

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-546 of 2005

Date _____ Order with signature(s) of Judge(s) _____

Present:

Muhammad Ali Mazhar, J.
Abdul Maalik Gaddi, J.

Executive Association of
Habib Bank Limited Petitioner

Versus

Federation of Pakistan
& 3 others Respondents

Hearing of Cases

1. For hearing of CMA No.2088/2005.
2. For hearing of CMA No.1065/2016.
3. For Regular Hearing.

17th January, 2017.

Mr. Qamar Ali Shaikh, President of the
Petitioner's Union.

Mr. Khalid Javed Advocate for the respondent No.1.

Mr. Jam Zeeshan Ali Advocate for Respondent No.2.

Mr. Naveed-ul-Haq Advocate for Respondent No.3.

Mr. M. Hafeez Advocate holding brief for
Mr. Javed Asghar Advocate.

Mr. Asim Mansoor Khan DAG.

Muhammad Ali Mazhar, J. The petitioner is an association of officers/executive of Habib Bank Limited. (respondent No.2). This petition has been brought to seek declaration that the policy relating to the stoppage of pension, commutation and abolishing medical facilities as per circular No.STF/2005/16 dated 04.03.2005 issued by the

present management is illegal and in violation of agreement between the former management of the Habib Bank Limited and also against the fundamental rights of the petitioner's members.

2. Learned counsel for Habib Bank Limited pointed out page No.51 of the memo of petition, which is a copy of Share Purchase Agreement for the Sale of Strategic Stake and Transfer of Management Control of Habib Bank Limited. This agreement was executed on 26.02.2004 and main reliance of the petitioner is at Clause 5.2.1, which is reproduced as under:-

“5.2.1 all existing benefits and facilities being enjoyed by the employees and staff members of HBL, (whether executive, managerial, officers or workmen) shall not be changed, varied or discontinued to the detriment of the staff members and employees by Purchaser, for a minimum period of (1) one year from the Signing Date and thereafter only in accordance with the provisions of applicable laws and contracts of such employees and staff members;”

3. The order sheet dated 28.08.2014 shows that counsel for the petitioner has expired and court directed the office to issue notice to the petitioner. On last date i.e 12.01.2017 also nobody appeared for the petitioner so we directed the office to issue notice again to the petitioner. Today Mr.Qamar Ali Shaikh appeared in person and argued that in terms of the aforesaid clause in the agreement, no change detrimental to the interest of petitioner's members could be made. The revision of the post medical facility to the retired/retiring officers is illegal. The change in the terms and conditions of service have been made one sided without giving any notice to the petitioner. The circular

dated 4.3.2005 is against the provision of agreement for transfer of management.

4. On the contrary, the learned counsel for the Habib Bank Limited pointed out that Condition No.5.2.1 clearly provides that all existing benefits and facilities being enjoyed by the employees and staff members of HBL, (whether executive, managerial, officers or workmen) shall not be changed, varied or discontinued to the detriment of the staff members and employees by Purchaser, for a minimum period of (1) one year from the Signing Date and thereafter only in accordance with the provisions of applicable laws and contracts of such employees and staff members. He argued that the restriction was limited for one year only from the signing date and thereafter there was no bar against the management not to make changes in accordance with the provisions of applicable laws. He referred to the judgment of **Dr. Akhtar Hassan Khan and others v. Federation of Pakistan and others (2012 SCMR 455)** in which privatization of Habib Bank Limited was challenged under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 but the hon'ble Supreme Court in Paragraph No.51 of the judgment at page 508, held that the approval of privatization of Habib Bank Limited by the Cabinet Committee on Privatization was within the purview of Privatization Commission, which does not reflect violation of any statutory provisions. It was further held that neither the process was tainted with lack of transparency or mala fides nor the successful bidder lacked qualifications prescribed in law and it is in accordance with the best practices around the world and the law declared by the court.

5. An important aspect cannot be ignored as to whether Habib Bank Limited is a statutory corporation or has statutory rules of service or not? The hon'ble Supreme Court in the case of **PIAC versus Tanveer-ur-Rehman** reported in **PLD 2010 SC 676**, held that "Although the Corporation was discharging functions in connection with the affairs of Federation, yet aggrieved persons could not approach High Court by invoking its constitutional jurisdiction. If any adverse action was taken by employer in violation of statutory rules, only then such action should be amenable to constitutional jurisdiction but if such action had no backing of statutory rules then principle of 'Master and Servant' would be applicable and such employees had to seek remedy permissible before the court of competent jurisdiction....". It is well settled now that constitution petition is not maintainable against the establishment which is neither a statutory corporation nor it has any statutory rules of service. The petitioner has not denied the fact that HBL is not a private entity so we have no hesitation in our mind to hold that constitution petition against HBL is not maintainable. Reference can also be made to the judgment of apex court reported in **2013 SCMR 1707 (Pakistan Defence Officers' Housing Authority versus Lt. Col. Syed Jawaid Ahmed)**. The petitioner's representative referred to a judgment passed by the learned Lahore High Court in **Writ Petition No.13590/2010**. Let us first clarify that learned Lahore High Court decided the case against the National Bank of Pakistan. At this juncture, we would like to point out that National Bank of Pakistan has been constituted under the National Bank of Pakistan Ordinance, 1949 and being governed by the statutory Rules of service framed in 1973 duly approved by the Federal Government of Pakistan,

therefore, the case against the National Bank cited by the petitioner is totally distinguishable. The petitioner further pointed out that some other retired employees approached the Federal Ombudsmen for same relief which was allowed to them. However, Habib Bank Limited filed appeal and challenged the order of Ombudsmen before the President of Pakistan, which order was maintained by the President, thereafter they filed writ petition at Islamabad High Court.

6. So far as the present petition is concerned, no writ can be issued against a private entity, however if any, relief was granted by the learned Ombudsmen to the employees of Habib Bank Limited and writ petition is pending at Islamabad High Court against Ombudsman's order, it has no direct nexus with this petition in which the core issue is against the maintainability of petition against private bank.

7. Mr. Khalid Javed, learned counsel of Privatization Commission also opposed the petition on the question of maintainability and he referred to the judgment reported in **2015 PLC (C.S.) 1313 (Muhammad Ashraf and others v. United Bank Limited)**. In this case, employees have approached to the hon'ble Supreme Court for increase in pension and other benefits, the hon'ble Supreme Court held that constitution petition filed before the High Court against the private bank having no statutory rules, such petition is not maintainable to entertain the grievances of the petitioner. However, in paragraph No.8, the apex court further held as under:-

“8. On humanitarian ground, one may have sympathy with the petitioners for their meager pensionary benefits, during these days of high cost of living, but this fact alone is not sufficient to make them entitled for the relief, which, according to them, was extended to some retired employees of State Bank of Pakistan and National Bank of Pakistan etc., who had opted to

implement the Government of Pakistan letter No.17(9)1-FX1/77 dated 30-11-1997. Admittedly, the spirit of clause 5.2 (supra) was only to provide protection to the existing employees/staff of respondent No.1 for a minimum period of one year, whereafter the respondent No.1 was free to make its own arrangements for dealing with its employees and staff. Moreover, it is also an admitted position from the record that respondent No.1 is a private Bank having no statutory rules, therefore, the forum chosen by the petitioners by filing petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 was also not well advised to entertain their grievance, as rightly held in the impugned judgment.”

8. As a result of above discussion, this petition is dismissed along with pending applications. However, the petitioner may avail the appropriate remedy in accordance with law.

Judge

Judge