

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W. P. No. 9041 of 2023

Umar Asghar Qureshi **VERSUS** Federation of Pakistan and 03 others

W. P. No. 26490 of 2023

Basar Ali **VERSUS** Federation of Pakistan and 03 others

JUDGMENT

Date of Hearing	14.11.2023
Petitioner(s) by:	Hafiz Tariq Nasim, Advocate
Respondent No. 1 by:	Mr. Nasir Javed Ghumman, Deputy Attorney General
Respondents No. 2 to 4 by:	Mr. Abid Hussain Chaudhry, Advocate Mr. Umer Abdullah, Advocate Mr. Hamza Najeeb, Advocate Mr. Hussain Tahir, Advocate Mr. Zarak Zaman Khan, Advocate

ABID HUSSAIN CHATTHA, J. The Petitioner in W. P. No. 9041 / 2023 joined the National Bank of Pakistan (the “NBP”) on 17.01.2007. He was served charge sheet and show cause notice on 31.05.2021 and was dismissed from service vide order dated 14.04.2022 which was upheld in appeal vide order dated 04.01.2023. The Petitioner in W. P. No. 26490 / 2023 joined NBP in the year 2003 and was served charge sheet and show cause notice on 09.09.2021 which culminated into his dismissal from service vide order dated 17.03.2022 and the same was upheld in appeal vide order dated 28.03.2023. The Petitioners, in the titled Petitions, call into question the concurrent dismissal Orders passed against them in the service hierarchy of NBP.

2. At the time of initiation of disciplinary proceedings against the Petitioners, the statutory National Bank of Pakistan (Staff) Service Rules, 1973 (the “Rules, 1973”) had been repealed and the National Bank of Pakistan (Staff) Service Rules, 2021 (the “Rules, 2021”) were in force.

Accordingly, at the very outset, learned counsel for the Respondents / NBP vociferously raised a preliminary objection regarding the maintainability of the titled Petitions on the ground that the Rules, 2021 are non-statutory and as such, the Petitioners could not invoke the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”). Hence, common question qua maintainability of the titled Petitions constitutes the substance of this Judgment.

3. Learned counsels for the Respondents submitted that NBP was incorporated under the National Bank of Pakistan Ordinance, 1949 (the “**Ordinance**”) and was later included in the Schedule of nationalized banks pursuant to the Banks (Nationalization) Act, 1974 (the “**Nationalization Act**”). As such, NBP exists, operates and functions within the legal framework enshrined under the Ordinance and the Nationalization Act. The terms and conditions of services of the employees of NBP were earlier regulated under the statutory Rules, 1973 which were made by the Board of Directors (the “**Board**”) of NBP with the approval of the Federal Government. Subsequently, the Board framed the National Bank of Pakistan (Staff) Service Rules, 1980 (the “**Rules, 1980**”) which were non-statutory and the same displaced the statutory Rules, 1973. It was accordingly held in case titled, “National Bank of Pakistan and another v. Punjab Labour Appellate Tribunal and 2 others” (1993 SCMR 105). However, subsequently the larger Bench of the Supreme Court of Pakistan in case titled, “Muhammad Tariq Badr and another v. National Bank of Pakistan and others” (2013 SCMR 314) held that non-statutory Rules, 1980 could not displace the statutory Rules, 1973. Thereafter, the Board of NBP has made the Rules, 2021 after the repeal of the statutory Rules, 1973 by the Federal Cabinet in its meeting held on 01.04.2021. Consequently, all employees of NBP are currently regulated by non-statutory Rules, 2021. Hence, the Petitioners cannot question the validity of dismissal orders under the constitutional jurisdiction of this Court.

4. Learned counsel for the Petitioners, in rebuttal, submitted that the Petitioners joined their services in NBP much earlier than the introduction of the Rules, 2021 and as such, their terms and conditions of service were

protected under the Rules, 1973 pursuant to the mandatory command of Section 13 of the Nationalization Act. Therefore, the Rules, 2021 cannot be applied to determine the case of the Petitioners. This is evident from the fact that the show cause notices issued to the Petitioners do not specifically refer to the Rules, 2021, rather, simply and conveniently employ the general term, “NBP (SSR)”. He further emphasized that Section 13 of the Nationalization Act in unequivocal terms provides protection to the existing employees of NBP prior to promulgation of the Rules, 2021 with respect to terms and conditions of their service. Therefore, Section 11 of the Nationalization Act which empowers the Board of NBP to frame new rules cannot be read in isolation but in conjunction with Section 13 of the Nationalization Act which is in the field and has not been amended so far. He asserted that Section 13 of the Nationalization Act was purposely discussed and conclusively interpreted by the Apex Court in Muhammad Tariq Badr case (supra) vis-à-vis the rights and interests of existing employees of NBP. Therefore, Section 13 of the Nationalization Act is required to be interpreted in the light of law laid down by the Supreme Court of Pakistan in similar situations in cases titled, “Masood Ahmed Bhatti and others v. Federation of Pakistan through Secretary, M/O. Information Technology and Telecommunication and others” (**2012 SCMR 152**); and “Zarai Taraqiati Bank Limited and others v. Said Rehman and others” (**2013 SCMR 642**). He maintained that in another case titled, “Muhammad Ali Gohar Zaidi v. House Building Finance Corporation & others” (C. A. No. 26-K of 2012), where the employees had joined the institution having statutory rules but later on, the corporation was converted into a company having non-statutory rules, it was held that the employees of the statutory corporation would be protected under the statutory rules despite adoption of non-statutory rules by the company.

5. Learned counsel for the Petitioners further contended that notwithstanding the fact that the Petitioners as existing employees of NBP are governed by the statutory Rules, 1973, even the Rules, 2021 are liable to be construed as statutory in terms of law laid down in cases titled, “P.T.C.L. and others v. Masood Ahmed Bhatti and others” (**2016 SCMR 1362**); and “Shafique Ahmed Khan and others v. Nescom through Chairman, Islamabad and others” (**PLD 2016 Supreme Court 377**) since mere non-approval of

the Federal Cabinet is not the sole principle to term the Rules as non-statutory. He further apprised that maintainability of a constitutional Petition in terms of the Rules, 2021 has been resolved by the Division Bench of Sindh High Court in C. P. No. D-4598 of 2021 titled, “NBP Officers Welfare Association and Others” decided on 07.02.2023 and C. P. No. D-1372 of 2022 titled, “Muhammad Rehan v. Federation of Pakistan and 2 others” decided on 22.02.2023. Finally, he stated that even otherwise, the proceedings against the Petitioner, Basar Ali in Writ Petition No. 26490 / 2023 were initiated in the year 2020 when he was suspended through staff order dated 22.10.2020, therefore, the objection qua maintainability is liable to be discarded.

6. Learned counsels for NBP responded that the rules, circulars and policies in vogue apply to all the existing employees of NBP and they cannot seek benefits under the repealed or non-existent rules, policies and circulars as held in cases titled, Umar Hayat Khawaja v. National Bank of Pakistan through President and 2 others” (**2015 PLC (C.S.) 1331**); and “Umar Hayat Khawaja v. National Bank of Pakistan through President and 5 others” (**2019 PLC (C.S.) 258**). In this context, it was argued that Muhammad Tariq Badr case (supra) is not relevant any more for the reason that the Federal Government has itself repealed the Rules, 1973. The Cabinet Committee for Disposal of Legislative Cases approved the repeal of the Rules, 1973 in its meeting held on 18.03.2021, the Federal Cabinet ratified the decision on 01.04.2021 and the same was published in the Gazette on 15.04.2021. Consequently, the current position emerges that the Board of NBP while exercising its powers under Section 11 of the Nationalization Act approved the non-statutory Rules, 2021 after repeal of the statutory Rules, 1973 without any saving clause. As such, the Board of NBP has competently framed the non-statutory Rules, 2021. Reliance was placed on case titled, “Idrees Ahmad and others v. Hafiz Fida Ahmad Khan and 4 others” (**PLD 1985 Supreme Court 376**) to explain that the effect of repealing a statute is to obliterate it completely from the record of Parliament as if it had never been passed and as such, it is considered as law that never existed except for the purposes of those actions which were commenced, prosecuted and concluded when it was an existing law. Hence, the actions initiated prior to

the repeal of the Rules, 1973 are protected and will be decided according to the Rules, 1973 but the actions initiated after the repeal of the Rules, 1973 are not protected and will be decided according to the Rules, 2021 as held in case titled, “Mst. Siddiqan Afzal and 6 others v. Assistant Collector of Central Excise and Land Customs, Faisalabad and 2 others” (**PLD 2001 Lahore 78**).

7. Learned counsels for the Respondents argued that powers of the Board of NBP under Section 11 of the Nationalization Act was dealt with by the Division Bench of this Court in case titled, “Rana Muhammad Khalil v. Regional Audit Chief, NBP Audit Office” (**2018 PLC (C.S.) 442**) and the same was upheld by the Supreme Court of Pakistan in C. P. No. 3345 of 2017 in case titled, “Rana Muhammad Khalil v. Regional Audit Chief, NBP, Lahore” decided on 17.10.2018. It was stressed that Section 13 of the Nationalization Act has a limited scope which is subservient to the commands of law stipulated in Section 11 of the Nationalization Act. Since Section 13 thereof starts with the qualifying stipulation, “Save as otherwise provided in this Act...”, therefore, it protects all actions and powers mentioned in Section 11 of the Nationalization Act. This principle of interpretation has been endorsed in cases titled, “Fazal Din v. Settlement and Rehabilitation Commissioner, Gujranwala and another” (**PLD 1977 Lahore 305**); “Muhammad Ramzan v. Mst. Khalida Perveen” (**PLD 1971 Lahore 813**); and “Sultan Ali Lakhani v. Nasreen Jalil and 11 others” (**1994 CLC 1505**).

8. It was further apprised that the Supreme Court in case titled, “Muhammad Zaman and others v. Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad and others” (**2017 SCMR 571**) endorsed the powers of the Board of the State Bank of Pakistan after amendments in its relevant statute and the subsequent amendments made by the Board were held to be non-statutory. In this context, it was vehemently argued that since the Rules, 2021 are non-statutory, therefore, the Petitioners cannot approach this Court in its constitutional jurisdiction in view of settled law laid down by the Supreme Court in cases titled, “Abdul Wahab and others v. HBL and others” (**2013 SCMR 1383**); “Pakistan Telecommunication Co. LTD. through Chairman v.

Iqbal Nasir and others” (PLD 2011 Supreme Court 132); “Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others” (PLD 2010 Supreme Court 676); and “Sui Southern Gas Company Limited and others v. Saeed Ahmed Khoso and another” (2022 SCMR 1256). This is especially so when different High Courts have held that the Rules, 2021 are non-statutory. Reliance is placed on unreported cases titled, “Ammar Saleem v. Federation of Pakistan & others” (W. P. No.42399 of 2023) decided on 21.06.2023 by this Court; “Faisal Taj v. National Bank of Pakistan & others” (W. P. No.1909-P of 2022) decided on 02.11.2022 by Peshawar High Court; and “All Pakistan NBP Officers Association, etc. v. Federation of Pakistan, etc.” (W. P. No. 3008 of 2021) decided on 06.03.2023 by the Islamabad High Court. Accordingly, it was prayed that the titled Petitions are liable to be dismissed on the question of maintainability.

9. Arguments heard. Record perused.

10. The Rules, 2021 made by the Board of NBP came into force at once upon repeal of the Rules, 1973 by the Federal Cabinet on 01.04.2021 as per Rule 1(2) of the Rules, 2021 before the date of issuance of charge sheets and show cause notices to the Petitioners. The initiation of disciplinary proceedings against the Petitioners is required to be reckoned from the date of issuance of charge sheets and show cause notices to the Petitioners which is acknowledged by them in their respective Petitions. Therefore, the contention that the date of initiation of disciplinary proceedings should be construed from some earlier date such as the date of suspension is completely misconceived. Hence, there is no ambiguity that the Petitioners were proceeded under the Rules, 2021. Accordingly, the following points of determination emerge from the rival arguments of the parties:-

- (i) Whether the Petitioners as existing employees of NBP before the introduction of Rules, 2021 were liable to be proceeded under the repealed statutory Rules, 1973 and if so, the titled Petitions are maintainable?
- (ii) Whether the Rules, 2021 are the only service rules in existence after the repeal of the non-statutory Rules, 1973? and

(iii) If so, whether the Rules, 2021 are non-statutory and as such, the titled Petitions are not maintainable?

11. NBP as a statutory nationalized bank is run, operated and managed by its Board under the Ordinance and the Nationalization Act. The latter is a subsequent enactment and Section 2 of the Nationalization Act postulates that it shall have effect notwithstanding anything contained in any other law for the time being in force or in any agreement and contract, award, memorandum or articles of association or other instrument. Thus, the Nationalization Act preempts the provisions of the Ordnance in case of any inconsistency between the two enactments. The Nationalization Act has been amended from time to time. Section 11 of the Nationalization Act in its current dispensation relates to general provisions pertaining to management of banks. It mandates that every bank shall have a Board headed by a President who shall be its Chief Executive Officer and the Board shall consist of not less than five and not more than seven other members. Importantly, Section 11(4) thereof proclaims that 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. Section 11(5) thereof specifically empowers the Board to determine the credit policies, evaluation criteria for the performance of its employees other than the President, personnel policies of the bank including appointment and removal of officers and employees, guidelines for entering into any compromise with borrowers and other customers and any other policy matter. Section 11(9) thereof stipulates that the President, subject to the control and directions of the Board, shall exercise powers of management of the affairs of the bank. More specifically, Section 11(10) thereof unequivocally declares that all selections, promotions and transfer of employees 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 policy determined by the Board.

12. Section 13 of the Nationalization Act contains provisions regarding the staff of nationalized banks and the same is reproduced as under:-

“(1) Save as otherwise provided in this Act, all officers and other employees of a bank shall continue in their respective offices and employments on the same terms and conditions, including 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.”

13. The Nationalization Act has been promulgated to nationalize banks included in its Schedule. Careful and plain reading of Section 13 of the Nationalization Act makes it manifestly evident that the existing employees of nationalized banks were granted limited statutory protection regarding continuity of service on the same terms and conditions including remuneration and rights as to pension and gratuity, as were applicable to the employees of the banks before the commencement of the Nationalization Act. Obviously, there were other private banks which were also nationalized through the Nationalization Act. As such, the Nationalization Act was not only applicable to NBP as an existing statutory bank owned by the Federal Government but was applicable to all other private banks which were nationalized through the Nationalization Act. The provisions of Section 13 of the Nationalization Act must be interpreted in this peculiar context that in order to alleviate the concerns of existing employees, statutory intervention was made to the effect that their terms and conditions will not be varied to their disadvantage in monetary terms. The only intelligible classification of employees made in this behalf was with respect to existing employees before nationalization and the employees recruited after nationalization. In this behalf, the required continuity in the services of existing employees was granted which was subject to other provisions of the Nationalization Act as is evident from the qualifying opening phrase, “save as otherwise provided in this Act” employed in Section 13 of the Nationalization Act.

14. Thus, Section 11 of the Nationalization Act is the general, catch-all, overriding and overarching provision of law vesting all powers of management of a bank in its Board without any restrictions, limitations or

caveats except as otherwise ordained by law. Surely, Section 11 of the Nationalization Act is the dominant and controlling provision of law which preempts and prevails over Section 13 of the Nationalization Act. Even otherwise, Section 13 of the Nationalization Act does not place an embargo or limitation upon the powers of the Board of NBP to frame service rules for its employees subject to limited statutory protection to its employees existing or in service before the date of promulgation of the Nationalization Act. Therefore, the distinction drawn by the Petitioners regarding existing employees before the date of promulgation of Rules, 2021 and new employees recruited after the date of enforcement of Rules, 2021 has no statutory basis. Even otherwise, the limited statutory protection granted to all existing employees of the banks at the time of promulgation of the Nationalization Act in terms of Section 13 thereof, has fully matured due to afflux of time as there would not be any existing employee after passing of 47 years since the date of enforcement of the Nationalization Act.

15. Section 32(1) of the Ordinance empowers the Board of NBP, with the prior approval of the Federal Government, to make Bye-laws not inconsistent with the Ordinance to provide for all matters for which provision is necessary or convenient for the purpose of giving effect to the provisions of the Ordinance. Section 32(2) of the Ordinance lists specific matters regarding which the Bye-laws can be made and clause (xxviii) thereof confers powers with respect to the recruitment of officers and staff of NBP including the terms and conditions of their service and the constitution and management of staff and superannuation funds for the officers and employees of NBP.

16. In exercise of powers conferred under Section 32 of the Ordinance, the National Bank of Pakistan Bye-laws, 1970 (the “**Bye-laws, 1970**”) were framed. Bye-law 18(a)(iii) & (iv) grants powers to the Board of NBP to frame service rules for its employees, with the previous approval of the Federal Government. Accordingly, the Rules, 1973 were made by the Board of NBP with the prior approval of the Federal Government. As per Rule 1(2) thereof, the Rules, 1973 came into effect on 01.01.1972 with the stipulation that the cases already decided before the commencement of the Rules, 1973

shall not be reopened if the decision taken is in conflict with any of provisions of the Rules, 1973. Rule 2 of the Rules, 1973 provides that they shall apply to all employees of NBP provided that they shall not apply, except as otherwise provided therein or to such extent as may be specially or generally prescribed by the Managing Director, to (a) staff on deputation from Government; and (b) staff or specialists recruited or engaged on special contracts or terms. Rule 2(2) of the Rules, 1973 further provides that the terms and conditions of service of local employees engaged in foreign branches of NBP will be determined in each case by the Managing Director keeping in view the provisions therein and the local conditions. Rule 4 of the Rules, 1973 states that the Board of NBP, with the prior approval of the Federal Government, reserves the right of altering, modifying or omitting any of the rules laid down as may be found necessary from time to time. Accordingly, the Rules, 1973 were held as statutory and there is no dispute to this effect.

17. Later, the Board of NBP invoked its direct management powers vested under Section 11 of the Nationalization Act and as such, additionally made the Rules, 1980. They were made under Bye-law 18(a)(iii) & (iv) of the Bye-laws, 1970 read with Section 11(4) of the Nationalization Act which came into effect on 01.01.1980. As such, the Rules, 1980 were declared as non-statutory having been made by the Board of NBP without recourse to the Federal Government by the Apex Court in National Bank of Pakistan case (supra). However, the Rules, 1980 were made during the existence of the Rules, 1973 without their repeal. Consequently, both set of rules were in the field at the relevant time.

18. Subsequently, in Muhammad Tariq Badr case (supra), the Supreme Court explored as to whether the non-statutory Rules, 1980 displaced the statutory Rules, 1973. It was concluded that non-statutory Rules, 1980 framed by the Board of NBP could not annul, repeal, rescind or displace the statutory Rules, 1973. In this context, it was observed that Section 13(1) of the Nationalization Act 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 on the same terms and

conditions which were applicable to them immediately before the commencement of the Nationalization Act. Since, the Rules, 1973 were in force before the commencement of the Nationalization Act with respect to terms and conditions of service of the employees of NBP, therefore, by virtue of Section 13(1) of the Nationalization Act, they were specifically safeguarded and shielded instead of having been replaced, repealed, rescinded or overridden. It was further held that language of Section 13(1) of the Nationalization Act spells out the clear intention of the legislature to preserve the earlier terms and conditions of employees of the nationalized banks which in the present case undoubtedly were the Rules, 1973. Hence, the Board of NBP constituted under Section 11 of the Nationalization Act in exercise of its management powers could not make non-statutory rules to displace or annul the statutory Rules, 1973 which were in force since the executive is not empowered to annul, invalidate or vitiate the command of the statute. Accordingly, it was held that irrespective of the timing of induction in service, the Rules, 1973 being statutory, would govern the terms and conditions of service of all employees of NBP as they had not been repealed for otherwise, it would be ludicrous and discriminatory to hold the employees with same and equal status who were taken in service prior to the Rules, 1980 to enjoy the benefit of statutory Rules, 1973 and those joining after the Rules, 1980 be deprived from the protection of statutory Rules, 1973.

19. It is manifestly evident from the above that the Supreme Court did not envisage any fetters on the powers of the Federal Government to amend or repeal the statutory Rules, 1973 which had been made with the prior approval of the Federal Government. In exercise of such powers, the Federal Government validly repealed the Rules, 1973. In the meanwhile, the Bye-laws, 1970 were substituted by the National Bank of Pakistan Bye-laws, 2015 (the “**Bye-Laws, 2015**”). Bye-law 51 thereof employs the language embodied in Section 11 of the Nationalization Act and empowers the Board of NBP to determine the personnel policies and staff service rules without recourse to the Federal Government while unequivocally acknowledging and recognizing the management powers of the Board subject to regulation by

the State Bank of Pakistan and adherence to the provisions of the Ordinance, the Nationalization Act and to the extent possible to the Code of Corporate Governance issued by the Securities & Exchange Commission of Pakistan. Hence, upon the repeal of the Rules, 1973 by the Federal Cabinet, the Board in exercise of its management powers vested under Section 11 of the Nationalization Act read with Bye-law 51, of the Bye-laws, 2015 framed the Rules, 2021 for its employees. Thus, both Section 11 of the Nationalization Act and Bye-law 51 of the Bye-laws, 2015, granted powers to the Board of NBP to frame service rules without the approval of the Federal Government.

20. Reliance by the Petitioners on Masood Ahmed Bhatti, Said Rehman and Muhammad Ali Gohar Zaidi cases (supra) is misplaced. In the said cases, the distinction between employees in terms of applicability of rules qua terms and conditions of their service is rooted in specific statutory dispensation and not on a general principle of law. It is trite law that every case is to be decided according to its own peculiar facts and circumstances, therefore, the findings in the said cases with reference to specific statutory provisions could not be applied to the facts and circumstance of the instant case.

21. Similarly, Muhammad Rehan case (supra) decided by the High Court of Sindh is of no help to the case of the Petitioners as the officers of NBP therein were proceeded under the Rules, 1973 since show cause notices were issued to them before the enforcement of the Rules, 2021. Likewise, NBP Officers Welfare Association case (supra) decided by the High Court of Sindh is also inapplicable as the matter in issue therein relates to alleged breach of policy decision regarding payment of annual increment to the employees from a particular date starting from the year 2020 taken by the management of NBP which itself is a statutory nationalized bank. Further, the determination regarding the nature of the Rules, 2021 with reference to their applicability qua service matters of the employees of NBP is made without reference to the Nationalization Act which overrides the Ordinance as noted above, particularly, Section 11 of the Nationalization Act which confers powers upon the Board of NBP to frame rules. The scope of Section 11 of the Nationalization Act as the dominant and preemptive command of

law in terms of vesting complete management powers in the Board of NBP free from the interference of the Federal Government was recognized by the Division Bench of this Court in Rana Muhammad Khalil case (supra). Moreover, Bye-law 51 of the Bye-laws, 2015 itself grants exclusive and unfettered powers upon the Board of NBP to frame service rules without approval of the Federal Government. The same was endorsed by the Supreme Court in C. P. No. 3345 of 2017 vide order dated 17.10.2018. This aspect creates a conspicuous and obvious distinction between the Rules, 2021 made by the Board without approval of the Federal Government vis-à-vis the repealed statutory Rules, 1973 which had been made by the Board of NBP with the prior approval of the Federal Government. In this context, the contention of the Petitioners that the Rules, 2021 are liable to be construed as statutory in terms of law laid down in Shafique Ahmed Khan case (supra) on the ground that mere non-approval of the Federal Cabinet is not the sole criteria to term the rules as non-statutory is misconceived for the reason that that the Rules, 2021 even in terms of their nature and area of efficacy are non-statutory as they deal with instructions for internal control or management and their area of efficacy is not broader or complimentary to the parent statute in the matters of crucial importance. Therefore, the reasoning of the Supreme Court in Muhammad Zaman case (supra) is squarely applicable to the facts of the titled cases.

22. The act of making non-statutory Rules, 2021 by the Board of NBP after the repeal of the statutory Rules, 1973 by the Federal Government is apparently a conscious effort by the management of NBP in concert with the Federal Government to streamline the human resource of NBP in order to bring it at par with other private banks in the increasingly competitive commercial arena considering that primary services of any bank are in the nature of provision of efficient services to its customers. Undoubtedly, NBP is a statutory commercial bank and in order to retain its viability, is expected and required to compete with other commercial banks. As such, the desire to exercise control over its employees at par with other private banks is quite natural. Therefore, there is absolutely no harm in the stated objective provided the same is achieved after due process within the ambit of law.

23. Therefore, it is safely concluded that the Rules, 2021 made by the Board of NBP in exercise of its powers conferred under Section 11 of the Nationalization Act read with Bye-law 51 of the Bye-laws, 2015 without approval of the Federal Government are non-statutory. After the repeal of statutory Rules, 1973, only the Rules, 2021 are in vogue and the same indiscriminately apply to all employees of NBP employed after the date of enforcement of the Nationalization Act subject to Rule 2 of the Rules, 2021.

24. The nutshell of the above discussion is that the Petitioners having been rightly proceeded under non-statutory Rules, 2021 were not entitled to institute the titled Petitions under Article 199 of the Constitution. Accordingly, the titled Petitions are not maintainable and are, hereby, **dismissed**.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

Announced in open Court on **08.12.2023**.

Judge

Abu Bakker