

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

C.P. D- 3188 of 2010

Abdul Shakoor Shaikh

Versus

Habib Bank Limited &amp; others

BEFORE:

**Mr. Justice Mushir Alam, CJ  
Mr. Justice Muhammad Shafi Siddiqui**

Date of Hearing: 11.12.2012

Petitioner: Through Mr. Abdul Mujeeb Pirzada & S. Khalid Shah Advocates

Respondent Nos.1 to 4: Through Mr. Mehmood Abdul Ghani Advocate

Respondent No.5: Through Mr. Muhammad Ashraf Mughal DAG

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

Muhammad Shafi Siddiqui, J.- Petitioner in this petition has challenged the amendment in the Staff Service Rule-18 of Habib Bank Limited. It is the case of the petitioner that he was a regular employee of respondent No.1 which is a public limited company and the terms and conditions of service are governed by Staff Service Rules 2008 which rules fall under the custom and usage and thus has force of law.

2. Learned Counsel for the petitioner submitted that in terms of Section (III) relating to termination of service, the Rule 18 provides a mechanism for the termination of service of an employee. He argued that in addition to Rule18(a) and 18(b), the insertion of 18(c) is discriminatory and gives power of pick and choose to the individual officers and no guiding principle is laid down for holding an inquiry in accordance with the principles of natural justice. The impugned

amendment is malafide in order to acquire arbitrary powers of inflicting major punishment on the subordinate officers of Habib Bank Limited. Learned Counsel further submitted that it is not clear from the impugned circular whether the Respondents No.3 & 4 have issued it after approval of the Board of Directors and thus it violates the provisions of Staff Service Rules as only the Board of Directors is competent to amend the Staff Service Rules of 2008. It is lastly contended that since the petitioner has no alternate, adequate and efficacious remedy, therefore, he has preferred this petition.

3. On the other hand learned Counsel for the respondents No.1 to 4 have objected to the maintainability of this petition on the ground that it is a public limited company registered under the Companies Ordinance,, 1984 and has been privatized in terms of notification dated 15.3.;2004. Learned Counsel submitted that the point regarding maintainability of the petition against such public limited companies have been decided in number of reported and unreported cases. Some of them for the sake of assistance are mentioned below:

REPORTED CASES	UN-REPORTED CASES
PLD 2010 SC 676 Pakistan International Airline Corporation & others v. Tanveer-ur-Rahman	Civil Appeal No. 468/2010 PTCL v. Iqbal Nasir & others
1998 PLC Civil Cases 1068 Wazir Ali Khoja v. Muslim Commercial Bank Ltd.	Civil Appeals No. 172-K to 175-K of 2009
	Civil Petition No. 106-K/2007 S.M. Gharib Nawaz Daccawala v. KESC & others
2008 PSC 1224 Ejaz Ali Bugti v. PTCL & others	Civil Petition No.827/2008 Naseeruddin Ghori v. H.B.L

4. He argued that it has been constantly held that the companies/ corporations which do not have statutory rules, writ petition of its employee is liable to be dismissed, unless any fundamental right is violated. He added that this issue has also been settled by the Division Bench of this Court in C.P. No. D-720/2008 (Syed Muhammad Syeden vs. UBL) and by another Bench of this Court in C.P. No. D-3064/2010 (Syed Abu Saleheen vs. HBFC).

5. Similarly Lahore High Court in the case involving Habib Bank Limited reported in 2006 TD Service 143 held that the writ petition against a privatized bank is not maintainable as after privatization the bank cannot be said to be performing its affairs in connection with the Federation or Province. Even same view was taken by the Islamabad High Court in the case of Arif Mehmood & other vs. NIB & others (Writ Petition No. 85/2011). Involving another private bank namely MCB, the Hon'ble Supreme Court of Pakistan in the case of Wazir Ali Khoja vs. MCB (1998 PLC Civil Cases 1068) held that employees of privatized/de-nationalized institutions cannot invoke the constitutional jurisdiction in terms of Article 199 of the Constitution. He further argued that the petition as framed and filed is in the representative capacity and as such on this score also this petition is liable to be dismissed.

6. On merits learned Counsel for the respondents submitted that the Habib Bank Limited Staff Rules 2008 are non-statutory and is only a human resource policy. It has neither force of law nor it could be said that its custom and usage have a force of law. He added that the impugned amendment has been approved by the Board of Directors of Habib Bank Limited in terms of annexure-R-2 which is an extract from the minutes of 131st Board Meeting held on 20.8.2010.

7. Mr. Muhammad Ashraf Mughal learned DAG appearing on behalf of the respondent No.5 has adopted the arguments of respondents No.1 to 4.

8. We have heard the learned Counsels and perused the record. The prime objection taken by the petitioner's Counsel is that this impugned amendment is not approved by the Board of Directors of respondent bank, however after filing of the counter affidavit which is supported by an extract of the minutes of 131<sup>st</sup> Board meeting held on 20.8.2010, it is clarified that such amendment was subject to the board meeting and this contention was not rebutted by the learned Counsel for the petitioner either in terms of his arguments or by way of filing any rejoinder affidavit.

9. It has been a constant stand of the apex Court as well as of this Court that the terms and conditions of service if not governed by the statutory rules and that too of the limited company/corporations, are not amenable to writ jurisdiction unless any fundamental right is violated. It has been held by the Hon'ble Supreme Court in the case of Syed Arshad Ali v. PTCL (2008 SCMR 314) that if a right is conferred by a statute and complete mechanism is provided, there could hardly be any occasion to invoke fundamental rights. The jurisdiction of High Court is barred by Article 212 of the Constitution in view of specific forum provided for redressal of grievance, even if the order proposed to be challenged, might have been passed under whatsoever circumstances viz. malafide, coram non iudice or without jurisdiction.

10. In the case of Abu Saleheen vs. Federation of Pakistan & others *ibid* it has been held that disciplinary procedure is not the one which could come in sphere of terms and conditions of the employment. It is

merely a procedure for taking action against an employee who is alleged to have committed or involved in some misconduct or misdemeanor. Nobody has guaranteed right in procedure. The Division Bench in the aforesaid case has also relied upon the case of Adnan Afzal v. Capt (Retd) Sher Afzal (PLD 1969 SC 187). The Division Bench further went on to observe as under:-

*“It would of course be another matter, if a substantive term and condition of employment is varies to disadvantage of the employee in violation of law or without their consent. Such would include salary, allowance, leaves, pension, gratuity, retirements, seniority, increments etc. But procedure for discipline is not a term and condition of employments and therefore as far as disciplinary proceedings are concerned, petitioners are no longer governed by statutory rules and therefore, this writ petition is not maintainable.”*

11. Similarly in the case of Abdul Malik vs. Habib bank Limited (SBLR 2009 Balochistan 98) the Division Bench held as under:-

*“It is not disputed that after privatization of Habib Bank Limited, it is being run by a private party and bank has no concern with the affairs of Federation or a province, which is condition precedent qua maintainability of Constitutional Petition. In this regard we are fortified by the judgments reported in PLD 1966 S.C 445 and 2006 T.D (Service) 143.”*

12. Similarly order passed by this Court in the case of Ramzan Ali v. HBL (C.P. No.D-2355/2008, unreported case) it has been held as under:-

*“8. As to the Petitioner’s grievance with regard to his termination from service, this happened in January, 2007 when the controlling shares and management of Respondent No.1 stood already vested in Aga Khan Fund for Economic Development. For such grievance therefore, the Petitioner is not entitled to invoke the constitutional jurisdiction of this Court.*

13. Similarly in the case of Ejaz Ali Bugti vs. PTCL (2008 PSC 1224) the Hon’ble Supreme Court after observing that the PTCL has no statutory rules and making reliance upon the case of Mobinul Salam (PLD 2006 SC

602), declined to grant relief to the petitioner as the respondent/PTCL does not enjoy the statutory rules.

14. In this case also the respondent is admittedly a public limited company and the learned Counsel for the petitioner has not responded to the preliminary objection of the respondent Counsel. Obviously the respondent which is a public limited company has to streamline performance appraisal and development and to provide mechanism for evaluating employees to facilitate ranking of individuals according to their respective performance. Such appraisal of the employee could ultimately become the basis of distinction between performers and non-performers, hence the arguments of the learned Counsel for the petitioner that such amendment is discriminatory, malafide and does not provide a right to defend is not sustainable. Impugned amendment clearly stipulates action only in the event that a member of regular staff of the Bank receive two (02) consecutive appraisals which are below average/below par.

15. The emphasis of learned Counsel for the petitioner that the custom and usage as defined under Article 8 is being violated by such amendment also has no force. We may add here that the custom or usage as defined under Article 8 is one which has a force of law. These non-statutory human resource policy cannot be defined as one having force of law to bind Courts exercising constitutional jurisdiction. Such custom and usage has to be recognized by law and only then such custom yield to a fundamental right, if found violated. We may also add here that the amendment which is impugned in this petition does not violate any principle of fundamental rights. In fact the action proposed to be taken in impugned amendment is based on two consecutive appraisals which are below average/below par. Hence a mechanism is

set out for the development and growth of the employees which is correlated with the growth of the company. If a mechanism as being set out by the company for its growth based on legitimate reasons, it cannot be said to have violated any fundamental right.

16. Thus the receipt of two consecutive appraisals by an employee itself provides inbuilt mechanism that the guilty person has not been thrown out on the basis of just one average or below appraisal. The two consecutive appraisals itself shows that the guilty person is given a chance after 1<sup>st</sup> below average appraisal.

17. In view of the above reasoning we conclude that this petition is not maintainable in law and fact hence, the petition is dismissed with no order as to cost.

**Judge**

**Chief Justice**