

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

C.P. No.D-226 of 2012

Present:

Mr. Justice Mahmood A. Khan,
Mr. Justice Khadim Hussain Tunio,

Petitioner : Allied Bank Limited through its attorneys represented by Mr. Javed Asghar Awan advocate.

Respondent : Tariq Mehmood (deceased) through his legal heirs through Agha Waqar Ahmed, advocate.

Dates of hearing : 15.09.2021 and 06.10.2021

Date of decision : 06.10.2021

JUDGMENT

KHADIM HUSSAIN TUNIO, J.-Through instant petition, the petitioner-Allied Bank Limited has challenged the order dated 26.01.2012, passed by learned Member Sindh Labour Appellate Tribunal at Karachi, camp at Hyderabad whereby Appeal # HYD-92/2010 (L.A. 106/2004) filed by deceased respondent Tariq Mehmood under Section 47 (3) of the Industrial Relations Ordinance, 2002 has been allowed.

2. Precisely, the facts of the present matter are that the respondent was working as a Cashier with petitioner-Allied Bank Limited since 22.05.1979 whereafter two charge sheets dated 28.09.2001 and 13.11.2001 were issued to him for alleged misappropriation of an amount of Rs.7,500/- and Rs.45,000/- respectively while being posted at Latifabad No.12 Branch, Hyderabad. Subsequently, on the basis of said allegations, the services of respondent were dismissed, twice, firstly by letter No. CO/HRD/DAC(w)/02/4282 and secondly by No. CO/HRD/DAC(w)/02/4283 both dated 15.04.2002. On 12.07.2002 the

respondent filed Application No.58/2002 under Section 25-A of IRO-1969 before learned Labour Court No.VI, Hyderabad which was dismissed vide order dated 13.01.2004 being not maintainable. On 11.02.2004 the respondent challenged the said order before the Sindh Labour Appellate Tribunal at Karachi camp at Hyderabad through Labour Appeal No.92/2010 (Old No.106/2004) under Section 47(3) of the Industrial Relations Ordinance, 2002 which was allowed vide impugned order dated 26.01.2012, hence, this petition has been filed.

3. Learned counsel for the petitioner has contended that the order passed by learned Labour Appellate Tribunal is without jurisdiction and has been passed without due appreciation of facts and circumstances of the case and pleadings of the parties; that the Tribunal without sending the document bearing disputed signature to the handwriting expert disagreed with the findings of Labour Court and held that there is a mark difference between the signatures; that the respondent failed to bring his grievance through notice to his employer; that if at all the Tribunal came to the conclusion that inquiry has not been held properly, it should have allowed opportunity to the employer to hold inquiry afresh. In support of his contentions he has relied upon the cases of **A.F. Ferguson and Company versus Sindh Labour Court No.II and others** (1989 PLC 484), **MCB Bank Limited through Senior Vice President and General Managers versus Ghulam Mustafa Channa** (2007 PLC 381), **Muhammad Yousaf Khan versus Habib Bank Limited through President and others** (2004 SCMR 149) and **Manager Planning, Formation and Control, Novartis, (Pakistan) Ltd and another versus Muhammad Arif** (2005 PLC 351). He lastly prayed for setting aside of impugned order.

4. On the other hand, learned counsel for LR's of the respondent No.1 has submitted that the impugned order is well within the four corners of law; that separate order of dismissal of the respondent No.1 was illegal, unlawful and not sustainable under the law; that the complainants admittedly were not examined on whose complaint enquiry was allegedly conducted and it is an admitted fact that defalcated amount was returned by respondent No.1 to the complainant Rafaqat Hussain much before the issuance of the charge

sheet hence, issuance of charge sheet was patently illegal. In support of his contentions, he has relied upon cases of **National Bank of Pakistan versus Sindh Labour Appellate Tribunal Karachi and 2 others** (1992 PLC 94) and **Muhammad Naeem versus General Tyer and Rubber Company of Pakistan and another** (2020 PLC 108).

5. We have given due consideration to the arguments advanced by the learned counsel for the parties and perused the record minutely.

6. After a perusal of the record, we have observed that the respondent was dismissed from his service on two different counts, first due to an inquiry filed after a complaint was received from one Rafaqat Hussain involving the alleged embezzlement of Rs. 45,000/- which was resolved through letter No. CO/HRD/DAC(w)/02/4282 and the second inquiry was initiated on the complaint of Muhammad Ilyas involving the embezzlement of a sum of Rs. 7,500/- which was resolved through letter No. CO/HRD/DAC(w)/02/4283. From the contentions of the petitioners' counsel, this Court was able to chalk out two prime arguments which remained the same as they were before the learned Labour Appellate Tribunal. The first contention was in relation to the respondent No. 1 failing to bring a grievance notice to his employer *i.e.* the petitioner-Allied Bank Limited. As far as this contention is concerned, the same was well-addressed by the learned Labour Appellate Tribunal and to a reasonable extent by observing that the legislature, while formulating S. 46 of the IRO 2002(*since repealed*) has not indulged itself in elaborating as to who shall be on the receiving end of the grievance notice/letter. The grievance letter handed down by the respondent was directed towards the President of the Allied Bank Limited who in turn surely qualifies as the "*employer*" when put in juxtaposition with the definition provided by the statute, being the proprietor of the multi-national establishment. The legislature has also not specified the details that may be disclosed in the said grievance letter, therefore leaving the same run with the imagination of a common man; therefore in this Court's view, even a few sentences would be sufficient to serve the purpose of a grievance

notice/letter as long as the same is in writing. Moreover, the grievance letter was filed on the 2nd day of May, 2002 whereas the respondent's service was terminated on 15th day of April, 2002.

7. Now coming to the actual merits attached to the two letters issued for dismissing the respondent from his service which are related to the rest of the contentions of the counsel for the petitioner. In the first instance, the alleged embezzlement was investigated on the complaint of one Rafaqat Hussain who, on 14.04.2001, appeared at the bank for the deposit of Rs.45,000 through pay slip No. 0611265 with respect to his PLS SB Account 2539. Throughout the whole inquiry, the complainant himself was never examined so as to establish the real culpability. A perusal of the reply filed by the respondent also shows that he implicated one Hidayatullah Bhutto who was responsible for affixing the seal and had allegedly taken the cash amount from the respondent on the pretext that he had borrowed the same from the depositor Rafaqat Hussain. However, even then, the said Hidayatullah Bhutto was not examined, let alone cross-examined so as to prove his innocence or otherwise. Not only this, Mr. Rafaqat Hussain, the depositor/complainant, was also paid the amount back in full by the respondent on 12.09.2001, even before the issuance of the charge sheet in the presence of witnesses and the said aspect was highlighted in the inquiry itself, though not considered. It was important for the proving of the charge sheet that the complainant Mr. Rafaqat Hussain and complainant Muhammad Ilyas were examined and in absence of such practice, it becomes quite illogical to simply determine the real culpability on the basis of mere statements that were otherwise not even cross-examined to determine whether the same were correct or not. The second inquiry was initiated on the complaint of Muhammad Ilyas for the sum of Rs.7,500 who presented the same for the payment of gas bills. The prime contention of the counsel for the petitioner here was that the learned Labour Appellate Tribunal could not determine that the signature on the document was forged on its own, without getting the opinion of handwriting expert. This argument, however, holds no merit as it has been the consistent view of the Courts that tribunals and Courts themselves can examine

the authenticity of signatures. The Hon'ble Apex Court, in the case of **Mst. Ummatul Waheed and others v. Mst. Nasira Kausar and others** (1985 SCMR 214) unanimously held that there is no rule of law which requires examination by an expert in every case and that the Courts are more than entitled to compare signatures or handwriting and come to any conclusion it deems fit. Moreover, the petitioner-Allied Bank Limited, for reasons best known to it, failed to consider the contentions raised by the respondent before them in his defense and even failed to examine the Accountant with respect to the respondent's case, besides whatever proceedings were already initiated against the said accountant namely Hidayatullah Bhutto. As also already noted by the learned Tribunal, the petitioner had 24 years of clean and unblemished service. Moreover, the electricity bill on the face of it also appears to not be genuine as the charge that was allegedly being paid was Rs.7,500/- whereas the bill that was produced had Rs.14,070/- marked on it which was encircled and the amount "Rs.7,500" was penned down above it. The accompanying statement with the bill was not even properly filled in and does not have any signature on it to ascertain genuineness or otherwise, therefore the same appears to be doubtful.

8. It is crucial to note here that the petitioner-Allied Bank Limited failed to examine the star witness to the cases, not once but on both counts; that being the complainants namely Razaqat Hussain and Muhammad Ilyas. Non-production or examination of the star witnesses who were also the complainants or the alleged aggrieved persons on whose request the inquiries were conducted is highly detrimental to the case of the petitioner. This only leads this Court to the irresistible conclusion that had the complainants been examined, they would have deposed against the petitioner. In this respect, reliance is placed on the case of **Sughran Bibi v. Mst. Aziz Begum and 4 others** (1996 SCMR 137) and the same principle was later followed by this Court in the case of **Muhammad Naem v. General Tyer and Rubber Company of Pakistan and another** (2020 PLC 108).

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9. It was open to the Tribunal to form its own assessment as to the signature and the merits of the case, so the opinion formed by the learned Labour Tribunal as to the comparison is entitled to respect. The findings, arrived at, by the learned Labour Tribunal are correct and require no interference, therefore instant constitutional petition was dismissed vide short order dated 06.10.2021. However, petitioner will be competent to determine the legal heirs of respondent Tariq Mehmood (deceased). These are the reasons of our short order of even date.

JUDGE

JUDGE

Irfan Ali