

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Muhammad Ali Mazhar

CIVIL PETITION NO.1165 OF 2021

[Against the order dated 18.2.2021, passed by the Lahore High Court, Lahore, in W.P. No.53502 of 2019]

***President, Zarai Taraqiati Bank Limited,
Islamabad and others***

...Petitioners

Versus

Agha Hassan Khursheed

...Respondent

For the Petitioners : Mr. Adnan Ahmed Khawaja, ASC
Mr. Jawaid Masood Tahir Bhatti,
AOR (absent)
Hassan Raza, Head Legal, ZTBL
Muhammad Jibran, Law Officer

Respondent : In person

Date of Hearing : 03.01.2022

ORDER

GULZAR AHMED, CJ.- The petitioners bank had advertised the post of Assistant Vice President (**AVP**) (Operations) in which the qualification required was that of Master Degree in Business Administration/Commerce with at least seven years experience or Graduate/Post Graduate degree with twelve years experience in Banking Operations in large commercial or financial organizations. The respondent applied for the said post and it is admitted by him, who is present in person that he has mentioned in his application, the qualification of holding of BA Degree in Punjabi, Political Science, Journalism so also MBA (Marketing). The case of the

respondent was processed for appointment as AVP by the petitioners bank by mentioning both his qualifications of BA as well as MBA and such is mentioned in the list of shortlisted candidates (at page 93 of the paper book) where the name of the respondent is mentioned at Serial No.3. The name of the respondent appears at Serial No.51 in the Interview Evaluation Sheet, where he has been granted 55 marks for the Professional Competence and overall 74 marks. At page 104 of the paper book, again the name of the respondent appears at Serial No.51 in which his qualification is mentioned as BA (Punjabi, Political Science) from Bahauddin Zikria University and MBA (Marketing) from Cresset College, Lahore with previous experience of service as AVP, My Bank Limited, from 1996 to date and again overall 74 marks have been given to him. The respondent was issued Offer of Employment letter dated 11.07.2009 as AVP. Clause (f) of Item No.vi of the Offer of Employment letter provides as follows:

- “f) In case any information/document provided by you at the time off seeking appointment in the Bank or after joining proved to be incorrect/fake, necessary departmental proceedings would be initiated against you, which may result in termination of your services from the Bank. The above action shall not preclude the criminal proceedings that the Bank may initiate against you for recovery of its ducs/assets which you may owe to the Bank at the time of termination.”

It seems that vide Office Memorandum dated 21.04.2015, the respondent was granted promotion from the post of AVP to Vice President with effect from 01.04.2015. This Office Memorandum is available at page 111 of the paper book. In the meantime, another Office Memorandum dated 17.09.2009 was issued, which is available at page 117 of the paper book by which the respondent was asked to provide academic credentials duly attested/authenticated by the Higher Education Commission (HEC) along with Declaration of Assets and Liabilities (on enclosed format) and attested copy of CNIC, at the earliest for record. The respondent submitted along with letter dated 28.09.2015, degrees/certificates verified from the HEC and in the Column mentioned Degrees/Certificates, MBA and in the Column of department, it is mentioned as GSU, Lahore. This letter appears at page 137 of the paper book. The respondent admits that he has signed this letter and submitted the MBA Degree verified from HEC to the petitioners bank. The petitioners bank through letter dated 15.10.2015 addressed to the Director, Attestation and Accreditation, HEC sent the MBA Transcript submitted by the respondent for verification along with copy of CNIC of the respondent. HEC responded to the petitioners bank letter vide letter dated 26.10.2015 available at page 141 of the paper book where in the Columns provided at Serial No.1, Ticket No.271260, January 21, 2010 the remarks are OK. At Serial No.2, against the name of the respondent, Ticket No.209089 dated February 09, 2015, MBA transcript of the respondent was found not attested by HEC and it was

further informed that Ticket No.209089 reflected on MBA transcript held by the respondent was originally allotted to B.Sc. (Hons) degree held by one Irfan Yaqub. The respondent was issued Charge Sheet dated 19.01.2018 along with the Statement of Allegations that he has failed to supply Degree of MBA despite lapse of 13 years and he obtained BA Degree from Bahauddin Zakria University, Multan during Session 1996 and MBA Degree from Cresset College, Lahore during Session 2002, while he remained posted in My Bank, Karachi from 16.06.1996 to 20.07.2009 as AVP. He was informed that he violated clause (f) of Item No.vi of the Offer of Employment letter dated 11.07.2009. The respondent submitted reply to the Charge Sheet/Statement of Allegations, which he has dated as 02.03.2017 in the first page of the reply, but while under his signature, the respondent has mentioned the date of 02.03.2018. This reply of the respondent is available at page 152 of the paper book. It seems that in reply dated 31.10.2017 to a letter dated 26.10.2017 of the petitioners bank, the respondent has specifically mentioned as follows:

“Keeping in view the above narrated just and genuine facts it is again humbly requested that MBA Degree may please be deleted from my testimonial as well as in your record to avoid unnecessary correspondence as it is impossible for me for verification and submission of attest copy of my MBA degree at this belated stage.”

In his reply to the Charge Sheet and the Statement of Allegations, the respondent has stated as follows:

“Keeping in view the above narrated facts and figures it is humbly requested that I may be absolved from the charges levelled against me with the request that I may very kindly be waived off the condition to submit my extra qualification of MBA mentioned in my CV which may be deleted from my testimonial and from your record as already requested for which I shall be highly obliged and pray for your long life and prosperity.”

It seems that enquiry was conducted against the respondent on the Charge Sheet and the Statement of Allegations, where the charges against the respondent were found to be proved. He was issued a Show Cause Notice dated 10.04.2018 by the petitioners bank. The respondent filed reply dated 29.04.2018 to the Show Cause Notice. Vide letter dated 30.04.2018 of the petitioners bank, the respondent was asked to appear for personal hearing. The respondent filed Writ Petition No.222080 of 2018. On 28.06.2018, the High Court disposed of the writ petition with the direction that application (Annex-L) be decided strictly in accordance with law. It seems that no notice of the writ petition was issued to the petitioners bank rather the DAG was called to examine the file, who accordingly made statement that he has no objection if such direction is issued. Pursuant to the order dated 28.06.2018 of the Lahore High Court, the respondent was called for personal hearing vide letter dated 09.07.2018. The respondent again file writ petition No.226277

of 2018 against this letter of personal hearing dated 09.07.2018. This writ petition of the respondent was allowed by the High Court vide its order dated 17.06.2019 and notice of personal hearing dated 09.07.2018 was set aside and the petitioners bank were directed to hold a regular enquiry in which the person who appointed the respondent shall be associated. Pursuant to the order of the High Court dated 17.06.2019 vide Office Memorandum dated 07.08.2019 an Enquiry Committee was constituted to conduct fresh enquiry into the Charge Sheet and the Statement of Allegations dated 19.01.2018 against the respondent. The respondent through his Advocate, Mian Liaquat Ali, submitted objections dated 12.09.2019 on the constitution of the Enquiry Committee. On 17.09.2019, the respondent was issued final notice to appear before the Enquiry Committee. This final notice was again challenged by the respondent by filing of Writ Petition No.53502 of 2019 and through an order dated 20.09.2019, the High Court suspended the final notice dated 17.09.2019. Through a Circular dated 09.09.2020, the petitioners bank has abolished General Services Unit, Karachi and Lahore. Through Office Memorandum dated 14.09.2020, the respondent service was terminated on the ground of abolishment of General Services Unit, Karachi and Lahore. Such termination of the respondent was effected in terms of para 16(B) of HR Manual (2012) under Staff Regulations (SR)-2005. On 18.02.2021, the High Court passed the impugned order in Writ Petition No.53502 of 2019, whereby the petitioners were given one month's time to

conclude the enquiry in accordance with the observations and directions passed by the Court on 17.06.2019 in Writ Petition No.226277 of 2018. The respondent states that he has filed another Writ Petition No.18588 of 2021 in the Lahore High Court where he has challenged the letter of his termination.

2. The learned counsel for the petitioners contends that in the first place the enquiry being conducted by the petitioners bank against the respondent was to determine as to whether the respondent is at all entitled to payment of terminal dues for which Enquiry Committee was constituted but the respondent did not participate in the same rather submitted frivolous objections and filed the writ petitions one after the other due to which the enquiry could not be completed. The learned counsel further contends that the petitioners bank only has to pass final order in respect of the enquiry and the petitioners bank be allowed to pass the order to conclude the proceedings.

3. The learned counsel further contends that in the order dated 17.06.2019, the learned Single Judge of the High Court while setting aside notice of personal hearing dated 09.07.2018 has directed the petitioners to hold a regular enquiry in which the person who appointed the respondent shall be associated. The learned counsel contends that Mr. Zaka Ashraf, who was the then President of the petitioners bank, has appointed the respondent and the very appointment of Mr. Zaka Ashraf as President of the Bank in the case of Muhammad Iqbal Khattak vs. Federation of Pakistan (2010 CLD 1572), in a

petition for *quo warranto* was found to be without lawful authority and of no legal effect.

4. It seems that this judgment of the High Court was challenged in ICA No.211 of 2010 in which initially interim injunction was granted but subsequently the ICA was disposed of vide order dated 25.09.2014, against which Muhammad Iqbal Khattak filed Civil Petition No.2290 of 2014, which was dismissed vide order dated 06.01.2015. However, Mr. Zaka Ashraf resigned from the post of the President of the petitioners bank. The learned counsel further contends that the very order of associating the appointing authority of the respondent, who was Mr. Zaka Ashraf, in the enquiry is not possible at this point of time and even otherwise, such an order is *ex facie* a void order.

5. We note that such argument has been made by the learned counsel for the petitioners bank but the very order dated 17.06.2019 was not challenged by the petitioners and attained finality. However, we note that the observation of the High Court in the order dated 17.06.2019 that a person who appointed the respondent shall be associated in the enquiry, apparently, is not sustainable in law, for that, the enquiry is to be conducted by the petitioners bank, and whosoever is to be associated in such enquiry, is a matter which only the petitioners bank is competent to decide.

6. It is for the respondent, in case he wants to contest the enquiry and to produce any person, as a witness before the Enquiry Committee, he is well entitled to do so, but under no

legal norms the petitioners could have been directed to associate a person in the Enquiry Committee who had appointed the respondent. The very direction given by the High Court in the order dated 17.06.2019 is not supported by any law nor by any precedent and apparently, such direction has been passed merely on the asking of the respondent, which in itself will pollute the enquiry and also rob it of being independent and transparent. The constant presence of Mr. Zaka Ashraf, who had been President of the petitioners bank and also appointed the respondent, will unnecessarily bring influence on Enquiry Committee which is also likely to cause embarrassment and serious prejudice.

7. The respondent who has appeared in person before the Court has admitted that the Degree of MBA possessed by him is not recognized by any institution in Pakistan and it is also not recognized by HEC.

8. Under Article 187 of the Constitution of the Islamic Republic of Pakistan, 1973, the Supreme Court has been given power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it. This very power of the Supreme Court is very much inherent and could be exercised without being handicapped by any technicality or rule or practice, nor exercise of such power is dependent upon any application being filed by a party to the case. It is enough that it is brought to the notice of the Court, while hearing a case, that an order has been passed by a forum below which has bearing on the case and

causes injustice to one of the parties, and the Court will not be hesitant for a moment to correct such injustice. Reliance in this behalf may be made to the cases of The State through Director General, FIA, Islamabad v. Alif Rehman (2021 SCMR 503), Raja Khurram Ali Khan and 2 others vs. Tayyaba Bibi and another (PLD 2020 SC 146) and Imran Ahmad Khan Niazi vs. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly, Prime Minister's House, Islamabad and 9 others (PLD 2017 SC 265).

9. The direction to the petitioners bank to obtain presence of Mr. Zaka Ashraf in the enquiry being conducted against the respondent, thus, is an order which inherently is not equitable rather on its face appears to be not consistent with the well recognized legal principles of law and therefore, lacks any legal support. Thus, while exercising power under Article 187 of the Constitution, the direction of the High Court of associating the person who had appointed the respondent, in its order dated 17.06.2019 in Writ Petition No. 226277 of 2018, is, therefore, set aside.

10. The petitioners bank shall continue the enquiry and pass order within 15 days after complying with all codal formalities. The respondent shall be called by the petitioners bank, who will appear before the relevant authority.

11. No further opportunity to the respondent shall be provided by the petitioners bank for concluding and passing of the final order.

12. The impugned order is, therefore, set aside and the petition is converted into appeal and allowed.

Bench-I

Islamabad

03.01.2022

- ~~NOT~~ APPROVED FOR REPORTING

Mahtab/*