

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
**C.P. No.D-4849 of 2018**

---

Date Order with signature of Judge

---

D/o matter

1. For order on CMA No.30172/2018.
  2. For order on CMA No.30173/2018.
- 

**Date of hearing: 17.12.2018**

M/s. Shahab Sarki & Meraj-u-ddin, Advocates for the Applicant.

-----

1. Urgency granted.
2. Through the listed application, under section 114 read with 151 CPC, the Petitioner seeks review of the order dated 11.09.2018 passed by this Court. We have gone through the contents of the aforesaid order. For convenience, the operative part of the order is reproduced as under:-

*“7. We have perused the Impugned Order dated 05.3.2018 passed by the President, NBP. The reasons assigned in the order are as follows:-*

- “a. That SBP had intimated that Mr. Malik does not pass the Fit and Proper Test (FPT).***
- b. Mr. Malik had minimal utility at NBP as Senior Executive. Vice President which is only below to the rank of President. Hence, the decision of the President as well as the Board was reasonable, whereby, his service contract was extended to certain timeframe with clear resolution and categorical understanding that in case Privatization Commission was willing to keep his service beyond 22.09.2017, they may do so at their own cost by making payments of his salary from 23.09.2017 onwards.***
- c. That the Board not taken the decision of renewal of service contract of Mr. Malik but had authorized the President to take***

**such decision which had been taken in the best interest of NBP.**

- d. That Mr. Malik had accepted the extension of 1 year and 9 months without any reservation or objection at that time.**

8. As per record, the Petitioner's contractual employment was expired on 22<sup>nd</sup> September, 2017. A question arises in the present proceedings as to whether the Petitioner can ask for extension in his contractual service on the premise that the Respondent-Bank has not continued his contractual service till his superannuation i.e. 11.10.2018.

9. Perusal of record does not reflect that the service of the Petitioner was regularized by the Respondent-Bank. We are of the view that such appointment would be terminated on the expiry of contract period or any extended period on the choice of Employer or Appointing Authority. The case of the Petitioner is governed by the principle of "Master and Servant", therefore, the Petitioner does not have any vested right to seek extension in his contractual service. It is a well settled law that contract employee cannot claim any vested right, even for regularization of service.

10. Reverting to the claim of the Petitioner that he has been condemned unheard by the Respondent-Bank before issuing the impugned order dated 05.3.2018. Record reflects that though the Petitioner was a contractual employee of Respondent-Bank, however he was heard by the Respondent-Bank as per the directions given by this Court vide Order dated 06.2.2018 in CP No.D-6300/2017.

11. In the present case, there is no material placed before us by which we can conclude that Impugned Order has been wrongly issued by the Respondent-Bank. The Petitioner has failed to establish that he has any fundamental/ vested right to remain on the contractual post. Therefore, the argument of the Petitioner that he was not heard before issuance of Impugned Order dated 05.03.2018 is not tenable in the eyes of law. We thus are of the view that the instant Petition is not maintainable on the premise that the Court cannot substitute its findings as of the findings of the President, NBP for the simple reason that he has given valid reasons declining the request of the Petitioner in the Order dated 05.3.2018, which does not require any interference on our part.

12. In view of the foregoing, the Constitutional Petition in hand is not maintainable, hence, is dismissed with no order as to cost."

Mr. Shahab Sarki, learned counsel for the Applicant, while attacking the aforesaid order passed by this Court, has taken the plea that this Court while passing the order dated 11.9.2018 did not consider the fact that as per Board Resolution dated 20.11.2015, the Board of Directors of NBP had approved to extend the contractual period of the applicant for 02 years 09 months and

18 days and this Court has wrongly observed in Para No.2 of the order that President NBP was authorized by the BoD to renew the contract for 1 year and 9 months, which is factually incorrect and was the main controversy in the instant Petition which can be adjudicated, after perusal of the record and hearing of the petition on merit; that this Court did not consider that the Petitioner was Senior Executive Vice President of the Respondent-Bank, therefore, the authority to take decision was lying with Board of Directors and not the President NBP, therefore, the power to curtail the contractual period was unjustified by the Directors of President, NBP; that the controversy in the instant Petition is not of extension of contract but was as to whether after approval of the BoD of NBP dated 30.11.2015 could the service of the Petitioner be terminated before the expiry of the period approved by BoD of NBP, therefore, the rule of 'Master & Servant' was not applicable in the case of Petitioner as held by this Court; that as per the directions given by this Court vide order dated 06.2.2018 in C.P No.D-6300/2017, Petitioner was heard by the President NBP and thereafter on 05.3.2018 he passed the impugned order, which was assailed before this Court, therefore, the plea of condemning unheard to the Petitioner, as recorded by this Court in the order dated 09.11.2018 was not pleaded by the Petitioner; that the impugned order dated 05.3.2018 was inconsistent with the earlier directions given by this Court in the aforesaid Petition and against the principles of law; that the aforesaid factual as well as legal position of the case has not been considered, while passing the order under challenge before this Court, therefore, the order dated 11.09.2018 passed by

this Court is required to be reviewed and the matter may be posted for hearing afresh on merits.

At this stage, learned counsel for the Applicant in his abortive attempt has tried to re-argue the matter on merit, which we cannot allow, as we are only concerned with the grounds of review as to whether the order dated 11.09.2018 passed by this Court needs to be reviewed?.

We have heard the learned counsel for the Petitioner on the listed application and have perused the material available on record and the grounds taken by him.

We have noticed that the review of the order can only be made by the party, if there is mistake or error apparent on the face of the record, as provided under Order XLVII (Section 114 CPC).

Upon perusal of the order dated 11.9.2018 passed by this Court, which explicitly show that we simply dismissed the captioned Petition being not maintainable on the premise that this Court cannot substitute its findings as of the President, NBP for the simple reason that he had given valid reasons for declining the request of the Petitioner in the order dated 05.3.2018, which was in compliance of the directives issued by this Court on 06.2.2018 in C.P No.D-6300/2017.

We have also noticed that the Petitioner through the instant Review Application has attempted to call in question the validity of the impugned order dated 05.3.2018 passed by the President NBP in compliance with the order dated 06.2.2018 passed by this Court in C.P No.D-6300/2017. The grounds taken by the Petitioner in the C.P No.D-4849 of 2018 were considered

and the request of the Petitioner was declined vide order dated 11.9.2018 on merits, therefore, the question of reviewing the order does not merit consideration.

For the aforesaid reasons, we are not persuaded by the contention of the learned counsel for the Applicant that any case of review is made out. This review application, therefore, merits dismissal as, in our view, our order dated 11.09.2018 was based on correct factual as well as legal position of the case and we do not find any inherent flaw floating on the surface of the record requiring our interference.

**JUDGE**

**JUDGE**

**Nadir / P.A**