

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-1977 of 2022

Sajid Ahmed Khan V. Federation of Pakistan and others

1. For hearing of main case

Before;

Mr. Justice Muhammad Karim Khan Agha;

Mr. Justice Nisar Ahmed Bhanbhro.

Petitioner: Sajid Ahmed Khan,
Through M/s. Nosheen Tajamul,
Tajamul Hussain Lodhi, Advocates.

Respondent No.1&2: National Bank of Pakistan & another,
Through Ms. Sumiya, Advocate.
Ms. Wajiha M. Mehdi, Assistant Attorney General.

Date of Hearing: 03.06.2025.

Date of Judgment: 10.06.2025.

J U D G M E N T

Nisar Ahmed Bhanbhro, J. Through instant petition, the petitioner has challenged order dated 24.02.2022 passed by Appellate Committee of National Bank of Pakistan, comprising of Senior Vice President and Executive Vice President of National Bank of Pakistan Employees Disciplinary Wing HR Management Group, Karachi, whereby the departmental appeal filed by the petitioner against the order of dismissal from service dated 30.01.2017 was declined.

2. Succinctly stated, facts of petitioner's case are that he was appointed as 'Cashier' in National Bank of Pakistan through appointment order dated 17.04.1996 on the basis of academic qualification of Intermediate in Commerce. Petitioner was promoted to Officer Grade-III vide order dated 01.01.2004 and to Officer Grade-II vide order dated 21.02.2009. Petitioner performed his duties diligently, efficiently, honestly without any complaint from any corner. Petitioner was given a notice to furnish his academic qualifications vide letter dated 21.09.2016 which he submitted through Manager NBP, DHA Branch, Karachi wherein he disclosed that he possessed qualification of Intermediate only. Petitioner was given a charge sheet vide letter dated 04.04.2017 on the allegation that degree certificate of graduation in Commerce (B.Com) submitted by him in Bank on verification from University of Sindh, Jamshoro was found bogus. Petitioner replied to the charge sheet, denied allegations leveled against him with an assertion that he had never submitted alleged bogus

degree certificate. Petitioner was qualified to Intermediate Level only; he obtained all promotions on said qualification. Reply furnished by petitioner was found unsatisfactory, disciplinary proceedings were initiated against him which culminated in dismissal from service, Petitioner was dismissed from service vide office order dated 30.01.2017. Petitioner filed a grievance appeal before Competent Authority which remained undecided, despite several reminders. Petitioner filed C.P. No.D-7240/2021 before this Court which was disposed of vide order dated 16.12.2021 with directions to respondent National Bank of Pakistan to decide appeal filed by petitioner after giving him a proper hearing. Pursuant to directions of this Court, Petitioner was called by Competent Authority (Appellate Committee), he was heard in person, his appeal was dismissed vide order dated 24.02.2022 giving Petitioner a fresh cause to file instant petition.

3. On notices, Respondent National Bank of Pakistan through its authorized officer filed reply, asserting that petition was not maintainable as respondent National Bank was having non-statutory rules of service. Petitioner at the time of joining service in Respondent Bank disclosed his academic qualification as Intermediate, subsequently he filed mark sheet under roll No.16291, issued by University of Sindh with his annual performance appraisal form claiming that he had acquired B-Com degree in year 2016. Degree Certificate furnished by Petitioner was sent to University of Sindh for verification, University vide its letter dated 02.08.2016 issued by Assistant Controller declared that certificate submitted by Petitioner was 'BOGUS'. Petitioner was given show cause notice, charge sheet and disciplinary proceedings were conducted through regular enquiry committee, Petitioner was found guilty of misconduct, he was recommended for imposition of major penalty of 'DISMISSAL FROM SERVICE', accordingly petitioner was dismissed from service vide OFFICE ORDER dated 30.01.2017. Petitioner filed departmental appeal which was declined by competent authority vide order dated 16.02.2021. Petitioner thereafter filed C.P. No.D-7240/2021 before this Court concealing the fact that his departmental appeal was dismissed. This Court vide order dated 16.12.2021 disposed of the Petition, directed respondent Bank to accord right of personal hearing to petitioner and decide appeal in accordance with law. Pursuant to directions of this Court, Petitioner was called and heard in person on 14.01.2022, Departmental appeal was decided for the second time and declined vide order dated 24.02.2022. Petitioner in his last annual performance appraisal form for year 2015 - 2016 disclosed his academic qualification as B-Com and submitted B-Com degree Certificate in support, which on verification from concerned University was found bogus. Petitioner was found guilty of misconduct and dismissed from service after adopting due process of law. Petition was meritless and liable to be dismissed.

4. Ms. Nosheen Tajamul, Advocate for petitioner contended that petitioner served National Bank of Pakistan for a period of about 22 years with an unblemished career, without complaint from any corner. He did not obtain any benefit of alleged bogus B-Com degree from Bank; he sought promotions to next higher grade on the basis of seniority-cum-fitness with academic qualification of Intermediate; he did not submit any document showing his academic qualification as B-Com. National Bank of Pakistan at its own managed degree certificate of petitioner and sent it for verification to University. Petitioner never submitted any graduation Degree with Bank, throughout his carrier Petitioner relied upon and shown his academic qualification as Intermediate degree. She contended that no case of misconduct was made out; respondent bank had taken action of dismissal from service against Petitioner beyond the bounds of law which need to be reversed by this Court in its writ jurisdiction. Constitution Petition under Article-199 was maintainable as the impugned action was taken under the NBP Staff Service Rules, 1973 which were statutory in nature and were repealed through NBP Staff Service Rules, 2021. The dismissal order was issued under the 1973 Rules, therefore, writ petition was maintainable. She placed reliance upon the case of Muhammad Naeem v. Federation of Pakistan reported as 2023 SCMR 301; an unreported judgment of this Court in the case of Syed Muhammad Jaffer Zaidi v. Federation of Pakistan in C.P. No.D-5990/2023; an unreported judgment in the case of Muhammad Rehan v. Federation of Pakistan and others in C.P. No.D-1372/2022; the case of NBP Officers Welfare Association and others v. NBP and others in C.P. No.D-4598 of 2021. She prayed for allowing of this petition and setting aside of impugned order dated 24.02.2022.

5. Ms. Wajiha Mahdi, Learned Assistant Attorney General assisted by Ms. Sumiya, learned counsel for the National Bank of Pakistan contended that petition was not maintainable as NBP Staff Rules, 1973 stood repealed by NBP Staff Service Rules, 2021, which are non-statutory in nature, therefore, relationship of petitioner with respondent bank was that of master and servant, hence petition was not maintainable under Article-199 of the Constitution of Islamic Republic of Pakistan. She contended that petitioner had filed earlier petition before this Court which was disposed of with directions to respondent bank for deciding his appeal which was accordingly decided and declined. The petition is hit by doctrine of *resjudicata*, as such, barred under the law. Petitioner in his annual performance appraisal form for 2015-16 disclosed his academic qualification as graduation in commerce, he submitted mark sheet as proof of his qualification. The mark sheet submitted by petitioner was sent to University of Sindh Jamshoro for verification which was declared bogus and such letter dated 02.08.2016 was issued by the concerned University, therefore, disciplinary proceedings were initiated against petitioner in which he could not justify the submission of fake degree certificate, therefore, he was dismissed from service vide order

dated 30.01.2017. He preferred departmental appeal which too was declined vide order dated 16.02.2021. He was heard for the second time pursuant to the directions issued by this Court in C.P. No.D-7240/2021 but could not justify filing of bogus degree certificate. She contended that no case for indulgence of this Court was made out; petition involved factual controversy which cannot be addressed by this Court in its writ jurisdiction under Article-199 of the Constitution. She prayed for dismissal of petition.

6. Heard arguments, perused the material available on record.

7. Respondents have questioned the maintainability of instant petition, to address this issue, it is pertinent to mention that Petitioner was appointed as Cashier in year 1996 under NBP Staff Service Rules, 1973 approved by Federal Government, which were statutory in nature. Petitioner was proceeded for alleged misconduct under the provisions of the said rules and as a result of findings of disciplinary enquiry, he was dismissed from service under the said rules. The NBP Staff Service Rules, 1973 were replaced by the NBP Staff Service Rules, 2021. No doubt the 2021 rules were non-statutory in nature; employees inducted in service and action taken under 2021 rules will be governed by the principle of master and servant, 2021 rules did not have any retrospective effect, as such, services of the employees who were appointed under 1973 rules shall be governed by the said Rules. The NBP being a body corporate, its employees appointed under 1973 Rules shall be deemed to be public servants. Any action taken by the Respondent Bank against its employees under 1973 Rules shall be amenable to writ jurisdiction of this Court conferred under Article-199 of Constitution of Islamic Republic of Pakistan. In the case of petitioner, he was appointed in year 1996, he was proceeded for charges of misconduct and dismissed from service under 1973 rules, which were statutory in nature; writ petition filed by the petitioner was maintainable under the law.

8. The Hon'ble Supreme Court of Pakistan in the case of Muhammad Naeem (*supra*) has been pleased to hold as under:-

6. We are cognizant of the legal position that the NBP, being a statutory corporation, is amenable to the writ jurisdiction of the High Courts under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, and its employees when are governed or proceeded against under the statutory rules can also avail the recourse to the writ jurisdiction for the redressal of their grievances in respect of their service matters. However, this legal position does not merge the NBP, a separate juristic person, into the Federal Government, nor in any manner blur the distinction between NBP a Statutory Corporation and the

Federal Government, a constitutional body or in any manner turn the employees of the NBP into the employees of the Federal Government.

9. Adverting to the issue of dismissal from service, the petitioner was appointed as Cashier in Respondent Bank on the qualification of Intermediate Commerce. Minutiae of the reply filed by Respondent Bank revealed that Petitioner in his Annual Performance Appraisal Form for year 2015 – 16 for the first time disclosed his qualification as graduation in commerce (B.Com), he submitted transcript of B.Com Degree with appraisal form. Transcript Certificate submitted by Petitioner was sent to University of Sindh for verification, which was declared “BOGUS”. Petitioner was served with a show cause notice and a charge sheet for the misconduct as to why disciplinary proceedings might not be initiated against him and major penalty as provided under the rules be imposed. In reply to charge sheet contained in show cause notice, petitioner pleaded that he had never submitted graduation degree in the Bank, he was intermediate in commerce, he did not avail any benefit from Respondent Bank for alleged bogus graduation degree. Contention of petitioner that he did not file bogus degree stood denied from Respondent Bank, such denial found support through documentary evidence in the shape of annual performance appraisal form of Petitioner submitted by him along with alleged Bogus Degree for the year 2015 – 2016. Petitioner did not controvert the assertion of Respondent by filing rejoinder to the reply or by placing on record the alleged original annual performance appraisal form, wherein per claim of petitioner that he disclosed his academic qualification as Intermediate Commerce. Petitioner was proceeded under NBP Staff Rules 1973, for misconduct by constituting a regular inquiry committee wherein he was afforded ample opportunity to defend charge sheet but he failed. Petitioner failed to place on record any documentary evidence before this Court to rebut and demonstrate that he did not file alleged Annual Performance Appraisal Form for year 2015 – 16 declaring for the first time his qualification as Graduation in Commerce. Meticulous perusal of material on record revealed that petitioner did not allege in his departmental appeal as well as in reply to charge sheet that his appraisal form was substituted or manipulated or any of the officers of bank supervising his job were inimical to him so as to manage the bogus academic record to deprive him of job. Memo of petition is carefully perused, it is silent in that aspect, Petitioner did not allege malafides, ulterior motives, animosity or ill will against any of the officers of National Bank to believe that the petitioner was proceeded under some extraneous considerations. Respondent Bank on receiving transcript certificate sent it for verification to University of Sindh immediately, without any lapse of time, verification report submitted by University through Assistant Controller of Examination contained full particulars of petitioner including his parentage. As such at this stage no material favouring petitioner was available on record to say that accusation of misconduct was ill founded.

10. Petitioner asserted that he did not submit alleged bogus degree, Respondent Bank controverted such plea through documentary evidence in the shape of transcript and annual performance appraisal form submitted by petitioner himself. The pro and contra pleas agitated by the parties cannot be thrashed out except by leading evidence, such an exercise of either conducting an inquiry or trial cannot be undertaken by this Court in its writ jurisdiction conferred under article 199 of the Constitution. In order to establish the fact, that petitioner did not submit annual performance appraisal form showing his academic qualification as graduation or he did never ever submit the degree which was declared bogus by University of Sindh, petitioner ought to have availed the remedy before the forum, where he could have established his claim by leading evidence, enabling the Court/Forum to form an ultimate opinion with regard to alleged bogus degree and who was actually at fault. At the moment there are findings of fact available on record rendered by forum below to demonstrate that petitioner submitted alleged bogus degree certificate with an intention to derive benefit in future and he was found guilty of misconduct during disciplinary proceedings, as such, matter agitated by petitioner involved factual controversy and this Court cannot render verdict on the findings on disputed questions of fact under its writ jurisdiction, with an exception for situations where a substantial defect in reading of documentary evidence is pointed out.

11. In the case of Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar and others versus Shah Faisal Wahab reported in 2023 S C M R 1642 Honorable Supreme Court of Pakistan has been pleased to hold as under:

5. The extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 is intended to provide an expeditious remedy in a case where the illegality of an impugned action can be established without any elaborate enquiry or recording of evidence, but if some complicated or disputed question of facts are involved, the adjudication of which could only possible to be resolved and decided by the Courts of plenary jurisdiction after recording evidence of the parties, then obviously the High Court should not embark on to decide convoluted issues of facts.

12. In the case of Waqar Ahmed and others Versus The Federation of Pakistan through Cabinet Secretariat Establishment Division and others reported in 2024 S C M R 1877 Honorable Supreme Court of Pakistan has been pleased to hold as under:

The extraordinary jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution"), is destined to

dispense with an expeditious remedy in cases where the illegality or impropriety of an impugned action can be established without any exhaustive inquisition or recording of evidence, but if some convoluted or disputed question of facts are involved, the adjudication of which can only be determined by the Courts of plenary jurisdiction after recording evidence of the parties, then incontrovertibly the High Court cannot embark on such factual controversy.

13. Petitioner through instant petition has sought indulgence of this Court against the office order dated 24.02.2022 passed by the appellate authority on appeal preferred by Petitioner. Respondent Bank had earlier decided the appeal of Petitioner and order dated 24.02.2022 was passed pursuant to the directions issued by this Court vide order dated 16.12.2021. Surprisingly Petitioner did not challenge dismissal from service order dated 30.01.2017 in the present lis. When confronted to this legal position, Learned Counsel for Petitioner failed to justify, how instant petition was maintainable in absence of any relief being sought against order of dismissal from service, taken after full dressed trial through departmental inquiry. It would be a fallacy of thought to treat this Court as an appellate Authority against the orders passed by Departmental hierarchy, in matters relating to terms and conditions of service. This court cannot encroach upon the powers of executive by issuing writ in a run of a mill manner. To grant relief to an aggrieved person which is never sought by him from the court would tantamount to judicial overreach. The writ jurisdiction of this Court is corrective and supervisory in nature. Powers conferred to this Court under its writ jurisdiction are exercised in the cases where it is established that an entity discharging its functions in connection with the affairs of Federation or Province acted beyond the bounds of law and exercised the powers not vested in it, or the actions taken by the authority infringed fundamental rights of an individual guaranteed under the constitution or the authority at helm of the affairs acted in arbitrary manner, or findings of fact were capricious, perverse and illegal which resulted in grave injustice. To take disciplinary action under charge of misconduct against an employee are purely internal affairs of the department, which fall within the domain and prerogative of the authority. We have examined the impugned order dated 24.02.2022 carefully and we do not find any illegality or infirmity in the same warranting interference by this Court under its writ jurisdiction. As the matter pertains to alleged misconduct which is purely an internal administrative affair of the organization, this Court under its writ jurisdiction cannot interfere into the internal affairs of department relating to an issue of misconduct, as the concerned department being the custodian of record of its employee is always in a better position to probe into the allegations of misconduct, the scope of interference under writ jurisdiction is limited and restricted and only to the extent of cases involving breach of fundamental rights.

14. Petitioner was dismissed from service in 2017; he assailed dismissal order through first petition before this Court in year 2021 almost after four years, and this second petition was filed in year 2022 five years after dismissal order, even without seeking any relief against the said order of dismissal from service. This petition, therefore, suffered from laches, petitioner was required to agitate his grievance with promptitude but he slept over his rights; he was guilty of contumacious delay and lethargy, as such, cannot claim relief under the equitable writ jurisdiction of this Court, even otherwise the petition from the face of it appeared to be defective.

15. For what has been discussed herein above, Petitioner has failed to make out a case for indulgence by this Court under its writ jurisdiction. This petition being devoid of merits is dismissed along with listed applications. However, petitioner may avail the appropriate remedy in accordance with law. It is clarified that if any proceedings are instituted by the Petitioner, the concerned Court/Authority shall decide the matter independently on its own merits in accordance with law, without being influenced by any observation rendered by this Court in the instant lis.

JUDGE

Head of the Const. Benches

Ayaz Gul