

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE YAHYA AFRIDI
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO.2997 OF 2021

(Against the Judgment dated 24.03.2021 passed by the Islamabad High Court, Islamabad in W.P.No.3312/2020)

United Bank Limited (UBL) through its President and others
...Petitioners

VERSUS

Jamil Ahmed and others
...Respondents

For the Petitioner: Mr. Umer Abdullah, ASC

For Respondents: Mr. Faridullah, ASC

Date of Hearing: 06.10.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the Judgment dated 24.03.2021 passed by the Islamabad High Court, Islamabad ("**High Court**") in W.P.No.3312/2020 whereby the Writ Petition filed by the petitioners was dismissed.

2. The transient facts of the case are that *vide* office order dated 13.12.2012, the services of the respondent No.1 were terminated by the petitioner's management and, being aggrieved, the respondent No.1 filed a Grievance Petition in the Labour Court which was allowed *vide* judgment dated 23.01.2017. Consequently, the termination order dated 13.12.2012 was set aside with a further direction to reinstate the respondent No.1 in service. The petitioners challenged the order of the Labour Court before the Full bench of the National Industrial Relations Commission ("**NIRC**") through Appeal No.12A(49)/2019-P, but *vide* Order dated 11.08.2020, the appeal was dismissed by the Full Bench of the NIRC. Being aggrieved, the petitioners approached the High Court

and filed Writ Petition No.3312/2020 and raised various grounds to assail the findings of the Court recorded below, but the Writ Petition was also dismissed *vide* Judgment dated 24.03.2021, hence the petitioners have filed this petition for leave to appeal.

3. The learned counsel for the petitioners argued that the respondent No.1 was performing managerial duties, hence the Grievance Petition under the provision of Industrial Relations Act, 2012 ("**IRA**") before the Labour Court was not competent. He further argued that certain documents were available for the proper perusal of the Courts below to verify whether the respondent No.1 was covered within the definition of 'worker or 'workman' or whether he was performing managerial duties according to his job description.

4. Conversely, the learned counsel for the respondent No.1 fully supported the judgments rendered by the Courts below and contended that there are three concurrent findings recorded against the petitioners, therefore at this juncture the findings of fact recorded in the Labour Court cannot be reopened. It was further contended by him that the respondent No.1 was not performing any managerial or supervisory duties, hence he was covered under the definition of worker or workman provided under the IRA.

5. Heard the arguments. The bone of contention in the matter relates to the employment status of the respondent No.1 i.e. whether he was actually a 'worker'/'workman' or he was performing any supervisory or managerial duties. The letter of termination depicts that the allegation against the respondent No.1 was unauthorized withdrawals from customers' accounts while he was posted as Customer Service Operation Manager and, subsequently, posted as Branch Manager with effect from 04.06.2012. An inquiry was conducted into the allegations mentioned in the charge sheet and the Inquiry Officer found him guilty of charges, therefore, he was terminated from service.

6. We have also gone through the charge sheet issued by the management and the reply filed by the respondent No.1 demonstrates certain admissions made by the respondent No.1 with regard to his employment status and promotion as Branch Manager. In order to adjudicate whether a person is performing his duties as a 'workman' or 'worker', or Manager, Officer and or duties of supervisory nature, the

pith and substance of the adjudication predominantly depends on the nature of duties and not on the basis of the nomenclature of the post. In order to thrash out this controversy, the appropriate appraisal for assistance can be made by dint of oral and documentary evidence produced by the parties in the court of first instance. In case the employee asserts that he was performing duties as workman and such contentions are opposed by the management, then in such eventuality the burden of proof lies upon the employee to substantiate that he was in fact performing the duties of a 'workman' and the mere nomenclature of the post does not affect his status of employment as worker or workman.

7. Cases in courts are decided on the preponderance of evidence led in the case by the parties, and in order to reach a just and proper conclusion, the oral as well as the documentary evidence should have been considered but we acutely feel that certain documentary evidence interrelated the status of employment vis-à-vis the admission of the respondent No.1 were not properly adverted to by the NIRC and the High Court while deciding the appeal and the Writ Petition.

8. Under Section 59 of the IRA, any person aggrieved by an award or decision given or a sentence or order determining and certifying a collective bargaining unit passed by any bench of the Commission, may, within thirty days of such award, decision, sentence or order prefer an appeal to the Commission. The Full Bench may confirm, set aside, vary or modify the decision or sentence passed and shall exercise all the powers required for the disposal of an appeal. In addition to the above powers, the Full Bench of the NIRC may, on its own motion, at any time, call for the record of any case or proceedings under this Act in which a Bench within its jurisdiction has passed an order for the purpose of satisfying itself as to the correctness, legality, or propriety of such order, and may pass such order in relation thereto as it thinks fit, provided that no order under this section shall be passed on its own motion revising or modifying any order adversely affecting any person without giving such person a reasonable opportunity of being heard. In the case in hand the original proceedings were commenced and decided in the Labour Court, but due to promulgation of IRA for trans-provincial organizations/establishments, the appeal filed by the petitioners was heard by the Full Bench of the NIRC.

9. It is a well settled exposition of law that a right of appeal is a right of entering into a superior court and invoking its aid and interposition to redress the error of the forum below. It is essentially a continuation of the original proceedings as a vested right of the litigant to avail the remedy of an appeal provided for appraisal and testing the soundness of the decisions and proceedings of the courts below. It is always explicated and elucidated that the right of appeal is not a mere matter of procedure but is a substantive right. While considering matters in appeal, the appellate courts may affirm, modify, reverse or vacate the decision of lower courts. Fundamentally, the remedy of appeal is elected on the grounds of attack that the court below committed a serious error in the verdict on law and facts, including the plea of misreading or non-reading of evidence led by the parties in support of their contention. It is the duty of the Court and Tribunal to adhere to the applicable law in letter and spirit. It is the foremost duty of the appellate court to determine whether the oral and documentary evidence produced by the parties for and against during the trial fortifies and adds force to the weight of decision or not. No doubt the Trial Court possesses the distinctive position to adjudge the trustworthiness of witnesses and cumulative effect of evidence led in the *lis* and, in turn, the appellate court accords deference to the findings and such findings are not overturned unless found erroneous or defective. It is not the domain or function of appellate court and/or High Court to re-weigh or interpret the evidence, but they can examine whether the impugned judgment or order attains the benchmark of an unflawed judgment; and whether it is in consonance with the law and evidence and free from unjust and unfair errors apparent on the face of record. However, if the concurrent findings recorded by the lower *fora* are found to be in violation of law or based on flagrant and obvious defect floating on the surface of record, then it cannot be treated as being so sacrosanct or sanctified that it cannot be reversed by the High Court in the Constitutional jurisdiction vested in it by Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as a corrective measure in order to satisfy and reassure whether the impugned decision is within the law or not and if it suffers any jurisdictional defect, in such set of circumstances, the High Court without being impressed or influenced by the fact that the matter reached the High Court under Constitutional jurisdiction in pursuit of the concurrent findings recorded below, can cure and rectify the defect. In the present

case we reached to the conclusion that the learned Full bench NIRC and learned High Court disregarded some substantial piece of oral and documentary evidence vis-à-vis jurisdiction which goes to the roots of the case that needs to be thrashed out for safe administration of justice.

10. This Civil Petition was fixed for the hearing on 06.10.2023, when it was converted into an appeal and allowed *vide* our short order as under:-

“For reasons to be recorded later, we convert this petition into appeal and by allowing the same, set aside the impugned judgment dated 24.03.2021 passed by the Islamabad High Court, Islamabad and the order dated 11.08.2020 passed by the National Industrial Relation Commission, Islamabad (NIRC). The matter is remanded back to the NIRC for deciding the same afresh within a period of three months after the receipt of certified copy of this Order.”

Above are the reasons assigned in support of our short order.

Judge

Judge

Islamabad
6th October, 2023
Khalid
Approved for reporting.