

**IN THE HIGH COURT OF SINDH, KARACHI**

**C.P Nos.D-1486 of 2014**

**Present**

**Mr. Justice Irfan Saadat Khan**

**Mr. Justice Adnan-ul-Karim Memon**

**C.P. No.D-1486/2014**

Messrs. Pakistan Petroleum Limited ..... Petitioner

V E R S U S

Arif Aziz and others ..... Respondents

**Date of hearing: 18.1.2017**

Mr. Muhammad Humayun, Advocate for Petitioner

Mr. Chaudhry Lateef Sagar, Advocate for Respondent No.1.  
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**JUDGMENT**

**ADNAN-UL-KARIM MEMON-J:** Through this constitutional petition, the petitioner has assailed the judgment dated 12.3.2014, (“the Judgement”) passed by the learned Sindh Labour Appellate Tribunal, Karachi (“Respondent No.2”), whereby it upheld the decision dated 6.4.1995 of learned Labour Court No. V, Karachi (“Respondent No.3”) and reinstated the worker Arif Aziz (“Respondent No.1”) with full back benefits.

2. The facts of the case are that the Company Messrs. Pakistan Petroleum Limited (“Petitioner”) issued show cause notice dated 14.1.1992 to the Respondent No.1, with the allegation that the following six cheques of the Chairman of the Petitioner were stolen from his office between the period of 3.9.1991 and 8.10.1991.

<u>Sl. No.</u>	<u>Cheque No.</u>	<u>D a t e</u>	<u>Amount of cheque</u>
1.	XPB 000224	03.09.1991	Rs.15,000/-
2.	XCB 339799	15.09.1991	Rs.10,000/-
3.	XCB 339800	19.09.1991	Rs.15,000/-
4.	XCB 333749	24.09.1991	Rs.25,000/-
5.	XCB 333750	07.10.1991	Rs.15,000/-
6.	XPB 000225	08.10.1991	Rs.45,000/-
		Total:	<u>Rs.125,000/-</u>

Thereafter, forged signatures were affixed on them and these cheques were encashed from the Grindlays Bank Limited. The Petitioner had strong reasonable grounds to believe that the Respondent No.1 was responsible for the theft of the unsigned cheques and that he had embezzled the above mentioned amounts from the bank by forging the signatures of the Chairman.

3. The Respondent No.1 replied to the show cause notice on 22.1.1992. However, finding the same to be non-satisfactory, the Petitioner vide memorandum letter dated 6.2.1992 appointed an Enquiry Officer for holding inquiry regarding of the theft of the cheques, with directions to the Respondent No.1 to appear before him in his office on 17.1.1992. At the conclusion of the inquiry the respondent was found guilty and a notice of dismissal from service, dated 9.7.1992 ("Dismissal Order") was served upon him.

4. Being aggrieved and dissatisfied with the Dismissal Order, the Respondent No.1 preferred a grievance application ("the Application") under section 25-A of the Industrial Relations Ordinance, 1969. ("Ordinance") before the Respondent No.3. Thereafter, the Respondent No.1 filed his affidavit-in-evidence and was cross examined by the petitioner's counsel (evidence of the Respondent No.1 is available on record from pages 135-141 to the main petition). The Petitioner also led its evidence through its witnesses namely; (i) Chairman of the Petitioner company namely Mr. J.R Rahim, (ii) Major (Rtd.) Mansoor Ahmed, (Chief Industrial Relations Officer) and (iii) Sajjad Bashir Khawaja, (the Chief

Store Officer). The cross examinations of the witnesses were also conducted by the learned counsel of the respondent No.1.

5. At the conclusion of the trial, the Respondent No.3 vide Order dated 6.4.1995 ("Trial Court Order") allowed the Application of the Respondent No.1 and reinstated him in service with full back benefits but also held that the management of the Petitioner would be at liberty to hold fresh inquiry against the Respondent No.1, if it desired to do so.

6. The Petitioner, being aggrieved and dissatisfied with the Trial Court Order filed an appeal ("the Appeal") under section 37(3) of the Ordinance before the Respondent No.2 on the preliminary ground that the act of misconduct on the part of Respondent No.1 was fully established in the inquiry proceedings. Simultaneously, the Respondent No.1 also filed an Appeal ("Connected Appeal") before the Respondent No.2 wherein it assailed the Trial Court's Order to the extent of the direction of the Respondent No.3 that the Petitioner could hold a fresh inquiry. The Respondent No.2 vide common Order dated 13.9.1996 ("Appellate Order"), allowed the Appeal of the Petitioner and thereby held, that the Connected Appeal of the Respondent No.1 had become infructuous on account of the fact that he was no longer being reinstated in service. Hence, there was no question of conducting a fresh inquiry.

7. The Respondent No.1 being aggrieved and dissatisfied with the Appellate Order, filed Constitution Petition D-1952 of 1997 ("the Petition") and this Court, with the consent of both the parties, vide Order dated 22.4.1998 ("Order") remanded the matter to the Respondent No.2 with the clear directions that the original cheques in dispute should be called from the concerned bank and forwarded to the handwriting experts for their opinion after comparing the same with the Respondent No.1's original specimen handwriting and signatures. It further directed

the Respondent No.2 to complete the said exercise within a period of two months and that till disposal of the Appeal status-quo, with regard to the Petitioner's reinstatement and back benefits to be maintained.

8. On the remand of the case, the Respondent No.2 vide the impugned Judgment dismissed the Appeal of the Petitioner. Hence, the instant constitutional petition has been filed by the Petitioner before this Court.

9. The counter affidavit to the main petition was filed by the Respondent No.1 wherein he has denied all the allegations raised in the instant petition.

10. The learned counsel for the Petitioner has argued that the Judgement passed by the Respondent No.2 is against the basic spirit of law and in violation of the directions of this Court Orders dated 22.4.1998 and 14.9.2010 respectively.

11. The learned counsel for the Petitioner further argued that the Respondent No.2 mistakenly arrived at the conclusion that the Petitioner failed to produce the original documents/cheques at any point of time of the proceedings. Per learned counsel the Respondent No.2 did not appreciate the fact that the original cheques were neither in the possession of the Petitioner nor could the same be produced before the Respondent No.3. Per counsel, the Respondent No.2 issued notice to the bank for production of original cheques, and the bank filed statement dated 21.5.2012, wherein it stated that referred cheques were irretrievable despite all efforts on the part of the bank as the same were part of the old record of ANZ Grindlays Bank which stood merged Standard Chartered Bank.

12. The learned counsel further argued that specimen signature of the Petitioner's Chairman, the Respondent No.1 and other worker were sent

to the handwriting expert and the handwriting expert sent his opinion that one cheque dated 24.9.1991 for Rs.25,000/- was written and signed by the Respondent No.1. Per learned counsel, the handwriting expert's evidence was recorded which was sufficient evidence against the Respondent No.1. The learned counsel stated that the circumstantial evidence was fully corroborated by the expert opinion and that Petitioner rightly dismissed the Respondent No.1 from the service for such heinous offence of theft, forgery, fraud and dishonesty which amounted to misconduct on his part and the same was established in the inquiry proceedings and full opportunity was given to the Respondent No.1 to prove his innocence which he failed.

13. The learned counsel for the petitioner lastly argued that the Respondent No.3, without looking into the evidence available on record reinstated the Respondent No.1 in service, as charge of misconduct was fully established in the inquiry proceedings and both the Respondent No.3 and 2, passed the orders on the basis of misreading and non-reading of the evidences.

14. The learned counsel further stated that the original court file/R & Ps of the Appeal and the Connected Appeal were mysteriously declared untraceable and the same had been reconstituted on the directions of the Respondent No.2. The learned counsel for the petitioner prayed for allowing the instant petition.

15. On the other hand, the learned counsel for the Respondent No.1 has argued that the Trial Court's Order and the Judgment passed by the Respondent No.2 and Respondent No.3 respectively, are just, fair and within the parameters of law and do not requiring interference in the matter, as there is concurrent finding of facts and law in favour of the Respondent No.1.

16. Per learned counsel for the respondent No.1, the instant petition is frivolous, misleading and is liable to be dismissed with cost.

17. The learned counsel for the Respondent No.1 has argued that the Respondent No.2 and 3 have discussed all the issues involved in the matter and considered the directions issued by this Court in the previous round of litigation and that the Respondent No.3 passed the order of reinstatement of the Respondent No.1 after recording of evidence.

18. Learned counsel further argued that the Petitioner was given opportunity to produce evidence against the Respondent No.1, so far as six cheques were concerned but the Petitioner deliberately and intentionally failed to produce the original cheques which were necessary to establish the allegations against the Respondent No.1.

19. Per learned counsel there was no loss either to the Petitioner or to the concerned bank and the Respondent No.1 was wrongly dismissed from service on the basis of false allegations which could not be proved in evidence and that the Respondent No.1 has suffered the agony of trial since the last twenty two years.

20. The learned counsel prayed for dismissal of the instant constitutional petition on the ground that there are concurrent findings of fact by the courts below and this Court has limited jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan to dilate upon the evidence of the parties.

21. We have heard the learned counsel for the Petitioner and the learned counsel for the Respondent No.1 and with their assistance have carefully gone through the material placed on record by both the parties.

22. The grievance of the Petitioner, is with respect to six cheques (two each from three cheque books) which were stolen from its office and the same had been drawn by someone, after forging the signatures of the Petitioner's Chairman and thereby a total sum of Rs.1,25,000/- was embezzled from ANZ Grindlays Bank PLC, Karachi. For convenience sake, show cause notice dated 14.01.1992 is reproduced as under:-

SHOW CAUSE NOTICE

Whereas it has come to the notice of Management that six(6) cheques Nos.XPB 000224, XCB 339799, XPB 339800, XCB 333749, XCB 333750 and XPB 000225 were stolen from the cheque books of the Chairman of the company between the period 03.09.1991 and 08.10.1991, while the cheque books were lying in his office.

And whereas the aforesaid six(6) cheques were presented before and encashed from Grindlays Bank Limited, Karachi, under forged signatures of the Chairman on different dates as under, and thus an amount of Rs.125,000/- (Rupees one hundred twenty five thousand only) was embezzled:

<u>Sl. No.</u>	<u>Cheque No.</u>	<u>D a t e</u>	<u>Amount of cheque</u>
1.	XPB 000224	03.09.1991	Rs.15,000/-
2.	XCB 339799	15.09.1991	Rs.10,000/-
3.	XCB 339800	19.09.1991	Rs.15,000/-
4.	XCB 333749	24.09.1991	Rs.25,000/-
5.	XCB 333750	07.10.1991	Rs.15,000/-
6.	XPB 000225	08.10.1991	Rs.45,000/-
		Total:	<u>Rs.125,000/-</u>

And whereas there are reasonable grounds to believe that you are responsible for the theft of the blank unsigned cheques, forging the signatures of the Chairman and thereafter presenting the same for encashment to the Grindlays Bank Limited.

You are, therefore, called upon the show cause within seven(7) days of receipt of this notice as to why appropriate disciplinary action should not be taken against you for committing the above acts of theft, forgery, fraud and dishonesty, which constitute misconduct.

Your explanation in writing should be submitted within the aforesaid period, failing which it shall be assumed that you have accepted the charges leveled against you, and that you have nothing to say in your defense.

23. On the basis of the said show cause notice, an inquiry was conducted and after conclusion of the same, the inquiry officer submitted

his report to the Petitioner wherein he found the Respondent No.1 guilty of misconduct.

24. We have also gone through the report of handwriting expert dated 10.5.1992 which is available at page-95 to the main petition, wherein he had arrived at the conclusion that a cheque dated 24.9.1991 of Rs. 25,000 had been written by the Respondent No.1.

25. We have also seen the deposition of witness, Mr. Shabbir Hussain Siddiqui, private handwriting expert, whose evidence was recorded during the appellate proceedings. The photocopy of his two-page deposition is available at page-211 to the main petition. We also note that he has admitted in the cross examination that,

*“the specimen were sent along with disputed writing by the company. I was sent the photocopies of the cheques and not the originals. I also received the photocopy of the signatures of Mr. Jamshed Razaur Rahim. I have compared Photostat signatures of Mr. Jamshed Razaur with the forged signatures on the cheque. They were both photocopies.”*

26. From the aforementioned excerpt, we note that the original six cheques were not produced before the handwriting expert and that his opinion was based on photocopies of the cheques. We also note that these aforementioned cheques were neither produced before the Inquiry Officer nor before the Respondent No.2 and 3. Hence, apparently the observations made against the Respondent No.1 were on the basis of photocopy of the cheques only and the admissibility of the same had remained doubtful.

27. We have also gone through the evidence of the Petitioner, available at page X.7 filed along with counter affidavit of the Respondent No.1 and



the deposition of witnesses of the Petitioner namely Major (Retd) Mansoor Ahmed and Mr. Sajid Bashir Khawaja, which are available at page-143 to 167.

28. We have also gone through the Trial Court's Order of the Respondent No.3 wherein the following issues had been framed:

1. Whether the applicant was illegally terminated from service?
2. Whether the applicant is entitled for his reinstatement in service with back benefits?

29. The Respondent No.2 has dilated upon the issues in an elaborative and erudite manner and have given findings in affirmative by appreciating the evidence of the parties and the Respondent No.3 has also considered each aspect of the case and thereafter had passed a detailed Judgment.

30. The Petitioner has mainly relied upon the orders dated 22.04.1998 and 14.09.2010 passed by this Court, directing the Respondent No.3 which reads as under:-

Order dated 22.04.1998 in C.P No.1952/1997

- (i) The original cheque(s) in dispute will be called from the concerned bank and forwarded to the two hand-writing experts, in turn, for comparison with the petitioner's original specimen hand-writing and signatures and their opinion thereon;
- (ii) The learned Sindh Labour Appellate Tribunal will then examine both the said hand-writing experts, whereafter it may, if it so considers allow the Return of the original cheque(s) to the bank retaining Photostat copy thereof on record.

Order dated 14.09.2010 in C.P No.D-838/2007

“In the facts and circumstances of the case we direct Sindh Labour Appellate Tribunal to decide the Appeal No.KAR-62 of 1997 (Old No.KAR-212 of 1995) and cross appeal bearing No.KAR-207 of 1995 by treating them as pending and to decide the same in the light of the Judgment of this Court reproduced above within a

period of three-months. We further direct that till disposal of the appeals status quo with regard to the petitioner's reinstatement and back benefits in terms of earlier order of this Court dated 22.4.1998 shall be maintained."

31. The Petitioner further submitted that he was not in a position to produce six cheques as the same were in the custody of the concerned bank and the learned counsel for the bank submitted statement dated 21.5.2012 alongwith copy of letter dated 23.04.2012 issued by the bank that original cheques are irretrievable despite all efforts by them, but the learned counsel for the Petitioner has failed to convince this Court with respect to the fact that whether any bank official was examined in order to prove that the original cheques were lost and not traceable. In our view the initial burden in this regard was upon the Petitioner to prove the charge against the Respondent No.1, which they have failed to discharge under the law, as they had to prove the case beyond any shadow of doubt through evidence.

32. We have further noted that no financial loss has caused to the Petitioner on account of the theft of the cheques and the said fact has been admitted by the Chairman of the Petitioner, Mr. J.R. Rahim in his cross examination because the loss on account of encashment of these cheques had been made good by the bank.

33. We have also noted that the only allegation against the Respondent No.1 is with regard to the theft of one cheque dated 24.9.1991 for Rs.25,000/-. So far as this allegation is concerned, the burden of proof was upon the Petitioner to produce the original cheque during the evidence to prove the allegation, as mentioned in the show cause notice and charge sheet but the same could not be produced and proved as such the guilt of the Respondent No.1 cannot be conclusively proved.

34. In the light of the above facts and circumstances of the case, we are of the view that this Court in its constitutional jurisdiction cannot interfere in the concurrent findings of facts arrived by the two Courts below as we do not see any illegality, infirmity or material irregularity in the Trial Court's Order and the Judgment passed by the Respondent No.3 and 2 respectively, warranting our interference. Hence, the same are upheld and consequently the instant constitutional petition is dismissed.

35. Foregoing are the reasons for our short Order dated 18.01.2017 whereby we have dismissed the instant petition.

JUDGE

JUDGE