

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C. P. No. D-3460 of 2025

(Mansoor Ahmed Khan v President National Bank of Pakistan & others)

Date

Order with signature of Judge

Before:-

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:-16.04.2026.

Mr. Muhammad Nishat Warsi advocate for the petitioner.

Mr. Fahad Akbar advocate for NBP

ORDER

Adnan-ul-Karim Memon , J The petitioner, through the instant petition, has prayed that this Court to call for the record and proceedings of the case and declare that the transfer of the petitioner from one Collective Bargaining Unit (CBU) to another is contrary to the constitution of the union and constitutes an act of unfair labour practice within the meaning of Section 31(a) and (e) of the Industrial Relations Act, 2012. The petitioner has further sought setting aside of the impugned judgment dated 01.07.2025 passed by the learned Full Bench of NIRC, and restoration of the order passed by the learned Single Member, NIRC, Karachi. Additionally, the petitioner has prayed that the transfer order issued against him be declared illegal and be set aside accordingly.

2. The learned counsel for the petitioner briefed this court on the subject issue and argued that the petitioner, a permanent employee of the respondent National Bank of Pakistan (NBP) working as Senior Assistant, asserted that he had performed his duties diligently and without any adverse remarks throughout his service. He further stated that he is an active trade unionist and was elected as Deputy General Secretary of the National Bank Employees Front (Head Office CBU), regularly contributing to union activities and paying subscription fees. The petitioner explained that the National Industrial Relations Commission (NIRC), through its order in 1980, had recognized five distinct Collective Bargaining Units (CBUs) within the National Bank, including the Head Office CBU. This position was subsequently reaffirmed by a later order dated 25.07.2003. According to the petitioner, only employees of the Head Office were eligible to remain members of the Head Office CBU union. It was the petitioner's case that in August 2024, when he raised demands relating to salary increments and allowances in his capacity as a union office bearer, the management became displeased and issued a transfer order dated 16.08.2024, transferring him from the Head Office CBU to

the Gulshan-e-Iqbal Region. He contended that this transfer was mala fide, intended to curtail his trade union activities, and would result in loss of his membership in the Head Office CBU, thereby constituting an unfair labour practice under Section 31(a) and (e) of the Industrial Relations Act, 2012. The petitioner challenged the said transfer before NIRC under Section 54(e) of the Industrial Relations Act, 2012, and obtained interim relief suspending the transfer order. The respondent, while filing objections, denied mala fide intent and maintained that the transfer was made in accordance with a job rotation policy. It was also argued that there was no material to suggest victimization or unfair labour practice. However, upon hearing the parties, the learned Single Member of NIRC allowed the petition vide order dated 17.03.2025, holding that transfer from one CBU to another may affect union membership and could fall within the ambit of unfair labour practice under Section 31(a) and (e) of the Industrial Relations Act, 2012. He submitted that the respondent Bank, being aggrieved, preferred an appeal before the Full Bench of NIRC. They also sought interim suspension of the impugned order, which was granted, thereby effectively restoring the transfer order on the purported plea that the petitioner joined the new place of posting pursuant to the interim arrangement. Ultimately, the Full Bench of NIRC, after hearing arguments, allowed the appeal vide order dated 01.07.2025. The appellate forum observed that transfer of an employee is generally within the prerogative of the employer and that interference by courts or tribunals is not warranted in the absence of mala fide or victimization. It was held that the respondent had failed to establish any mala fide intent or unfair labour practice, as no specific allegation of victimization had been made in the grievance petition. The Full Bench further held that NIRC, being a statutory forum under the Industrial Relations Act, 2012, may intervene only where clear evidence of unfair labour practice or mala fide is established. In the present case, such ingredients were missing; therefore, the transfer order was held to be an administrative act within the lawful domain of the employer. Consequently, the appeal was allowed, the order of the Single Member was set aside, and the petition of the employee was dismissed, with no order as to costs. The petitioner's counsel contended that petitioner was being deprived of his rights as an office bearer of the union, and that his transfer was aimed at preventing him from participating in union activities at the Head Office CBU, thus rendering the proceedings infructuous as the interim order had already granted the main relief sought by the employer.

3. Learned counsel for the respondent Bank, at the outset, raised preliminary objections to the maintainability of the petition and submitted that the same is misconceived and liable to be dismissed. It was contended that the petitioner is not an office bearer of any recognized trade union, therefore, the very foundation

of the claim based on alleged interference in trade union activities is incorrect. It was further argued that transfer and posting of an employee is the exclusive prerogative of the employer, exercised in administrative exigencies for the efficient functioning of the Bank. Reliance was placed on settled law laid down by the superior courts, wherein it has consistently been held that an employee has no vested right to remain posted at a particular place of his choice, and the employer is fully competent to transfer an employee from one place to another in accordance with organizational requirements. The learned counsel emphasized that the petition is contrary to well-established judicial precedents, including reported judgments, wherein it has been categorically held that transfer is an incident of service and falls within the domain of the competent authority. It was submitted that unless a transfer order is shown to be tainted with mala fide or issued for ulterior motives, the same cannot be interfered with by courts or tribunals. It was also contended that the present petition is not maintainable under the provisions of the Industrial Relations Act, 2012, as well as under the terms and conditions governing the petitioner's employment. The employer, it was argued, has an inherent right to utilize the services of its employees in the best interest of the organization, and such administrative actions do not constitute unfair labour practice. In support thereof, reliance was also placed on judicial pronouncements holding that transfer does not amount to unfair labour practice in the absence of specific evidence of victimization or bad faith. The learned counsel further submitted that the petitioner has approached this Court with unclean hands by concealing material facts and misrepresenting the true position, and on this ground alone, the petition is liable to be dismissed. Referring to subsequent developments, it was pointed out that in the union elections held on 05.11.2025, the petitioner's group suffered a decisive defeat, and the petitioner himself did not even cast his vote. As a result, the matter relating to union representation has become infructuous, and the petitioner no longer holds any representative status that could be affected by the impugned transfer. It was further submitted that the grievance petition filed by the petitioner before the NIRC was rightly challenged in appeal, and the learned Full Bench, after appreciating the record and hearing both sides, correctly held that there was no allegation or proof of mala fide, victimization, or unfair labour practice. The appellate forum observed that the petitioner had not even pleaded that the transfer was made on account of his trade union activities or due to any malice on the part of the employer. The learned counsel stressed that the law is settled that NIRC, being a statutory forum, can only grant relief where unfair labour practice or mala fide is established. In the absence of such elements, the transfer being a purely administrative act, does not warrant interference. The learned Full Bench, therefore, rightly concluded that the petition before the learned Single Member was not maintainable and set aside the

impugned order. In view of the foregoing submissions, it was prayed that the instant petition be dismissed as being devoid of merit and an attempt to challenge a lawful administrative action of the employer. In support of his contention he relied upon the cases of *Muhammad Sajjad v Federation of Pakistan & others* 2021 SCMR 1064, *Abdullah Memon v Pakistan Electric Power Company and others* 2010 PLC (C.S) 662, *Tariq Mehmood Malik v Chief Executive Officer & others* 2018 PLC (C.S) 664 and *Muhammad Nawaz v General Manager (Planning), WAPDA Lahore & others* 1994 PLC 140. He lastly submitted to dismiss it.

4. In light of the foregoing facts, submissions, and the record available, this Court is of the considered view that the instant constitutional petition is devoid of merit and not maintainable for the reason that the controversy arises out of a service matter of respondent Bank pertaining to transfer of the petitioner, which has already been adjudicated upon by the competent statutory forum, i.e., the learned Single Member and thereafter the learned Full Bench of the NIRC. The appellate forum, after due appreciation of the entire material on record and hearing the parties at length, has categorically held that the petitioner failed to establish any element of mala fide, victimization, or unfair labour practice. The findings recorded by the learned Full Bench are based on proper evaluation of facts and law and do not suffer from any patent illegality or jurisdictional defect.

5. It is a settled principle of law that the constitutional jurisdiction of this Court under Article 199 of the Constitution is supervisory in nature and not appellate. This Court does not sit as a court of appeal to reappraise evidence or substitute its own findings in place of those recorded by competent forums merely because another view is possible. Interference in such jurisdiction is warranted only where the impugned order is shown to be without lawful authority, suffers from jurisdictional infirmity, is coram non iudice, or is tainted with mala fide or gross misapplication of law.

6. In the present case, the petitioner has essentially sought re-examination of factual determinations already settled by the full Bench of NIRC, particularly regarding the nature of transfer and absence of unfair labour practice. No material has been brought on record to demonstrate that the findings of the learned Full Bench suffer from any jurisdictional error, perversity, or violation of settled legal principles. The plea of mala fide, apart from being vaguely asserted, has not been substantiated by any cogent evidence. Mere assertion that the transfer may affect union membership does not, by itself, convert an otherwise lawful administrative action into an act of unfair labour practice, especially in the absence of proof of victimization or ulterior motive.

7. It is also well-settled that transfer is an incidence of service and falls within the exclusive domain of the employer, to be exercised in administrative exigencies. Unless such action is shown to be tainted with mala fide or in violation of law, the same is not open to interference by this Court. The learned Full Bench has rightly observed that no such elements exist in the present case.

8. Furthermore, the Industrial Relations Act, 2012 provides a complete mechanism for redressal of grievances, including appellate remedies before the NIRC. The petitioner has already availed such remedy, and the matter has attained finality at the level of the competent statutory forum. The present petition is, in substance, an attempt to convert this Court into a forum of second appeal, which is impermissible in law and contrary to the settled jurisprudence laid down by the superior courts.

9. This Court is also mindful of the principle that where a statute provides a complete code with adequate remedies, constitutional jurisdiction should not be invoked to circumvent the legislative scheme or to reopen concluded matters, unless exceptional circumstances are made out, which are conspicuously absent in the present case.

10. The contentions advanced by the learned counsel for the petitioner do not withstand legal scrutiny when examined in the light of the settled principles governing service jurisprudence and the scope of interference in such matters.

11. At the outset, the petitioner's claim that the impugned transfer constitutes an act of unfair labour practice merely because it results in loss of union membership is misconceived. The mere consequence of transfer affecting union affiliation does not, by itself, establish mala fide or victimization. To attract the mischief of Section 31(a) and (e) of the Industrial Relations Act, 2012, there must be clear, cogent, and specific evidence demonstrating that the transfer was actuated by anti-union animus or was intended to penalize the employee for trade union activities. In the present case, as rightly observed by the learned Full Bench, no such specific plea or substantiated allegation was made in the grievance petition.

12. The petitioner has attempted to build his case on a general assertion that he was an active trade unionist and had raised demands before management. However, such bald assertions, unsupported by any contemporaneous material or evidence of retaliation, are insufficient to establish mala fide. It is a settled proposition of law that mala fide is not to be presumed but must be specifically pleaded and strictly proved. The absence of any direct nexus between the alleged

union activities and the transfer order renders the petitioner's claim speculative and legally untenable.

13. Furthermore, the argument that transfer from one CBU to another per se amounts to unfair labour practice is not supported by law. Transfer is an incidence of service and falls squarely within the administrative domain of the employer. The employer retains the discretion to deploy its workforce in accordance with organizational needs and exigencies. Unless such discretion is shown to have been exercised arbitrarily, capriciously, or for ulterior motives, the same is not open to judicial interference. The petitioner has failed to demonstrate any violation of statutory provisions or any discriminatory treatment vis-à-vis similarly placed employees.

14. The reliance placed by the petitioner on the potential loss of union membership is also misplaced. Union membership is incidental to the place of posting and subject to the framework of the union constitution; however, it does not override the employer's lawful authority to transfer employees. Acceptance of such a contention would effectively curtail the employer's administrative powers and create an untenable situation where union office bearers become immune from transfer, which is neither contemplated by law nor supported by any precedent.

15. It is also significant that the learned Full Bench of NIRC, being the final fact-finding forum under the Industrial Relations Act, has categorically held that no element of mala fide, victimization, or unfair labour practice is made out. These findings are based on proper appreciation of the record and carry a presumption of correctness. The petitioner has failed to point out any perversity, misreading of evidence, or jurisdictional error in the said findings.

16. Moreover, the petitioner's plea that the proceedings were rendered infructuous due to interim arrangements is equally devoid of substance. Interim orders are always subject to final adjudication and do not create any vested rights. The fact that the petitioner joined the transferred place pursuant to interim directions does not validate his claim nor does it establish illegality in the final order passed by the competent forum.

17. In essence, the petitioner is seeking to convert a routine administrative transfer into a constitutional or labour dispute without laying the necessary factual and legal foundation. The arguments advanced are largely based on presumptions and perceived grievances rather than demonstrable illegality. For these reasons, the contentions raised on behalf of the petitioner are found to be without merit,

lacking evidentiary support, and contrary to settled principles of law, and therefore do not warrant any interference.

18. For the foregoing reasons, this Court finds no illegality, irregularity, or jurisdictional defect in the impugned judgment dated 01.07.2025 passed by the learned Full Bench, NIRC, warranting interference under Article 199 of the Constitution.

19. Accordingly, the instant constitutional petition is dismissed along with pending application(s), being not maintainable, with no order as to costs.

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