

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 1914/2020

ZARAI TARAQIATI BANK LIMITED

APPELLANT
PETITIONER

VERSUS

THE LEARNED FULL BENCH NIRC, ISLAMABAD, ETC.

RESPONDENT
DEFENDANT

Appeal/revision against the decree or order (as the case may be) of _____

SERIAL NO. OF ORDER OF PROCEEDINGS	DATE OF ORDER/ PROCEEDINGS	ORDER WITH SIGNATURES OF JUDGE, AND THAT OF PARTIES OR COUNSEL, WHERE NECESSARY.
1	2	3

26.08.2020 Syed Hasnain Ibrahim Kazmi, Muhammad Akram Shaheen and Mr. Usman Ahmad Ranjha, Advocate for petitioner. Rana Abid Nazir, Advocate for Respondents.

For the reasons recorded in my detailed judgment of even date passed in connected W.P. No. 1859/2020, titled petition is also **dismissed**.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the Open Court on : 21.09.2020

JUDGE

Adnan/

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 1859 OF 2020

ZARAI TARAQIATI BANK LIMITED
Vs.
THE LEARNED FULL BENCH NIRC, ISLAMABAD, ETC

WRIT PETITION NO. 1913 OF 2020

ZARAI TARAQIATI BANK LIMITED
Vs.
THE LEARNED FULL BENCH NIRC, ISLAMABAD, ETC

WRIT PETITION NO. 1914 OF 2020

ZARAI TARAQIATI BANK LIMITED
Vs.
THE LEARNED FULL BENCH NIRC, ISLAMABAD, ETC

Petitioner by : Syed Hasnain Ibrahim Kazmi, Advocate.
Mr. Muhammad Akram Shaheen, Advocate.
Mr. Usman Ahmad Ranjha, Advocate.
(In all Cases)

Respondents by : Rana Abid Nazir, Advocate.
(In all Cases)

Date of hearing : 26.08.2020.

LUBNA SALEEM PERVEZ, J. Through this common judgment I intend to dispose of all the three titled writ petitions as common facts are involved. The petitioner bank through present writ petition has assailed order dated 15.11.2019, passed by learned Single Member NIRC and order dated 24.06.2020, passed by learned Full Bench of NIRC.

2. The facts in brief, are that the private respondents (arrayed as respondents' No.3 in the titled petitions / hereinafter referred to as employees) are the employees of the petitioner bank and working as Qasid and Typists and also hold portfolios of President, senior Vice President and General Secretary respectively of

All Pakistan ZTBL Employees Union registered with NIRC. All the three officials were terminated from service, vide dismissal orders dated 12.06.2018, 11.06.2018 & 06.04.2018, respectively on the ground of misconduct as found absent from duty during working hours on 03.11.2017, 06.11.2019 for attending the meetings of CBA. The employees filed grievance petition under Section 33 of Industrial Relations Act, 2012 (hereinafter referred to as Act, 2012) which was allowed, vide order dated 15.11.2019, passed by the learned Single Member Bench of NIRC, whereby, the termination orders were set aside for being illegal and unlawful and not sustainable in the eyes of law. The petitioner bank challenged the order passed by the learned Single Member Bench, NIRC before the learned Full Bench of NIRC, wherein, the order dated 15.11.2019, was upheld and the appeals filed by the bank were dismissed, hence, present petition.

3. Learned counsel for the petitioner bank while assailing both the orders passed by the Single Member as well as learned Full Bench of NIRC submitted that the employees were dismissed from service on misconduct and in this regard evidence produced by the bank during trial have been misread by the learned Single Member, NIRC; that the employees were dismissed from service after due process of law and they were given proper opportunity of hearing by issuing office memorandums of absence from the duty during working hour of the bank, and after issuance of proper show cause notices, charge sheets and after conducting proper inquiry by the Committee; that the employees have violated the provisions of section 27-B of the Banking Companies Ordinance, 1962 by involving themselves in the illegal and unlawful trade union activities against the bank; that the NIRC lacks jurisdiction to try the matter as the rules of petitioner bank are statutory and it is now well settled that where the rules and regulations are statutory the remedy lie before the High Court under Article 199 of the Constitution; reliance in this regard was placed on case re: *Pakistan Telecommunication Company Limited v. Mohammad DilpazeerAbbasi* (2016 PLC 367); that the learned Single Member Bench and the Full Bench, NIRC have not dilated upon the issue of jurisdiction; that only 'industrial dispute' can be agitated before NIRC, whereas, the respondents have been terminated on the charges of misconduct which is in the nature of an 'individual dispute' and placed reliance on *Government of Pakistan v. Nawaz Ali Sheikh* (2020 SCMR 656), *Muhammad*

Nawaz Bhatti v. President, Muslim Commercial Bank(2008 SCMR 1377), 1994 SCMR 2213 and *Mustekhum Cement Limited v. Abdul Rashid* (1998 SCMR 644); that the respondents had no *locusstandi* to file the grievance petition before NIRC who had no jurisdiction to entertain the grievance petition by relying on the judgments *MumtazSaleem v. Pakistan Telecommunication Corporation* (1993 PLC 445); that the procedure for filing applications relating to industrial dispute has been provided in Regulation 43 of NIRC (Procedure and Functions) Regulation Act,2016, according to which the application regarding industrial dispute shall be filed by the Trade Unionetc before the NIRC by setting out the disputes in the prescribed Form U; that no such application under regulation 43 has been filed by the registered trade union of the bank. Reliance was placed on *National Bank of Pakistan v. Sindh Labour Appellate Tribunal* (1973 PLC 57); that the private respondentsare not ‘workmen’ as defined u/s 2 (xxxiii) of IRA, 2012, therefore, grievance petition before the NIRC is not maintainable; that the employees failed to show that their rights guaranteed or secured, award or settlement has been violated; that the employees have by passed the statutory procedure of departmental appeal; he lastly contended that the learned NIRC have illegally assumed jurisdiction to entertain the grievance petitions of respondents, he relied on the case titled as *National Bank of Pakistan v. Muhammad DilpazeerAbbasi* (2016 PLC 367).

4. On the other hand, learned counsel for employees controverted the arguments made on behalf of the petitioner bank and submitted that respondents are elected President, vice President and General Secretary of the registered trade union / CBA of the petitioner bank and has been victimized for agitating against the unfair labour practices of the management of the bank; that office memorandum dated 03.11.2017 and the entire proceedings for termination of the employees was based on malafide as the allegation of misconduct has been elaborately replied by employees by clarifying their position which was not considered by the petitioner bank; that the total absence in case of Respondent No.3 in W.P No. 1859 of 2020 is 9 hours, in W.P No. 1913 of 2020 is 2 days out of which one day was availed by the petitioner as casual leave and in W.P No. 1914 of 2020 is 2 days; that the respondents have not violated section 27-Bof the Banking Companies Ordinance, 1962, as no activity/meeting has been held in the premises of the bank; that all the three employees falls in the category of

“workman” as working as Qasid and Typist, which is not an employment in the managerial and administrative capacity; that employees have been terminated from service for involvement in the activities of registered trade union, therefore, the dispute is in the nature of industrial dispute, thus the grievance petition has been competently filed and decided by the NIRC; that employees were terminated from the service with malafide intentions for taking principle stand against the unfair management decisions of the petitioner bank; that there is no legal infirmity in the impugned orders thus writ of *certiorari* cannot be issued.

5. Arguments heard. Record perused.

6. Learned counsel for the petitioner assailed the jurisdiction of NIRC for entertaining the grievance petition of employees mainly on the grounds that; they are not the workman within the meaning of section 2(xxxiii) of IRA, 2012, and there is no industrial dispute of the respondents as defined in section 2(xvi) of the IRA, 2012.

7. As regard the status of the employees that whether they fall in the definition of “worker” or “workman” under section 2(xxxiii) of IRA, 2012 or not, it has not been disputed that the employees are working as a Qasid and Typist with the petitioner bank, thus admittedly they are not engaged for managerial or administrative supervisory work and have no authority to hire or fire any employee. Thus, keeping the nature of their duties and designation. The arguments of the learned counsel for the petitioner Bank that the employees do not fall under the category of “worker” and “workman” as defined in IRA, 2012, are not found convincing. Section 2(xxxiii) is reproduced as under:-

“2(xxxiii) “worker” and “workman” mean a 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 be express or implied, and, for the purpose of any proceedings under the 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, layoff, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity.”.

8. The term workman has been explained by the Apex Courts in the following judgments as a person who is not an employer and that he is not engaged in managerial or administrative capacity. The status of a workman is determined not

by his designation but the nature of duties performed by him which must be skilled or unskilled, manual or clerical in nature:-

➤ **National Bank of Pakistan v. Anwar Shah (2015 SCMR 434).**

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'.

➤ **Ganga R. Madhani v. Standard Bank Limited (1985 SCMR 1511).**

"A 'Workman' is employed in an industry to do skilled or unskilled work which is 'manual or clerical' Manual work entails physical exertion to distinguish from the mental or intellectual exertion involved in the clerical work. But both the manual and clerical work, in the sense these terms are used here, connote that it is more or less a routine work,, not requiring any great amount of initiative, imagination, direction, central and supervision in discharging the same. The true nature of the duties performed by the employee is the determining factor in ascertaining if he was a workman or not within this definition. In case the manual work forms only a small and auxiliary part of his responsibilities or he is incidentally required to prepare a statement, maintain a register or submit a report, he cannot be considered to be a workman if otherwise his main and primary duties do not belong to this category. The true test, therefore, is to look to the direct, immediate and the substantial part of the work for which he is employed and not the sundry duties incidentally performed by him. The true answer to this question will, therefore, depend upon the proved facts in each case."

➤ **All Pakistan SRBC Workers' Union v. National Industrial Relations Commission (2015 PLC 210).**

The plain reading of the definition indicates that any person who does not fall within the definition of employer and is not a person who is employed mainly in managerial or administrative capacity falls in the definition of a worker and workman. The test laid down by the Courts to see whether person is a workman or not is that it is not the job designation which is material but the nature of duty that is performed by the person concerned. In this regard reliance is placed on the case titled Sadiq Ali Khan v. Punjab Labour Appellate Tribunal and 2 others (PLD 1994 SC 273) in which it has been held as under:---

"Case-law covering contentions mentioned above, requires that onus is on the workman to show that he is so within the meaning of labour laws and that onus must be discharged by leading sufficient evidence. While evaluating the evidence pith and substance of duties should be considered and not the designation. Even salary is not of much relevance. To answer the contentions much depends on the evidence produced in that case and facts of each case are different from another."

9. The next argument of the learned counsel for the petitioner is that the grievance petition u/s 33 of the IRA, 2012, is maintainable before the NIRC where

there is an industrial dispute of the aggrieved workman. The record of the case has been perused according to which the employees in all the three petitions in the respective petitions were terminated from the services on 12.06.2018, 11.06.2018 & 06.04.2018, respectively, on the ground of absence from the duties on 3rd and 6th of November, 2017, and their involvement in the trade union activities against the management of the Bank treated as violation of section 27 (B) of the Banking Companies Ordinance, 1962. These two days absence from the duty have been considered as misconduct by the authority of the bank and after completing the prescribed formalities under the rules, major penalty of termination from the service was imposed. The replies of the employees that their absence from the duty was on account of CBA meeting and not for any agitation against the petitioner bank and that they were victimized for contesting unfair labour policies of the petitioner bank were also not considered satisfactory by the petitioner Bank. It has been noticed from the office memorandum, show cause notice and charge sheet issued to the employees that the petitioner bank has levelled the charges of holding general body meeting of CBA during office hours and treating the same as violation of section 27(B) of the Banking Companies Ordinance, 1962. It is further observed that there was no allegation/charges of in-efficiency, indiscipline and dishonesty or willful negligence of employees while performing the official duties for the petitioner bank. ADBP Officer Service (Efficiency and Discipline) Regulations, 1975, (*hereinafter referred to as Regulations, 1975*), defines the misconduct, vide section 2(4) as under:-

“2(4) *“misconduct:* means conduct prejudicial to good order or service discipline or contrary to conduct regulations prescribed in ADBP Staff Service Regulations 1961 for the time being in force or unbecoming of an officer and a gentlemen and includes any act on the part of a bank employee to bring or attempt to bring political or other outside influence directly or indirectly to bare on the bank or any Bank officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Bank employee.

10. Record reveals that no such allegation of misconduct as defined in the Regulations, 1975, against the employees, whereas, they were terminated on the allegation of absence from the duty for participating in trade union activities, thus this reason is enough in holding that the dispute between the parties is an industrial dispute and not individual dispute relating to service of the employees. Therefore, the NIRC has validly exercised the jurisdiction in entertaining the grievance petition filed by employees under section 33 of the IRA, 2012.

11. The petitioner bank has challenged the orders dated 15.11.2019 and 24.06.2020 of the NIRC by invoking constitutional jurisdiction of this Court under Article 199 of the Constitution, therefore, it being a writ of *certiorari* under Article 199(1)(a)(ii) have limited scope permitting interference only when illegality, irregularity and infirmity is found in the impugned order. It is well settled that writ of *certiorari* is to be issued when on judicial review it is found that the order of inferior Court or tribunal is illegal, without jurisdiction and no legal effect. This Court has no jurisdiction to reconsider the facts found by the inferior court which are based on documentary evidence and statements produced during proceedings in respect of the issues agitated. This Court in its recent judgments has explained the concept of writ of *certiorari* as under:-

“W.P. 86/2019, KhwajaRauf Segal vs. Full Bench, NIRC ()

20. The petitioner is seeking the issuance of a writ of certiorari under Article 199(1)(a)(ii) of the Constitution with respect to the impugned orders passed by the learned Member and the learned Full Bench of N.I.R.C. Certiorari is an order which brings up to the High Court a decision of an inferior Court or Tribunal for it to be quashed. A decision of an inferior Court or Tribunal may be quashed by issuing a writ of certiorari where that Court or Tribunal acted without jurisdiction, or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where those rules are applicable, or where there was an error of law on the face of the record, or a decision is unreasonable in the Wednesbury sense. However, this Court will not, in exercise of writ jurisdiction, act as a Court of appeal from the Court or the Tribunal concerned. This Court cannot substitute its decision for the one taken by the inferior Court or Tribunal. Where this Court quashes a decision, it has the power to remand the matter to the Court, Tribunal or the authority concerned with a direction to reconsider it and to reach a decision in accordance with the judgment given by this Court while deciding a writ of certiorari. In the case of Chief Constable of North Wales Police Vs. Evans [1982] 3 All ER 141, Lord Hailsham L.C. held that it is important to remember in every case that the purpose of the remedy of judicial review is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that of the authority constituted by law to decide the matters in question. Additionally, in the said case, Lord Brightman held that if the Court were to attempt itself the task entrusted to that Court or Tribunal or authority by the law, the Court would, under the guise of preventing the abuse of power, be guilty itself of usurping power.”.

Teradata Ireland Limited vs. Federation of Pakistan (2020 PTD 1316)

23. In the petition at hand, the petitioners are seeking the issuance of a writ of certiorari. Certiorari is not a writ of right, but one of discretion. Its object is to curb excess of jurisdiction and to keep inferior courts and tribunals within their bounds. The High Court, while judicially reviewing the proceedings and judgments of the inferior courts and tribunals, cannot substitute its own decision with that of such inferior courts and tribunals.

The grounds on which certiorari may be invoked is where there is an error of law apparent on the face of the record, and not every error either of law or fact which can be corrected by the appellate authority. The High Court, while issuing a writ of certiorari, acts in exercise of a supervisory and not appellate jurisdiction. The High Court will not judicially review findings of fact reached by an inferior court or tribunals unless there is manifest error apparent on the face of the proceedings, or where such findings are in disregard of the provisions of law....”.

12. In view of the above discussion, I am of the considered opinion that the learned Single Member has addressed all the legal and factual controversies by taking into consideration all the relevant record and law on the subject, vide order dated 15.11.2019, which order has been rightly upheld, vide order dated 24.06.2020, by the learned Full Bench of NIRC. The concurrent findings in the orders are well reasoned and do not suffer from any legal infirmity or jurisdictional defect. The petitions, therefore, being devoid of any merit, are hereby **dismissed**, accordingly.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on this _____ day of September, 2020.

JUDGE

APPROVED FOR REPORTING.
Blue Slip added

M. JUNAID USMAN

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