

# IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

**C.P No. D-4268 of 2018**

Ghulam Rabbani

V/s

Governor State Bank of Pakistan & others

Petitioner : Through Mr. Muhammad Asif Malik advocate

Date of hearing : 31.05.2018

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** The Petitioner seeks following relief(s) in the above captioned Constitutional Petition as under:-

- a) To declare that impugned office order No. HRD-98 dated 24.05.2016 vide E&DT No HRD( SC-2) F-26/2063/2016 passed by the respondents are illegal, void ab- initio and of no legal effects as such the same may be set aside.***
- b) To direct the respondents to restore the petitioner on the same position as was working prior to the issuance of Office order No, HRD-98 dated 24.05.2016 along with financial benefits as to pay and allowances.***

2. Brief facts of the above referred petition are that the Petitioner joined as an officer Grade-II in State Bank of Pakistan vide letter dated 17.04.2002 subsequently he assumed the position of Assistant Director, Deputy Director, Joint Director and lastly he was performing the duties as Senior Joint Director in the Respondent Bank. Petitioner has submitted that during the tenure of 14 years of his service with the Respondent Bank no adverse report or disciplinary action was pending against him. Petitioner has submitted that he was deceitfully trapped in a murder case of his mother and an FIR was registered at Police Station Boat Basin against the Petitioner.

Petitioner was arrested and remanded in police custody till 19.2.2016 and thereafter he was remanded to jail custody. Petitioner has submitted that due to his confinement in jail, the Respondent Bank suspended his service vide office order dated 24.05.2016, followed by Show Cause Notice dated 09.11.2016, which was replied by the Petitioner vide letter dated 15.11.2016, finally Petitioner was acquitted by the learned trial Court vide order dated 30.11.2016 on application under section 345(2) and 345(6) Cr.P.C. Petitioner has submitted that Respondent Bank vide letter dated 18.07.2017 issued Charge sheet with certain allegations on the premise that Petitioner's detention in the murder case, which has tarnished the image of the Respondent Bank and thus falls within the ambit of term misconduct under State Bank of Pakistan Staff Regulation, 2005. As per Petitioner, he replied the charges leveled against him vide letter dated 23.08.2017 and pleaded his innocence, however Petitioner was provided personal hearing by the Respondent Bank on 19.09.2017, finally the Respondent Bank imposed major penalty of compulsorily retirement from service upon the Petitioner with effect from 08.05.2018. Petitioner being aggrieved by and dissatisfied with the act / omission of Respondent Bank has filed the instant petition on 29.05.2018.

3. Mr. Muhammad Asif Malik, learned counsel for the Petitioner has contended that the punishment inflicted upon the Petitioner is not in accordance with the provision of regulation No. 34(i)(f) of State Bank of Pakistan Staff Regulation 2005; that Petitioner has not been convicted by any criminal court of law as such the punishment awarded to the petitioner by the Respondent bank is harsh and against the norms of justice and fair play; that the Petitioner has caused no loss to the Respondent Bank during his service and worked, honestly and diligently; that the impugned order dated 18.05.2018 does not enumerate each charge and reason, which is not

sustainable under the law; that the Petitioner has not been dealt with in accordance with law; that the Respondent Bank has violated its circulars dated 31.01.1972 and 31.03.2001; that nothing adverse is against the Petitioner except the allegation leveled in the charge sheet which are even otherwise not sustainable in law for the simple reason that Petitioner has not been convicted by the competent of law but rather he has been acquitted from the criminal charge honorably, therefore the punishment awarded by the Respondent Bank cannot be sustained. He lastly prayed for allowing the instant petition.

4. We have heard learned counsel for the Petitioner, and perused the material available on record minutely with his assistance.

5. Upon query by this Court as to how the instant Petition is maintainable against the Respondent-Bank, the Petitioner reiterated his arguments and argued that this is a hardship case and this Court can hear and decide the matter on merits.

6. Firstly with regard to the question of maintainability, we seek Guidance taken from the Hon'ble Apex Court's Judgment enunciating the test of Statutory Rules and non-Statutory Rules [Shafique Ahmed Khan and others versus NESCOM through Chairman Islamabad and others (PLD 2016 SC 377] and Muhammad Zaman etc versus government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad (un-reported Judgment dated 21.02.2017) in civil Appeal No. 1313 of 2017 where in Paragraph-7 following was held:-

**“ According to the Judgment delivered in Civil Appeal No. 654/2010 etc. titled Shafique Ahmed Khan, etc. Vs. NESCOM through its Chairman, Islamabad, etc. the test of**

**whether rules/regulations are statutory or otherwise is not solely whether their framing requires the approval of the Federal Government or not, rather it is the nature and efficacy of such rules/regulations. It has to be seen whether the rules/regulations in question deal with instructions for internal control or management, or they are broader than and are complementary to the parent statute in matters of crucial importance. The formers are non-statutory whereas the latter are statutory. In the case before us, the Regulations were made pursuant to Section 54(1) of the Act and Section 54(2) thereof goes on to provide the particular matters for which the Board can frame regulations [ while saving he generality of the power under Section 54(1) of the Act] Out of all the matters listed in Section 54(2) of the Act, Clause (i) is the most relevant which pertains to the “recruitment of officers and servants of the Bank including the terms and conditions of their service, constitution of superannuation, beneficial and other funds, with or without bank’s contribution, for the officer and servants of the Bank; their welfare; providing amenities, medical facilities, grant of loans and advances, their betterment and uplift” A perusal of the Regulations suggests that they relate to pension and gratuity matters of the employees of SBP and therefore it can be said that the ambit of such Regulations is not broader but narrower than the parent statute, i.e. the Act. Thus the conclusion of the above discussion is that the Regulations are basically instructions for the internal control or management of SBP and are therefore non-statutory. Hence the appellants could not invoke the constitutional jurisdiction of the learned High Court which was correct in dismissing their writ petition.**

**Since it has been held above that the Regulations are non-statutory, therefore, we do not find it necessary to dilate upon the point of laches. In the light of the above, this appeal is dismissed.” (Emphasis Added)**

7. We are cognizant of the fact that this Court cannot entertain the grievance of the Petitioner against a Respondent-Bank under Article 199 of the Constitution. Consequently, the instant Petition stands dismissed in limine along with listed applications. However, the Petitioner may avail appropriate remedy as provided to him under the law.

JUDGE

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