

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C.P No.D-1831 of 2019

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Arbab Ali Hakro

Petitioner: Gul Muhammad Indhar
Through Mr. Sohail Ahmed Khoso,
Advocate

Respondents No.2to4: M/s Habib Bank Limited
Through Mr. Shaukat Ali Chaudhry,
Advocate

Respondent No.1: Mr. Dareshani Ali Haider 'Ada',
Deputy Attorney General

Date of hearing: **08.05.2024**

Date of Decision: **23.05.2024**

J U D G M E N T

Arbab Ali Hakro, J: Through this writ petition, the petitioner, Gul Muhammad, challenges the Order dated 02.10.2019, rendered by the learned Full Bench of the National Industrial Relations Commission ("N.I.R.C"). The contentious Order dismissed the respondent-Bank's appeal against the initial Order dated 27.02.2019, issued by the distinguished Member of the N.I.R.C. The aforementioned Order of 27.02.2019, adjudicated by the learned Member of the N.I.R.C., partially upheld the petitioner's grievance petition, thereby ordering his reinstatement into service sans arrears. It further mandated the employer to retire the petitioner upon reaching the age of superannuation, in accordance with the Bank's policy, ensuring the provision of full retirement and pension benefits.

2. The pivotal facts germane to the adjudication of the present petition are that the petitioner was initially inducted as a Guard on 15.9.1991, subsequently ascended to the role of Cashier. During his

tenure at Habib Bank Ltd, Daharki Branch Sukkur, he was entrusted with collecting Utility Bills. On 12.9.2002, an explanation was demanded from him regarding the late deposit of Rs.4,060/-, purportedly received on 15.8.2002 but recorded as deposited on 05.9.2002, as evidenced by the corresponding Sui Gas bill stamp. The petitioner's response to this explanation was deemed unsatisfactory, culminating in issuing a charge sheet. After an inquiry on 14.10.2002, he was recommended for two punishments: Degradation to the Grade of original and a Reprimand. Despite his rebuttal to the final Show-Cause notice, asserting innocence and attributing the error to the concerned officer, the petitioner was ultimately dismissed from service on 11.12.2002.

3. The Petitioner, aggrieved by the dismissal order, filed an appeal on 18th December 2002. However, the appeal was not granted by the competent authority. Subsequently, the petitioner contested the Order before the Federal Service Tribunal through Appeal No. 58/2004. This appeal was abated following the Supreme Court of Pakistan's judgment dated 27th June 2006 in the case of Mubeen-us-Salam (PLD 2006 SC 602).

4. Thereafter, the petitioner initiated Application No. 58/2010 before Sindh Labour Court No. V at Karachi. Upon completion of evidence by both parties, the case was transferred to the National Industrial Relations Commission bench in Karachi and subsequently to the Sukkur bench due to the enactment of the Industrial Relations Act, 2012.

5. The N.I.R.C member, after considering the final arguments, partially upheld the petition through an Order dated 27th February 2019. The Order overturned the dismissal dated 11th December 2002, reinstating the petitioner without back benefits. Additionally, it directed the respondent bank to retire the petitioner upon

reaching the age of superannuation according to the Bank's policy, ensuring full retirement and pension benefits.

6. Dissatisfied with the above Order dated 27th February 2019, passed by the learned Member, N.I.R.C, the respondent-bank filed an appeal to the Full Bench of the N.I.R.C. Subsequently, by an impugned Order dated 2nd October 2019, the Full Bench allowed the appeal, thereby overturning the Member's Order and dismissing the grievance petition. Hence, this petition has been filed.

7. At the very outset, learned counsel representing the petitioner has contended that impugned order dated 02.10.2019, passed by learned NIRC Islamabad, Bench at Karachi, is illegal, unlawful and unwarranted under the law as the same has been passed in hastily manner without applying a judicious mind; that learned Bench has failed to consider the evidence of bank wherein they admitted before the trial Court that no loss was caused to the Bank; besides, did not consider the recommendation of Inquiry Officer and recommended for two punishments i.e. Degradation to the Grade of original and a Reprimand, which is not sustainable under the law; that the grievance application was filed within stipulated period; however, learned Bench failed to consider such legal aspect and came to the conclusion that such application was time-barred; that notice of grievance application was duly served upon Bank but the Bench also failed to consider such aspect of the case; that impugned decision has been passed without considering factual as well as legal aspects of the case and is liable to be set-aside while allowing this petition. Learned Counsel for the Petitioner, in support of his contention, placed reliance on the case law reported as **PLD 2006 SC 602**.

8. Conversely, learned counsel for respondent-bank argued that learned Full Bench, NIRC Islamabad Bench at Karachi has rightly

passed the impugned order by considering all the factual as well as legal aspects of the case; that Grievance application preferred by the Petitioner was time-barred; that the plea of Petitioner regarding service of grievance notice is based on presumption and assumption as the same has not been served upon the Respondent-Bank. At the end, he submits that the order passed by learned NIRC Full Bench is a speaking and well-reasoned, hence no interference is required by this Court to disturb its findings. In support of his contention, he placed reliance on the case law reported as **2005 SCMR 1610, 2003 PLC (C.S) 1247, 2007 PLC 381, 1980 PLC 981, 2002 SCMR 943, 1976 SCMR 74 & 1984 PLC 181.**

9. We have meticulously scrutinized the arguments presented by the Learned Counsel representing the Petitioner, the respondent-Bank, and the Deputy Attorney General. Furthermore, we have assiduously examined the records under their guidance and have drawn upon the jurisprudential precedents furnished by them.

10. Upon meticulous examination of the extant records and the impugned Order, it has been discerned that the adjudication passed by the Member of the N.I.R.C was primarily annulled on the basis of two pivotal issues. Firstly, the Grievance Petition filed by the petitioner was egregiously belated, rendering it beyond the permissible time limit prescribed by law. Secondly, the issue pertains to the non-service of the grievance notice.

11. Addressing the first issue, the erudite Full Bench of N.I.R.C, by placing reliance on the precedent established by the Supreme Court in the case of Mubeen-us-Salam vs. Federation of Pakistan and others (PLD 2006 S.C 602), adjudicated that the Grievance Petition filed by the petitioner was egregiously belated, thereby exceeding the statutory time limit. In light of such circumstances, it becomes indispensable to elucidate the pertinent findings as follows initially:

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“9. Further, the grievance petition of the respondent is hopelessly time-barred as approached before this Commission in year, 2010 after abatement of the appeal by the Federal Service Tribunal. The Honourable Supreme Court while directing the abatement of the proceedings not covered by the judgment has allowed 90 days’ time to the affected person to approach the proper forum. The Limitation provided under Section 46 is not applicable in view of the pronouncement of the Honourable Supreme Court and the appellant can approach the proper Court within 90 days. As such, Limitation was not to be counted as from the date the case was returned by the FST but from the date of judgment dated 27.6.2006 and therefore, the grievance petition had to be filed by or before 26.9.2006 and no application of delay/condonation was filed by respondent and Limitation also cannot be condoned without application.”

12. To ascertain whether the learned Full Bench of the N.I.R.C has accurately interpreted the directives promulgated by the Supreme Court of Pakistan in the case of Mubeen-us-Salam (supra), it would be expedient to reproduce the aforementioned directives of the Supreme Court as follows: -

“109. Now, the question is as to what would be the effect of this judgment on the cases pending before this Court and Federal Service Tribunal. In this behalf it may be noted that following the rule of past and closed transactions, laid down in the case of Mehram Ali v. Federation of Pakistan (PLD 1998 SC 1445), it is directed as follows:--

(a) The cases which have been decided finally by this Court in exercise of jurisdiction under Article 212(3) of the Constitution shall not be opened and if any Review Petition, Misc. Application or Contempt Application, filed against the judgment is pending, it shall be heard independently and shall not be affected by the ratio of this judgment.

(b) The proceedings instituted either by an employee or by the an employer, pending before this Court, against the judgment of the Service Tribunal, not covered by category (a) before this Court or the Service Tribunal shall stand abated, leaving the parties to avail remedy prevailing prior to promulgation of section 2-A of the STA, 1973.

(c) The cases or proceedings which are not protected or covered by this judgment shall be deemed to have abated and the aggrieved person may approach the competent forums for redressal of their grievances within a period of 90 days and the bar of Limitation provided by the respective laws, shall not operate against them till the expiry of stipulated period.

(d) The cases in which the Order of Service Tribunal has been implemented shall remain intact for a period of 90 days or till the filing of appropriate proceedings, whichever is earlier.?????

(e) The Service Tribunal shall decide pending cases under section 2-A of the STA, 1973 in view of the above observations. However, if any of the cases is covered by clause `c' (ibid), a period of 90 days shall be allowed to aggrieved party to approach the competent forum for the redressal of its grievance.

13. Pursuant to Paragraph 109(c), cases or proceedings not safeguarded or encompassed by the judgment are deemed to have been abated. The aggrieved party may seek recourse to the competent forums for the redressal of their grievances within a stipulated period of 90 days, and the statutory limitation imposed by the respective laws shall not be operative against them until the expiration of the aforementioned period. Paragraph 109(e) articulates that the Service Tribunal shall adjudicate pending cases under Section 2-A of the Service Tribunals Act (STA), 1973 in light of the preceding observations. However, if any of the cases fall within the purview of clause 'c' (ibid), a grace period of 90 days shall be accorded to the aggrieved party to approach the competent forum for the redressal of its grievance. In the instant case, the Federal Service Tribunal abated the appeal of the petitioner vide Order dated 14.5.2010, advising the petitioner to seek a remedy before the appropriate forum for redressal of his grievance. Subsequently, the petitioner filed the Grievance Application before Labour Court-V, Karachi, on 15.06.2010, afresh under the provision of the Industrial Relations Ordinance (IRO), 2002, thereby falling within the stipulated 90-day period. Hence, the findings of the learned Full Bench of the N.I.R.C regarding counting the period are erroneous and constitute a misreading of the Judgment of the Supreme Court of Pakistan.

14. About the second issue of the non-service of the Grievance Notice by the petitioner to the respondent-bank, the learned Full Bench of N.I.R.C has adjudicated that the respondent conceded during

his cross-examination that he had not served the Grievance Notice to the authority responsible for his dismissal. It was further observed that the petitioner erroneously addressed his departmental appeal to the President of H.B.L, rendering it legally invalid. However, despite the departmental appeal being addressed to the President of Habib Bank Ltd, it was nonetheless entertained and adjudicated on its merits by the Vice-President in the following manner: -

“This is with reference to your appeal dated 18.12.2002 against the punishment awarded to you vide HBL Regional Headquarters Sukkur letter No.MAZ/1595 of 11th December 2002.

Your case has been examined by the Competent Authority and it is to inform you that no room was found to amend the decision already taken in your case.”

15. The aforementioned decision of the Vice-President does not state that it was erroneously addressed to the President of the Bank, as observed by the learned Full Bench N.I.R.C. The departmental appeal of the petitioner can be construed as a grievance notice in light of the principle established in the case of [Nadeem Ahmed Qureshi v. Habib Bank Limited 2009 PLC 160](#), wherein it was held as follows:

“that the proposition is not based on correct footings because Standing Order 18 of the Ordinance of 1968 speaks about bringing the grievance to the notice of the employer and not of any particular format through which the employee should bring his grievance to the notice of the employer, hence the petition filed by the appellant before President of Habib Bank was well in time and had served the purpose.”

16. At first glance, the petitioner has been disadvantaged by the learned Full Bench of N.I.R.C on procedural grounds. The rationale of the learned Full Bench is incongruous with established legal principles. It is a well-entrenched legal doctrine that certiorari is a remedy available to annul a decision on the grounds of a legal error. It can also be invoked to rectify jurisdictional errors when a lower Court or a tribunal acts beyond its jurisdiction, fails to exercise its jurisdiction, or where the Court or a tribunal acts unlawfully in the exercise of its undisputed jurisdiction and adjudicates a matter in contravention of the principles of natural justice. The High Court, in issuing a writ of

certiorari, operates in the capacity of supervisory jurisdiction. Therefore, it is held that the concurrent orders passed by the learned Full Bench of NIRC and Single Bench of NIRC, which resulted from a legal error and devoid of jurisdiction, are subject to revocation. The aforementioned proposition is substantiated by the case of the Government of Pakistan through the Director-General, Ministry of Interior, Islamabad, and others v. Farheen Rashid, 2011 SCMR 1.

17. Upon preliminary examination, the petitioner was not implicated in committing grave, egregious violations, misappropriation, or misuse of bank funds. Instead, he was found culpable of a minor procedural oversight. During the inquiry, he conceded his error of affixing an incorrect date on the consumer's utility bill, a position he continues to maintain. The respondent-bank has not furnished any substantive evidence to suggest that the mistake committed by the petitioner was intentional or premeditated for illicit gains. Such errors in routine work are plausible due to the exigencies of work. For such a minor infraction, the petitioner cannot be subjected to the severe penalty of dismissal from service. The respondent bank has not incurred any financial loss. The petitioner, who served as a cashier in the respondent-bank, has been embroiled in litigation since 2002.

18. The case law that the learned counsel for the respondent-bank relies upon is distinguishable from the present case and, as such, does not apply to it.

19. Based on the foregoing discussion, this petition is **allowed**. The impugned Order dated 02.10.2019, passed by the learned Full Bench of N.I.R.C, is hereby overturned. As a result, the Order dated 27.02.2019, passed by the learned Member of N.I.R.C, is reinstated.

JUDGE

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