

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

**PRESENT:**

MR. JUSTICE MUNIB AKHTAR  
MR. JUSTICE MUHAMMAD ALI MAZHAR  
MR. JUSTICE SYED HASAN AZHAR RIZVI

**C.P.L.As.121 and 122 of 2024**

(Against judgment dated 06.12.2023 passed by the Peshawar High Court, Peshawar in Civil Revisions No.916-P and 917-P of 2021.)

**And**

**C.M.As.507 and 509 of 2024**

(Stay)

National Bank of Pakistan through its ... **Petitioners /**  
President, Karachi and others **Applicants**  
In both cases

Vs

Muhammad Shafiq	:	C.P.L.A.121/2024 and C.M.A.507/2024
Muhammad Tahir	:	C.P.L.A.122/2024 and C.M.A.509/2024
	...	<b>Respondents</b>

For the Petitioners / : Mr. Faisal Mahmood Ghani, ASC  
Applicants

For the Respondents : Mr. Amjad Ali, ASC

Date of Hearing : 09.01.2025

**ORDER**

**Munib Akhtar, J.:** The facts, as relevant for present purposes, may be stated briefly. There are two leave petitions but the legal issue raised is the same. Both the respondents were employees of the petitioner Bank. In terms of the disciplinary code made applicable by the Bank to its employees proceedings were initiated against them and ultimately their services were terminated. They instituted suits in the civil courts at Peshawar challenging their termination and the relief sought was that they be reinstated in the Bank's service. The suits were contested and ultimately decreed. The dismissals were set aside and orders of reinstatement made. The bank filed appeals which were dismissed and that led to the filing of revision petitions in the High Court, which were also dismissed by means of the impugned judgment. The bank has now petitioned this Court for leave to appeal.

2. As noted in the order of 15.04.2024, the principal ground taken by learned counsel for the bank is that the relationship between it and the respondents was contractual in nature, being that of master and servant (i.e., employer and employee) and that the law was well settled that while an aggrieved employee could maintain (in suitable situations, which it was denied was the case at hand) a suit for damages, no order of reinstatement could in any case be made by the court. That was so because it would tantamount to forcing a servant on an unwilling master. A number of cases were cited and relied upon.

3. The leading case in this area, which is invariably cited as the "root" authority for the proposition advanced by learned counsel, is the judgment of a five member Bench reported as *Malik and Haq and another v Muhammad Shamsul Islam Chowdhury* PLD 1961 SC 531 ("*Shamsul Islam Chowdhury*"). This was in fact one of the cases cited by learned counsel on 15.04.2024. All other decisions, directly or indirectly, refer or relate back to this decision. This case is now almost 65 years old. It was rendered in the middle of the last century and now the first quarter of the next century is almost over. The (respectful) question therefore is whether this decision, and the principle of law laid down therein (see, in particular, at pp. 534-5), continues to be fit for purpose? This is a question that requires attention for a number of reasons, which include the following.

4. The state of the national economy was radically different in 1961 as compared to today. This is an era dominated, at least in the formal sector, by large corporations in various areas of economic life, which employ several hundreds if not thousands of persons placed all over the country and even abroad, and for whom that employment is not just a contract of service but a career, to be pursued over the working life of the employee. Many of those corporations have detailed terms and conditions of service relating in particular to disciplinary matters, which are elaborate codes in themselves, rivaling, e.g., the rules and regulations that govern civil servants. This is also now the age of the Internet and even in relation to what is called the "gig economy" (where the position of the hired/engaged person is at its most precarious) the courts in many jurisdictions have held that the relationship cannot

be reduced to that of master and servant. Even that ancient concept, at least as set out in traditionalist terms and certainly as appears (respectfully) to be in the mind of the Court in *Shamsul Islam Chowdhury*, appears to be outmoded. The "master" now may well not be some identified person or small group of persons who themselves rely on the personal skill of the "servant" but rather an impersonal corporation containing many layers of employment and management, and where decisions of service (and in particular termination thereof) may well be taken by persons some levels below what would, in law (in traditional terms) be regarded as the "mind" of the "master". It therefore appears to us, with respect, that the law in this area may have ossified and become outmoded, being no longer congruent with the demands and requirements of modern times. The rule laid down in *Shamsul Islam Chowdhury* is ultimately of an equitable nature and it is of the essence of equity that it must retain flexibility and the discretion of the Court (in the judicial sense) so that the law can appropriately develop, and continue to develop, with the passage of time. Unfortunately, and we say this with great respect, the rule at hand has prima facie (barring a few developments, which do not however address the issue at the most fundamental level) now acquired a rigidity that is a negation of the discretion that is the hallmark of equity, and become little more than a self denying ordinance that bars the healthy and organic development of the law so that it remains fit for purpose and the modern age. Developments in other common law jurisdictions also ought not to be ignored. Another aspect that needs to be kept in mind is the explosion in litigation and concomitant delays in the court system. In *Shamsul Islam Chowdhury* the dispute arose in or around 1952 and by 1960 the litigation, fully settled and decided, had already reached this Court with decision following less than a year later on the appeal. In such a context it perhaps could make sense for limiting an aggrieved employee, whose cause of action was found to be justified in law, to a claim for damages, although even there the well known admonition of the Privy Council in 1872 that "the difficulties of a litigant in India begin when he has obtained a decree" ought to be kept in mind. In present times, and keeping in mind the undoubted (though regrettable) backlog of cases the travails of the aggrieved employee, in our respectful view, may well

prima facie be multiplied by a rigid adherence to the rule relied upon. It should also be noted that in the context of the modern economy the termination of service, in particular by a large corporation, may well in practical terms make a person effectively unemployable even if the termination is later found to be unlawful by a court and compensated by an award of damages. In such circumstances, the decree, when (and if) ultimately honored, may well be cold comfort only.

5. In our respectful view therefore it is now long overdue that matters be reappraised at a fundamental level and even, perhaps, on the basis of recourse to first principles. Accordingly, leave to appeal is granted to, inter alia, consider the following question:

Whether the rule laid down by this Court in the *Shamsul Islam Chowdhury* decision and others that follow and/or lay down or affirm the same or similar principle are, and continue to be, fit for purpose or require any modification, replacement or substitution and if so, in what manner and to what extent?

6. Since the *Shamsul Islam Chowdhury* decision is of a five member bench it will require a larger bench of appropriate strength to consider the question for which leave to appeal has been granted. Accordingly, the office may place these matters before the committee constituted under s. 2 of the Supreme Court (Practice and Procedure) Act, 2023 for appropriate orders.

7. Appeal paper books to be prepared on the existing record, to be supplemented only with the permission of the Court. The interim order made on 15.04.2024 to continue till further orders.

Judge

Judge

Judge

Islamabad, the  
9<sup>th</sup> January, 2025  
Naveed/\*

Approved for reporting