IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Mr. Justice Ejaz Afzal Khan.
Mr. Justice Iqbal Hameedur Rahman.

Civil Petition No. 1702/2015.
(On appeal against the judgment dated 26.05.2015
passed by the High Court of Sindh, Karachi,
in C. P. No. D-1306/2012)

M.C.B. Bank Limited, Karachi. Petitioner(s).

Versus

Abdul Waheed Abro, etc. Respondent(s).

For the Petitioner(s): Mr. Shahid Anwar Bajwa, ASC.
Mr. M. S. Khattak, AOR.

For the Respondent(s): N.R.

Date of Hearing: 30.09.2015.

JUDGMENT

Iqbal Hameedur Rahman, J: - The petitioner, through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, seeks leave to appeal against the order dated 26.05.2015 passed by the Division Bench of the High Court of Sindh, Karachi, in C. P. No. D-1306/2012, whereby it upheld the judgments of the fora below and dismissed the constitutional petition filed by the petitioner.

2. The concise facts giving rise to the instant petition are that respondent No. 1 (hereinafter to be referred as "the respondent") was performing his duties as Cashier at the petitioner's branch at Rohri when a complaint against him was received that he has failed to credit on the same day an amount of Rs.187,434/- on 28.05.2003. After a probe, charge sheet was issued to him on 12.06.2003 and after inquiry he was dismissed from service on 09.08.2003. After dismissal from service, the respondent served a grievance notice to the petitioner which was not responded to and resultantly he filed grievance application under Section 46 of the Industrial

Relations Ordinance, 2002, before the Labour Court No. VII, Sukkur (hereinafter to be referred as “the Labour Court”). The said grievance application was allowed by the Labour Court vide judgment dated 13.10.2005 and he was ordered to be reinstated in service without back benefits. Thereafter, the respondent as well as the petitioner challenged the judgment of the Labour Court before the Sindh Labour Appellate Tribunal, Karachi (hereinafter to be referred as “the Tribunal”) by filing their respective appeals. The respondent in his appeal had assailed denial of back benefits whereas the petitioner in its appeal had assailed reinstatement of the respondent. The Tribunal vide its judgment dated 27.02.2012 dismissed the appeal of the respondent for non-prosecution whereas the appeal of the petitioner was disposed of with the modification that the dismissal order was converted into stoppage of increments for three years. However, the Tribunal maintained the order of reinstatement in service passed by the Labour Court. The respondent did not agitate the matter further, but the petitioner assailed the concurrent findings of the Courts below before the High Court by filing a constitutional petition which has been dismissed vide impugned order while maintaining concurrent orders of reinstatement in service of the respondent and also maintained the findings of the Tribunal regarding stoppage of increments for three years of the respondent, hence this petition for leave to appeal.

3. The learned counsel for the petitioner contended that the Courts below have failed to appreciate that a proper inquiry had been conducted. The charge of misappropriation leveled against the respondent stood fully established, in fact he had accepted his guilt in writing pursuant to which his uncle namely Allah Lok Abro had undertook to pay an amount of Rs.160,000/- and subsequently the same was deposited. That the respondent

at no stage had complained about the conduct of the inquiry officer or the inquiry proceedings. The Courts below erred in coming to the conclusion that irregularity had been committed in the inquiry proceedings by not allowing the respondent to cross-examine all the witnesses. The respondent duly cross-examined the main witness as such no prejudice had been caused to him. Even otherwise, if the Courts below had come to the conclusion that the inquiry had not been properly conducted the option should have been given to the petitioner to conduct a fresh inquiry. It was further contended that in fact the Tribunal by awarding the penalty of stoppage of increments for three years to the respondent fully indicates that the charge against him stood established and in this regard he placed reliance upon the case of ***Iqbal Ahmed vs. Muslim Commercial Bank Ltd.*** (2009 SCMR 903). It was also contended that the High Court had failed to notice that with the repeal of Industrial Relations Ordinance there was no lis before the Tribunal in view of the fact that Industrial Relations Ordinance, 1969 was repealed by the Industrial Relations Ordinance, 2002, which then was further repealed by Industrial Relations Act, 2008, therefore, neither the Industrial Relations Ordinance, 2002 nor the Industrial Relations Ordinance, 1969 could be revived on the strength of Section 6 of the General Clause Act, 1897, or Article 264 of the Constitution of Islamic Republic of Pakistan and in this regard he placed reliance upon the case of ***Air League of PIAC Employees through President vs. Federation of Pakistan M/o Labour and Manpower Division, Islamabad and others*** (2011 SCMR 1254). The learned counsel while concluding his arguments urged that with the huge computerization of banking sector the manual operation by personnel have become

redundant as such the banks are already over-staffed so where will the respondent be posted.

4. We have heard the learned counsel for the petitioner and have gone through the judgments of the Courts below as well as the material available on the record.

5. The allegation against the respondent, who was working as a Cashier at the Rohri branch of the petitioner, was that he committed embezzlement or misappropriation which he had denied through his grievance application as being false and frivolous. He rather attributed it to human error. He further contended that he had not been given proper opportunity of fair trial by the inquiry officer as he had not been given the chance of cross-examining all the witnesses. The Labour Court after framing of issues and recording of evidence had come to the conclusion as under: -

> "28/- From the perusal of the record it appears that there is lacuna and flaws in the case of the respondents because the Enquiry Officer did not provide opportunity to the applicant to cross examine the witnesses. The Enquiry Officer in his cross examination has admitted that on behalf of the management the statement of witness Irshad Soomro, Altaf Hussain Manager Ghulam Mustafa Accountant, Kashif Shaikh Cashier, Muhammad Hassan and Abdul Raseed Ansari were recorded but the opportunity for cross examination to the accused (applicant) was only given to the extent of witness Irshad Ali Soomro.
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> 29. The aforesaid admission on the part of Enquiry Officer clearly shows that he had recorded the statements of as many as 6 witnesses, but opportunity for cross examination was only given to the extent of Irshad Ali Soomro representative of management, who too was not examined and produced by the management in court.
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> 30. It is also an admitted fact that applicant was handed over in police custody on the very same day without registration of any criminal case and was not released unless the payment of the alleged amount was paid by the Uncle of the applicant. The management has also failed to prove that it was a case of misconduct on the part of the applicant and he has mis-appropriated the amount where as the version of the applicant was that the said amount was obtained/received from him by the Manager Altaf Khan. It has also come on evidence that on very same day

in the morning hours when cash was no shortage/short fall of any kind. It is settled law that the Labor Laws are to be interpreted in favour of the workmen and in view of the discrepancies/lacunas as referred above I am of the opinion that it was not a case of misappropriation where major penalty of dismissal from service to be awarded. Admittedly no monetary loss is sustained by the Bank nor there any complaint and evidence against applicant in respect of amount credited after 2 to 3 days in the account of Mehran Corporation. The issue is therefore answered that it is not the case of misappropriation or pocketing hence issue is answered against the management.

31. In view of my findings on issues No.1 to 3, the impugned order of dismissal issued on 9.8.2003 by the respondents Bank is hereby set aside and applicant is reinstated in service, however, not entitled to the back benefits. The respondents is directed to reinstate the applicant in service within a period of 30 days."

The Tribunal while modifying the judgment of the Labour Court held as under: -

" Perusal of record reveals that a domestic enquiry had been conducted and the said Enquiry Officer was examined before learned Labour Court who had admitted that he was given opportunity to the respondent worker to cross-examination only one witness of the bank, while he was not given the opportunity to cross-examine the other witnesses of the bank. However during the domestic enquiry the worker was not provided opportunity to cross-examine the other witnesses. He had allowed the management to cross-examine the respondent worker during domestic enquiry and the said cross-examination reveals that the respondent worker has leveled allegations against the Manager who on information submitted by the respondent worker initiated action against him as the respondent worker himself admitted during cross-examination in the domestic enquiry that he pointed out about the shortage of cash to the Manager and he has also gone to his friends/customers for the arrangement of cash and thereafter he allegedly handed over to Police. This statement of respondent worker is a proof that there is some negligence/fault of the respondent worker that's why the cash was shortened and which created problems. Perusal of the entire record leads me to the conclusion that there must be some responsibilities lie upon the respondent worker for which he has been rightly charge sheeted and domestic enquiry was conducted, therefore, I am of the view that the management of the bank is entitled to proceed against the respondent worker and as because I find some responsibility of respondent worker, therefore, due to the lacunas in the domestic enquiry, I feel that major

> punishment as awarded by the bank cannot be awarded without following the proper procedure of enquiry and as the worker had already faced the problem of unemployment, therefore, I modify the order of the learned Labour Court of straight away accepting the grievance of the respondent worker without considering the lapses on the part of the worker, hence the punishment of dismissal from service shall be converted into stoppage of increment for three years, however, reinstatement order of the learned Labour Court is maintained. Here, I have to mention that the appeal of the respondent worker against the refusal of back benefits as pointed out has already been dismissed in default for non-prosecution by the Tribunal, therefore, there is no question of the grant of back benefits.
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> In view of the above modification the present appeal filed by the appellant bank is disposed of accordingly."

The High Court while maintaining the concurrent findings of reinstatement in service of the respondent came to the conclusion that, "*……he was not afforded fair opportunity to defend the charges. Even the inquiry officer appeared in the labour court as witness of management/petitioner also admitted the lapses, oversights and shortcomings in the inquiry. During inquiry, the inquiry officer only allowed the respondent No. 1 to cross examine Irshad Ali Soomro, representative of the management and the respondent No. 1 was cross examined by Irshad Ali Soomro. The representative of management produced at least six more witnesses before the inquiry officer but no opportunity of cross examination was made available to respondent No. 1. This fact was admitted by the inquiry officer, Shaif Muhammad Shaikh during the cross examination in the labour court……*"

6. Perusal of the record reveals that the respondent had not been afforded reasonable opportunity of defending himself as it is quite evident that six witnesses were produced during the inquiry, but the respondent was afforded the opportunity of cross examining only one witness namely Irshad Ali Soomro. In the facts and circumstances of this case, this Court

has held in the case of ***Muhammad Ataullah vs. Islamic Republic of Pakistan and 2 others*** (1999 SCMR 2321) as under: -

> "6. We find that the stoppage of promotion of a civil servant for a specified period on the charge of carelessness in the discharge of duties is as serious a matter as convicting a person for crime because his whole career is ruined, therefore, the order of stoppage of promotion must be based on some evidence. This is according to us a serious lapse on the part of the authorized officer to have not afforded an opportunity of cross-examining the prosecution witnesses appearing against the appellant in support of the charges. Having omitted to afford this opportunity to the appellant, resulting in the impugned order, it was violative of the principle of natural justice enshrined in the maxim: "audi alteram partem" the impugned order is, thus, vitiated on this score alone."

That after the induction of Article 10A in the Constitution of Islamic Republic of Pakistan, 1973, it would postulate that opportunity of fair trial had not been afforded to the respondent by depriving him his right of cross-examining the witnesses as such it could be held that principles and procedures of due process of law and fair trial had not been followed, which are against the principle of natural justice. As regards the contention of the learned counsel for the petitioner that the Courts below should have ordered *de novo* trial which would have served the purpose of justice, suffice it to say that the High Court had rightly dealt with this aspect in the following manner: -

> "10. The learned counsel for the petitioner argued that instead of reinstatement of respondent No. 1 the labour court could have directed the petitioner to hold fresh inquiry. The inquiry was initiated in the year 2003. The labour court decided the matter in the month of October, 2005, while the appeal was decided by the labour appellate court in the month of February, 2012. Since then the respondent No. 1 is facing miseries of protracted trial that by no means responsible or accountable for the defects perceptible and discernable in the inquiry, there is no rationality to order fresh inquiry which will make the petitioner back to square without his fault hence we do not want to dwell too much in this regard……"

As far as the plea of the learned counsel for the petitioner that the penalty imposed on the respondent of stoppage of increments for three years is concerned, we are of the view that this contention does not carry much force when the Courts below have concurrently held that the respondent had not been afforded proper opportunity to cross-examine the witnesses as such the respondent has been deprived of the due process of fair trial which being against the principle of natural justice. As regard the contention of the learned counsel for the petitioner relating to posting of the respondent upon reinstatement is concerned, we would like to least comment on the same as it has rightly been observed by the High Court that it is the prerogative of the management of the petitioner to decide the designation/posting of the respondent in accordance with their norms and indoor management. As far as the contention of the learned counsel regarding the effect of repeal of Industrial Relations Ordinance, 2002 is concerned, we are of the opinion that the said argument is not well founded. Section 6 of the General Clauses Act, 1897, operates in such a manner that it allows for the effect of an enactment repealed by any Central Act to continue even after such repeal. A perusal of Section 6 of the Act *ibid* reflects the same: -

> "**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 hereinafter to be made then, unless a different intention appears, the repeal shall not--
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> (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
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> (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."

In the present case Section 6 of the Act *ibid* shall apply as the initial grievance application filed in the said Labour Court was made under the Industrial Relations Ordinance, 2002, which was repealed by a Central Act i.e., Industrial Relations Act, 2008, thereby fulfilling the requirement of Section 6 of the General Clauses Act, 1897, and bringing it into operation. It is also pertinent here to distinguish between the present case and the case law relied upon by the learned counsel i.e., ***Air League*** (supra), in support of his contention. In the said case, the statute governing the dispute was the Industrial Relations Act, 2008 which was repealed not by a Central Act as was the Industrial Relations Ordinance, 2002, but by a sunset clause i.e., Section 87(3), present within the framework of the statute itself. For ready reference Section 87(3) of the Industrial Relations Act, 2008, is reproduced herein below: -

> "**87. Repeal and savings: -……..**
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> (3) This Act shall, unless repealed earlier, stand repealed on 30th April, 2010."

Thus the case cited in support of learned counsel's contention stands distinguished. Moreover, it is also necessary to clarify that the mandate contained in Section 6 of the General Clauses Act, 1897, does not call for the revival of a repealed law but rather imputes finality to actions already undertaken.

7. In the above perspective, we are not inclined to interfere in the well reasoned concurrent judgments of all the Courts below while exercising our jurisdiction under Article 185(3) of the Constitution of Islamic Republic of

Pakistan, 1973. Resultantly, leave to appeal is refused and petition is dismissed.

Judge.

Judge.

ISLAMABAD.
30.09.2015.
(Farrukh)

Approved for Reporting.