

# IN THE HIGH COURT OF SINDH KARACHI

**Before:**

Mr. Justice Naimatullah Phulpoto  
Mr. Justice Adnan-ul-Karim Memon

**C.P. No. D-1607 of 2020**

Sardar Imdad Hussain Gorchani  
Petitioner through : Mr. Afaq A. Saeed, advocate

Respondents  
Through : Mr. Zain Mustafa Soomro, advocate

Date of hearing : **19.05.2022**  
Date of announcement : **24.05.2022**

**JUDGMENT**

Through this petition, the petitioner has assailed his termination from service letter/order dated 16.08.2017 issued by the respondent National Bank of Pakistan (NBP), on account of unauthorized absence with effect from February 27, 2017. An excerpt of the order dated 16.08.2017 is as under:

**“MEMORANDUM-  
TERMINATION FROM THE BANK’S SERVICE ON ACCOUNT OF UNAUTHORIZED  
ABSENCE MR. IMDAD HUSSAIN GORCHANI, OG-1 (SAP ID 14452) NBP,  
BULLOWAL KALAN BRANCH, SIALKOT.**

With reference to the above, it is advised that the services of Mr. Imdad Hussain Gorchani, OG-1 have been terminated from the Bank by the competent authority with effect from the date of his unauthorized absence i.e. February 27, 2017.

He is also advised to immediately adjust all direct/indirect outstanding liabilities against him, otherwise, his guarantor is liable to pay the same without any delay, failing which recovery suit will be filed against the officer as well as his guarantor.”

2. Petitioner has averred that he joined the respondent Bank on 20.01.1979 and before three days of his retirement, his services were dispensed with vide order dated 18.08.2017 due to personal vendetta of respondents 4 and 5. Petitioner further submitted that he filed the departmental appeal on 15.09.2017 followed by Reminder dated 12.12.2017, which was declined vide letter dated 19.12.2019 without assigning any cogent reasons, an excerpt whereof is reproduced as under:

*“As per minutes of Appeal Review Committee (ARC-II) agenda paper No.08/2019 dated 24.09.2019, the Appeal Review Committee-II has declined your appeal for reinstatement in the Bank’s service.”*

3. Mr. Afaq A. Saeed, learned counsel for the petitioner, has argued that the impugned order dated 16.08.2017 endorsed on 18.08.2017 and followed by the appellate order dated 19.12.2019 are passed in violation of Rule 37 of the National Bank of Pakistan (Staff) Service Rules. Per learned counsel, the appellate authority failed to consider that the petitioner has 512 days leave period in his credit up to 2011 as per the leave certificate dated 06.11.2011 for which the petitioner submitted an application on 15.09.2017 for a grant of 365 days LPR, but the same remained undecided. Learned counsel asserted that before the issuance of termination orders dated 16.8.2017 and 18.08.2017, neither a charge

sheet nor any show-cause notice was served upon the petitioner hence he was condemned unheard. He placed reliance on Articles 4 and 27 of the Constitution of the Islamic Republic of Pakistan, 1973, and the case of *Faisal Sultan v. EDO (Education) and others*, **2011 PLC (CS) 419**.

4. Mr. Zain Mustafa Soomro, learned counsel representing the respondent Bank, has submitted that the petitioner (ex-OG-1) was the Manager and joint custodian of the keys of NBP Bullawal Kalan Branch, Sialkot, and did not attend to his entrusted duties with effect from 27.02.2017. Due to the petitioner's unauthorized absence, the respondent Bank, on 27.02.2017 got the Branch opened through duplicate keys by deputing an officer from the District Courts Branch, Sialkot to facilitate the customers and general public. Per learned counsel, since the first day of petitioner's unauthorized absence i.e. 27.02.2017, which absence continued as long as six (06) months, he never disputed the fact of remaining absent from duty, in which no question of holding a regular inquiry was raised, but the respondent Bank while acting in good faith, abided by the principles of natural justice and due process of law, multiple opportunities were given to the petitioner by way of notices dated 28.08.2017, 07.03.2017 and 16.03.2017 to resume his duty and explain his position. In the meantime, he applied for a grant of post-facto emergency leave, before the office of Regional Head, NBP on 03.03.2017, wherein he had admitted his absence from duty and stated to be in Karachi to look after his wife who was allegedly hospitalized. Thereafter a final notice dated 30.03.2017 was sent to his residence in compliance with Rule 15(3) of the NBP Staff Service Rules, 1973. Per counsel, during the petitioner's unauthorized absence, the respondent Bank received four complaints against him for being involved in parallel banking/fraud and finally, he was dismissed/terminated from service vide letter dated 16.08.2017. In support of his contentions, he relied upon the cases of *National Bank of Pakistan and another v. Zahoor Ahmed Mengal*, **2021 PLC (CS) 385**, *Secretary Elementary and Secondary Education Department, Government of Khyber Pakhtunkhwa Peshawar and others v. Noor-ul-Amin*, **2022 PLC (CS) 132**, and *Federation of Pakistan v. Mamoon Ahmed Malik*, **2020 SCMR 1154**.

5. As per record, the respondent-bank vide letter dated 27.6.2014 has disclosed the following leave(s) was granted to the petitioner to cover his period of absence from duty:

"Frozen Leave availed from 15<sup>th</sup> March 2014 to 15<sup>th</sup> April 2017 32 days  
 Privilege leave availed (from 6<sup>th</sup> November 2012 to 20<sup>th</sup> May 2014) 94 days  
 Casual leave availed (from 6<sup>th</sup> November 2012 to 20<sup>th</sup> May 2014) 19 days  
 Leave Record as on 20<sup>th</sup> May 2014

Privilege Leave Due for the year 2014	Nil
Casual Leave for the year 2014 (Due)	19 days
Casual Leave availed (during 2014)	01 day
Sick Leave availed during the year 2014	Nil
Leave granted from frozen leave balance in the year 2014	32 days
Frozen Leave balance as on 20 <sup>th</sup> May 2014 (452+15+32=453)	453 days

452 days (as reported by General Manager, HR & Administration Wing vide their letter No. FEDC/HRM/09/4267 dated 7 <sup>th</sup> December 2012)	
Un-availed sick leave for the year 2012 (Added)	15 days
Un-availed sick leave for the year 2013 (Added)	18 days
Leave availed from 15 <sup>th</sup> March 2014 to 15 <sup>th</sup> April 2014 (Subtracted)	32 days

Position of extraordinary leave without pay if any, availed during his service, may be ascertained from Personal Administration Wing, HRM & Administration Group, NBP, Head Office, as we do not have such record, at our end.”

6. The record further reflects that during the purported unauthorized leave, respondent Bank vide Office Memorandum dated 14.3.2017, downgraded the petitioner by one step in his pay scale, with directions to the concerned office not to post the petitioner as Branch Manager for three years, however, the respondents continued with the purported disciplinary proceedings up to the level of issuance of show-cause notices only and no further proceedings could take place, finally the respondent-bank found it fit to terminate the services of the petitioner on account of absence from duty with effect from 27.02.2017 vide letter dated 16.08.2017, which explicitly shows that two punishments were awarded to the petitioner, firstly he was demoted one step in his pay scale during the intervening period and secondly his services were dispensed with on account of unauthorized absence from duty, just a few days before his superannuation, i.e. 60 years of age.

7. The questions are whether two punishments can be awarded to the petitioner on the same charges and whether the petitioner has 512 days leave period in his credit up to 2014 as per the leave record of the petitioner and whether in such circumstances regular inquiry was essential to ascertain all these things.

8. Per learned counsel for the respondent Bank, the factual aspect of such absence from duty of the petitioner, which is admitted, there was no need to hold a regular inquiry in terms of the ratio of the judgment passed by the Honorable Supreme Court in the case of Federation of Pakistan through Secretary Ministry of Law and Justice Division, Islamabad v. Mamoon Ahmed Malik, 2020 §CMR 1154.

9. There is no cavil to the proposition settled by the Hon'ble Supreme Court on the subject point. However, the only thing evident from the record is that by letter dated 16.08.2017, the service of the petitioner was terminated with effect from February 27, 2017, and the intervening period, from the date of absence from duty till the date of termination, was not treated as Extra Ordinary Leave (EOL) without pay though 512 days leave was in his credit. The treatment of absence period has already been dealt with by the Honorable Supreme Court in the case of National Accountability Bureau through Chairman v. Muhammad Shafique 2020 §CMR 425 and Kafyat Ullah Khan v. Inspector General of Police, Islamabad and another (Civil Appeal No.1661 of 2019), where it has been held that while imposing a penalty on the employee in the case of unauthorized absence, the absence period treated as an EOL is not a punishment, rather is a treatment

given to the absence period, which employer is entitled to do. Reliance is placed in the case of National Bank of Pakistan and others Vs. Zahoor Ahmed Mengal 2021 **SCMR 144**.

10. In the present case, it is apparent that the entire spectrum of departmental proceedings to establish the culpability of the petitioner has not been exhausted on merits. Primarily, merely issuance of show cause notice is not sufficient to deprive the employee of regular inquiry to probe his guilt, as the employer has to stand on its own feet rather than relying upon the weaknesses of the defense side. Even otherwise, it is well settled that a plea of guilt has to be unequivocal. At this stage, learned counsel for the petitioner vehemently argued that impugned order, inflicting the punishment of removal from service is too harsh and disproportionate to the charges leveled and proved against the petitioner, therefore, he prayed that impugned orders be set aside. He asserted that impugned orders do require to be interfered with because the petitioner has pointed out the irregularities and illegalities committed by the respondent bank as no disciplinary proceedings have taken place which has caused prejudice to the defense of the petitioner. He also submitted that there is a violation of the principles of natural justice. Moreover, the charges leveled against the petitioner are not serious ones as he has not indulged in any embezzlement, and in such cases, dismissal or removal is treated as a harsh penalty. Learned counsel for the petitioner further pointed out that rule 9(3) of the Revised Leave Rules, 1980 empowers the competent authority to grant extraordinary leave in lieu of absence from leave and since the competent authority has exercised such discretion by treating the petitioner's un-authorized absence of days as extraordinary leave, therefore, there was no occasion to impose the major penalty of dismissal from service, when the petitioner was at the verge of retirement from service. In support of his contentions, he placed reliance on the judgments of the Honorable Supreme Court in the case of Lahore Development Authority v. Muhammad Nadeem Kachloo, 2006 **SCMR 434**, Director General Intelligence Bureau v. Muhammad Javed, 2012 **SCMR 165**, and Muhammad Sharif Abbasi v. Member, Water, WAPDA Lahore, 2013 **SCMR 903**.

11. On the modification of the punishment, learned counsel for the respondent-Bank submitted that once unauthorized absence for more than six (06) months was established on record, this court cannot convert the penalty of dismissal from service imposed upon the petitioner into compulsory retirement. Departmental proceedings initiated against the petitioner were under the law, due process rights were granted to him and he was given every possible opportunity to defend himself. On his failure to justify his continuous absence from duty, the only possible penalty was imposed upon him accordingly. Learned counsel relied upon the cases of Commissioner Faisalabad Division, Faisalabad and another v. Allah Bakhsh, 2020 **SCMR 1418** and Government of Punjab through Chief Secretary v. Muhammad Arshad and 2 others, 2020 **SCMR 1962**.

12. Prima facie, respondent-bank, under the law, rules/regulations of the bank, were responsible for expediting the process of the application of the petitioner dated 27.02.2017

for leave in time, on account of ill-health of his wife, the said application was duly received by the respondent bank on 03.03.2017 followed by letters dated 09.03.2017, 03.04.2017 and 07.04.2017 addressed to the President/SVP/Regional Head of the respondent bank, failure thereof, by deciding, either way, petitioner could not be held responsible and presumption could be drawn that the application was sanctioned. At this stage, learned counsel for the respondent bank submitted that the respondent bank vide letter dated 17.4.2017 turned down the explanation of the petitioner and directed him to resume his duty. Be that as it may, the record shows that the impugned action was taken when the petitioner was on the verge of retirement on 22.08.2017, however, the respondent continued calling the petitioner to join the duty; and finally they downgraded him by one step in his pay scale vide office memorandum dated 14.03.2017, just after fifteen days from the date of receiving his leave application. For convenience sake, an excerpt of the application of the petitioner dated 27.02.2017 and the Office Memorandum dated 14.03.2017 are reproduced as under:

**“MEMORANDUM  
DISCIPLINARY ACTION AGAINST MR. IMDAD HUSSAIN GORCHANI, OG-  
1/MANAGER (\$AP ID# 14452) WINDOW DRESSING INFLATION OF PROFIT  
FOR RS.27.728(M) AT NBP SHAHPUR KANJARAN BRANCH, REGIONAL  
OFFICE, LAHORE.**

In terms of Charge Sheet & Show Cause Notice No.HRM&AG/IDW/CUFF/L-3085/1098 dated 30.05.2016 he is advised that after taking into consideration all aspects of the case, the competent authority has Downgraded him by one (01) step in his pay scale in the above case.”

**“REQUEST FOR 10 DAYS EMERGENCY LEAVE**

*With due respect, this is to inform you that my wife is hospitalized in Hill Park General Hospital on 26.02.2017 and due to her condition undersigned had to come to Karachi in an emergency.*

*In view of the above, it is requested to sanction me 10 days emergency leave from 27.02.2017 to 08.03.2017 alongwith permission to leave the station in order to take care of my wife”*

13. We had given an option to the learned counsel for the respondent bank for resolution of the matter, however, the respondent bank disagreed to remand the case to the respondent bank for holding regular disciplinary proceedings, so far as the allegations of unauthorized absence from duty were concerned, but after thoughtful appraisal of every aspect of the case, and looking into the factual as well as the legal position of the case, and keeping in view the factum that the petitioner had already superannuated on 22.08.2017 and under such circumstances, it would be a futile exercise to remit the matter. The legal position of the case is that dispensing with the regular inquiry and awarding two punishments i.e. downgrading and major penalty of dismissal from service, ought not to have been imposed upon the Petitioner at the same time when the charges were denied by the Petitioner. The principle of natural justice demands that the petitioner ought to have been heard on the allegations leveled against him; however, the respondent had chosen not to conduct the regular inquiry and simply relied upon the purported admission of the petitioner which was not called for in the above circumstances.

14. From the facts and the reasons mentioned above, we are of the view that the order of termination from Service dated 16.08.2017 and subsequent appellate order issued by the respondent National Bank of Pakistan is not sustainable under the law as the inquiry about allegations of unauthorized absence from duty was not held under the procedure as laid down under the Service Regulations of respondent-bank for the reason that there were 453 days frozen leave balance in his credit up to 2014 as per leave record certificate dated 27.08.2014 and under such circumstances the petitioner ought to have been sent LPR with effect from 22.08.2016 to 21.08.2017.

15. In the light of the above facts and circumstances of the case, this Petition is allowed with the directions to the Competent Authority of the Respondent-bank to issue retirement order of the petitioner and award pensionary/back benefits (superannuation) to him within fifteen (15) days from the date of receipt of this judgment under law.

**J U D G E**

**J U D G E**

Nadir\*