

Form No: HCJD/C-121
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Writ Petition No. 776 of 2021

MCB Bank Limited, Islamabad through authorized attorneys
Versus
Rizwan Ali Khan and others.

Petitioner by: Mr. Tariq Mahmood,
Advocate.

Respondents No.1 Mr. Abdul Rehman Khan,
by: Advocate.

Dates of hearings: 26.02.2021, 24.03.2021,
02.04.2021, 04.05.2021,
21.05.2021, 26.05.2021,
04.06.2021, 11.06.2021,
17.06.2021, 25.06.2021,
02.07.2021, 27.07.2021,
30.07.2021

TARIQ MEHMOOD JAHANGIRI, J:

Through the instant writ petition, the petitioner has called in question order dated 20.01.2021, passed by the learned Full Bench, National Industrial Relations Commission (NIRC), Islamabad in Appeal No. 12A(117)/2020, whereby order dated 03.03.2020, passed by the learned Member, National Industrial Relations Commission (NIRC), Islamabad was upheld and has also prayed for dismissal of case titled as

"Rizwan Ali Khan Vs. MCB Bank Limited etc." filed by respondent No. 1 before the learned Member NIRC, Islamabad.

02. Succinctly stated facts of the case are that respondent No.1 was employed in the petitioner's bank, performed his duties as Manager/Incharge/Head of the bank branch at Gilgit. He committed acts of omission and commission amounting to misconduct under the Bank Rules; he was charge sheeted, inquiry was conducted, was found guilty of charges leveled against him; the petitioner/bank proceeded strictly in accordance with law and dismissed him from service.

03. That respondent No.1 challenged the said dismissal order by way of filing writ petition before the Chief Court of Northern Areas, Gilgit which was accepted vide judgment dated 12.11.2008, dismissal order was set aside and the petitioner/bank was directed to re-instate the respondent No.1 from date of his dismissal with all financial benefits. Consequently, respondent No.1 was reinstated in service; being aggrieved the petitioner/bank filed Civil Petition for Leave to Appeal before the Supreme Appellate Court, Gilgit Baltistan which was allowed

and the judgment dated 12.11.2008, passed by the Chief Court Northern Areas, Gilgit was set aside on the ground that as the dismissal order was passed in Islamabad, therefore, the Courts in Northern area had no jurisdiction.

04. That respondent No.1 approached the learned Labour Court, Islamabad by way of filing writ petition which was dismissed vide order dated 19.12.2009. Feeling aggrieved of the order, respondent No.1 filed writ petition before the Lahore High Court, Rawalpindi Bench, Rawalpindi, which was transmitted to this Court and was dismissed vide judgment dated 20.05.2015.

05. That against the said order respondent No.1 filed Civil Petition No.2360 of 2015 before the august Supreme Court of Pakistan, which was allowed vide judgment dated 02.12.2016, in the terms that the status of respondent No.1 being workman be decided after recording of evidence and the case was remanded to the Labour Court for decision afresh in accordance with law. Respondent No.1 approached the National Industrial Relations Commission (NIRC), Islamabad. Both the parties adduced their evidence and the learned Single

Bench of NIRC accepted the Grievance Petition of respondent No.1 vide order dated 03.03.2020.

06. That feeling aggrieved of the order dated 03.03.2020, the petitioner bank filed an appeal before the learned Full Bench, NIRC which met the same fate and was dismissed on 20.01.2021.

07. That being aggrieved of the impugned orders, instant writ petition has been filed seeking the setting aside of concurrent findings of both the learned lower forums.

08. Learned counsel for the petitioner, *inter-alia*, contends that the grievance petition was not maintainable as the respondent No.1 was not a 'Worker' or a 'Workmen' as defined in the Section 2 (xxxiii) of the Industrial Relations Act, 2012; respondent No.1 was not dismissed or removed from employment in connection with or as a consequence of industrial dispute and no grievance notice was either served by respondent No.1.

09. That respondent No.1 was Manager of the Bank; he was performing managerial and fiduciary duties, was working in the supervisory capacity and was Incharge of the branch; learned Full Bench of NIRC misinterpreted the said admitted facts and did

not apply the law and declared him as workman; the petition before NIRC has been filed with an unexplained delay, hence, same was not maintainable and has prayed for setting aside of orders passed by both the learned lower forums. Learned counsel placed reliance on cases reported as **1999 SCMR 1892**, **2002 SCMR 943**, **PLD 2016 SC 872** and **2019 SCMR 946**.

10. Learned counsel for the respondent No.1 has controverted the arguments advanced by the learned counsel for the petitioner/bank and stated that both the impugned orders have rightly been passed by the competent forums; the scope of interference in writ jurisdiction is very limited; respondent No.1 was the workman according to definition of the Industrial Relations Act, 2012, the learned Single Bench of NIRC has properly passed the impugned order by accepting the grievance petition of respondent No.1 and the same has been upheld by the learned Full Bench of NIRC strictly in accordance with law and has prayed for dismissal of instant writ petition. Learned counsel placed reliance on cases reported as **1973 SCMR 455**, **2017 SCMR 56**, **PLD 2010 SC 878** and **2010 PLC 460**.

11. Arguments advanced by learned counsel for the petitioner and learned counsel for the respondent No.1 have been heard and record has been perused.

12. Admittedly the respondent No.1 was appointed as cashier and promoted to the post of OG-II and on 03.04.2006, appointed as Officiating Manager of the petitioner bank at Gilgit; during his tenure as Officiating Manager, some irregularities were unearthed; explanation letter was issued to him; he submitted reply, inquiry was conducted, finalized and he was dismissed from service on 21.04.2008.

13. Explanation letter was issued on 02.07.2007 with the allegations that respondent No.1 misutilized a sum of Rs. 222,689.23; drew House Building Finance in lump sum instead of three phases and unauthorizedly outsourced cash officer to handle cash, in-spite of the fact that permanent cashier was posted at the branch; Inquiry was conducted and Inquiry Officer gave his findings vide Inquiry Report dated 14.11.2007 (Exh.R/1) that Charge#1 partially proved to the extent of shortage of Rs. 2,689.23 and

not to the extent of misutilization of funds; Charge of drawing House Building Finance in lump sum was proved, regarding Charge # 3, Inquiry Officer stated that regular cashier had left to perform Hajj and an ex-employee of the bank was outsourced and allowed to handle cash safe and stated that charge # 3 was also established. The said inquiry report was confronted to respondent No.1 during the course of cross-examination, no any suggestion etc. was given that said inquiry report was fake or fabricated.

14. As far as argument that respondent No.1 was not workman is concerned, it is mentioned in letter dated 03.04.2006 (Exh.R/6) that respondent No.1, being Cash Officer/OG-III, was advised to officiate as Manager in place of Mr. Ashraf Hussain Wazir, OG-II/Manager after taking complete charge of the branch. It is also mentioned in Exh.R/10 dated 12.05.2006, that respondent No.1 is transferred as Manager as already arranged vide order dated 03.04.2006 (Exh.R/6); it is admitted that no power of attorney was ever issued in favour of respondent No.1 by the bank; no evidence was produced by the

petitioner/bank that respondent No.1 was not falling within the definition of workmen.

15. As far as argument of the learned counsel for the petitioner that grievance petition was filed with an unexplained delay and was not maintainable is concerned, in the judgment of the Supreme Appellate Court, Gilgit Baltistan, it is mentioned that respondent No.1 can seek remedy at the proper forum by seeking benefit of Section 14 of the Limitation Act. The Hon'ble Supreme Court of Pakistan vide order dated 02.12.2016 passed in C.P No. 2360 of 2015 filed by respondent No.1 has also remanded the case back to the Labour Court for decision afresh in accordance with law after recording of evidence and vide order dated 11.10.2017 in CMA No.5194 of 2017, the word 'Labour Court' was substituted with the word 'N.I.R.C' by the Hon'ble Supreme Court of Pakistan and the NIRC was directed to decide the case within a period of three months.

16. Grievance notice Exh.P/2 sent by respondent No.1 has also been produced in evidence which has not been challenged. In the cross-examination of

respondent No.1, no suggestion was ever given to him that the inquiry report dated 14.11.2007 (Ex.R/1) is fake and fabricated and also no suggestion was given that petition filed before NIRC was time barred.

17. It is very important aspect of the matter that no proper charge sheet has ever been issued to respondent No.1 by the petitioner/bank; no Show Cause Notice has been served upon him either before initiating the inquiry or before the issuance of the dismissal order. Hence, the famous principle of *Audi Alteram Partem* has been violated by the petitioner/bank.

18. Had there been serious allegations against respondent No.1, this Court would have not granted him any relief but there are no allegations of embezzlement or misappropriation of funds or misuse of authority against respondent No.1; first allegation which has been proved according to inquiry report is that there was a shortage of Rs. 2689.23, which has been paid by respondent No.1 to the bank; other allegation was that he made the payment to a customer during the late hours,

normally in order to keep good relations with the customers, payments during the late hours are made by the bank officials; another allegation was that respondent No.1 drew House Building Finance in lump sum instead of three phases and also did not maintain proper record/proof of security documents. In this regard, it is a well-established fact that House Building Finance facility is sanctioned by the competent authority after scrutiny of all the relevant documents as well as after getting opinion etc. of legal wing of the bank and the payment of installments in lump sum was only possible with the consent of the Management. There is no allegation that respondent No.1 was not entitled to get the House Building Finance facility or has misappropriated or defaulted in the payment of amount/installments to the bank.

19. As far as allegation of outsourcing to handle cash of the bank is concerned, it is mentioned in the inquiry report that regular cashier namely Fida Ali had gone to perform Hajj, so it was outsourced to an official to run the cash department of the bank who was former cashier of the bank and also no

misappropriation or embezzlement etc. was found due to outsourcing to handle the cash in absence of regular cashier of the bank.

20. Respondent No.1 was not found of committing serious, gross violations or misappropriation, or misutilization of bank money rather was found of committing slight oversight for which his career cannot be ruined/destroyed.

21. Respondent No.1 being poor cashier is being dragged in the litigation since the year 2008 (more than 13 years) which started from the Chief Court, Gilgit Baltistan, Supreme Appellate Court, Gilgit Baltistan, Lahore High Court, Rawalpindi Bench, Rawalpindi, Islamabad High Court, Hon'ble Supreme Court of Pakistan (two times), Labour Court, Islamabad, Single Bench and Full Bench of N.I.R.C and still the matter has not been finally decided.

22. During the pendency of instant petition, the Head of HR department of the petitioner bank was called and it was suggested that as there are no serious allegations of huge embezzlement or misappropriation or misconduct against respondent No.1, so being a poor cashier/employee of the bank,

if unconditional apology or request for mercy is made, the management of the bank may consider the case of respondent No.1 on humanitarian grounds, by issuing warning/imposing minor penalty etc. but the management of the bank flatly refused to do so.

23. It is well settled that *certiorari* is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of *certiorari* acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of facts reached by the inferior Court or a tribunal. Reliance may be made to the following case laws:

- (i) In the case of **"Owais Shams Durrani and others V. Vice-Chancellor, Bacha Khan University, Charsadda and another (2020**

SCMR 1041)”, it is held by the Hon’ble Supreme Court that ***“It is trite that where a citizen seeks relief in constitutional jurisdiction he must point to a right statutory or constitutional which vests in him and has been denied in violation of the law.”***

(ii) In the case of **“Amjad Khan V. Muhammad Irshad (Deceased) through LRs (2020 SCMR 2155)”**, it is held by the Hon’ble Supreme Court that ***“it is by now a settled principle of law that the High Courts must not exercise their constitutional jurisdiction in order to interfere with the discretion exercised by lower courts unless the same suffers from jurisdictional, factual or legal errors. In other words, such interference would be justified in cases where the impugned order has been passed without jurisdiction or is based on misreading or non-reading of evidence, or is not in accordance with the law. If none of these errors is present, the High Courts must not exercise their constitutional jurisdiction to interfere with the findings of lower courts merely because it reached a different conclusion as to the controversy than the latter. In this regard, reference can be made to a collective reading of Mst. Mobin Fatima V. Muhammad Yamin (PLD 2006 SC 214) and Nadira Shahzad V. Mubashir Ahmad (1995 SCMR 1419).”***

(iii) In the case of **“President All Pakistan Women Association, Peshawar Cantt V. Muhammad Akbar Awan and others (2020 SCMR 260)”**, it is held by the Hon’ble Supreme Court that ***“It is settled law that when the***

Statute does not provide the right of appeal against certain orders, the same cannot be challenged by invoking the constitutional jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not available to a party under the Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court. The High Courts exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of advancing the policy of law and delivering expeditious justice in accordance with the law and the Constitution. Even otherwise, constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of a validly enacted statutory provision."

(iv) In the case of **"Jurist Foundation through Chairman V. Federal Government through Secretary, Ministry of Defence and others (PLD 2020 SC 1)"**, it is held by the Hon'ble Supreme Court that ***"Judicial review must, therefore, remain strictly judicial and in its exercise Judges must take care not to intrude upon the domain of the other branches of Government. Judicial restraint, in this perspective, is essential to the continuance of rule of law, and for the continued public confidence in the political impartiality of the judiciary and the voluntary respect for the law as laid down and applied by the Courts."***

(v) In the case of **"Chief Executive MEPCO and others V. Muhammad Fazil and others (2019 SCMR 919)"**, it is held by the Hon'ble Supreme Court that ***"where the Court or the Tribunal has jurisdiction and it determines specific question of fact or even of law, unless patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by the High Court while exercising jurisdiction under Article 199 of the Constitution."***

(vi) In the case of **"Chairman, NAB V. Muhammad Usman and others (PLD 2018 SC 28)"**, it is held by the Hon'ble Supreme Court that ***"the powers of judicial review vested in High Court under Article 199 of the Constitution is no doubt a great weapon in the Judge's hands however, the same shall not be exercised in a case where discretion is exercised by the subordinate court/Tribunal in a fair and just manner without violating or disregarding statutory provision of law, likely to occasion the failure of justice. Ordinarily such extraordinary jurisdiction shall not be exercised at random and in routine manner. The following case law is reproduced for the guidance of the learned Judges of the High Court for future course of action:"***

(i) Brig. (Rtd.) Imtiaz Ahmed v. Government of Pakistan, through Secretary, Interior Division, Islamabad (1994 SCMR 2142)

(ii) Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Balochistan (PLD 1971 SC 677)

(iii) Malik Shaukat Ali Dogar v. Ghulam Qasim Khan Khakwani (PLD 1994 SC 281)"

(vii) In the case of **"Shajar Islam V. Muhammad Siddique and 2 others (PLD 2007 SC 45)"**, it is held by the Hon'ble Supreme Court that ***"the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal."***

24. Learned counsel for the petitioner made no submission on the point as to how the concurrent orders passed by the learned Full Bench of NIRC and Single Bench of NIRC, Islamabad dated 20.01.2021 and 03.03.2020 were the consequence of an error of law or without jurisdiction or in excess of jurisdiction.

25. In view of above prospective, instant writ petition has no merits and the same is hereby **dismissed** with a cost of Rs. 500,000/- (Five Hundred Thousand Rupees Only) to be paid by the

petitioner/bank to respondent No.1. The petitioner bank is directed to pay cost and reinstate the respondent No.1 in service with all benefits within a period of fifteen (15) days.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Announced in Open Court on this Day of , 2021.

JUDGE

Ahmed Sheikh*