

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE YAHYA AFRIDI
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO.6117 OF 2021

(Against the Order dated 23.09.2021 passed by
the Peshawar High Court, Peshawar in
W.P.No.503-P/2021)

Aman Ullah

...Petitioner

VERSUS

United Bank Limited through President and others

...Respondents

For the Petitioner: Qazi Jawad Ehsan Ullah, ASC
Syed Rifaqat Hussain Shah, AOR

For Respondents: N.R.

Date of Hearing: 02.10.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the judgment dated 23.09.2021 passed by the learned Single Judge of the Peshawar High Court ("**High Court**") in W.P.No.503-P/2021 whereby the Writ Petition filed by the petitioner was dismissed.

2. The short-lived facts of the case are that the petitioner was performing his duties as Machine Operator at United Bank Limited ("**Bank**") and after rendering 25 years' service he was promoted to Officer Grade-II ("**OG-II**"). He was issued a charge sheet on account of some irregularities in certain transactions carried out under his supervision. Subsequently an inquiry was conducted and as a result, the petitioner was terminated from service *vide* letter dated 23.08.2013. Being aggrieved and dissatisfied, the petitioner filed a Grievance Petition under Section 33 of the Industrial Relations Act, 2012 ("**IRA**") before the National Industrial Relations Commission, Islamabad, Bench Office at Peshawar ("**NIRC**"), however his Grievance

Petition was returned by the Single Member of the NIRC due to a lack of jurisdiction. The petitioner challenged the order of the Single Member of the NIRC by dint of appeal under Section 58 of the IRA before the Full Bench of the NIRC, which was also dismissed *vide* order dated 27.11.2020. The predominant question before the NIRC, as well as the learned High Court was whether the petitioner was a 'workman' under Section 2 (xxxiii) of the IRA or employed in a supervisory, administrative or managerial capacity.

3. The record reflects that the petitioner was posted as Manager at UBL, Ashraf Road Branch, Peshawar and also had the power of attorney of the Bank and two other persons, namely Muhammad Ali, (Operation Manager OM), and Zahid Gul, (Chief Teller), both of whom were performing their duties under his supervision. All the Courts below concurrently held that he was performing his managerial/supervisory duties and could not be considered a 'workman' who may agitate a grievance under the IRA before the NIRC.

4. According to the Section 2, clause (xxxiii) of IRA, the definition of worker and workman is as under:-

xxxiii "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.

5. The provision for redress of individual grievances (Chapter-VI-Settlement of Disputes) provided under Section 33 of the IRA accentuates that only a worker may bring his grievance in the NIRC with respect to any right guaranteed or secured to him by or under any law, or any award or settlement for the time being in force, and in adjudicating and determining a grievance, the Commission shall go into all the facts of the case and pass such orders as may be just and proper in the circumstances of the case. It is clear beyond any shadow of doubt that only a worker may approach the NIRC for redress of his

grievance after fulfilling the other prerequisites provided under Section 33 of the IRA.

6. According to Chambers, 21st Century Dictionary (page 833) "Manager" means someone who manages, especially someone in overall charge or control of a commercial enterprise, organization, project, etc. whereas under the Words and Phrases, (Permanent Edition 26 at Pages 366 & 369 "Manager" is one charged with the management, direction or control of an affair, undertaking or business. [Hodges v. Bankers Surety Co., 152 Ill.App. 372]. The designation "Manager" implies general power and permits a reasonable inference that the employee so designated was invested with general conduct and control of employer's business [Gillis v. Great Atlantic & Pacific Tea Co., 27 S.E.2d 283, 285, 223 N.C. 470, 150 A.L.R. 1330; Manning v. Lamb, D.C.Mun.App., 89 A.2d 882, 884]. While in Black's Law Dictionary, (Tenth Edition), Page 1104, Manager, means someone who administers or supervises the affairs of a business, office, or other organization.

7. It is a well settled exposition of law that the mere nomenclature of an assigned post is not relevant in determining the status of an employee and assessing whether he is performing the duties of a worker or workman, or a manager, officer or supervisor, rather the paramount and predominant consideration is the nature of the job, and if any employee claims that he was performing the duties of a worker/workman, the burden lies on him to discharge if he claims contrary to the job description assigned to him separately or by means of appointment letter or subsequently made any change in the job description through up-gradation or promotion which detached or estranged the status of employee from workman to managerial or supervisory post so in all fairness and evenhandedness, the litmus test is the nature of job actually being performed rather than the nomenclature of the job simpliciter. It is also a matter of record that the petitioner during his cross examination admitted that he took the charge of Manager for Ashraf Road Branch UBL w.e.f., October 2012, and that the Operation Manager (OM) and Chief Teller were both his subordinates. He further admitted that his functions included managing, coaching and monitoring of staff. It was also his job to physically verify and check vouchers and cash at the time of closing of the Branch every day. During further cross examination, the petitioner

admitted that in light of the powers granted to him in the power of attorney, he used to supervise, cancel and pass instruments during the course of his daily work.

8. We have also gone through the indenture of the Officer's Sub-Power of Attorney available at page 82 of the paper book, which shows the following powers:

"1. To open and operate on Current, Overdraft, Loan, Cash Credit or other account or accounts in the name of the Bank or deposit any money with or borrow or obtain recommendation, money or facilities upon or without security from any Bank or Banks or from the State Bank of Pakistan or any firm, person or Company in Pakistan or elsewhere.

2. To draw, make accept, execute, endorse, discount, rediscount, retire and negotiate bills, hundies, drafts, cheques, warrants, promissory notes and other negotiable instruments.

3. To buy, sell, hypothecate, pledge, mortgage, endorse and transfer Government Securities, Municipal, Port Trust and Improvement Trust Bond or the Bonds or Securities or Debentures issued by any other public body or corporation and shares of Joint Stock Companies or other statutory corporation and all other securities and execute and sign or join in Letters of Guarantee and any form of indemnity or indemnities.

4. To receive deposits, to sign receipts and to give valid and effectual discharges for and in the name of the Bank.

5. To receive and hold in safe custody any kind of securities or other movable property whatsoever.

6. To recover and take possession of and manage all lands, houses, buildings and other property mortgaged to or otherwise belonging to the Bank and to let on lease or otherwise manage the same and to make sale and dispose of all lands, houses, goods, merchandise and property of every description, whether belonging to the Bank absolutely or in trust or as security, and for any such purpose to exercise all such powers and authorities and adopt proceedings as the Bank might or could exercise.

7. To purchase or take on lease or other terms any lands, houses or buildings for the purpose of offices or premises suitable for carrying on the business of the Bank at any place and to build, alter and furnish any offices, houses or premises.

8. To assign and re-assign Policies of Insurance standing in the name of the Bank or in which the Bank is interested in any way, to file proofs of claims and to recover any sum or sums that may become due to the Bank.

9. To commence, prosecute, continue and defend all actions, suits or legal proceedings whether civil, criminal or revenue including proceedings to procure or establish the bankruptcy or insolvency of any person or firm or liquidation or winding up of any company to compromise or refer to arbitration any claims or disputes either in such suits or proceedings or otherwise, to appoint Solicitors, Advocates, Pleaders, Vakils and other legal agents, to make sign, verify, execute, complaints, petitions, Written Statements, Memorandum of Appeal, applications, tabular statements, Vakalatnamas, Warrants of Authority or any other papers, Writings or documents expedient or necessary in the opinion of the Attorney to be made, signed, executed, verified, presented or filed.

10.To buy and sell silver and gold coins, bullion and currency notes, traveler's cheques, and currency notes of Pakistan or any currency in accordance with the regulations in force from time to time.

11.To advance money of the Bank on security or otherwise in accordance with the limits sanctioned by the Board of Directors of the Bank or by any authorized Director, or other authorized officer or within the discretionary powers allowed to the Attorney by the Board of Directors or any authorized Director, of the Bank, on such terms as to rate of interest, repayment and security or otherwise as the said Board or any of the aforesaid persons may sanction or authorize.

12. To do generally all acts, deeds and things not herein specifically mentioned which are necessary or requisite or expedient to carry on and manage the business of the Bank or which be necessary or requisite or expedient for the better and more effectively doing and performing the several acts, deeds and things aforesaid or incidental thereof.

II. For and in the name of the Bank to do, execute; transact and perform alone and singly and without joining any other attorney or Officer of the Bank the following acts or any of them, namely:-

(a) In respect of all cheques and bills drawn or endorsed in favour of the Bank or otherwise payable to the Bank to endorse them as payable to bankers of the Bank for credit of the Bank's Account or Accounts with such bankers or for collection.

(b) To discharge such cheques and bills for payment through the, Bankers' Clearing House or otherwise.

(c) To confirm endorsements of clients, constituents and customers of the Bank or other parties in all cheques, bills, drafts, telegraphic transfers, pay slips, pay orders dividend and interest warrants and vouchers and other negotiable or mercantile or other instruments.

(d) For and in the name of the Bank to certify that the proceeds of any cheques, bills, drafts, telegraphic transfers, pay slips, pay orders dividend and interest warrants, vouchers, negotiable or mercantile instruments or other instruments have been or will be credited the account with the Bank as specified in the certificate, and

(e) To endorse Bills of Exchange, Hundies, Bills of Lading, Dock and Warehouse warrants and other Shipping Documents, Railway Receipts and other negotiable or transferable instruments for the purpose of discharging the same.

III.AND the Bank doth hereby agree to ratify and confirm all and whatsoever the said Attorney shall lawfully do or cause to be done by virtue of this power, it being declared that all acts, deeds and transactions of the Attorney shall, notwithstanding any prior revocation or cancellation of this power, be valid and effectual, unless such revocation shall have been previously notified to the person or persons acting or dealing with the Attorney".

9. The petitioner has unequivocally admitted his job description as manager and few persons were also subordinate to him. The powers conferred upon the petitioner of such nature and responsibility that could only be granted to a person having the status of manager, officer or the person having the category of supervisory duties. It is self-explanatory from the gist of powers delegated in the indenture of the sub-power of attorney, clauses 1 to 12, that such wide-ranging and comprehensive powers have been conferred upon the petitioner which

are quite sufficient to determine his status *vis-à-vis* the nature of duties. All courts below after proper appreciation of facts rightly held that the petitioner was not 'workman', hence he could not maintain a grievance petition in the NIRC.

10. In the case of Abdul Razzaq Vs. Messrs Ihsan Sons Limited and 2 others (1992 PLC 424), this Court reiterated the dictum laid down in the case of General Manager, Hotel Intercontinental, Lahore, and another v. Bashir A. Malik and Others PLD 1986 SC 103 in which it was held that the test for determining the question whether an employee is a workman within the meaning of various statutes in the field of labour legislation is well-settled. The consensus of judicial opinion seems to be that it is the nature of the work done by the employee that would be essential and fundamental consideration for determining the question and not his designation which is not conclusive. The question to be examined is whether manual or clerical work is incidental to the main work or a substantial part of it, so that the fact that a person employed in a supervisory capacity does some manual or clerical work as ancillary or incidental to such employment has been held not to bring him within the ambit of the definition. The main features or the pith and substance of his employment must be manual or clerical before the definition is attracted. In the case of National Bank Of Pakistan Vs. Punjab Labour Court No.5, Faisalabad and 2 others (1993 SCMR 672), it was again held that whether a person is a workman within the purview of 'clause (xxviii) of section 2 of the 1RA, can be determined not on the basis of the designation of his post, but on the basis of the duties which he was performing. It was further held that the burden of proof that respondent No.3 was a workman was on him, which he failed to discharge. While in the case of National Bank of Pakistan and another Vs Anwar Shah and others (2015 SCMR 434), it was held that where a person approached a Labour Court for redress of his grievance claiming himself to be a workman and such status of workman was denied by the employer, it became a bounden duty of such person to demonstrate through evidence that the nature of his duties and functions were that of a workman and not in a managerial or administrative capacity and that he was not an employer and unless such categorical evidence was led by such person, he would not be considered to be a workman and his grievance petition would not be maintainable before the Labour forum. At this juncture, we would also

like to quote the judgment rendered by this Court in the case of Habib Bank Limited (HBL) Vs. Gulzar Khan (2019 SCMR 946) where this Court relied upon the admission of an employee during cross-examination where he admitted that he was promoted as OG-II by HBL where he worked as Manager of the Sharifabad Branch and his duties included the issuing of drafts, issuing of cheques, opening of accounts, closing of cash with signature of second officer, depositing of cash in the strong room. After overall consideration of evidence available on record, this Court reached the conclusion that he was not performing clerical duties and due to the duties being of a managerial and supervisory nature, under no circumstances could he be considered a 'workman'. We have also considered the indenture of power of attorney issued in favour of the petitioner in the case in hand and the powers conferred upon the petitioner cannot be considered the powers that could have been conferred on a person performing clerical duties. The nature of responsibilities and duties mentioned in the power of attorney to a great extent depict that the petitioner was performing his managerial and supervisory duties.

11. The learned counsel for the petitioner cited the case of Muslim Commercial Bank Limited (MCB) and others Vs. Muhammad Shahid Mumtaz and another (2011 SCMR 1475). In this case also the respondent was in OG-II and posted as Branch Manager at MCB. On charges of misconduct he was dismissed from service, hence he filed a Grievance Petition in the Labour Court which was allowed with the direction to reinstate him in service with all back-benefits. The MCB challenged the Order in the Lahore High Court but the appeal was also dismissed, so as a last recourse they filed an appeal in this Court and, while considering the nature of duties of the respondents, this Court held that the respondent was not a 'workman' the judgments of the two Courts below could not be maintained. Ultimately the appeal was allowed and the judgments of both the Courts below were set aside by this Court. In this case also a power of attorney was executed in favour of the respondent, but the counsel for the petitioner in the present case tried to take the benefit of this judgment on the plea that in the power of attorney referred to in the reported judgment, the employee was conferred the powers of hiring and firing which are were available to the petitioner in the case in hand, therefore he insisted that the petitioner was a 'workman' despite performing his duties as a

manager. It is neither necessary nor mandatory that an employee may be considered in the category of manger, officer or supervisor only when he has been vested with hiring and firing powers, but again in the pith and substance, his status is to be determined keeping in mind the nature of duties and in the case in hand, the powers conferred to the petitioner including his admission are enough to hold that he was performing managerial duties.

12. In the wake of the above discussion, we do not find any illegality or perversity in the impugned judgment passed by the learned High Court. This Civil Petition is dismissed and leave is refused.

Judge

Judge

Judge

Islamabad
2nd October, 2023
Khalid
Approved for reporting.