

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2370 of 2020

United Bank Limited

Versus

The Full Bench, National Industrial Relations Commission and
another

Dates of Hearing: 21.09.2022 & 03.10.2022

Petitioner by: Mr. Mushtaq Hussain Bhatti, Advocate

Respondents by: Mr. Muhammad Arif Khawaja, Advocate for
respondent No.2

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, United Bank Limited, impugns the order dated 08.07.2020 passed by the learned Full Bench, National Industrial Relations Commission (“N.I.R.C.”), whereby the appeal filed by respondent No.2, Shafaat Hussain, against the order dated 17.04.2019 passed by the learned Member, N.I.R.C., was allowed and it was directed that respondent No.2 be reinstated in service with all back benefits. Through the said order dated 17.04.2019, the learned Member, N.I.R.C. had dismissed respondent No.2’s grievance petition on the ground that he did not fall within the meaning of a ‘*workman*’ and therefore his grievance petition against the termination of his services was not maintainable.

2. The record shows that in 1986, respondent No.2 was appointed as an Assistant in United Bank Limited. Over the years, he was promoted to the position of Officer Grade-III (“OG-III”). On 06.10.2010, a charge sheet was issued to respondent No.2 wherein three allegations of misconduct were levelled against him. Thereafter, an inquiry was conducted against respondent No.2. The conclusion in the inquiry report dated 02.11.2010 shows that the charge of not calling back the customer while supervising clearance of a cheque for an amount of Rs.1.4 million in favour of a third party was partially proved against him. On the basis of the said inquiry report, the petitioner vide letter dated 03.11.2010 imposed the

punishment of termination from the bank's services on respondent No.2.

3. Against the termination of his services, respondent No.2 filed a grievance petition before the Punjab Labour Court No.VI at Rawalpindi. The said grievance petition was accepted and it was ordered that respondent No.2 be reinstated in service with full back benefits. The petitioner preferred an appeal before the Punjab Labour Appellate Tribunal, which converted respondent No.2's termination from service into the stoppage of one annual increment. Dissatisfied with the said decision, the petitioner filed a writ petition before the Hon'ble Lahore High Court, which was dismissed vide order dated 05.05.2014. The civil petition for leave to appeal filed by the petitioner against the said order dated 05.05.2014 was accepted by the Hon'ble Supreme Court vide order dated 22.02.2016 and the matter was remanded to the N.I.R.C. for a decision on respondent No.2's grievance petition.

4. The post-remand proceedings culminated in the order dated 17.04.2019 passed by the learned Member, N.I.R.C. whereby respondent No.2's grievance petition was dismissed on the ground that he did not come within the meaning of a '*workman*', and therefore the N.I.R.C. did not have jurisdiction to adjudicate upon respondent No.2's grievance petition. The reason why the learned Member, N.I.R.C. came to the said conclusion was that the petitioner had executed a power of attorney (Exh.R/1) in favour of respondent No.2 authorizing him to perform acts of a managerial and supervisory nature.

5. The appeal filed by respondent No.2 against the said order dated 17.04.2019 was allowed by the learned Full Bench, N.I.R.C. vide order dated 08.07.2020 and it was directed that respondent No.2 be reinstated in service with all back benefits. The learned Full Bench, N.I.R.C. held that although a power of attorney had been executed in respondent No.2's favour, powers under the said power of attorney had not actually been exercised by respondent No.2. The

said order dated 08.07.2020 has been assailed by the petitioner in the instant writ petition.

6. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that although respondent No.2's designation was OG-III, since the power of attorney dated 18.08.2004 had been executed in his favour authorizing him to perform acts of a managerial and supervisory nature, he did not come within the meaning of a '*workman*' and that the learned Member, N.I.R.C. did not commit any illegality by dismissing respondent No.2's grievance petition for want of jurisdiction; and that under Section 2(xxxiii) of the Industrial Relations Act, 2012, a person employed mainly in a managerial or administrative capacity does not come within the meaning of a '*workman*.' Learned counsel for the petitioner prayed for the impugned order dated 08.07.2020 passed by the learned Full Bench, N.I.R.C. to be set-aside and for the order dated 17.04.2019 passed by the learned Member, N.I.R.C. to be resorted.

7. On the other hand, learned counsel for respondent No.2 submitted that the petitioner, in its reply to the grievance petition, did not take an objection that respondent No.2 was not a workman; that at the time of respondent No.2's termination from service, he was in OG-III and performing duties of a workman; that indeed the power of attorney had been executed by the petitioner in favour of respondent No.2 but at no stage had respondent No.2 been authorized to exercise any power under the power of attorney; that an employer cannot take advantage of the execution of a power to wriggle out of his obligations to a workman under the labour laws; that there was no charge of embezzlement or misappropriation against respondent No.2; and that the only allegation against respondent No.2 that was partially proved as per the Inquiry Officer's report was that he had acted in violation of the bank's policy. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

8. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 5 above and need not be recapitulated.

9. Respondent No.2, in his grievance petition, had sought relief under Standing Order 12(3) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968. The said Ordinance defines a '*workman*' to mean a person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or clerical work for hire or reward. The said Ordinance defines an '*employer*' to include in any person responsible to the owner for the supervision and control of such establishment. The vital question that needs to be answered is whether respondent No.2 as an OG-III employee of the petitioner ceased to have the status of a workman on account of the power of attorney having been executed in his favour.

10. The fact that the power of attorney dated 18.08.2004 had been executed by the petitioner in favour of respondent No.2 authorizing him to perform managerial and supervisory powers is not denied. The said power of attorney is annexed at page 16 of this petition and was tendered in evidence as Exh.R/1. It is essential to reproduce herein below the powers under the power of attorney that respondent No.2 could exercise jointly with another attorney of the bank and the powers that he could exercise singly:-

Powers that respondent No.2 could exercise jointly with another attorney of the bank under the power of attorney:-

- "1. To open and operate on Current, Overdraft, Loan, Cash Credit or other account or accounts in the name of the Bank or deposit any money with or borrow or obtain accommodation, money or facilities upon or without security from any Bank or Banks or from the State Bank of Pakistan or any firm, person or Company in Pakistan or elsewhere.*
- 2. To draw, make, accept, execute, endorse, discount, rediscount, retire and negotiate bills, hundies, drafts, cheques, warrants, promissory notes and other negotiable instruments.*

3. *To buy, sell, hypothecate, pledge, mortgage, endorse, and transfer Government Securities, Municipal, Port Trust and Improvement Trust Bond or the Bonds or Securities or Debentures issued by any other public body or corporation and shares of Joint Stock Companies or other statutory corporation and all other securities and execute and sign or join in Letters of Guarantee and any form of indemnity or indemnities.*
4. *To receive deposits, to sign receipts and to give valid and effectual discharges for and in the name of the Bank.*
5. *To receive and hold in safe custody any kind of securities or other movable property whatsoever.*
6. *To recover and take possession of and manage all lands, houses, buildings and other property mortgaged to or otherwise belonging to the Bank and to let on lease or otherwise manage the same and to make sale and dispose of all lands, houses, goods, merchandise and property of every description, whether belonging to the Bank absolutely or in trust or as security, and for any such purpose to exercise all such powers and authorities and adopt proceedings as the Bank might or could exercise.*
7. *To purchase or take on lease or other terms any lands, houses or buildings for the purpose of offices or premises suitable for carrying on the business of the Bank at any place and to build, alter and furnish any offices, houses or premises.*
8. *To assign and re-assign Policies of Insurance standing in the name of the Bank or in which the Bank is interested in any way, to file proofs of claims and to recover any sum or sums that may become due to the Bank.*
9. *...*
10. *...*
11. *...*
12. *To do generally all acts, deeds and things not herein specifically mentioned which are necessary or requisite or expedient to carry on and manage the business of the Bank or which be necessary or requisite or expedient for the better and more effectively doing and performing the several acts, deeds and things aforesaid or incidental thereof."*

Powers that respondent No.2 could exercise singly or alone under the power of attorney:-

- (a) *In respect of all cheques and bills drawn or endorsed in favour of the Bank or otherwise payable to the Bank to endorse them as payable to bankers of the Bank for credit of the Bank's Account or Accounts with such bankers or for collection.*
- (b) *To discharge such cheques and bills for payment through the Bankers' Clearing House or otherwise.*
- (c) *To confirm endorsements of clients, constituents and customers of the Bank or other parties on all cheques, bills, drafts, telegraphic transfers, pay slips, pay orders dividend*

and interest warrants and vouchers and other negotiable or mercantile or other instruments.

- (d) *For and in the name of the Bank to certify that the proceeds of any cheques, bills, drafts, telegraphic transfers, pay slips, pay orders dividend and interest warrants, vouchers, negotiable or mercantile instruments or other instruments have been or will be credited to the account with the Bank as specified in the certificate, and*
- (e) *To endorse Bills of Exchange, Hundies, Bills of Lading, Dock and Warehouse warrants and other Shipping Documents, Railway Receipts and other negotiable or transferable instruments for the purpose of discharging the same.”*

11. It is well settled that it is the nature of the work done by an employee that would be the essential and fundamental consideration, and not just his designation, for determining the question whether he is a worker or a workman. It is also well settled that the burden to prove as to whether the employee who approaches the Courts / Tribunals is a workman lies on the employee and not on the employer. In the case of Habib Bank Limited Vs. Gulzar Khan (2019 SCMR 946), it was held that *“[i]t is a well-settled proposition of law that a person who approaches a Court on the basis of averment that he is a workman within the definition of clause (xxviii) of section 2 of the IRO, the burden of proof lies on him and not on the employer.”*

12. Ghulam Mustafa Asjad, Assistant Vice President (RW.1) appeared as a witness for the petitioner and deposed *inter alia* that respondent No.2 did not fall in the category of a workman since the power of attorney had been executed in his favour, authorizing him to exercise duties of a managerial and supervisory nature. In his cross-examination, the said witness deposed that there was one OG-III officer subordinate to respondent No.2 to whom respondent No.2 could not sanction leave, charge sheet him or initiate disciplinary proceedings against him. He also deposed that whenever the occasion arises, respondent No.2 can make use of the power of attorney in the manner stated therein. Respondent No.2 did not deny the execution of the power of attorney in his favour.

13. The powers that were given to respondent No.2 under the power of attorney dated 18.08.2004 were clearly of a managerial

and supervisory nature. In the case of Ganga R. Madhani Vs. Standard Bank Limited (1985 SCMR 1511), the power of attorney that had been given by the respondent / bank to the appellant, who was a Grade-III officer, had powers similar to the ones given under the power of attorney dated 18.08.2004 to respondent No.2 in the instant case. On the basis of such powers given to the appellant under the power of attorney, the Hon'ble Supreme Court held *inter alia* that the appellant did not come within the meaning of a workman. In this regard, it was held that the appellant was not a workman within the meaning of Section 2(i) of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968. In this regard, paragraph 12 of the said report is reproduced herein below:-

“A reading of the above-mentioned paragraphs clearly shows that powers thereby conferred on and functions thereby required to be performed by the appellant can neither be termed as manual nor clerical work and evidently involve the exercise of discretion and taking of important decisions. It is noteworthy that he has also been given in clear and unambiguous words the power to manage some of the affairs of the bank. He was also given a number of powers which he can exercise by himself. This is clear from a reading of paragraph No.10 of the Power of Attorney which authorises him to do all acts, deeds and things, which are necessary requisite or expedient for the better or efficient performance of several acts, relating to the affairs of the bank.

Similarly paragraph No.11 authorises him to do things, perform functions and transact in the name of and on behalf of the respondent-Bank alone and singly, or jointly with any other Attorney or officer of the bank, a large number of functions which can, by no means, be said to be manual or clerical in nature. As such we are of the view that the learned Division Bench of the High Court of Sindh and Baluchistan at Karachi, had rightly held that Ganga Ram appellant was not a ‘workman’ within the meaning of clause (i) to section 2 of the 1968 Ordinance.”

14. In the case of Muslim Commercial Bank Ltd. Vs. Muhammad Shahid Mumtaz (2011 SCMR 1475), it was held *inter alia* that the powers conferred on an employee of the bank by a power of attorney are material for determining his status in the context of whether or not he is a workman. In the said case, a power of attorney had been executed by the appellant / bank in favour of the respondent / employee who had been authorized *inter alia* to do all

such acts, deeds and things not specifically mentioned in the power of attorney but which are necessary and expedient to carry on and manage the business of the bank and all such other acts which are incidental to the promotion of banking business. It was held *inter alia* that the powers given to the respondent / employee who was a Grade-II officer sufficiently demonstrated that the nature of his duties and functions were of managerial and supervisory and not clerical in nature, as claimed by him. In the said report, it was also held that simply on the ground that there was no evidence to show that the power of attorney had ever been delivered to the respondent / employee, the learned Trial Court could not have taken the power of attorney out of consideration.

15. Additionally, in the case of Allied Bank of Pakistan Ltd. Vs. M.R. Nadeem (2002 PLC 131), the petitioner / bank had executed a power of attorney in favour of the respondent who was a Grade-III officer holding a power of attorney executed by the petitioner / bank in his favour. One of the grounds taken by the petitioner / bank in a writ petition against the order passed by the Punjab Labour Appellate Tribunal, which had accepted the grievance petition filed by the respondent against his dismissal from service, was that on account of the execution of the power of attorney in favour of the respondent, he could not be termed as a workman. The Hon'ble Lahore High Court held that *"the mere fact that he had been issued a power of attorney on behalf of bank means that he was not a workman but an officer."* The writ petition filed by the petitioner / bank was allowed on the ground that the respondent had failed to prove that he was a 'workman' as defined in the Industrial Relations Ordinance, 1969.

16. Learned counsel for respondent No.2 placed heavy reliance on the judgment in the case of Dilshad Khan Lodhi Vs. Allied Bank of Pakistan (2007 PLC 41) wherein a two-member bench of the Hon'ble Supreme Court expressed an opinion that *"mere designation of a person, the amount of emoluments drawn by him or even holding a power of attorney by itself are not the sole criteria for determining*

his status” as a workman. However, on the basis of the law laid down in the case of Muslim Commercial Bank Ltd. Vs. Muhammad Shahid Mumtaz (supra), which is a subsequent judgment by a three-member bench of the Hon'ble Supreme Court, it is safe to hold that an employee cannot assert himself to be a workman where a power of attorney is executed by the employer in favour of an employee giving the latter powers of a managerial or administrative nature. This is so even where it is not proved that the power of attorney has been physically delivered to the employee or where the employee has not, during the course of his employment, actually exercised powers under the power of attorney. The mere fact of the execution of the power of attorney and the employee's knowledge as to such execution is enough.

17. In view of the above, I am of the opinion that the managerial and administrative nature of the powers given by the petitioner to respondent No.2 in the power of attorney took respondent No.2 out of the ambit and meaning of a '*workman*.' Therefore, the instant petition is allowed; the impugned order dated 08.07.2020 passed by the learned Full Bench, N.I.R.C. is set-aside; and the order dated 17.04.2019 passed by the learned Member, N.I.R.C. is restored.

18. Before parting with this judgment, it may be mentioned that the petitioner, along with the memo of the petition, had just filed (i) a copy of the order dated 08.07.2020 passed by the learned Full Bench, N.I.R.C., (ii) a copy of the power of attorney dated 18.08.2004 executed by the petitioner in favour of respondent No.2, and (iii) cross examination of PW-1. These documents were not sufficient for this Court for the just adjudication of this petition. This lapse on the part of the petitioner caused respondent No.2 to go through the trouble of filing an application for bringing on record several other documents that were a part of the record before the Tribunals below. It should never come to the respondent in a petition seeking the issuance of a writ of *certiorari* to be bringing the record of the proceedings before Courts or Tribunals below by filing applications for additional documents. It is the responsibility of the petitioner to

file along with the writ petition copies of the record before the Courts or Tribunals below. Rule 2(1)(d) in Part-J of Chapter-IV, Volume-V of the Rules and Orders of the Lahore High Court, which have admittedly been adopted by this Court, provides that an application under the Constitution shall be accompanied by an affidavit or affidavits in proof of the fact and certified copies of all pleadings, documents, orders of the subordinate Court or authority or tribunal, including the evidence recorded, if any, and unless dispensed with by this Court. Since it has become commonplace for petitioners to pick and choose documents out of the record of Courts or Tribunals below to file along with the writ petition, and this lapse causes an obstruction in the expeditious administration of justice, I deem it appropriate to direct the office to, henceforth, not accept for filing a petition seeking the issuance of a writ of *certiorari* without a certificate of the counsel for the petitioner to the effect that the record of the Court or Tribunal below has been filed along with the petition. Office is directed to serve a copy of this judgment on the Additional Registrar (Judicial) of this Court for compliance.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 21/10/2022

(JUDGE)

Qamar Khan*

APPROVED FOR REPORTING