

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –1372 of 2022

(Muhammad Rehan v. Federation of Pakistan and 2 others)

Constitutional Petition No. D –1373 of 2022

(Khalid Rasheed v. Federation of Pakistan and 2 others)

Constitutional Petition No. D –1374 of 2022

(Sohail Kamran v. Federation of Pakistan and 2 others)

Constitutional Petition No. D –1375 of 2022

(Muhammad Rafiq v. Federation of Pakistan and 2 others)

Mr. Zamir Hussain Ghumro, advocate for the petitioners

Malik Khushhal Khan, advocate for respondents, assisted by Liaquat Ali Vice President NBP

Dates of hearing : 07.02.2023

Date of announcement : 22.02.2023

JUDGMENT

ADNAN-UL-KARIM MEMON, J. – Through these petitions, the petitioners have impugned office memorandums dated 07.02.2019 issued by the Senior Vice President /Wing Head National Bank of Pakistan (“NBP”) whereby their services were dispensed with on the ground of alleged misconduct. The departmental appeals filed by the petitioners have been declined vide separate orders dated 21.04.2020. They seek reinstatement of their service with all back benefits in terms of the ratio of the judgment dated 12.03.2021 passed by this court in Constitutional Petition No. D –5657 of 2019.

2. The relevant facts of the case are that petitioners were posted at Custom House Branch Karachi dealing with the collection of government duties and were found involved in the alleged fraud (disclosed in the charge sheets). The preliminary investigation was conducted by the NBP, who held them responsible; consequently, they were served with a charge sheet, final Show Cause notices dated 24.07.2018, and Personal Hearing on 10.09.2018. Finally, their services were dispensed with by the respondent bank vide separate office memorandums dated 07.02.2019, their appeals were also dismissed on the same analogy vide separate orders dated 21.04.2020. Petitioners being aggrieved by and dissatisfied with the aforesaid orders filed the instant petitions.

3. Respondent-Bank appointed inquiry officer; and, as per the finding of the Inquiry Officer, the following charges were leveled against the petitioner Rehan Khalid OG-III:-

Charge No.01 about the shortfall of the aggregated amount of Rs.32,468,064.97/- against the petitioner was not proved.

Charge No.2 that the petitioner had full knowledge about Mr. Irfan Umer Memon's misappropriation of Rs.30.243(M) by the issuance of 5 GDs for this amount without receiving any funds from the actual importers and camouflaging his act by the illegal collection of PO for Rs.31.104(M) issued in favor of Excise and Taxation Officer Port Qasim on a/c of Quaid-e-Azam Thermal Power (Pvt.) Limited and credit to Custom Collection account but the actual five payment orders deposited for credit to Model Custom account by Mr. Irfan Umar Memon, OG-II as evident from Transfer Pay in Slip dated 23.11.2016 signed by him. The amount was collected in clearing and credited to the customer account on 24.11.2016 with a transfer voucher signed by the petitioner for issuance of some other GDs. Per the Inquiry finding, the said charge was proved against him because of his confessional statement.

Charge No.3 regarding not depositing an amount of Rs.68,076,172/- for Excise and Taxation Officer on 26.11.2017 and 27.01.2017, the petitioner was found guilty by the inquiry office on the ground that the petitioner deposited/passed credit voucher for PO 30002298 for Rs.68,076,172/-, and he accepted PO for collection without any reason with malafide intention as there were no supporting documents i.e. Challan of GDs and the said charge was proved against him.

Charge No.04 of fraud in government accounts was not proved against the petitioner as per the inquiry officer.

Charge No.5 of signing/passing the cheques received from the WEBOC Counter without checking when GDs had been issued against the instrument, the said charge was not proved against the petitioner as all cheques are passed by Mr. Ghulam Murtaza Abbasi and Shamsuddin.

Charge No.6 of misappropriation in ETO KPT Infra Cess Account was not proved against the petitioner as he produced a detailed statement of reconciliation from 02.07.2015 till 28.07.2016.

Charge No.7 regarding non-reconciliation of the pre-pact account with customs authorities was proved against the petitioner as the petitioner could not produce documentary evidence in support of his written reply.

4. Petitioner Rehan Khalid refuted the allegations and submitted that he was allegedly found guilty of 3 out of 7 charges leveled against him (Charges 2, 3, and 7). Charges 2 and 3 pertain to another employee, namely Irfan Umer, and the petitioner has been alleged to know about the irregularities committed by him. However, the said employee has only been reprimanded by the respondent bank. It is alleged that the petitioner had signed the Pay-in slips of the POs submitted by Irfan Umar, the employee who had been alleged to be guilty of misappropriation, whereas, this allegation is false, for the reason that the same was deposited by Irfan Umar who had already been exonerated from the charges; and, the petitioner's signature is only thereby being the officer who had posted the POs, having no nexus with the deposit or receipt. Even though the employee alleged to have committed misappropriation was someone else, he was only reprimanded. In the findings of charge no. 2, it has been said that the petitioner submitted a confessional statement, in light of which, he was found guilty, per petitioner

this was/is a false statement on the part of the inquiry officer, and no such alleged confessional statement was given by the petitioner. As per the petitioner, he has no nexus with the allegations leveled in charges no. 2 and 3 and the same pertain to Irfan. So far as charge no. 7 is concerned, the same pertains to the reconciliation of the Pre-Pact Account, whereas, no such working role was ever assigned to the petitioner, in absence of which, no responsibility could be attributed to the petitioner. Petitioner has averred that the said role of reconciliation was carried out through the WeBoc account, as he had no nexus with any such role.

5. As per the finding of the Inquiry Officer, the following charges were leveled against petitioner Khalid Rasheed:-

Charge No.1 of intentionally keeping open the passageway by not locking the door opening between the WEBOC Counter and Store Cum Record Room leading towards the Strong Room was not proved against the petitioner.

Charge No.2 regarding unauthorizedly keeping Rs.1500000/- in Branch strong Room received from Muhammad Rehan OG-III as bribery was proved against the petitioner as the petitioner could not produce documentary evidence nor submitted a written reply.

Charge No.3 of sharing of User I.D & Password was proved against the petitioner.

6. Petitioner Khalid Rasheed also rebutted the allegations and submitted that vide charge 2, he was accused of keeping a sum of Rs. 1,500,000, received from Rehan Khalid OG-III, before handing over the same to Mehmood Khan (Head Cashier), who then deposited the same into the account of Custom Collectorate East. He submitted that the officer who deposited the money was exonerated and petitioner Rehan was not even charged with this allegation. He further submitted that the charge 3, he was accused of sharing his user ID with another employee (Ahmed Ali Qureshi). He submitted that the ID was given to the said officer, however, it was on the instructions of the Bank Manager for the reason that the petitioner had to proceed on Ex-Pakistan Leave to perform Umrah, and without his ID, the Bank Vault could not be closed at the end of the working day, which was/is an admitted fact. Furthermore, the officer using the ID was only issued a warning letter and no disciplinary action was taken against the Bank Manager, whereas, the petitioner was dismissed from service, without any opportunity to examine the alleged evidence brought against him or to produce his defense.

7. As per the finding of the Inquiry Officer, the following charges were leveled against petitioner Sohail Kamran:-

Charge No.1 of chat inside WEBOC Counter at about 02.14 afternoons on 21.02.2017 as criminal involvement and connivance with the outsider Saeed Chaywalal and others was proved against the petitioner as Operations Manager failed to perform his core duties.

Charge No.2 of personal gains and malpractice was not proved against the petitioner.

Charge No.3 of non-adherence to the Head Office Instruction regarding improvement in internal controls, was not proved against the petitioner.

Charge No.4 of shortfall of Rs.32.468(M) in three customs collection accounts and credit balance was not proved against the petitioner.

Charge No.5 of releasing 5 GDs to customs Karachi was proved against the petitioner as the accused was unable to perform his core duties and responsibilities as per Bank's Standard procedure Manual.

Charge No.6 of non-reconciliation of Pre Pact Account was proved against the petitioner as the accused failed to reconcile the various government accounts and perform his legitimate duties as Operations Manager.

Charge No.07 of concealing the misappropriation of Mr. Tahir Athar, WeBoc Operator for issuance of GDs for Chess Shipping & Logistics Pakistan was proved against the petitioner as the complainant produced valid proof in support of this Charge in form of 39 GDs which were released before the realization of cheques.

Charge No.8 of not setting up proper customs collection procedure as per Banks instructions for collection resultantly PO and cash were accepted without a voucher and entering in Government Credit was proved against the petitioner.

8. Petitioner pleaded his innocence and submitted that the inquiry officer concluded that the petitioner was guilty of 5 out of 8 charges, without allowing the petitioner to produce any evidence in his support and without confronting him with the material against him. He submitted that charge No. 1 was/is vague, unspecific, and relates to the WeBoc area, which was headed by WeBoc in charge, not the Petitioner. Therefore, the Petitioner had no nexus with persons working therein. He further submitted that the stranger was never allowed to enter the WeBoc area. On Charge no. 7 he submitted that the same pertains to transactions made by Tahir Ather (WeBoc Operator), however, he has been reinstated in service and working with the bank to date. Moreover, Ghulam Murtaza Abbasi was also alleged to have been responsible for the actions of Tahir, he has been reinstated in service. On Charge no. 8, he submitted that the same relates to the loss of 2 POs by Irfan Memon and Nawaz Soomro, who were exonerated from the charges. Petitioner submitted that the concerned branch had reported to the head office that there was no loss caused to the concerned party for issuance of duplicate pay orders, for cancellation of old cheques as well as the bank.

9. As per the finding of the Inquiry Officer, the following charges were leveled against petitioner Muhammad Rafiq:-

Charge No. 3 pertains to transactions made by Mr. Tahir Athar (We Boc Operator), however, he has been reinstated in service and working with the bank to date.

Charge No. 4 pertains to the release of GDs on 01.07.2016 by Mr. Arshad Siddiqui without receiving funds. It is pertinent to mention here that on 01.07.2016 (i.e., Friday), the operational Banking was closed due to it being a bank holiday, however, custom collection counters remained open. The charge is factually incorrect as Internal Branch Cheque by M/s Chess Shipping & Logistics Pakistan was submitted by Arshad Siddiqui,

however, since the branch was closed till 03.07.2016, the same was debited on 04.07.2016, as per practice, was never objected to in the audit.

Charge no. 6 relates to the release of GDs of one person against POS issued on behalf of another and alleged misappropriation of funds. It is pertinent to mention here that the WeBoc in charge is only concerned with the total amount received against the total GDs released. The individual POS is not cross-checked by the WeBoc in charge due to their voluminous number if the balance is correct. Since the balance was correct, the petitioner cannot be blamed for the actions of WeBoc operator Rashid. Needless to emphasize that all charges pertain to procedural lapses and no loss was ever caused to the bank.

10. Petitioner also pleaded his innocence and submitted that he was allegedly found to be guilty of 3 out of 6 charges, without the opportunity to produce any document in his defense or even to examine the material against him; that charge No. 3 pertains to transactions made by Tahir Athar (We Boc Operator), however, he has been reinstated in service and working with the bank to date; that charge no. 4 pertains to the release of GDs on 01.07.2016 by Arshad Siddiqui without receiving funds. He submitted that on 01.07.2016 (i.e. Friday), the operational Banking was closed due to the bank holiday, however, custom collection counters remained open. The charge was/is factually incorrect as Internal Branch Cheque by M/s Chess Shipping & Logistics Pakistan was submitted by Arshad Siddiqui, however, since the branch was closed till 03.07.2016, the same was debited on 04.07.2016, as per practice, and was never objected to in the audit. That charge No. 6 relates to the release of GDs of one person against POS issued on behalf of another and the alleged misappropriation of funds. He submitted that the WeBoc in charge is only concerned with the total amount received against the total GDs released. The individual POS is not cross-checked by the WeBoc in charge due to their voluminous number if the balance is correct. He submitted that since the balance was correct, the petitioner cannot be blamed for the actions of WeBoc operator Rashid. He further submitted that all charges pertain to procedural lapses and no loss was ever caused to the bank.

11. Mr. Zamir Hussain Ghumro, learned counsel for the petitioners, argued that the petitioners have been awarded the major penalty based on unilateral fact-finding inquiry as no regular inquiry or other codal formalities were followed by the inquiry officer. Learned counsel submitted that no loss to the Bank or third party has been caused, as such, no embezzlement or act of corruption could be established against the petitioners. The learned counsel averred that colleagues of the petitioners against whom similar action was taken were reinstated in service, and only singling out the petitioners, and penalizing them is the discriminatory attitude on the part of the respondent-bank thus the impugned termination from service orders are liable to be struck down/ set aside. The learned counsel alleged that the respondents have objected to reinstatement on the ground that the respondent bank is governed by non-statutory rules, which is a misleading statement as the said rules have only been enforced with effect from 2021, whereas, the petitioners

were dismissed in 2019, while the NBP Byelaws, 2015 which are statutory are still in force and regulate the Petitioners' terms of service, the same were framed under Section 32 of the NBP Ordinance, 1949 with the approval of the Government. Therefore, the petitioners can very well be reinstated, in light of the foregoing legal position.

12. Malik Khushhal Khan, advocate for the respondent bank has raised the question of maintainability of these petitions, 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 petitioners could not ask for reinstatement of their services under Article 199 of the Constitution for the reason that the relationship between the petitioners and respondent-bank was/is of master and servant.

13. On merits, learned counsel argued that all the exercise was adopted by suspension, issuing charge sheet and show cause notices and thereafter holding proper regular inquiry wherein the charges were fully proved against all petitioners; and, the second show cause notices were also issued and thereafter the petitioners were dismissed from service of the respondent-bank. The learned counsel pointed out that the petitioners preferred departmental appeals and the same were declined by the Competent Authority. The learned counsel further argued that the petitioners played a key role in committing fraud with the bank such allegations were fully proved through regular inquiry proceedings and thereafter their services were terminated. The learned counsel asserted that in a financial institution, no such person can hold the post if he /she is involved in such kind of destabilizing activities. The learned counsel added that there was/is no discrimination meted out with the petitioners and punishments were awarded to them as per their role. The learned counsel further submitted that the amount involved in the scam was 94.691(M) out of that amount 20.982(M) was recovered and the still recoverable amount is 73.70(M) for which the office of Deputy Director Excise and Taxation Officer (SDMI) KPT Karachi has also claimed Rs.112,774,078/- which was not sent to the government treasury, however, in another letter the office of Deputy Director/Senior ETO SDMI KPT Karachi filed a claim with the President National Bank of Pakistan for Rs.23,054,623/- from NBP Custom House Branch Karachi. The learned counsel referred to the details of the petitioner's viz. charges, punishments, the outcome of appeals, and reasons thereof, which are as follows:

Name & Designation	Total charges	Proved Charges	Punishment	Appeal	Reasons
Khalid Rasheed Ex-OG II	03 charges	02 charges proved 1. He kept Rs.1500,000/- in the strong room received from Muhammad Rehan Ex-OG-III and handed over cash to incoming head cashier without sign deposit slip favor custom collectorate Karachi East 2. He shared his user I.D and password during his Ex-Pakistan Leave. Several transactions were executed with his profile.	Dismissed from service	Appeal declined and dismissal sustained	
Muhammad Rafiq Ex-OG-II	06 charges	03 charges proved 1.While taking over the day collection from WEBOC operator he failed to check that GDS were issued without fund. 2. He concealed the facts regarding issuance of 10 GDS by WEBOC operator despite having full knowledge of incident. 3. He failed to report the misutilization of PO by WEBOC operator	Dismissed from service	Appeal declined and dismissal sustained	
Muhammad Rehan Ex-OG-III	07 charges	03 charges proved. 1.Despite having full knowledge of misappropriation of PO in favor of ETO by WEBOC he signed and transferred voucher for issuance of some other GDS. 2.He was responsible for misutilization of PO in favor of ETO Port Qasim. 3. He failed to reconcile PD account with custom authority which resulted in misappropriation of the funds in the said account.	Dismissed from service	Appeal declined and dismissal sustained	
Sohail Kamran Ex-OG-I	08 charges	05 charges proved. 1.Being operation manager responsible for implementing SOPs but failed to do so. 2.Failed to restrict access of unauthorized persons. 3.Responsible for collection of Govt. duties but failed and concealed misappropriation by issuance of 05 GDS without receiving funds. 4.He failed to reconcile balance in PD account with custom authorities. 5.He was responsible for non-setting of proper procedure for custom duty collections.	Dismissed from service	Appeal declined and dismissal sustained	

The learned counsel lastly prayed for dismissal of the captioned petitions and in support of his contentions, he relied upon the cases of Province of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Farasatullah and others, 2020 SCMR 1629, Habib Bank Ltd. v. The State, 2013 SCMR 840, G.M Pakistan Railways and others v. Muhammad Rafique, 2013 SCMR 372, Syed Fida Hussain Kazmi v. Inspector General of Police, Punjab and others, 2008 SCMR 1513, Nazir Ahmed Pathan and another v. Muslim Commercial Bank Ltd. and others, 2008 SCMR 899, Muhammad Ali S. Bukhari v. Federation of Pakistan through Establishment Secretary, Islamabad and 2 others, 2008 SCMR 214, Ghulam Mstafa Channa v. Muslim Commercial Bank Ltd. and others, 2008 SCMR 909, Auditor General of Pakistan and others v. Muhammad Ali and others, 2006 SCMR 60, Maqbool Ahmad and another v. Chief Executive, Faislabad Electric Supply company and another, 2004 SCMR 637, Commissioner Punjab Employees Social Security Institution v. Jamal Butt and 3 others, 2004 SCMR 186, and Pakistan Tobacco Co. Ltd. v. Channa Khan and others, 1980 PLC 981.

14. We have heard the learned counsel for the parties and perused the record with their assistance.

15. The preliminary question which falls for consideration is whether the respondent Bank is a private body or falls within the definition of the State or authority under the control of the government and whether its rules are statutory or otherwise.

16. 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.

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.

18. In view of what has been discussed above, the preliminary objection regarding the maintainability of the petitions is not sustainable under the law and these petitions are held to be maintainable in terms of Article 199 (5) of the Constitution.

19. The next question is whether the allegations leveled against the petitioners could be inquired under Article 199 of the Constitution.

20. To answer the question, in principle, the role of the Court is not to remake the decision being challenged or to inquire into the merits of that decision, but to conduct a review of the process by which the decision was reached to assess whether that decision was within the parameter of law or otherwise; and observance of rules of natural justice. Of course, fair play is the basis, and if there is perversity or arbitrariness, bias, which vitiates the conclusions reached. In such a scenario, more particularly in service matters, this Court can only see whether:

- (a) the inquiry is held by a competent authority;
- (b) the inquiry is held according to the procedure prescribed on that behalf;
- (c) there is a violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case; (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

21. However, we are also cognizant of the fact that this Court under Article 199 of the Constitution shall not be in a position to:

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the inquiry, in case the same has been conducted under the law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be
- (vii) go into the proportionality of punishment unless it shocks its conscience.

22. To elaborate further on the subject question, it is well-settled law that the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion that the authority reaches is necessarily correct in the eye of the Court.

23. It is also a well-established proposition of law that when an inquiry is conducted on charges of misconduct by a public servant, the Court is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power, and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules nor proof of a fact or evidence in the *Stricto-Sensu*, apply to disciplinary proceedings. When the authority accepts that evidence and conclusion receive support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge, however, that is subject to the procedure provided under the relevant rules and not otherwise, for the reason that the Court in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its independent findings on the evidence. This Court may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding is such as no reasonable person would have ever reached, the Court may interfere with the conclusion or the finding and mold the relief to make it appropriate to the facts of each case. In service jurisprudence, the disciplinary authority is

the sole judge of facts. Where the appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment.

24. To go ahead on the subject issue; and, touching the cases of Master and servant, the master cannot be permitted to play hide and seek with the law of dismissals. The same processes must be grounded on the substantive reason for the order. Even the discretion to dispense with the inquiry could not be exercised arbitrarily but honestly, justly, and fairly in consonance with the spirit of the law, after the application of a judicious mind, and for substantial reasons. For this purpose, the nature of the allegations against the accused public servant has to be considered for the reason that when it is clear to the authority that the allegations could be decided about the admitted record or it forms an opinion that un-rebuttable evidence on the touchstone of QANUN-E-SHAHADAT, to prove the charge against the accused/employee is available on the record, the procedure for regular inquiry, may be dispensed with, otherwise, the ends of justice demand regular inquiry to be conducted to probe the real fate of allegations and not by mere textual proof allowing the inquiry officer to call delinquent public servant in the office to sign inquiry papers, he has to take efforts to substantiate the allegations being a neutral officer and not to act as a stooge of the master for the reason that the requirement of regular inquiry could be dispensed with in exceptional circumstances. Where recording of evidence was necessary to establish the charges, then departure from the requirement of regular inquiry under the Rules would amount to condemning a person unheard.

25. Having said so on the aforesaid proposition, on merits, it is the case of the petitioners that respondent-bank dispensed with their services vide impugned office memorandums dated 07.02.2019 on the ground of alleged misconduct as discussed supra. The departmental appeals filed by them have been declined vide separate orders dated 21.04.2020. They seek reinstatement of their service with all back benefits, on the ground that the respondent bank did not hold a regular inquiry in terms of Rule 39 of the National Bank of Pakistan (Staff) Service Rules, 1973, to probe the guilt of the petitioners because the allegations were denied by them and it was incumbent upon the inquiry officer for holding a regular inquiry in terms of principles of natural justice and to ascertain the truth about the allegations by producing cogent material and evidence against the petitioners, whereas no legal procedure has been adopted by the inquiry officer to substantiate the charges. Be that as it may, we are not in a position to say for and against at this stage for the reason that proper inquiry needs to be conducted in terms of law to unearth the truth in the matter.

26. To see whether there was/is a financial loss to the respondent bank due to the alleged conduct of the petitioners and whether there was/is a complaint of misappropriation in the relevant account on the part of petitioners established in the

inquiry proceedings, and whether mere irregularity in the banking procedure as opined by the inquiry officer could be construed to be misconduct of gravest form to dispense with the services of the petitioners and whether the inquiry officer erroneously charged the petitioners and wrongly opined by giving his findings, thus purported charges leveled against the petitioners were/are not sustainable in law.

27. The aforesaid questions need to be addressed by the independent inquiry officer of the respondent bank by holding fresh regular inquiry under the law for the reason that there is nothing available on record that could show that upon denying the allegations by the petitioners any regular inquiry was conducted and or any opportunity to cross-examine the witnesses was provided by the respondents on the aforesaid allegations, for the reason that specific allegations had been leveled against the petitioners which included inefficiency and misconduct. When the petitioners in response to Show Cause Notices, and a charge sheet had specifically denied the charges leveled against them and considering the nature of the charges, all those allegations required proper evidence, then it had become incumbent upon the authority to have ordered a regular inquiry rather than issuing mere statement of complainant and allowing the petitioners to participate in the inquiry proceedings based on fact-finding inquiry is not sufficient to hold the petitioners guilty of the gravest charge of misconduct, and in the above-given situation departure from a normal course was/is against the principle of natural justice.

28. Applying the above principles, the impugned orders in the instant cases, cannot be treated to be a simpliciter termination. It was the orders passed by way of punishment and, with stigma, therefore, were orders of dismissal from service which having been passed without holding a regular departmental inquiry as already held by this Court vide judgment dated 12.03.2021 passed by this court in Constitutional Petition No. D –5657 of 2019.

29. The law provides that the punishment must always be commensurate with the gravity of the offense charged. The punishment imposed on the petitioners is disproportionately excessive and it is not within the reach of natural justice for the simple reason that the petitioners have explained their position but could not convince the respondent bank and if the assertions of the petitioners were not acceptable to them they ought to have inquired the allegations through regular mode of inquiry, which they have failed to do so, thus leaving this court with no option but to accept the version of the petitioners at this stage to remit the case to the competent authority of the respondent-bank to inquire the allegations through regular mode of inquiry by allowing the petitioners to cross-examine the witnesses and produce the evidence in defense.

30. Prima-facie it is yet to be ascertained whether a financial loss has been caused to the respondent bank on account of alleged misconduct of the petitioners and whether misappropriation has taken place in the relevant account, besides it is yet to be ascertained whether irregularity in the banking procedure as opined by the inquiry officer could be construed to be misconduct of gravest form to dispense with the services of the petitioners. Prima facie, in the present form, the inquiry officer's findings cannot be held to be sacrosanct unless it is established beyond the shadow of a doubt that the petitioners benefited from the alleged irregularities in the banking procedure in terms of the purported findings of the inquiry officer.

31. Accordingly, the orders of termination dated 07.02.2019 and appellate orders are quashed and set aside. The petitioners are directed to be reinstated in service. The respondents are directed to take back the petitioners in service on their original posts and position forthwith. So far as, salary and wages/benefits for the interregnum that depends upon the outcome of fresh regular inquiry to be conducted by the respondent bank, within one month positively. However, if the petitioners are found guilty in the regular inquiry the competent authority shall pass a speaking order after providing a meaningful hearing to the petitioners.

32. The petitions are disposed of in the above terms with no order as to costs. Let a copy of this order be transmitted to the respondents for compliance.

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Nadir*