IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT
Mr. Justice Gulzar Ahmed, HCJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sayyed Mazahar Ali Akbar Naqvi

AFR
Civil Appeal No.82 of 2016
Against order dated 30.09.2015 of High Court of Sindh at Karachi, passed in C.P.No.D-95 of 2011.

Allied Bank Limited ***...Appellants***

VERSUS

Zulfiqar Ali Shar & others ***...Respondents***

For the Appellant(s) : Mr. Shahid Anwar Bajwa, Sr.ASC

For Respondent No.1 : Syed Rafaqat H. Shah, AOR

Date of Hearing : 26.04.2021

JUDGMENT

IJAZ UL AHSAN, J-. This appeal by leave of the Court arises out of an order of High Court of Sindh at Karachi dated 30.09.2015. Through the impugned order, a constitutional petition filed by the Appellant-Bank was dismissed.

2. Briefly stated the facts necessary for disposal of this Appeal are that Respondent No.1 *(Zulfiqar Ali Shar)* was serving as a Cashier with the Appellant-Bank. An FIR was lodged against him on behalf of the Appellant-Bank on May, 2001 on the allegation of misappropriation of Rs.9,00,000/-. He was taken into custody. After a

proper trial, the Special Court (Offences in Banks) Sindh at Karachi convicted and sentenced him to undergo rigorous imprisonment for 12 years and also pay fine. In 2006, the Appellant-Bank after having waited for almost 5 years and considering that the Respondent had been convicted by a Court of competent jurisdiction made a determination that his services would no longer be available during the period of his imprisonment and accordingly served on him a letter of termination dated 13.04.2006. The said termination letter was sent to him by Registered AD and also through the Superintendent of Jail. There is no dispute that the Respondent received the said letter.

3. It appears that against his conviction, the Respondent filed an Appeal before the High Court of Sindh. Such appeal was allowed and the Respondent was acquitted of the charges vide judgment of the Sindh High Court dated 10.08.2007. After his acquittal, the Respondent served a grievance notice on the Appellant-Bank under Section 46(3) of the Industrial Relations Ordinance, 2002. Upon his grievance not being redressed, he filed a grievance petition before the Labour Court. His grievance petition was allowed and he was directed to be reinstated with all back benefits. The appeal filed by the Appellant-Bank before the Labour

Appellate Tribunal failed and the constitutional petition before the High Court also met the same fate vide impugned order dated 30.09.2015.

4. Aggrieved of the said impugned orders/judgments, the Appellant-Bank approached this Court by way of a Civil Petition in which Leave to Appeal was granted on 19.01.2016 in the following terms:-

> *"Respondent No.1 (the respondent) was arrested in connection with some criminal case registered against him and was convicted and sentenced by the learned Trial Court. In the meantime, having been arrested the appellant/bank served upon the respondent a termination letter dated 13.4.2006, which postulates that as he was a Cashier in the bank and such post cannot be kept vacant for an indefinite period of time, therefore termination simpliciter was conveyed to him. In the criminal matter upon appeal before the learned High Court the respondent has been acquitted of the charge(s) and released from jail on 17.12.2007 and within a period of 20 days thereof after serving a grievance notice upon the appellant he challenged the noted termination order before the learned Labour Court and has succeeded at all the forums below.*
>
> *2. The question whether in the facts and circumstances of the present matter there was/is a bar upon the petitioner (organization/establishment) to await the acquittal or release of its employee for an indefinite period of time and has no right to terminate the services needs consideration. Leave is granted to consider the above."*

5. The learned counsel for the Appellant-Bank submits that the lower *fora* failed to appreciate the fact that case of the Respondent was not one of dismissal, but of termination simpliciter in exercise of powers available to an employer in terms of Order 12(3) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 *[hereinafter referred to as* ***"the Ordinance"****]*. He maintains that it is settled law that if an employee is incarcerated, the employer is not required to wait for his release for an indefinite period, keep his post vacant and, reinstate him into service in case he is ultimately acquitted of the charges. He further maintains that a bulk of authorities on the subject point towards requiring the employer to wait for a reasonable period of time only (which varies from fifteen days to six months) and thereafter exercise its powers, if it so wishes, in terms of Order 12(3) of the Ordinance. He further maintains that the lower *fora* have committed grave error in coming to the conclusion that it was a case of dismissal from service for which due process of law including holding of a regular inquiry was required to be followed. He further submits that reinstatement of the Respondent with all back benefits from the date of his termination was unwarranted by the law and the lower *fora* erred in law in failing to appreciate the intent, purpose and spirit of Order 12 (3) of the Ordinance,

which is meant to safeguard the employer against a situation where an employee is imprisoned as a result of an order of a Court of competent jurisdiction and is no longer available to perform his job for extended periods of time.

6. The learned AOR for Respondent No.1, on the other hand, has defended the impugned order. He submits that once having found that termination of the Respondent was illegal, the lower *fora* including the High Court had no option but to reinstate him into service with all back benefits. He maintains that even if on account of absence of the Respondent for 6 years, the Appellant-Bank had filled his post, the principle of last in and first out (LIFO) would be attracted and the incumbent could be adjusted elsewhere while returning the post to the Respondent where he was serving when he was accused, arrested, convicted and thereafter incarcerated for 6 years. He further maintains that the Appellant is a large Bank and it has the capacity to adjust the person who had later been employed against the post of the Respondent elsewhere, which was the just and fair thing to do.

7. We have heard the learned ASC for the Appellant-Bank, the learned AOR for Respondent No.1 and have gone through the record. The facts in the

matter are not disputed. The Respondent was accused of an offence, an FIR was lodged against him and he was arrested and later convicted by a Court of competent jurisdiction. He remained incarcerated for more than 6 years during which time he was not available to perform services as a Cashier for the Appellant-Bank for which he had originally been employed. Furthermore, the Respondent was holding the said post at the time when he got involved in the criminal offence. It is also not denied that he was acquitted and, served a grievance notice within 20 days of his acquittal and thereafter, went to the competent forum for redressal of his grievance.

8. The questions of law requiring determination by this Court are as follows:-

i. *Whether the termination of services of the Respondent required the process of issuing a show cause notice, holding a regular inquiry and the passing of a proper order by the competent authority after granting him a personal hearing or, was it termination simpliciter not requiring the above process?*

ii. *Whether an employer is required to wait indefinitely and keep a post vacant till such time that all appellate remedies are exhausted and the employee is not available to perform services against the post that he had held?*

Before answering the aforenoted questions, it would be useful to examine the letter of termination admittedly received by the Respondent and consider its contents in light of the provisions of Order 12(3) of the Ordinance. For ease of reference, the relevant portions of letter of termination of the Respondent are reproduced below:-

> *"You were issued Charge Sheet No. ROH/ADMN/2001/586.*
> *ROH/ADMN/2001/587 &*
> *ROH/ADMN/2001/20/587-A all dated May 23, 2001 for allegedly committing acts of misconduct. Since you were behind bars, no inquiry could be conducted.*
>
> *It has been brought to the attention of the Management that you have been sentenced to imprisonment for a period of 12 years by a Court of law. The job of cashier in the bank cannot be kept vacant indefinitely. There appears to be no probability of your being released in the near future. It has therefore been decided to terminate your employment by way of termination simplicitor.*
>
> *Your employment is therefore hereby terminated with immediate effect. In addition to your legal dues, if any you shall be paid substantive pay of one month in lieu of period of notice.*
>
> *Position of your legal dues and liabilities shall be communicated in due course of time."*

The Appellant-Bank had apparently relied upon the provisions of Order 12(3) of the Ordinance to terminate the services of the Respondent which for ease of reference is reproduced below:-

> *"12(3).The services of a workman shall not be terminated, nor shall a workman be removed, retrenched, discharged or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken. In case a workman is aggrieved by the termination of his services or removal, retrenchment, discharge or dismissal, he may [take action in accordance with the provisions of] [Section 33] of the [Punjab Industrial Relations Act, 2010 (XIX of 2010)] and thereupon the provisions of the said section shall apply as they apply to the redress of an individual grievance."*

A perusal of the termination letter clearly indicates that:-

i. The Respondent was categorically informed that, although he had been charge sheeted for allegedly committing acts of misconduct, no inquiry could be conducted because he was behind bars.

ii. The Respondent was informed that since he had been sentenced to imprisonment for a period of 12 years by a competent Court of law, the job of Cashier in the Appellant-Bank could not be kept vacant indefinitely.

iii. The Respondent's employment had been terminated by way of termination simpliciter which shows that he had not been dismissed from service for committing acts of misconduct for which he had earlier been charge sheeted.

iv. The Respondent was also informed that in addition to his legal dues, if any, he will be paid substantive pay of one month in lieu of period of notice.

9. It is clear and obvious to us that the lower *fora* misinterpreted the letter of termination as one of dismissal from service for misconduct which was not the case as is evident from the record as well as the contents of the letter of termination dated 13.04.2006. The only requirement for exercise of powers under Order 12(3) of the Ordinance is that where services of a workman are to be terminated, such action must be undertaken by an order in writing which must explicitly state the reasons for the action taken. The reasons so given are justiciable before a Court of competent jurisdiction. The question that arises is whether in exercise of powers under Order 12(3) of the Ordinance, where power of termination is "in simpliciter", and such order meets and fulfils the criteria given in Order 12(3), can a workman be reinstated into

service on the ground that charges of misconduct had not been established and that no regular inquiry was held against him. To our mind, the answer to the query is in the negative insofar as the requirement of law is limited to the extent of communication of the order in writing explicitly stating the reasons for such action. Such action, to our mind, cannot be set aside or declared illegal simply on the ground that termination of service can only be made on proof of misconduct after issuance of a show cause notice, conducting a regular inquiry and by orders of the employer after granting him a personal hearing. Such interpretation to our mind would negate the very object and purpose of Order 12(3) of the Ordinance which envisages that under certain circumstances, the employer can terminate the services of a workman "in simpliciter" by giving explicit reasons justifying such termination. Had the lower *fora* found that the reasons given for termination in simpliciter namely incarceration of the Respondent and his non-availability as a Cashier for a period in excess of 5 years was not sufficient, valid or appropriate, the said letter could have been set aside. However, it needs to be emphasized that in such case the scope of inquiry of Labour Court, Labour Appellate Tribunal as well as the High Court was to be limited to the extent of determining whether or not the reasons given by the Appellant-Bank justifying its action

for termination in simpliciter were explicit, clear enough and valid. The lower *fora* could not have gone on the premise that the Respondent had been dismissed from service for misconduct and since the process for dismissal from service for misconduct namely a show cause notice, regular inquiry and order of dismissal had not been followed therefore the order of termination of service in simpliciter was not sustainable and was liable to be set-aside.

10. We are therefore of the view that the course of action adopted by the lower *fora* and, the premise on which all three orders/judgments were based, was built on an incorrect foundational basis and, the superstructure of successive judgments built on a faulty foundation must fall.

11. We find that this question was examined by the National Industrial Relations Commission in the case of Fazal Dad v. Attock Electric Supply Company Limited **(1977 PLC 364)** where it was held as follows:-

> *"4. The letter dated 25-6-1973 (Annexure 'H' to the respondent's reply) whereby the services of the petitioner were terminated by the respondent shows that his services were terminated for the reason that he did not resume his duties within the given time which clearly shows that his services were not terminated on account of any*

misconduct. I therefore accept the respondent's plea that it was a case of simple termination of service as provided for in Standing Order 12. As far as the question of its reasonableness or unreasonableness is concerned, I agreed with the contention raised by the respondent that he was not bound to wait for the petitioner's release from jail particularly when it could not definitely be said as to when the petitioner would be released from custody. The next question which now arise is that whether the respondent was bound to reinstate the petitioner after his return from jail. According to me the respondent was not bound to reinstate him after his release from custody as he had neither given such undertaking to the petitioner nor he was bound under any law to follow such a course."

This issue was also examined by the Labour Appellate Tribunal Sindh in a case reported as Muhammad Ramzan v. M/s National Motors Limited **(1980 PLC 780)** where it was held as under:-

"Obviously, a person who has been awarded one year's imprisonment could not be in a position to attend his duties since after the expiry of his sentence or if the sentence is set aside or remitted. In such cases, it will be unreasonable to expect the management to keep the job of the workman vacant until he serves out his sentence or otherwise is released from Jail. If the workman happened to be a key person or holding a key post, his failure to attend to his

duties may have serious repercussions on the production and the work of the establishment. In such cases, I am of the view that right of the Management to terminate the services of the workman cannot be fettered or questioned. It may be pointed out that the respondent establishment did not dismiss the workman, but merely terminated his services."

12. The question of termination in simpliciter was also examined by a Division Bench of the Sindh High Court in a case reported as Sikandar Hayat v. Sindh Labour Appellate Tribunal **(1991 PLC 508)** where in somewhat similar circumstances as are present in the instant case it was held as follows:-

"The petitioner was involved in a case of moral turpitude in which he could get sentence up to life imprisonment and the petitioner being a Timekeeper, his post could not be left vacant indefinitely and, therefore, no fault can be found with the impugned order which appears to have been validly passed under Standing Order 12(1). Termination simpliciter of a workman is permissible under Standing Order 12 and the employer is only obliged to state reasons for such action taken by him. Such a procedure appears to have been followed in the present case. No doubt, an order of termination of services of an employee if tainted with mala fides or colourable exercise of power can be interfered with by the Court but the onus to establish the mala fides or colourable exercise of power would be on the workman himself."

In the case of Ahmad Barch v. Chairman, Pakistan Steel, Karachi **(2006 PLC (CS) 993),** the Federal Service Tribunal examined the question of exercise of powers under order 12(3) of the Ordinance and concluded as follows:-

> *"Appellant was arrested in connection with a murder case and it was uncertain as to the ultimate outcome of the criminal proceedings against the Appellant. Respondents waited for his release for fifteen months and five days which is reasonable time as they could not wait for the Appellant indefinitely. Appellant was released on 19-2-2000 i.e. nine months and two days after the original appellate order dated 17-5-1999. Respondents then terminated his services on the principle of termination simplicitor which action was strictly in accordance with a relevant labour laws i.e. Standing Order No.12(1) of West Pakistan Industrial and Commercial (Standing Orders) Ordinance (VI of 1968)"*

13. In order to examine the rights of the employer whose employees remain absent and unavailable to perform their services, we have examined the law in other jurisdictions in the context of similar provisions. In a case reported as M/s Indian Iron and Steel Company v. Their Workmen **(AIR 1958 Supreme Court 130),** the Indian Supreme Court while relying on earlier precedents and in the context of the Industrial Disputes Act, 1974

whose relevant provisions are similar to the provisions of Standing Orders Ordinance, 1962 came to the following conclusion:-

> *"It is true that the arrested men were not in a position to come to their work, because they had been arrested by the police. This may be unfortunate for them; but it would be unjust to hold that in such circumstances the Company must always give leave when an application for leaven is made. If a large number of workmen are arrested by the authorities in charge of law and order by reason of their questionable activities in connection with a labour dispute, as in this case, the work of the Company will be paralysed if the Company is forced to give leave to all of them for a more or less indefinite period. Such a principle will not be just; nor will it restore harmony between labour and capital or ensure normal flow of production. It is immaterial whether the charges on which the workmen are arrested by the police are ultimately proved or not in a Court of law."*

14. Having scanned the relevant law on the subject, we are mindful of the fact that in constructing and interpreting Statutes, the Court has first to look at the language of the law and interpret the same in accordance with the ordinary meaning and usage of the words. The context in which the said words have been used by the legislature as evident from the language of the provision itself can also be considered without adding to or subtracting anything from the same. In

case of lack of clarity, as a second step, the Court may look for the intent and purpose of the Lawmaker in using a particular language and words as evident from the language of the Statute. To our mind, the language of order 12(3) of the Ordinance admits of no interpretation except that services of a workman can be terminated by an order in writing which explicitly states the reasons for the action taken. The word explicit has been defined in the Oxford Dictionary as, *"stated clearly and in detail, leaving no room for confusion or doubt, fully revealed or expressed without vagueness, implication or ambiguity leaving no question as to meaning or intent"*. In Merriam Webster Dictionary, the word "explicit" has been defined as *"fully revealed or expressed without vagueness, implication, or ambiguity : leaving no question as to meaning or intent."* And in Black's Law Dictionary, the word "explicit" has been defined as *"not obscure or ambiguous, having no disguise meaning or reservation"*.

15. Considering the contents of the letter of termination dated 13.04.2006 in light of the provisions of order 12(3) of the Ordinance and in the facts and circumstances of this case, we are in no manner of the doubt that the reason of termination of Respondent's services was explicitly, clearly and unambiguously communicated to him and requirements of order 12(3) of the Ordinance had properly and adequately been met.

16. Having so held, we now revert to the questions posed by us in earlier part of the judgment. As regards the question whether the termination of services of the Respondent required the process of issuing a show cause notice, holding a regular inquiry and passing of an order by the competent authority after granting him a personal hearing or, was it termination in simpliciter not requiring the above process; we find that order of termination of services of the Respondent was in essence and for all intents and purposes, an order under order 12(3) of the Ordinance. Hence, it was a case of termination in simpliciter. The termination of the Respondent was not on account of misconduct and there was neither any requirement to issue a show cause notice, a charge sheet, regular inquiry and complete the process for dismissal on the ground of misconduct. Therefore, the High Court as well the lower *fora* wholly misdirected themselves and fell into error in treating the case of the Respondent as one of dismissal from service rather than termination in simpliciter.

17. As far as concerns the question whether an employer is required to wait indefinitely and keep a post vacant till such time that all appellate remedies are exhausted and the employee becomes available to perform services against the post for which he was employed, we hold that it is unfair and unjust to expect

an employer to wait indefinitely and keep a post vacant till such time that the employee has exhausted all legal remedies and in the meantime is either incarcerated or for any other reason unable or unwilling to join his duty and perform services for extended periods of time. In our opinion, an employer is only required to wait for a reasonable time which can vary on a case to case basis depending upon the nature of the job that the delinquent employee was performing and how long it can realistically be kept open and vacant without materially affecting the working of the employer. However, to our mind, in the absence of *mala fide* on the part of the employer a reasonable period should not ordinarily exceed a period of two months during which if an employee is unable to return to work his services can be terminated simpliciter in exercise of powers under order 12(3) of the Ordinance.

18. For reasons recorded above, we find that the impugned orders/judgments passed by the High Court as well as lower *fora* are based upon a mistaken and erroneous view of the law and an incorrect appreciation of facts and circumstances of the present case. These are therefore not sustainable. The same are accordingly set aside. The order of termination in simplicitor passed by the Appellant-Bank on 13.04.2006 is accordingly

affirmed, restored and upheld. Consequently, the Appeal is allowed.

sd/— HCJ
sd/— J
sd/— J

ISLAMABAD, THE
26.04.2021
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~~Not~~ *Approved For Reporting*