***JUDGEMENT SHEET***

IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

**Regular First Appeal No. 215 of 2016**

Pakistan International Airlines Corporation Limited through its Managing Director & another
*Vs.*
Muhammad Saleem Sherwani

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| APPELLANTS BY: | Mr. Muhammad Umer Khan Vardag, Advocate. |
| RESPONDENT BY: | Mr. Muhammad Arshad Khan, Advocate.<br><br>M/s Asad Ladha, Usama Khawar Ghuman and Babar Mumtaz, Advocates/Amici. |
| DATE OFHEARING: | 26.06.2024. |

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***BABAR SATTAR, J.***- The appellant has impugned judgment and decree dated 13.10.2016, whereby the suit was decreed in favour of the respondent to the extent of recovery of provident fund in the amount of approximately 5 million, gratuity/completion in the amount of approximately 1 million, pension from 23.09.2008 onward, transfer of a vehicle and damages in the amount of Rs.3 million.

2. The respondent served as an employee of Pakistan International Airlines Corporation (PIA) for a period of thirty-seven and a half years. He sought premature retirement a few months before his actual date of superannuation as he felt that he was being penalized by the then Managing Director, PIA (i.e. appellant No.2), for having rendered an adverse decision in an inquiry against another pilot of PIA, who was a friend of appellant No.2. After the respondent's retirement was approved, his post-retirement benefits were withheld on the basis that an

inquiry had been initiated against the respondent for abuse of power and wrongful inductions when he was posted at PIA's office in Manchester, UK. The respondent filed a suit claiming his retirement benefits as well as damages for breach of his employment terms and conditions pursuant to which his employment benefits were to be released within one month of his retirement and for denial of grant of pension.

3. The Civil Court framed the following issues by order dated 07.06.2012:

1. Whether the plaintiff is entitled for decree for recovery of Rs.30,000,000/- on account of terminal benefits, pension, provident fund commutation and damages as prayed for? OPP
2. Whether the plaintiff has no cause of action to file this suit? OPD
3. Whether the plaintiff has not come to the court with clean hands? OPD
4. Whether the suit of the plaintiff is not maintainable? OPD
5. Whether the plaintiff is estopped by his words and conduct to file the suit? OPD
6. Whether the suit of the plaintiff is false, frivolous and defendants are entitled to get special costs U/S 35-A CPC?
7. Relief.

After recording of evidence, the Civil Court by judgment dated 10.06.2012 decreed the suit to the extent of Provident Fund, gratuity and pensionary benefits and granted damages to the extent of Rs.1 million. The Civil Court had made an error in terms of the pensionary benefits as recorded in the judgment,

which it undertook to correct without issuing notices to the appellants. The respondent filed an appeal titled ***Muhammad Saleem Sharwani v. PIAC*** ***(R.F.A No.129 of 2023)***, in which by order dated 26.11.2015, with the consent of the parties, the judgments and decrees dated 10.06.2012 and 29.06.2012 were set-aside and the matter was remanded back to the Civil Court to be decided afresh. After recording of evidence, the Civil Court passed the impugned judgment and decree. Issue No.1 (i.e. entitlement of the respondent to a decree for recovery of post-retirement benefits and damages) was decided in favour of the respondent. The Civil Court found that the respondent had established through evidence, including his own testimony and the testimony of Mr. Azaan Ahsan Siddique, PW-2, that the respondent was not involved in any wrongdoing, as approval for any inductions at PIA's Manchester office could not be made without the authorization by Chairman PIA. The Civil Court further recorded that Mr. Muhammad Abdullah Qureshi, Manager HR, PIA, DW-I, had admitted that the terms and conditions of service of the respondent did not empower PIA to carry out an inquiry against a retired employee. It was further acknowledged that the inquiry being carried out against employees, including the respondent, ended without establishing that any of the individuals subject to the inquiry, including the respondent, were liable to pay any financial loss suffered by PIA. Subsequently, the letters of clearance were issued for all individuals under inquiry and Mr. Muhammad Abdullah Qureshi, Manager HR, PIA, DW-I, who appeared on behalf of PIA, acknowledged that post-retirement dues and pension of the respondent were also to be released, as he had only been issued a letter of censure. The

Civil Court, in view of the evidence adduced before it, concluded that the respondent had successfully established that withholding of his post-retirement benefits and pension was a wrongful act on part of PIA and further the respondent had been victimized by the appellants, as had been established through the testimony of plaintiff witnesses along with documentary evidence produced, which was not rebutted by the appellants. Accordingly, Issues No.2 to 6 were decided in favour of the respondents and against the appellants.

4. The learned counsel for the appellants submitted that there was no contest in relation to the post-retirement benefits, including pensionary benefits to be granted by the appellants to the respondent. He submitted that the appellants had filed an application before the Court (C.M. No.317 of 2020) providing details of the amounts in lieu of provident fund, gratuity, commutation, arrears of pension, etc. that had been paid by PIA to the respondent and further that No Objection Certificate (NOC) in relation to the vehicle that was to be transferred by PIA to the respondent had also been issued and the vehicle had been transferred in the name of the respondent. He submitted that the only point of contention was the award of damages in the amount of Rs.3 million in relation to which the respondent had led no evidence and had not quantified as to how he suffered any losses. He submitted that the respondent had claimed damages for mental torture and agony in the amount of Rs.25 million but had led no evidence to substantiate how he suffered such loss, in the absence of which no damages could be granted in lieu of mental torture and agony. He argued that the actual post-retirement benefits and pensionary benefits had already

been released by PIA to the respondent and the judgment and decree to the extent of grant of damages in the amount of Rs.3 million was liable to be set-aside.

5. The learned counsel for the respondent supported the impugned judgment and decree. He submitted that the respondent was a hockey player who led Pakistan's National Hockey Team and also represented the country in the Olympics. He was not only a national hero being a sportsman but also diligently discharged his obligations as an employee of PIA for a period of thirty-seven and a half years. At the fag-end of his career, he was persecuted by appellant No.2, who wanted that the respondent to file a favorable report as inquiry officer looking into the misconduct of one of his friends. This the respondent did not do. Immediately after, appellant No.2 was appointed as Managing Director PIA he started punishing the respondent by posting him to offices traditionally held by junior officers and by displacing him in the last year before his retirement. The respondent endured such wrongdoing and sought retirement. But even after his retirement, in order to punish him further, appellant No.2 ordered that his post-retirement and pensionary benefits be withheld, while initiating an inquiry against the respondent being a retired employee, which was not permissible under the terms and conditions of service of the respondent. The inquiry resulted in a letter of censure and PIA ended up releasing the post-retirement and pensionary benefits of all those facing the inquiry, which in itself was proof that the post-retirement benefits had been wrongly withheld. He submitted that the Civil Court had granted general damages in the amount of Rs.3

million keeping in view the delay in release of pensionary benefits. He prayed for the dismissal of the appeal.

6. In the instant case, the respondent's entitlement to be granted post-retirement and pensionary benefits is not disputed. DW-1, who appeared on behalf of PIA, testified that the respondent was entitled to post-retirement and pensionary benefits, and that they would be released soon. The appellants have also filed a statement before this Court stating that the amounts due in lieu of provident fund, gratuity, commutation and pension have been released to the respondent along with issuance of a NOC for transfer of a vehicle that the respondent was entitled to retain upon payment of book value at the time of his retirement. Consequently, the only contested issue before this Court is the legality of the award for damages in the amount of Rs.3 million.

7. The appellant was the employee of the respondent and the suit filed by the respondent was a claim for payment of contractual dues and damages. Section 73 of the Contract Act, 1872, provides for grant of damages arising out of breach of contract and states, in relevant part, the following:

> *Compensation for loss or damage caused by breach of contract. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.*
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> *Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.*

The foreseeability test for grant of damages as contemplated in Section 73 of the Contract Act was first articulated in ***Hadley vs. Baxerdale*** ***([1854] 9 Ex 341),*** which permitted grant to damages that fall within either of two categories: (1) damages that had fairly and reasonable have arisen naturally from the breach of contract; and (2) the damages that ought to reasonably have been in the contemplation of both parties at the time of making of the contract as a probable result of a breach. This foreseeability test was affirmed by the Supreme Court in ***A. Ismailjee & Sons Ltd. Vs. Pakistan*** ***(PLD 1986 SC 499)***.

8. Damages flowing from breach of contract are sometimes placed in two categories: general damages and special damages. At the risk of simplification, general damages are the losses that flow as a direct and inevitable consequence of the breach i.e. a direct result of the defendants' wrongful conduct. Special damages, on the other hand, are unique to the claimant affected by the wrongful conduct, which may have been caused due to the peculiar circumstances of such claimant. Within contract law, general and special damages are both regarded as compensatory damages that a claimant, on the receiving end of breach of contract, is entitled to, with the distinction that general damages being in everyone's contemplation require no proof, while the burden of proving special damages has to be discharged by the claimant who has sustained them.

9. A claim for pain and suffering caused by breach of contract falls within the category of general damages. In ***Miss Irshad Jehan vs. P.N.S.C*** ***(1999 CLC 192)***, the Sindh High

Court dealt with a claim for damages brought forth by a wrongfully dismissed employee, who also sought to be compensated for loss of health, reputation and mental torture. It was held that, *"damages for mental shock and torture fall in the category of general damages for assessment of which no definite method has been laid down. In such cases the primary consideration of the court should be to compensate the plaintiff as far as possible for the injury caused. Here consideration should also be given to the station in life, age and the nature of persons to whom injury has been caused because people differ in their reaction and response to traumatic events."*

10. In ***Pakistan International Airlines Corporation vs. Syed Ali Raza Rizvi*** **(1996 CLC 627)** the defendant's argument that the claim for shock, agony and mental torture should be rejected as there was inflicted no physical injury, was given short shrift by the Sindh High Court. It was held that, *"mental shock, agony and torture imply a state of mind. Such state of mind can be proved only by a positive assertion of one who experiences the same. That assertion on oath was always there in the verified plaint and was reiterated through the affidavit in ex-parte proof."* In ***Abdul Qadir vs. S. K. Abbas Hussain (PLD 1997 Karachi 566)*** Sindh High Court acknowledged that there was a time when courts were reluctant to grant damages for mental shock and suffering, but times had changed and the entitlement to seek damages for such loss was well-recognized.

11. In ***M/s Emirates Airline vs. Daoud Shami (PLD 2003 Lahore 358)*** it was clarified by the Lahore High Court

that, *"punitive or exemplary damages could not be awarded in a purely contractual action. Since the object of such an action is not to punish the defendant but to compensate the claimant…The object of damages for breach of contract is to put the victim so far as money can do it in the same position as if the contract had been performed and not to enrich the plaintiff."*

12. In ***Mrs. Zahra Zaidi vs. M. Anwar Khan Ghauri (2004 CLC 223)*** Sindh High Court granted damages in the amount of Rs.1 million as compensation for mental torture suffered by a lady who endured frivolous litigation. It was held that, *"there is no yardstick to measure or assess the actual quantum of damages in respect of the mental torture sustained by a person while facing the agonies of a frivolous litigation. Even if the plaintiff fails to prove the same, a suit is not to be dismissed in such cases."* The court placed reliance on ***Muhammad Sharif vs. Nawab Din (PLD 1957 (W.P) Lahore 283)*** and held that in such case the Court is to grant damages in exercise of its discretion while applying the rule of thumb.

13. In ***Abdul Majeed Khan vs. Tawseen Abdul Haleem (2012 PLC (C.S) 574)*** the Supreme Court awarded damages in the amount of Rs.100,000/- along with mark up at the rate of 10 percent from the date of filing of the suit, till the recovery of the entire amount. It was held that, *"the petitioner was entitled to the grant of general damages for the mental agony which he has suffered on account of the conduct of the respondents. The petitioner has pleaded specific instances to establish personal vengeance against the respondents No.1, on account of which he claimed to have suffered losses and mental agony."* In his

opinion Iftikhar Muhammad Chaudhary, CJ explained that, *"the term 'general damages' refers to the special character, condition or circumstances, which accrue from the immediate, direct and approximate result of the wrong complained of… it is settled that in an action for personal injuries, the general damages are governed by the rule of thumb whereas the special damages are required to be specifically pleaded and proved… the general damages are those which the law implies even if not specifically pleaded. This includes compensation for pain and suffering and the like…"* Dicta from ***Islamic Republic of Pakistan vs. Sh. Nawab Din*** **(2003 CLC 991)** was cited with approval, wherein it was noted that, *"general damages naturally arising according to the usual course of things from the breach of contract are recoverable in the ordinary circumstances."*

14. The Supreme Court held in ***Abdul Majeed Khan*** that, *"although there can be no compensation for mental tension and agony in monetary terms, as money cannot renew a shattered human frame, but still the law has provided that on account of damages, monetary compensation can be awarded and so the Court must do the best it can in the light of the facts of each case, on the basis of settled principles of law."* While relying on English case law for purposes of quantification of general damages, it was held that, *"the principle is… to put a person in the same position as he would have been in, had he not received the injury."* It was also noted in the opinion of Justice Khilji Arif Hussain that general damages need not be proved by strict evidence and *"are those which law will imply in very violation of legal rights,"* and that, *"the conscience of the Court should be*

*satisfied that the damages awarded would, if not completely, satisfactorily compensate the aggrieved party."*

15. ***Gohar Ali vs. M/s Hoechst Pakistan Limited (PLJ 2009 SC 303)*** was a case of wrongful termination of employment. While relying on ***Sufi Muhammad Ishaque vs. The Metropolitan Corporation Lahore (PLD 1996 SC 737)*** it was held by the Supreme Court that, *"there can be no yardstick or definite principle for assessing damages in such cases. The damages are meant to compensate a party who suffers an injury. It may be bodily injury, loss of reputation, business and also mental shock and suffering…"* and that, *"it is the discretion of the Judge who may on facts of the case and considering how far the society would deem it to be a fair sum determines the amount to be awarded to a person who has suffered such a damage."* In ***Habib Bank Limited vs. Mehboob Rabbani (2023 SCMR 1189)*** the Supreme Court held that the purpose of granting damages for breach of contract is, *"to bring the person(s) or party(s) who has/have suffered from the breach of contract into a position which they would have been had the breach of contract not accrued. This principle is now legally known as the principle of restitution in integrum (restoration to original condition). It therefore stands to reason that damages are in fact the compensation that the law awards when a breach of contract occurs as compensation for loss that a person or party has suffered from a breach of contract."* It was held that, *"once the respondent had proved that he had been wrongfully dismissed from service, the onus shifted on the appellants to prove that the damages claimed by the respondent were either too remote or did not arise out of the breach of contract."* The

Supreme Court upheld the award of Rs.5 million out of Rs.20 million sought as general damages in this case of wrongful dismissal from employment.

16. Let us summarize the relevant principles applicable to a claim for breach of contract and grant of damages before we apply them to the facts of the instant case:

(i) In case of breach of contract, a claim can be made for foreseeable damages, which include (A) damages that fairly and reasonably arise naturally from breach of contract, and (B) damages that ought to reasonably have been in the contemplation of both parties at the time of making of the contract as being the probable result of a breach.

(ii) A claimant injured by breach of contract can bring forth a claim for general and special damages. General damages that naturally arise for breach of contract including mental suffering need no special proof. Special damages that are peculiar to the circumstances of the claimant need to be proven and quantified by the claimant in order for them to be granted.

(iii) Contractual damages are of a compensatory nature and are meant to put the claimant in the same position that he/she would have been in, had the contract not been breached. They are not conceived as a penal measure or to act as a deterrent.

(iv) There is no standard arithmetic formula to calculate general damages, which are awarded on the basis of

the rule of thumb as being deemed adequate compensation by the right-thinking members of the society in a situation where financial loss cannot be calculated with exactitude.

(v) There can be made a global award for general damages in circumstances where it is not possible to itemize each claim and/or put a financial value on such claim. This, however, does not bar a Court from granting specific awards for itemized claims, even when they all fall within the category of general damages, to enable the contesting parties to understand how the Court has exercised its discretion in applying the rule of thumb and to make the judgment reasoned.

(vi) The onus to prove special damages is on the claimant and such damages cannot ordinarily be granted unless their incurrence and their quantum is proved by the claimant on a balance of probabilities.

17. Let us now apply the principles of law discussed above to the facts of the instant case. The appellants have not seriously contested that withholding post-retirement and pensionary benefits did not amount to wrongdoing. The only argument in favour of withholding such benefits, as made before the Civil Court and this Court, was that the benefits were withheld pending an inquiry into the conduct of the respondent while he was an employee of PIA posted at Manchester Airport a few years before his retirement. No evidence was led before the trial court to establish that PIA was vested with authority to investigate the conduct of a retired employee when no questions

about such conduct were raised during the period of his service. No terms and conditions of service of PIA employees were produced before the Civil Court to establish such entitlement or that the terms and conditions of service permitted PIA to withhold retirement and pensionary benefits pending the conclusion of any outstanding inquiry. The claim of the respondent that he was persecuted and wrongfully punished by appellant No.2 for not heeding his request for delivering a favour to appellant No.2’s friend, as supported by plaintiff's witnesses and documentary evidence, was not effectively rebutted by the appellants. Appellant No.2 neither testified before the court nor did the defendant's witnesses dispute the authenticity of the documents produced by the respondent in such regard. Further, DW-1 conceded that the respondent was entitled to release of post-retirement benefits and such benefits of other retired employees of PIA who were nominated in the inquiry being faced by the respondents had been released. Further, the statement filed by the appellants representing that the post-retirement benefits had been released during the adjudication of the appeal is itself manifestation of the fact that the payment of such dues had been wrongly withheld. The damages granted by the Civil Court constitute a global award for general damages. The respondent had pleaded before the civil court and before this court that the respondent was deprived of the benefit of international and domestic travel, he was deprived of usage of the vehicle that he was supposed to retain post-retirement, he was deprived of medical benefits, and was claiming damages in relation to these heads. The respondent, however, led no evidence to document the loss suffered in the context of any of

the heads that would be characterized as special damages. The civil court granted no damages in lieu of any of these heads, but granted general damages for direct financial loss of the respondent and damages for pain and suffering in the amount of Rs.3 million.

18. What emerges from the statement filed by the appellants before this Court detailing the amounts released by PIA to the respondent (through C.M No. 317 of 2020) is that the respondent was paid an amount of Rs.2,872,941/- in lieu of Provident Fund dues, Rs.632,051/- and Rs.563,442/- in lieu of gratuity and commutation, respectively, and Rs.392,113/- as arrears of pension. If we were to disregard the payment made in lieu of arrears of pension, by PIA's own account, the respondent was entitled to an amount of Rs.4,068,428/- at the time of his retirement, which amount was not paid until after the issuance of the impugned judgment and decree. In other words, this is the amount that was due and payable to the respondent at the time of his retirement and was wrongfully withheld by the PIA. And it was the benefit of this amount that was denied to the respondent for all the year when he was pursued his claims within the justice system. Even if we were to round of the amount to Rs.4 million, had such amount been deposited by the respondent in a regular saving account of a commercial bank on the date of his retirement and kept deposited up until the date of the issuance of the impugned judgment and decree, the respondent would have earned interest in the amount of Rs.2,896,219/- in view of the prevalent interest rate during such period (ranging from 7.5% to 14.5%). If, on the other hand, the respondent had invested such amount in Defense Saving

Certificates under the National Saving Schemes, he would have made a profit north of Rs.4 million.

19. While the Civil Court through its judgment does not provide any insight into how it applied the rule of thumb while calculating general damages in the amount of Rs.3 million, the projected interest/profit on the withheld amount (due to the respondent and subsequently paid to the respondent by PIA), reflects that the amount of damages awarded was on the lower side of the profit that the respondent would have earned had he invested the sums (due to him) in different financial instruments available at interest rates set by State Bank of Pakistan. This loss of profit falls within the category of direct financial damages that naturally flow from the denial of compensation and benefits that were due to be paid by the PIA to the respondent upon his retirement. Such loss was within the reasonable contemplation of both parties as the respondent was denied the benefit of the funds to be released to him upon retirement and PIA reaped the benefit of retaining and utilizing such funds till they were eventually released to the respondent.

20. In addition to the loss of profit on amounts due and payable to the respondent that were wrongly withheld by PIA, the respondent was also entitled to damages for pain and suffering. In this regard, the respondent led evidence and gave his own testimony detailing the circumstances that led to his decision to seek retirement and the manner in which his post-retirement dues were withheld and he was subjected to an inquiry carried out by PIA even after which his retirement benefits were not released, while the retirement benefits of

others facing the same inquiry were released. The respondent need not have led any special evidence to quantify damages in lieu of pain and suffering as these are damages that cannot be quantified by reducing them to a financial number. Damages in lieu of pain and suffering fall within the category of general damages and once a plaintiff has established through evidence that wrongful conduct of the defendant would naturally have caused pain and suffering, it is for the court to determine the quantum of damages that would be compensatory in nature and satisfy the conscience of the court that the claimant has been duly compensated for bearing the pain, suffering and agony inflicted on him. As the civil court has not clarified what amount of Rs.3 million granted as damages is in lieu of the direct financial loss suffered by the respondent due to withholding of his overdue post-retirement compensation and benefits, and what amount has been ordered in lieu of pain and suffering, this Court can only assume that the grant of damages in the amount of Rs.3 million constitutes a global award that includes damages for financial loss and damages for pain and suffering.

21. As the respondent has not filed a cross-appeal contesting the quantum of damages awarded to him under the category of general damages, it is not for this court to reopen the award and consider its enhancement. After the filing of this appeal, PIA filed a statement before this Court stating that an outstanding amount of Rs. 4.7 million had been paid to the respondent, and yet continued to contest the appeal. The appeal itself includes frivolous arguments, including that the civil court was vested with no jurisdiction to adjudicate the respondent's claim, notwithstanding the fact that the appellants filed an application

under order VII Rule 10 claiming lack of jurisdiction before the civil court, which was dismissed, and ***Civil Revision No. 29 of 2011*** ***(PIA Vs. M. Saleem Sherwani)*** against the order of the civil court was also dismissed by this Court vide order dated 28.5.2012, whereby this Court had reaffirmed that the civil court was vested with jurisdiction to adjudicate the respondent's suit. Notwithstanding the same, the appellants continue to press such grounds for appeal, which have also resulted in delay in the adjudication of the appeal.

22. For the aforementioned reasons, this Court finds that the appeal is without merit and is **dismissed.** The judgment and decree of the Civil Court is upheld. In addition to the award made by the civil court in favour of the respondent, the respondent is also entitled to interest on the decretal amount from the date of the judgment up until the day when such amount was paid by PIA to the respondent. Further, the respondent is also entitled to interest on the amount of damages (in the amount of Rs.3 million) granted by the civil court at the rate of 10% from the date of the decree to the date when such amount is actually paid. In allowing interest at the rate of 10% this Court has taken into account the fact that the policy rate set by the State Bank of Pakistan from the date of decree up until today has ranged from 5.75% to 20.5%. This Court has, therefore, ordered that interest be paid at the rate of 10%, which would be less than the average policy rate determined by the State Bank of Pakistan and would make it simpler to calculate the amount due for the executing court in the event that the satisfaction of the decree requires the filing of an execution petition.

24. The respondent is also entitled to cost of litigation in the amount of Rs.500,000, which has been claimed by the respondent and appears to this Court to be a reasonable amount.

24. This Court would wish to express its gratitude to Mr. Asad Ladha and Mr. Babar Mumtaz, Advocates for their valuable assistance as amicus and for having filed amicus briefs. This Court also wishes to recognize that M/s Adeen Ahmed Siddiqi and Mustafa Sajid Zuberi, Law Clerks, have rendered valuable assistance in the instant matter.

**(BABAR SATTAR)**
**JUDGE**

Announced in the open Court on 11.09.2024.

**JUDGE**

Approved for reporting.