

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

High Court Appeal No.239 of 2016

Allah Dino Khaskheli.....Appellant

V/s

Mr. Zakir Mahmood,

President, Habib Bank Limited,

Karachi & others.....Respondents

Dates of hearing: 08.10.2018, 31.10.2018 & 04.12.2018

Mr. Abdul Karim Khan Abbasi, Advocate for the Appellant.

Mr. Faisal Mahmood Ghani, Advocate for the Respondents No.1 to 4.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - Through the captioned Appeal, the Appellant has impugned the Judgment dated 08.08.2016 and Decree dated 19.08.2016 passed by the learned Single Judge (Original Side), whereby the Suit of the Appellant was dismissed.

2. Mr. Abdul Karim Khan Abbasi, learned counsel for the Appellant makes categorical statement that he is confining his argument to the extent of damages only and he does not press so far as the reinstatement of service of the Appellant is concerned. He has submitted that the Appellant was appointed as an Officer Grade-III by the Respondent-Bank on 30.04.1990; he was promoted to Grade-II in the year 1999 and served the Respondent-Bank for more than 16 years. During his tenure of service, he was assigned the work of initiating and sanctioning the loan to the Agriculturists/borrowers, subject to submission of their Agriculture Pass Books. During his tenure of service, he received a

Show Cause Notice from the Respondent-Bank on 28.11.2005 regarding non-verifying the Agriculture Pass Books of various agriculture finances of millions of rupees in different branches so also sanctioning Agriculture finances to various borrowers against forged Pass Books. The Appellant denied the allegations, which were not considered by the Respondent-Bank and the Appellant received another Show Cause Notice on 27th February, 2006. He denied the allegations but the same were not considered by the Inquiry Officer, during the course of inquiry proceedings. The Appellant was later on dismissed from service vide order dated 30.12.2006. Learned counsel added that the Appellant was entitled to claim damages due to his wrongful dismissal from service; that the Appellant served upon the Respondent-Bank Grievance Notice under Section 46 of IRO. Finally he filed Suit No.903/2007 before the learned Single Judge of this Court on 17.7.2007.

3. We have noticed that the learned Single Judge vide order dated 22.12.2008 framed the following issues:-

- 1. Whether employment of the plaintiff was governed by law of master and servant? If yes, whether any declaratory or injunctive relief can be granted?**
- 2. Whether any employment benefits and salaries can be claimed or allowed for further service where the employment is governed by the law of Master and Servant?**
- 3. Whether the plaintiff has been illegally and unlawfully dismissed from service by the defendant?**
- 4. Whether the plaintiff sustained mental loss/agonny after dismissal from service?**
- 5. Whether the Defendant breached the contract of employment as per employment policies of Defendants?**
- 6. Whether the plaintiff has been dismissed from service after due disciplinary process?**
- 7. What should the decree be?"**

4. We have also noticed that the learned Single Judge after careful examination of the parties and evidence decided the aforesaid issues in elaborative manner and after hearing the parties dismissed the Suit of the Appellant vide judgment dated 08.08.2016 followed by Decree dated 19.08.2016. Appellant being aggrieved by and dissatisfied with the aforesaid dismissal order has filed the instant High Court Appeal on 24.08.2016.

5. Mr. Abdul Karim Khan Abbasi, learned counsel for the Appellant has argued that the learned Single Judge has grossly erred in not appreciating the evidences on record which resulted in the miscarriage of justice; that the Respondent-Bank has suppressed material evidences; that the Banks were established under a statute, therefore, their servants are liable to be dealt with in accordance with law; that the Appellant had illegally been removed from the service upon false allegations and by stigmatizing his personality; that the Appellant has been condemned unheard and removed from service without holding proper inquiry into the allegations leveled against him, which is unwarranted under the law; that the act of Respondent-Bank was based on malafide intention; that if the Termination Order conveys a message of a stigma the employee cannot be ousted from service without resorting the procedure as provided under the Employees' (Efficiency and Discipline) Rules but in the matter of the appellant, no procedure was adopted and he was removed from the employment against the law and procedure; that it is a trite principle of law that even if a person is to be condemned for the misconduct and even if he is employed on regular basis he is entitled to a fair trial and an opportunity should be provided to him to clear his position but in the instant matter not only the Appellant was condemned unheard but on the basis of his

stigmatized removal he had been rendered and disentitled for future employment; that the learned Single Judge has erred in leaning in favour of the Respondent-Bank which is against the principle that justice should not only be done but should be seen to have been done; that the learned Single Judge has erred in appreciating the version of the Respondent-Bank as correct and rejecting everything stated about the facts and the law by the Appellant; that the case requires further evidence on the point that when other officials upon whom Show Cause Notices were served on the same charges and inquiry held against them but they were retired with full benefits. In this view of the facts and law the Appellant has been meted out with discriminatory treatment in violation of his fundamental rights; that the fundamental rights of the Appellant under Articles 4, 10-A, 14 & 25 of the Constitution have been violated; that the learned counsel at this stage focused to the evidence file and argued that the allegations leveled against the Appellant were falsified by the Decree passed by the learned trial Court regarding recovery of loan from the concerned borrowers; that the pass books as opined by the Inquiry Officer to be fake are incorrect statements, hence a nullity in the eyes of law. He then referred to various documents attached with the evidence file and argued that the Appellant was wrongly dismissed from service, therefore, he was entitled for the damages of his wrongful dismissal from service. In support of his contentions, he relied upon the cases of ***Rashid Hussain Mangi vs. Hon'ble Register, High Court of Sindh (2006 PLC (C.S) 291)***, ***M.A. Rahman vs. Federation of Pakistan and others (1988 SCMR 691)***, ***Muhammad Iqbal vs. Assistant Commissioner, Jaranwala and another (2000 PLC (C.S) 1053)***, ***Unreported orders dated 08.11.2013 passed by the Hon'ble Supreme Court in CRP No.171 of 2012 in C.P No.338/2011 (Mehboob Ahmad Soomro***

vs. Federation of Pakistan through Ministry of Finance etc.), Unreported order dated 20.11.2013 passed by the Hon'ble Supreme Court in CRP No.171 of 2013 in C.P No.338/2011 (Mahboob Ahmad Soomro vs. Federation of Pakistan through Ministry of Finance etc.) Unreported order dated 21.11.2013 passed by the Hon'ble Supreme Court in CRP No.171 of 2013 in C.P No.338/2011 (Mehboob Ahmad Soomro vs. Federation of Pakistan through Ministry of Finance etc.), Unreported Judgment passed by the Hon'ble Supreme Court dated 22.12.2009 in Civil Petition No.2098 of 2009, Arif Majeed Malik and others vs. Board of Governors Karachi, Grammer School (2004 CLC 1029) & Shahid Mahmood vs. Karachi Electric Supply Corporation Ltd. (1997 CLC 1936). He lastly prayed for allowing the instant Appeal.

6. Mr. Faisal Mahmood Ghani, learned counsel for the Respondent-Bank has refuted the claim of the Appellant and supported the impugned judgment and decree passed by the learned Single Judge; that the learned Single Judge has taken into consideration every aspect of the case; that nothing is liable to be decided or interpreted further on the issues involved in the matter; that the Appellant was not entitled even for reinstatement and damages, therefore, once the Appellant had failed to prove his case on the plea of reinstatement in service, the question of awarding damages does not arise. He further stated that no declaratory injunction for grant of relief could have been claimed where governing law is that of "*Master and Servant*"; therefore, no damages for loss of future earnings prospects etc. could be claimed by the Appellant, whose removal from service on certain charges were later on proved against him, through the inquiry proceedings.

7. We have given serious thoughts to the respective arguments of the learned counsel for the parties and have also perused the record and the decisions cited before us.

8. Issue in the present proceedings is whether the suit of the Appellant for damages was lawfully dismissed under the facts and circumstances?

9. In order to initiate this discussion, it would be appropriate to reproduce the contents of the prayer clauses of the Plaint filed in the Suit:-

- a) **Declare that the dismissal order is an unlawful, illegal, issued to *mala fide* act of the defendant no.2, hence no force in law;**
- b) **Direct the defendant to pay the damage amount Rs.7689312.80 by way of remaining salaries, bonuses, leave encashment, provident fund, HBL Employees Welfare Fund Units etc to the plaintiff;**
- c) **Grant any other relief (s) that this Hon'ble Court may deem fit in favour of the plaintiff against the defendants, according to facts and circumstances;**
- d) **Cost of litigation;**

10. It appears from the foregoing that the basic claim of the Appellant was with respect to the damages on account of wrongful dismissal of his service, in lieu of reinstatement in Service. This factum was also recognized by the learned Single Judge in the impugned order, wherein it is recorded that:-

“15. There can be no denial that a ‘wrongful’ act may result in causing mental loss and damages but one, in law, cannot succeed for such relief by uttering words ‘mental loss or damages’ but one shall be required not only to plead specifically every fact, constituting claimed loss / damage under each head but also to prove the same by leading evidence, as per required standard. Reference, if any, can well be made to the case of Abdul Majeed Khan (supra).

In the instant case, the plaintiff in his pleading (plaint) had asserted as :

‘Para-13.....It is to be mentioned here that due to his

dismissal from service, the Plaintiff's reputation, credibility has been damaged within financial institutions and also in the job market, which have directly and indirectly damaged on his personality in the society at large.'

but he(plaintiff) neither given any detail of mental suffering / damage except that of calculating his service benefits with reference to his unexpired service. The plaintiff even did not attempt to produce a single document to establish mental suffering or other special damages therefore, without much debate, the issue under discussion shall conclude in no other answer but 'negative'. It is worth to add here that a 'wrongful dismissal' would not entitle one to claim damages from employer under head of 'loss to reputation' as has been held in the case of 'Abdul Majeed Khan v. Tawseen Abdul Haleem & others (2012 PLC (C.S) 574 as:-

'24. The above analysis show that where an employee who was wrongfully dismissed from service to his position he is entitled to that salary for the period he remained out of job from his employer, but he is not entitled to sue in tort to claim damages on account of the injury to his reputation due to wrongful dismissal or for tort of malicious prosecution of disciplinary proceedings.'

Further, in the same case, it was held that disciplinary proceedings would not be taken as 'malicious prosecution' so as to sustain a suit for recovery of damages for 'malicious prosecution' which (tort for malicious prosecution) otherwise has its own ingredients.

'26. I am in agreement with the reasoning recorded in the cases of Gregory and Muhammad Amin (supra) that remedy of tort normally cannot be extended to departmental disciplinary proceedings.

Thus, I answer this issue in 'negative'."

11. We have scanned the impugned judgment and the decree passed by the learned Single Judge and it is noted that the learned Single Judge of this Court (O.S) has dismissed the suit of the Appellant on the basis of evidences brought on record by both the parties.

12. The affidavit in evidence / deposition of the Appellant clearly depicts the following factual position:-

“It is incorrect to say that the defendant Bank has no statutory Rules. At the moment I cannot produce such statutory Rules of the defendant Bank. I can produce these Rules later. It is correct that I was Branch Manager and being Branch Manager I was responsible for all the affairs of branch. I am shown Enquiry Proceedings annexed with the written statement and say that it bears my signature at every page. I produce the same as Exhibit P/3 (containing 79 pages). I see annexure “L” to the written statement and say it was written by me. I produce the same as Ex. P/4 (containing 5 pages). I see annexure “M” to written statement and say that it bears my signature at every page (containing 48 pages). I produce the same as Ex. P/5. I see Annexure “O” to the written statement and say that it was received by me. I produce the same as Ex.P/6. I see Annexure “R” to the written statement and say that I had received it. I produce the same Ex.P/7. I see Annexure “S” to the Written Statement and say that I had received it. I produce the same as Ex.P/8. I see Annexure “T” and “U” to the Written Statement and say that Annexure “T” was written by me and Annexure “U” was written by my advocate. I produce the same as Ex.P/9 and P/10 respectively. I see Annexure “V” to the Written Statement and say that it was received by my advocate. I produce the same as Ex.P/11. It is correct to say that before, during and after the enquiry proceedings against me, I had raised no objection either against the Enquiry Officer, proceedings and/or conduct of enquiry. It is incorrect to say that I had sanctioned the Agriculture loans without proper documents and to fake persons. It is incorrect to say that the contents of para...my affidavit-in-evidence are not correct. I do not know whether Habib Bank has ever informed any outsider/person about my dismissal. It is incorrect to say that I have filed a false suit against the Defendant Bank and deposed falsely.”

13. The affidavit in evidence/ deposition of Mr. Muhammad Mujtaba Bari witness of the Respondent-Bank, who deposed as under:-

“It is correct to suggest I conducted enquiry against the plaintiff. It is also correct to suggest that after completing enquiry I had submitted the enquiry report to the competent authority as per Rules. It is also correct to suggest that the allegation with regard to taking bribe by the plaintiff has not been proved against the plaintiff in the enquiry report. It is also correct that there was a charge of taking bribe against the plaintiff ...charge sheet issued to the plaintiff.

Q. I put it to you that in the entire enquiry proceedings, not a single charge has been proved specifically against the plaintiff?

Ans. All charges except taking bribe were proved against the plaintiff in the enquiry. It is correct to suggest that in the enquiry proceedings no documentary evidence was

produced by the management of the defendant bank to prove the entire charges against the plaintiff. Vol. states that the prosecutor had submitted documents as exhibited from Ex. D/1 to D/20. It is incorrect to suggest that the management has no any fake pass book to prove that the plaintiff sanctioned/granted loan against such fake pass books to the agriculturist/borrowers. Vol. states I refer Ex.P/6 & P/7 wherein revenue officer has declared two pass books as bogus. It is correct to suggest that the management of defendant bank had delegated powers to the plaintiff for granting loan / finance of Agriculture Production Finance and also given in the target. Vol. states that plaintiff misused his powers. It is incorrect to suggest that my voluntary statement is false.

Q. Is it correct to suggest that the plaintiff exercise power to every agriculturist amounting to Rs.50,000/- subject to deposit of pass book?

Ans. Yes. It is correct. Plaintiff also sanctioned loan on fake pass books.

It is correct to suggest that management has also appointed staff for the spot verification of pass books by visiting to the agriculturist. It is also correct to suggest that plaintiff has sanctioned agriculture finance to the agriculturist on the basis of report of spot verification that were submitted/carried out by the field staff of defendant bank. Vol. states that therefore the AFO were also held responsible and they also faced the enquiry. I see letter of defendant bank dated 12.02.2002 Ex.P/2 and say that the duties of AFO's have been mentioned in the said letter.

Q. Is it correct to say that in enquiry proceedings management of defendant bank did not focus on the duties of AFO's?

Ans. It is correct Vol. states that the enquiries against SFO's were also conducted separately therefore, there was no need to focus on AFO's in this enquiry.

It is incorrect to suggest that the plaintiff was dismissed from the employment without proving charges against him. It is incorrect to suggest that plaintiff has been dismissed from the service due biasness, malafide intention, illegally, unlawfully and without having any proof against him. It is incorrect to suggest that the plaintiff dismissed from the service because there were instructions from the higher management to dismiss the officers and that it was management's policy decision."

14. The affidavit in evidence/ deposition of Mr. Aijaz Ahmed Shaikh witness of the Respondent-Bank, who deposed as under:-

"The defendant bank is duly incorporated under the companies Ordinance/Act. It is correct to say that the appointment of plaintiff in the defendant bank was made in accordance with the recruitment rules of the bank. It is correct to suggest that the plaintiff being ex-officer of bank was part of the management of the bank.

It is correct to suggest that the management has delegated discretionary powers to the branch in which plaintiff was manager to grant Agriculture Production Finance to the agriculturist. It is correct to suggest that plaintiff was given power of attorney by the defendant bank to the extent of powers as specified and mentioned therein. It is correct to suggest that the officers of bank are regarded as employees and not as employer. It is correct to suggest that the relationship of plaintiff and the defendant bank is master and servant. It is correct to suggest that plaintiff was employee of defendant bank. It is correct to suggest that plaintiff was authorized by the defendant bank for grant of Agriculture Production Finance to each agriculturist subject to production of pass book upto Rs.50,000/-. It is correct to suggest that defendant bank has appointed AFO's for at spot verification of agriculture land of intending borrowers. It is incorrect to suggest that on the basis of verification of AFO's the manager concerned of authorized branch grant/sanction loan. Vol. states that AFO's only assist the manager to the extent of verifications land in respect of intending borrowers/agriculturist, whereas manager is solely responsible to ascertain and verify financial status of the borrowers/agriculturist from different sources and after thorough investigation he can exercise his discretionary power for grant of loan. It is incorrect to suggest that there were written instructions for bank managers in the year 2002-2003 to go outside the bank in order to ascertain status of intending borrowers/agriculturist and to check their genuineness. It is correct to suggest that bank maintains the record of all borrowers and agriculturist to whom such loan is granted/sanctioned. It is correct to suggest that Agriculture Production Finance is sanctioned to those who have their own land and pass book in respect of same land. It is correct to suggest that pass books are issued by revenue department. It is correct to suggest that for recovery of amount from defaulters/Agriculturist/Borrowers/Customers, bank files suits in the concerned banking court to recover such amount. It is correct to suggest that there were five charges against the plaintiff. It is correct to suggest that the charge with regard to taking bribe could not be proved against the plaintiff in the enquiry conducted against the plaintiff. It is incorrect to suggest that on the instigation of Fazal Hussain Brohi, AFO, the charges were leveled against the managers of defendant bank. It is incorrect to suggest that if one charge could not be proved against the accused, other charges would also be regarded not proved.

RECALLED AND REAFFIRED AFTER BREAK:

It is correct to suggest that defendant bank had initiated legal process for recovery of amount against those who had committed default in respect of Agriculture Production Finance. It is correct to suggest that repayment of Agriculture Production Finance is in process of payment. It is correct to suggest that two parallel enquiries were proceedings against the plaintiff. Vol. states that on two cause of actions two different enquiries were conducted against the plaintiff. It is correct to suggest

that in both the enquiries the pass books of one Munnawar Lashari has been made basis. Vol. states that in the first show cause notice the name of Munnawar Lashari was not made basis. It is incorrect to suggest that the reply of show cause notice submitted by the plaintiff has not been considered at any stage of enquiry proceedings. It is incorrect to suggest that the plaintiff has been dismissed on false, frivolous, malafidely, illegally and unlawfully and that his dismissal based on biasness. It is not in my knowledge whether plaintiff prior to the enquiry in question was ever charge sheeted for any misconduct and/or any act or omission. It is incorrect to suggest that no charge has been proved against the plaintiff in the enquiry proceedings. Vol. states out of five charges, four charges were proved against the plaintiff. It is incorrect to suggest that plaintiff has been illegally, unlawfully and malafidely dismissed from the service. It is also incorrect to suggest that due to such dismissal that plaintiff has suffered acute mental torture, agony and he has lost his reputation amongst the friends, relatives and in the society and that he is entitled for damages from the bank and future salary and other charges as per his superannuation. It is incorrect to suggest that the bank management had already made up its mind to dismiss the plaintiff from service.”

15. We have noticed that the Appellant has admitted in the evidence that he had raised no objection either against the Enquiry Officer, enquiry proceedings and/or conduct of enquiry against him. In the evidence he produced Ex.P/6 and Ex.P/7 and as per revenue officer's report, who declared two pass books as bogus and on the basis of the aforesaid documents certain loans were sanctioned by the Appellant, which prima-facie suggest adverse inference against him. It has also come on record that there was relationship of “*Master and Servant*” between the parties. So far as issue of damages is concerned, in the evidence, the Appellant has miserably failed to provide the details of mental suffering / damages on account of his wrongful dismissal from service, except that of calculating his service benefits with reference to his unexpired service. In our view ‘wrongful dismissal’ would not entitle the Appellant to claim damages from the Respondent-Bank, when the Appellant has failed to bring on record any document to

establish his mental suffering or other special damages, which onus in our view rests with him.

16. We are of the view that the learned Single Judge has dilated upon the issues in an elaborative manner and has given his findings by appreciating the evidences of the parties and thereafter has passed an explanatory Judgment, therefore no ground existed for re-evaluation of the evidences that were brought on record, thus, we maintain the Judgment dated 08.08.2016 and Decree dated 19.08.2016 passed by the learned Single Judge (O.S). We are fortified by the decisions rendered by the Hon'ble Supreme Court of Pakistan and High Courts, on the aforesaid issues, in the cases of ***United Bank Limited and 5 others vs. Raja Ghulam Hussain and 4 others (1999 SCMR 734)***, ***Shafi Muhammad and others vs. Khanzada Gul and others (2007 SCMR 368)***, ***Aurangzeb through L.Rs and others vs. Muhammad Jaffar and another (2007 SCMR 236)***, ***Abdul Majeed Khan vs. Tawseen Abdul Haleem and others (2012 PLC (C.S) 574)***, ***ABN-AMRO Bank vs. Waseem Dar (2004 PLC 69)***, ***Muhammad Umar Malik vs. The Muslim Commercial Bank and others (1995 SCMR 453)***, ***Monazza Obaid and others vs. PIAC (2010 PLC (CS)1436)***, ***Iqbal Ahmed vs. MCB Limited (2009 SCMR 903)***, ***Shoukat Ali others vs. Allied Bank Pakistan Limited and others (2007 SCMR 198)***, ***Karamat Hussain vs. Water & Power Development Authority and another (1998 SCMR 779)***, ***Ghulam Mustafa Channa vs. MCB Limited and other (2008 TD Labour 387)***, ***Pakistan Tobacco Co. Limited vs. Channa Khan and others (1980 PLC 981)***, ***UBL and 5 others vs. Raja Ghulam Hussain and 4 others (1999 TD Labour 220)***, ***Syed Husnain Ammer vs. Tehsin Municipal Officer Narowal (2007 PLC (CS) 348)*** & ***PIAC vs. Tanveer ur Rehman (PLD 2010 SC 676)***, ***Dilshad Khan Lodhi v. Allied Bank of Pakistan and other (2008 SCMR 1530)***

and General Manager National Radio Telecommunication Corporation Haripur District Abotabad v. Muhammad Aslam and others (1992 SCMR169).

17. To elaborate further on the issue involved in the present proceedings, with regard to jurisdiction of the learned Single Judge to entertain the *lis* between the parties and to grant declaration on the terms and conditions of the service and damages on account of wrongful dismissal from service of an employee, it is expedient to refer to Section 9 of the Civil Procedure Code, which confers general jurisdiction upon the Courts to try all the Suits of a civil nature. In the light of the preceding paragraph, we are of the considered view that the Civil Courts are Courts of ultimate jurisdiction with regard to a Civil right, duty or obligation, unless the jurisdiction is either expressly or impliedly barred. Section 9 of the Civil Procedure Code only confers jurisdiction upon Courts and does not grant a substantive right of action. The right of action is to be established by reference to the substantive law. We concur with the view of the learned Single Judge that where the relationship between a Corporation and its employees was that of “*Master & Servant*” only a Suit for damages could be filed and no relief for reinstatement of service could be claimed.

18. We have also noticed that the Appellant has confined his argument to the extent of damages on account of his wrongful dismissal from service and claimed that he was entitled to the salary for the period he remained out of job from the Respondent-Bank. In our view, the Appellant is not entitled to sue for wrongful act of the Respondent-Bank, if any, for damages on account of the injury to his reputation due to dismissal of his service. We have noticed that the Appellant had been non-suited through the

domestic inquiry proceedings and as per the record the allegations were proved against him.

19. The pivotal question before us is as to whether; we can call in question the aforesaid inquiry proceedings at the appellate stage? In our view, we cannot examine the proceedings of domestic inquiry conducted against the Appellant and substitute our own conclusion on merits of the case, in place of the findings of the inquiry officer and the departmental authorities. The dismissal of the Appellant from service as a consequence of the inquiry proceedings was, therefore, not opened to any exception at this stage. Dismissal of the Appellant being in accordance with law, no damages could be awarded for wrongful dismissal from service without proving the wrongful act of the Respondent-Bank through concrete evidence, which has not been done in the instant matter by the Appellant though ample opportunity was provided to him.

20. We conclude that the Appellant's reinstatement in service cannot be made through any Decree of the Civil Court, since the Appellant relinquished his claim of reinstatement and confined his case to the extent of damages, if any, accrued to him due to his purported wrongful dismissal from service, therefore, this Court cannot come to the rescue of the Appellant and order for his reinstatement in service at the appellate stage for the simple reason that the wrongful termination is *sine qua non* for maintaining the right of employee to claim the damages, otherwise he would have no cause of action, since no statutory rules governing terms and conditions of service had been framed, therefore, the relationship between the Appellant the Respondent-Bank was governed by the relationship of "*Master & Servant*" and in such a situation the relief of reinstatement in service was not envisaged for such relationship nor the same could be granted

under the Code of Civil Procedure by the learned Single Judge sitting on the Original Side.

21. The learned counsel for the Appellant has also drawn our attention that the Respondent-Bank had initiated recovery proceedings against the borrowers and the matter between the Bank and borrowers has been set at naught. The aforesaid claim of the Appellant has been refuted by the learned counsel for the Respondent-Bank and argued that since that issue is quite different so far as the right of Bank was concerned to sue against the borrowers to satisfy their claim lodged against them. Learned counsel for the Appellant has sought permission to point out that the Respondent-Bank had exonerated other employees who were tried along with the Appellant by granting full pensionary benefits. The learned counsel for the Respondent-Bank has again discarded the contention of the Appellant and placed on record the statement dated 04.12.2018 and argued that the other officials, who were proceeded along with the Appellant, were also dismissed from service, therefore, no discrimination was meted out with the Appellant.

22. In the light of the evidences and other material produced before us, we have reached to the conclusion that the Appellant has failed in all aspects to prove his case through cogent material with regard to his reinstatement in service as well as on the point of damages. The learned Single Judge has rightly opined against the Appellant and dismissed his Suit for reinstatement as well as for damages.

23. We are also of the considered view that the Appellant has miserably failed to prove his case for general damages as well as special damages, once he failed to prove his case on the point of

reinstatement in service which were not available under the law and the learned Single Judge even otherwise was not competent to reinstate the service of the Appellant, when it is established on record that there was a relationship between the parties as that of “*Master & Servant*”.

24. The case laws cited by the learned counsel for the Appellant are quite distinguishable from the facts and circumstances of the present case.

25. In view of the foregoing discussion, we do not find any illegality, infirmity and material irregularity in the impugned Judgment and Decree passed by the learned Single Judge warranting interference at our end.

26. In the light of above facts and circumstance of the case, the High Court Appeal No. 239 of 2016 filed by the Appellant is found to be meritless, and is dismissed along with the listed application(s).

Karachi
Dated: 10.12.2018

JUDGE

JUDGE

Nadir/PA