

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

## **Constitutional Petition No.D-5043 of 2017**

(Allah Bux Soomro v. National Industrial Relations Commission and 07 others)

Syed Amir Ali Shah, advocate for the petitioner.

Mr. Noman Ali, Associate of Mr. Shoukat Ali Choudhry advocate for respondent No.3.

Date of hearing : 09.03.2023.

Date of Order : 17.03.2023

## **ORDER**

The writ of certiorari under Article 199(1)(a)(i) of the Constitution of the Islamic Republic of Pakistan, 1973, has been sought by the petitioner- Allah Bux Soomro, against concurrent orders dated 09-03-17 & 03-10-2013, passed by the benches of National Industrial Relation Commission at Karachi, (NIRC) thereby dismissing the Appeal No. 12(46)/2013-K filed by the Petitioner, wherein the petitioner challenged his dismissal from service order dated 06-06-2012 passed by the respondent- Muslim Commercial Bank (MCB), inter-alia on the ground that, impugned orders dated 03-10-2013, & 09-03-2017, passed by both the benches of NIRC are illegal, ultra vires, unlawful and have no legal effect just to deprive of the petitioner from his 20 years' service rendered in the MCB, without holding the regular inquiry, therefore, the said orders are liable to be set aside.

2. The case of the petitioner in nutshell is that he is aggrieved by the decision of the respondent bank whereby his services were dispensed with vide order dated 06.06.2012, on the purported plea of encashing the amount of Rs.36, 000/- of the customer. On 11.06.2012, the petitioner preferred a departmental Appeal against his dismissal order, however, no response was given by the respondent-Bank. Petitioner preferred a Constitutional Petition bearing No. D- 3162/2012 before this Court of Sindh, which was disposed of vide order dated 13.02.2013 with direction to approach Labor Court. On 26.02.2013, the petitioner served a Grievance Notice upon the respondent bank and subsequently filed Grievance Petition before the learned Single Bench of the NIRC for redressal of his grievances, unfortunately, his grievance application was rejected by the Single bench of NIRC on the point of limitation vide order dated 03.10.2013. The petitioner being aggrieved by and dissatisfied with the aforesaid decision filed the Appeal under Section 58(1) of the Industrial Relations Act, 2012, before the

Full Bench of NIRC, which was also dismissed on the same analogy with the observation that his departmental appeal could not be substituted as a grievance notice under the law.

3. The petitioner present in person along with his counsel submitted that both the benches of NIRC failed to appreciate the law on the subject issue and erroneously rejected his claim of reinstatement in service on the ground of Limitation, which is the mixed question of Law and fact; and, it has been wrongly observed by the NIRC in their impugned orders that on 26-02-2013, the Petitioner served the Grievance Notice upon the respondent-bank belatedly, though soon after his dismissal from service on 06.06.2012, petitioner filed departmental Appeal on 11-06-2012, before the competent authority of the bank, thereby narrating all his grievances and the said Appeal ought to have been treated as a "Grievance Notice" but learned Benches of NIRC ignored the legal aspect of the case and dismissed the Appeal /Grievance Petition filed by Petitioner before both benches of NIRC. The learned counsel emphasized that under the procedure of the bank, the Petitioner encashed the said cheque in favor of the said account holder for Rs.40,000/= after getting sanctioned by the Operation Manager and have not usurped the payment of the customer. Besides customer did not come forward to make a complaint about his alleged misappropriation of the amount. As per learned counsel, there was no misappropriation of the amount as alleged by the respondent bank. He further submitted that every cheque is required to be kept in the safe custody of the Operation Manager, and Branch Manager to whom the letter of Charge was issued by the Bank but they were discharged/exonerated from the charges. He further submitted that no proper inquiry was conducted, nor any report /decision of so-called inquiry was ever conveyed to the petitioner, and the petitioner was condemned unheard. The learned counsel argued that his dismissal from the service is illegal and unlawful and is liable to be declared as void and ab initio.

4. On the other hand the counsel for the respondent bank has contended that the departmental appeal filed by the petitioner on 11-06-2012 cannot be considered a grievance notice under the law. The petitioner instead of availing the remedy against his dismissal before the NIRC filed a constitution petition before this Court which was disposed of on 01.09.2012, and the limitation runs from the date of dismissal from service and not from the date filing the petition even the limitation was not condoned by this court in the aforesaid proceedings. He contended that a grievance notice was served by the petitioner on 26.02.2013 which was barred by time. The learned counsel has supported the impugned

orders passed by learned Benches of NIRC. Per learned counsel, the petitioner has admitted his guilt by depositing the amount of Rs.36, 000/-. learned counsel relied upon the domestic/fact-finding inquiry proceeding initiated against the petitioner and submitted that the petitioner has been found guilty of the charges of pocketing banks funds, indulging in dishonest, defaming the bank's reputation, and committing a breach of rules and regulations of the bank, therefore, he is not entitled to reinstatement in service. He further submitted that irreparable loss was caused to the Bank because Bank depends on the goodwill and reputation of its employee, therefore the petitioner is not entitled to relief through the instant petition. He next submitted that the question of limitation cannot be considered a technicality as it has got its significance and the law of limitation must be followed strictly. In support of his contentions, he relied upon unreported **order dated 16.05.2013** passed by the Hon'ble Supreme Court of Pakistan in **CPLA Nos. 57-K to 59-K of 2013** and the cases of *Allied Bank of Pakistan Limited through Attorneys and 2 others v. Muhammad Bashir Khan, 2006 PLC 39*, *Muhammad Aslam v. Inspector General of Police, Islamabad, and others, 2011 SCMR 8* and *Almas Ahmad Fiaz v. Secretary Government of the Punjab Housing and Physical Planning Development Lahore and another, 2007 PLC 64*. He prayed that this petition is liable to be dismissed.

5. We have heard the parties on the subject issue and perused the record with their assistance.

6. On 15.02.2023, learned counsel for the respondent bank sought time to seek instructions for modification of the major penalty of dismissal into compulsory retirement of the petitioner, and the matter was adjourned to 09.03.2023, however, today learned counsel for the respondent bank is called absent and his junior Noman Ali has put his appearance and shown ignorance about instructions contained in the aforesaid order. Since the parties have already argued the matter at length which factum is disclosed in the order dated 30.01.2023.

7. Mainly the petitioner has been non-suited by the learned Benches of NIRC on the point that the petitioner failed to serve the grievance notice upon the respondent bank under section 33 of the Industrial Relations Act,2012, within time. If this is the stance of the respondent bank, it is expedient to have a look at the factual aspect of the case first.

8. It appears from the record that in the year 1993, the petitioner was appointed as Messenger at MCB Bank Ltd., and thereafter promoted to the post

of CASHIER (Scale-V) in 1995. However, in April 2012, the Regional Operation Manager of the respondent bank served with the allegations that he committed theft of a Cheque of a customer, amounting to Rs.36, 000/-, on the premise that “a cheque # 1936545 dated 01-04-2011 for Rs.4, 000/= from an account holder namely Dildar & Abdul Aziz was encashed by petitioner and posted Rs.36, 000/= and the said cheque had also been stolen after perpetrating Fraud”.

9. Petitioner replied to the said Charge vide letter 28-04-2011, wherein he denied all the allegations of theft and embezzlement/fraud. However, his services were dispensed with by the respondent bank vide impugned order dated 06.06.2012. After that, the Petitioner on 11-06-2012, filed a departmental Appeal before respondents No. 2 & 3, with the prayer to allow him to resume his duties. For convenience's sake, an excerpt of the impugned order is reproduced as under:

“This is in connected with the charge sheets served upon you vide our letter No.ROL/ADS/GEN/541 DT 21-04-2011 and subsequent domestic enquiry held into the charges leveled against you.

Since the charges into which enquiry was held, have already been proved and same are acts of major misdemeanor/gross misconduct the punishment warranted is that of dismissal.

The matter was placed before Disciplinary Action Committee and committee decided to dismiss you from Bank's service.

Therefore, in pursuance of Human Resource Management, HRM Group Karachi letter# HRD/DISP/4-3/0106/12 Dt: 01-06-2012 you are hereby dismissed from service with immediate effect.

You may settle your dues if any with the bank immediately, failing which the bank have right to sue you in any forum regarding recovery of outstanding against you.”

10. The petitioner filed a Constitutional Petition before this Court which was disposed of on 13-02-2013, with the directions to the petitioner to approach to Labor Court for redressal of his grievances, and again the petitioner served upon the respondent-bank fresh grievance notice dated 26.02.2013, however, both the stances of the petitioner were discarded by the learned single bench of NIRC on the analogy that grievance notice was served upon the respondent-bank belatedly.

11. Petitioner being aggrieved by and dissatisfied with the aforesaid decision preferred statutory appeal before the learned FB-NIRC. However, the learned

FB-NIRC dismissed the appeal vide order dated 09-03-2017 on the same analogy. An excerpt of the order dated 09-03-2017 is reproduced as under:

“5. After hearing the arguments of both the learned Counsel for the parties and perusing the record. Admittedly the dismissal order of the appellant was passed by the Respondent department on 06.06.2012. The Appellant instead of serving a grievance notice within time filed a departmental appeal on 11.06.2012 and preferred a Constitutional Petition before the Sindh High Court, instead of availing a remedy before NIRC. The Constitution Petition of the appellant was disposed of on 13.02.2013 with the observation that: "If the grievance petition is still time-barred than the petitioner shall seek its condonation before the Labour Court". Meaning thereby the limitation was not condoned by the Hon'ble Sindh High Court. Thereafter the Appellant served a grievance notice on the Respondents on 26.02.2013. Under the law a grievance notice is to be served within 90 days of the dismissal order. The appellant should have served the grievance notice before 05.09.2012. The Appellant served the Grievance Notice after a delay of five months and 20 days. Delay of each day is to be explained. No plausible explanation has been given by the Appellant. Law favours the vigilant and not the indolent.

6. Under the law the departmental appeal filed by the appellant on 11-06-2012 cannot be substituted as a grievance notice. Reliance is placed on 2002 PLC (CS) 907. As a consequence the grievance petition of the appellant was also barred by time.

In view of the aforesaid reasons, this appeal is dismissed. File be consigned to record room after due completion.”

12. As far as the argument of the learned counsel for the respondent bank that the grievance petition was filed with an unexplained delay and was not maintainable is concerned, this approach is not valid for the reason that the main purpose of serving the grievance notice is just to intimate the employer of the intention of the employee to move further on the subject issue before the competent Court of law, which purpose was served when the notice and/or intimation from the employee was given within stipulated time as provided under the law.

13. Prima facie, the petitioner has been non-suited by both the learned benches of NIRC on technical grounds, and the merit of the case was ignored. The reasoning of the learned Benches does not align with the law for the simple reason that after the dismissal from service order dated 06-06-2012 passed by the respondent- Muslim Commercial Bank (MCB), the petitioner served upon the respondent-bank grievance notice dated 11.06.2012, by way of appeal, which was within time and the law on the point is very clear that the grievance notice is required to be served upon the employer within 90 days as provided under section 33 of the Industrial Relations Act 2012 and prima facie the petitioner succeeded to serve upon the respondent bank with the aforesaid notice on 11.06.2012.

14. It is well settled that certiorari is available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or over its jurisdiction or fails to

exercise its jurisdiction or where the Court or a tribunal acts illegally in the exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in the exercise of supervisory jurisdiction, therefore hold that the concurrent orders passed by the learned Full Bench of NIRC and Single Bench of NIRC, were the consequence of an error of law and without jurisdiction are liable to be set aside. On the aforesaid proposition reliance could be placed on the case of the Government of Pakistan through the Director General, Ministry of Interior, Islamabad, and others v. Farheen Rashid, 2011 SCMR 1.

15. From the above facts brought forth in the preceding paragraph, it is pretty much evident that the petitioner has not at all been indolent in his approach and he was following his remedies with all due diligence and bona fide. Besides the above, merits have always been encouraged instead of non-suiting the litigants for technical reasons. It is well settled that the provision of Labor laws should be construed liberally and not be used as a trap. Therefore, we are inclined to treat the appeal as a formal grievance notice as envisaged by section 33 of the Industrial Relations Act 2012. On the aforesaid proposition, we are guided by the decision of the Supreme Court in the case of Forbes Forbes Campbell & Co. Ltd., Karachi, and 3 others v. Habibur Rehman and 2 others, 1982 SCMR 651.

16. Prima-facie, the petitioner was not found of committing serious, gross violations or misappropriation, or miss-utilization of bank money rather was found of committing slight procedural oversight for the reason that the petitioner replied to the answer in the inquiry proceedings about depositing the amount of Rs.36000/- in the respondent bank's credit with the narration that "I did not know that amount will be deposited in fraud and forgery and he signed the slip". Prima facie, the respondent bank has not sustained the monetary loss. Besides the learned Single Bench of NIRC vide order dated 03.10.2013 observed in paragraph 6 as under:

"6. Though the applicant has prima facie good case but in view of the fact that his grievance notice is hopelessly time-barred I am unable to grant any relief to a poor fellow. Accordingly, the petition is dismissed.

The petitioner has served with the respondent Bank for about 22 years. This way he has subscribed for G.P Fund and as such payment of G.P Fund and other legal dues shall not be withheld and he shall not be deprived of from the above benefits."

17. Prima-facie the respondent bank has not established in the evidence about the misappropriation, or miss-utilization of bank money by the petitioner so far as, the allegations that petitioner deposited the amount of Rs.36000/-, with the

bank, which factum has been denied by the petitioner to the extent, for that, we asked the learned counsel representing the bank to show the original record/ statement, however, he referred to inquiry report and relied upon the photocopy of slip, however, the original slip was not shown for obvious reason, in such circumstances, we infer that the respondent bank failed to establish the guilt of the petitioner in its true perspective to award a major penalty of dismissal from service.

18. Petitioner being a cashier in the respondent bank is being dragged in litigation since the year 2013. Therefore, we deem it appropriate to set aside the punishment of dismissal from service imposed upon the petitioner.

19. In view of the discussion above, this petition is allowed. The impugned orders dated 09-03-17 & 03-10-2013, passed by the learned SB and FB of NIRC are set aside. Consequently, the dismissal from the service order is also set aside with a direction to the competent authority of the respondent bank to reinstate the service of the petitioner forthwith. The back benefits shall be paid to him within two weeks.

**JUDGE**

**JUDGE**

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