

# IN THE HIGH COURT OF SINDH KARACHI

## **Before:**

Mr. Justice Aftab Ahmed Gorar  
Mr. Justice Adnan-ul-Karim Memon

## **C.P. No. D-4623 of 2018**

M/s. United Bank Limited  
Petitioner through : Mr. Abdul Haleem Siddiqui, advocate.

Respondent No.4  
Through : Mr. Zia-ul-Haq Makhdoom, advocate &  
Mr. Muhammad Azhar Mahmood, advocate.

Respondent No.1  
Through : Mr. Nishat Warsi Deputy Attorney General

Date of hearing  
& order : **24.01.2022**

## **ORDER**

Through this petition, the petitioner-M/s. United Bank Limited has assailed the judgment dated 10.05.2018 passed by the learned Full Bench of National Industrial Relations Commission, Islamabad at Karachi (F-NIRC) whereby, the order dated 28.07.2016, passed by the learned Single Member, NIRC at Sukkur Camp at Hyderabad was maintained to the extent of reinstatement of private respondent in service with all back benefits and held that private respondent was erroneously dismissed from service in 2009. For convenience sake, an excerpt of the judgment dated 10.05.2018 passed by the Full Bench of NIRC is reproduced as under:

*“6. First of all we take up the question whether the instant appeal can be treated as a Revision Petition or not. Learned counsel for the appellant has heavily relied on the provision of Section 58(2)(d) of IRA, 2012 as a revisional forum of the NIRC but as it has been held by the honorable Supreme Court in Civil Petition No. 2297/14 decided on 02-01-2015. According to which the honorable Supreme Court had held that the provision of Section 58 (2)(d) of IRA, 2012 does not provide revisional forum to the NIRC because appeal / revisional remedy is a statutory remedy and can only be exercised if such a right is expressly and specifically provided under the law and for no reason can be considered as a substitute for the suo motu revisional jurisdiction of the NIRC. So in the availability of this dictum of law laid down by the honorable Supreme Court the instant appeal cannot be treated as a revision. Moreover, this view has been also followed by the Full Bench of NIRC in Review Application bearing No. 12(72)/16-K titled Zulfi titled Zulfiqar Ali Qadri vs. Member NIRC and others.*

*7. Now the next question is whether this appeal is within time and if time barred whether appellant has convincing and plausible explanation advanced by the appellant. The impugned order was passed on 28-07-2016 and application moved for getting the certified copy of the impugned order on 29-07-2016 and the certified copy was delivered to the appellant on 31-08-2016, while the instant appeal has been filed on 21-10-2016. There is no cavil to this reality that the instant appeal has been filed after badly running limitation of thirty days. For the condonation of delay the convincing and plausible explanation of each day is required, in the application for condonation of delay supported by an affidavit at para No. 4 the only explanation is advanced that Nasir Ali deponent of the affidavit was dealing with Labour Management and Employees related litigation was unwell and had to proceed to Lahore as advised by the doctor but alongwith*

*this application / affidavit no supporting / substantive documentary evidence, prescription of the doctor, nature of the deceases or period of ailment has not been provided which speaks that the appellant is not armed with the convincing and plausible explanation for submission of instant appeal with delay so there is no question arise for condonation of delay because it has been held by the honorable Supreme Court in case law 2011 SCMR 08 titled M. Ismal vs. Inspector General Police question of limitation cannot be considered a technicality simpliciter as it has got its own significance and would have substantial bearing on merits of the case.*

8. *Moreover, in case PLD 2008 SC 462 even one day delay of period of limitation in filing appeal was not condoned by the honorable Supreme Court. Further in case law 2012 SCMR 587 the honorable Supreme Court rule that no limitation run against void order was not a indefeasible rule because party could not be slept over to challenge a void order and it was to challenge the same within stipulated/ prescribed time period of limitation from the date of its knowledge before the proper forum in appropriate proceedings. The case law relied on by the learned counsel for the appellant 2004 SCMR 98, 2004 SCMR 149, 2007 SCMR 198 are not helpful to the appellant because in the above relied case laws the point of limitation has not been attended.*

9. *While in the instant appeal there is no question of passing an order in absence of the appellant by the Learned Single Member because the order was announced on 28-07-2016 and application for getting the certified copy of the impugned order was moved on next day i.e. on 29-07-2016, so there is no question of ignorance or lacking of knowledge of the appellant about the impugned order.*

10. *In the light of above discussion we are of the opinion that the appeal is hopelessly time barred for which the appellant has not advanced any convincing and plausible explanation for which he was legally obliged today so, hence, without touching merits of the appeal, this appeal is hereby dismissed being time barred. There is no order as to costs. File be consigned to the record room after due completion."*

2. The case of the petitioner-bank in birds-eye view is that a private respondent was appointed in the year 1990 as Machine Operator / Universal Teller in the petitioner-Bank. Private respondent has averred that the duties assigned to him were cleaning, transferring, posting SS Card Scanning OBC, IBC daily, however, he did the entire work manually. Private respondent further averred that during his posting at UBL Branch Quaid e-Azam Road, Hyderabad, he was served with a charge sheet, containing allegations of misconduct of misappropriation of a certain amount, which was promptly replied by him, and denied the allegations leveled against him with vehemence. The petitioner-bank considered his reply and appointed an inquiry officer to probe the allegations. Per petitioner, the charges leveled against the private respondent were proved; and, he was dismissed from service vide letter dated 05.06.2009. The private respondent being aggrieved by and dissatisfied with the impugned dismissal form service order served upon the petitioner-bank grievance notice dated 12.6.2009, with the plea that he be reinstated in service with all back benefits, with a further plea that during the intervening period he was not gainfully employed anywhere, however, the matter landed in the learned Sindh Labor Court No.VI Hyderabad (**SLC**) and finally, the learned SLC vide common order dated 30.01.2013 dismissed the applications of the management of the various companies including petitioner-bank either for dismissal/abatement of proceedings or return of grievance petitions to the workman. In the meanwhile, learned counsel for the petitioner-bank moved Miscellaneous Application in Grievance Application No.110 of 2009 and submitted that during the pendency of the proceedings before the learned SLC, the Hon'ble Supreme Court of Pakistan has given the decision in the case of Pakistan Telecommunication

*Private Limited v. Member NIRC, 2014 SCMR 535*, and held that matters about “Trans provincial Establishment” are to be determined by the NIRC and not by the Labour Court, therefore, in light of the decision of the Hon’ble Supreme Court of Pakistan, the aforesaid Grievance Application has abated, and could only be now determined by NIRC bench. The learned SLC, vide diary sheet dated 23.08.2014, referred the matter to the learned NIRC Bench. The learned Single Bench of NIRC after receiving the matter started recording evidence of the parties and finally vide order dated 28.7.2016 allowed the Grievance Application of the private respondent and set aside the dismissal from service order dated 05.6.2009 passed by the petitioner-bank and reinstated private respondent in service with all back benefits with immediate effect. Petitioner-bank being aggrieved by and dissatisfied with the impugned decision of the learned Single Bench of the NIRC preferred Appeal/ Revision No.12A (09)/2016 before the Full Bench of NIRC under section 58 read with 58(2) (d) of the Industrial Relations Act, 2012, and the learned Full Bench of NIRC, after hearing the parties, dismissed the appeal, being time-barred and now the petitioner-bank has filed the instant petition on 09.6.2018 against the concurrent findings of two legal fora.

3. Mr. Abdul Haleem Siddiqui, learned counsel for the petitioner-bank, has submitted that the impugned Orders dated July 28, 2016, and May 10, 2018, of the Respondent No. 2 and 3 are bad in law and on facts as such, the same are not sustainable in the eyes of law; that the impugned orders are based on misreading and non-reading of the evidence available on record and non-consideration of legal objections concerning the jurisdiction of Sindh Labour Court VI Hyderabad after passing of 18th Constitutional Amendment on April 20, 2010, and cessation of Industrial Relation Act, 2008 (IRA), which resulted in miscarriage of justice; that the Learned Respondent No.2 failed to consider that Presiding Officer Labour Court No.VI at Hyderabad has transferred the case of the Respondent No.4 to Member NIRC at Karachi (Respondent No.3) where the Case of the Respondent No.4 was renumbered as Case No.4B(418)/2014-K and the same was proceeded by the Learned Member of Respondent No.3 who was appointed through notification as Member NIRC for Karachi. Hence, the entire proceeding whatsoever may be conducted by the said Presiding Officer was Corrum non-judice; that it is settled Principle of Law that any proceeding before any Court of Law having no Jurisdiction is a nullity in Law and any Order passed by such Court is a void Order, for which no limitation runs against a void Order but the learned Respondent No. 2 failed to consider such aspect of Law and dismissed the appeal being barred by time which is illegal, unlawful and required consideration by this Court; that the learned Respondent No. 2 failed to consider that the Respondent No.4 applied Section 41(4) of the LRA, 2008 before the Sindh Labour Court which states that the Labour Court shall give the Decision within 7 days of the matter being brought before it as if such matter was an Industrial Dispute. Whereas in the present case, Respondent No.4 had committed a breach of trust by indulging in acts of gross negligence due to which an amount of Rs.4,70,000/- was withdrawn from the account of the customer, hence the Charge Sheet was issued about misappropriation of the amount which caused loss to the Bank as mentioned in the said Charge Sheet. Respondent No.4 was provided the full opportunity of being heard and he contested and participated in the disciplinary

proceeding neither the Single Bench of NIRC nor Appellate Court has given any finding in this regard; that the Learned Respondent No.3 (Single Bench of NIRC) failed to notice that neither in the Grievance Petition nor in the Affidavit-in-Evidence filed by the Respondent No.4 has alleged his dismissal was in connection with any Industrial Dispute or has led to any Industrial Dispute. Hence, it is settled that the Grievance Petition under Section 41(4) of LRA, 2008 was not maintainable. The said Legal aspect has been ignored either by the Learned Respondent No.3 (Single Bench of NIRC) or by the Learned Respondent No. 2 (Appellate Bench of the NIRC); that the Learned Single and Appellate Bench of NIRC has failed to consider another ground on which the Grievance Petition was not maintainable, under Standing Order 12(3) of the Industrial & Commercial Employment (Standing Order) Ordinance, 1969, as the said law still refers to Section 25-A of L.R.O, 1969 which is not in the field and was replaced by IRO, 2002 which was also replaced by IRA, 2008. Furthermore, the IRA 2008 was also repealed or replaced by Industrial Relations (Revival 8. Amendment) Act, 2010 and even the present Industrial Relations Act, 2012. Hence, there is no corresponding amendment made in the law on which the Respondent No.4 referred to Section 25-A of I.R.O, 1969 in its Impugned Order; that the Learned Single Bench has no jurisdiction to entertain the grievance application of the private respondent and wrongly held that the manager of the Bank was equally responsible for the Commission of offense, this ipso facto is no ground to conclude that extreme punishment and dismissal could not be inflicted on Manager but upon the Respondent No. 4 alone. It is submitted that such finding of the Learned Single Bench should not be used for allowing the Petition of Respondent No.4 with back benefit. The quantum of punishment is the total discretion of the employer as held by the Hon'ble Apex Court in its various Judgments. Hence, the Impugned Order of the Single Bench is without jurisdiction based on a miscarriage of Justice and liable to be set aside. Learned counsel heavily relied upon the case of Air league of PIAC Employees v. Federation of Pakistan, 2011 SCMR 1254 and argued that the IRA 2008 stood repealed by virtue of section 87(3) with effect from 30.04.2010, and it was not saved, thus the cases pending before SLC and further proceedings were nullity in the eyes of law; that the aforesaid factum was not considered by both the benches of NIRC; that the learned SLC Hyderabad has no jurisdiction to refer the matter to NIRC, as such proceedings before the NIRC on the aforesaid analogy as discussed supra is ultra-vires, illegal, unlawful and are without legal authority and jurisdiction on the premise that there was no any industrial dispute by and between the parties. In support of his contentions, he relied upon the cases of PESCO, WAPDA House through Chief Executive v. Ishfaq Khan and others, **2021 SCMR 637**, Rehmatullah and others v. Saleh Khan and others, **2007 SCMR 729**, Muhammad Tariq Khan v. Khawaja Muhammad Jawad Asami and others, **2007 SCMR 818**, S.M. Waseem Ashraf v. Federation of Pakistan through Secretary, M/O Housing and Works, Islamabad and others, **2013 SCMR 338**, Mustafa Lakhani v. Pakistan Defence Officers Housing Authority Karachi, **2008 SCMR 611**, Talib Hussain and others v. Member, Board of Revenue and others, **2003 SCMR 549**, Evacuee Trust Property Board and others v. Mst. Sakina Bibi and others, **2007 SCMR 262**, and Mehreen Zaibun Nisa v. Land Commissioner, Multan and others, **PLD 1975 Supreme Court 397**.

4. Mr. Zia-ul-Haq Makhdoom, learned counsel for the private respondent, has supported the impugned orders passed by the learned Benches of NIRC and argued that the petitioner was dismissed from service on the allegations that two cheques in question were attended by M/s. Mohsan, Nawab Khan, and Miss Anika whereas Mohsan verified the signature of the customer and Nawab Khan made cash payment which was supervised by Anika. The above-named officials had contributed the alleged misappropriation amounts and the same deposited in the account of the complainant, however, they were awarded minor punishment but the private respondent was awarded major punishment of dismissal from service without ascertaining the factual position of the matter that it was no fault of the private respondent. Per learned counsel, the aforesaid version is corroborated by the statement of the witness of petitioner-bank, who had deposed that the above-named officials were charge-sheeted for the same offense and they were given minor punishment while private respondent was awarded major punishment of dismissal from service. Per learned counsel, the aforesaid act of the petitioner bank was/is against the basic principles of natural justice and also violates Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. He further submitted that the private Respondent was a permanent worker in the Petitioner-bank, thus the Grievance Application was maintainable under the law. Learned counsel asserted that the captioned petition is liable to be dismissed under the law on the premise that there are concurrent findings recorded by the competent forum under the special law and the grounds raised in the instant petition are untenable; that Petitioner-bank terminated the services of the private-Respondent without any justiciable reason; that both the aforesaid Judgment/order are passed within the parameters of the law. Besides that the instant petition is frivolous, misleading as there are concurrent findings by the courts below and this Court has limited jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to dilate upon the evidences led by the parties; that private Respondent had performed his duties with full devotion and was erroneously dismissed from service without fault on his part; that aforesaid action of the Petitioner-bank was absolutely illegal therefore private Respondent served his grievance notice upon the petitioner-bank, which was not redressed at the initial stage, however he had no alternative except to approach the learned SLC for the aforesaid remedy and relief under the relevant provision of law in the field; that the learned SLC after change in law, referred the matter to the learned Bench of NIRC on the plea that petitioner-bank claims to be a trans-provincial establishment, therefore the jurisdiction lied with NIRC and no more with SLC. Learned counsel emphasized that on receiving the pleadings of the parties, the learned Single bench of NIRC recorded the evidence and passed just, proper and fair order, holding the dismissal from service of the private respondent as illegal and reinstated him in service with all back benefits and the Petitioner-bank did not reinstate him on duty and filed a time-barred appeal before the learned Full bench of NIRC by accepting the jurisdiction under the changing scenario of law; that the learned Full Bench of NIRC after hearing the learned counsel for the parties passed the order by dismissing the appeal of the petitioner-bank being time-barred, however, the Petitioner-bank has now approached this Court. He lastly prayed for the dismissal of the instant petition.

5. Mr. Nishat Warsi, learned Deputy Attorney General has supported the findings of both the benches of NIRC on the law point and submitted that the learned benches of NIRC have rightly decided the cases in the light of judgment passed by Full Bench of this Court reported as **PLD 2014 Sindh 553**. Learned DAG assisted this Court and submitted that, when respondent No.4 filed the grievance petition before the Labour Court under the IRO 2008, there was no question of the petitioner-bank being a trans-provincial establishment, since such provision was introduced much later under the IRA 2012. The learned SLC passed the impugned order dated 23.08.2014 under the law laid down by the full bench of this Court as discussed supra and the matter was rightly transferred to NIRC. He further added that, while the Grievance Application was pending before the SLC, the IRA 2012 was already in the field to bestow the NIRC with jurisdiction to decide disputes between employers and workers of a trans-provincial establishment. He further submitted that from the enactment of the IRA 2012 on 14-03-2012, when the matter was landed before the NIRC by operation of law, who passed the impugned judgment/orders under law. Per learned DAG, the petitioner-bank moved an application to the learned SLC for abatement of the proceedings, and the learned SLC rightly referred the matter to the NIRC after the enactment of the IRA 2012 because the petitioner-bank had come to be a trans-provincial establishment as discussed supra. He further added that the petitioner-bank has taken the plea of the jurisdiction of NIRC at this stage when admittedly two courts have decided all the issues, came out of pleadings, thus the principle of estoppels shall come into play.

6. Primarily the plea taken by the learned DAG on the legal issue is tenable under the law, in this regard, we seek guidance from the decision of the Honorable Supreme Court in the matter reported as **PLD 2015 SC 212** that:-

“Where a person was aggrieved of a fact, he had a right, rather a duty to object thereto to safeguard his right, and if such a person did not object, he shall be held to have waived his right to object and subsequently shall be estopped from raising such objection at a later stage—person....Such waiver or estoppel may arise from mere silence or inaction or even inconsistent conduct of a person.”

7. We have heard learned counsel for the parties and perused the material available on record and case-law cited at the bar.

8. To evaluate the legal as well as the factual position of the case, the learned trial Court, framed the issues in the Grievance Applications of the private Respondents and gave its findings in favor of the private Respondent in the petition.

9. To appreciate the controversy from a proper perspective, we deem it appropriate to have a glance at the evidence brought on record by the parties. At the first instance, the relevant portion of the conclusive findings of learned single Bench of NIRC is as under:

*“3. I have gone through the written arguments & examined the documents available on record. It is evident from record that two cheques in questions were attended by M/s Mohsan, Nawab Khan and Miss Aniqqa, whereas Mohsan verified the signature of the customer and Nawab Khan made cash payment, which was supervised by Aniqqa. The above named official had contributed the alleged misappropriation amount and the same*

*deposited in the account of complainant. It is very strange that they were awarded minor punishment but petitioner was awarded major punishment of dismissal from service. This version also supported by Mr. Abdul Aziz Assistant Vice president of UBL who was appeared in witness box and recorded his statement as RW-2 has deposed during his cross examination that above named official were charge sheeted for the same offence and they were given minor punishment while petitioner was awarded major punishment of dismissal from service. Which is against the principle of natural justice and also violation of Article 25 of constitution of Pakistan.*

4. *The Hon'ble High Court of Sindh Karachi reported Judgment in 2006 PLC (CS) P-237 has held that "it was legitimate grievance & violation of article 25 of the constitution, when petitioner/employee was not treated a like with other employees and was deprived of some benefits which was being given to others. Rational & underlying idea behind which is that similarly placed and situated should be treated a like and equally.*

5. *It is pertinent to mention here that according to bank policy as provided in para 9(a)&10 at page-3 about issuance of cheque book which transpires that in two men spoke branch i-e with Manager / Teller only Manager shall be one of custodian of cheque book. In all other branches the cheque books shall be kept under dual control.*

6. *It proves that Manager of the Bank was also responsible of it but no such action was taken against the Manager, Mr. Liqauat Ali inquiry officer was appeared in witness box as RW-1 during his cross examination he deposed that there is no document which certainty show that applicant was on duty and on cash counter on relevant day. He also admitted during his examination that copy of inquiry report was not provided to petitioner.*

7. *I fortified my view to dictum laid down by Hon'able Supreme Court of Pakistan in case Punjab Road Transport Corporation v/s Punjab Labour Appellate Tribunal Lahore & as reported in 1973 SCMR-455 has held that "It was necessary and consistent with the principles of natural justice, that not only respondent should have been furnished with a copy of the inquiry report but also should have been given opportunity to show cause why the order of dismissal should not be passed against him.*

8. *For what has been discussed above I am inclined to accept this petition and the same accepted. The impugned order dated: 05-06-2009 dismissal of the petitioner from service is set aside. Petitioner is reinstated in service with all back benefits with immediate effect. No order as to costs. File consigned to record after completion of codal formalities."*

10. The aforesaid decision of the learned NIRC was concurred by the learned Full Bench of NIRC. The impugned Judgment/order passed by both the learned Courts below explicitly show that the matter between the parties has been decided on merits based on the evidence produced before them on the subject issues.

11. On merits, we have scanned the evidence available on record and found the admission of the witness of the Petitioner namely Abdul Aziz Assistant Vice president of UBL, who deposed that M/s. Mohsan, Nawab Khan, and Miss Aniqqa, whereas Mohsan verified the signature of the customer and Nawab Khan made a cash payment, which was supervised by Aniqqa. The above-named officials were charge-sheeted for the same offense and they were given minor punishment while private respondent was awarded major punishment of dismissal from service. He also admitted that no personal hearing was given to the private respondent before his removal from service; that private respondent was in Grade-5 and nobody was working under his subordination; that except the Prosecutor no other witness was examined in the inquiry; and, the statement recorded in the inquiry was not produced with the inquiry report. He also admitted that cheque number is not given. An excerpt of the charge sheet is reproduced as under:

"a) Being the Custodian of Security Stationary & handling of checkbook issuance assignment, you did not confirm before issuance of second Cheque Book to

the holder of Account No. 100-0546-0 Mr. Haji Ameer Ahmed Memon that whether earlier requested Cheque Book by him have been destroyed was used.

b) You did not check the System to ensure that no Cheque from the previous checkbook, reported as destroyed was used.

c) By your above acts you have thus committed the breach of trust by indulging in acts of gross negligence due to which an amount of Rs. 4,70,000/- withdrawn from A/c # 100-0546-0 of Mr. Haji Ameer Ahmed, at Qasimabad Branch, Hyderabad.”

12. The inquiry officer namely Liaquat Ali deposed that no document certainly show that the private respondent was on duty and cash counter on a relevant day. He also admitted during his examination that a copy of the inquiry report was not provided to the petitioner, an excerpt of the inquiry report is reproduced as under:

**“D: OBSERVATIONS:**

I have thoroughly examined all the documents produced by the Prosecutor, Statements, and cross-examinations of both sides as well; my observations are as under:

1. In this case the customer had given Cheque Book Requisition Slip on 17.9.08 to dealing staff namely Mr. Zulfiqar Leghari, who sent indent through NIFT and when cheque book No. 4275851 to 4275875 was received through NIFT, it was entered manually into Cheque Book Issued Register. Consequent upon transfer of his service and relieved on 26.9.08, the assignment was handed over to Mr. Najeeb Akhtar, Accused.

2. Accused has admitted that he was dealing with the assignment of Cheque Books handling, but he has given wrong reply to cross No.6 of Prosecutor, on page No.6 of the Proceeding Sheet, that the assignment was given since 04.12.08 i.e after issuance into System the Cheque Book No.4275851 to 4275875. It is important to mention that name of Mr. Zulfiqar Leghari is not on branch Roll, copy of Attendance Register for December-08, is attached herewith as Annex-D-4, further Accused had issued/feederd the series of 10 checkbooks on 03.12.2008, which proved that he was custodian of the Cheque Books including the Cheque Book No. 4275851 to 4275875.

3. Accused could not satisfy and justify the reasons and circumstances under which Chief Teller feederd the cheque series of 01 checkbook out of 11, as admitted in reply of cross No.9 of the Prosecutor (page-7).

4. Accused has admitted that he had private business which closed, but once stated that business was closed 10-12 years ago, again stated that business was closed 4-5 years ago, thus contradicted his own statements and he could not satisfy the sources through which he made up the loss, sustained in his business.

5. Accused found involved in this case but he planned and acted very cleverly with cunning minded approach, as he managed the things in following manner:

a- He gained the confidence of all staffs and made himself a reliable staff member.

b- He had feederd 10 cheque books on 03.12.08 but got feederd 01 from other staff, taking the benefit of being reliable person.

c- He chosen right time for his misdoings, which I further elaborate below: -

-On 03.12.08, there was rush due to nearest days of Eid-ul-Azha, in the branch having 569 vouchers on that day even ½ day being Saturday and 03 UT/OCO were, one on relieving duty and two on Training, and he took full benefit of rush as well as shortage of staffs. So he got feederd the Cheque Book being 1<sup>st</sup> step of his fraudulent plan.



-After one month exactly on 03.1.2009, he managed to encash these two cheques. On that day, there was heavy rush/work load being starting days of New Year, having 945 vouchers, two OCO were not on duty and new Branch Manager has resumed his duty and it was his first day.

d- He remained present on duty from Septemer-08 to January-09, and the astonishing fact is what he did not avail a single leave during this period, to ensure all success of his fraudulent plan, photo copies of the Attendance Registers for the months of September-08 to January-09 are attached and marked as Annex-D-1 to D-5.

6. In reply of cross 14.15, 16 and 17, Accused admitted but by twisting the facts, that after unearh of the fraudulent withdrawals, he had met with Mr. Nawab Khan Teller, Munshi/Manager of the holder of Account, defrauded, and another customer namely Mr. Iqbal Soomro, for seeking help to save his skin.

7. Being In charge of Cheque Book assignment/handling, he had all records of Cheque Books destroyed and to be destroyed but the Cheque Book No.4275851 to 4275875 not included in such records, which proved that he had disappeared the Cheque Book in question with malafide intention, which later used for fraudulent withdrawals. On the other hand, the customer was falsely told that his Cheque Book is destroyed and now apply for fresh/new. Further, the customer has stated in his application with full confidence that the concerned staff is involved in the forgery. Photo copy of customer's application is attached as Annex E-1 and E-2

#### **FINDINGS:**

In view of the statements, cross-examinations, record produced as well as my above observations, the Charges leveled against Mr. Najeeb Akhtar, Universal Teller, Emp. No. 439679, are fully established and as such he is found guilty.”

13. From the above material evidence brought on record, prima facie the entire burden ought not to have been shifted upon the private respondent all alone, whereas the colleagues of the private respondent were set free and private respondent was made scapegoat, this discriminatory treatment ought not to have been given to the private respondent. In our view, the learned NIRC has rightly granted the benefit of reinstatement of service to the private respondent. So far as the issue of back benefits is concerned, the private respondent has specifically pleaded in the grievance application that during the intervening period he was not gainfully employed anywhere else.

14. In principle, on the issue of the back benefits, we have noticed that there are two basic principles on the subject; (a) that back benefits do not automatically follow the order of reinstatement where the order of dismissal or removal has been set aside; and (b) as regards the matter of onus of proof in cases where a workman 'is entitled to receive the back benefits it lies on the employer to show that the workman was not gainfully employed during the period of the workman was deprived of service till the date of his reinstatement thereto, subject to the proviso that the workman has asserted at least orally, in the first instance, that he was (not) gainfully employed elsewhere. On his mere statement to this effect, the onus falls on the employer to show that he was so gainfully employed. The reason is that back benefits are to be paid to the workman, not as a punishment to the employer for illegally removing him but to compensate him for his remaining jobless on account of being illegally removing him but to compensate him for his remaining jobless account of being illegally removed from service. On the aforesaid

proposition, we are fortified by the decision of the Hon'ble Supreme Court in the case of *Dilkusha Enterprises Ltd. v. Abdul Rashid and others* (1985 §CMR 1882).

15. Now, we would address the legal question about the jurisdiction of the NIRC-SB to adjudicate the matter between the parties; as per record, Petitioner-Bank is a Trans-Provincial Establishment. The phrase, "trans-provincial" has been defined in clause (xxxiv) of section 2 of Act X of 2012, which means, "any establishment, group of establishments, the industry having its branches in more than one Provinces." To elaborate further on the subject, we have seen that under the provision of section 53, the NIRC has been constituted by the Federal Government but its functions and jurisdiction have been explained and elaborated in the provision of section 54 of the IRA, 2012. According to clause (e), the NIRC has the powers and jurisdiction to deal with the cases of unfair labor practices specified in sections 31 and 32 of the Act on the part of employers, workers, trade unions, either of them or persons acting on behalf of any of them, whether committed individually or collectively, in the manner laid down under section 33 of subsection (9) of section 33 or in such other way as may be prescribed and to take, in such manner as may be prescribed by regulations under section 66, measures calculated to prevent an employer or workman from committing an unfair labor practice. In addition to the above powers and jurisdiction, the NIRC has been conferred upon additional powers under the provision of section 57 of the Act (ibid), which includes the powers to punish for contempt of court and may award simple imprisonment which may extend to six months or with fine, which may extend to Rs.50, 000 or with both. In the same provision, vide clause (2)(b), the Commission has been empowered to withdraw from a Labor Court of a Province any applications, proceedings or appeals relating to unfair labor practice, which fall within its jurisdiction; and (c) grant such relief as it may deem fit including an interim injunction. A proviso has been added to the above provision, to the effect that "no Court, including Labor Court, shall take any action or entertain any application or proceedings in respect of a case of unfair labor practice", which is being dealt with by the learned Commission, therefore, in the light of aforesaid provisions and decisions rendered by the Hon'ble Supreme Court of Pakistan in the case of *Pakistan Telecommunication Company Limited v. Members of NIRC and others*, 2014 §CMR 535 and judgment dated 04.08.2014 passed by the Full Bench of this Court in C.P. No. D-3195 of 2010 and other connected petitions reported as **PLD 2014 Sindh 553**. We are of the considered view that, NIRC was competent to decide the issue at hand. The grievance of the Petitioner-bank in respect of legal plea taken in the instant matter is answered accordingly.

16. Coming to the second limb of arguments as put forward by the petitioner-bank about the jurisdiction of the learned SLC to entertain the initial grievance application of the private respondent against his dismissal from service on account of misconduct, as well as his status in the petitioner-bank was/ is concerned. On this point, we have scanned the file and evidence brought on record, in the present case, the private respondent was held to be a workman as defined under Section 2(xxxiii) of the Act, 2012. The Honorable Supreme Court has already clarified the term 'worker' and the 'workman' in its various pronouncements with the findings that 'person not falling within the definition of

'employer' who is employed as a supervisor or as an apprentice but does not include a person who is employed mainly in a managerial or administrative capacity. On the other hand, the 'employer' as defined in the Act includes a person who is the proprietor, director, manager, secretary, agent, officer, or person concerned with the management of the affairs of the establishment. The term 'officer' is specifically mentioned in the definition of the term 'employer'. However, as has been noted from the judgments of the Honorable Supreme Court, the Courts have not considered the designation of a person to be a factor determining his status of employment in an establishment to be that of an officer or a workman rather the Court has always considered the nature of duties and functions of a person to be the factor which will determine his status as to whether he is a workman or not. In this respect, we may refer to the case of National Bank of Pakistan v. Punjab Labour Court No.5, Faisalabad (1993 SCMR 672), which was a case relating to an Officer Grade-1 of NBP against whom disciplinary action was taken. He approached the Labour Court for the Redressal of his grievance claiming himself to be a workman. The matter came up to the Honorable Supreme Court and it was held that the designation per se is not determinative of a person being a workman rather the nature of duties and function determine his status and the burden is on him to establish that he is a workman. As Officer Grade-II failed to discharge his burden, he was held not to be a 'workman' and his grievance petition was dismissed.

17. The ratio of the case is that the person who approaches a labor Court for redressal of his grievance claiming himself to be a workman and such status of a workman being denied by the employer, it becomes a bounden duty of a person who approaches the labor forum to demonstrate through evidence that his nature of duties and functions were that of a workman and not that of a managerial or administrative capacity and that he was not an employer. Unless such categorical evidence is led by him, he will not be considered to be a workman and his grievance petition will not be maintainable before the labor forum. It, therefore, implies that the officer cannot be assumed to be workmen nor such can be declared on mere asking.

18. The argument of the learned counsel for the petitioner-bank that private respondent was performing the supervisory function in itself means that this was required to be established by evidence, which evidence, prima-facie came in his favor; besides that, his dispute was rightly presented under the relevant law in the field, thereafter under the Act, 2012, thus the proposition put forward by the learned counsel for the petitioner-bank on the issue is based on erroneous premises. Our view is supported by the decision of the Honorable Supreme Court rendered in the case of the National Bank of Pakistan and another Vs. Anwar Shah and others. (2015 SCMR 434).

19. Besides, the Act of 2012 is not providing such directions that cases are to be transferred automatically. On the contrary, that mechanism was provided in the judgment passed by this court in the case of KESC and others vs. NIRC reported in 2015 PLD 1, hence the plea taken by the petitioner-bank is misconceived, thus discarded.

20. In view of the foregoing, we are of the considered view that at the initial stage learned SLC and thereafter the change in law, the learned NIRC had the jurisdiction to entertain the grievance application of the private respondent.

21. We, in view of such facts and circumstances, would not proceed to reappraise the entire material including the evidence on the assumption that such reappraisal could lead us to a different view than the one taken by the two competent fora. This Court's interference in the concurrent findings would be justifiable only when some illegality apparent on the record having nexus with the relevant material is established. Learned Single Bench of NIRC has discussed the entire evidence adduced by the parties, and there appears no illegality in the findings of both the forums recorded on the facts and law; besides both the learned NIRC have concluded that allegations leveled against private respondent could not be proved to justify his termination from service.

22. It is a settled principle of law that both courts while reaching at factual aspect about the employment of private respondent which, otherwise, appears to be well reasoned, hence cannot be disturbed in writ jurisdiction.

23. On the concurrent findings, the Honorable Supreme Court further deliberated on the subject; and, held that the basic principle is that where the Court or the Tribunal has jurisdiction and it determines the specific question of fact or even of law unless the patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by this Court while exercising jurisdiction under Article 199 of the Constitution. Hence, the instant Petition is found to be meritless and is accordingly dismissed along with the listed application(s).

24. These are the reasons of our short order dated 24.01.2022, whereby we have dismissed the instant petition.

**J U D G E**

**J U D G E**

Nadir\*