

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon

## Constitutional Petition No.D-4598 of 2021

**NBP Officers Welfare Association  
And others**

Petitioners: Through M/S Rafiq Ahmed Kalwar and Muhammad Yasir, advocates

Respondents: Through M/S Ch. Muhammad Ashraf Khan, Faisal Mahmood Ghani and Aamer Latif, advocates

Date of hearing: 26.01.2023

Date of Judgment: 07.02.2023.

## J U D G M E N T

**ADNAN-UL-KARIM MEMON, J.** – Through the captioned petition, the petitioners are seeking directions from this court against the respondent- National Bank of Pakistan (‘NBP’) to pay them annual increment with effect from 1<sup>st</sup> January of every year under the Policy decision of the NBP, and failure thereof was illegal activity on their part. The petitioners further seek arrears of annual increment with effect from 2020-21, inter-alia on the ground that they are entitled to annual increments every year in the pay which shall accrue and be granted according to the Annual Performance Appraisal, based on the Bank's financial results; that the annual increments in the pay of the employees are to be granted on the 1st of January or any other date each year as specified by the competent authority of the bank; that the Bank, since decades, has been paying the specified annual increment diligently from the effective date of 1<sup>st</sup> January of the year. However, in the year 2020, the bank avoided and failed to pay the annual increment from the effective date and instead started paying it from July 2020, with a lapse of six months; the Banking year for Annual Appraisal and payment of annual increment is different from the financial year and starts from 1 January till 31<sup>st</sup> December; that as per the policy of the bank, the annual increment ought to have been accrued from the effective date rather than from the middle of the year; that again in the year 2021, the bank repeated the same practice and issued annual increments from March 2021, instead of the effective date i.e. 1 January 2021; that the bank has been deliberately flouting its policies to the detriment of the employees of the bank including petitioners, who are lawfully entitled to the annual increments based on performance with effect from actual accrual date as discussed supra.

2. Mr. Rafiq Ahmed Kalwar, learned counsel for the petitioners, contended that Petitioner No. 1 is a registered association of the NBP and Petitioners No. 2 to 13 are officer-grade employees of the bank. He added that NBP is governed by Statutory Rules. Learned counsel further contended that the respondent's acts of non-payment of the annual increment from the accrual date/effective date i.e. 1st January of every year, according to annual appraisal is illegal, unlawful, mala fide, biased, unconstitutional, and against the principles of natural justice; that the bank has been deliberately violating the Human Resource Policy guidelines in payment of annual increment to its employees, and without any rhyme and reason, causing financial as well as mental agony to its employees; that non-payment of the annual increment from the effective date is in violation to Rule 23 of the National Bank of Pakistan (Staff) Service Rules, 1973, (**NBP Rules-1973**), Rule 23 of the National Bank of Pakistan (Staff) Service Rules, 1980 (**NBP Rules-1980**); as well as Article 9 of the Constitution.

3. On the maintainability of the petition learned counsel has argued that NBP is a government-owned and controlled bank and is not a private entity but is a corporate body established under the statutory law and it has been carrying on essential State Functions. Learned counsel contended that the question of statutory or non-statutory Rules of Service does not arise as the respondent bank has attempted to violate the policy decision, thus their terms and conditions of the service could not be varied which are protected under NBP Rules-1973, which is a statutory dispensation. He next argued the Honorable Supreme Court has already allowed various writ petitions against the respondent bank and thus the objection raised on behalf of the bank is of no consideration, in terms of the ratio of the decision rendered by the Honorable Supreme Court in the cases *Muhammad Tariq Badr and another v. National Bank of Pakistan and others*, **2013 SCMR 314** and *Ramna Pipes and General Mills versus SNGPL* (**2004 SCMR 1274**).

4. Learned counsel emphasized that under section 37 of NBP Bye-laws, 2015, the appointment of directors of NBP are to be appointed by the Federal Government, in consultation with the State Bank of Pakistan, for three years, whereas under section 38, the appointment of the Chairman of the Board is to be made by the Federal Government, as such it is obvious that the respondents in their abortive attempt tried to change the terms and conditions of service of the employees of the bank by introducing the new NBP Staff Service Rules, 2021 to avoid interference of this court under Article 199 of the Constitution, therefore,

the petition is maintainable and can be heard and decided on merits. He lastly prayed for allowing the instant petition.

5. M/S Chaudhary Muhammad Ashraf Khan and Faisal Mahmood Ghani, learned counsel for the respondent bank have raised the question of maintainability of the instant petition on the premise that the National Bank of Pakistan (Staff) Service Rules, 1973 (NBP Rules-1973), has been repealed and new National Bank of Pakistan Staff Service Rules, 2021, have been framed by the Board of the respondent-bank under clause 51 of the By-laws of 2015. It is emphatically contended that repealed NBP Rules-1973, had a statutory status, whereas, the new NBP Staff Service Rules, 2021, carry instructive status, thus are non-statutory, therefore the employees of the NBP could not ask for enforcement of non-statutory rules through this petition under Article 199 of the Constitution, more particularly, in terms of the ratio of the judgments passed by the Honorable Supreme Court in the cases of *Pakistan Electric Power Company v Syed Salahuddin* (2022 SCMR 991), *Sui Southern Gas Company Limited and others v. Saeed Ahmed Khoso and another*, 2022 SCMR 1256, and *Sardar Ali Khan Vs. State Bank of Pakistan and others* 2022 SCMR 1454, for the reason that the relationship between the employees and respondent-bank was/is of master and servant.

6. Learned counsel further argued that the relationship between master and servant is the existence of a right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is required to do but also in the manner in which he shall carry out the assignment. Learned counsel next submitted that in the instant case, petitioners are asking for payment of the annual increment from the particular date of every year, which is a policy decision made by the respondent bank and circulated amongst the employees vide Circular No.209/2020 dated 25.11.2020 and Circular No.05/2021 and the employees have nothing to do with the policy of the respondent-bank; and its enforcement could not be asked under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Besides, there is no violation or contravention of any statutory rules of service as portrayed by the petitioners.

7. They contended that the petitioners have benefited from the subject circulars and are now assailing the same through this petition amounts to blowing hot and cold in the same breath on their part. They next argued that the respondent bank is fully competent to change / modify its policies, including increases in pay and packages of its employees based on performance evaluation, which cannot be called in question under the constitutional jurisdiction of this

court as there is no discrimination / prejudice on the part of respondent-bank as the policies are uniformly applied to all employees based on terms of their service as well as decision exercised by the respondent-bank from time to time; besides no employee of the bank could claim a particular policy to benefit him all alone on account of a vested right.

8. It is contended that there is no mala fide on the part of the respondent bank to single out the petitioners for the subject annual increment with effect from the date prescribed by the competent authority of the bank and thus no case of discrimination point is made out. Learned counsel next argued that petitioners have to avail the jurisdiction of the civil court for the redressal of their grievances if any and not under Article 199 of the Constitution.

9. Upon perusal of the pleadings and after hearing arguments of the learned Counsel for the parties, the question raised in these proceedings is whether the respondent bank is a statutory entity, having non-statutory rules of service; and whether the employment of the petitioners with the respondent bank is to be regulated by the principle of `Master` & `Servant`?

10. To address the aforesaid proposition, primarily, the National Bank of Pakistan is a statutory body established under the National Bank of Pakistan Ordinance, 1949, and its employees are employees of a statutory corporation and fall within the purview of Article 199 (5) of the Constitution, 1973, more particularly in terms of the ratio of the unreported order dated 25.11.2022 passed by the Hon'ble Supreme Court of Pakistan in **CP No.4294/2018** (*re-Muhammad Naeem v. Federation of Pakistan, etc*) and held that the NBP, being a statutory corporation is amenable to the writ jurisdiction of this court under Article 199 of the Constitution of the Islamic Republic of Pakistan and its employees can also avail the recourse to the writ jurisdiction for the redressal of their grievances in respect of their service matters. An excerpt whereof is reproduced as under:

“.....The NBP, as per Section 3(2) of the National Bank of Pakistan Ordinance 1949, is a body corporate, and its employees are employees of a statutory corporation, not of the Federal Government. They are therefore not “government servants” or “civil servants” as defined in the Civil Servants Act 1973.

6. We are cognizant of the legal position that the NBP, being a statutory corporation, is amenable to the writ jurisdiction of the High Courts under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, and its employees when are governed or proceeded against under the statutory rules can also avail the recourse to the writ jurisdiction for the redressal of their grievances in respect of their service matters. However, this legal position does not merge the NBP, a separate juristic person, into the Federal Government, nor in any manner blur the distinction between NBP a Statutory Corporation and the Federal Government, a constitutional body or in any manner turn the employees of the NBP into the employees of the Federal Government.

7. For the above reasons, we agree with the conclusion of the impugned judgment. The petition is meritless. It is, therefore, dismissed and the leave to appeal is declined.”

11. The only question remains to be determined whether NBP service rules-2021 is statutory or non-statutory.

12. To elaborate on the subject question, it is expedient to have a glance at the service rules of the NBP. Primarily, in the year 1973, the NBP Rules-1973 were made by the Central Board under Bye-Law 18(a)(iii) of the National Pakistan Bye-Laws, with prior approval of the Central Government. Essentially, under Rule 4 of the 1973 Rules, the Central Board was given powers to amend, modify or omit all or any of the 1973 Rules, with the prior approval of the Federal/Central Government, as may be found necessary from time to time. Thus the NBP Rules-1973 were in principle Statutory Rules and the same envisaged the terms and conditions of Service of bank employees. However, in the intervening period, much water crossed the bridge and in the year 2015, the Board of Directors of the National Bank of Pakistan in exercising the powers conferred upon them under section Section 32 of the National Bank of Pakistan Ordinance, 1949; and, with the concurrence of the Federal Government, National Bank of Pakistan Bye-laws, 2015 were framed; and, now again by adopting the same analogy, with the concurrence of the Cabinet, fresh National Bank of Pakistan Staff Service Rules, 2021 have been framed by the Board of Directors of the NBP by exercising powers under section 51 of National Bank of Pakistan Bye-laws, 2015, which were in principle statutory dispensation, more particularly, in terms of the ratio of the authoritative judgment rendered by the Honorable Supreme Court in the case of *Shafique Ahmed Khan v. NESCOM through Chairman, Islamabad* (PLD 2016 SC 377); for the reason that statutory regulation is a law passed by a legislature. A non-statutory regulation is not based on legislative action but instead is derived from the interpretation of the federal or provincial statute. The Rules framed under the powers conferred by an Act are an integral part of the Act and these Rules are called Statutory Rules and are held to be part of the parent Act. It can do anything if within its scope. The Rules or the Bye-Laws made under the Statutes or Act cannot override the provisions of other Statutes. Neither the Rules control the construction to be placed on the provisions of the Act nor can they enlarge the meaning of the section. The Rules are framed under the Act in aid of the construction of ambiguous Statutes. The Rules under the Act shall be made by the Authority, empowered under the Act to frame the Rules or Bye-Laws. No other authority that is not empowered under the Act makes the Rules. A Rule Making Body also cannot frame the Rules in conflict with or derogating from the substantive provisions of the law or Statute under which the Rules are framed.

13. Elaborating further, non-statutory rules are made by the organization itself for the smooth running of its affairs. The distinction between statutory and non-statutory rules is vital because where the organization itself prescribes the terms and conditions of service of its employees, the principle of master and servant applies, for the reason that if the terms and conditions of an employee are not governed by statutory rules but by regulations, instructions, or directions issued for its internal use, any violation thereof would not normally be enforced through a constitutional petition; and if there is wrongful dismissal, the employee may file a suit for damages.

14. The Honorable Supreme Court has held in its various pronouncements that a statutory regulation means regulations that are legislative (as opposed to executive) made by a rule-making authority in the exercise of statutory power with the approval of the central government or provincial government. Precisely it is the exercise of the delegated legislative power by the rule-making authority. Ordinarily, it is necessary also that making and promulgation of a rule should be attended by certain formalities e.g. publication in government gazette as law laid down by this Court in various pronouncements. The Honorable Supreme Court further held that the statutory rules have the following three characteristics:

- (i) Rules or Regulations are framed by statutory or public body;
- (ii) They are framed under the authority or powers conferred in the statute;
- (iii) They have statutory Governmental approval or statutory sanction.

15. A reference is made to the case of *Pakistan Defence Officers Housing Authority v. Mrs. Itrat Sajjad Khan and others* (2017 SCMR 2010) in which the Hon'ble Supreme Court held that:

“The test to gauge as to whether the service rules are statutory or not was laid down by this Court as far back as in the year 1984 in the case of the Principal Cadet College, Kohat and another v. Mohammad Shoab Qureshi (PLD 1984 SC 170) by holding that unless rules of service of a statutory body are made or approved by the Government, such rules could not be regarded as statutory but mere instructions for guidance. However, in the case of Shafique Ahmed Khan v. NESCOM through Chairman, Islamabad (PLD 2016 SC 377) as well as in the case of Muhammad Zaman and others v. Government of Pakistan (2017 SCMR 571), this Court while widening the scope of such criterion held that ‘the test of whether rules/regulations are statutory or otherwise is not solely whether their framing requires approval of the Federal Government or not, rather it is the nature and area of efficacy which determine their status. Rules dealing with instructions for internal control or management are treated as non-statutory while those, whose area of efficacy is broader and/or complementary to the parent statute in the matter of crucial importance, are statutory.’”

16. Having said so, in principle, an aggrieved party can invoke the jurisdiction of this Court under Article 199(1)(a) of the Constitution against a person performing, within its territorial jurisdiction, functions in connection with the affairs of the federation, or a province or a local authority.

17. Article 199(5) elucidates that “person” includes any body politic or body corporate, any authority under the control of the Federal Government or a Provincial Government, and any court or tribunal, other than the Supreme Court,

a High Court or a court or tribunal established under a law relating to the armed forces of Pakistan. In Salahuddin and 2 others v. Frontier Sugar Mills & Distillery Ltd. and 10 others (PLD 1975 SC 244), the Hon'ble Supreme Court of Pakistan observed as under:

“The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of the sovereign or public power; whether the control of the organization vests in a substantial manner in the hands of Government: and whether the bulk of the funds is provided by the State. If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not.”

18. The above view was reaffirmed by the Hon'ble Supreme Court in the cases of Aitchison College, Lahore through Principal v. Muhammad Zubair and another (PLD 2002 SC 326); Federal Government Employees Housing Foundation and another v. Muhammad Akram Alizai (PLD 2002 SC 1079); Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others (PLD 2010 SC 676); Abdul Wahab and others v. HBL and others (2013 SCMR 1383); Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707); Pir Imran Sajid and others v. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan and others (2015 SCMR 1257); Muhammad Zaman and others v. Government of Pakistan and others (2017 SCMR 571); and Human Rights Case No.3564 of 2018 – In the matter regarding the appointment of Managing Director, Pakistan Television Corporation (2019 SCMR 1).

19. In view of what has been discussed above, the preliminary objection regarding the maintainability of the petition is overruled and the petition is held to be maintainable in terms of Article 199 (5) of the Constitution.

20. Having decided the question of maintainability of the petition, it is the case of the petitioners that the annual increment is automatically added to the basic pay every year in December and the employee is entitled to get a salary with an increment in January. Primarily, the annual increment is changed whenever pay scales are revised otherwise, no change has been made on the annual basis. It is the case of the petitioners that under H.R. Policy, the effective accrual date is 1st January of every year and now the respondent bank has changed the accrual date to 1st July 2020 which has triggered the cause the petitioners to assail the decision of the respondent bank through the instant petition.

21. During arguments, parties referred to the H.R. Policy Booklet and submitted that rate of annual percentage increase of basic pay in all the performance categories as disclosed will be approved every year by the Board of NBP based on the bank's financial results and will be effective from 1st January of the year; and, the appraisal period will be one year starting from 1st January to

31st December. However, there are certain exceptions of ineligibility for annual pay increases under the aforesaid policy.

22. Erstwhile NBP (Staff) Service Rules, 1973 provided that the annual increment in the pay of the employees shall accrue and be granted on 1st January or any other date of each year as may be specified by the competent authority of NBP, which is based on performance as per employees performance evaluation reports, which is admissible to all executives/officers to the extent of prescribed maximum salary ranges in their respective grades; and, now the respondent-bank vide Circular No.209/2020 dated 25.11.2020 has revised the basic salary of the officers along with other allied allowances to be effective from 1st July 2020 which is the bone of contention between the parties.

23. We have carefully examined the policy of NBP which is under challenge and we do not find any error in the policy which has violated any fundamental right of the petitioners. Even otherwise, it is an established law the policy matters cannot be gone into in writ jurisdiction. The courts always keep themselves away and never intervene in the policy of the organizations unless it is shown that any fundamental rights have been violated by such a policy.

24. The petitioners have failed to establish their fundamental right to challenge the policy; besides increment otherwise is not a right to be claimed without showing good performance. The increment in salary particularly in banking employment is always based on the performance of each employee. The more the bank earns the more the employee gets his benefits/perks. In other words, the increment is directly dependent on the performance which must give rise to the business of the bank.

25. In the light of the above facts and circumstances of the case, the instant Petition merits no consideration and is thus dismissed along with the pending application(s).

**JUDGE**

**JUDGE**

Nadir\*