

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Ijaz ul Ahsan  
Mrs. Justice Ayesha A. Malik  
Mr. Justice Syed Hasan Azhar Rizvi

**CIVIL PETITION NO.4980 OF 2021**

[Against judgment dated 06.08.2021 passed by the Islamabad High Court, Islamabad in WP No.776 of 2021]

Muslim Commercial Bank Limited ...Petitioner(s)

*Versus*

Rizwan Ali Khan and others ...Respondent(s)

For the Petitioner(s) : Mr. Muhammad Shoaib Rashid, ASC  
(via video link, Lahore)

For Respondent No.1 : Mr. Zubair Hussain, ASC

Date of Hearing : 10.11.2023

**JUDGMENT**

**Ayesha A. Malik, J.** Through this Civil Petition, the Petitioner, Muslim Commercial Bank, Limited (**Petitioner-Bank**), impugns judgment dated 06.08.2021 of the Islamabad High Court, Islamabad (**High Court**) whereby Constitutional petition filed by the Petitioner-Bank was dismissed, and Respondent No.1 (**Respondent**) was declared a workman.

2. Brief facts of the case are as that the Respondent was employed by the Petitioner-Bank on 15.11.1996 as a Cashier. Over time, he was promoted to OG-III and then OG-II. In 2006, upon the then bank manager's sudden resignation, the Respondent was given charge of the Skardu Branch on an officiating charge basis. Subsequently, on account of allegations of misappropriation, disciplinary proceedings were initiated against the Respondent and he was ultimately dismissed from service on 21.04.2008. Aggrieved, the Respondent challenged the dismissal order before the Northern Areas Chief Court, Gilgit, through WP No.36 of 2008, which was accepted vide judgment dated 12.11.2008. However, upon appeal, the Supreme Appellate Court, Gilgit Baltistan, vide judgment dated 19.10.2009, set aside the said judgment for want of jurisdiction. The Respondent then

invoked the jurisdiction of the Labour Court at Islamabad through a grievance petition under Section 41 of the Industrial Relations Act, 2008 (**IRA, 2008**) . However, the grievance petition was disposed of vide order dated 19.12.2009. Aggrieved, the Respondent challenged the said order before the High Court through WP No.1053 of 2010 and the High Court dismissed the petition vide judgment dated 20.05.2015 on the ground that the Respondent was not a workman. The Respondent challenged the judgment of the High Court dated 20.05.2015 before this Court through CPLA No.2360 of 2015. This Court vide order dated 02.12.2016 converted the CPLA into an appeal and remanded the matter to the Labour Court for determination of the status of the Respondent, particularly, if he falls under the definition of a workman. During the pendency of the *lis*, the Industrial Relations Act 2012 (Act No.X of 2012) (**IRA, 2012**) was promulgated on 14<sup>th</sup> March, 2012. Following this enactment, the Respondent approached the National Industrial Relations Commission, Islamabad (**NIRC**) by filing a petition under Section 33 of the IRA, 2012. The NIRC accepted the Respondent's petition vide judgment dated 03.03.2020 and set aside the dismissal order. The Petitioner-Bank challenged the judgment dated 03.03.2020 before the Full Bench of the NIRC which was dismissed vide judgment dated 20.01.2021. The Petitioner-Bank then challenged the judgment of the Full Bench before the High Court through WP No.776 of 2021 which was also dismissed vide the impugned judgment with costs of Rs.500,000/- to be paid by the Petitioner-Bank to the Respondent.

3. The grievance of the Petitioner-Bank before us is that the Respondent does not fall within the definition of a workman as he was an officer working as OG-III and then OG-II, executing duties of the branch manager at one of the branches of the Petitioner-Bank. It is argued that the Respondent's duties were neither manual nor clerical as he claims, rather they were managerial and administrative in nature and as such, neither the Labour Court nor the NIRC had the jurisdiction to adjudicate upon the Respondent's grievance petition. The counsel for the Petitioner-Bank submits that the impugned judgment as well as the judgments of the NIRC and the Labour Court relied on selective evidence i.e., letter dated 03.04.2006 (Ex.R/6) and transfer letter dated 12.05.2006 (Ex.R-10) while totally ignoring the evidence produced by the Petitioner-Bank which included a series of documents (Ex.R/2 to Ex.R/16) which demonstrated that the Respondent was not a workman but an officer tasked with managerial responsibilities. He

also contends that the impugned judgment wrongly characterized the Respondent as a low-income cashier, a classification that contradicts both the evidence and the assertions made by the Respondent in his submissions before the Labour Court. Based on this characterization of the Respondent as a poor cashier, embroiled in prolonged litigation by the Petitioner-Bank for over thirteen years, the High Court imposed costs on the Petitioner-Bank to the tune of Rs.500,000/- and that such attribution is unjustified being misconceived and against the record. The counsel for the Petitioner-Bank further argues that the interpretation of workman and what it entails, as inferred in the impugned judgment, contradicts the legal precedents established by this Court.

4. The counsel for the Respondent relies upon the impugned judgment and maintains that the Respondent was a workman as his routine work was making entries in different ledgers by hand, and verification of signatures and that he did not have any power to hire or fire anyone nor could he impose any punishment on anyone. He argues that the Respondent was merely serving as a branch manager on officiating charge basis at the time the allegations of misappropriation were levelled against him, which had led to his dismissal. He asserts that the Respondent has persistently contested this matter since his dismissal, and his grievance was finally redressed through the impugned judgment, therefore, the same should be upheld.

5. The fundamental issue before this Court is whether the Respondent is a 'workman' under the IRA 2008, which definition was adopted by IRA, 2012 which is the law in the field. The word 'workman' has been defined in Section 2(xxxiii) of the IRA 2012, which reads as follows:

*"worker" and "workman" mean person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment are express or implied, and, for the purpose of any proceedings under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity*  
(emphasis supplied)

The IRA, 2012 divides employment into two broad categories being workman and employees, with the former doing clerical or manual work

and the latter doing managerial, administrative or supervisory work. In the event of a grievance, by a workman, of unfair labour practices,<sup>1</sup> the workman can invoke the jurisdiction of the Labour Court or NIRC for redressal of their grievance. The fundamental requirement for such invocation is that the grievance must be of a person employed in an establishment as a workman. The question as to who is a workman has been considered by this Court time and again in various cases. It has been consistently held that evidence must be produced to establish the nature of work and functions of the aggrieved claimant, particularly to show that the work is manual or clerical and not managerial or supervisory.<sup>2</sup> It has been emphasized that the court has to give due consideration to the cumulative effect of the evidence in the context of the nature of work that the workman claims he was doing so as to determine if he is a workman and not rely on piecemeal evidence. For a claimant to be categorized as a workman, his designation alone is not relevant and cannot be considered conclusive evidence of his work status rather, it is the pith and substance of his duties and functions which must be manual or clerical.<sup>3</sup> When understanding further the definition of '*worker*' and '*workman*,' mere reliance on the fact that it is routine work does not make one's functions and duties clerical or manual and is not sufficient to establish the workman status. Manual and clerical work involves physical exertion as opposed to mental or intellectual exertion. Furthermore, even routine work can involve the exercise of initiative, imagination, direction and supervision while maintaining registers, submission of reports, preparing of vouchers and statements and such jobs cannot be termed as being that of a workman simply because they are routine work. The judicial consensus of the Court with respect to the determination of the work status is clear such that the court must analyze the nature of the actual duties and functions of the employee to ascertain whether he falls within the ambit of the definition of *worker* or *workman* for which collective evidence must be examined to ascertain whether the duties were supervisory or managerial or whether they are manual or clerical.<sup>4</sup> Therefore, in determining the work status, the overall nature of duties assigned to that person along with the functions of the job and the manner in which he performs his duties must be brought onto evidence and must

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<sup>1</sup> Section 31 of the IRA, 2012

<sup>2</sup> Habib Bank Limited v. Gulzar Khan and others (2019 SCMR 946)

<sup>3</sup> National Bank of Pakistan v. Anwar Shah and others (2015 SCMR 434)

<sup>4</sup> Abdul Razzaq v. Messrs Ihsan Sons Limited and 2 others (1992 SCMR 505)

be duly considered. With respect to the Bank-employees, this Court has settled that duties such as issuing cheque books, checking ledgers and preparing statements of accounts are not merely manual or clerical tasks, and do not fall within the works of a workman as they involve the exercise of discretion and decision-making.<sup>5</sup>

6. To determine whether a person is a workman is a finding of fact, routed in evidence and the person who approaches the court on the basis of an averment that he is a workman carries the initial burden of proof to establish that he is a workman.<sup>6</sup> To emphasize, when dealing with the question of burden of proof in establishing the status of the workman, this Court has consistently held that such burden lies on the person claiming to be a workman.<sup>7</sup> It is the bounden duty of a person who approaches the Labour Court to demonstrate through evidence the nature of duties and functions, and to show that he is not working in any managerial or administrative capacity and that he is not an employer. In the absence of such evidence, a grievance petition would not be maintainable before the Labour Court for lack of jurisdiction.<sup>8</sup> Moreover, it has been established that this burden of proof is to be discharged by the claimant through documentary and oral evidence supporting his claim that the nature of his work is, in fact, manual or clerical.<sup>9</sup> This requires the production of evidence, documentary or oral, which shows the nature of duties and the functions of the claimant pursuant to his claim that he is a workman. It has been clarified that even if there does not exist the power to hire or fire any person, the nature of the job as performed by the person must be evident from the holistic view of the record produced and that it has to be determined through overall record whether he was employed as a workman doing manual and clerical work and whether he was discharging his functions in a managerial and supervisory role.<sup>10</sup> Accordingly, it's vital for the court to consider all the evidence and to ascertain the duties and functions of the person claiming to be a workman and to ensure that the workman has discharged his burden with the required evidence. When it involves bank employees, duties and functions are documented as is daily work, which should be brought before the court in evidence.

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<sup>5</sup> Ganga R. Madhani v. Standard Bank Ltd. and others (1985 SCMR 1511)

<sup>6</sup> National Bank of Pakistan v. Punjab Labour Court 5 Faisalabad and 2 others (1993 SCMR 672)

<sup>7</sup> National Bank of Pakistan v. Anwar Shah and others (2015 SCMR 434)

<sup>8</sup> Ibid. (2015 SCMR 434)

<sup>9</sup> Shahi Bottlers (Pvt) Ltd. v. Punjab Labour Appellate Tribunal, Lahore and others (1993 SCMR 1370)

<sup>10</sup> Dilshad Khan Lodhi v. Allied Bank of Pakistan and others (2008 SCMR 1530)

7. In order to establish his case, the Respondent claimed before the NIRC that he was appointed as a cashier and was promoted to branch manager in OG-III and then to OG-II. However, he argues that since he was never given any power of attorney as a branch manager nor did he have the power to hire or fire anyone, for all intents and purposes, he was a workman under the IRA, 2012. The courts below accepted the argument of the Respondent while relying on letter dated 03.04.2006 (Ex.R/6) and the fact that the Respondent did not have any power of granting leave nor could he appoint any person and that his duties were manual and clerical in nature. The impugned judgment also relied on letter dated 03.04.2006 (Ex.R/6) and transfer order dated 12.05.2006 (Ex.R/10) to conclude that the Respondent is a workman being a poor cashier. We have examined the documentary evidence produced by the Respondent, which does not establish the duties and functions of the Respondent neither does it establish that he was working in a clerical position. Merely relying on office letter dated 03.04.2006, related to officiating charge (Ex.R/6) and transfer order dated 12.05.2006 (Ex.R-10), is insufficient to determine the status of the Respondent.

8. In view of the judgments of this Court, we examined the evidence produced by the Petitioner-Bank in support of its contention that the Respondent is not a workman. Although as per letter dated 03.04.2006 (Ex.R/6), the Respondent was assigned officiating charge of bank manager but his transfer order dated 12.05.2006 (Ex.R/10) shows that he was appointed as a bank manager at the Sakardu Branch of the Petitioner-Bank which clearly shows his appointment as the bank manager where he had been performing his managerial duties. It is also noteworthy that in the said branch, at that time, one Zakir Hussain had been performing duties as a cashier as depicted from the joining report dated 12.07.2006 (Ex.R/11). An official posting order dated 05.05.2006 (Ex.R/8) also shows that the Respondent was OG-III/Gen. Banking Officer in Sakardu, which position is also reflected in the official posting orders dated 08.05.2006 (Ex.R-9) and 12.05.2006 (Ex.R/10) that the Respondent was OG-III in the Sakardu Branch. More importantly, his performance evaluation report for the year 2007 (Ex.R/12) shows that the Respondent was working as OG-II/bank officer and his work included supervision and guidance; he was being assessed on the basis of management skills and not on the basis of clerical skills. The record clearly reflects that the Respondent was involved in financial

management, people management, processes and controls, customer focus and operational efficiency. List of duties dated 14.04.2006 (Ex.R/17) assigned to the Respondent shows his control of internal working, development of branch deposit, advances, marketing, etc. In this context, the Petitioner-Bank also relied on the list of duties dated 14.04.2006 (Ex.R/16) assigned to the Respondent which included control of internal working, development of the branch deposit, advances, KB accounts opening which was totally ignored. Interestingly, the Respondent in his grievance petition before the Labour Court himself claimed that he was an OG-II/banking officer, meaning that he was a management level officer but the nature of his job being that of a cashier and even this fact was not examined by the court. These documents were produced in evidence by the Petitioner-Bank but were clearly ignored by the Single Member Bench and then Full Member Bench of NIRC and then by the High Court. It appears that the entire thrust of the decisions rendered was on the limited understanding that a workman is a person who does not enjoy the power to hire and fire and that he does routine work and does not have a power of attorney issued in his favour. In our opinion, this understanding is not only against the law but also totally against the principles established by this Court in the above cited judgments, which required the Respondent to establish his status as a workman through evidence.

9. We also note that neither of the aforementioned forums examined the nature of duties and functions of the Respondent nor did they examine the nature of work that he discharged on a daily basis. Simply placing reliance on him not being able to hire or fire or not having a power of attorney is not sufficient evidence for the purposes of determining the status of a workman. The Respondent did not establish the nature of his work or his duties and his emphasis remained on what he did not have the authority to do. In terms of the settled dicta of this Court, it is the pith and substance of the work that determines the status of a workman as duties and functions vary from one establishment to another. Hence, it is necessary that oral and documentary evidence be placed before the court to establish workman status. While proving the status of a workman, is fact finding based on evidence, the courts are required to evaluate the evidence in support of the fact finding and determine whether the factual conclusions follow from the evidence and the standard of proof. The Labour Court and NIRC failed to analyse the evidence before them and ignored the

established principles on how to establish workman status and the High Court, thereafter, affirmed those orders without considering the law and the evidence in the case.

10. Under the circumstances, this Petition is converted into an appeal and allowed. The impugned judgment dated 06.08.2021 and the judgments of the NIRC dated 20.01.2021 and 03.03.2020 are set aside.

**JUDGE**

**JUDGE**

**JUDGE**

Islamabad  
10.11.2023  
'APPROVED FOR REPORTING'  
Azmat/Alizeh A. Meer\*