

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –7678 of 2015

Habib Bank Limited

Versus

Full Bench NIRC 04 others

Dates of hearing : 26.02.2021 & 16.03.2021

Date of announcement : 26.03.2021

Mr. Faisal Mahmood Ghani, advocate for the petitioner.

Mr. Imran Hussain Qadri, advocate for respondent No.3.

Mr. Muhammad Nishat Warsi, DAG.

JUDGMENT

Adnan-ul-Karim Memon, J. – Through this petition, the petitioner-Habib Bank Limited (HBL) is praying for setting aside the order dated 28.10.2015 passed by the Full Bench of National Industrial Relations Commission Islamabad (NIRC-FB) in Appeal No.12(18)/2015-K, whereby order dated 05.01.2015 passed by the learned Single Bench of National Industrial Commission, at Karachi (NIRC-SB), in Grievance Petition No.4B (187)/2012-K, filed by the private respondent, was allowed with the compensatory cost of Rs.100,000/- while granting salary and all admissible back benefits to him by treating him to be in service from the date of his dismissal from service i.e. 09.09.2003, till reaching the age of superannuation i.e. 12.12.2012; and, he was also declared to be entitled to have pensionary benefits with effect from 12.12.2012 in terms of the ratio of the judgment passed by this Court in C.P. No.D-886 of 2011.

2. The brief facts of the case, as per pleadings of the parties are that the private respondent was appointed in the petitioner-bank in the year 1978 as Assistant. During his service tenure, he was served with the show cause notice dated 18.07.2003 with the allegations of misconduct on the ground that on 22.05.2003 at about 12:50 p.m. he participated in the protest led by one Zahid Ali Bugti (Assistant), HBL Plaza Karachi; and, entered into HBL Plaza and pasted pamphlets on the General Boards, floors and on the walkthrough entrance of Mercantile Branch; and, subsequently, departmental proceedings were initiated against him, whereby he was found guilty of the charges of misconduct as discussed supra, and finally was dismissed from service vide letter dated 08.09.2003. He being aggrieved by and dissatisfied with the impugned letter of

termination, served upon the petitioner-bank, grievance notice dated 18.09.2003, which was subsequently rejected by the petitioner-bank vide letter dated 03.11.2003. He being aggrieved by and dissatisfied with the rejection letter preferred Service Appeal No.926 (K) (CE) /2003 before learned Federal Service Tribunal (FST), where his Appeal was abated based on the ratio of the judgment passed by the Hon'ble Supreme Court in Mubin-us-Salam's case (PLD 2006 SC 602), thereafter he filed Grievance Petition before the learned Vth Sindh Labor Court Karachi (SLC), where evidence of the parties was recorded. Subsequently, his case was transferred to the NIRC-SB, because of the change in law and decision of the Full Bench of this Court; and, thereafter the matter was proceeded by the NIRC-SB by framing the following points of determination:-

- 1) Whether the private respondents being officer grade-I falls within the ambit of the workman?
- 2) Whether grievance notice was served by the private respondents?
- 3) Whether the dismissal of private respondents was justified by the petitioner-bank?
- 4) Whether upon attaining the age of superannuation the prayer of the private respondent had become infructuous?
- 5) Whether the prayer of back benefits could be awarded?

The NIRC-SB after hearing the parties gave the decision in favor of the private respondent vide order dated 05.01.2015 by granting him a salary and all admissible back benefits by treating him to be in service from the date of his dismissal till the age of superannuation i.e. 09.09.2003 to 12.12.2012 and he was also held to be entitled to have pensionary benefits with effect from 12.12.2012 in the light of the decision of this Court passed in C.P No. D-886/2011. He was also granted a compensatory cost of Rs.100, 000/-. Petitioner-bank being aggrieved by and dissatisfied with the aforesaid decision preferred Statutory Appeal No.12 (18) / 2015-K before NIRC-FB, which too was dismissed vide order dated 28.10.2015. Petitioner-bank being aggrieved by and dissatisfied with the concurrent decisions of two fora below filed this petition before this Court on 09.12.2015.

3. We asked the learned Counsel for the petitioner-bank to satisfy this Court on the following propositions:-

- i) Whether against the concurrent findings of facts and law by the two competent fora could be interfered.
- ii) Whether the private respondent's grievance survived upon his death; and, therefore, the legal heirs if the private respondent could not be permitted to pursue the claim initiated by the deceased.
- iii) Whether the dismissal of the private respondent was justified under the law; and, whether upon his attaining the age of superannuation his prayer had become infructuous? And
- v). Whether the proceedings initiated against the private respondent, under Removal from Service (Special Powers) Ordinance 2000 could only be assailed before the Federal Service Tribunal, against the statutory dispensation. And
- vi). Whether the learned Benches of NIRC erred in granting full back benefits to the private respondent by ignoring the basic principles laid down by the Hon'ble Supreme Court on the issue of back benefits, i.e. that when there was no plea on the part of the employee, for being jobless between the period i.e. date of termination; and, the order of his reinstatement by the NIRC.

4. Mr. Faisal Mahmood Ghani, learned Counsel for the Petitioner-bank, has briefed us on the aforesaid propositions and attempted to satisfy the maintainability of the instant petition as well, however, he insisted that the present status of Habib Bank Limited (HBL) is a Private-Bank, since its privatization in 2005; besides that petitioner-bank is a Trans-Provincial Establishment, thus fully aggrieved by the decisions rendered by the Benches of NIRC. He averred with the strong assertion to set-aside both the orders passed by the learned Bench of NIRC, inter-alia, on the ground that proceedings initiated against the private respondent, under Removal from Service (Special Powers) Ordinance 2000 (RSO, 2000) were justiciable only before the Federal Service Tribunal (FST) against the statutory dispensation i.e. RSO,2000; and, not before any other legal forum, except this Court under Article 199 of the Constitution, however, he emphasized that institution of the labor proceedings by the private respondent, at the belated stage, before the learned SLC was ab-initio, void; and, of no legal effect, and subsequent transfer of his individual grievance by the SLC after recording evidence, to learned NIRC Bench was an act of grave mistake, thus ab-initio, illegal and of no legal effect; that the proceedings initiated before the SLC, without framing of issues, and subsequent recording of evidence by the SLC could not be treated or construed as legal evidence, either before the SLC or before the NIRC. He further averred that the basic Grievance Petition of the private respondent was not an Industrial Dispute under the labor law, this was also not liable to be transferred by the

Labor Court to the Bench of NIRC for its decision; and, the Bench of NIRC erred in not recording evidence itself, but relied upon the evidence earlier recorded by the learned SLC, in deciding the petition, which practice was illegal and contrary to the law on the subject. On the issue of the workman, he argued that the private respondent was an officer Grade-I in the petitioner-bank, and due to his misconduct, he was dismissed from service, thus he was not a workman as defined under the labor law to lodge a claim before the learned SLC. On the issue of misconduct, he argued that private respondent committed misconduct under the HBL Staff Service Rules, 1973, hence, he was not entitled to any relief(s) or back benefits, etc., as prayed when he willfully and deliberately failed to receive the show cause notice, therefore, he failed to participate in the inquiry proceedings despite two opportunities were given to him to disprove the charges as discussed supra. He further argued that the learned Benches of NIRC erred in granting full back benefits to the private respondent by ignoring the basic principles laid down by the Hon'ble Supreme Court on the issue of back benefits. He emphasized that when there was no plea on the part of private respondent, for being jobless between the relevant period i.e. date of termination and date of reinstatement order passed by NIRC-SB; he was not engaged, in any gainful pursuit in his Grievance Application; that there is no provision for the award of cost, grant of cost to the private respondent by the NIRC-SB against the petitioner-bank which action was contrary to law and of no legal effect; that the dismissal/termination of the private-respondent being not alleged nor proved to be in connection with any Industrial Dispute nor lead to any Industrial Dispute was not maintainable before learned SLC or NIRC; that the award of compensatory cost and passing of the structure against the petitioner-bank is liable to be set-aside and expunged. Per learned counsel the competent authority approved that disciplinary action be initiated against the culprits including respondent No.3 and consequently inquiry committee issued him a statement of allegations, who refused to receive it, then it was sent through the registered post which was returned with remarks that his house was locked for a long time. Thereafter, the inquiry proceedings were held and the report was submitted to the competent authority for further order, thereafter Final show cause notice was served upon him and he submitted his reply which was, later on, found unsatisfactory and he was dismissed from service under Removal from Service (Special Powers) Ordinance 2000 (RSO, 2000) vide letter dated 09.09.2003. He further argued that dismissal under the provisions of RSO, 2000 could not be challenged before the National Industrial Relations Commission (NIRC); that the

respondent No.3 was dismissed from service after providing him ample opportunity of hearing and inquiry; that the Member NIRC and Full Bench of NIRC both failed to consider the evidence available on record in favor of petitioner-bank. He pointed out that during the pendency of the lis before the NIRC-SB, respondent No.3 attained the age of superannuation, therefore, the management was erroneously directed to pay all back benefits to respondent No.3 by treating him in service from the date of his dismissal till reaching the age of superannuation; and, he was wrongly held entitled to pensionary benefits. Learned counsel for the petitioner-bank relied upon the cases of Administrator Zila Council, Sahiwal v. Arif Hussain and others, **2011 SCMR 1082**, and argued that as per record private respondent now (deceased) had not asserted in his pleadings that he had remained unemployed between the date of his termination from service and the date of his reinstatement order passed by the learned NIRC. He emphasized that though there are concurrent findings passed in favor of the private-respondent, however in the present case, as noted above, the learned Benches of NIRC have exercised its jurisdiction beyond its lawful mandate under the Act, 2012. Per learned counsel, this gross jurisdictional error could not be ignored. He asserted that when the very foundation of the claim of private respondent lacked legal sanctions, then the superstructure built thereon must also fall. This crucial jurisdictional lapse escaped the attention of the courts below, and thus, warrants correction by this court in its constitutional jurisdiction. He also relied upon the case of Habib Bank Limited through Attorneys v. Sindh Labor Appellate Tribunal and another, **2012 PLC 321**, Manzoor Ali and 39 others v. United Bank Limited through President, **2005 SCMR 1785**, Almas Ahmad Faiz v. Secretary Government of the Punjab Housing and Physical Planning Development Lahore and another, **2006 SCMR 783**, Khushal Khan v. Muslim Commercial Bank Ltd., **2002 SCMR 943**, Tanveer Hussain v. Ravi Ryan Limited through its Managing Director and others, **PLJ 2007 SC 577**, Dilshad Khan Lodhi v. Allied Bank of Pakistan and others, **SBLR 2006 SC 29**, Mahmood Hussain Larik v. Muslim Commercial Bank Limited, **2011 PLC 307**, Syed Imtiaz Ali v. Chairman Implementation Tribunal For Newspaper Employees (ITNE) Islamabad and others, **2019 SCMR 1034**, Syed Matloob Hassan v. Brooke Bond Pakistan Limited Lahore, **1992 SCMR 227**, Muhammad Nawaz Bhatti v. President, Muslim Commercial Bank Limited, Karachi and others, **2008 SCMR 1377**, Binyamin and 3 others v. Chaudhry Hakim and another, **1996 SCMR 336**, Province of Punjab through Chief Secretary and 5 others v. Malik Ibrahim and sons and another, **2000 SCMR 1172**, Din Muhammad and another v. Subedar Muhammad Zaman,

2001 SCMR 1992, Sh. Fateh Muhammad v. Muhammad Adil and others, PLD 2007 Supreme Court 460, Zulfiqar and others v. Shahadat Khan, PLD 2007 Supreme Court 582, Dawood Cotton Mills Ltd. v. Guftar Shah and another, PLD 1981 Supreme Court 225, Allah Dino Khaskheli v. Zakir Mahmood and 3 others, 2019 PLC (CS) 999, M/S Crescent Pak Industries Ltd. v. Sindh Labor Appellate Tribunal Etc, NLR 2000 Labor 114, Abdul Hafeez Abbasi and others v. Managing Director, Pakistan International Airlines Corporation, Karachi and others, 2002 SCMR 1034, Pakistan Automobile Corporation Limited v. Mansoor-ul- Haque and 2 others, 2004 SCMR 1308, Muhammad Bashir and others v. Chairman, Punjab Labour Appellate Tribunal, Lahore and others, 1991 SCMR 2087, unreported order dated 24.09.2020 passed in Civil Petition No.3093 of 2018 by the Hon'ble Supreme Court of Pakistan, Executive Council, Allama Iqbal Open University Islamabad v. M. Tufail Hashmi, 2010 SCMR 1484, Muhammad Mubeen-us-Salam and others v. Federation of Pakistan through Secretary Ministry of Defence and others, PLD 2006 Supreme Court 602, Muhammad Idrees v. Agriculture Development Bank of Pakistan and others, PLD 2007 Supreme Court 681, and Chief Executive MEPCO v. Muhammad Fazil and others, 2019 SCMR 919. He prayed for allowing the instant petition.

5. Mr. Imran Hussain Qadri, learned counsel representing respondent No.3, has supported the impugned judgments passed by the learned courts below. He lastly prayed for dismissal of the instant petition.

6. We have heard learned counsel for the parties on the aforesaid propositions, perused the material available on record as well as case-law cited at the bar.

7. Firstly, we would like to deal with the proposition about the survival of the right to sue, following the death of the private respondent during the pendency of the lis before learned NIRC-SB. This issue has been settled for all intents and legal purposes, by the authoritative pronouncement of Honorable Supreme Court vide order dated 23.12.2020 passed in the C.P.2717-L of 2015(re- Regional Operation Chief, National Bank of Pakistan, Human Resource Department, Regional Office, Sargodha, etc. V. Mst. Nusrat Perveen, etc.); and, held that 'Fundamental rights under the Constitution do not only protect and safeguard a citizen but extend beyond his life and protect and safeguard his survivable interests by being equally available to his legal heirs. It is reiterated that other than pecuniary and pensionary benefits that inure to the benefit of the legal heirs, the right to restore one's

reputation is also survivable and flows down to the legal heirs to pursue and take to its logical conclusion. Any slur on the reputation of a civil servant impinges on his human dignity and weighs equally on the dignity and honor of his family’.

8. Secondly, we would address the question of jurisdiction of the NIRC-SB to adjudicate the matter between the parties; as per record, Petitioner-Bank is a Trans-Provincial Establishment. The phrase, "trans-provincial" has been defined in clause (xxxiv) of section 2 of Act X of 2012, which means, "any establishment, group of establishments, the industry having its branches in more than one Provinces." To elaborate further on the subject, we have seen that under the provision of section 53, the NIRC has been constituted by the Federal Government but its functions and jurisdiction have been explained and elaborated in the provision of section 54 of the IRA, 2012. According to clause (e), the NIRC has the powers and jurisdiction to deal with the cases of unfair labor practices specified in sections 31 and 32 of the Act on the part of employers, workers, trade unions, either of them or persons acting on behalf of any of them, whether committed individually or collectively, in the manner laid down under section 33 of subsection (9) of section 33 or in such other way as may be prescribed and to take, in such manner as may be prescribed by regulations under section 66, measures calculated to prevent an employer or workman from committing an unfair labor practice. In addition to the above powers and jurisdiction, the NIRC has been conferred upon additional powers under the provision of section 57 of the Act (ibid), which includes the powers to punish for contempt of court and may award simple imprisonment which may extend to six months or with fine, which may extend to Rs.50, 000 or with both. In the same provision, vide clause (2)(b), the Commission has been empowered to withdraw from a Labor Court of a Province any applications, proceedings or appeals relating to unfair labor practice, which fall within its jurisdiction; and (c) grant such relief as it may deem fit including an interim injunction. A proviso has been added to the above provision, to the effect that "no Court, including Labor Court, shall take any action or entertain any application or proceedings in respect of a case of unfair labor practice", which is being dealt with by the learned Commission, therefore, in the light of aforesaid provisions and decisions rendered by the Hon'ble Supreme Court of Pakistan in the case of Pakistan Telecommunication Company Limited v. Members of NIRC and others (2014 SCMR 535) and judgment dated 04.08.2014 passed by the Full Bench of this Court in C.P. No. D-3195 of 2010 and other

connected petitions (PLD 2014 Sindh 553). We are of the considered view that, NIRC was competent to decide the issue at hand. The grievance of the Petitioner-bank in respect of legal plea taken in the instant matter is answered accordingly.

9. Thirdly, on the proposition that the proceedings initiated against the private respondent, under Removal from Service (Special Powers) Ordinance 2000 could only be assailed before the Federal Service Tribunal (FST), against the statutory dispensation. We do not agree with the contention of the learned counsel for the Petitioner-bank that his Grievance petition was not maintainable before NIRC-SB for the reason that initially the private respondent assailed the vires of rejection letter issued by the petitioner-bank by presenting his Service Appeal No.926 (K) (CE)/2003 before learned FST where his Appeal was abated based on the judgment passed by the Hon'ble Supreme Court in Mubeen-us Salam and others vs. Federation of Pakistan and others (PLD 2006 SC 602), thereafter he filed his grievance petition before the SLC, where evidence was recorded. However, his case was transferred to the NIRC-SB, because of the decision of the Full Bench of this Court vide order dated 08.04.2014 as discussed supra; and, thereafter the matter was proceeded by the NIRC-SB; besides that irrespective of an employee of a State-controlled corporation not being a civil servant the corporation themselves continue to remain amenable to the jurisdiction of this Court under Article 199 of the Constitution as well. However, in exceptional cases, the Rule of Master and Servant is inapplicable to cases where there is a violation of statutory provisions or any other law. But in the present case, the private respondent was held to be a workman as defined under Section 2(xxxiii) of the Act, 2012. The Honorable Supreme Court has already clarified the term 'worker' and the 'workman' in its various pronouncements with the findings that 'person not falling within the definition of 'employer' who is employed as a supervisor or as an apprentice but does not include a person who is employed mainly in a managerial or administrative capacity. On the other hand, the 'employer' as defined in the Act includes a person who is the proprietor, director, manager, secretary, agent or officer, or person concerned with the management of the affairs of the establishment. The term 'officer' is specifically mentioned in the definition of the term 'employer'. However, as has been noted from the case-law cited by the learned counsel for the parties, the Courts have not considered the designation of a person to be a factor determining his status of employment in an establishment to be that of an officer or a workman rather the Court has

always considered the nature of duties and functions of a person to be the factor which will determine his status as to whether he is a workman or not. In this respect, we may refer to the case of National Bank of Pakistan v. Punjab Labour Court No.5, Faisalabad (1993 SCMR 672), which was a case relating to an Officer Grade-1 of NBP against whom disciplinary action was taken. He approached the Labour Court for Redressal of his grievance claiming himself to be a workman. The matter came up to the Honorable Supreme Court and it was held that the designation per se is not determinative of a person being a workman rather the nature of duties and function determine his status and the burden is on him to establish that he is a workman. As Officer Grade-II failed to discharge his burden, he was held not to be a 'workman' and his grievance petition was dismissed.

10. The ratio of the case is that the person who approaches a labor Court for redressal of his grievance claiming himself to be a workman and such status of a workman being denied by the employer, it becomes a bounden duty of a person who approaches the labor forum to demonstrate through evidence that his nature of duties and functions were that of a workman and not that of a managerial or administrative capacity and that he was not an employer. Unless such categorical evidence is led by him, he will not be considered to be a workman and his grievance petition will not be maintainable before the labor forum. It, therefore, implies that the officer cannot be assumed to be workmen nor such can be declared on mere asking.

11. The argument of the learned counsel for the petitioner-bank that private respondent was performing the supervisory function in itself means that this was required to be established by evidence, which evidence, prima-facie came in his favor; besides that, his dispute was rightly presented under that the Act, 2012, thus the proposition put forward by the learned counsel for the petitioner-bank on the issue is based on erroneous premises. Our view is supported by the decision of the Honorable Supreme Court rendered in the case of NATIONAL BANK OF PAKISTAN and another Vs. ANWAR SHAH and others. (2015 SCMR 434).

12. On merits, we have noticed that grave accusations were leveled against the private respondent in the show-cause notice, and all the allegations appear to relate to his alleged participation in pasting pamphlets on the walls of subject premises as discussed supra, etc. All these allegations were denied by him in his reply to the final notice, which was, however, not found satisfactory

and hence the inquiry was conducted against him, which resulted in his dismissal from service in the year 2003. The SLC attended all the facts of the case and competently examined the material available on record to determine whether the punishment awarded to the private respondent was sustainable or not. It is well-settled law that where an employee is to be removed from service, which action carries a stigma with it, he is entitled to due process which includes a fair opportunity to defend himself, cross-examine the witnesses and produce evidence in his defense. Further, he must be confronted with the material based on which he has been issued a show-cause notice.

13. We, in view of such facts and circumstances, would not proceed to reappraise the entire material including the evidence on the assumption that such reappraisal could lead us to a different view than the one taken by the two competent fora. This Court's interference in the concurrent findings would be justifiable only when some illegality apparent on the record having nexus with the relevant material is established. Learned benches of NIRC have discussed the entire evidence adduced by the parties, and there appears no illegality in their findings recorded on the facts and law; besides both the benches of NIRC have concluded that allegations leveled against private respondent could not be proved.

14. We find that the private respondent was deprived of his due process rights. He was not confronted with the material based on which the show cause notice had been issued to him and he was not permitted to cross-examine the witnesses who were produced by the petitioner-bank in support of allegations. Even otherwise, the process followed by the petitioner-bank was sketchy, one-sided, non-transparent, and not supported even by the service Regulations and the relevant law. We, therefore, find that both the Learned benches of NIRC were justified in passing the impugned orders and recorded valid and cogent reasons for doing so. Prima-facie, the fact-finding inquiry does not accuse the private respondent solely responsible for committing alleged misconduct. Besides the above this court in C.P No. D-886/2011 treated the dismissal of the colleague of the petitioner namely Zahid Bugti, as retirement with payment of his dues and other pensionary benefits; even the case of the private respondent is on a better footing; and, in the judicial proceedings, he passed away without availing his service benefits. On the aforesaid proposition we are guided by the decision of the Honorable Supreme Court in the case of MUHAMMAD NAEEM AKHTAR vs. MANAGING DIRECTOR WATER AND SANITATION AGENCY LDA,

LAHORE and others (2017 PLC (C.S.) 676). The learned counsel for the petitioner-Bank has not been able to persuade us to hold otherwise or to interfere in the impugned orders, which are based upon the record and correct application and interpretation of the law on the subject. Our view is supported by the decision of the Honorable Supreme Court in the case of DIRECTORATE GENERAL EMERGENCY RESCUE SERVICE 1122 KHYBER PAKHTUNKHWA, PESHAWAR. Vs. NIZAKAT ULLAH (2019 SCMR 640).

15. Adverting the issue of About the back benefits, we have noticed that there are two basic principles on the subject; (a) that back benefits do not automatically follow the order of reinstatement where the order of dismissal or removal has been set aside; and (b) as regards the matter of onus of proof in cases where a workman 'is entitled to receive the back benefits it lies on the employer to show that the workman was not gainfully employed during the period of the workman was deprived of service till the date of his reinstatement thereto, subject to the proviso that the workman has asserted at least orally, in the first instance, that he was (not) gainfully employed elsewhere. On his mere statement to this effect, the onus falls on the employer to show that he was so gainfully employed. The reason is that back benefits are to be paid to the workman, not as a punishment to the employer for illegally removing him but to compensate him for his remaining jobless on account of being illegally removing him but to compensate him for his remaining jobless account of being illegally removed from service. On the aforesaid proposition, we are fortified by the decision of the Hon'ble Supreme Court in the case of Dilkusha Enterprises Ltd. v. Abdul Rashid and others (1985 SCMR 1882).

16. We confronted the learned counsel for the petitioner-Bank that the only principle on which back benefits could be denied to the private respondent is his gainful employment between the period of his dismissal from service to his reinstatement and there is no evidence available on the record showing that he was gainfully employed, back benefits could not be refused to him. In this respect, reference is made to the case of Sohail Ahmed Usmani v. Director General Pakistan Civil Aviation Authority and another [2014 SCMR 1843]. In the cited judgment, the Honorable Supreme Court has allowed back benefits on the ground that the employee was not gainfully employed during the period of his dismissal up to his reinstatement. However, the employee being gainfully employed or not while remaining out of service has not always been a reason for granting or non-granting of back benefits rather it has been held by the

Honorable Supreme Court in several cases that where the Court concerned reinstates the employee in service, it is not bound to grant back benefits automatically rather it is within the discretion of that Court to grant back benefits or not and exercise of such discretion could not be interfered with by this Court in the exercise of writ jurisdiction unless it is shown that such discretion has been exercised without lawful authority and is of no legal effect. Such discretion has not been interfered with by the superior forum. In this regard, reference is made to the cases of Abdul Majid v. Chairman, WAPDA and 2 others (1990 SCMR 1458), Muhammad Tufail v. Divisional Forest Officer, Forest Division, Lahore and 3 others (1990 SCMR 1708), Humayun Badshah v. Habib Bank Limited and 3 others (1996 SCMR 1606) and Syed Kamaluddin Ahmed v. Federal Service Tribunal and others (1992 SCMR 1348).

17. The Honorable Supreme Court further deliberated on the subject; and, held that the basic principle is that where the Court or the Tribunal has jurisdiction and it determines the specific question of fact or even of law unless the patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by this Court while exercising jurisdiction under Article 199 of the Constitution.

18. Having dilated upon the issue in hand, prima-facie, the very facts of the case amply demonstrate that the private respondent remained out of his job after his removal from service by the petitioner-bank, after serving twenty-five years with the petitioner-bank; and he specifically pleaded this factum, even such cross-examination was also conducted, on the crucial point, by the petitioner-bank. Primarily Both the Benches of NIRC having exercised discretion in granting back benefits to the private respondent, such exercise of discretion could not be found to be without lawful authority and of no legal effect. Reference is made to the latest pronouncement of the Honorable Supreme Court in the case of HIEF EXECUTIVE MEPCO and others. Vs. MUHAMMAD FAZIL and others. (2019 SCMR 919).

19. Reverting to the contentions of the learned counsel for the petitioner-bank that the Grievance Petition filed by the private respondent was hopelessly time-barred, thus the learned Courts below failed to appreciate this aspect of the matter. We again confronted him that the private respondent properly availed the remedy before the learned FST in time; and, after his appeal was

abated by the learned FST and the matter landed in the Labor Court who had exercised jurisdiction and recorded evidence of the parties and thereafter by operation of law, the subject matter was referred to the learned Single Bench of NIRC, wherein the decision came against the petitioner-bank, who availed the remedy of appeal before the Full Bench of NIRC, wherein they could not succeed. Learned counsel contended that on the occurrence of grievance a workman has been given time of three months for giving a grievance notice and in case such grievance notice is given to the employer, the employee is required to file the grievance petition before the labor Court. On the other hand, learned counsel for the private respondent has contended that limitation for filing of a grievance petition will be counted from the date of rejection letter dated 03.11.2003 issued by the petitioner-bank, thus the question of limitation does not arise. In our view, the question of limitation is diluted when the learned SLC recorded evidence and thereafter learned Bench of NIRC decided the matter on merits, therefore, no further deliberation is required on the issue of limitation on the aforesaid analogy.

20. We are of the considered view that this Court in Constitutional Jurisdiction cannot interfere in the findings on facts arrived at by a competent forum until and unless there are misreading and non-reading of evidence, perversity, illegality, or irregularity in the proceedings. The question about private respondent being workman or not need to keep us waiting for a long time to make further deliberation on this term, for the reason that such question has already been considered by the learned courts below and there is concurrent finding of fact that the private respondent was a workman.

21. For displacing such concurrent finding of fact, learned counsel for the petitioner-bank was required to show and establish misreading of evidence and wrongful exercise of jurisdiction by the forums below in holding that the private respondent was not a workman. Incidentally, no evidence from the record was shown to us, which may lend support to the submissions of the learned counsel for the petitioner-bank that the private respondent was not a workman and other ancillary issues. Thus, we are not persuaded to disturb the finding of the forums below on these questions; besides, in the instant case, we do not see any such illegality, infirmity, or material irregularity in the Impugned Orders passed by learned Benches of NIRC.

22. In the light of the above facts and circumstances of the case, order dated 28.10.2015 passed by the Full Bench of National Industrial Relations Commission Islamabad in Appeal No.12 (18)/2015-K, and order dated 05.01.2015 passed by the learned Single Bench of National Industrial Commission, at Karachi in Grievance Petition No.4B (187)/2012-K are upheld and consequently the instant Constitution Petition is dismissed along with the pending application(s) with the cost.

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