

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed
Mr. Justice Qazi Faez Isa
Mr. Justice Yahya Afridi

CIVIL APPEAL NO.1189 OF 2014

[on appeal against the Judgment dated 19.03.2014 passed by the Lahore High Court, Lahore, in W.P.No.21698 of 2011]

Habib Bank Limited

...Appellant(s)

Versus

Gulzar Khan & others

...Respondent(s)

For the Appellant(s) : Mr. Faisal Mehmood Ghani, ASC

For the Respondent(s) : Mr. Zulfiqar Khalid Maluka, ASC

Date of Hearing : 11.04.2019

JUDGMENT

GULZAR AHMED, J.— This appeal is by leave of the Court dated 10.09.2014. Brief facts of the matter are that respondent No.1 (**the respondent**), who was working as an Officer Grade-II (**OG-II**) and Manager HBL, Sharifabad Branch, District Jhang, allegedly mishandled the bank funds. Show-cause notice was issued to the respondent, who filed its reply. Thereafter, a regular inquiry was conducted against the respondent in which he was found guilty of the commission of said offence. Second show-cause notice dated 20.11.2006 was issued to the respondent and thereafter vide letter dated 26.06.2007, a major penalty of compulsory retirement from service was imposed on him. The respondent then filed Grievance Petition in Punjab Labour Court No.5, Sargodha Camp at Jhang, praying for his reinstatement with all back benefits. The appellant

contested the said Grievance Petition of the respondent by filing its written statement in which one of the objections taken was about the maintainability of the Grievance Petition on the basis that he was not a 'workman' for that he was employed as OG-II and Manager of the branch. The Labour Court, after full trial, vide its order dated 23.02.2009 allowed Grievance Petition filed by the respondent. On appeal, the Punjab Labour Appellate Tribunal (**the Tribunal**), after hearing both parties, allowed the appeal vide judgment dated 08.07.2011, by setting aside the order of the Labour Court. The respondent, however, challenged judgment of the Tribunal by filing Writ Petition No.21698 of 2011 before the Lahore High Court, Lahore. Such Writ Petition of the respondent was dismissed in limine vide order dated 30.09.2011 passed by the learned Judge in Chambers of the Lahore High Court, Lahore. The respondent approached this Court by filing Civil Petition No.1965-L of 2011, wherein order dated 20.12.2012 was passed remanding the Writ Petition to the High Court for decision afresh. Pursuant to the remand order, the learned Judge in Chamber of the Lahore High Court, Lahore, passed the impugned order dated 19.03.2014 and while allowing the Writ Petition of the respondent the matter was remanded to the Tribunal for decision of the controversy on merits.

2. Mr. Faisal Mehmood Ghani, learned ASC for the appellant, at the outset, has contended that the Tribunal in its judgment has considered all relevant evidence as well as the case law and thereafter concluded that the respondent was not a 'workman' and thus the order of the Labour Court was set-aside.

He further contended that the High Court, in the impugned judgment, has dealt with the question of respondent being a 'workman' or not, and has given a finding that he is a 'workman'. He next contended that the evidence, on record, amply demonstrated that the respondent, who was employed as OG-II and Manager of the branch was not a 'workman' and thus the Labour Court could not have exercised jurisdiction of entertaining his Grievance Petition. He contended that the High Court, by way of impugned judgment, had misread the evidence available on record so also the legal position pronounced by this Court and have thus reached the conclusion that the respondent is a 'workman', which is not sustainable by law.

3. Mr. Zulfiqar Khalid Maluka, learned ASC, on the other hand, has contended that by the impugned judgment the High Court has merely remanded the matter to the Tribunal and thus the remand order could not have been challenged by the appellant. He conceded that the High Court while remanding the matter, by the impugned judgment, has given a specific finding that the respondent is a 'workman' and thus his Grievance Petition before the Labour Court was maintainable and the matter was remanded only for decision on merits by the Tribunal. Learned ASC further contended that the evidence on record so also the legal position amply established that the respondent was a 'workman' and in this regard supported the impugned judgment of the High Court.

4. We have considered the submissions of learned ASC for the parties and have also gone through the record with their assistance. The foremost question is as to whether jurisdiction

was available to the Labour Court to adjudicate and decide the matter and once it is established that the Labour Court had the jurisdiction, then the Labour Appeal before the Tribunal, as a consequence, would be maintainable and decided on its own merits. The history of this case shows that the Labour Court has already dealt with the matter at full length and passed its order. Thereafter, the matter has been dealt with by the Tribunal, the High Court and then by this Court, when it was remanded to the High Court to decide the Writ Petition filed by the respondent afresh. In our view, where this Court, while remanding the matter to the High Court, has directed to decide the matter afresh, perhaps such direction of this Court did not provide enough room to the High Court to further remand the matter to the Tribunal for deciding the same on merits. In our view, in terms of the order passed by this Court, the High Court ought to have decided the case afresh not only on the point of jurisdiction but also on merits. Be that as it may, as the High Court has decided only the question of jurisdiction of the Labour Court by determining the respondent to be a 'workman', so we are mainly concerned with this question, which has been elaborately argued by the learned ASC appearing for the parties. So far as the evidence available on record is concerned, we have noted that the respondent has recorded his evidence as PW-1 before the Labour Court where he admitted that on 01.07.2005 he was promoted as OG-II by the appellant and that he worked as Manager of Sharifabad branch of the appellant-bank for one year and three months. He also admitted that he was drawing a salary of Rs.18,324/- plus other allowances, as

admissible to him. He further admitted, in his evidence, that his duty included issuing of drafts, issuing of cheques, opening of accounts, closing of cash with signature of second officer, depositing of cash in the strong room and locking the same. Such admission by the respondent, in his evidence, amply demonstrated that the nature of work being performed by the respondent as OG-II and Manager of the branch was not of a clerical nature and did not fall within the ambit of term 'workman' as defined in the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 so also under the Industrial Relations Ordinance, 2002. It is not necessary for us to give here the definition of the term 'workman' in these two laws for that besides the evidence available on record, the legal aspect is also clinched by various judgments pronounced by this Court in relation to the bank employees, who were employed as OG-II and Manager of the branch. We may note that though the respondent did not have Power of Attorney with him, he was still Manager of the branch and all affairs of the branch were under his management and control, even the entire cash and record of the bank relating to the branch as well as all communications of the branch were also under his supervision, upon which he was required to take decisions as to how the same has to be dealt with in the best interest of the appellant-bank. The term 'Manager' even otherwise is defined in the Black's Law Dictionary, 9th Edition, as follows:

"A person who administers or supervises the affairs of a business, office, or other organization"

5. Learned ASC for the appellant has cited a number of cases on the point as to whether the respondent being OG-II and

Manager of the branch could be considered as a 'workman' and in this regard has referred to the case of National Bank of Pakistan v. Punjab Labour court No.5, Faisalabad & 2 others [1993 SCMR 672], where this Court dealt with the case of OG-II of the National Bank of Pakistan, who had filed Grievance Petition before the Labour Court. The bank has taken an objection that OG-II was not a 'workman' as he was predominantly performing managerial and administrative work. This Court dealt with the issue as follows:

"11. ... Admittedly, respondent No.3 was drawing, according to his own showing, salary of Rs.1,150 per month. He was an officer of Grade-II and, therefore, if he was employed at the relevant time in a supervisory capacity not necessarily mainly in a managerial or administrative capacity, he would fall within the first category of clause (b) referred to hereinabove. It is a well-settled proposition of law that a person who approaches a Court on the basis of averment that he is a workman within the definition of clause (xxviii) of section 2 of the IRO, the burden of proof lies on him and not on the employer. In the present case as pointed out hereinabove, the Labour Court has not examined the above question, but the Tribunal relied upon the statement of respondent No.3 in his examination-in-chief to the effect that "I was Second Officer in the branch when I was dismissed. I was not Manager at the relevant time. My job was of clerical nature. I was not entrusted with managerial or supervisory job." The Tribunal was also influenced by the factum that no cross-examination was directed in this regard. In our view, simpliciter statement of respondent No.3 that "I was not performing supervisory job", but at the same time, admitting the factum that he was Grade-II Officer, was not sufficient for discharging the above burden of proof. The Tribunal as well as the learned Judge in chamber wrongly placed burden of proof on the appellant by holding that they had failed to produce the evidence to show the duties of respondent No.3. In our view, it was for respondent No.3 to have stated what were the duties of a Grade-II Officer. It is also incorrect to conclude that the appellant had not directed any cross-examination on the above question. In the cross-examination, it was suggested that respondent No.3 was performing the duties of Manager, which suggestion was denied by him."

After examining the case law on the point, this Court ultimately reached at the following conclusion:

"15. ... The question, whether a person is a workman within the purview of clause (xxviii) of section 2 of the IRO, can be determined not on the basis of the designation of his

post, but on the basis of the duties which he was performing. In the present case, we have already held that burden of proof that respondent No.3 was a workman, was on him, which he failed to discharge."

Further, in the case of National Bank of Pakistan & another v. Anwar Shah & others [2015 SCMR 434], this Court was confronted with the question as to whether OG-I, OG-II and OG-III were workmen and could become members of the employee's union and participate in such union election process, and observed as follows:

"8. ... The 'worker' and the 'workman' defined in the Act mean person not falling within the definition of 'employer' who is employed as a supervisor or as an apprentice but does not include a person who is employed mainly in managerial or administrative capacity. On the other hand, the 'employer' as defined in the Act includes a person who is proprietor, director, manager, secretary, agent or officer or person concerned with the management of the affairs of the establishment. The term 'officer' is specifically mentioned in the definition of term 'employer'. However, as has been noted from the case-law cited by the learned counsel for the parties, the Courts have not considered the designation of a person to be a factor determining his status of employment in an establishment to be that of an officer or a workman rather the Court has always considered the nature of duties and functions of a person to be the factor which will determine his status as to whether he is a workman or not. In this respect, we may refer to the case of National Bank of Pakistan v. Punjab Labour Court No.5, Faisalabad (1993 SCMR 672), which was a case relating to an Officer Grade-II of NBP against whom disciplinary action was taken. He approached the Labour Court for redressal of his grievance claiming himself to be a workman. The matter came up to this Court and it was held that the designation per se is not determinative of a person being a workman rather the nature of duties and function determine his status and the burden is on him to establish that he is a workman. As the Officer Grade-II failed to discharge his burden, he was held not to be a 'workman' and his grievance petition was dismissed. The ratio of this case and also of the other cases that have been relied upon by the learned counsel for the parties is that the person who approaches a Labour Court for redressal of his grievance claiming himself to be a workman and such status of workman being denied by the employer, it becomes a bounden duty of a person who approaches the Labour forum to demonstrate through evidence that his nature of duties and functions were that of a workman and not that of a managerial or administrative capacity and that he was not an employer. Unless such categoric evidence is led by him, he will not be considered to be a workman and his grievance petition will not be maintainable before the Labour forum. It,

therefore, implies that the officer cannot be assumed to be workmen nor such can be declared on mere asking. The argument that officers Grade-I to III are performing supervisory function in itself means that this has to be established by evidence. In this view of the matter, on a solitary claim of the union no blanket declaration can be given that the Officers Grade-I to III in the establishment of NBP are workmen."

Moreover, in the case of Muslim Commercial Bank Ltd. and others

v. Muhammad Shahid Mumtaz and another [2011 SCMR 1475] =

[2009 PLC 281] this Court has dealt with the issue as follows:

"7. In the light of the above definition, we need to examine as to whether the respondent was a workman or not. Before discussing the factual aspects of the question, we may point out that both the Courts erred in placing burden on the Bank to provide that the respondent was not a workman. This Court has already held in the case of *National Bank of Pakistan v. Punjab Labour Court No.5 (supra)* that a person, who approaches a Court on the basis of averment that he is a workman, the burden of proof lies on him and not on the employer. The respondent, was a Manager at the relevant time of the Khakwani Cloth Market Branch of the appellant-Bank. This was his second posting as Manager as he has earlier posted in the same capacity in Khiali Gate Branch, MCB, Gujranwala. The power of attorney was executed by the Bank in his favour on 20th August, 1996, four years prior to the present incident. This power of attorney was given to him on his first posting as Manager. It was duly notarized by a Notary Public and signed by the President of the Bank and attested by two Vice-Presidents of the Bank. There is no reason to doubt its authenticity and we are unable to understand as to how the trial Court had ruled out of consider the power simply on the ground that there was no evidence to show that the same was ever delivered to the respondent. In view of its notarization and execution by the most responsible official of the Bank, in the absence of any convincing evidence to the contrary, it is unbelievable that the same would have been fabricated only to counter the respondent's claim of being the workman. We have also noticed that this aspect was not discussed by the learned Judge in Chambers in the High Court.

8. The powers conferred on the respondent by the power of attorney are material for fixing his status in the context as to whether or not he was a workman. For this purpose, all the powers conferred are relevant but the most significant ones are the following:--

(2) To engage, employee, control and dismiss Clerks, Servants and others whether engaged by the said Attorney or by the Bank or otherwise.

(4) To settle and adjust all average and other losses and claims under Policies of Insurance of All kinds and all other accounts and reckonings whatsoever and to compromise and compound all debts and claims whatsoever claimable by the Bank and to submit to Arbitration all

differences and disputes whatsoever.

(6) To take on lease or other tenancy any land, houses, buildings for the purposes of officers or premises suitably for carrying on the said business or any of them and to build, alter and furnish any office, house or premises.

(8) To make, sign, seal, execute, deliver and endorse all receipts, deeds, redemption of mortgage deeds, conveyance, transfers and instruments.

(12) To draw, accept, endorse, sign and negotiate all Bills of Exchange, Dividend Warrants and any orders for payment of money in which the Bank is or may be interested or concerned and to which its endorsement or signature may be necessary or requisite.

(17) AND GENERALLY to do all such acts, deeds and things not specifically mentioned hereinabove but which are necessary or expedient to carry on and manage the business of the Bank and all such other acts which are incidental to the promotion of Banking business."

9. The above powers, particularly the one of hire and fire in para 2, sufficiently demonstrates the nature of his duties and functions as managerial and supervisory and not clerical in nature, as claimed by him."

Again, in the case of Javaid Hussain Naqi v. Member Board of Directors, MCB and others [2009 PLC 260], this Court was confronted with the question as to whether the Branch Manager of the Bank could fall within the term 'workman' as defined under the labour laws. Such question was dealt with by this Court as follows:-

"3. The present petitioner also is a Branch Manager of Muslim Commercial Bank, performing the duties of managerial and supervisory nature. It is not in the last Branch alone but, according to para. No.3 of his grievance petition (pp.65), he has all along been working as Branch Manager at different stations since November, 1979. Learned High Court was, therefore, justified in holding, in the light of the above referred judgment of this Court, that the petitioner was not a "workman" and hence the Labour Court lacked jurisdiction to entertain his petition under section 25-A of the Industrial Relations Ordinance, 1969.

4. The arguments of the learned counsel that the branch in which the petitioner was last posted, was a small branch, is altogether out of context. The size of a branch has no nexus with the nature of duties of the Manager, which always remain of managerial and supervisory nature. It would be ridiculous to observe that the Manager of a large branch would not be a "workman" and that of a small branch would be. There being no force in the petition, it is hereby dismissed and leave to appeal refused."

6. On the other hand, learned ASC for the respondent has referred to the case of Mahmood Hussain Larik and others v. Muslim Commercial Bank Limited [2009 SCMR 857]. This case was heard by a three-member bench of this Court where two of the members who were in majority, *inter alia*, dealt with the question as to whether OG-III in the bank could be considered as a 'workman' or not and came to the conclusion that such officers, in view of the nature of work performed by them were not 'workman'. However, his lordship Sabihuddin Ahmed, J., one of the members of the said bench gave his dissenting note. Learned ASC for the respondent has relied upon this dissenting note to support his case. Reliance of the learned ASC for the respondent on the dissenting note against the majority view, cannot give a foundation to this Court to base its decision in considering as to what was the decision of this Court in the case, the Court will always consider the majority view that prevailed in the case and not the dissenting note given by one of the judges of the bench. This is well established law and it is unnecessary to cite any precedent for it.

7. The very evidence which the respondent recorded before the Labour Court, as read by us, did not refer to any function of the respondent that could be considered to be mainly of manual or clerical nature rather the functions which he performed and also stated in his evidence were of OG-II and Manager of the branch and those were mainly of managerial and supervisory nature and under no circumstance could they be considered to be that of a 'workman' more particularly, when the respondent in his evidence has stated that he was issuing drafts and cheques,

opening of accounts, closing of cash with signature of second officer, depositing of cash in strong room and locking the same are the those which need independent application of mind and making of decisions for that the drafts and cheques are not issued in routine when they are also to be signed. Similarly, opening of bank accounts, depositing of cash in the strong room and locking the same are the functions which are mainly of the Manager and not that of a 'workman'. Further, during arguments, provision of Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, was also referred to, which provides as follows:

"9(1) Where a customer or financial institution commits a default in fulfilment of any obligation with regard to any finance, the financial institution or, as the case may be, the customer, may institute a suit in the Banking Court by presenting a plaint which shall be verified on oath, in the case of a financial institution by the Branch Manager or such other officer of the financial institution as may be duly authorized in this behalf by power of attorney or otherwise".

This provision shows that the branch Manager of the bank is competent to file a suit on behalf of the bank and the person, who is authorized by law to file a suit on behalf of a bank in the Court of law could not be considered to be a 'workman'. In this regard, reference may further be made to the provision of Rule 1 Order XXIX CPC, which is as follows:

"Subscription and verification of pleading: In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case."

8. The cumulative effect of the evidence available on record, judgments of this Court referred to above, the provision of the Financial Institutions (Recovery of Finances) Ordinance, 2001 and Rule 1 Order XXIX CPC amply establish that the respondent,

as an officer OG-II and Manager of the branch, was not a 'workman'. Thus, the Labour Court did not have jurisdiction to entertain his Grievance Petition, which on this very ground was liable to be dismissed. Having come to conclusion that the Labour Court did not have jurisdiction in the matter, thus, the Tribunal also lacked jurisdiction to deal with the matter and, therefore, the very exercise of remanding the case to the Tribunal for deciding the same on merits will be a futile exercise.

9. For all the above reasons, we are of the considered view that the impugned judgment was not in consonance with the evidence available on record, the law pronounced by this Court and other legal provisions cited above, thus the same is not sustainable. Consequently, the appeal is allowed and the impugned judgment dated 19.03.2014 passed by the High Court is set-aside.

JUDGE

JUDGE

Bench-II
ISLAMABAD
11.04.2019
APPROVED FOR REPORTING
Hashmi

JUDGE

In the very evidence which the respondent recorded before the Labour Court, as read by us, did not at all refer to the work that he actually performed in that Bank as OG-II and Manager of the branch was predominantly of manual or clerical nature, which is the requirement under the law for holding a person to be as 'workman' rather as noted above, the function that he has admitted to be performing as OG-II and branch Manager predominantly shows that he was performing work that of an officer and manager which under no circumstance to be considered to that of a 'workman'.