

**0JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**W.P. No.956/2019**

Muhammad Ramzan & 267 others

*vs.*

Federation of Pakistan through Finance Division & 07 others

Petitioners by: Dr. G. M. Chuadhary and Mr. Amir Shahzad Jhammat,  
Advocates.

Respondents by: Malik Khushal Khan, Advocate for NBP along with Ms.  
Mehnaz Salar (Head Legal) and S.M. Zamin, Secretary,  
NBP Board, NBP.  
Ms. Riffat Sultana, Advocate for Respondent No.3.  
Mr. Usman Ali Chaudhary, Advocate for Respondent No.7

Date of Hearing: 20.09.2021.

**MOHSIN AKHTAR KAYANI, J:** Through the instant writ petition, the petitioners being outsourced employees seek regularization of their services in the National Bank of Pakistan (NBP).

2. Succinctly, the petitioners have been appointed in the National Bank of Pakistan (NBP) under the policy approved by the Board of NBP in different scales as well as in different intervals of time through outsourcing companies, as such, the petitioners since their appointments have been performing their duties with the NBP without any break and, therefore, they are seeking regularization of their services with the NBP as per recent ruling of the apex Court that employees serving in the bank regularly for many years despite being termed as outsourced staff are entitled to be declared as employees of the bank.

3. Learned counsel for petitioners contended that it has been ruled out by the apex Court as well as by the Hon'ble Peshawar High Court that employment through contractor was a fraud being the mechanism devised to employ the services of the persons indirectly with the object to avoid granting them the benefits they were entitled to; that earlier the NBP in its 283<sup>rd</sup> Meeting, held on 27.04.2018, approved the regularization of the services of outsourced staff, even

otherwise, the Finance Division vide notification dated 14.06.2018 amended the National Bank of Pakistan By-laws, 2015, thereby permitting absorption and regularization of outsourced employees by the bank; that despite clear direction of the apex Court the petitioners are not being regularized, rather they are subjected to various punitive actions and prejudicial actions.

4. Conversely, learned counsel for NBP (Respondent No.2) as well as learned counsel for respondents No.3 and 7 opposed the filing of instant writ petition on the grounds that the petitioners have no cause of action against the NBP as neither the NBP has hired the services of the petitioners nor have any contractual obligations; that the instant writ petition is also not maintainable to be entertained by this Hon'ble Court for the reasons that the Head Office of the NBP is at Karachi and most of the petitioners have been rendering services at Karachi; that the judgment of the apex Court relied upon by the petitioners is pending subjudice before the apex Court in Civil Appeal No.617/2019, therefore, until and unless the questions of law raised regarding issues of outsourcing employees by a third party are not decided by the apex Court in the aforesaid appeal, no order can be passed; that the petitioners have to approach the proper forum i.e. the Labour Court or NIRC for redressal of their grievances after recording of evidence.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioners have invoked jurisdiction of this Court primarily on the ground that they are working with National Bank of Pakistan (respondent No.2) on regular basis and performing core functions of the NBP, though their services are on contracts and extended from time to time since long but, they have a right to be regularized in the NBP on permanent basis while relying upon 2005 SCMR 100 (Ikram Bari and 524 others v. National Bank of Pakistan). Contrarily, the NBP has taken the stance that all the petitioners are

contract employees of third party contractors and their services have not directly been engaged by the NBP. It is also argued on behalf of NBP that the petitioners are employees of those private companies hired by NBP, known as third party contractors, as such, instant petition is not maintainable as the terms and conditions of the petitioners' services are governed under the principle of master and servant with the third party.

7. While going through the respective arguments and record of this case, it has been observed that the petitioners are admittedly performing their duties on the basis of contracts executed between petitioners and M/s Icon Consultants (Pvt.) Ltd., M/s Outriders (Pvt.) Ltd., M/s Professional Employees (Pvt.) Ltd., M/s First Manpower Services and M/s Hussain International (Pvt.) Ltd. (respondents No.3 to 7, respectively), as such, the said respondents have separately entered into service agreement with NBP for providing services of different employees, per se, the salaries have been paid to petitioners through respective recruitment companies i.e. respondents No.3 to 7.

8. In order to consider the status of petitioners, this Court has gone through the terms and conditions of contracts appended with this case on behalf of respondents No.3 to 7, which were executed with NBP to obtain non-core service in the bank. The terms agreed between those companies and the bank clearly stipulate its working, scope and objective, whereby it was specifically referred in those agreements that:

*"Any person so placed shall not be part of the employees of National Bank of Pakistan, whether permanent or on contract, and shall remain sole employee of \_\_\_\_\_ (company) to the exclusion of the National Bank of Pakistan."*

This aspect has been objected to by the learned counsel for petitioners while taking the specific plea that such type of third party contracts have already been held illegal and non-effective qua the rights of petitioners and, as such, this Court

has been guided by the case reported as 2018 SCMR 157 (Abdul Ghafoor and others v. President, National Bank of Pakistan),

“6. Similarly in the case of Ikram Bari and others v. National Bank of Pakistan (2005 SCMR 100), where the petitioners had been working with the appellant-bank for the past many years on daily wages in various categories and their services were terminated on the ground that although the employees were appointed by the bank yet their salaries were being paid by the borrower/loanees, this Court, deprecated such arrangement and held the same to be a fraud on the statute and observed that in Islamic Welfare State, it is the obligation of the State to establish a society which is free from exploitation wherein social and economic justice is guaranteed to its citizens. Whilst noting that no equilibrium of bargaining strength between employer and employees existed, the Court found it difficult to countenance the approach of the bank that the temporary godown staff and the daily wages employees should be continued to be governed by disgraceful terms and conditions of service for indefinite period, directed the bank to issue appointment letters to the petitioners/employees.

7. 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.”

9. Similarly, this Court has also been guided by another judgment, dated 29.10.2018, passed by the apex Court in C.Ps No.4609 to 4614/2017 (National Bank of Pakistan v. Sohail Ahmad, etc.), whereby the apex Court has categorically held that:

“The argument of the learned counsel for petitioner that the respondents were not employees of Bank, rather their services were outsourced through various

*companies, hence the impugned judgment is liable to be set aside, is unfounded, as has been held by this Court in a recent judgment reported as M/s State Oil Company Ltd. versus Bakht Siddique and others (2018 SCMR 1181), whereby it has been categorically held that employment through contractor is a fraud and a sham, and is mechanism devised to employ the services of the persons indirectly with the object to avoid giving the benefits they would have gotten had they been directly employed by the Bank. As rightly observed by the learned High Court, this seemingly has been done to nullify the effect of and bypass the judgment reported as Ikram Bari and 452 others v. National Bank of Pakistan through President and other (2005 SCMR 100)”.*

10. The above mentioned consistent view has been confronted to the learned counsel for NBP, who has taken a categorical stance before this Court that they have been guided by the policy and guidelines issued by the State Bank of Pakistan known as *Guidelines on Outsourcing Management* and, as such, the National Bank of Pakistan has adopted the guidelines and engaged the services of private companies known as contractors i.e. respondents No.3 to 7, who have hired the services of the petitioners. In this regard, this Court has called upon the relevant officer of the State Bank of Pakistan, vide order dated 13.07.2021, as a result whereof, Muhammad Akhtar Javed, Director (BR&RD), Raza Mohsin Kazalbash (Legal Department), Muhammad Nazir Rana (Law Officer), Syed Ansar Hussain (Deputy Director) and Ken Fahad (Deputy Director) of the State Bank of Pakistan put in appearance before this Court and acknowledged that they have issued the guidelines on outsourcing arrangements vide Circulars No.9 of 2007, No.6 of 2017 and No.3 of 2019, which have been amended on different occasions. The recent framework for risk management in outsourcing arrangement by financial institutions provides a complete mechanism on the issue, the relevant extract of the said outsourcing management is as under:

#### **I. INTRODUCTION**

- (a) *Financial Institutions (FIs) are increasingly using third party services to carry out activities, functions and*

processes as outsourcing arrangements to meet new & complex challenges like innovation in technology, increasing competition, economies of scale and improvement in quality of service to stakeholders (i.e. customers, depositors or investors). The practice, however, increases their dependence on third parties and consequently impacts their risk profile. With the objective to enable FIs to effectively manage the risks arising out of outsourcing, State Bank of Pakistan has updated the Guidelines on Outsourcing Arrangements issued vide BPRD Circular No.09 of 2017. This framework, however, does not allow outsourcing of core banking functions / activities.

- (b) The FIs, while deciding to outsource any function, activity or process shall ensure that outsourcing should neither reduce the protection available to depositors or investors nor be used as a way of avoiding compliance with regulatory requirements. It will be the responsibility of the FIs to ensure compliance with all legal / regulatory requirements issued and amended from time to time, while entering into any outsourcing arrangement.

## **II. APPLICABILITY**

- (a) The guidelines contained in this framework are applicable on all outsourcing arrangements entered into by Commercial Banks, Islamic Banks, Microfinance Banks (MFBs) and Development Financial Institutions (DFIs) hereinafter jointly referred to as Financial Institutions (FIs).
- (b) This framework is applicable on all outsourcing arrangements of FIs with local as well as off-shore service providers.
- (c) All new outsourcing arrangements by FIs shall be governed under this framework. The outsourcing arrangements already in place by the FIs shall be streamlined to comply with this framework latest by June 30, 2018.

## **III. POLICY FOR OUTSOURCING ARRANGEMENTS**

- (a) The FIs shall develop outsourcing policy to be approved by their Board of Directors. The outsourcing policy shall,

*at a minimum, include Roles & Responsibilities of all stakeholders, Materiality Assessment Criteria, Vendor Management (due diligence, on-boarding, contractual requirements, monitoring, training & development etc.), Risk Assessment & Mitigation measures for all types of outsourcing risks, classification of core & non-core activities for each function, contingency planning and an exit strategy from the outsourcing arrangement etc.*

- (b) The FIs shall ensure effective implementation of policy and formulation of detailed Standard Operating Procedures (SOPs)/Procedural Manual for outsourcing arrangements. The outsourcing policy shall be disseminated across the institution for information, understanding and compliance.*
- (c) The FIs shall ensure that the staff responsible for outsourcing arrangements is trained to have reasonable understanding on the outsourcing and the outsourced functions / activities.*
- (d) The exceptions or deviations in the policy shall be escalated to the board or its sub-committee in the immediate next meeting.*

11. While going through the above referred guidelines on outsourcing arrangement, it has become crystal clear that the State Bank of Pakistan being regulator has acknowledged the use of third party service to carry out activities, functions and processes as outsourced management to meet new and complex challenges in the banking system. However, these guidelines are not applicable qua the core banking functions and the key mandate in the entire scheme to protect the rights of depositors or investors at the first instance and it is the responsibility of the financial institutions to continue to satisfy all regulatory / legal requirements issued to them from time to time while entering into any outsourcing arrangement. In this entire scheme the term outsourcing has widely been used, which means “the use of third party to perform materiel activities normally

*to save money / or use the skills / technology of another entity on contingent basis that would normally be undertaken by a licensed institution, now or in the future.”*

12. While going through the above guidelines and definition of outsourcing drawn by the State Bank of Pakistan for all the financial institutions, it has been observed that the State Bank of Pakistan has given complete autonomy to the financial institutions to settle their core and non-core functions for the purpose of outsourcing and, as such, the financial institutions are the best judge under their own scheme and policy to dedicate its non-core banking functions to the outsourcing companies. The National Bank of Pakistan prepared and got approved their *Outsourcing Policy* by the Board of Directors initially on 25.09.2008 and provided the *Framework for Outsourcing* in Clause 4, whereby the core functions, which could not be outsourced, have been highlighted, which are as under:

**4. FRAMEWORK FOR OUTSOURCING**

4.1 *Outsourcing shall, as far as possible, be limited to areas in which there is little requirement of maintaining secrecy, Cash dealing, financial transactions and any of the Bank's core functions including the following will not be outsourced in any case:*

4.1.1 *Risk management function, internal audit function, treasury function, internal control function, compliance functions and decision-making including determining compliance with Know Your Customer (KYC) requirements for opening deposit account and credit functions.*

4.1.2 *off-shore outsourcing arrangement in case the off-shore service provider is not a regulatory entity.*

4.1.3 *sub-contracting of material outsourcing arrangements both in case of local and off-shore outsourcing is not allowed.*

13. The National Bank of Pakistan has outsourced non-core functions other than functions mentioned in Clause 4.1 referred above and petitioners are performing their duties with the outsourcing companies i.e. respondents No.3 to 7, therefore, the rights of the petitioners have to be seen in the light of judgment



reported as 2013 SCMR 1253 (Fauji Fertilizer Company Ltd. v. NIRC through its Chairman), wherein it has been held that:

13. At this juncture, it would be appropriate to have a glance at the case-law referred to by the learned counsel for the appellant. In the case of *Souvenir Tobacco Co. Ltd. v. Najammuddin* (PLD 1977 Karachi 250) the employees of Canteen Managing Committee were declared not to be the employees of the company on the ground that according to the Karachi Factories Canteen Rules, 1953 read with the contents of the settlement, the affairs of the canteen of the company were directly under the control and the management of the Canteen Managing Committee and it was held that the application for re-instatement should have been filed against the said Committee and not against the company. In the case of *Mian Munir Ahmad v. The State* (1985 SCMR 257) the company used to run a beverage bottling at their factory and for the manufacturing of its product (Pepsi Cola) employed its own workers, who were on the pay-roll of the Factory. But certain other works were entrusted to contractors who employ their own labour. During the season in question the contract of loading and unloading the material in the Factory was awarded by the company to one Abdul Hamid Contractor, who had employed his own labour for the said work, who had nothing to do with the company, directly or indirectly. The employees of the contractor filed criminal complaints against the Managing Director of the company (appellant therein). The appellant approached the High Court for quashment of proceedings but the petition was dismissed on the ground that the High Court had no jurisdiction to exercise its inherent powers under section 561A, Cr.P.C., to quash proceedings pending before a labour Court as the same was not a Court subordinate to the High Court. The matter came to this court where the question for consideration was that whether the High Court had no jurisdiction under section 561-A, Cr.P.C. in respect of the proceedings pending before the Labour Court, which was dealing with the case 'in its capacity as a Section 30 Magistrate'. A 3-Member Bench of this Court allowed the appeal and quashed all the criminal complaints. It was further observed that the contractor had employed its own labour they were not on the pay-roll of the Factory. The management of the Factory was not even aware of the number of the workers employed by the contractor or about the terms and conditions of their appointment or

service. As such the Factory Management was not required to issue them any attendance tickets under the relevant law, i.e. section 2 of Schedule 2(g) of the W.P. Standing Orders Ordinance. In the case of *Farid Ahmad v. Pakistan Burmah Shell Ltd.* (1987 SCMR 1463) the respondent company owned a number of petrol pumps and stations in Karachi, most of which were run by dealers appointed by the company, whereas, some others were run and managed by contractors. Appellant, the employee of the contractor, was terminated by the then contractor. The said termination order was challenged by the appellant in the Labour Court through a Grievance Petition under section 25A of the IRO, but the same was dismissed on the ground that there was no privity of contract between him and the company. Appeal filed by him before the Labour Court was accepted and he was ordered to be reinstated. The said order, though was complied with by the company, but was challenged before the High Court through a writ petition. The writ petition was allowed observing, *inter alia*, that the appellant was not an employee of the respondent company. In spite of the above judgment the appellant continued to work at the petrol pump. Afterwards, the then contractor, again terminated the services of the appellant. Thereupon, the appellant filed a criminal complaint before the NIRC against the company and its 3 officers under section 53(1-A) of the IRO, complaining "unfair labour practice". The matter came up before this Court when leave was granted to consider as to whether or not the appellant was an employee of company and whether it was open to the High Court to have decided this question in exercise of its constitutional jurisdiction as it involved a question of fact. A 5-Member Bench of this Court, after relying upon the cases of *Mian Munir Ahmad (ibid)* and *D.C. Works Limited v. State of Saurashtra* (AIR 1957 SC 269), on the ground that the contractor was not only the person who had employed the appellant but also the person who had the power of hiring and firing the employees, assigning works to be taken from them, etc., held that the appellant was not employees of the company but that of the contractor. In the case of *Mehmood Hussain v. Presiding Officer, Punjab Labour Court* (2012 SCMR 1539) a 2-Members Bench of this Court held that the question of relationship between the owners of company and the persons employed by its contractors, had already been decided by this Court in the case of *Mian Munir Ahmad (supra)* wherein it was held that such persons were not the employees of the company but those of the contractor who has

*hired them, therefore, the claim made by the respondent from the appellant was not tenable in law.*

*The ratio of the above case-law is that the employees of the contractor shall not be the employees of the company if:--*

- (a) they are under the control and management of the contractor and not that of the company;*
- (b) they are not on the pay-roll of the company and the management of the company is not even aware of the number of the workers employed by the contractor or about the terms and conditions of their appointment or service; and*
- (c) the contractor has the power of hiring and firing the employees, and assigns works to them and the company has no concern with it.*

14. *Turning towards the case-law referred to by the learned counsel for the respondents, it is to be noted that in the case of Messrs Euro Ceramics Ltd. v. Registrar of Trade Union (1996 PLC 45) the Balochistan High Court after considering the cases of Mian Munir Ahmad (supra) and Farid Ahmad (supra) held that in order to determine the status of the workers it is to be seen that whether the contractor engaged the workers for running of the affairs of the company or through those workers, it was carrying out another independent work which had no concern with the production, etc., of the company. It was further held that contractor had engaged the labour not for doing the job other than which was being carried out in the factory; and inference can also be drawn that a device was adopted to deprive the employees from their legitimate right to form a trade union. In the case of Messrs Dawood Cotton Mills v. Sindh Labour Appellate Tribunal (2004 PLC 348) a Division Bench of the High Court of Sindh again considered the same question in the light of the law laid down in the cases of Mian Munir Ahmad (supra) and Farid Ahmad (supra). The Court distinguished the said judgments on the ground that the workers were required to work in the weaving department of the company which constituted one of the principle organs of a textile mill; the machines were belonged to the company and the raw material was also supplied by them; and the said section was controlled by the weaving master. The Court relied upon the case of Hussainbhai Calicut v. Alath Factory (AIR 1978 SC 1410) = (1978 LLJ 397) to hold that the workers employed through contractor were the employees of the company. The said judgment of the*

High Court was assailed through civil petition for leave to appeal in the case of *Messrs Dawood Cotton Mills v. Sindh Labour Appellate Tribunal* (Civil Petition No.309 of 2004, etc.) but this Court maintained the finding of the High Court. In the case of *Pakistan Telecommunication Company Limited v. Muhammad Zahid* (I.C.A. No.164 of 2002) a Division Bench of the High Court, while dealing with the question as to whether the employees engaged by the PTCL through a contractor (Telecom Foundation) were the employees of PTCL or not, it was held that it is trite law that whether employees are engaged directly or through a contractor, they would be deemed to be the employees of the establishment for whose benefit they perform functions. The said decision was upheld by the Supreme Court in the case of *Pakistan Telecommunication Company Limited v. Muhammad Zahid* (2010 SCMR 253), declaring the employees of Telecom Foundation to be employees of the PTCL.

15. It would also be advantageous to consider cases on the issue in hand from the Indian jurisdiction. In the case of *Messrs Basti Sugar Mills v. Ram Ujagar* (AIR 1964 SC 355) the Indian Supreme Court has held that the word 'employed by the factory' are wide enough to include workmen employed by the contractors of the factory. In the case of *Silver Jubilee Tailoring House v. Chief Inspector* (AIR 1974 SC 37) = [(1974) 3 SCC 498] certain employees claim the status of regular workers in a tailoring house "as employed in the establishment" within the meaning of section 2(14) of the Shops and Establishments Act. On the question as to whether there existed employer-employee relationship between the workers and the Management, the Court pointed out that the control test, which is normally adopted for considering the said question is not an exclusive test or a decisive test. If the ultimate authority over the performance of the work of the employee rested in the employer so that he is subject to the supervision of the principal employer, would be sufficient. In the case of *Hussainbhai, Calicut v. The Alath Factory Thezhilali Union, Kozhikode* (AIR 1978 SC 1410) = [(1978) 4 SCC 257] the Indian Supreme Court laid the test for determining the workmen employed by the independent contractor to work in employer's factory. The said issue relates to hiring workmen through contractors by an industry manufacturing ropes. The Supreme Court pointed out to the admitted fact that the work done by the contract labour was an integral part of the industry concerned and the

*workmen were broadly under the control of the Management. The relevant para therefrom reads as under:--*

*"5. The true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is, virtually, laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contract is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth, though draped in different perfect paper arrangement, that the real employer is the Management, not the immediate contractor. Myriad devices, half-hidden in fold after fold of legal form depending on the degree of concealment needed, the type of industry, the local conditions and the like, may be resorted to when labour legislation casts welfare obligations on the real employer, based on Articles 38, 39, 42, 43 and 43-A of the Constitution. The court must be astute to avoid mischief and achieve the purpose of the law and not be misled by the maya of legal appearances."*

*In the case of Catering Cleaners of Southern Railway v. Union of India (AIR 1987 SC 777) = [(1987) 1 SCC 700], on the issue of contract labour engaged for cleaning catering establishments and pantry cars in Southern Railway, the Indian Supreme Court pointed out that the work of cleaning catering establishments and pantry cars is necessary and incidental to the industry or the business of the Southern Railway; the employment was of perennial nature and that the work required employment of sufficient number of whole-time workmen. It was directed that those workmen, who were previously employed by the contractor on the same wages and conditions of work as were applicable to those engaged in similar work in Western Railway, be absorbed without waiting for the decision of the Central Government. In the case of Sankar Mukherjee v. Union of India (AIR 1990 SC 532) = [(1990) (Supp) SCC 668], the Indian Supreme Court considered*

*the notification by the Government of West Bengal prohibiting the employment of contract labour in various departments including the job of loading and unloading of bricks from the wagons and trucks in Brick Department. The Court pointed out that the bricks handled by the Brick Department were used in furnaces of the company as refractory and incidental to the industry carried on by the company. Even though the petitioners therein were not doing the job of stacking the bricks, there was no denial or any averment or material to show that the job of loading and unloading of bricks was not incidental or alike to the stacking of the bricks; on the other hand, the workers performing those jobs which were of perennial nature, were to be treated alike. The workers doing the job of loading and unloading from the wagons and trucks in the Brick Department are to be treated on par with those who were doing the job of cleaning and stacking in the said Department. There was no reason as to why others doing the same job should be treated differently. In the case of Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union (AIR 2000 SC 1508) = [(2000) 4 SCC 245] the Court held that no single or substantive test could be confined or concretized as a fixed formula of universal application in all class or category of cases. Although some common standards could be devised, the mere presence of one or more or their absence of the same cannot, by itself, be held to be decisive of the whole issue, since every case has to be decided on the peculiar aspects of a particular case. That being the position, in order to safeguard the welfare of the workmen, the veil may have to be pierced to get at the realities. In the case of Steel Authority of India Ltd. v. Union of India (AIR 2001 SC 3527) the Court held that even in case of contract labour, there can be adjudication as to the regularization of the employment by the Industrial Court/Tribunal. If the contract is found to be not genuine, but a mere camouflage, the so called contract labour will have to be treated as employee of the principal employer, who shall be directed to regularize the services of the contract labour in the establishment concerned. In the case of Mishra Dhatu Nigam Ltd. v. M. Venkataiah (AIR 2003 SC 3124) = [(2003) 7 SCC 488] the Indian Supreme Court held that where in discharge of a statutory obligation of maintaining a canteen in*

*an establishment the principal employer availed the services of a contractor, the contract labour would indeed be the employees of the principal employer and that such cases do not relate to or depend upon the abolition of contract labour. In the case of Ram Singh v. Union Territory, Chandigarh (AIR 2004 SC 969) = [(2004) 1 SCC 126] the Court reiterated that in determining the relationship of employer and employee, even though 'control' test is an important test, it is not the sole test. It was further observed that it is necessary to take a multiple pragmatic approach weighing up all the factors for and against the employment instead of going by the sole test of control. An "integration" test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer's concern or remained apart from and independent of it. The other factors which may be relevant are, who has the power to select and dismiss, to pay remuneration, deduct insurance contributions, organise the work, supply tools and materials and what are the "mutual obligations" between them. The Court further held that the mere fact of formal employment by an independent contractor will not relieve the master of liability where the servant is, in fact, in his employment. In that event, it may be held that an independent contractor is created or is operating as a subterfuge and the employee will be regarded as the servant of the principal employer. In the case of Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N. (AIR 2004 SC 1639) = [(2004) 3 SCC 514] after referring to the case of Ram Singh (supra) the Court reiterated that the test of organization or of control and supervision are the only decisive test and different tests have to be applied in different facts and circumstances; ultimately all relevant facts have to be integrated in considering the said question. Relevant portion therefrom is reproduces hereinbelow:--*

*"37. The control test and the organisation test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the court is required to consider several factors which would have a bearing on the result:-*

*(a) who is the appointing authority;*

- (b) *who is the paymaster;*
- (c) *who can dismiss;*
- (d) *how long alternative service lasts;*
- (e) *the extent of control and supervision;*
- (f) *the nature of the job e.g. whether it is professional or skilled work;*
- (g) *nature of establishment;*
- (h) *the right to reject."*

16. *The crux of the above case-law is that:--*

- (a) *the word 'employed by the factory' are wide enough to include workmen employed by the contractors of the company;*
- (b) *the employees of the contractor shall be the employees of the company if the contractor engaged the workers for running of the affairs of the company and not for some other independent work which has no concern with the production of the company;*
- (c) *if the employees are working in a department of the company which constituted one of the principle organs of the company, the machines belong to the company, the raw material is supplied by the company and the said department is controlled by the supervisors of the company, the employees of the contractor shall be the employees of the company;*
- (d) *the employees, engaged directly or through a contractor, would be deemed to be the employees of the company for whose benefit they perform functions;*
- (e) *even though 'control' test is an important test, it is not the sole test; a multiple pragmatic approach weighing up all the factors for and against the employment has to be adopted, including an "integration" test; and*
- (f) *if the contract is found to be not genuine and a device to deprive the employees from their legitimate rights/benefits, the so called contract employees will have to be treated as employee of the company.*



17. *Normally, the relationship of employer and employee does not exist between a company and the workers employed by the Contractor; however, in the case where an employer retains or assumes control over the means and method by which the work of a Contractor is to be done, it may be said that the relationship of employer and employee exists between him and the employees of the contractor. Further, an employee who is involved in the running of the affairs of the company; under the direct supervision and control of the company; working within the premises of the company, involved directly or indirectly in the manufacturing process, shall be deemed to be employees of the company."*
14. The above referred function test and criteria determining the status of contractor employees being employees of the company clearly establishes that the present petitioners, who are/were performing their duties in National Bank of Pakistan at different stations without any objection by contractor i.e. outsourcing companies are/were deemed to be employees of the bank subject to above mentioned conditions. The control test is an important test referred in Paras-15 & 16 of the above referred case law qua the appointing authority, pay master, right to hire, terminate, control and supervision etc. does not extend the automatic conversion of employees of outsourcing company being employees of the National Bank of Pakistan, rather they are allowed to take benefits equal to the benefits of permanent employees of the National Bank of Pakistan only. Though such aspect also needs approval from Board of Directors of the National Bank of Pakistan subject to their financial impact which is the key factor in resolution of the said issue. However, these issues have been taken into account by the superior Courts with reference to the employment given by third party contractor in outsourcing companies in the case laws reported as 2005 SCMR 100 (Ikram Bari and 524 others v. National Bank of Pakistan), 2018 SCMR 157 (Abdul Ghafoor and others v. President, National Bank of Pakistan) and 2018

SCMR 1181 (M/s State Oil Company Ltd. v. Bakht Siddique and others), as such, the view rendered by the apex Court is binding upon this Court in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 as “*any decision of the Supreme Court shall, to the extent that it decides a question of law is based upon or enunciates a principle of law, be binding on all other courts in Pakistan*”. Therefore, when any person continuously performs his duties with any institutions on the basis of third party contract for a longer period, he earns a right to be called as employee of that institution for all intent and purposes. I have gone through the policy guidelines issued by the State Bank of Pakistan and outsourcing policy of National Bank of Pakistan, whereby non-core banking functions have been explained in details and such concepts legitimize the outsourcing of non-core banking functions to third party contractor but, these guidelines and outsourcing policy do not take away the rights of employees contrary to settled principle of law in the above mentioned judgments of the superior Courts, which are binding on all institutions, authorities and Courts in letter and spirit, even otherwise, the *obiter dictum* is binding upon all organs of the State in terms of Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 as held in 2021 SCMR 1509 (Dr. Iqrar Ahmad Khan v. Dr. Muhammad Ashraf, etc.), 2017 SCMR 206 (2017 SCMR 206 (Shahid Pervaiz v. Ejaz Ahma) and PLD 2010 SC 483 (Justice Khurshid Anwar Bhinder v. Federation of Pakistan), hence the argument advanced by the NBP as well as by the private outsourcing companies i.e. respondents No.3 to 7 that petitioners are employees of outsource companies is not a correct.

15. Now moving to the second question as to whether employees of third party contractor shall be deemed to be employees of National Bank of Pakistan for all intent and purpose but, their initial status is to be considered as contract employees by virtue of their employment contract and, as such, they have never been given any right to claim themselves being permanent employees unless the Board of Directors of NBP approve their status, per se, all statutory institutions having their own Board of Directors or Board of Governors are the final authorities to resolve such internal policy question in the light of case titled *Imran Ahmad v. Federation of Pakistan (ICA 340/2017)*, reported as *2019 PLC (CS) Note 19 Islamabad*, whereby Division Bench of this Court has held in Para-123(vii) that:

*vii. All employees who are working on different positions in the statutory organization/companies (controlled by the Federal Government) having their own Board of Directors or Board of Governors, has to decide the cases of their employees in accordance with their own service rules independently and regularize the services of those employees without seeking any further approval from the Government of Pakistan, however, such kind of exercise is permissible for one time and in future they shall not hire any person on temporary, daily wages or contract basis.*

16. The above mentioned judgment of the Division Bench of Islamabad High Court has been maintained by the apex Court vide judgment dated, 13.03.2019, passed in C.P. No.3579/2018. The status of contract employees is to be considered in such type of institution like National Bank of Pakistan as governed under the master and servant relationship or within the time specific clauses where an employee has no right to claim regularization as a matter of right under the law. The status of such kinds of employees has been discussed and

settled by the Apex Court in cases reported as 2020 SCMR 507 (Province of Punjab through Secretary Agriculture Department, Lahore v. Muhammad Arif), 2021 SCMR 609 (SSGCL v. Zeeshan Usmani), 2021 SCMR 185 (Government of Khyber Pakhtunkhwa v. Jawad Ali), 2021 SCMR 998 (Pakistan Telecommunication Company Limited v. Muhammad Samiullah), 2021 SCMR 630 (Government of Khyber Pakhtunkhwa v. Liaquat Ali), 2021 SCMR 1045 (Government of Khyber Pakhtunkhwa v. Muhammad Younas) and 2021 SCMR 1376 (Government of Khyber Pakhtunkhwa v. Saeed ul Hassan), therefore, the principle set out in the above mentioned case laws does not support the claim of the present petitioners i.e. contractual employees of outsourcing companies to claim regularization as a matter of right as they have no vested right for such a claim as they have opted for contractual employment by choice at the first instance, whereas the contract employment or the policy of the bank has not provided any such exception for their regularization under the law, even otherwise, the National Bank of Pakistan has gone further to resolve the controversy by placing the cases of all the outsourcing employees for the purpose of regularization in the 283<sup>rd</sup> Board of Directors Meeting, held on 27.04.2018, resolving that Cross Functional Scrutiny Committee and Selection Committee be constituted to review the case of outsourced employees, whereafter the Board of Directors of NBP in its 294<sup>th</sup> Meeting, dated 03.05.2019, decided to review the proposal for regularization of outsourced employees in the next meeting, as such, the Secretary, Board of Directors of National Bank of Pakistan namely S.M. Ali Zamin has verbally informed this Court that the Board has regretted the regularization of outsourced employees in the service of the National Bank of Pakistan, therefore, the mandate of law as settled in the case of *Imran Ahmad*

*supra*, which has been maintained by the apex Court, has been observed, as such, the decision of the National Bank of Pakistan is well within their policy domain, per se, the Courts are not in a position to compel the financial institutions to employ the contractual employees and convert their status as permanent employees.

17. Keeping in view the above position, the petitioners have neither any right to claim their regularization in the National Bank of Pakistan nor are they able to persuade this Court to achieve such status under the law, therefore, instant writ petition fails and same is hereby **DISMISSED**, with no order as to cost.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 23.09.2021.

JUDGE

Khalid Z.