

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

Suit No. 2489 of 2015

Syed Murshad Ali

Versus

Bank Islami & other s

Date	Order with signature of Judge
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For hearing of CMA No.17791 /15

Date of Hearing: 08.02.2016

Plaintiff: Through Mr. s. Asghar Ali along with Aamir
Ali Bukhari Advocates

Defendants: Through Mr. Jaffar Raza, Advocate

Muhammad Shafi Siddiqui, J.- Plaintiff was earlier employee of KASB

Bank whose services were amalgamated with the defendant No.1. It is the case of the plaintiff that his employment is protected under the approved Scheme of Amalgamation and despite this protection he was coerced to resign and retrench by the defendant No.1 which is not only discrimination but contrary to the service rules, regulations and Article 7 of the Amalgamation policy.

2. Counsel for the plaintiff submitted that the defendant sent retrenchment letter dated 21.10.2015 and consequently the salary of the plaintiff was stopped for the month of October, 2015. Subsequently as per the Counsel's statement the retrenchment letter was withdrawn by defendants No.2 & 3 and plaintiff's salary for the month of October, 2015 was released on 12.11.2015 and he was asked to resign forcibly on 24.11.2015. He submitted that service of the plaintiff cannot be terminated in terms Article 7.01 for three years and defendant No.1 was liable to absorb them with all benefits that they enjoyed when employed with defendant. Counsel submitted that in terms of Section 47(5)(i) Proviso (ii) of the Banking Companies Ordinance, 1962 it is mandatory

that the defendant transferee bank shall pay the same remuneration and on the same terms and conditions on which they were working with the earlier bank.

3. On the other hand learned Counsel submitted that there is only relationship of master and servant between the plaintiff and defendant No.1 consequently this suit is not maintainable under the law. He has relied upon the case of Haider Ali Baig v. First Micro Finance Bank Ltd & others {2015 PLC (CS) 1412} and Imtiaz Ali & another v. Habib Bank Limited {2010PLC (CS) 1222}. Counsel though has relied upon the written statement but such written statement is not available on record. Counsel has relied upon Section 47 of the Banking Companies Ordinance, 1962 and Scheme of Amalgamation as per instructions of State Bank of Pakistan.

4. I have heard the learned Counsels and perused the material available on record. Section 47 subsection (5) of the Banking Companies Ordinance, 1962 provides that the Scheme contains the provision of any of the following matters.

- (a) -----
- (b) *In the case of amalgamation of the banking company, the transfer to the transferee bank of the business, properties, assets and liabilities of the banking company on such terms and conditions as may be specified in the scheme.*
- (c) -----
- (d) -----
- (e) -----
- (f) -----
- (g) -----
- (h) -----
- (i) *The continuance of the services of all employees of the banking company, excepting such of them who, not being workmen within the meaning of the Industrial Disputes Ordinance, 1959, are specifically mentioned in the scheme, in the banking company itself-----
----- . Provided that the scheme shall contain a provision that;*
- (j) *the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Federal Government, to the said employees the same remuneration and the same terms and conditions of service as are applicable to*

employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the State Bank whose determination in this respect shall be final;

(ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service as are applicable to the other employees of corresponding rank or status of the transferee bank subject to the qualification and experience of the other employees of corresponding rank or status of the transferee bank, the doubt or difference shall be referred to the State Bank whose decision thereon shall be final---

5. Insofar as the cited case of Hyder Ali Baig is concern, it relates to transfer and posting of employee hence the facts are distinguishable. Similarly the case of Imtiaz Ali 2010 PLC CS 1222 is a case where compensation offered as against retrenchment was duly accepted by the retrenched employee and hence the facts and circumstances of the cited case are different and are not applicable to the case in hand.

6. The controversy here is applicability of the Scheme of Amalgamation and Section 47 of the Banking Companies Ordinance, 1962. In terms of Article 7 of the Scheme Amalgamation all employees of the bank stood employee of the transferee bank at the same remuneration and under the same terms and conditions of the service, which they were getting, or as the case may be, which they were governed immediately before the effective date, provided that proviso (ii) to subsection 5(i) of Section 47 of the Banking Companies Ordinance, 1962 shall be deemed to be incorporated therein.

7. Insofar as the Article 7.04 is concerned, it relates to termination of employees who have resigned as envisaged by Article 7.02. Article 7.04 is not applicable to the facts and circumstances as the case of either party is not of resigning from the post. Section 47 in this regard thus is crucial and plays a prominent role to govern the issue on the basis of Scheme of Amalgamation subject to Section 47 *ibid*. Admittedly

the plaintiff's service has not been terminated. The defendant has taken the instance that the position of the plaintiff has become surplus to their requirement. Though they have not terminated the employment but the management decided to pay ex-gratia salary of one month. To me, this apparently is contrary to the provisions of Section 47 of the Banking Companies Ordinance, 1962. The Scheme of Arrangement as agreed was subject to the applicability of Section 47 of the Ordinance, 1962 which provides that:

(i) the Banking Company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Federal Government, to the said employees the same remuneration and the same terms and conditions of service as are applicable to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the State Bank whose determination in this respect shall be final and;

(ii) The Banking Company shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service as are applicable to the other employees of corresponding rank or status of the transferee bank subject to the qualification and experience of the said employee being the same as or equivalent to those such other employees of the transferee bank.

8. It is no doubt a case of the employment of private parties but subject to the control of provisions of Banking Companies Ordinance, 1962. The impugned letter available as annexure P-3 at page 51 dated

21.10.2015 apparently is in conflict of the aforesaid provisions of Section 47 of the Banking Companies Ordinance, 1962.

9. In view of the above, the application is allowed and the impugned letter dated 21.10.2015 shall remain suspended.

Judge