

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-2279 of 2006

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Abdul Maalik Gaddi.

M/s. National Bank of Pakistan Petitioner

V E R S U S

Ali Murad Jalbani & another Respondents

Date of hearing 15.02.2017

Ch. Muhammad Ashraf Khan advocate for the petitioner.

M/s. Abdul Mujeeb Pirzada and Khalid Shah advocates for the Respondent No.1 a/w Ali Murad Jalbani, Respondent No.1.

Muhammad Ali Mazhar, J: Through this petition, the petitioner has challenged the judgment dated 28.06.2006 passed by learned Presiding Officer, Special Court (Offences in Banks), Sindh at Karachi, whereby, the respondent No.1 was acquitted for the reasons that the prosecution case was found full of doubts and they failed to establish case against the respondent No.1 so the court extended the benefit of doubt and acquitted the respondent No.1. He was on bail and his bail bond was cancelled and surety was discharged. Some question of law was raised in this petition as to why the acquittal appeal was not filed against the impugned judgment rather than this constitutional petition.

2. Learned counsel for the petitioner submits that under Section 10 of Offences in respect of Banks (Special Court)

Ordinance, 1984 acquittal appeal is not provided and he also referred to the judgment passed by the hon'ble Supreme Court which is reported in 1993 S.C.M.R 1853.

3. Conversely, learned counsel for the respondent No.1 argued that under Section 10 only application of Sections 426, 491 and 498 Cr.P.C have been excluded. He also referred to Section 5 of the same Ordinance which pertains to the procedure, whereby under sub-section 8 it is provided that the Special Court shall, in all matters with respect to which no procedure has been prescribed by this Ordinance, follow the procedure prescribed by the Code for the trial of the cases by Magistrates.

4. However, after arguing at some length, learned counsel for the petitioner referred to para-2 of page 9 (page 29 of the court's file) of the impugned judgment in which learned trial court observed that in view of the evidence, it appears that no departmental inquiry was conducted against the present accused nor his name has been given by the complainant being the responsible with three officers mentioned by the complainant. After reading this portion, learned counsel for the petitioner argued that this is factually incorrect. Before taking an action of dismissal of the respondent No.1, inquiry was conducted and in this regard a separate C.P. No.D-2008 of 2016 filed by respondent No.1 is pending for his reinstatement. At this juncture, learned counsel for the respondent No.1 pointed out that though the inquiry was conducted but it was

an ex parte. The main reason for pointing out it by the learned counsel for the petitioner is that this finding may not influence or prejudice the pending petition for reinstatement where all documents have been placed on record. He further argued that if this finding is strike out he will not press this petition. On this proposal, the learned counsel for the respondent No.1 has no objection.

5. As a result of above discussion, this petition is disposed of with this clarification that obviously the pending petition of the respondent No.1 filed against his dismissal order from service will be decided on its own merits keeping in view the documents filed by the petitioner and respondents as to whether the action was taken after inquiry or without inquiry with other grounds raised for reinstatement, however, the findings of learned trial court discussed above shall not prejudice the case of either party as it is well settled that the prosecution and inquiry on the charge of misconduct against any employee have two distinct features and both are decided independently.

JUDGE

JUDGE