

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2330/2016
Asif Majeed Paul and another
Versus
Ministry of Finance and another

Date of Hearing:	14.02.2019
Petitioners by:	Barrister Syed Hassan Ali Raza.
Respondents by:	Mr. Rashid Hafeez, learned Deputy Attorney-General and Ms. Sitwat Jahangir, learned Assistant Attorney-General along with Mr. Abid Afridi, Assistant, Finance Division. Mr. Shahid Anwar Bajwa, Advocate for respondent No.2/H.B.L.

MIANGUL HASSAN AURANGZEB, J:- Through the instant petition, the petitioners, Asif Majeed Paul and Rashid Hussain, who are retired employees of Habib Bank Limited (“H.B.L.”), seek the issuance of a writ of *mandamus* to the Ministry of Finance and H.B.L. to grant them the benefits under the Finance Division’s circular No.17(9)-1F.XI/77, dated 30.11.1977 so that their pension is increased to the same level as paid by the Federal Government to retired civil servants.

2. Initially, when the said petition was filed, the petitioners had appeared in person and wanted to argue the case themselves. The petitioners had submitted that they were old pensioners and could not afford the services of a counsel. Barrister Syed Hassan Ali Raza was present in the Court volunteered to argue the case gratis on the petitioners’ behalf.

3. Learned counsel for the petitioners, after going through the Finance Division’s circular dated 30.11.1977, submitted that at present, a clerk is being paid more pension than the petitioners; that the petitioners had retired prior to the privatization of H.B.L.; that the pensioners of the National Bank of Pakistan (“N.B.P.”) had also filed writ petitions seeking an enhancement in their pension on the basis of Finance Division’s circular dated 30.11.1977; that the said writ petitions were allowed by the

Hon'ble Lahore High Court and intra court appeal filed thereagainst was dismissed by the Division Bench of the Hon'ble Lahore High Court in the judgment reported as National Bank of Pakistan Vs. Iftikhar Rasool Anjum (2017 PLC (C.S.) 453); that the Hon'ble Supreme Court vide judgment reported as Bahadur Khan Vs. Federation of Pakistan (2017 SCMR 2066) had also dismissed N.B.P.'s appeals against the said judgments of the Hon'ble Lahore High Court; that the petitioners come in the category of H.B.L.'s pensioners, who retired prior to the enactment of the Banks (Nationalization) (Amendment) Act, 1997; that the petitioners had a legitimate expectation for their pension to be enhanced so as to bring it at par with the rate of pension paid to retired civil servants; that in the cases of Pakistan Telecommunication Employees Trust Vs. Muhammad Arif (2015 SCMR 1472), Muhammad Riaz Vs. Federation of Pakistan (2015 SCMR 1783) and P.T.C.L. Vs. Masood Ahmed Bhatti (2016 SCMR 1362) it had been held that the employees of the Telephone and Telegraph Department, who retired prior to the enactment of the Pakistan Telecommunication Corporation Act, 1991, were entitled to be paid pension at the same increased rates as was payable by the Federal Government to retired civil servants; and that the denial by H.B.L. to pay the petitioners' pension at the same rate as paid by the Federal Government to the retired civil servants was a violation of their fundamental rights under Articles 9 and 25 of the Constitution.

4. Learned counsel for the petitioners additionally submitted that since the circular dated 30.11.1977 had been issued by the Federal Government, it is the Federal Government which should pay the petitioners pension at the enhanced rates in case H.B.L. fails to do so. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

5. On the other hand, learned counsel for H.B.L./respondent No.2 raised an objection to the maintainability of the instant petition primarily on the ground that since the Habib Bank Limited (Staff) Service Rules, 1981, are not statutory in nature, and a declaration to the said effect has already been given by the

Hon'ble Supreme Court in the case of Abdul Wahab Vs. H.B.L. (2013 SCMR 1383), the instant petition is not maintainable; that recently, the Hon'ble Supreme Court in the case of Muhammad Zaman Vs. Government of Pakistan (2017 SCMR 571), upheld the judgment of the Hon'ble Peshawar High Court, whereby writ petitions filed by employees of the State Bank of Pakistan seeking an increase in their pension on the basis of Finance Division's circular dated 30.11.1977 were dismissed on the ground that the State Bank of Pakistan Officers (Pension-cum-Gratuity) Regulations, 1980, were non-statutory; that the petitioners' reliance on the judgments in the cases of National Bank of Pakistan Vs. Iftikhar Rasool Anjum (supra) and Bahadur Khan Vs. Federation of Pakistan (supra) is misplaced inasmuch as in the said cases, the writ petitions filed by the employees of N.B.P. seeking an enhancement in their pension on the basis of Finance Division's circular dated 30.11.1977 were held to be maintainable since admittedly the rules governing the terms and conditions of service of N.B.P.'s employees are statutory in nature; and that the reliance placed by the petitioners on the law laid down in the cases of Pakistan Telecommunication Employees Trust Vs. Muhammad Arif (supra), Muhammad Riaz Vs. Federation of Pakistan (supra) and P.T.C.L. Vs. Masood Ahmed Bhatti (supra) is also misplaced inasmuch as in the said cases, the protection given to the employees of the Telephone and Telegraph Department under Section 9 of the Pakistan Telecommunication Corporation Act, 1991, and Sections 35 and 36 of the Pakistan Telecommunication (Re-organization) Act, 1996, was enforced, whereas in the instant case, there is no statute or statutory instrument giving such protection to the terms and conditions of H.B.L.'s employees.

6. Furthermore, it was submitted that the Banks (Nationalization) Act, 1974 ("B.N. Act") was amended through the Banks (Nationalization) (Amendment) Act, 1997 ("B.N. (Amendment) Act"); that the amended Section 11(11) of the B.N. Act provided that the Board, the President and other officers shall exercise their powers and discharge their duties in

accordance with sound banking principles and prudent banking practices and shall ensure compliance with Regulations and directions that may be issued by the State Bank from time to time; that before the said amendment, the power to issue directions to H.B.L. was with the Federal Government; that after the B.N. (Amendment) Act, the Federal Government lost the power to issue directions to any of the then nationalized banks, and financial and administrative autonomy was given to such banks; that pension was introduced in H.B.L. on the basis of the directions of the Federal Government contained in the circular dated 13.11.1977; that after the enactment of B.N. (Amendment) Act, H.B.L., through circular dated 22.01.1998, increased the emoluments ranging from 90% to 130% for all its employees; that no approval of the Federal Government was required for the issuance of the said circular; that the said circular was issued with the approval of the Board of Directors of H.B.L.; that the emoluments of H.B.L.'s employees, including their pay scales and pensionary benefits were restructured through circular dated 30.12.1988; that further amendments were made in their emoluments through circular dated 04.03.2005; and that the H.B.L. (Staff) Service Rules, 1981, were repealed and replaced by new Rules which became effective on 01.02.2008.

7. Learned counsel for H.B.L. further submitted that when petitioner No.1 retired on 09.03.2012, his basic salary was Rs.46,537/- and his entitlement to pension was Rs.15,327/- per month; that petitioner No.2 opted for separation under the Voluntary Golden Handshake Scheme, 1997, and after his request for separation was accepted, he was released on 31.12.1997 and paid the golden handshake amount of Rs.1,456,060/-; that petitioner No.2 is receiving his pension in accordance with his entitlement; and that the petitioners were admittedly not civil servants, and were entitled to the increase in their pension equivalent to the pension paid by the Federal Government to retired civil servants. Learned counsel for H.B.L. 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.

9. Petitioner No.1 had retired from service in H.B.L. on 09.03.2012, whereas petitioner No.2 was released on 31.10.1997 after his request for separation under the Voluntary Golden Handshake Scheme was accepted by H.B.L. Essentially, the petitioners' case is that they should be given an increase in the rate of their pension in the same proportion to the increase in the rate of pension announced by the Federal Government for the retired civil servants from time to time. The petitioners based their case on Finance Division's circular dated 30.11.1977, whereby the Finance Division informed the Chairman, Pakistan Banking Council that for providing better social security, it had been decided to introduce pension and retirement benefits for the officers/executives of banks, including the State Bank of Pakistan and financial institutions as had been introduced by the Federal Government for civil servants. In the said circular, it was also mentioned that the changes or revisions in the rates or scales of pension or gratuity that may be made by the Federal Government shall also apply to the officers/executives of banks. It is an admitted position that on 27.02.1978, H.B.L. had circulated the said circular amongst its employees, who were given a choice to opt for the pension scheme or gratuity and provident fund. The petitioners claim to have opted for the pension scheme. The petitioners admit that after their retirement, they had been given pension based on the recommendations of the Pay Commission constituted by the Federal Government. The inaction on the part of H.B.L. since December, 2000 to increase the pension of its retired employees has caused the petitioners to invoke the Constitutional jurisdiction of this Court so that directions are issued to the respondents to increase their pension at the same rate and proportion as paid by the Federal Government to civil servants.

10. I propose, in the first instance, to decide the objections raised by the learned counsel for the H.B.L. to the maintainability

of the instant petition on the ground that since the Habib Bank Limited Staff Service Rules, 1981, are not statutory in nature, the instant petition is not competent.

11. Learned counsel for the petitioners did not dispute the fact that H.B.L.'s Rules which had governed the terms and conditions of the petitioners' service were not statutory. The Hon'ble Supreme Court in the case of Abdul Wahab Vs. H.B.L. (2013 SCMR 1383) has in no uncertain terms held that Habib Bank Limited (Staff) Service Rules, 1981, are non-statutory in nature, and thus, not a law. Additionally, in the case of Habib Bank Limited Vs. The State (SBLR 2013 SC 1), the Hon'ble Supreme Court held as follows:-

“5. The terms and conditions of service of employees of HBL were governed by HBL (Staff) Service Rules, 1981, which was not a statutory rules of service and thus in terms of the case of Pakistan International Airline Corporation and others vs. Tanveer-ur-Rehman and others (PLD 2010 SC 76), the Respondent No.1 could not have filed and maintained a Constitution Petition in the High Court for enforcement of terms and conditions of his service for that his relationship with his employer was strictly governed by the rules of Master and Servant and the only remedy provided by law in this regard is only by way of a civil suit and not otherwise. Thus even if it is assumed that HBL was a government owned and controlled Bank on a date of suspension of service of the Respondent No.1, his service being not governed by statutory rules of service, he will not be entitled to maintain a constitution petition in the High Court for payment of his salary, dues for the period of his suspension as allowed by the impugned judgment.”

12. It is well settled that a writ petition is maintainable where the respondent authority violates any provision of law or statutory rules. Employees, who are governed by statutory rules, can avail the remedy of filing a writ petition before the High Court. It is also well settled that the principle of 'master and servant' was applicable to the employees whose services were not governed by any statutory rules. Employees of a body, owned by the government, in the absence of violation of law or any statutory rule, could not press into service the Constitutional jurisdiction of the High Court in order to seek relief with respect to their employment. Reference in this regard may be made to the law laid down in the cases of “Samiullah Narago Vs. Federation of Pakistan (2012 PLC (C.S.) 1205), Pakistan

Telecommunication Company Limited Vs. Iqbal Nasir (PLD 2013 SC 132), and Pakistan International Airline Corporation Vs. Tanveer-ur-Rehman and others, (PLD 2010 SC 676)". In the latter case, it has been held as follows:-

"19. However, this question needs no further discussion in view of the fact that we are not of the opinion that if a corporation is discharging its functions in connection with the affairs of the Federation, the aggrieved persons can approach the High Court by invoking its constitutional jurisdiction, as observed hereinabove. But as far as the cases of the employees, regarding their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable to the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the Court of competent jurisdiction."

13. The petitioners, through the instant writ petition, have raised a grievance pertaining to the terms and conditions of his service with H.B.L., I cannot take a view different to the one taken by the Hon'ble Supreme Court in the abovementioned judgments.

14. The Hon'ble Peshawar High Court, vide judgment dated 15.05.2014, dismissed writ petition No.1882-P/2013, filed by retired employees of the State Bank of Pakistan seeking an enhancement in their pension on the basis of the Finance Division's circular dated 30.11.1977. The petitioners in the said case claimed to be entitled to the same retirement benefits which were applicable to the Federal Government employees. The said writ petition was primarily dismissed on the ground that the State Bank of Pakistan Officers (Pension-cum-Gratuity) Regulations, 1980, were non-statutory. The petitioners, who were unsuccessful before the Hon'ble Peshawar High Court, filed an appeal before the Hon'ble Supreme Court against the said judgment dated 15.05.2014. The Hon'ble Supreme Court in its judgment reported as Muhammad Zaman Vs. Government of Pakistan (2017 SCMR 571), dismissed the said appeal. In the said judgment, it was held *inter-alia* that since the said Regulations of the State Bank of Pakistan were non-statutory, the appellants

could not have invoked the Constitutional jurisdiction of the High Court which had been correct in dismissing their writ petition.

15. Muhammad Zaman's case (*supra*) has a strong resemblance to the case at hand. Just like in Muhammad Zaman's case (*supra*), the petitioners in the instant case are also seeking an enhancement in the rate of the pension on the basis of the Finance Division's circular dated 30.11.1977. Another common feature between Muhammad Zaman's case (*supra*) and the instant case is that the service rules/regulations applicable to the employees of the State Bank of Pakistan and H.B.L. are non-statutory. It is on this very basis that the Hon'ble Supreme Court in Muhammad Zaman's case (*supra*) upheld the judgment of the Hon'ble Peshawar High Court, whereby a writ petition filed by employees of the State Bank of Pakistan seeking an enhancement in their pension on the basis of the Finance Division's circular dated 30.11.1977 was dismissed. Since a clear question of law has been decided by the Hon'ble Supreme Court in Muhammad Zaman's case (*supra*), the same is binding on this Court in terms of Article 189 of the Constitution. The said Article provides a decision of the Supreme Court enunciating principles of law is binding on all the High Courts.

16. Now as regards the petitioners reliance on the judgments in the cases of National Bank of Pakistan Vs. Iftikhar Rasool Anjum (*supra*) and Bahadur Khan Vs. Federation of Pakistan (*supra*), true, the Hon'ble Lahore High Court had allowed writ petitions filed by employees of the N.B.P. seeking an enhancement in their pension on the basis of Finance Division's circular No.17(9)-1F.XI/77, dated 30.11.1977, and an appeal against the judgment of the Hon'ble Lahore High Court allowing the writ petitions had been concurrently dismissed by the Hon'ble Division Bench of the said Court as well as the Hon'ble Supreme Court of Pakistan, the distinguishing feature in the said cases was that the applicable service rules/regulations of N.B.P. were statutory. This is not so in the case at hand. Therefore, I would tend to agree with the learned counsel for H.B.L. that the petitioners' reliance on the said judgments is misplaced. In the

case of Bahadur Khan Vs. Federation of Pakistan (*supra*), the Hon'ble Supreme Court after holding that N.B.P.'s Employees Pension Provident and Gratuity Rules, 1958, and the N.B.P. (Staff) Service Rules, 1973, had been made with the prior approval of the Federal Government, held in paragraph 9 of the said judgment that Muhammad Zaman's case (*supra*) had no relevance to the case in hand.

17. As regards the contention of the learned counsel for the petitioners that since the circular dated 30.11.1977 had been issued by the Finance Division, the Federal Government should pay the petitioners pension at enhanced rate in the event H.B.L. does not do so. Learned counsel for the petitioners is correct in his submission to the extent that the said circular had been issued by the Federal Government but a scheme of pension was introduced by H.B.L. only after the latter, vide circular dated 27.02.1978, gave a choice to its employees to opt for the new scheme of pension, gratuity and provident fund in lieu of the existing retirement benefits admissible to them. It was after options were given by the employees of H.B.L. that a pension scheme was introduced. Therefore, the essential liability to pay pension to H.B.L.'s employees is that of H.B.L. and no other.

18. The petitioners' reliance on the judgments reported as Pakistan Telecommunication Employees Trust Vs. Muhammad Arif (*supra*), Muhammad Riaz Vs. Federation of Pakistan (*supra*) and P.T.C.L. Vs. Masood Ahmed Bhatti (*supra*) is also misconceived since in the said cases, the former employees of the Telephone and Telegraph Department were held entitled to be paid pension at the same enhanced rates as payable by the Federal Government to its retired employees on the basis of the protection afforded by Section 9 of the Pakistan Telecommunication Corporation Act, 1991, and Sections 35 and 36 of the Pakistan Telecommunication (Re-organization) Act, 1996. In the case at hand, learned counsel for the petitioners could not cite any statute which gave the same protection to the employees of H.B.L. as was given to the employees of the Telephone and Telegraph Department under the said Statutes.

19. It may also be mentioned that in the case of Muhammad Ashraf Vs United Bank Limited (2015 SCMR 911), it was held by the Hon'ble Supreme Court that a writ petition could not have been filed against a privatized bank which did not have statutory rules. In the said case also, a petition had been filed by employees of United Bank Limited seeking an enhancement in their pension on the basis of the Finance Division's circular dated 30.11.1977. For the purposes of clarity, paragraph 8 of the said judgment is reproduced herein below:-

"8. On humanitarian ground, one may have sympathy with the petitioners for their meager pensionary benefits, during these days of high cost of living, but this fact alone is not sufficient to make them entitled for the relief, which, according to them, was extended to some retired employees of State Bank of Pakistan and National Bank of Pakistan etc., who had opted to implement the Government of Pakistan letter No.17(9)1-FX1/77 dated 30-11-19[7]7. Admittedly, the spirit of clause 5.2 (supra) was only to provide protection to the existing employees/staff of respondent No.1 for a minimum period of one year, whereafter the respondent No.1 was free to make its own arrangements for dealing with its employees and staff. Moreover, it is also an admitted position from the record that respondent No.1 is a private Bank having no statutory rules, therefore, the forum chosen by the petitioners by filing petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 was also not well advised to entertain their grievance, as rightly held in the impugned judgment."

(Emphasis added)

20. Since Habib Bank Limited (Staff) Service Rules, 1981, have already been declared as non-statutory by the Hon'ble Supreme Court in the case of Abdul Wahab (*supra*); and since this Court is bound to follow the law laid down by the Hon'ble Supreme Court in the case of Muhammad Zaman (*supra*); and given the striking similarities between the case at hand and the case of Muhammad Zaman (*supra*), I hold that the instant petition is not maintainable, and is accordingly dismissed with no order as to costs. The petitioners are at liberty to seek redress by invoking the jurisdiction of the competent forum.

21. I refrain from touching the merits of the case, lest it may prejudice to the petitioners' case before the competent forum. There is catena of case law in support of the view that where a Court holds a petition not to be maintainable, it ought not to delve into or give findings or observations on the merits of the case.

Reference in this regard may be made to the judgments in the cases of S.M. Waseem Ashraf Vs. Federation of Pakistan through Secretary, Ministry of Housing & Works and others (2013 SCMR 338), Yousuf A. Haroon Vs. Custodian of the Karachi Hotel Project (2004 CLC 1967), and Messrs Voyage de Air, General Sales Agent, Shaheen Air International Vs. Shaheen Air International Pvt. Ltd. (2006 CLC 173).

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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