

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.

Mr. Justice Javed Iqbal, Judge.

1. Civil Appeal No. 73/2016

In

CPLA No. 84/2016.

Zarai Taraqiati Bank

Petitioners.

Versus

Sher Ali Baig & others

Respondents.

2. Civil Appeal No. 74/2016

In

CPLA No. 82/2016.

Employees of Zarai Taraqiati Bank

Petitioners.

Versus

Federation of Pakistan

Respondent.

PRESENT:-

1. Civil Appeal No. 73/2016

1. Mr. Sharif Ahmed Advocate for the petitioner alongwith Mr. Taqi Ahmed, Assistant Vice President, Policy & Regulations Department ZTBL Head Office, Islamabad.
2. Mr. Johar Ali Khan Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the respondents.

2. Civil Appeal No. 74/2016

1. Mr. Johar Ali Khan Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioners.
2. Mr. Sharif Ahmed Advocate alongwith Mr. Taqi Ahmed, Assistant Vice President Policy & Regulations Department ZTBL Head Office, Islamabad for the respondents.

DATE OF HEARING: - 03.10.2017.

DATE OF ANNOUNCEMENT: - 12.04.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... These Petitions have arisen out of the impugned judgment dated 16.03.2016 passed by the learned Chief Court whereby the Writ Petition No.

67/2011 filed by the respondents/employees of ZTBL was partially accepted to the extent of grant of allowance of 25% as Special Pay. Both the respective parties being aggrieved by the impugned order filed separate petitions for leave to appeals. This court vide order dated 30.09.2016 granted leave to appeal and the case is heard on 03.10.2017. Since, both the petitions have been directed against the impugned order, therefore, the same are, heard together and decided through this common judgment.

2. Briefly, the facts of the case are that the respondents filed a Writ Petition before the learned Chief Court contending therein that they are permanent employees of Zarai Taraqati Bank Limited. They are entitled for grant of Un-Attracted Area Allowance as well as for 25% Special Pay on their running basic pay w.e.f 02.12.2001 as per directive of the Prime Minister Islamic Republic of Pakistan contained in Finance Division (Regulation Wing) Government of Pakistan vide Notification dated 01.02.1993. On the contrary, the authorities of The Agriculture Development of Pakistan (ADBP) contended that the bank in question was established under The Agriculture Development of Pakistan Ordinance, 1961 under Section 39(ii)(e) &(f) and the approval of Federal Government was mandatory in respect of service matter of employees. The Federal Government vide a Gazette Notification dated 13.01.2001 and in pursuance of the provisions of The Banks (Nationalization) Act, 1974, the Board of Directors of the Bank was declared competent to determine personnel policies with regard to

remunerations and benefits thereto in respect of their employees. The Board of Directors in exercise of its powers under Section 11 of the Banks (Nationalization) Act, 1974 approved the revision of basic pay of staff with effect from 01.07.2000 by increasing the same up to 100%. Subsequently, the special pay was rationalized by revising the same from 25% to 15% at the existing pay of the employees. Later on, The Agriculture Development Bank of Pakistan (ADBP) was transformed into a public limited company with the name Zarai Taraqiati Bank Limited (ZTBL) with effect from 14.12.2002 in the light of The Agriculture Development Bank of Pakistan (ADBP) (Reorganization & Conversion) Ordinance, 2002. The said bank has already been placed under Bank Nationalization Act, 1974 through a Gazette Notification by repealing The Agriculture Development Bank of Pakistan (ADBP) Ordinance, 1961. Per averments of the petitioners/employees of ZTBL, after issuance of the above referred Gazette Notification, the instructions of the Federal Government are no more binding upon the Zarai Taraqiati Bank Limited and the special pay was allowed on running basic pay @ 25% with effect from 02.04.2007 till 30.06.2011 whereafter the same is being paid at a frozen/fixed amount till to date. As per contentions of the ZTBL the impugned order passed on the conceding statement of the learned counsel for the bank in question which has no legal value. The conceding statement can be given on facts but not permissible on legal questions.

3. Mr. Taqi Ahmed, Vice President, ZTBL submits that initially 25% Special Pay was allowed to all the Federal Government Employees serving in the then Northern Areas now re-nomenclated as Gilgit-Baltistan. The Federal Government vide a Gazette Notification dated 13.01.2001 and in pursuance of the provisions of The Banks (Nationalization) Act, 1974, the Board of Directors of the Bank was declared competent to determine personnel policies with regard to remunerations and benefits thereto in respect of their employees. Consequently, the Board of Directors in exercise of its powers under Section 11 of the Banks (Nationalization) Act, 1974 approved the revision of basic pay of staff with effect from 01.07.2000 by increasing the same up to 100%. He submits that resultantly, the special pay was rationalized by revising the same from 25% to 15% at the existing pay of the employees. Later on, The Agriculture Development Bank of Pakistan (ADBP) was transformed into a public limited company with the name Zarai Taraqati Bank Limited (ZTBL) with effect from 14.12.2002 in the light of The Agriculture Development Bank of Pakistan (ADBP) (Reorganization & Conversion) Ordinance, 2002. The said bank has already been placed under Bank Nationalization Act, 1974 through a Gazette Notification by repealing The Agriculture Development Bank of Pakistan (ADBP) Ordinance, 1961. He further submits that after issuance of the above referred Gazette Notification, the instructions of the Federal Government are no more binding upon the Zarai Taraqati Bank Limited and the special pay was allowed on running

basic pay @ 25% with effect from 02.04.2007 till 30.06.2011 is being paid at a frozen/fixed amount till today. He submits that after the revision of the pay and salary of the employees of the ZTBL, the basic pay has been increased by 100%, hence, the 25% Special pay has been rationalized and 15% Special pay has been added in the pay of the employees of the ZTBL who are getting the same as usual. He submits that the learned Chief Court fell in error while passing the impugned order, therefore, the same is not sustainable. He prays that the impugned order passed by the learned Chief Court may graciously be set aside.

4. On the other hand, the learned counsel appearing on behalf of the respondents/employees contends that in the year 1992, the Prime Minister Islamic Republic of Pakistan vide directive bearing No. F.JS(IMP)PMDIR/323/92 dated 1992 approved Special Pay of 25% of the basic pay to all employees including both local and non local serving in the Northern Areas now Gilgit-Baltistan. In pursuance of the said directive, the Kashmir Affairs & Northern Areas Division, Government of Pakistan issued a Notification vide No. NA-II-16/1/85 dated 29.09.1992 with the concurrence of Finance Division (Regulation Wing) Government of Pakistan, wherein the 25% Special Pay was granted to Federal Government Employees serving in Gilgit-Baltistan. He also contends that in pursuance of the said Notification, the petitioner No.01 allowed the grant of Special Pay equal to 25% of basic pay to the employees vide Circular No. PD (P)3(83)/92/I/3566 dated 01.02.1993. Later on, the

Finance Division (Regulation Wing) vide letter No. F.21/(4) R. 9/95-134 dated 04.02.1996 further clarified to the effect that the Special Pay equal to 25% of basic pay be treated as pay and is reckonable for calculation of allowances related to the pay and same was endorsed by the petitioner No.02 vide Circular No. PD(P) 3(83)92/I/151 dated 18.02.1996. Per learned counsel, as per recommendations of Award of the Fourth Wage Commission for Clerical and non Clerical Staff of banks and Financial Institutions, 1984, published by Government of Pakistan in the Official Gazette on 19.07.1984. The petitioners vide Circular No. PD-Circular No. 24/84 dated 30.07.1984 even Finance Division Government of Pakistan letter No. F.4(6)/Bkg.V/94 dated 17.01.1994 regarding the revision of pay & allowances of the Officers/Executives, continued the payment of Unattractive Area Allowance at the existing rate of 40% of the basic pay to the employees. He contends that on 25.12.2001, the petitioner No. 02 issued the impugned Circular vide No. PD/33/2001 wherein under Para 09 of the said impugned circular, Special Pay was renamed as Personal pay and it was reduced from 25% to 15% of the revised basic pay. Furthermore, under Para 10 of the said impugned circular Unattractive Area Allowance was also reduced from 40% to 20%.

5. Per learned counsel, on 28.07.2006, the petitioner No. 02 issued another Circular bearing No. PD/18/2006 wherein under Para 02 (iii), the Unattractive Areas Allowance was frozen at the existing level as on 30.06.2006 and the employees who belonged to

the cadre of Officers and above were disentitled to the Unattractive Area Allowance on the pretext of having domicile of Gilgit-Baltistan while the facility of Unattractive Area Allowance was restricted to non-local employees. He submits that the respondents/employees of ZTBL made series of appeal/representations to the petitioners/ZTBL since the issuance of both the impugned Circulars and finally made individual appeals on 25.04.2011 to the petitioner No. 02 wherein they prayed for the withdrawal of the said impugned circulars but the response from the petitioners/ZTBL was/is still awaited. He contends that the impugned circulars issued by the petitioners/ZTBL are void ab-initio, illegal without lawful authority and against the fundamental right of the employees. The petitioners cannot overrule the directives of the Prime Minister of Pakistan, therefore, the said impugned circulars are not sustainable. He prays that the impugned order passed by the learned Chief Court is required to be modified by including Unattractive Hard Area Allowance at the rate of 50% including the grant of 25% Special Pay at the running basic of the employees of ZTBL to meet the ends of justice by setting aside the impugned Notification issued by the petitioners/ZTBL dated 25.12.2001.

6. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned order passed by the learned Chief Court as well as the impugned Circular issued by the petitioners/ZTBL dated 05.12.2001. The perusal of the said Notification so issued by the

petitioners/ZTBL, it transpires that the Federal Government vide a Gazette Notification dated 13.01.2001 and in pursuance of the provisions of The Banks (Nationalization) Act, 1974, has empowered the Board of Directors of the Bank to determine personnel policies with regard to remunerations and benefits in respect of their employees. The Board of Directors in exercise of its powers under Section 11 of the Banks (Nationalization) Act, 1974 approved the revision of basic pay of staff with effect from 01.07.2000 by increasing the same up to 100%. Consequently, the special pay was rationalized by revising the same from 25% to 15% at the existing pay of the employees. Similarly, the Agriculture Development Bank of Pakistan (ADBP) was transformed into a Public Limited Company with the name Zarai Taraqati Bank Limited (ZTBL) with effect from 14.12.2002 in the light of The Agriculture Development Bank of Pakistan (ADBP) (Reorganization & Conversion) Ordinance, 2002. The said bank has already been placed under Bank Nationalization Act, 1974 through a Gazette Notification by repealing The Agriculture Development Bank of Pakistan (ADBP) Ordinance, 1961.

7. In our considered view, the ZTBL in pursuance of the above Notification has rightly rationalized the pay, allowance & other remuneration of its employees and no indulgence is warranted into it by this Court. The learned Chief Court fell in error while allowing 25% special pay to the employees of Zarai Taraqati

Bank Limited on the basis of No Objection given by the counsel of ZTBL. The conceding statement on law can not be accepted.

8. In view of the above discussions, Civil Appeal No. 73/2016 in CPLA No. 84/2016 filed by the Petitioner i.e. The Zarai Taraqiati Bank Limited (ZTBL) is allowed whereas Civil Appeal No. 74/2016 in CPLA No. 82/2016 filed by the Employees of the Bank in question is dismissed. Consequently, the impugned judgment dated 16.03.2016 passed in Writ Petition No. 67/2011 by the learned Chief Court is set aside by maintaining the Notification Dated 05.12.2001 issued by Zariai Taraqiati Bank Limited (ZTBL). Before parting with this judgment we appreciate Mr. Taqi Ahmed, Assistant Vice President, Policy & Regulations Department ZTBL Head Office, Islamabad who presented his case like an experienced lawyer with clarity and legal wisdom. He has properly assisted this Court as all the legal questions put to him by this Court were rightly answered by him with legal force.

9. The aforementioned appeals are disposed-off in above terms.

Chief Judge.

Judge.