

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

**W.P. No.908/2020**

MCB Bank Ltd.

*versus*

Full Bench, NIRC, Islamabad & 2 others

Petitioner by: Mr. Riaz Hussain Haleem, Advocate.

Respondents by: Mr. Abdul Rehman Qadar Khan, Advocate for  
Respondent No.3

Date of Decision: 10.09.2020.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:-** Through this writ petition, the petitioner has called in question order of the learned Full Bench, NIRC, dated 24.09.2019, whereby appeal filed by Respondent No.3 has been allowed and order of the learned Single Bench, NIRC, dated 02.05.2017, has been set-aside with direction to the petitioner Bank to correct the record and date of reinstatement of Respondent No.3.

2. Brief facts referred in the instant writ petition are that Shafique Ahmad (Respondent No.3) while employed with MCB Bank Ltd. (petitioner) was terminated from service vide order dated 27.05.2006, however Respondent No.3 on challenging the said order before the Labour Court, Rawalpindi was reinstated into service with 20% back benefits, though he was directed to return the amount received by him being non-clerical staff, but he could not comply with said direction, rather filed an appeal before Labour Appellate Tribunal. In the meanwhile, Respondent No.3 instituted yet a fresh petition seeking correction of his date of joining with the petitioner Bank, the same was vehemently contested by the petitioner Bank, whereafter the learned Single Bench, NIRC, vide order dated 02.05.2017, dismissed the petition of Respondent No.3. Feeling aggrieved thereto, Respondent No.3 filed an appeal before the learned Full

Bench, NIRC, which was accepted vide impugned order dated 24.09.2019 with direction to the petitioner Bank to correct the record and date of reinstatement as prayed by Respondent No.3. Hence, the instant writ petition.

3. Learned counsel for petitioner contended that learned Full Bench, NIRC has not appreciated the facts and evidence produced by the petitioner Bank, even failed to determine whether Respondent No.3 was entitled to any benefit which had already been refused to him by the competent jurisdiction in previous round of litigation; that learned Full Bench, NIRC decided the case on assumptions as neither merits of the case were discussed nor the documents produced by the petitioner Bank were taken into account while passing the impugned judgment; that learned Full Bench, NIRC also overlooked that Respondent No.3 never filed any application for condonation of delay nor ever raised the question of correction of the date of joining of service, rather Respondent No.3 sought correction of record at the verge of retirement, even the impugned judgment has been passed in haste, which is illegal, *ultra-vires* and against the settled propositions of law, therefore, same is liable to be set-aside.

4. Conversely, learned counsel for respondent No.3 opposed the filing of instant writ petition on the grounds that learned Full Bench, NIRC has rightly reappraised the record and passed the impugned judgment in accordance with law, as such, the controversy with regard to the date of appointment / joining of the petitioner i.e. 03.08.1978 as Godown Keeper has already stand established upto the Apex Court in the first round of litigation between the parties, which otherwise constrains the petitioner Bank to question the same by filing the instant writ petition, which is liable to be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that the entire controversy raised in the instant matter by the MCB is the initial date of appointment of respondent No.3 Shafique

Ahmed which was settled by Full Bench NIRC through judgment dated 24.09.2019 on the basis of following observations:-

*We, therefore, are of the considered opinion that the appellant has continuous cause of action, as he was employed on daily wage basis and it was duty of the respondent department to regularize the services of the appellant after completion of probation period i.e. 3 months and the post against which the appellant was working existed more than 9 months, under Standing Orders Ordinance, 1968, the appellant has attained the status of permanent employee. Consequently, the appellant has attained the status of permanent/regular employee. Therefore, there was no need of serving grievance notice upon the respondent, as it was the duty of the respondent bank to regularize the service of the appellant under Industrial & Commercial Employment (Standing Orders) Ordinance, 1968. Hence, the instant appeal is allowed and the impugned order dated 02.05.2017 is hereby set-aside and the respondent bank is directed to correct the record and date of reinstatement of the appellant as 03.08.1978 instead of 04.05.1991, within one month, as the appellant was reinstated by the learned Labour Court, not appointed afresh. No order as to cost. File be consigned to record room after its due completion.*

7. Learned counsel for the petitioner bank contends that respondent No.3 was dismissed from service on 01.04.1985, whereby he challenged his termination order before Punjab Labour Court, which was also dismissed on 31.09.1990 and finally matter was settled by Punjab Appellate Tribunal by remanding the case to the Punjab Labour Court on 21.11.1990, however, in second appeal matter was allowed vide order dated 27.01.1991 with direction to the appellant/petitioner Bank to reinstate respondent No.3 with 50% back benefits. The petitioner bank had inadvertently issued reinstatement letter with date of appointment as 04.05.1991, although respondent No.3 was initially inducted in the petitioner bank on 03.08.1978 as Godown Keeper. This aspect was agitated by respondent No.3 before the NIRC, whereby his grievance petition was dismissed by Single Bench, NIRC, while learned Full Bench, NIRC allowed the appeal filed thereto.
8. I have confronted the learned counsel for the petitioner bank to point out any illegality in the findings of the Full Bench on the decision passed by Punjab Labour Appellate Tribunal which attained finality, even it has not been denied by the petitioner bank that Respondent No.3 was reinstated instead of appointed on

new post, rather his reinstatement is in continuation of his previous job, which was started on 03.08.1978. This aspect left nothing in favour of petitioner bank as no jurisdictional error or illegality has been pointed out.

9. I have also considered the affidavit submitted by Nozhat Ali Hasmi as RW-1 in the NIRC, whereby the following facts have been admitted:-

1. *That the Petitioner joined respondents' service through service providing companies as GODOWN KEEPER on daily wages basis on 03-08-1978.*
2. *That the services of the petitioner were terminated in 1986.*
3. *That the Grievance petition of the petitioner has been dismissed by the Learned Labour Court on 31-01-1990.*
4. *That in appeal filed by the petitioner, the case was remanded to learned labour Court which was again dismissed on 21-11-1990.*
5. *That in appeal, the Petitioner reinstated in service Vide order dated 27-01-1991 with 50% back benefit by the Order of PLAT.*
6. *That the retrenchment scheme was formulated by the bank for all non clerical staff and the same was approved by the board of directors of MCB Bank on 26-05-2006.*
7. *That the services of the petitioner have been retrenched as per bank policy and notice dated 27-05-2006.*
8. *That the petitioner received the payments in accordance with scheme and no objection were raised by the petitioner at the time of receiving payments.*
9. *That the petitioner challenged the order dated 27-05-2006 before Punjab Labour Court No.6 Rawalpindi.*
10. *That the respondent bank appeared and submitted written statement.*
11. *That the Punjab Labour Court no.6 reinstated the petitioner in to service from the date of his retrenchment with 20% back Benefit and petitioner was also ordered to return the receiving amount within six months in six equal installment.*
12. *That the petitioner was reinstated in service on 03-08-2009.*

10. The above mentioned facts portray the case of respondent No.3 in the grievance petition and even the stance of Respondent No.3 taken during the course of cross-examination carried out by the petitioner Bank, whereby it was

specifically asked by the petitioner Bank regarding the date of appointment, which was confirmed by respondent No.3 with the reply that *"it is correct to say that I was appointed as Assistant in the respondent Bank on 03.08.1978"*. The entire evidence and case discussed above left nothing in favour of petitioner bank as the date of initial appointment of respondent No.3 is 03.08.1978, therefore, any other date of appointment of Respondent No.3 claimed by petitioner bank is contrary to record and has rightly been observed by the Full Bench, NIRC on the basis of decision passed by Punjab Labour Appellate Tribunal. The petitioner bank has failed to point out any jurisdictional error or illegality in the impugned order, hence, instant writ petition is not made out and the same is hereby *dismissed*.

(MOHSIN 'AKHTAR' KAYANI)  
JUDGE

Zahid.