

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

Present:  
Mr. Justice Syed Hassan Azhar Rizvi  
Mr. Justice Adnan-ul-Karim Memon

## **C.P No.D-5362 of 2014**

Soneri Bank Limited through President.....Petitioner

Versus

Aurangzeb & other.....Respondents

**Date of hearing: 10.08.2017**

Mr. Khaleeq Ahmed, Advocate for the Petitioner.  
Mr. Ejaz Hussain Shirazi, Advocate for Respondent No.1.

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

**ADNAN-UL-KARIM MEMON,J:-**Through instant Petition, the Petitioner has Impugned Order dated 23.09.2014, passed by Learned Member, Sindh Labour Appellate Tribunal at Karachi in Appeal No. KAR-103 of 2013, whereby Order dated 04.05.2013, passed by Sindh Labour Court at Karachi, was set aside with direction to Petitioner-Bank to reinstate Respondent No.1 in service with all back benefits within thirty days from the date of announcement of the decision.

2. Brief facts of the case are that Respondent No.1 was appointed in Petitioner-Bank as Officer Grade-I on 23.05.2008 and his service was confirmed vide Confirmation Letter No.SBL/HRD/2822/031237/2009 dated 20.08.2009. It is asserted

by the Petitioner-Bank that on 04.01.2010 service of Respondent No.1 was terminated on the ground that a complaint was received against him from the Bank of Khyber, Peshawar with allegation that Respondent No.1 had been found guilty of misconduct, involvement in fraudulent loans and criminal breach of trust and that NAB was investigating the matter against the Respondent No.1. Per Petitioner-Bank, copies of said Complaint bearing No. BOK/HO/MD's Sectt/387 dated 25.11.2009, from the Managing Director of the Bank of Khyber, Peshawar addressed to the Director General, National Accountability Bureau, Peshawar and copy endorsed to the President of Petitioner-Bank were also supplied to the Respondent No.1, for explanation. It is further asserted by the Petitioner-Bank that Respondent No. 1 filed explanation dated 02.01.2010, which was examined by Competent Authority and found unsatisfactory.

3. The case of Respondent No.1 is that he specifically denied allegations leveled against him through Letter dated 02.01.2010 and further requested the Petitioner-Bank to provide him alleged documentary evidence. It is further added by Respondent No.1 that in the said Letter dated 02.01.2010 he mentioned that he served The Bank of Khyber from July, 1995 to August, 2001 and resigned of his own accord and thereafter he served number of organizations. It is further asserted by Respondent No. 1 that till December, 2009 he did not receive any letter or Notice either from The Bank of Khyber or NAB Authorities regarding his alleged involvement and has been terminated from service on 04.01.2010 without any cogent reason. Respondent No.1 being aggrieved by

and dissatisfied with Termination Order filed Service Appeal on 13.01.2010, followed by another Letter dated 21.01.2010 before Competent Authority for his reinstatement in service, which was not considered. Hence, Respondent No.1 served Grievance Notice dated 24.02.2010 upon Petitioner-Bank Under Section 41 of Industrial Relations Act, 2008 against his termination from service. Per Respondent No.1 Petitioner-Bank vide Letter No. SBL/HRD/0584/03123/2009 dated 26.02.2010 admitted that they had no complaint against Respondent No.1; but the same was a result of complaint lodged by The Bank of Khyber against Respondent No.1 in the National Accountability Bureau (NAB), Peshawar. That Respondent No.1 Impugned Termination Letter dated 04.01.2010, before learned Sindh Labour Court No.V, Karachi, which was dismissed vide Order dated 04.05.2013. Respondent No.1 being aggrieved by and dissatisfied with Order dated 04.05.2013 challenged the same before Sindh Labour Appellate Tribunal at Karachi in Appeal No. KAR-103 of 2013, which was allowed vide Impugned Order dated 23.09.2014. Petitioner-Bank being aggrieved by and dissatisfied with said Order dated 23.09.2014 filed the instant Constitution Petition on 17.10.2014.

4. That Respondent No.1, after receiving notice filed comments, wherein denied the allegations leveled against him besides raising preliminary legal objections.

5. Mr. Khaleeq Ahmed, learned counsel for the Petitioner-Bank has contended that Impugned Order dated 23.09.2014 is against the settled proposition of law; that learned Sindh Labour Appellate Tribunal at Karachi (Respondent No.2)

without discussing merits of the case and case law cited by Petitioner-Bank allowed Appeal No. KAR-103/2013 of Respondent No.1, which is not warranted under the law; that the findings recorded by the Respondent No.2 are based on misreading and non-reading of evidence; that high standard integrity of a Banker is required under the instructions of State Bank of Pakistan and, if any doubt arises against a particular employee, the Bank is at liberty to take action in accordance with law; that Respondent No. 2, while deciding an Appeal No. KAR-103/2013 observed that Petitioner-Bank had no complaint against Respondent No.1, while ignoring Circular of State Bank of Pakistan as well as agreed terms of Letter of Appointment; that Respondent No. 2 fixed the case for announcement of judgment on 23.09.2014, but announcement was made later on and issued certified copy of the judgment, which was provided on the same date; that learned Sindh Labour Appellate Tribunal at Karachi in violation of Article 201 of the Constitution of Islamic Republic of Pakistan, 1973, ignored the principle laid down by the Honorable Supreme Court of Pakistan in the judgment reported as 2012 SCMR 64; that order of Respondent No.2 has prejudiced the case of Petitioner-Bank. Learned counsel lastly prayed that Impugned Order dated 23.09.2014, passed by Member, Sindh Labour Appellate Tribunal at Karachi be set aside. In support of his contention, he placed reliance upon the cases of Trustee of the Port of Karachi v. Saqib Samdani (2012 SCMR 64), Ghulam Mustafa Channa v. Muslim Commercial Bank Ltd and others (2008 SCMR 909), The Commandant, Izzat Baig Awan v. Habib Bank Ltd (2004 SCMR 98).

6. Mr. Ejaz Hussain Shirazi, learned counsel for the Respondent No.1 has argued that the order passed by Respondent No.1 is just, fair and within the parameters of law hence, the same does not require interference of this court in Constitutional Jurisdiction. Per learned counsel, the instant Petition is frivolous and misleading; that Respondent No.2 has discussed all the issues involved in the matter; that Petitioner-Bank had full opportunity to produce evidence against Respondent No.1 but, Petitioner-Bank deliberately and intentionally failed to establish the allegations against Respondent No.1. Per learned counsel, no loss accrued either to the Petitioner-Bank or the concerned Bank; that on the contrary Respondent No.1 was unlawfully dismissed from service on the basis of false allegations which could not be proved in evidence; that Respondent No.1 has suffered the agony of trial for the last about eight years. Learned counsel lastly prayed for dismissal of instant Petition on the ground that there are findings on facts recorded by the learned Appellate Tribunal and this Court has limited jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 to dilate upon evidence of the parties.

7. We have heard learned counsel for the Petitioner-Bank and Respondent No.1 respectively and with their able assistance carefully perused the material placed on record by both the parties and case law cited at the bar.

8. In order to evaluate grievance of Petitioner-Bank in respect of allegations of misconduct against Respondent No.1, the contents of

impugned Termination Letter bearing No. SBL/HRD/3983/031237/2009 dated 04.01.2010 are reproduced below in extensor as follows:-

“This is in continuation of your explanation dated 02.10.2010 regarding complaint received against you from the bank of Khyber, Peshawar alleging that you have been found guilty of misconduct and involved in fraudulent loans, criminal breach of trust and that NAB is investigating the matter. A copy of the complaint No. BOK/HO/ND's Sectt/387 dated 25.11.2009 from the Managing director of the Bank of Khyber, Peshawar addressed to the Director General, National Accountability Bureau, Peshawar and copy endorsed to the President of our Bank was also supplied to you. The contents of your explanation dated 2<sup>nd</sup> January 2010 have been examined and found unsatisfactory. The competent authority has, therefore decided to terminate your services with immediate effect, you will be given three months' pay in lieu of notice in addition to other legal dues if any.”

9. That Petitioner-Bank found Respondent No.1 guilty of misconduct as mentioned in Letter No. BOK/Ho/MDs Sectt:/387 dated 25.11.2009, referred in the impugned Termination Letter (supra) the contents whereof are reproduced in extensor, which reads as under:-

“Refer your letter NO. 1/39/COM (182) /FCIW/NAB (F)/1454 dated 20.11.2009 on the captioned subject and as desired, a detailed and comprehensive enquiry report conducted in the said cases through internal Audit Division, is being enclosed herewith for your kind perusal and necessary action at your end please. However, as you would observe from the enclosed enquiry report conducted by Audit Division, the bank suffered a huge loss of Rs. 9.700M approximately due to fraudulent involvement and carelessness on the part of the relevant staff. We would, therefore, be obliged, if the criminals are put to task because of their misconduct, criminal breach of trust and dishonesty with the institution. It may please be mentioned that all the relevant record and documentary evidence of the case, has already

been submitted to your office vide our letter No. BOK/Ho/MD's Sectt/370 dated 05.11.2009.”

10. We have also perused deposition of Respondent No. 1 and deposition of Representative / Authorized Officer of Petitioner-Bank. The entire case against Respondent No.1 is with regard to his involvement in the case of criminal breach of trust in his previous employer that is, M/s Khyber Bank Limited and certain complaints against him registered at National Accountability Bureau, Peshawar.

11. We have also perused Impugned Order dated 04.05.2013, passed by Sindh Labour Court No. V at Karachi. The learned Trial Court in order to resolve the controversy between the parties had framed the following issues:

(i) Whether Applicant was illegally terminated by Respondent?

(ii) Whether applicant is entitled for the relief claimed?

12. The primordial question is whether Respondent No.1 was served with show cause notice along with statement of allegations? And, whether inquiry proceedings were initiated against Respondent No.1 and he was provided personal hearing before impugned action?

13. The deposition of the Representative / Authorized Officer of Petitioner-Bank clearly spells out that Respondent No.1 was not

convicted by NAB Court on the allegations leveled against him. It is further admitted by him that he did not produce any letter issued by the Petitioner-Bank regarding performance of Respondent No.1 from his previous employer from the date of appointment till the date of confirmation. He further admitted that there was no fault on the part of Respondent No.1 regarding Petitioner-Bank. It is further admitted by him that neither Inquiry Officer was appointed nor inquiry was conducted against Respondent No.1 by the Petitioner-Bank regarding allegation mentioned in the Impugned Termination Letter.

14. From perusal of pleadings of the parties and evidence recorded by the learned Labour Court No. V, Karachi it is crystal clear that all these proceedings and actions were taken against Respondent No.1 by the Petitioner-Bank on the basis of hearsay evidence and no conclusive findings of guilt of Respondent No.1 have been established in the evidence.

15. We have noted that no financial loss is caused to Petitioner-Bank by the act of Respondent No.1.

16. We have also noted that only allegation against Respondent No.1 is with regard to Letter bearing No. BOK/Ho/MDs Sectt:/387 dated 25.11.2009. In this regard, we are of the view that it was incumbent upon Petitioner-Bank to prove allegations against Respondent No.1 as per Qanun-e-Shahadat Order, 1984. Since, the Petitioner-Bank has failed to do so no inference can be drawn against Respondent No.1 at this stage.



17. That learned Sindh Labour Appellate Tribunal/Respondent No. 2, vide impugned Order dated 23.09.2014 considered every aspect of the case including evidence and rendered the final decision within the parameters set forth in law.

18. We are of the view that there were certain allegations against the Respondent No.1 but his service was not supposed to be terminated without holding a full-fledge inquiry and grant of opportunity of hearing to Respondent No. 1 to defend himself on the allegations made against him. It is well settled proposition of law that right of fair trial and due process is a fundamental right of every person under Article 10-A of the Constitution. Reference in this regard is made to the case of Engineer Majeed Ahmed Memon v. Liaquat University of Medical and Health Sciences, Jamshoro and others (2014 SCMR 1263).

19. We have noted that case law cited by the learned counsel for the Petitioner is distinguishable from the facts and circumstances of the case.

20. We are of the view that this Court in Constitutional Jurisdiction cannot interfere in the findings on facts arrived at by a competent forum until and unless there is misreading and non-reading of evidence, perversity, illegality or irregularity in the proceedings. In the instant case, we do not see any such illegality, infirmity or material irregularity in the Impugned Order dated 23.09.2014 passed by learned Sindh Labour Appellate Tribunal,

Karachi vide which Respondent No.1 has rightly reinstated in service.

21. In the light of above facts and circumstances of the case, Order dated 23.09.2014 passed by Respondent No.2 is upheld and consequently the instant Constitution Petition is dismissed along with pending application(s).

22. Foregoing are the reasons of our short Order dated 10.08.2017 dismissing the instant petition.

Karachi  
Dated:

JUDGE

JUDGE

Shafi/P.A