

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No. D-1829 of 2023
(*Abdul Fattah and another v. The President/ CEO ZTBL & others*)

Petitioners : Abdul Fattah and another *through*
Mr. Noor Hassan Malik, Advocate.

Respondents : The President / CEO,
M/s Zarai, Taraqiati Bank Limited,
and others, *through*
Mr. Zahid Mehmood Mughul,
alongwith Syed Mujtaba Ahmed
Gilani, General Manager, M/s ZTBL.

Syed Naved Ahmed Shah, Deputy
Attorney General.

Date of Hearing : 18.02.2026

Date of Decision : 04.03.2026

ORDER

Ali Haider 'Ada', J. - The petitioners have admitted to obtaining a loan from the Respondent Bank (ZTBL). They contend that, after availing the loan, they deposited certain installments, which the Bank allegedly refused to acknowledge, claiming that the receipts were fake and bogus. The employees involved in the loan process were subjected to disciplinary proceedings by the Bank and, following a proper inquiry, were dismissed from service with the imposition of a major penalty.

2. The petitioners' grievance is that, despite full repayment of the loan, the Bank withheld their passbook. Applications were submitted to the Bank to release the passbook, but no action was taken. Consequently, the petitioners filed a complaint before the Wafaqi Mohtasib, Regional Office Sukkur, on 30.03.2022. The Wafaqi Mohtasib directed the Bank to resolve the grievance regarding the adjustment/settlement of the loan and to release the mortgaged passbook. The Bank, dissatisfied with this direction, sought a review before the Wafaqi Mohtasib Regional Office, Sukkur, which was

rejected on 21.11.2022. Subsequently, the petitioners filed an application for implementation of the Ombudsman's order, and notices were issued to the Bank by the Wafaqi Mohtasib. The main prayer of the petitioners is for a direction to the Respondent Bank to return the passbook. The inquiry report and the decision of the Wafaqi Mohtasib confirm that there is no outstanding amount against the petitioners.

3. Learned Counsel for the petitioners submitted that, while an agricultural loan was obtained against the mortgaged passbook, the loan has been fully repaid, yet the Bank continues to withhold the passbook on the pretext of allegedly forged deposit slips. The Wafaqi Mohtasib, after inquiry, held that the Bank failed to justify the non-adjustment of the loan and directed that the grievance regarding loan settlement and passbook release be resolved. These findings are binding on the Bank, which, despite this, has erred in not releasing the passbook. Learned Counsel has also placed on record the procedural mechanism followed by ZTBL regarding complaint initiation, which is taken into consideration.

4. On the other hand, learned Counsel for the Bank contended that the petitioners were involved with the employees against whom disciplinary proceedings were initiated and, following proper inquiry, penalties were imposed on those employees who had recommended or processed the loan. The Learned Counsel further submitted that the petitioner's names appear in the disciplinary records concerning embezzlement, and therefore, they did not approach this Court with clean hands.

5. Learned Deputy Attorney General submitted that the Wafaqi Mohtasib lacks jurisdiction to decide disputes between a borrower and the Bank, as such matters fall within the exclusive domain of the competent forum. He therefore prayed that the instant petition is devoid of merit and liable to be dismissed.

6. Heard and perused the record.

7. It is pertinent to note that the petitioners claim to be aggrieved by the actions of the Bank authorities and, on that ground, approached the Wafaqi Mohtasib. For clarity, the Wafaqi Mohtasib is a statutory institution, established under the **Office of Wafaqi Mohtasib (Ombudsman) Order, 1983**. The procedure, functions, and powers of the Mohtasib are specifically defined under **Article 9** of the said Order, which is reproduced as follows:

9. Jurisdiction, functions and power of the Mohtasib. – (1) *The Mohtasib may, on a complaint by any aggrieved person, on a reference by the President, the Federal Council or the National Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion, undertake any investigation into any allegation of mal-administration on the part of any Agency or any of its officers or employees:*

Provided that the Mohtasib shall not have any jurisdiction to investigate or inquire into any matters which:

(a) are sub-judice before a court of competent jurisdiction, tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him; or

(b) relate to the external affairs of Pakistan or the relations or dealing of Pakistan with any foreign state or government; or

(c) relate to, or are connected with the defence of Pakistan or any part thereof, the military, naval and air forces of Pakistan, or the matters covered by the laws relating to those forces.

(2) Notwithstanding anything contained in clause (1), the Mohtasib shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matters relating to the Agency in which he is, or has been, working in respect of any personal grievance relating to his service therein.

(3) For carrying out the objectives of this Order and, in particular for ascertaining the root causes of corrupt practices and injustice, the Mohtasib may arrange for studies to be made or research to be conducted and may recommend appropriate steps for their eradication.

(4) The Mohtasib may set up regional offices as, when and where required.

8. Nonetheless, the foregoing, it is made clear that the Wafaqi Mohtasib (Ombudsman) is empowered to investigate any allegation of maladministration or impropriety on the part of any agency or

any of its officers or employees. For this purpose, the term “agency” is specifically defined in the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, under Article 2(1). For ready reference, Article 2(1) is reproduced as under:

“Agency” means a Ministry, Division, Department, Commission or office of the Federal Government or statutory body, corporation or other institution established or controlled by the Federal Government but does not include the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court or a High Court;

9. This definition clarifies the Ombudsman’s scope and the limits within which complaints can be heard and investigated. However, in disputes involving a customer or borrower with the Financial Institute or Bank, the Banking Mohtasib is the competent forum to address complaints against banks, rather than the Wafaqi Mohtasib. Part IV(A) of the Banking Companies Ordinance, 1962, sets out the procedure for such complaints, and Section 82-B provides the statutory mechanism for filing and deciding complaints against banks and financial institutions. For reference, Section 82-B is reproduced as under:

82B. Terms and conditions of the Banking Mohtasib.

1. *The Banking Mohtasib shall be entitled to the same salary and allowances as a Judge of a High Court.*
2. *The Banking Mohtasib may be removed from office on the ground that he has been guilty of misconduct or that he is incapable of properly performing the duties of his office by reason of physical or mental incapacity.*

Provided that he shall have the right to file an appeal before the Federal Services Tribunal.

3. *The Banking Mohtasib shall be provided with a secretariat to be appointed in consultation with the State Bank. Appointments to the Secretariat may be made on deputation from the State Bank of Pakistan or other banks or otherwise on the basis of professional qualifications and the costs of the Secretariat shall be shared by banks in such proportions as may be determined by the State Bank of Pakistan.*

4. *The Banking Mohtasib shall have the power and responsibility --*

(a) to entertain complaints from customers, borrowers, banks or from any concerned body or organization;

(b) to facilitate the amicable resolution of complaints after giving hearings to the complainant and the concerned Bank;

(c) To receive evidence on affidavit;

(d) To issue commission for the examination of witnesses; and

(e) in the event that complaints cannot be resolved by consent, to give finding which shall be acted upon in the manner set out herein.

5. *The Banking Mohtasib shall exercise his powers and authority in the following manner :-*

(a) In relation to all banks operating in Pakistan:- The Banking Mohtasib shall be authorized to entertain complaints of the nature set out herein below:-

(i) failure to act in accordance with banking laws and regulations including policy directives or guidelines issued by the State Bank from time to time.

Provided that there is a dispute as to the proper interpretation of any regulations, directions or guidelines, the same shall be referred to the State Bank for clarification.

(ii) delays or fraud in relation to the payment or collection of cheques, drafts, or other banking instruments or the transfer of funds;

(iii) fraudulent or unauthorized withdrawals or debit entries in accounts;

(iv) complaints from exporters or importers relating to banking services and obligations including letter of credits;

(v) complaints from holders of foreign currency accounts, whether maintained by residents or non-residents;

(vi) complaints relating to remittances to or from abroad;

(vii) complaints relating to mark-up or interest rates based on the ground of a violation of an agreement or of State Bank directives; and

(viii) complaints relating to the payment of utility bills.

(b) In relation to banks in the public sector:-. The Banking Mohtasib shall be authorized to entertain complaints against such banks on the following additional grounds as well ---

(i) corrupt or malafide practices by bank officers;

(ii) gross dereliction of duty in dealing with customers; and

(iii) inordinate delays in taking decisions.

(c) The Banking Mohtasib shall not entertain any complaint or application which has already been disposed off by the State Bank or any court in Pakistan.

10. It is evident that the matter referred by the petitioners to the Wafaqi Mohtasib under the Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983, when a Banking Mohtasib exists under the Banking Companies Ordinance, 1962, is **coram non judice**. Reliance is placed on **Peshawar Electricity Supply Limited v. Wafaqi Mohtasib (Ombudsman), Islamabad and others (PLD 2016 SC 940)**. Furthermore, the Honourable Federal Court of Pakistan, in **F.C.P.LA No. 464 of 2025, titled Ghulam Abbas v. Telephone Industries of Pakistan and 2 others, decided on 06.02.2026**, categorically held that a jurisdictional error committed by the Wafaqi Mohtasib can be corrected through the constitutional powers of the High Courts. The Honourable Court further held that the Wafaqi Mohtasib had wrongly assumed jurisdiction. Paragraph No. 12 of the judgment reads as follows:

“12. For the foregoing reasons, it is concluded that the case of the petitioner, which pertains to his personal grievance relating to his service, clearly falls under the aforesaid sub-Article 2 of Article 9 of the Order of 1983 containing a bar on the jurisdiction of Wafaqi Mohtasib. The Wafaqi Mohtasib has wrongly assumed jurisdiction while entertaining the complaint of the petitioner and giving findings on it, which he could not do...”

11. Even under the **Financial Institutions (Recovery of Finances) Ordinance, 2001**, a customer has the statutory right to file a suit in the Banking Court if a financial institution defaults in fulfilling any of its obligations. When an adequate remedy already exists, a Constitutional petition cannot be invoked as a matter of routine. Reliance in this regard is placed upon the judgments reported as **Indus Trading and Contracting Company v. Collector of Customs (Preventive), Karachi and others (2016 SCMR 842)**; **President, All Pakistan Women Association, Peshawar Cantt. v. Muhammad Akbar Awan and others (2020 SCMR 260)**; **Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others (2022 SCMR 92)**; and **Executive Director (P&GS), State Life, Principal**

Office Karachi and others v. Muhammad Nisar, Area Manager, State Life Corporation of Pakistan, Peshawar Zone (2025 SCMR 249).

12. The proceedings and order of the Wafaqi Mohtasib are held to be without jurisdiction and are therefore declared *coram non judice*. In view of the foregoing reasons and discussion, the instant petition, being devoid of merit, is hereby dismissed along with any pending applications, if any, with no order as to costs.

J U D G E

J U D G E

Faisal Mumtaz/PS.