

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1057/2018

Dr. Muhammad Amin

Versus

Zarai Taraqiati Bank Limited and others

Date of Hearing:	24.05.2019
Petitioner by:	Syed Iqbal Hashmi, Advocate along with petitioner in-person
Respondents by:	Barrister Alayar Sindhu and Ch. Shafiq-ur-Rehman, Advocate for Z.T.B.L. M/s Toqeer Riaz and Tahira Rashid, Law Officers, Z.T.B.L. Malik Tariq Mehmood Noon, learned Deputy Attorney-General and Mr. Sadaqat Ali Jahangir, learned State Counsel with Asif Raza A.S.I.

MIANGUL HASSAN AURANGZEB,J:- Through the instant writ petition, the petitioner, Dr. Muhammad Amin, impugns office memorandum ("O.M.") dated 07.03.2018 issued by respondent No.1, Zarari Taraqiati Bank Limited, whereby his departmental appeal against respondent No.1's O.M. dated 15.04.2016, was dismissed. Vide said O.M. dated 15.04.2016, major penalty of dismissal from service was imposed on the petitioner.

2. The petitioner is a qualified Agronomist. On 26.11.1987, the petitioner was appointed in respondent No.1/Bank as Assistant Director in the Agricultural Technology Division. Over the years, the petitioner was promoted as Assistant Vice President ("AVP"). Vide respondent No.1/Bank's O.M. dated 07.05.2011, the petitioner was transferred and posted in the Gujranwala Zone of respondent No.1/Bank. The petitioner assailed the said transfer order in writ petition No.2077/2011 before this Court. Vide ad-interim order dated 29.06.2011, the operation of the said transfer order dated 07.05.2011 was suspended. Consequently, respondent No.1/Bank, vide O.M. dated 22.07.2011, suspended the petitioner's transfer orders. Vide order dated 12.11.2014, the said writ petition was dismissed. After the dismissal of the said writ petition, respondent No.1/Bank, vide O.M. dated 31.12.2014

directed the petitioner to report to Wahndo Branch, Gujranwala Zone. It was not until 03.07.2015 that the petitioner joined his duties at the said branch.

3. The petitioner assailed this Court's order dated 12.11.2014, whereby the said writ petition was dismissed in Intra Court Appeal No.608/2014 before this Court. Vide order dated 10.02.2015, the Division Bench of this Court dismissed the said appeal. The petitioner assailed the said order dated 10.02.2015 in civil petition No.633/2015 before the Hon'ble Supreme Court. Vide order dated 17.03.2016, the said petition was dismissed. Perusal of the said order dated 17.03.2016 shows that since the petitioner had not reported for duty to the place of his transfer, respondent No.1/Bank had initiated departmental proceedings against him.

4. Respondent No.1/Bank, vide letter dated 02.03.2016 issued a charge sheet and statement of allegations to the petitioner. The petitioner was alleged to have committed gross misconduct by unauthorizedly absenting himself from duty on numerous dates between July, 2015 and March, 2016. Furthermore, the petitioner was alleged to have tampered with the attendance register. The charge sheet is stated to have been issued to the petitioner under Zarai Taraqati Bank Limited Officers Service (Efficiency and Discipline) Regulations, 1975 (**"the 1975 E&D Regulations"**).

5. The inquiry proceedings against the petitioner culminated in the inquiry report dated 04.04.2016, which shows that the said charges levelled against the petitioner had been proved. On 05.04.2016, the Authority (i.e. the Head - Human Resource) issued a notice to the petitioner to show cause as to why he should not be dismissed from service. On 08.04.2016, the petitioner submitted his reply to the said show cause notice. Vide O.M. dated 15.04.2016, the Authority imposed major penalty of dismissal from service on the petitioner. The said penalty is stated to have been imposed in exercise of the powers under the 1975 E&D Regulations.

6. On 24.04.2016, the petitioner preferred a departmental appeal against the said O.M. dated 15.04.2016 before the Board of Directors of respondent No.1/Bank. In the said appeal, the petitioner had taken the position that he had filed writ petition No.2978/2014 before this Court praying for his appointment as Chairman of respondent No.1/Bank. I was amused after noticing that in the said appeal, the petitioner had stated: *“[t]here is no Chairman ZTBL except me. I set aside his illegal, malafide without authority and contemptuous O.M. dated 15.04.2016.”*

7. Subsequently, on 11.05.2016, the petitioner submitted a departmental appeal against the O.M. dated 15.04.2016 before the President of respondent No.1/Bank. In the said appeal, the position taken by the petitioner was that the Inquiry Officer had not conducted the inquiry properly, and that the petitioner was not given a chance of filing a reply or to cross-examine the witnesses. The Inquiry Officer was accused of not taking the petitioner's reply to the allegations against him. The petitioner's stance was that since the Inquiry Officer's service was governed under Staff Service Regulations - 2005 (**“the SSR-2005”**), he could not have conducted an inquiry against the petitioner, whose service was governed under the Agricultural Development Bank (Staff) Service Regulations, 1961.

8. As mentioned above, vide O.M. dated 07.03.2018, the petitioner's appeal was dismissed by the President of respondent No.1/Bank, who was also the Appellate Authority. The said O.M. dated 07.03.2018 has been impugned by the petitioner in the instant writ petition.

9. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the petitioner has been in the service of respondent No.1/Bank prior to its conversion into a company limited by shares pursuant to the provisions of Agricultural Development of Pakistan (Re-organization and Conversion) Ordinance, 2002 (**“the 2002 Ordinance”**); that the petitioner was entitled to the protection under Section 6 of the 2002 Ordinance, which provided *inter-alia*

that the employees of the company created pursuant to the provisions of the said Ordinance “*shall be subject to the same rules and regulations as were applicable to them before the effective date*”; that the inquiry proceedings against the petitioner could only have been conducted under the 1975 E&D Regulations and not the SSR-2005; that the SSR-2005 was applicable to only those employees of respondent No.1/Bank, who had been employed after the creation of the company pursuant to the provisions of the 2002 Ordinance or those employees, who had specifically opted for their service to be governed by the provisions of the SSR-2005; that at no material stage, had the petitioner opted for his service to be governed under the SSR-2005; and that since the disciplinary proceedings against the petitioner were conducted under the provisions of SSR-2005 and not under the 1975 Regulations, such proceedings were *coram non-judice*.

10. Furthermore, learned counsel for the petitioner submitted that under the 1975 E&D Regulations, the petitioner’s services could only have been terminated by the Chairman, whereas the impugned O.M. dated 07.03.2018 had not been issued by the Chairman, but by the President of respondent No.1/Bank; that an officer appointed in respondent No.1/Bank after the promulgation of the 2002 Ordinance and whose terms and conditions of service were governed by SSR-2005 could not have conducted an inquiry against the petitioner; that only an officer appointed prior to the promulgation of 2002 Ordinance and whose terms and conditions of service were governed under the 1961 Regulations could have conducted an inquiry or imposed a penalty on the petitioner; that the petitioner was not given sufficient time to file his reply/defence or to cross-examine the witnesses; that the petitioner’s absence from duty was justified on the ground that he had thirty years of service with 1,100 days of leave to his credit; that the petitioner had made corrections in the attendance register since he had been unlawfully marked as absent on certain days; and that impugned office memoranda

dated 15.04.2016 and 07.03.2018 are liable to be declared unlawful. Learned counsel for the petitioner prayed for the petition to be allowed in terms of the relief sought herein. In making his submissions, learned counsel for the petitioner placed reliance on the judgment in the case of Zarai Taraqiati Bank Limited Vs. Said Rehman (2013 SCMR 642).

11. On the other hand, learned counsel for respondent No.1/Bank raised an objection to the maintainability of the instant petition. He submitted that the instant petition is not maintainable since the petitioner had already filed a suit for “*declaration, rendition of accounts and mandatory injunction*” against respondent No.1/Bank before the Court of the learned Civil Judge, Islamabad, wherein he had challenged the imposition of the penalty imposed on him; that the said suit is still pending adjudication; and that the instant petition is barred under the principle of *res subjudice*.

12. Learned counsel for respondent No.1/Bank further submitted that the petitioner was proceeded against under the provisions of the 1975 E&D Regulations and not the SSR-2005; that during the inquiry proceedings, the petitioner did not raise any objection regarding the manner in which the inquiry was being conducted against him; that the petitioner had unauthorizedly absented him from duty on numerous dates; that the petitioner had admitted correcting the entries in the attendance register without permission of the Branch Manager; that in terms of the circular dated 08.09.2015, the Head (HR) was the Authority competent to impose a penalty under the 1975 E&D Regulations, whereas the President of respondent No.1/Bank was the Appellate Authority; and that respondent No.1/Bank does not have a Chairman, who could have imposed a penalty on the petitioner. Learned counsel for respondent No.1/Bank prayed for the writ petition to be dismissed.

13. 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 8 above, and need not be recapitulated.

14. I deem it appropriate, in the first instance, to decide the objection raised by the learned counsel for respondent No.1/Bank to the maintainability of the instant petition.

First Suit – Suit for Declaration, Mandatory and Permanent Injunction, titled “Dr. Muhammad Amin Vs. Anwar ul Haq, etc.” filed before the Court of the learned Civil Judge, Islamabad.

15. It is a matter of record that after disciplinary proceedings were initiated against the petitioner, he, on 18.03.2016, filed a suit for “*declaration, mandatory and permanent injunction*” before the Court of the learned Civil Judge, Islamabad, praying for *inter-alia* a declaration to the effect that the statement of allegations issued to the petitioner were without lawful authority. Vide order dated 29.03.2016, the learned Civil Court declined to grant ad-interim injunction to the petitioner. During the pendency of the said suit, respondent No.1/Bank, on 15.04.2016, imposed major penalty of dismissal from service on the petitioner. Even though ad-interim injunction had not been granted to the petitioner by the learned Civil Court, he then filed an application for contempt of Court against officers of respondent No.1/Bank. In the said application, it was alleged that orders dated 18.03.2016 and 21.03.2016 passed by the learned Civil Court had been violated by the officers of respondent No.1/Bank, who had been arrayed as respondents in the said application. Vide order dated 18.03.2016, only summons had been issued to the defendants in the said suit, whereas vide order dated 21.03.2016, the defendants in the said suit had been required to file written statements and replies to the petitioner’s application for interim relief. Since no ad-interim injunction had been granted in the petitioner’s favour on 18.03.2016 or 21.03.2016, the learned Civil Court, vide order dated 26.01.2017, dismissed the said application with costs amounting to Rs.2,000/-. The petitioner’s appeal against the said order dated 26.01.2017 was dismissed by the Court of the learned Additional District Judge, Islamabad, vide order dated 26.10.2017.

16. Vide order dated 18.06.2016, the learned Civil Court dismissed the application for interim injunction filed by the petitioner along with the said suit. The said order dated 18.06.2016 was assailed by the petitioner in an appeal before the Court of the learned Additional District Judge, Islamabad. Vide ad-interim order dated 19.07.2016, the learned Appellate Court directed *status quo* to be maintained. Vide judgment dated 24.01.2017, the learned Appellate Court dismissed the petitioner's said appeal. The said judgment dated 24.01.2017 was assailed by the petitioner in civil revision petition No.189/2017 filed before this Court. The said petition was dismissed by this Court vide judgment dated 08.03.2018. In the said judgment dated 08.03.2018, this Court had observed that the petitioner had not made a disclosure regarding certain proceedings.

17. Vide order dated 09.07.2018, the learned Civil Court rejected the plaint in the petitioner's said suit by allowing the application under Order VII, Rule 11, C.P.C. filed by the defendants in the said suit. The plaint in the said suit was rejected primarily on the ground that the statement of allegations challenged by the petitioner had culminated in the order dated 15.04.2016, whereby major penalty of dismissal from service has been imposed on the petitioner, and that the said order of dismissal had been challenged by the petitioner before this Court in writ petition No.1057/2018. The petitioner has filed an application for review of the said order dated 09.07.2018 before the learned Civil Court. In the said review application, the petitioner has prayed for the proceedings before the learned Civil Court to be adjourned *sine die* until the decision by this Court on writ petition No.1057/2018. It is not disputed that the said review petition is still pending.

18. The petitioner has also assailed the said order dated 09.07.2018 in an appeal before the Court of the learned District Judge, Islamabad. The said appeal is still pending.

Second Suit – Suit for Declaration, Mandatory and Permanent Injunction, titled “Dr. Muhamamd Amin Vs. Anwar ul Haq, etc. filed before the Court of the learned Civil Judge, Islamabad.

19. On 11.04.2016, the petitioner filed a suit for declaration, mandatory and permanent injunction before the Court of the learned Civil Judge, Islamabad, against two officers of respondent No.1/Bank. In the said suit, the petitioner had sought a declaration to the effect that show cause notice dated 05.04.2016 issued to him by respondent No.1/Bank was without lawful authority and in violation of the 1975 Regulations. Along with the said suit, the petitioner had filed an application for interim injunction. Vide order dated 11.04.2016, the learned Civil Court declined to grant ad-interim injunction in the petitioner's favour. The said order dated 11.04.2016 was assailed by the petitioner in an appeal before the Court of the learned Additional District Judge, Islamabad. Vide order dated 26.05.2016, the said appeal was dismissed by the learned Appellate Court.

20. Vide order dated 27.05.2016, the learned Civil Court dismissed the petitioner's application for interim injunction. Furthermore, the petitioner was directed to address arguments on the maintainability of the suit. The said order dated 27.05.2016 was assailed by the petitioner in an appeal. Vide judgment dated 24.01.2017, the said appeal was dismissed by the Court of the learned Additional District Judge, Islamabad.

21. On 29.03.2018, the petitioner made a statement before the learned Civil Court that he had submitted an application for an amicable settlement with respondent No.1/Bank. The representative of respondent No.1/Bank had confirmed that such an application had been received. On the said date, the petitioner withdrew the said suit with permission to file afresh.

Third Suit – Suit for Declaration, Rendition of Accounts and Mandatory Injunction, titled “Dr. Muhammad Amin Vs. Zarai Taraqiati Bank Limited, etc.” filed before the Court of the learned Civil Judge, Islamabad.

22. On 14.07.2018, the petitioner filed a suit for declaration, rendition of accounts and mandatory injunction against *inter-alia* respondent No.1/Bank before the Court of the learned Civil

Judge, Islamabad. In the said suit, the petitioner prayed for *inter-alia* a declaration to the effect that his dismissal from service was illegal. The petitioner had specifically prayed for a direction that his dismissal order be withdrawn.

23. It is pertinent to bear in mind that prior to the institution of the said suit, respondent No.1/Bank, vide order dated 07.03.2018, dismissed the petitioner's appeal against the said order dated 15.04.2016. Although the petitioner had assailed his dismissal order in the said suit, but for reasons best known to him, he chose not to challenge the appellate order dated 07.03.2018.

24. Although the petitioner in his suit for declaration, etc. filed on 14.07.2018 had prayed for *inter-alia* a declaration to the effect that he had been illegally dismissed from service, the foundation of his case in the said suit was that on 28.03.2018 the petitioner had been called by respondent No.1/Bank to its Head Office where an oral agreement was entered into whereunder the petitioner was to withdraw his cases against respondent No.1/Bank, and he would be reinstated with all back benefits. The petitioner's stance in the said suit was that even though he withdrew four civil suits and the petition for contempt of Court, respondent No.1/Bank did not fulfill its part of the bargain to reinstate him in service. In the said suit, the petitioner had also prayed for a direction to respondent No.1/Bank to fulfill its part of the bargain by withdrawing his dismissal order. As mentioned above, the said suit is still pending adjudication.

25. It ought to be borne in mind that the said suit was filed on 14.07.2018, i.e. after the filing of the instant writ petition on 12.03.2018. In paragraph 6 of the said petition, the petitioner has made a disclosure as to the civil suits instituted by him before the learned Civil Court. Therefore, I am of the view that this petition cannot be dismissed on the ground of *res subjudice*.

26. The petitioner, in his second suit for declaration, etc. filed on 11.04.2016, had challenged show cause notice dated 05.04.2016. The said suit was withdrawn with permission to file

afresh after the representative of respondent No.1/Bank had confirmed that the petitioner had submitted an application seeking his reinstatement in service. As regards the petitioner's first suit, the same was filed prior to the passing of his dismissal order. In the said suit, the petitioner had simply challenged the statement of allegations dated 02.03.2016 issued to him. The plaint in the said suit was rejected on the ground that the petitioner had already filed the instant petition before this Court. Since the order impugned in the instant petition, i.e. the appellate order dated 07.03.2018 was not challenged in the petitioner's first two suits, the instant petition cannot be dismissed on the ground of *res judicata*.

27. Since the learned counsel for the contesting parties had made detailed submissions on the merits of the case, I now proceed to decide the petition on merits. On 26.11.1987, the petitioner was offered appointment to the post of Assistant Director in Agricultural Development Bank of Pakistan. Clause 8 of the said letter provided that the petitioner's service would be governed by the rules, regulations and orders of respondent No.1/Bank enforced and amended from time to time.

28. Agricultural Development Bank of Pakistan was converted into a company limited by shares after the promulgation of the 2002 Ordinance. The Agricultural Development Bank of Pakistan was subsequently renamed as Zarai Taraqati Bank Limited. Section 6 of the 2002 Ordinance gives protection to the officers and staff of respondent No.1/Bank, employed prior to its conversion into a company, against any change in the terms and conditions of their service. For the purposes of clarity, the said Section 6 is reproduced herein below:-

"6. Continuation in service of the company.---(1) The employees of ADBP who were in the service of ADBP before the effective date shall stand transferred to and become the employees of the Company as of the effective date on the same terms and conditions and shall be subject to the same rules and regulations as were applicable to them before the effective date.

(2) Notwithstanding anything contained in law, contract, agreement or the conditions of service no person transferred to

the Company in pursuant to subsection (1) shall be entitled to any compensation by reason of such transfer.”

29. The Agricultural Development Bank (Staff) Service Regulations, 1961 (“the 1961 Regulations”) were applicable to the petitioner’s service in respondent No.1/Bank. Paragraph 6 of the said Regulations provides that the decision of the Board of Directors of respondent No.1/Bank shall be final and binding on all matters and questions relating to or connected with the said Regulations or as to the meaning or effect of any Regulation or any matter relating to or arising out of the same. Furthermore, paragraph 7 of the said Regulations provides *inter-alia* that the various powers delegated by the Board are specified in Appendix-I. Appendix-I to the said Regulations show that the power to terminate the service of staff officers grade and above had been delegated by the Board of Directors to the Chairman. Paragraph 7 of the said Regulations also provides that the Chairman may delegate by an order in writing any of his own powers under the said Regulations to any officer of the bank for such period to such extent and subject to such conditions as may be specified in the order.

30. Chapter VI of the 1961 Regulations titled “*Efficiency and Discipline*” was to govern the efficiency and discipline of the officers employed in respondent No.1/Bank. This Chapter provided for the procedure in accordance with which a disciplinary inquiry was to be conducted against an officer of respondent No.1/Bank.

31. In exercise of the powers conferred by Section 39(1) of the Agricultural Development Bank Ordinance, 1961, the Board of Directors of respondent No.1/Bank made the 1975 E&D Regulations. These Regulations had been made with the approval of the Federal Government. The 1975 E&D Regulations set out the procedure for conducting an inquiry. These regulations expressly repealed Chapter VI of the 1961 Regulations.

32. Although the learned counsel for the petitioner submitted that the inquiry against the petitioner was not conducted under the 1975 E&D Regulations, the show cause notice dated 05.04.2016 issued to him explicitly provides that the same was issued under the 1975 E&D Regulations read with circular dated 08.09.2015. The office memorandum dated 15.04.2016, whereby the petitioner was dismissed from service shows that the same was issued under the 1975 E&D Regulations. Learned counsel for the petitioner could not substantiate his submission that the petitioner was proceeded against under the SSR 2005 and not under the 1975 E&D Regulations. There is no document on the record to suggest that the petitioner was proceeded against under the SSR-2005. Learned counsel for the petitioner did not point out any requirement in the procedure for conducting an inquiry under 1975 E&D Regulations that had been violated by the Authorized Officer while conducting an inquiry against him.

33. At the time when the inquiry proceedings were initiated against the petitioner, he was holding the post of Agronomist/Area Specialist. This post is equivalent to that of an AVP. I say so because in writ petition No.3503/2013 filed before this Court, the petitioner had described himself as an AVP. There is nothing on the record to show that the petitioner was promoted after 2013, when he filed the said writ petition. Additionally, respondent No.1/Bank's memorandum dated 05.09.2017 shows that the petitioner was not promoted beyond the position of AVP.

34. Regulation 2(2) of the 1975 E&D Regulations defines an "Authority" to mean the Chairman or an officer designated by him in writing to exercise the powers of the Authority under the said Regulations. Vide circular dated 10.10.2001 issued by the Personnel Division (Efficiency & Discipline Department) of respondent No.1/Bank, the Chairman, in exercise of the powers vested in him under the 1975 E&D Regulations, designated the Head of the Department (E&D) to be the Authorized Officer; the Executive Director (Personnel) to be the Authority; and Senior

Executive Director (Operations) to be the Appellate Authority for the Deputy Directors serving in respondent No.1/Bank. It is not disputed that the position of AVP is equivalent to a Deputy Director. Therefore, the Authority competent to impose a penalty on the petitioner prior to the promulgation of the 2002 Ordinance was Executive Director (Personnel).

35. After the conversion of the Agricultural Development Bank of Pakistan into a public limited company by the name of “Zarai Taraqiati Bank Limited” pursuant to the provisions of the 2002 Ordinance, the provisions of the 1975 E&D Regulations continued to be applicable to the employees/officers of respondent No.1/Bank, who were employed prior to the promulgation of the said Ordinance. This protection was afforded to such employees/officers by Section 6 of the 2002 Ordinance. The Board of Directors of respondent No.1/Bank had approved the change of respondent No.1/Bank’s name from Agricultural Development Bank of Pakistan to Zarai Taraqiati Bank Limited. The Board of Directors had also approved the change of the nomenclature of “Chairman” to “President”. This has been clearly provided in respondent No.1/Bank’s circular dated 15.09.2003.

36. By virtue of circular dated 08.09.2015, the 1975 E&D Regulations were amended so as to provide for the “Authorized Officer” for officers in OG-III to AVP to be Head (Human Resource Policy Branch (“HR PD”)), and for the “Authority” to be Head (HR) and for the “Appellate Authority” to be the President of respondent No.1/Bank. Since the petitioner was an AVP when the disciplinary proceedings were initiated against him, Authority empowered to terminate an officer from service after an inquiry under the 1975 E&D Regulations was the Head (HR).

37. Respondent No.1/Bank’s O.M. dated 15.04.2016, whereby the penalty of dismissal from service was imposed on the petitioner, was admittedly issued by the Head (HR), who was, as mentioned above, the “Authority” under the 1975 E&D Regulations read with circular dated 08.09.2015. The petitioner’s

departmental appeal was dismissed by the President of respondent No.1/Bank. It may be mentioned once again that in terms of the circular dated 08.09.2015, the President of respondent No.1/Bank was the Appellate Authority.

38. The petitioner's insistence that his departmental appeal could only be heard and decided by the Chairman and none other is implausible for the simple reason that the Board of Directors of respondent No.1/Bank had approved the change of the nomenclature of "Chairman" to "President". As a result of this, all powers exercisable under the 1975 E&D Regulations by the Chairman would be read as exercisable by the President after the issuance of circular dated 15.09.2003. Learned counsel for the petitioner could not satisfy the Court as to how the decision on the petitioner's appeal made by the President of respondent No.1/Bank had violated the protection afforded to him under Section 6 of the 2002 Ordinance. Paragraph 73 of the Articles of Association of respondent No.1/Bank provides *inter-alia* that the President shall be a whole time officer and Chief Executive of respondent No.1/Bank. The said Articles also provide that the Directors of respondent No.1/Bank shall elect a Chairperson, whose role would be to preside over the meetings of Directors. No other role for the Chairperson has been provided in respondent No.1/Bank's Memorandum and Articles of Association.

39. I do not find any merit or substance in the contention of the learned counsel for the petitioner that only an officer appointed in respondent No.1/Bank prior to the promulgation of 2002 Ordinance and whose terms and conditions of service were governed under the 1961 Regulations could have conducted an inquiry or imposed a penalty on the petitioner, and not an officer appointed after the promulgation of the 2002 Ordinance and whose terms and conditions of service were governed by SSR-2005. This contention was not backed by any law, or protection afforded to the petitioner under any of the Regulations governing his terms and conditions of service. An officer whose terms and

conditions of service are governed by SSR-2005 is as much an officer of respondent No.1/Bank as the petitioner and not disqualified from being appointed as the Authority or Authorized Officer. Only the Appellate Authority is required by Regulation 9 of the 1975 E&D Regulations to be senior than the officer upon whom a penalty is imposed.

40. I have gone through the appeal submitted by the petitioner on 11.05.2016 to the President of respondent No.1/Bank. In the said appeal, the position taken by the petitioner was *inter-alia* to the effect that the Inquiry Officer had not conducted the inquiry properly and that the petitioner had requested for the appointment of a competent officer to conduct the inquiry. The petitioner also took the position that he was not given enough time for filing his defence/reply and for cross-examination. The petitioner did not bring on record any document seeking time from the Authorized Officer for the filing of a reply. Additionally, before the penalty was imposed on the petitioner, there is no document on the record to suggest that the petitioner had complained to the Authority or the Authorized Officer that he had been deprived of his right of cross-examination. Since the petitioner had participated in the inquiry proceedings, I find it difficult to accept his contention that he was not given enough time to file a reply or to cross-examine the witnesses.

41. One of the allegations against the petitioner was that he had unauthorizedly absented himself from duty. Several letters, including letters dated 11.02.2016, 16.02.2016, 20.02.2016, 26.02.2016, 17.03.2016, 22.03.2016, 07.04.2016 and 12.04.2016, brought on record by respondent No.1/Bank show that the petitioner had absented himself from duty at Wahndo Branch.

42. As mentioned in paragraphs 2 and 3 of this judgment, the petitioner had challenged his transfer order dated 07.05.2011 to Gujranwala Zone Wahndo Branch in writ petition No.2077/2011, which was dismissed by this Court vide order dated 12.11.2014. Intra Court Appeal filed by the petitioner was also dismissed and so was his Civil Petition dismissed by the Hon'ble Supreme

Court. It was not until 03.07.2015 that the petitioner joined his duties at the said branch.

43. After the petitioner's challenge to his transfer to Wahndo Branch of Z.T.B.L. was unsuccessful with the dismissal of writ petition No.2077/2011 by this Court, he then preferred writ petition 4768/2014 seeking a direction to respondent No.1/Bank to sanction his leave from 16.10.2014 to 28.10.2014. Order dated 25.11.2014 passed in the said petition, this Court had observed that the petitioner was reluctant to join his new posting. Furthermore, it was observed that *"the petitioner appears to be at fault as he is not willing to join his new posting"*. The said petition was disposed of by this Court vide order dated 29.01.2015 with the direction to the petitioner to join his duties at the new place of posting.

44. It may be mentioned that through writ petition No.4345/2014 the petitioner had challenged the appointment of Mr. Talat Mehmood as the President of respondent No.1/Bank. The said petition was dismissed by this Court vide judgment dated 26.05.2015. Perusal of the said judgment dated 26.05.2015 reveals that certain facts about the petitioner which are interesting to say the least. The petitioner had contended that he was qualified to be appointed as the President of respondent No.1/Bank. This Court had also asked the petitioner as to why special costs should not be imposed on him for taking the precious time of *bonafide* litigants and for abusing the process of this Court. The position taken by respondent No.1/Bank in the said case was that the petitioner was a chronic litigant and had filed the said petition merely to harass the management of respondent No.1/Bank and to impede the disciplinary proceedings pending against him. It was noted by this Court that as per the report submitted by the Office of this Court, the petitioner had by 2015 filed as many as 65 petitions. This Court had observed that *"such frivolous litigation, particularly by employees of organizations having statutory rules/regulations has clogged the Courts and made other bonafide litigants suffer"*

and that *“the petitioner took considerable time in arguing his case, which obviously was at the cost of many, who are waiting for decisions by this Court”*. This Court dismissed the petitioner’s said petition by holding that his conduct does not entitle him to relief, and that there was no merit whatsoever in his petition. This Court did not impose costs on the petitioner since his salary had already been withheld. The petitioner was advised to refrain from filing frivolous petitions and to withdraw those petitions which were frivolous in nature. Civil petition No.1121/2015 filed by the petitioner before the Hon'ble Supreme Court against the above-mentioned judgment of this Court was dismissed, vide judgment dated 07.01.2016.

45. The reason why I have made reference to the orders passed in writ petitions No.2077/2011, 4345/2014, 4768/2014 is to satisfy my mind that the petitioner is indeed in the habit of agitating frivolous claims not just before the Courts but also before his employer, and / or importantly to show his reluctance to join his duties at the place where he was transferred. The orders passed in the said petitions by this Court lead credence to respondent No.1/Bank’s decision to conduct disciplinary proceedings against the petitioner and impose a penalty on him for absenting himself from his place of work.

46. Another allegation/charge against the petitioner was that he had carried out interpolation in the attendance register at the Wahndo Branch of respondent No.1/Bank. As regards this charge, the petitioner, in his departmental appeal, tried to justify the entries made by him in the said attendance register by taking the following position:-

“I was allowed to use my lab top for Report writing and other official work at ZTBL Officers colony Islamabad and to pursue at Head office and Zonal office but in the attendance register of branch my presence was marked cross malafidely. I was present on duty these dates, I was paid pay but on these dates it was alleged that I was not at Wahndo whereas I have worked at night in field for dissemination of technologies being agronomist. I attended branch late a few dates from field duty and I marked my attendance in my own column. I rectified attendance register I was blame of tempering register.”

(Emphasis added)

47. The petitioner's stance was that he had been marked as absent on the dates when he claimed to be performing his duties in the field or working in home. If that was so, he ought to have submitted an application for the rectification of the attendance register on the said ground. He, however, could certainly not have accessed the attendance register and marked himself as present on the dates that he had been marked as absent by Chief Manager of Wahndo Branch. This conduct of the petitioner justified the charge of misconduct on him.

48. In view of the above, I do not find any jurisdictional irregularity or infirmity in the proceedings conducted against the petitioner. Consequently, this petition is dismissed with no order as to costs.

49. Before parting with this judgment, it may be observed that the petitioner has had more than 30 years of service in respondent No.1/Bank. It is not for this Court to hold whether the penalty of dismissal from service was commensurate with the charge of interpolation and unauthorized absence from duty having been proved against the petitioner. It is well settled that this Court in exercise of its jurisdiction under Article 199 of the Constitution cannot substitute its findings with those of a tribunal below. This Court also has no jurisdiction to substitute the penalty imposed by the Authority and upheld by the Appellate Authority. Reference in this regard may be made to the cases of General Manager, Pearl Continental Hotel Vs. Farhat Iqbal (PLD 2003 SC 952), Sardar Hussain Vs. Mst. Parveen Umer (PLD 2004 SC 357), Syed Azmat Ali Vs. The Chief Settlement and Rehabilitation Commissioner, Lahore and PLD 1964 SC 260, Kaleem Iftikhar Vs. Secretary Cooperative Government of Punjab (2003 YLR 1736). Having said that, it may be recalled that the suit for declaration etc., instituted by the petitioner on 08.03.2016, was dismissed by the learned Civil Court after he had made a statement on 29.03.2018 that he had submitted an application to respondent No.1/Bank for an amicable settlement. The said suit

was withdrawn after the representative of respondent No.1/Bank had confirmed that such an application had been received. Since the said application has, till date, not been decided, it may be observed that while deciding the said application, the competent authority shall not be influenced by any observations of this Court in this judgment.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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