their highest, generated suspicion. In such circumstances, the drastic penalty of compulsory retirement imposed upon the petitioner appears wholly disproportionate to the evidentiary foundation available on record and cannot be sustained merely by converting suspicion into a finding of guilt. Where the very inquiry conducted to determine culpability stops short of establishing the charge, the consequence of bringing the petitioner's career to an end through a major penalty becomes all the more difficult to sustain in law.

16. This court is not entering into any disputed question of fact, nor are undertaking a reappraisal of the evidence as an appellate forum; rather, examining whether the conclusion drawn by the competent authority is legally sustainable on the basis of the material forming part of the departmental record and whether such material provides a rational and lawful foundation for the action impugned assailed before this court. The scope of judicial review, however, extends to examining whether the authority has acted within the bounds of law, observed the prescribed procedure, considered the relevant material, and reached a conclusion which is rationally sustainable on the record. The mere presence of a factual element in a

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controversy cannot, therefore, by itself, oust the constitutional jurisdiction of this Court where the legality of the decision-making process can be determined from the record itself. In *Multan Tax Bar Association v. Federation of Pakistan,* 2015 PTD 1010, the Court, while considering a similar objection, observed that although, generally speaking, disputed questions of fact are not decided in constitutional jurisdiction, this principle does not mean that decisions which are "manifestly arbitrary, based on no evidence, or contrary to the record and not justified by law" are to be upheld. The said principle provides an important qualification to the general rule and makes it clear that the constitutional jurisdiction of the High Court cannot be rendered unavailable merely by characterizing an unlawful or irrational administrative decision as involving a question of fact. In *Al-Hamza Ship Breaking Co. and 14 others vs. Government of Pakistan and others,* 2015 PTD 1010, the Court held that: -

> ***"28. We now turn to the judgment in the second set of cases in which the argument advanced on behalf of the department was that it was not mandatory for the Controller of Customs to revise the ITPs after three months. We have already held supra that this view is not valid. Further, the contention that the petitioners did not submit any evidence before the department and hence the Collector of Customs had no option but to assess the value per the ITP earlier fixed is equally incorrect per the record. Reliance was also placed by the department on the case of Messrs Madina Traders v. Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and 4 others (1999 SCMR 63) in support of the contention that question of facts cannot be agitated in constitutional jurisdiction. While it is clear that, generally speaking, the High Court in the exercise of its constitutional jurisdiction does not decide questions of disputed facts, this does not mean that decisions which are manifestly arbitrary, based on no evidence, or contrary to the record and not justified by law will he upheld. In this case of course there is a direct violation of the Parameters which itself distinguishes the case. In the circumstances the findings in the second judgment also cannot be maintained."***

17. In the present case, the objection raised by the respondents that the matter involves disputed questions of fact, therefore, does not merit acceptance. The

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controversy before us does not require the Court to undertake a fresh appraisal of the evidence, record additional evidence, or determine which of two competing factual versions ought to be preferred. The question is whether the material relied upon by the departmental authorities, when examined on its own terms, was capable of furnishing a lawful and rational basis for the conclusion that the petitioner had committed the misconduct attributed to him. The answer, in our view, must be in the negative. The Inquiry Committee, after examining the material placed before it, did not record a clear, categorical or affirmative finding that the petitioner had deliberately manipulated or altered the answer sheets, nor did it conclusively establish any dishonest or mala fide act on his part. On the contrary, the report expressly acknowledged that the statements of the candidates/students did not support the principal allegation, noticed material contradictions in the statements of the Principal and other members of the Admission Committee, and further recorded that all three students had themselves used red ballpoints during the written examination. Even the circumstance which, according to the Committee, rendered the petitioner "suspicious" was expressed in tentative terms, the report stating only that the difference in the pattern of circles "may support" the statement of the Principal. Such tentative observations, without a definite finding of culpability, could not reasonably be elevated into a proved charge of misconduct merely through an administrative conclusion. The impugned orders, therefore, cannot be sustained on the ground that this Court is being called upon to reappraise disputed facts; rather, the record itself demonstrates that the foundational inquiry stopped short of establishing the charge, whereas the competent authority proceeded as though the charge had been conclusively proved. This constitutes a defect in the very legal foundation of the impugned action and consequently falls within the permissible scope of judicial review under Article 199 of the Constitution.

18. For the foregoing reasons, this court is of the considered view that the impugned Order dated 13.11.2018, whereby the major penalty of compulsory retirement was imposed upon the petitioner, and the appellate Order dated 02.07.2019, whereby the said penalty was upheld, cannot be sustained in law. Consequently, the instant petition is **ALLOWED**; the impugned Orders dated

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13.11.2018 and 02.07.2019 are hereby **set aside**. Since the petitioner has already attained the age of superannuation on 31.12.2022, his case shall be treated as having culminated in normal retirement, and the respondents are directed to determine and release to him all consequential service, retirement and pensionary benefits admissible to him under the law, including the benefits which would have accrued upon his retirement on attaining the normal age of superannuation, after making lawful adjustments, if any. The exercise shall be completed within a reasonable period, preferably within three months from the date of receipt of a certified copy of this judgment.

(SHAHRUKH ARJUMAND)
JUDGE

Announced in Open Court on 8th day of September, 2026.

JUDGE

Approved for Reporting

Tanveer Ahmed/*

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