

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-761 of 2018

Habib Bank Ltd.....Petitioner

Versus

Safeer Ahmed & othersRespondents

Date of hearing: 02.03.2018

Mr. Javed Asghar Awan Advocate for the Petitioner.

Mr. Malik Altaf Javaid Advocate for Respondents No.1 to 12.

Shaikh Liaquat Hussain, Assistant Attorney General.

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ORDER

ADNAN-UL-KARIM MEMON, J:- The Petitioner, through the instant petition has impugned the stay order dated 16.01.2018 passed by learned Member of National Industrial Relations Commission Karachi Bench/ Respondent No.13.

2. Facts of the case, in a nutshell are that Respondents No. 1 to 12 were employed by the Petitioner Bank as Senior Managers, Managers, Assistant Managers and Officers. Petitioner Bank has averred that they have completed 25 years of their services and as per Staff Service Rules of the Bank, Petitioner Bank reserved the right to retire any staff member who has completed 25 years of service

in the Bank. Petitioner Bank has submitted that the Board of Directors of the Bank has decided to retire the Respondents No. 1 to 12 with certain benefits vide letter dated 21.12.2017. Petitioner has averred that the Respondents No.1 to 12 being aggrieved by and dissatisfied with the retirement letters challenged the same before the learned Member of NIRC Bench at Karachi by filing case No. 4-A (41)/ 2018-K and 24(41)/2018-K under Section 54(e) read with section 57(ii) of the Industrial Relations Act, 2012.

3. Notice of this Petition was issued to the Respondents and in response to that Notice Mr. Malik Altaf Javaid, learned counsel has filed vakalatnama on behalf of Respondents No. 1 to 12.

4. Mr. Javed Asghar Awan learned counsel for the Petitioner has argued that the impugned order dated 16.01.2018 passed by the learned Member of NIRC, Karachi Bench is contrary to the law; that learned NIRC has no jurisdiction to entertain grievance petition of the private respondents under section 54(e) of the IRA 2012 on the allegations of unfair labor practice, who have ceased to be employee of the Petitioner-Bank after their retirement under the Service Rules of Petitioner-Bank; that Respondents No. 1 to 12 have assailed their retirement from the service of Petitioner-Bank, therefore, there cannot be any question of granting injunction of any nature by the respondent No.13; that the Private Respondents are not entitled to any final relief by way of suspension of retirement order at the interim stage as an interim measure; that the impugned order has been terminated from service in defiance of the order was passed by the Respondent No.

13 on stay application; that no order of reinstatement can be passed under section 58 (2) of the NIRC (P&F) Regulations; that the order passed at the initial stage of institution of the petition filed by the Private Respondents is void, ab-initio and of no legal effect and is liable to be set aside. Learned counsel in support of his contention has relied upon the case of Maersk Pakistan Limited Vs. Pakistan through Secretary Ministry of Overseas Pakistan and 11 others, (2017 PLC 176), Islamic Republic of Pakistan through Secretary Vs. Muhammad Zaman Khan and others, unreported Judgment dated 05.01.2011 passed by this Court in C.P. No. D-3097 of 2010. He lastly prayed for suspension of the impugned order dated 16.01.2018 passed by the Respondent No.13.

5. Mr. Malik Altaf Javaid, learned counsel for Private Respondents has raised a preliminary legal objection that the instant Petition is not maintainable against an interlocutory order dated 16.01.2018 passed by the learned Single Member of NIRC Bench at Karachi. He supported the impugned order passed by the Respondent No.13. He lastly prayed for dismissal of the instant petition.

6. We have heard learned counsel for the parties and have perused the material available on record and the case law cited at the Bar.

7. Without touching merits of the case, we may observe that the learned Single Bench of NIRC vide order dated 16.01.2018 suspended the operation of the retirement letter dated 21.12.2017

till 01.02.2018. Per learned counsel for the Petitioner-Bank the matter between the parties is still subjudice before the learned Single Bench of NIRC and it is yet to be decided by the same Bench of NIRC, whether it has jurisdiction to entertain the application of the Private Respondents under Section 54(e) read with section 57(2)(c), IRA of 2012, as such no order to suspend the operation of retirement letter dated 21.12.2017 was called for, hence, immediate indulgence of this Court is required otherwise the Petitioner-Bank will be highly prejudiced rendering the Petitioner Bank remediless for the time being. Be that as it may, we have noted that during pendency of lis before the NIRC, the impugned action has been taken against the Petitioner-Bank. In view of the above facts and circumstances of the case, we direct the Respondent No.13 to decide the case No. 4-A (41)/ 2018-K and 24(41)/2018-K under Section 54(e) read with section 57 (ii) of the Industrial Relations Act, 2012 within a period of 30 days in accordance with law. Meanwhile, till such time no coercive action shall be taken against the Petitioner-Bank. However, it is made clear that if the matter is not decided within the stipulated time the learned Single Member of NIRC will be at liberty to decide the matter in accordance with the provision of IRA 2012 with regard to interim order passed by the Single Bench.

8. The instant Petition stands disposed in the above terms along with the pending application(s).

JUDGE

JUDGE