

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 4370/2018
MUHAMMAD PERVAIZ AKHTAR.

APPELLANT
PETITIONER

VERSUS
NATIONAL BANK OF PAKISTAN, 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

23.07.2020 Mr. Muhammad Umair Baloch, Advocate.
 Kh. M. Farooq Mehta & Ms. Moona Khan, Advocates.

For the reasons recorded in my detailed judgment
of even date passed in connected W.P. No. 4348/2018,
titled petition is also disposed of.

(LUBNA SALEEM PERVEZ)
JUDGE

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.PNo. 4348 of 2018

Abdul Sattar
VS
National Bank of Pakistan, etc.

W.PNo. 4372 of 2018

Imran Khan
VS
National Bank of Pakistan, etc.

W.P No. 4357 of 2018

Muhammad Saleem
VS
National Bank of Pakistan, etc.

W.P No. 4370 of 2018

Muhammad Pervaiz Akhtar
VS
National Bank of Pakistan, etc.

W.P No. 4371 of 2018

Muzammal Hussain
VS
National Bank of Pakistan, etc.

W.P No. 4373 of 2018

Muhammad Ijaz
VS
National Bank of Pakistan, etc.

W.P No. 4374 of 2018

Shakeel Ahmed
VS
National Bank of Pakistan, etc.

Petitioners by : Mr. Muhammad Umair Baloch, Advocate.

Respondents by : Kh. M. Farooq Mehta & Ms. Moona Khan, Advocates.

Date of hearing : 23.07.2020.

LUBNA SALEEM PERVEZ J. Through this common judgment I intend to dispose of all the titled writ petitions as common facts are involved and have been filed against the same orders.

2. The petitioners have challenged orders dated 21.05.2018, passed by the learned Full Bench of NIRC, Islamabad at Lahore Bench Lahore, whereby, the order passed by the learned Single Bench dated 14.04.2017 was upheld.

3. The common facts in the above titled petitions are that the petitioners were initially appointed as Godown Keepers in the respondent bank on contract basis. Some of the colleagues of the petitioners were regularized, whereas, services of the present petitioners were verbally terminated. The petitioners approached learned Federal Service Tribunal through filing of appeal but same was dismissed *in limine*, vide order dated 15.07.2011, for want of jurisdiction. The petitioners challenged the said order before the Hon'ble Supreme Court of Pakistan through CPLA Nos. 1266, 1267, 1277 to 1289, 1307 to 1322, 1333, 1334, 1336, 1337 & 1380/2011, where the leave was refused, vide order dated 25.08.2011, holding that *Service Tribunal has rightly declined to grant relief to the person; however, they may avail appropriate remedy before proper forums subject to all just exceptions*. It appears that petitioners also filed petitions before the Hon'ble Lahore High Court which were also disposed of, vide order dated 02.11.2011, to be decided in terms of case titled "Ikram Bari and 524 others vs. NBP" (2005 SCMR 100). Record shows that petitioners also challenged Federal Service Tribunal's judgment dated 18.06.2011, before the Hon'ble Supreme Court through various CPLA's, which were disposed of, vide order dated 02.10.2012, in view of the consent of respondent bank to consider the case of the petitioners in the light of judgment passed in Ikram Bari's case. One of the aggrieved persons also filed writ petitions before the Hon'ble Lahore High Court, which was decided vide order dated 30.11.2012, whereby the petition was remitted back

to the respondents who agreed to consider the grievance of the petitioners in terms of judgment passed in Ikram Bari's case supra by making reference to the order of the Hon'ble Supreme Court dated 02.10.2012. However, it appears that in the meantime, the respondent bank, in compliance of order dated 02.10.2012, of the Hon'ble Supreme Court, after examining the record of the petitioners rejected their request for regularization, vide letter dated 13.11.2013, stating that cases of the petitioners do not fall in the category of Ikram Bari's case. The petitioners, against the order passed by the bank, filed criminal original/contempt petition before the Hon'ble Supreme Court of Pakistan for non-compliance of order dated 02.10.2012, however, the contempt petition was disposed of on 28.10.2013 as not pressed by the petitioners, to agitate the matter before the appropriate forum. As per record, the petitioners have also filed another writ petition before the Hon'ble Lahore High Court, which was decided on 14.05.2014, and while allowing the petitions respondent Bank was directed to confirm the service of the petitioners. Against this order the respondent bank filed I.C.A before the Lahore High Court, Lahore, which, vide judgment dated 14.09.2014, was allowed and order dated 14.05.2014, passed by the learned Single Judge in chambers was set-aside. Petitioners challenged this judgment before the Hon'ble Supreme Court of Pakistan, which was dismissed, vide order dated 11.01.2016, however, with the following observations:-

"With the intent to approach the learned Labour Court for redressal of their grievance, learned counsel for the petitioners does not press these petitions. However, any observation made by the learned High Court, which may be detrimental to the merits of the respondents' case would not come in their way. Dismissed accordingly".

4. The petitioners consequently filed grievance petition under section 33 of the Industrial Relations Act (IRA), 2012 before the NIRC on 08.04.2016. The learned Single Member of NIRC, vide order dated 14.04.2017, dismissed the grievance petition of the petitioners holding that the grievance notice was served after filing of the grievance petition and secondly the same was held to be hopelessly time barred. The learned Full Bench of NIRC, in appeal, vide their order dated 21.05.2018, upheld the order of the learned Single Bench, hence, present petition challenging the orders dated 21.05.2018 & 14.04.2017.

5. Learned counsel for the petitioners submitted that the learned Single as well as Full Bench of the NIRC have failed to consider the grievance of the petitioners who are running from pillar to post for their rights of regularization

since long and promptly applied to the next forum for redressal; that therefore, the grievance petition under section 33 of IRA, 2012 was not hit by limitation; that the cases of the petitioners were not considered for regularization by the respondents on the touch stone of Ikram Bari's case; that though the petitioners were appointed on contract basis, however, have served the respondent bank for a considerable period without any break in service on the post of permanent nature; that juniors to the petitioners have been absorbed/regularized permanently, whereas, the petitioners have been ignored illegally and unlawfully by violating their fundamental rights guaranteed under the constitution; that the petitioners being aggrieved of the verbal termination order challenged the same in appeal before Federal Service Tribunal in 2006 and thereafter, before Hon'ble Supreme Court and Hon'ble Lahore High Court by filing petitions; that the NIRC has not appreciated the law and the judgment of the Superior Courts on the subject; that under the Labour laws a Workman having nine months of service is to be treated as a permanent employee; that the petitioners are entitled to be regularized in accordance with law and principle settled by the Hon'ble Apex Court. He submitted that no limitation runs against void orders and since, the learned Full Bench of NIRC has technically knocked out the petitioners on the ground of limitation without taking into consideration the merits of the case, the impugned order is, therefore, *void ab initio*, illegal and unlawful and liable to be set-aside.

6. Conversely, learned counsel for the respondent Bank submitted that the petitioners were appointed as Godown Keepers purely on temporary basis; that on the demand of the CBA, Circular 10 of 2013 was issued to regularize Godown Keepers against 1500 posts and it was specified clearly that the same would be filled strictly as per terms and conditions of said circular; that on the directions of the Hon'ble Supreme Court of Pakistan, case of each and every petitioner was considered on the basis of criteria laid down in judgment of Ikram Bari's case reported as 2005 SCMR 100 and the application for regularization of those petitioners who were not qualified were rejected; that instead of challenging the rejection before the appropriate forum i.e. NIRC the petitioners indulged themselves in filing different petitions before the Hon'ble Lahore High Court as well as Hon'ble Supreme Court; that the grievance petition under section 31 of IRA, 2012 was ultimately filed before the NIRC after withdrawing CPLA's filed

before Hon'ble Supreme Court, vide order dated 11.01.2016, without fulfilling the mandatory requirement of serving notice prior to the filing of grievance petition before the NIRC; that since the grievance of the petitioners firstly arose when the petitioners were terminated and second time after the decision of the Hon'ble Supreme Court dated 02.10.2012; that the learned Single Bench as well as the learned Full Bench of the NIRC have consciously and judiciously applied their mind while passing the impugned orders and dismissing the appeal due to laches; that on the merits also, the case of the petitioners is not covered by the judgment passed in Ikram Bari's case, hence, the present petitions are liable to be dismissed. Learned counsel, on the point of non-issuance of grievance notice under section 33 of IRA, 2012 on the respondents, relied on the judgment passed in case titled as "*Matee ul Hassan vs. NIRC Appellate Bench at Islamabad*" (2018 PLC Note 30). On the ground of laches and limitation, learned counsel placed reliance on cases titled as "*Muhammad Din vs. Abdul Ghani*" (2012 SCMR 1004), *Mst. Khadija Begum vs. Mst. Yasmeen and 4 others*" (PLD 2001 SC 355), "*Nazakat Ali vs. Wapda*" (2004 SCMR 145), "*Rehmatullah Khan vs. Saadat Ali Khan*" (1991 MLD 1017), "*M/s Colony Textile Mills Limited vs. Water and Power Development Authority*" (2015 CLC 1378) and "*Bashir Ahmad vs. Muhammad Sharif*" (PLD 2001 SC 228).

7. It has been observed while perusing the record of the titled petitions that all the petitioners are resident of different Tehsil/Districts of Punjab; the Respondent No.1 is the NBP whose head office is in Karachi; and the other respondents are the Regional Chiefs and Managers of branches of NBP located in province of Punjab; the Member NIRC has also been made respondent in the petition address of whom is mentioned as Islamabad, whereas, the impugned orders dated 14.04.2017 and 21.05.2018 have been passed by the learned Single Member as well as learned appellate Bench of NIRC at Lahore Bench, Lahore. Therefore, the question of maintainability with regard to the territorial jurisdiction of this Court arises. The learned counsel for the parties were , therefore, requested to assist the Court.

8. On the point of maintainability, learned counsel for the petitioner submitted that the head office of the NIRC is located in Islamabad, therefore, it is the prerogative of the petitioner to file petition before any province of the

country. He referred the definitions of terms “commission” “establishment” and “trans-provincial establishment” contained in section 2(vi), (x) and (xxxii) and sections 53 and 55 of IRA 2012, and submitted that NIRC has been constituted by the Federal Government whose chairman exercises supervisory powers over the affairs of the commission, who also constitutes benches under section 55 for the purposes of adjudication and determination of the issues. Though these benches functions in all the provinces but since, IRA, 2012 under which the NIRC is constituted is a Federal Statute, the writ against the decision of the Appellate Bench of NIRC can be challenged before any High Court of the Country on the basis of having concurrent jurisdiction. He further submitted that the NBP is a trans-provincial establishment within the meaning of section 2(xxxii) thus the disputes are challengeable before this Court also. He relied on the judgment titled as ***“Let-Gen (R) Salahuddin Tirmizi vs. Election Commission of Pakistan” (PLD 2008 SC 735)***.

9. Learned counsel for the respondent submitted that for the purposes of determining the territorial jurisdiction of the High Court under Article 199, the place of accrual of cause of action is to be seen. In the present case, the petitioners are resident of province of Punjab and have been appointed in head office of NBP Gujrawala, as such, the cause of action against the petitioners have arisen in the province of Punjab, therefore, the Hon’ble Lahore High Court has the appropriate territorial jurisdiction over the cases of the petitioners. Learned counsel relied on the judgment of ***“Gulzar Ahmad Khan vs. The Chief Election Commissioner of Pakistan” (PLD 1997 Lahore 643)*** and ***M/s Al-Iblagh Limited, Lahore vs The Copyright Board, Karachi and others” (1985 SCMR 758)***.

10. Arguments advanced by the learned counsel for the parties have been heard and record has also been perused with their able assistance.

11. Maintainability of the present petitions with regard to the territorial jurisdiction of the Court has been examined in view of the fact that the petitioners are the residents of province of Punjab as well as office of Respondent No. 2 is also located in Gujrawala, whereas, head office of Respondent No.1 is based in Karachi and the impugned orders of Respondent No.4 has been

delivered by the learned bench of NIRC, at Lahore. In this regard, guidance has been sought from the following judgments, whereby, the principles on the point of territorial jurisdiction/concurrent jurisdiction of the High Court have been elaborated.

- **M/s Al-Iblagh Ltd vs. Copyright Board, Karachi (1985 SCMR 758):**

"The rules laid down in the said case would, we think, be applicable also in the circumstances of this case. The Central Government has set up a Copyright Board for the whole of Pakistan and it performs functions in relation to the affairs of the Federation in all the Provinces. Hence, any order passed by it or proceedings taken by it in relation to any person in any of the four Provinces of Pakistan would give the High Court of the Province, in whose territory the order would affect such a person, jurisdiction to hear the case.

- **Sandalbar Enterprises (Pvt.) Ltd vs. CBR (PLD 1997 SC 334):**

(Relying on the judgment of Al-Iblagh's case supra the Hon'ble Supreme Court has observed as under:-)

We agree and are of the opinion that both the Lahore High Court' as well as the Sindh High Court had concurrent jurisdiction in the matter and both the Courts could have entertained a Writ Petition against the impugned orders in the circumstances of this case. We, therefore, hold that the Lahore High Court has illegally refused to exercise jurisdiction in this case. The case will, therefore, go back to the Lahore High Court for decision of the Writ Petition filed by the appellant before it for decision on merits, in accordance with law.

- **"Let-Gen (R) Salahuddin Tirmizi vs. ECP" (PLD 2008 SC 735):**

Order passed by Election Commission of Pakistan which functions at Islamabad in respect of the constituency of Province of NWFP, would be challengeable both before the Islamabad High Court and Peshawar High Court--- Such concurrent jurisdiction is however, subject to the rule of propriety according to which a High court having jurisdiction in a matter if has exercised such jurisdiction, the other High Court, which has also jurisdiction in the matter may restrain itself from exercising its jurisdiction—[Emphasis provided]

The Islamabad High Court has been established with status equal to that of the High Courts of Provinces under (Establishment) Order, 2008 (P.O. No.5 of 2008) wherein its territorial limits have been described as Islamabad Capital Territory, therefore, this Court has territorial as well as inherent jurisdiction in all matters within the area of capital territory (Islamabad District) and the authorities functioning at Islamabad in connection with the affairs of Federation are subject to the jurisdiction of Islamabad High Court. The principal seat of Election Commission of Pakistan is at Islamabad with its Branches at Provincial Headquarters and the function of Election Commission of Pakistan is to manage and regulate the elections of Parliament (National Assembly and Senate), prepare electoral rolls for such elections with all other duties relating to election, therefore, in the light of principle laid down in Flying Kraft Paper Mills (Pvt.) Ltd. Charsadda v. Central Board of Revenue, Islamabad 1997 SCMR 1874, the order passed by Election Commission of Pakistan in respect of constituency situated in a Province can conveniently be challenged before the Islamabad High Court. The expression "discharges function within the territorial jurisdiction" would sufficiently indicate that an order passed by an authority which exercises

jurisdiction within the boundaries of Capital Territory, is subject to the jurisdiction of Islamabad High Court.

- **Syed Shehzad Zahoor vs. Government of Pakistan (2001 CLC 581):**

The words "within the territorial jurisdiction of the Court" have obviously been incorporated with the intention of confining the scope of exercise of jurisdiction by the High Court. There should be justified basis to approach a particular High Court, otherwise everybody would be free to file a Constitutional petition as per his whim, wish or convenience. The intention of Constitution's maker can also be gathered from the use of words "any act done or proceedings taken". Accordingly; it is held that though functionaries acting on behalf of Federal Government can be sued before any of the High Courts yet petitioner has to show some real basis, which may include that he has been effected by such acts, within the territorial jurisdiction of a High Court. Additionally, more than one High Court may have concurrent jurisdiction, in the circumstances of a case.

- **Alam Dad Laleka vs Election Commission of Pakistan (PLD 2020 Islamabad 20):**

14. There is no doubt that the impugned orders dated 10.06.2019 and 01.07.2019 have been passed by the E.C.P. within the territorial jurisdiction of this Court, and that this Court has the jurisdiction to issue a writ of certiorari with respect to the orders passed by the E.C.P in view of the law laid down by the Hon'ble Supreme Court in the case of "Salahuddin Tirmizi v. Election Commission of Pakistan" (PLD 2008 SC 735). However, as regards the case at hand since the petitioner has challenged the orders passed by the E.C.P. in proceedings pursuant to show cause notice dated 08.03.2019, which notice has admittedly been assailed by the petitioner before the Hon'ble Lahore High Court in Writ Petition No.2681/2019 and since the petitioner is seeking an order to stay the proceedings before the E.C.P. on the strength of interim orders passed by the Hon'ble Lahore High Court in the said petition, propriety demands that this Court ought not to interfere in the proceedings before the E.C.P., especially when there is nothing preventing the petitioner from challenging E.C.P.'s orders dated 10.06.2019 and 01.07.2019 before the Hon'ble Lahore High Court which is already seized of the matter. A litigant who challenges a show cause notice before a High Court of one Province cannot be permitted to challenge orders passed in the proceedings pursuant to the show cause notice before another High Court, even if both the High Courts have concurrent jurisdiction over the matter.[emphasis provided] The distinguishing feature between the case at hand and the case of "Salahuddin Tirmizi v. Election Commission of Pakistan" (Supra) was that in the latter case the orders passed by the E.C.P. with respect to an election in the erstwhile North-West Frontier Province were challenged before this Court and no other High Court. It was in such circumstances that the Hon'ble Supreme Court held that this Court as well as the Hon'ble Peshawar High Court would have concurrent jurisdiction with respect to orders passed by the E.C.P. Furthermore, it was held that such concurrent jurisdiction was "subject to the rule of propriety according to which a High Court having jurisdiction in a matter if has exercised such jurisdiction, the other High Court, which has also jurisdiction in the matter may restrain itself from exercising its jurisdiction."

Thus, in the light of the above referred judgments I am of the view that this Court has concurrent jurisdiction over the cases of the petitioners as NIRC constituted under section 53 of the IRA, 2012 which is a Federal law and its head office is

based in Islamabad. The benches are constituted under section 55 read with Regulation 7 of NIRC (procedure and functions) Regulations, 2016, by the Chairman at the places subject to his general control for efficient performance of the functions of the commission. However, at the same time there are some exceptions regarding exercise of jurisdiction by a High Court in case of concurrent jurisdiction, taken in the above cited judgment passed in the case of Let-Gen (R) Salahuddin Tirmizi, whereby, it has been observed that exercise of concurrent jurisdiction by a High Court is subject to the rule of propriety according to which a High Court having jurisdiction in matter, if has exercised such jurisdiction, the other High court, which also has jurisdiction in the matter may restrain itself from exercising its jurisdiction. This Court also in Alam Dad Laleka's case supra has taken a similar view while holding that when the Hon'ble Lahore High Court, Lahore is already seized of the matter, than propriety demands that this Court, though having concurrent jurisdiction, should restrain itself from interfering in the proceedings. Moreover, in the case of Syed Shehzad Zahoor supra it has been observed that though functionaries acting on behalf of Federal Government can be sued before any of the High Courts but the petitioner has to show some genuine cause for approaching the High Court including the reason that the act which has effected him has happened within territorial jurisdiction of that High Court. Whereas, with regard to the case in hand, it is pertinent to mention here that one of the employees of the respondent Bank who were also aggrieved of the orders dated 14.04.2017 & 21.05.2018 (impugned through present petitions) passed by the learned Member and Appellate Bench of the NIRC, Lahore, having common set of facts and circumstances, preferred writ petition before the Hon'ble Lahore High Court against the said orders and the Hon'ble Lahore High Court, vide judgment dated 21.01.2020, by placing reliance

on the judgment of Hon'ble Supreme Court of Pakistan in case titled as ***Abdul Ghafoor and others vs. The President of NBP and others***” (2018 SCMR 157) has set aside both the impugned orders and remanded the case to the NIRC for decision afresh on merits also by discussing the point of limitation. The findings of the Hon'ble Lahore High Court is as under:-

“8. The above factors depict that the Hon'ble Supreme Court of Pakistan or for that matter high Court has neither condoned the delay nor found it to be unjustified. The observation of the Hon'ble Supreme Court of Pakistan that NIRC seized of the matter would give its findings on merits without being prejudiced with the observation of the High Court shows that it was expected from the NIRC that it would decide the case on merit. This is also supported by the conduct of the petitioners when they have Federal Service Tribunal, Hon'ble Supreme Court of Pakistan, Lahore High Court and again before the Hon'ble Supreme Court of Pakistan and finally before the NIRC. Notably, neither the Single bench nor the Full Bench of NIRC had discussed the effect of interregnum period during which petitioner has been pursuing the remedy before the Apex Court as well as the High Court. The NIRC had also not been able to discuss the reasons why the delay should not be condoned.

9.

10. In the judgment titled (2018 SCMR 157) *Abdul Ghafoor and others versus The President National Bank of Pakistan and others*” the dictum laid down in *Ikram Bari's* case was reiterated. Paragraph 7 of the said judgment is reproduced as under:-

In the present case also, the respondent bank cannot be allowed to persist in its similar practice and machination to exploit its workers and to defeat the spirit and purpose of law and the judgments of this Court, by describing the employment of the petitioners as a contract and calling such workers as "contractors" instead of "contract employment" and "contract employees". As the petitioners for all intents and purposes were engaged/employed by the respondent bank for manual jobs and were being paid salary/compensation for the services they rendered for the respondent-bank, on monthly basis and from year to year personally/manually, and having so served for more than one year, on several 11 months stints, have earned entitlement for regularization of their services with the respondent-bank.

11. In view of the above discussion, this Court is of the view that neither the Full Bench of NIRC nor the Single Member of the NIRC has been able to decide the case on merits, therefore, these writ petitions are allowed. Both the impugned orders are set aside. Case is remanded to the NIRC with a direction to decide the same afresh on merits also by discussing the point of limitation.”.

It is obvious in the present matter that despite the fact that, this Court as well as Hon'ble Lahore High Court, Lahore, have concurrent jurisdiction in the matter but since, the Hon'ble Lahore High Court has already dealt with the matter,

therefore, keeping in view the observations made by the larger Bench of the Hon'ble Supreme Court in the case of Lt.Gen (R) Salahuddin Tirmizi, propriety demands and that followed by this Court in Alam Dad Laleka's case supra should restrain itself from giving a verdict in the matter. Moreover, in the present case the petitioners, who were residents of Punjab were employed in the Regional office of the NBP, situated in Punjab where the cause of action has arisen and both the impugned orders have been passed by the learned Member and Appellate Bench of the NIRC, Lahore Bench, therefore, there is no valid reason available to the petitioners to approach this Court.

13. For the above said discussion, and keeping in view the above referred judgments of the Hon'ble Supreme Court of Pakistan as well as facts and circumstances of the case, this Court restrains itself from exercising its jurisdiction in the matter. Petitioners, if so advised, may approach the proper forum for redressal of their grievance.

14. Instant petition stands disposed of in the above terms.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on this 26th day of August, 2020.

JUDGE