Stereo.HCJDA 38.

Judgment Sheet

LAHORE HIGH COURT
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

….

W.P.NO.2832 OF 2021

MUHAMMAD TARIQ KHAN.

Versus

THE NATIONAL BANK OF PAKISTAN through President/CEO, etc.

JUDGMENT

Dates of hearing:	***25.01.2024, 07.02.2024 and 16.02.2024.***
Petitioner by:	*Ch. Imran Hassan Ali, Advocate.*
Petitioner in connected W.P.No.3243 of 2021 by:	*Mr. Muhammad Arshad Tabrez, Advocate*
Respondents by:	*Malik Muhammad Siddique Awan, Advocate.*

MIRZA VIQAS RAUF, J. *This single judgment shall govern the instant writ petition as well as W.P.No.3243 of 2021, raising not only similar questions of fact and law but arising out of common orders as well.*

Brief Facts

2. *The petitioner herein namely Muhammad Tariq Khan was initially inducted in the National Bank of Pakistan (hereinafter referred to as "N.B.P.") as officer Grade III on 17.03.1996 and later on was promoted as officer Grade II vide order dated 03.03.2003. On the other hand, Tahir Zaman, who is the petitioner in connected petition was appointed as cashier on 20.05.1995 and ultimately was promoted as officer Grade III w.e.f 01.12.2002. Both the petitioners were when posted at Rawat Branch Islamabad as joint custodian/ Manager (Operations) and Cashier respectively, an incident of robbery took place which also resulted into the assassination of security guard of the Bank. This resulted into registration of F.I.R No.28 dated 13.02.2005 under sections 302, 396, 409, 412 & 109 of the*

Pakistan Penal Code, 1860 (hereinafter referred to as "PPC") at Police Station, Sihala Islamabad against unknown culprits. The petitioners were initially suspended from service and subsequently they were also arrayed as accused in the criminal case. In addition to criminal proceedings, the petitioners were also proceeded departmentally. Shahid Pervaiz Dar, Vice President/Manager Cantt. Branch, Rawalpindi was appointed as Inquiry Officer, who issued the statement of allegations on 28.04.2005. As per averments contained in the petitions, the Inquiry Officer though exonerated the petitioners from the allegations but they were informed that competent authority being not in agreement with the Inquiry Officer directed the holding of fresh inquiry. For the said purpose, an inquiry committee was constituted, which issued second statement of allegations to the petitioners. On culmination of inquiry, the petitioners were confronted with major penalty of dismissal from service vide order dated 22.03.2007. The petitioners were since confined in jail, so they routed their departmental appeals from prison. In the meanwhile, the petitioners were tried and convicted in the criminal case. Being the condemned prisoners, the petitioners challenged their conviction in appeal before this Court. The appeals were accepted and the petitioners were acquitted from the charges vide judgment dated 08.06.2010. The petitioners, after their release, moved fresh representations/appeals but on failure to decide, the petitioners approached the Federal Service Tribunal, Islamabad. The appeals were, however, dismissed, being not maintainable. The petitioners though challenged the judgment of Federal Service Tribunal before the Supreme Court of Pakistan but remained unsuccessful as the civil petitions were dismissed with the observation that the petitioners could avail appropriate remedies before the proper forum. The petitioners then filed their respective constitutional petitions before this Court, which were allowed with consent by way of a consolidated order dated 09.05.2018 with the observation that the Bank shall hold a fresh inquiry. In pursuance to the above order, Ghulam Mustafa, Vice President/Regional Executive (Credit), Faisalabad was appointed as inquiry officer. On completion of inquiry, the petitioners were found guilty and again they were confronted with major penalty of dismissal from service vide order dated 21.01.2019. The petitioners submitted their representations/appeals before the departmental authority, which remained unattended and ultimately the petitioners voiced their

grievance through constitutional petitions before this Court, which were disposed of vide order dated 16.02.2021. The representations/ appeals of the petitioners were ultimately dismissed by way of order dated 29.06.2021, hence these petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as "Constitution").

3. *As both these petitions were admitted for regular hearing, so the respondents submitted their reply wherein it is canvassed that the petitions are not maintainable inter alia; the Court lacks territorial jurisdiction; the petitioners have remedy under the Industrial Relations Act, 2012; "N.B.P" Rules are non-statutory and petitions are rested on factual controversy.*

4. *Ch. Imran Hassan Ali, Advocate while opening submissions on behalf of petitioners contended that departmental proceedings were since conducted by the Regional Headquarter Rawalpindi so this Court is vested with the territorial jurisdiction and the objection is misconceived. He added that the petitioners are not workmen so they don't have any remedy under the Industrial Relations Act, 2012. It is argued with vehemence that rules governing the employment of "N.B.P" employees are statutory and this Court can invoke the constitutional jurisdiction. Learned counsel submitted that glaring irregularities were committed during the departmental inquiry. It is contended that the findings of inquiry officer are self-contradictory. Learned counsel further contended that main charges against the petitioners were though never proved but they have been held guilty in an illegal and unlawful manner. In order to supplement his contentions, learned counsel placed reliance on* <u>*The FEDERAL GOVERNMENT through Secretary Interior, Government of Pakistan v. Ms. AYYAN ALI and others*</u> ***(2017 SCMR 1179)***, <u>*NATIONAL BANK OF PAKISTAN and another v. ANWAR SHAH and others*</u> ***(2015 SCMR 434)***, <u>*MUHAMMAD NAEEM v. FEDERATION OF PAKISTAN and others*</u> ***(2023 SCMR 301)***, <u>*FEDERATION OF PAKISTAN through Chairman Federal Board of Revenue FBR House, Islamabad and others v. ZAHID MALIK*</u> ***(2023 SCMR 603)*** *and* <u>*LPG ASSOCIATION OF PAKISTAN through Chairman v. FEDERATION OF PAKISTAN through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and 8 others*</u> ***(2009 CLD 1498)***.

5. *Adding to the contentions of his counterpart Mr. Muhammad Arshad Tabraiz, Advocate submitted that the petitioners have been found guilty by the inquiry officer on the basis of surmises and conjectures. It is contended that major penalty has been imposed upon the petitioners in a mechanical manner without adhering the principles of natural justice.*

6. *Conversely, Malik Muhammad Siddique Awan, Advocate for the respondents, while reiterating the preliminary objections raised in the reply submitted that criminal case was since registered at police station within the territorial limits of Islamabad, so this Court lacks territorial jurisdiction. He also laid much emphasis on the ground that matter in issue entails factual inquiry and this Court cannot substitute the findings of inquiry officer or the appellate authority in writ jurisdiction.*

7. *Heard. Record perused.*

8. *Before embarking upon the rigmarole of the factual aspects of the matter, it would be apposite to first attend the objections with regard to maintainability of these petitions. First comes the question of territorial jurisdiction of this Court. As observed earlier that the petitioners are the employees of "N.B.P". In their respective capacities, as officers Grade II and III, they were posted at "N.B.P" Branch Rawat, Islamabad. During their posting, unfortunately an incident of robbery took place in the bank which resulted into registration of a criminal case against unknown accused but later on the petitioners were arrayed as perpetrators of offence. The petitioners were tried by the learned Additional Sessions Judge, Islamabad and ultimately, they were convicted vide judgment dated 15.06.2007. Feeling dissatisfied, the petitioners challenged their conviction through criminal appeals No.180 and 178/2007 before this Court which were allowed by way of judgment dated 08.06.2010 and the petitioners were resultantly acquitted. Simultaneously, the petitioners were also proceeded departmentally. In the first departmental inquiry, the petitioners were absolved from the charges by the inquiry officer. The petitioners were, however, informed through letter dated 27.08.2005 that competent authority while disagreeing with the inquiry officer decided to hold a denovo inquiry. In furtherance whereof, an inquiry committee comprising of Mr. Pervaiz Taj Bhatti, Vice President and Mr.*

Shahzado Khan Pathan, Vice President was constituted which issued fresh statement of allegations on 03.12.2005. It is evident that second show cause notice was issued to the petitioners by the committee through Regional Office, Bank Road, Saddar, Rawalpindi. It is an undeniable fact that all the proceedings pursuant thereto were conducted at Regional Office, Rawalpindi. Even in the previous round, the petitioners filed W.P.No.2443/2011 and W.P.No.2539/2011, which were allowed vide order dated 09.05.2018 in the following manner: -

> ***"6. In view of above, this petition, as well as W.P.No.2443/2011, is allowed, the inquiry and the order dated 22.03.2007, passed by respondent-bank is set aside and the respondent-bank, as submitted by learned counsel of the respondent-bank, shall hold a fresh inquiry to provide a fair right of hearing to the petitioner. This exercise, as suggested by learned counsel for the respondent-bank, shall be completed within three months. The petitioner shall appear in the Regional Office of respondent-bank on 01.06.2018 and no notice to procure his attendance will be issued by the respondent-bank."***

It would not be out of context to mention here that after the culmination of denovo inquiry, the matter again came up before this Court through W.P.No.1712/2019, which was disposed of vide order dated 16.02.2021. In the wake of above discussion, it can thus safely be held that this Court is vested with the territorial jurisdiction to entertain these petitions. While forming my view I am fortified with the principles laid down in <u>The FEDERAL GOVERNMENT through Secretary Interior, Government of Pakistan v. Ms. AYYAN ALI and others</u> ***(2017 SCMR 1179)****. The relevant extract is reproduced below: -*

> 4. As regards the question of territorial jurisdiction, it hardly need any emphasis that the impugned Notification/Memorandum has been issued by the Federal Government, which functions all over the country, and since the respondent No.1 resides in Karachi, and has a right and choice to proceed abroad through Jinnah International Airport, Karachi, and in fact atleast twice earlier she had proceeded to go abroad through Jinnah International Airport, Karachi, though she was stopped owing to the earlier Notifications/Memorandums, and therefore the embargo placed on her leaving the country has in fact taken place at Karachi, which prevention in all likelihood, was to be repeated at Karachi in pursuance of the third Notification/Memorandum, and thus giving rise to a cause of action against the third Notification/Memorandum at Karachi because of its taking effect there. It is now well settled that the Federal Government, though may have exclusive residence or location at Islamabad, would still be deemed to function all over the country. In this regard the case of *<u>LPG Association of Pakistan through its Chairman v. Federation of Pakistan through Secretary Ministry of Petroleum and</u>*

Natural Resources Islamabad and 8 others (2009 CLD 1498), may be referred to, whereby the Lahore High Court, after meticulously analyzing the judgments rendered by this Court, as well as of the High Courts on the question of territorial jurisdiction, with regard to the acts, deeds and the legislative instruments of/by the Federal Government, has deduced the jurisprudential principles as follows:-

> "(A) The Federal Government or any body politic or a corporation or a statutory authority having exclusive residence or location at Islamabad with no office at any other place in any of the Province, shall still be deemed to function all over the country.
>
> (B) If such Government, body or authority passes any order or initiates an action at Islamabad, but it affects the "aggrieved party" at the place other than the Federal capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order/action has affected him.
>
> (C) This shall be moreso in the cases where a party is aggrieved by a legislative instrument (including any rules, etc.) on the ground of it being ultra vires, because the cause to sue against that law shall accrue to a person at the place where his rights have been affected. For example, if a law is challenged on the ground that it is confiscatory in nature, violative of the fundamental rights to property; profession; association etc. and any curb has been placed upon such a right by a law enforced at Islamabad, besides there, it can also be challenged within the jurisdiction of the High Court, where the right is likely to be affected.
>
> In this context, illustrations can be given, that if some duty/tax has been imposed upon the withdrawal of the amounts by the account holders from their bank account and the aggrieved party is, maintaining the account at Lahore though the Act/law has been passed at Islamabad, yet his right being affected where he maintained the account (Lahore), he also can competently initiate a writ petition in Lahore besides Islamabad; this shall also be true for the violation of any right to profession, if being conducted by a person at Lahore, obviously in the situation, he shall have a right to seek the enforcement of his right in any of the two High Courts."

And thus whether or not the subject Notification/Memorandum was issued on the recommendation of the Punjab Government has no relevance to the question of the Court's jurisdiction in the matter. Furthermore it is also factually incorrect to claim that the Notification/ Memorandum has been issued in pursuance of an order passed by the learned Lahore High Court as the learned High Court's order dated 17.5.2016, being referred to in this regard, contain only a direction to the petitioner to decide a certain application submitted by the petitioner before it, in accordance with law. Absolutely no direction or order was passed by the learned Lahore High Court for issuance of any Notification/Memorandum. Even otherwise such order of the learned High Court cannot be successfully used to plead lack of jurisdiction of

the learned High Court of Sindh in the matter, because brought under challenge before the High Court of Sindh was the Notification/ Memorandum issued by the petitioner and not any act or deed of the Government of Punjab. Furthermore as noted hereinbefore, the earlier two Notifications/Memorandums have been successfully challenged before the learned High Court of Sindh as the said Court in view of the above principle, has entertained those petitions."

9. *In the case of LPG ASSOCIATION OF PAKISTAN through Chairman v. FEDERATION OF PAKISTAN through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and 8 others* ***(2009 CLD 1498)****, a learned Single Bench of this Court held as under: -*

6. From the judgments cited at the Bar on both the sides, the portions whereof have been extensively reproduced, the following ratio is deducible:--

(A) The Federal Government or any body politic or a corporation or a statutory authority having exclusive residence or location at Islamabad with no office at any other place in, any of the Provinces, shall still be deemed to function all over the country.

(B) If such Government, body or authority passes any order or initiates an action at Islamabad, but it affects the "aggrieved party" at the place other than the Federal capital, such party shall have a cause of action to agitate about his grievance within the territorial jurisdiction of the High Court in which said order/action has affected him.

(C) This shall be moreso in the cases where a party is aggrieved or a legislative instrument (including any rules, etc.) on the ground of it being ultra vires, because the cause to sue against that law shall accrue to a person at the place where his rights have been affected. For example, if a law is challenged on the ground that it is confiscatory in nature, violative of the fundamental rights to property; profession, association etc. and any curb has been placed upon such a right by a law enforced at Islamabad, besides there, it can also be challenged within the jurisdiction of the High Court, where the right is likely to be affected.

In this context, illustrations can be given, that if some duty/tax has been imposed upon the withdrawal of the amounts by the account holders from their bank account and the aggrieved party is maintaining the account at Lahore, though the Act/law has been passed at Islamabad, yet his right' being affected where he maintains the account (Lahore), he also can competently initiate a writ petition in Lahore besides Islamabad; this shall also be true for the violation of any right to profession, if being conducted by a person at Lahore, obviously in the situation, he shall have a right to seek the enforcement of his right in any of the two 'High Courts.

(D) On account of the above, both the Islamabad and Lahore High Courts shall have the concurrent jurisdiction in certain

> matters and it shall not be legally sound or valid to hold that as the Federal Government etc. resides in Islamabad, and operates from there; the assailed order/action has also emanated from Islamabad, therefore, it is only the Capital High Court which shall possess the jurisdiction. The dominant purpose in such a situation shall be irrelevant, rather on account of the rule of choice, the plaintiff/petitioner shall have the right to choose the forum of his convenience.

10. *So far status of rules of "N.B.P" governing its employees is concerned, it is observed that "N.B.P" was established and incorporated under the National Bank of Pakistan (Ordinance No.XIX of 1949) as a body corporate having perpetual succession and a common seal, and shall by the said name sue and be sued. In order to regulate the services of the "N.B.P" employees, the National Bank of Pakistan Staff Service Rules, 1973 (hereinafter referred to as "Rules, 1973") were made. The above rules followed the National Bank of Pakistan (Staff) Service, Rules, 1980 (hereinafter referred to as "Rules, 1980"), which were given effect from 1st January, 1980. It would be imperative to mention here that "Rules, 1973" were not repealed by the later rules and as such same remained alive for all intent and purposes.*

11. *In the case of <u>MUHAMMAD TARIQ BADR and another v. NATIONAL BANK OF PAKISTAN and others</u>* ***(2013 SCMR 314)****, the question with regard to the nature of the "Rules, 1980" and their effect on the "Rules, 1973" came under discussion before the Supreme Court of Pakistan and it was held as under: -*

> 9. Be that as it may, dilating upon the first proposition set out above, suffice it to say that according to the provisions of section 20 of the Act, 1974 the rule making power is conferred upon the Federal Government in the terms as under:--
>
> > *"Power to make Rules. The Federal Government may, by notification in the official Gazette, make Rules to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act."*
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> It is an admitted position that 1980 Rules have not been framed as per the mandate of law ibid, inasmuch as these rules are neither made by the Federal Government nor published in the, official gazette. There is also no cavil/quibble that the said rules have not been composed/enforced with the prior approval of the Government or any subsequent benediction was conferred to those by the Government. Rather (admittedly) the rules have been formulated by the Board of the respondent-bank constituted under section 11 of the Act, 1974 which stipulate the general power of the Board pertaining to policy making and the administration and management of the nationalized banks.

Subsection (4) thereof specifically provides *"The general direction and superintendence of the affairs and business of a bank, and overall policy making in respect of its operations, shall vest in its Board"*. Furthermore, as per subsection (5) of the Act, 1974 the Board shall determine *"personal policies of the bank, including appointment and removal of officers and employees"* and in accordance with subsection (10) *"All selections, promotion and transfer of employees of banks except the President and decisions as to their remuneration and benefits shall be made by the President in accordance with the evaluation criteria and personnel polices determined by the Board"*. From the above it is unequivocally clear that the 1980 Rules have been framed by the Board of the bank pursuant to its authority in the nature of management/ superintendence of the affairs of the bank and/or the policy making power; however for all intents and purposes, it is so done in the exercise of an executive authority under the statute, but having even no remote or possible or permissible connection and nexus to any statutory jurisdiction, these rules thus can at best be termed, understood, comprehended and construed merely as the guidelines or the domestic instructions of the N.B.P., for the purposes of highlighting, elucidating or beneficially revamping the service structure of bank's employees for their advantage, provided the same do not in any manner contravene the 1973 Rules, but nothing more than that can be imputed to those; and in any case the rules do not enjoy the status of a statutory instrument. And this is not disputed by the parties, therefore, the legal question which eminently calls for the resolution, is that whether non-statutory rules (though we have herein construed these as mere instruction etc.) have, and/or can repeal, rescind or displace the statutory rules of 1973? To plead so, it has been inter alia submitted on the bank's behalf that on account of section 13(2) of the Act, 1974 particularly the expression *"Notwithstanding"* which shall operate as a non obstante provision/ clause, even though 1980 Rules are non-statutory, yet as per the force of the **law** afore-stated, these (1980 Rules) have the overriding effect qua the 1973 Rules. In order to appreciate the above contention, it shall be germane to reproduce the whole section 13 which reads as follows: --

> *"13. Provisions regarding staff. (1) Save as otherwise provided in this Act, all officers and other employees of a bank shall continue in their respective offices and employment on the same terms and conditions, remuneration and rights as to pension and gratuity, as were applicable to them immediately before the commencing day.*
>
> *(2) Notwithstanding any law or any provision contained in a contract agreement, letter of appointment, rules or regulations of a bank, every officer and employee of a bank shall be liable to transfer to any of its branches in or outside Pakistan or to any other bank.*
>
> *Provided that his status and emoluments shall not be adversely affected."*

A plain reading of section 13(1) ibid unambiguously postulates that the service of the officers and other employees of the nationalized banks have in fact and in true sense and spirit been secured and protected (*emphasis supplied*) as per force thereof "**on the same terms and conditions**" etc. which were applicable to them immediately before the commencement of the Act, 1974. It is an admitted and undisputed factual reality that before the commencing day of 1974 Act, 1973 Rules

were validly in force and for all intents and purposes were serving as the conclusive terms and conditions of service of the employment for the N.B.P. officers etc. Thus, by virtue of the section 13(1), such rules were specifically saved, guarded and shielded instead of having been displaced/repealed/rescinded overridden. The language of the section 13(1) without any shadow of doubt, spells out the clear intendment of the legislature to preserve the earlier terms and conditions of the nationalized bank, which in the present case undoubtedly were 1973 Rules, rather than being obliterated. The argument of the learned counsel for the respondent that the expression "*notwithstanding*" appearing in section 13(2) should be construed as a non obstante provision/clause to annul and cancel 1973 Rules 'as a whole' and thus be replaced by 1980 Rules is doubtlessly misconceived and unfounded. The protection and security provided under section 13(1) which in fact is absolute and unambiguous in nature cannot be negated and vitiated by section 13(2) on account of the expression *"notwithstanding'* which is an expression only relatable to that specific part and purpose of the section (i.e. 13(2)). In my candid view it can neither be legally done, or permissible under the law nor it is the purport or the meaning and the spirit of section 13(2) when it is read in the syntax of its full text. In simplest terms, the tenor and the command of this subsection is limited and restricted qua the transfer of the officers/employees of a nationalized bank, inter se the branches of the same bank, and/or a room has been provided for such transfer to any other nationalized bank. Obviously this being the legislative command and if there was anything to the contrary contained in any other law for the time being in force i.e. any law in force at the time of enforcement of 1974 Act, including the 1973 Rules to this restricted extent, the provisions of subsection (2) of section 13 shall prevail and anything inconsistent thereto even in the said (1973) Rules or contract/agreement etc. shall be subservient to this provision and has to give way. But this shall be without in any manner affecting any other earlier terms and conditions of service, which stand fully secured under section 13(1). I may like to add here with emphasis that the Board of N.B.P. constituted under section 11 of the Act, 1974, at the most was conferred with the power of managing the affairs of the bank in terms of the policies etc. to be formulated by it on the subjects enumerated in the section, but by no express command of law (section 11) was empowered to make service rules, which can be termed as statutory in nature, with the further authority to annul the statutory rules already in force. In any case, the Board in the garb of its general empowerment of policy making, superintendence and managing the affairs and business of the bank, by no stretch of legal comprehension and principle of interpretation could, rescind, replace, substitute and/or vitiate the 1973 Rules. This undoubtedly could not be done by a non-statutory instrument, which has come into being through simipliciter account of the exercise of executive authority of the Board; and it is a fundamental rule of jurisprudence that the executive has no empowerment to annul or in any manner invalidate or vitiate the command of the statute. Therefore, I am constrained to hold that 1980 Rules have not replaced or rescinded the earlier rules of 1973."

After going through the principles laid down in the case of MUHAMMAD TARIQ BADR supra, there remains no hint of doubt with regard to the nature of "Rules, 1973" being statutory. It is also added with clarity that the petitioners were also governed by the said Rules.

12. *Adverting to the contention of learned counsel for the respondent Bank that with the framing of the National Bank of Pakistan Staff Service Rules, 2021 (hereinafter referred to as "Rules, 2021"), the petitioners are to be governed under the said Rules as by virtue of Rule 72 of "Rules, 2021", "Rules, 1973" have been repealed, suffice to observe that the appropriate answer to this proposition is embodied in section 6 of the General Clauses Act, 1897, which reads as under: -*

> **6. Effect of repeal.** – Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-
>
> **(a)** revive anything not in force or existing at the time at which the repeal takes effect; or
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> **(b)** affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
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> **(c)** affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
>
> **(d)** affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
>
> **(e)** affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;
>
> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

From the bare reading of the above referred provision of law, it clearly manifests that a change in the substantive law amounting to divest and adversely affect the vested rights of the parties shall always have prospective implication unless by express intention of the legislature such law has been made applicable retrospectively. The petitioners, for all intent and purposes, are the employees of "N.B.P" and are governed by the "Rules, 1973" being statutory in nature. "N.B.P" being a statutory corporation is amenable to the writ jurisdiction of this Court under Article 199 of the "Constitution". Guidance to the above effect can be sought from <u>*MUHAMMAD NAEEM v. FEDERATION OF PAKISTAN and others*</u> ***(2023 SCMR 301)***. *The relevant extract from the same is reproduced below: -*

> "6. We are cognizant of the legal position that the NBP, being a statutory corporation, is amenable to the writ jurisdiction of the High Courts under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, and its employees when are governed or proceeded against under the statutory rules can also avail the recourse to the writ jurisdiction for the redressal of their grievances in respect of their service matters. However, this legal position does not merge the NBP, a separate juristic person, into the Federal Government, nor in any manner blur the distinction between NBP a Statutory Corporation and the Federal Government, a constitutional body or in any manner turn the employees of the NBP into the employees of the Federal Government."

13. *One of the objections with regard to maintainability of the petitions is that the petitioners have an alternate remedy under the Industrial Relations Act, 2012 (hereinafter referred to as "Act, 2012"), suffice to observe that "Act, 2012" was promulgated to consolidate and rationalize the law relating to formation of trade unions, and improvement of relations between employers and workmen in the Islamabad Capital Territory and in trans-provincial establishments and industry. Worker and Workmen are defined in subsection (xxxiii) of section 2 of the "Act, 2012", which reads as under: -*

> **2 (xxxiii)** "worker and "workman" mean person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment are express or implied, and, for the purpose of any proceedings under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity."

The petitioners being the officers of the "N.B.P", in no way, can be equated or termed as workmen. While forming my opinion, I am fortified with the judgment in the case of <u>NATIONAL BANK OF PAKISTAN and another v. ANWAR SHAH and others</u> ***(2015 SCMR 434)****. The relevant extract from the same is reproduced below:*

> 8…… The 'worker' and the 'workman' defined in the Act mean person not falling within the definition of 'employer' who is employed as a supervisor or as an apprentice but does not include a person who is employed mainly in managerial or administrative capacity. On the other hand, the 'employer' as defined in the Act includes a person who is proprietor, director, manager, secretary, agent or officer or person concerned with the management of the affairs of the establishment. The term 'officer' is specifically mentioned in the definition of term

'employer'. However, as has been noted from the case-law cited by the learned counsel for the parties, the Courts have not considered the designation of a person to be a factor determining his status of employment in an establishment to be that of an officer or a workman rather the Court has always considered the nature of duties and functions of a person to be the factor which will determine his status as to whether he is a workman or not. In this respect, we may refer to the case of *National Bank of Pakistan v. Punjab Labour Court No.5, Faisalabad (1993 SCMR 672),* which was a case relating to an Officer Grade-I1 of NBP against whom disciplinary action was taken. He approached the Labour Court for redressal of his grievance claiming himself to be a workman. The matter came up to this Court and it was held that the designation per se is not determinative of a person being a workman rather the nature of duties and function determine his status and the burden is on him to establish that he is a workman. As the Officer Grade-II failed to discharge his burden, he was held not to be a 'workman' and his grievance petition was dismissed. The ratio of this case and also of the other cases that have been relied upon by the learned counsel for the parties is that the person who approaches a Labour Court for redressal of his grievance claiming himself to be a workman and such status of workman being denied by the employer, it becomes a bounden duty of a person who approaches the Labour forum to demonstrate through evidence that his nature of duties and functions were that of a workman and not that of a managerial or administrative capacity and that he was not an employer. Unless such categoric evidence is led by him, he will not be considered to be a workman and his grievance petition will not be maintainable before the Labour forum. It, therefore, implies that the officer cannot be assumed to be workmen nor such can be declared on mere asking. The argument that officers Grade-I to III are performing supervisory function in itself means that this has to be established by evidence. In this view of the matter, on a solitary claim of the union no blanket declaration can be given that the Officers Grade-I to III in the establishment of NBP are workmen.

9. We may also here make reference to the case of *Karachi Pipe Mills Employees Union v. Karachi Pipe Mills Ltd. Karachi (1992 SCMR 36),* where union has filed an application under section 34 of erstwhile Industrial Relations Ordinance, 1969, claiming payment of benefit of overtime to the workers employed in the Mills. This Court, after elaborate discussion, came to the conclusion that CBA in an application under section 34 of the Ordinance can only raise grievance before a Labour Court for enforcement of its own rights guaranteed under the law, award and settlement and not the rights of an individual worker who has remedy under section 25A of Ordinance to raise his own grievance in respect of right guaranteed to him under any law, award or settlement. Sections 60 and 33 of the Act are in similar term as that of sections 34 and 25-A of the Ordinance. Thus, for this reason also NBP Employees Front was not competent in taking up the cause of Officers Grade-I to III of having them declared as 'workmen'."

Reference to this effect can also be made to HABIB BANK LIMITED v. GULZAR KHAN and others ***(2019 SCMR 946)***.

14. *Now coming to the propriety of departmental proceedings, resulting into dismissal of the petitioners from service, it is observed without any hint of doubt that there is no legal impediment in conducting criminal*

and departmental/disciplinary proceedings side by side. It is also trite that even in case of acquittal in criminal proceedings, employee cannot claim immunity being proceeded departmentally. The fate of departmental proceedings is always to be adjudged from the incriminating material placed in support of the charges against the delinquent employee. At the same time, one cannot keep himself aloof from the fact that if an employee is precluded to claim the premium of his acquittal in the departmental proceedings, he cannot be vexed merely on account of his conviction in the criminal case.

15. *In order to examine the validity of the departmental proceedings, it is noticed that initially the petitioners were suspended and they were confronted with statement of allegations and charges on 28th April, 2005 in pursuance whereof, an inquiry was conducted by Shahid Pervaiz Dar, Vice President/Inquiry Executive, who exonerated the petitioners from the charges, which followed the second inquiry conducted by two members committee while serving the petitioners with the fresh statement of allegations and charges on 3rd December, 2005. The inquiry committee held the petitioners guilty of the charges and resultantly by way of order dated 22nd March, 2007, major penalty of dismissal from service was imposed upon them. The petitioners were since confined in jail, so they moved a departmental appeal therefrom and later on both the petitioners were convicted in the criminal trial against which they preferred their appeals before this Court, which were allowed. On their release from jail, the petitioners moved fresh departmental appeals and since they received no response from the respondents, so they filed service appeals No.1358(R)CS/2010 and 1448(R)CS/2010 before the Federal Service Tribunal. The appeals were, however, dismissed by the Tribunal by way of judgment dated 18th June, 2011, being not maintainable. Feeling dissatisfied, the petitioners then filed Civil Petitions for leave to appeal before the Supreme Court of Pakistan, which too were dismissed with the observation that the petitioners could avail the appropriate remedy before the proper forum. The petitioners then filed W.Ps.No.2443 and 2539 of 2011 respectively before this Court. The petitions were allowed vide order dated 9th May, 2018 in the manner as narrated hereinabove. In pursuance of the order of this Court, denovo inquiry was conducted by Mr. Ghulam Mustafa, Vice*

President/ Regional Executive (Credit), Faisalabad, who on finalizing the inquiry recommended the imposition of major penalty, which was accordingly imposed by way of order dated 21st January, 2019.

16. *The petitioners being dissatisfied again moved departmental appeal before the President "N.B.P" as well as Executive Officer President/Group Head through proper channel, so as to be placed before the competent appellate authority but remain unattended. This prompted the petitioners to file W.P.Nos.1712 of 2019 and W.P.No.936 of 2019, which were disposed of vide common order dated 16th February, 2021 in the following manner: -*

> **"**This constitutional petition as well as connected petition W.P.No.936 of 2019 challenges the dismissal of the petitioners by the competent authority of National Bank of Pakistan (NBP). During the course of arguments, it was admitted by the learned counsel for the petitioners that an appeal under rule 40 of the NBP Staff Service Rules, 1973 has been filed to the competent authority which has not been decided. Therefore, quite clearly since the petitioners have availed the remedies provided under law, they cannot be permitted to make collateral challenge to the same order. These petitions are therefore disposed of with a direction to the respondent No.2 Regional Chief Executive, Rawalpindi Cantt to ensure that the appeals of the petitioners are placed before the competent authority empowered under the rules to decide these appeals. These appeals then shall be decided within the next two months of the receipt of the order of this Court by the competent authority before whom the appeals shall be placed for decision.**"**

Leaving aside the desultory events occurring thereafter, ultimately by way of order dated 29th June, 2021, the departmental appeal was declined.

17. *As already observed that in the first inquiry report, the petitioners were absolved from the allegations whereas in the second inquiry though the petitioners were held guilty but it was scratched by this Court through judgment dated 9th May, 2018 directing the respondent Bank to hold de novo proceedings. In the final inquiry resulting into dismissal of the petitioners, it is noticed that the petitioners were confronted with charges founded on the following statements of allegations: -*

> ***STATEMENT OF ALLEGATIONS AGAINST MUHAMMAD TARIQ KHAN.***
>
> **"**As per the order to the General Manager (Maintenance) being the Competent Authority under section 2(a) read with sections 3 and 5 of the Removal from Service (Special Powers) Ordinance 2000, the

undersigned has been appointed as the Inquiry Executive to inquire into the following allegations and charges levelled against you.

1. Being Passing Officer/Joint custodian, he under criminal intentions, passed on 12.02.2005 a bogus late cash receipt voucher of Rs.5,700,000/- in respect of CA No.870-8 and authenticated late cash receipt in Branch Cash Balance Book (B-52) and joined hands for accomplishment of planned murderous robbery and caused financial loss to the Bank.

2. On 12.02.2005, total cash balance after close of day's transaction including Prize Bonds was aggregating Rs.1,425,273.66 and he in connivance with Mr. Tahir Zaman (U/S) OG-III/Cash Officer, after showing bogus receipt of Rs.5,700,000/- misappropriated Branch Cash Balance valuables worth Rs.3,862,530/- leaving an amount of Rs.562,743.66 in large safe and left the branch.

3. He, contrary to the instructions contained in SPM, Volume-I, Para-9/B in respect of "Discipline and General conduct" Rule, owed Rs.1.200 (M), from Mr. Tahir Zaman, OG-III/Cash Officer evidencing joint malpractices thereof and started foul play of parallel/pocketing banking.

4. He, contrary to the instructions contained in SPM, Volume-I, Para-66/B, 226 & 227 also handed over his small safe keys to his counterpart, Mr. Tahir Zaman, OG-III/Cash Officer at mid night on 12.02.2005. Therefore, he has not only been found guilty as co-associate providing free hand for accomplishment of the heinous crime/ murderous robbery but also created bad name for the prestigious institution.

STATEMENT OF ALLEGATIONS AGAINST TAHIR ZAMAN.

1. Being OG-III/Cash Officer, you joined hands with your counterpart joint custodian at Rawat Branch and involved yourself in criminal and fraudulent malpractices and also started foul play of parallel pocketing banking.

2. In connivance with Mr. Muhammad Tariq Khan, OG-II (U/S) prepared a bogus late receipt voucher of Rs.5,700,000/- duly entered in Cash Balance Book on 12-02-2005 under your signature and planned to dramatize a pre-planned dacoity that resulted not only cruel slaughtering of the innocent security guard on duty but also financial loss to Bank.

3. During your posting as Incharge Cashier, you had not only been found guilty as main character in heinous crime of murderous robbery during 12/13-02-2005 (night) at Rawat Branch, but also created bad name for the prestigious institution.

4. You for satisfaction of the A/C holder Mr. Masood Pervaiz C/A No.870-8 made an unauthorized payment of Rs.700,000/- from Branch cash balance on 12-02-2005 through Mr. Ali Ashgar, Security Guard.

5. You contrary to Bank instructions issued from time to time for strengthening safety and security, allowed your co-associates, criminal professional (outsider) M/s Azam Khan, Blund Khan & Taj Khan to enter the branch premises after 1800 hours on 12-02-2005 and left the branch alongwith Mr. Asif Masih, Sweeper resulting murderous dacoity.

In the process of inquiry, the petitioners were though associated and process was completed on 16th July, 2018 but it appears from the inquiry report that later on the complainant sent further documents in support of the charges through courier under cover of his letter dated 13th September, 2018, which as per Inquiry Officer were routed to the petitioners so as to give a fair chance of defence for their response/reply with regard to the documents/evidence. The inquiry report was thus revised after taking into consideration the documents submitted by the complainant and the response received from the petitioners in terms thereof. It is an admitted position on the record that the petitioner Muhammad Tariq Khan was absolved from rest of the charges except charge No.1, which too was proved partly to the extent of passing bogus late receipt of Rs.5,700,000/- in respect of c/a 870-8 and authenticated late cash receipt in Branch Cash Balance Book (B-52). From the bare reading of nature of the charges, it is manifestly clear that charges No.1 and 2 are clearly interlinked and dependent to each other. Charge No.2 was directly relatable to bogus receipts. It is quite strange that on the one hand it is opined by the Inquiry Officer that Charge No.2 was not proved but on the contrary, the petitioner in W.P.No.2832 of 2021 was held guilty of charge No.1 partly to the extent of passing bogus late receipts. The findings of guilt with regard to Charge No.1 are not tenable as per Inquiry Officer's own comments, which are reproduced below for the purpose of convenience:-

1. Copy of Debit Voucher dated 14.02.2005 regarding debit of Rs.9,562,530.00 to Branch Protested Bill Account bearing signatures of Mr Muhammad Tariq Khan along with signatures of the then Branch Manager, provided by the complainant, shows that dacoity was taken place in branch and the amount of Cash/Valuables found short was debited to Protested Bill. The accused accepted his signatures on the voucher. However from the said voucher, it cannot be ascertained that who dacoit was. Moreover the amount of debit voucher shows that amount of Late Receipt of Rs.5.700M is included in the amount debited to protest bill. However the copy of above voucher itself does not indicate that late receipt was bogus or otherwise.
2. From the Copy of relevant page of Cash Balance Book B 52 showing late receipt of Rs.5,700,000/- bearing

signatures of the accused, then Branch Manager and Mr Tahir Zaman, it appears that there was late Receipt of Rs.5,700,000/- regarding account NO.870-8 Masood Pervez. Said Page of B 52 does not reflect any thing to ascertain that late receipt was bogus or otherwise.

3. Copy of statement of account of Mr Muhammad Tariq Khan does not show any entry which may create link with late receipt of Rs.5,700,000/-.
4. The Witness, Mr Mehmood Abbasi, stated that signature on B 52 were put by him confirming the signatures of joint custodian of branch and Head cashier of Branch as per practice of Bank. He endorsed his already submitted statement dated 15.02.2005 in which he has said nothing about late receipt.
5. The accused has stated that the alleged late receipt for Rs.5,700,000/- was regularly been received from the depositor by the Cash Officer, entered it in the cash receipt book as well as in the Branch Cash Balance Book (B-52).

18. *The nature of charges against the petitioner namely Tahir Zaman was almost the same. The Inquiry Officer though absolved him from charge No.1 but found him guilty of charge No.2 partly, which findings at the face of it are not reconcilable in view of non-proving of charge No.1, being the main of the charges.*

19. *It is evident from the record that the petitioners were held guilty of the charges on the basis of additional material, which was later on purportedly received by the Inquiry Officer from the complainant with regard to which it is specific stance of the petitioners that it was never confronted to them. Though inquiry report states that said material was confronted to the petitioners but there is no cogent evidence to this effect. Apparently for forming an opinion of guilt of the petitioners, statement of Masood Pervaiz recorded under section 164 of the Code of Criminal Procedure, 1898 (hereinafter referred to as "Cr.P.C") and his affidavit was made basis but his statement under section 164 "Cr.P.C" cannot be used against the delinquent employee without even affording him an opportunity to conduct cross-examination upon the person, who made such statement. Even otherwise, for the use of statement under section 164 "Cr.P.C", there is a mode provided under said Code, which was not adopted at all. Furthermore, in his statement as well as affidavit, Masood Pervaiz nowhere named the petitioners as his culprits. There is no cavil to the proposition that in departmental proceedings, standard of proof of the allegations cannot be equated with the standard of evidence against an accused in a criminal trial but one cannot*

ignore the principle of natural justice while inflicting even meagre penalty upon a person as it amounts to deprive him from the right of earning. Right of fair trial, even otherwise, is guaranteed by the "Constitution".

20. *I am cognizant of the fact that though jurisdiction of this Court under Article 199 of the "Constitution" to some extent is limited with respect to the orders ensuing from the departmental proceedings determining the guilt or otherwise of an employee but this Court being custodian of the rights of citizens cannot shut its eyes when the patent illegalities are floating on the surface of the record. Right of earning is right to life and no one can be allowed to take away such right in a clandestine manner. The petitioners were proceeded against in a non-transparent and haphazard manner in the departmental proceedings, which culminated into their dismissal from service. The impugned orders are apparently suffering with patent illegalities and against the principles of natural justice.*

21. *For the foregoing reasons, this petition (W.P.No.2832 of 2021) as well as connected W.P.No.3243 of 2021 is allowed. As a result, the inquiry report, dismissal order dated 21st January, 2019 and order passed in appeal dated 29th June, 2021 are set aside being illegal and unlawful. As a sequel, the petitioners are reinstated in service with all permissible back benefits. No order as to costs.*

(MIRZA VIQAS RAUF)
JUDGE

Dictated:
21.03.2024

Signed
27.03.2024.

Announced in open Court on ***27.03.2024****.*

JUDGE

Approved for reporting

JUDGE

Zeeshan