In the Federal Constitutional Court of Pakistan
(Appellate Jurisdiction)

Present:
Justice Amin-ud-Din Khan, Chief Justice
Justice Ali Baqir Najafi
Justice Syed Arshad Hussain Shah

C.P.L.A. No.2793-L of 2022
(On appeal from judgment of the Lahore High Court, Bahawalpur Bench dated 29.6.2022 passed in W. P. No.72191 of 2021(old) renamed 522 of 2022(BWP) & W.P. 5528 of 2021)

Muhammad Akram

Petitioner

Versus

National Bank of Pakistan and others

Respondents

For the petitioner: Mian Shahid Iqbal, ASC

For the respondents: Mr. Azmat Hayat Khan Lodhi, ASC

Date of hearing: 24.7.2026

Judgement

Syed Arshad Hussain Shah, J – This petition assails the order dated 29.06.2022 passed by the Lahore High Court, Bahawalpur Bench, whereby writ petition No.72191 of 2021 (old) renumbered as writ petition No.522 of 2022(BWP) filed by the respondent-National Bank of Pakistan (the Bank), was accepted and the matter was remanded to National Industrial Relations Commission (NIRC). However, in the light of this order, writ petition No.5528 of 2021, filed by the petitioner seeking implementation of his reinstatement order, was disposed of as having become infructuous.

2. Learned counsel for the petitioner argued that application of the Bank under Regulation No.45 of the NIRC (Procedure and Functions), Regulations 2016 read with section 12(2) CPC was dismissed being barred by time, as the same was filed on 4.5.2021 seeking review of the order dated 30.11.2020. The High Court, therefore, erred in law while accepting the writ

petition filed against the order dismissing time barred application. Furthermore, the application of the Bank before Full Bench of the NIRC was not maintainable as on the date of passing the order dated 30.11.2020, sought to be reviewed, learned counsel for the Bank was present. Therefore, no question of fraud or misrepresentation arises, which is a condition precedent for filing application under section 12(2) CPC, Hence the impugned order is not sustainable in the eyes of law.

3. Conversely, learned counsel for the Bank has opposed the petition and contended that it is not maintainable, as the same is directed against a remand order, which neither determines the rights of the parties finally nor amounts to an adjudication on merits of the controversy. He submits that the impugned order merely remits the matter to the competent forum for a fresh decision in accordance with law after affording the parties an adequate opportunity of hearing. Further that after remand of the case to NIRC, despite issuance of repeated notices, the petitioner is not appearing before the NIRC. Therefore, the matter has been adjourned *sine die*.

4. Heard the learned counsel for the parties and perused the record.

5. Having somewhat chequered history, this case pertains to the retirement/pensionary benefits of the petitioner, who served as driver with the Bank. Initially the petitioner was appointed as driver on daily wages vide appointment letter dated 1.7.1992. Having been disengaged from service with effect from 15.6.1995, the petitioner filed grievance petition before the Single Bench of the NIRC, which was allowed vide order dated 21.10.1996 and the Bank was directed to allow the petitioner to join his duties. Appeal filed by the Bank before the Full Bench of NIRC was dismissed vide order dated 12.8.1997. The Bank challenged this order before the High Court

through writ petition No.2565 of 1998. The writ petition was allowed vide judgement dated 22.9.2004 and the matter was remanded back to the single Bench of the NIRC. Consequently, the petitioner was relieved of his duty vide order dated 23.9.2004. By that time, section 2A was inserted in the Service Tribunals Act 1973, therefore, the petitioner filed appeal before the Federal Service Tribunal. During pendency of this appeal, by virtue of judgment of the Supreme Court **(PLD 2006 SC 602),** Section 2A was omitted. Therefore, the petitioner again filed grievance petition before the Punjab Labour Court No.8, Bahawalpur (Labour Court). The Labour Court allowed his grievance petition vide order dated 18.4.2008, whereby the Bank was directed to reinstate and regularize the petitioner in service with all back benefits. This order was assailed by the Bank before the Punjab Labour Appellate Tribunal (PLAT). The petitioner also approached the PLAT for implementation of order of the Labour Court passed in his favour. After promulgation of Industrial Relations Act 2012, both the appeals were transferred to Full Bench of NIRC. During pendency of these appeals, the petitioner filed writ petition No.2454 of 2013/BWP seeking directions to implement the order of his reinstatement. The writ petition was disposed of vide order dated 2.1.2013. This order was challenged by the petitioner before the Supreme Court by way of filing C.P.L.A. No.648 of 2013 seeking implementation of the order dated 18.4.2008 passed by Labour Court. This petition was converted into appeal and allowed vide order dated 5.7.2013. In order to comprehend crux of the order of the Supreme Court, it is appropriate to reproduce the same verbatim:-

> "We have heard the petitioner-in-person and have also heard the learned counsel for the respondent-Bank. It is most unfortunate that the orders, which have been passed by the Labour Court and the Labour Appellate Court in favour of the petitioner, directing that he be re-instated with back benefits, have still not been implemented by the respondent although, there is no order of any Court, staying implementation of the aforesaid order. In fact, the respondent Bank filed Writ Petition No.1792/2010, which was decided on 20.12.2012. in the following terms

> "At the very outset of hearing learned counsel for the petitioner-bank points out that the petitioner's appeal is presently pending before the Punjab Labour Appellate Tribunal-II Multan and prays that he would be satisfied if a direction is issued for expeditious disposal of the appeal.
>
> "2. In view of fair stand, taken by the learned counsel for the petitioner, the learned Punjab Labour Appellate Tribunal-II, Multan is expected to decide the above said appeal within a period of two months from the date of receipt of a certified copy of this order. Disposed of."

> 2. Today, we are surprised to hear from the learned counsel for the respondent bank that the petitioner has still not been reinstated as a consequence of the implementation of the order, passed in his favour. Learned counsel for the respondent Bank has merely stated that the Labour Appellate Tribunal, Multan has not decided the listed appeal filed by the respondent Bank within a period of two months mentioned in the above reproduced order. This can hardly be a ground to justify failure of the respondent Bank to reinstate the petitioner, as directed by the Courts below.
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> "3. In the foregoing circumstances, this petition is converted into appeal and allowed. As a consequence, the petitioner shall be reinstated in service within seven days and a report in this regard shall be filed in Court by the respondent-Bank."

From the perusal of the above order, it becomes clear that it is a direction to implement the order dated 18.4.2008 passed by the Labour Court.

6. In compliance of the above directions of the Supreme Court, reinstatement order of the petitioner was issued on 19.7.2013. On attaining the age of superannuation, the petitioner stood retired from service with effect from 21.5.2017. He was extended the benefits of gratuity and the benevolent fund grant. However, he has been denied his monthly pension and other pensionary benefits i.e. G.P. Fund, insurance and leave encashment etc. on the premise that his qualifying service for pensionary purposes is only eight years and nine months. And that the question of reckoning the petitioner's temporary service towards his qualifying service for the computation of pensionary benefits is sub-judice before the NIRC and that the release of his pension depends upon the final determination of the said proceedings.

7. It may be noted that two appeals, referred to in paragraph No.5 ante, pending before Full Bench of the NIRC, came up for hearing on 30.11.2020 and were disposed of in the following terms:-

> "For the foregoing reasons, we are of the considered opinion that when the controversy involved in these appeals has already been resolved by the August Supreme Court of Pakistan vide order dated 5.7.2013 and in compliance of the said order, the appellant bank issued reinstatement and retirement letter of the respondent, therefore, the instant appeal[s] have become infructuous and the same are disposed of accordingly.".

Against the above order of the Full Bench of the NIRC, the Bank filed application dated 4.10.2021 before the Full Bench of NIRC under Regulation No.45 of the NIRC (Procedure and Function) Regulations, 2016 read with section12(2), CPC, which was dismissed being barred by time. Paragraph No.3 of the order is reproduced below for ready reference:-

> "3. Perusal of the record shows that the order dated 30.11.2020 was passed in the presence of the learned counsel for the petitioners and after hearing him. In the presence of the learned counsel for the petitioners the Commission heard the version of the respondent and taking it into consideration, the Full Bench passed this order. So, the petitioners cannot say that the order dated 30.11.2020 has been got by playing fraud with the Commission. Even otherwise the prayer of the petitioner amounts to review of the order dated 30.11.2020. The order sought to be set aside has been passed on 30.11.2020, but the present petition has been filed on 04.05.2021 much beyond the prescribed period of limitation for application for review of an order/judgment. In these circumstances, we are of the considered view that this petition has no merits and is dismissed accordingly.".

The Bank challenged the above order before the High Court by way of writ petition No.72191 of 2021 (old) renumbered as writ petition No.522 of 2022 (BWP), which was accepted by the High Court through the impugned order and the matter was remanded to NIRC. However, writ petition No.5528 of 2021 filed by the petitioner for implementation of the order of his reinstatement was disposed of as having become infructuous. Hence this petition for leave to appeal.

8. It has also been noted that, in the application filed under Regulation 45 of the National Industrial Relations Commission (Procedure and Function) Regulations, 2016, read with section 12(2) of the CPC, a specific ground was taken in paragraph 6 to the effect that the petitioner had already received Rs.1,367,132/- towards back benefits for the period from 08.08.2008 to 19.07.2013 through a pay order dated 05.08.2013.

However, neither the pay order nor any accompanying document indicates that the said amount was paid in full and final settlement of the petitioner's claim. Furthermore, by letter dated 19.07.2013 issued by the Regional Head Office, the petitioner was reinstated in service on the same terms and conditions as were applicable prior to his dismissal, subject to the final outcome of Appeal No.129/09 dated 21.10.2009, in compliance with the order dated 18.04.2008 passed by the Labour Court. The said reinstatement order, by its express terms, signifies reinstatement with continuity of service and entitlement to full back benefits. It has further been observed that the impugned order makes specific reference to section 58 of the Industrial Relations Act, 2012, concerning the powers of the NIRC to determine the matter. Those powers were exercised while passing the impugned order with the consent of learned counsel for the Bank. Section 58 of the Industrial Relations Act, 2012 provides as follows:-

> "(1) Notwithstanding anything contained in this Act, or in any other law for the time being in force, any person aggrieved by an award or decision given or a sentence or order determining and certifying a collective bargaining unit passed by any Bench of the Commission, may, within thirty days of such award, decision, sentence or order prefer an appeal to the Commission.
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> (2) An appeal preferred to the Commission under subsection (1) shall be disposed of by the Full Bench of the Commission which shall
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> > (a) if the appeal is from an order determining and certifying a collective bargaining unit, have the power to confirm, set aside, vary or modify such an order.
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> > (b) if the appeal relates to any other matter, the Full Bench may, confirm, set aside, vary or modify the decision or sentence passed and shall exercise all the powers required for the disposal of an appeal.
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> > (c) The decision of the Full Bench shall be delivered as expeditiously as possible, within a period of sixty days following the filing of the appeal, provided that such decision shall not be rendered invalid by reasons of any delay in its delivery.
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> > (d) The Full Bench may, on its own motion at any time, call for the record of any case or proceedings under this Act in which a Bench within its jurisdiction has passed an order Page 43 of 56 for the purpose of satisfying itself as to the correctness, legality, or propriety of such order, and may pass such order in relation thereto as it thinks fit:
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> Provided that no order under this subsection shall be passed revising or modifying any order adversely affecting any person without giving such person a reasonable opportunity of being heard.

> (3) In an appeal preferred to it against the order of a Bench directing the reinstatement of a workman, the Full Bench may make an order staying the operation of the order of the Bench.
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> (4) The Full Bench shall decide such appeal within twenty days of its being preferred:
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> Provided that, if such appeal is not decided within the period aforesaid, the stay order of the Full Bench shall stand vacated on the expiration of that period."

Thus, it cannot be said that the order passed by the NIRC suffered from any lacuna, procedural irregularity or legal defect. We have also painfully noticed that reinstatement order, passed on 18.4.2008 by the Labour Court i.e. 17 years before, is yet to be fully implemented owing to the mis-interpretation of the various court orders by the Bank. Needless to add that clear directions issued by the superior judiciary that all pension papers must be completed and processed at least six months prior to an employee's date of retirement. Refers Muhammad Ismail Memon's case **(PLD 2007 SC 35)**, in which it was*, inter alia,* held that *"such lethargic action of responsible officials was in violation of Articles 9 and 14 of the Constitution and was against dignity of human being"* and it was categorically directed that *"all Government department, Agencies and Officers deployed to serve the general public within the limit by the Constitution as well as by the law shall not cause unnecessary hurdle or delay in finalizing the payment of pensionary/retirement benefits cases in future and violation of these directions shall amount to criminal negligence and dereliction of the duty assigned to them."***.** Furthermore, as per judgment of the Labour Court the *"previous service rendered by the petitioner shall also be counted towards his pensionary benefits."* Therefore, his total service with effect from his initial appointment i.e. 1.7.1992 till retirement i.e. 21.5.2017 comes approximately 25 years, thus, he qualifies for pensionary benefits. We hold that pensionary benefits constitute a vested, enforceable, legal and fundament right of a retired employee and cannot be withheld except by the order of a Court of competent jurisdiction in accordance with law.

Consequently, any unnecessary, arbitrary, or unexplained delay in the release of pensionary benefits, or their withholding without any lawful justification or a specific order of a Court of competent jurisdiction, amounts to a willful disregard of the law declared by the superior judiciary. Such conduct not only violates the legal rights of the pensioner but also undermines the authority of the Court, and would amount to contempt of Court.

9. Coming to the impugned order, suffice it to observe that an order passed on a time-barred review petition is not amenable to the writ jurisdiction of the High Court, as the litigants cannot be allowed to adopt forums at will to bypass limitation, as it makes a mockery of the process of law. The superior courts have consistently held that once an original order attains finality due to the expiration of the limitation period, a suitor cannot bypass this finality by filing a time-barred review and subsequently challenging its dismissal in a writ petition. This is based on the principle that what cannot be done directly cannot be done indirectly. In <u>Mumtaz Baig VS Jamal Din</u> **(2009 SCMR 1364)** it was held that a suitor cannot bypass a binding order by challenging a refusal to review it if the original order has become final by efflux of time. <u>In Ahmad Jan Vs Qazi Azizul Haq</u> **(2009 SCMR 1022)** the Court ruled that a review petition filed beyond the period of limitation is hopelessly barred, and simple permission to file it does not condone the delay. In the instant case, the High Court, while allowing the writ petition filed by the Bank, accepted a novel, factually incorrect and legally untenable plea advanced by the Bank to the effect that, *"in order to resolve the controversy between the parties, the Court has to first determine the anchor point pending since 2008 regarding the back benefits of Respondent No.1, namely Muhammad Akram."*. By accepting this plea, the High Court has overlooked the cardinal principle of common

law and constitutional jurisprudence that there must be an end to litigation. Further that the authorities cited in the impugned judgment are not relevant to the facts of the case.

10. In view of the foregoing, this petition is converted into appeal and allowed. Impugned order is set aside. Consequently, the judgment of the learned Labour Court dated 18.04.2008 attained finality. The findings and directions contained therein, having remained undisturbed through the hierarchy of judicial forums, can neither be reopened nor circumvented.

Chief Justice

Judge

Judge

Islamabad
24th July, 2026
Approved for reporting
Riaz

Announced in open Court on 30th July, 2026.

Judge