

NATIONAL INDUSTRIALS RELATIONS COMMISSION**FULL BENCH AT ISLAMABAD**

Appeal No. 12A(30)/2023

Before:- **Mr. Justice (F) Abdul Rasool Memon, Chairman**
Mr. Abdul Qayyum Khan, Member
Syed Noor-ul-Hassnain, Member

1. Faiz Ali S/o Habib-ur-Rehman, Ex-Employee No. 431370, United Bank Limited, Peshawar.

Versus

United Bank Limited through its President, 8th Floor, State Life Building No. 1 I.I. Chundrigar Road, Karachi and 4 others

Present Mr. Bilal Ahmed Kakaizai, learned counsel for the appellant.
Mr. Alam Zaib Khan, Learned counsels for the respondents.

ORDER **By Syed Noor-ul-Hassnain, Member**

29.11.2023

The appellant filed this appeal against the order dated 22.06.2023 passed by the Learned Single Bench, NIRC, Peshawar. The brief fact of the case is that the appellant/petitioner filed a petition before the Single Bench at Peshawar against the impugned order of compulsory retirement dated 29.09.2022 and the same has been dismissed by the Single Bench. The learned counsel for the appellant contended that the impugned judgment whereby the grievance



petition of the appellant has been dismissed is illegal, unlawful; that the Single Bench has failed to apply its judicious mind while dismissing the petition as in the impugned judgement no cogent, forceful, strong and logical reasoning for dismissal of the petition has been mentioned; that the learned single bench has also failed to appreciate the law i.e. Industrial Relations Act, 2012 and West Pakistan Industrial & Commercial Employment (Standing Order Ordinance, 1968 and the judgment passed by Single Bench is based on unconvincing and unpersuasive reasons; that the Single Bench has given its verdict on the basis of the concept of competent authority and appointing authority; which could not be justified under the Industrial Relations Act, 2012 as according to section 33 of ibid law the concept of service of grievance notice has been mentioned with the term employer instead of competent authority or appointing authority; that the punishment of compulsory retirement has not been classed as one of the punishments under the West Pakistan Industrial & Commercial Employment (Standing Orders) Ordinance, 1968; that the impugned order 29.09.2022 is coram-non-judice and void ab-initio on this score. The learned counsel for the appellant further contended that the bank has conducted the domestic enquiries against the appellant under the Bank Service Rules which are non-statutory; that the



proceedings against an employee cannot be conducted under any law/rules which are non-statutory except under the West Pakistan Industrial & Commercial Employment (Standing Orders) Ordinance, 1968; that the judgment reported as 2002 SCMR 943 was delivered during the year when section 2-A of the Services Tribunal Act, 1973 was in vogue and the employees of the corporatized banks used to approach FST for the redressal of their grievances.

2. The version of the learned counsel for the respondents is that the petitioner has not yet served the grievance notice upon the respondent and this petition is liable to be dismissed; that the appellant was retired compulsorily by taking a lenient view despite the fact that he was proved guilty of gross misconduct and insubordination; that the appellant was warned several times to improve his performance and behaviour but he was not interested in his job; that he was transferred to UBL Mall Road Branch, however he refused to join the place of posting and absented himself and he was issued charge sheet to which he replied but the same was found unsatisfactory. Thereafter enquiry was conducted against him in which he fully participated; that during enquiry he was provided opportunity to cross examine the prosecution witness and he was also allowed to



produce his defence; that the appellant duly recorded his satisfaction with regard to inquiry proceedings; That the charges of misconduct levelled against the petitioner stand proved during inquiry, hence he has been awarded penalty of compulsory retirement from service in accordance with law. The learned counsel for the respondents while submitting his arguments has stated that the hiring and firing authority of the appellant was not President of the Bank rather it was Director Human Resource and the alleged grievance notice is not a grievance notice rather it can be termed as departmental appeal and he relied upon judgment reported as 2002 SCMR 943 and submitted that while relying on the dictum the alleged grievance notice cannot be termed as grievance notice , therefore, for want of grievance notice, this petition cannot be proceeded further and is liable to be dismissed. The attendance record that the appellant sent appeal for punishment review to the President UBL Bank Karachi and there is no other notice on file. The learned counsel for the appellant as well as the appellant himself stated that the same may be termed as grievance.

3. We have heard the learned counsel for the parties and gone through the record.



4. Reliance is placed on 2002 SCMR 943 titled Khushal Khan vs. Muslim Commercial Bank Limited and other, it has been held in the said authority that:

"We have looked into available record as well as the impugned judgment consciously. it is an uncontroverted fact that against the dismissal order dated 22.05.1996 no grievance notice as required under A section 25-A, IRO was served by the petitioner upon the employer. There is no gain in saying that the Appellate Authority is always considered to be distinct and different entity from the original authority competent to make appointment. According to the contents of appointment letter dated 04.05.1983 petitioner was appointed as Cashier by Regional Manager of MCB being the Appointing Authority whereas appeal was addressed in the name of the President of the Bank who admittedly was not his Appointing Authority. In addition to it, according to the Muslim Commercial Bank Ltd (Staff) Service Rules, 1981, petitioner being a Cashier was a category-II official, therefore, President of MCB could not be his Appointing Authority meaning thereby that for the purposes of section 325-A, IRO Regional Manager would be the employer of the petitioner. As such we are inclined to associate ourselves with the contention put forward by the learned counsel for the caveator.

As a result of above discussion we are of the opinion that petitioner initiated incompetent proceedings against the respondent as no grievance notice under section 25-A IRO was issued. As such relief was rightly declined to him by the High Court, vide impugned order".

5. The appeal submitted by the appellant to the President could not be termed as grievance notice for the reason that the President of the Bank could not be his appointing Authority and the



purpose of section 33 of the Industrial Relations Act, 2012 could not be served Section 33 sub section 1 of the Industrial Relations act, 2012 provides that

33 Redress of individual grievance.____(1) A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his shop steward of collective bargaining agent within ninety days of the day on which the cause of such grievance arises.

6. Reliance is placed 2018 PLC Note 30 titled Matee ul Hassan vs. NIRC in para-10 held that "under section 33 (4) of the IRA 2012, the petitioner could take its grievance to the NIRC only if his employer failed to communicate a decision within a period of fifteen days of the submission of the grievance notice or if the employer had given a decision against the petitioner on his grievance notice. Hence, the filing of grievance notice in terms of section 33 (1) of the IRA, 2012 is an essential pre-requisite for filing a grievance petition before the NIRC. This court in the case of Pakistan Telecommunication Company Limited Vs. Muhammad Dilpazeer Abbas (2016 PLC 367), has held *inter alia* as follows"

"A worker/workman can file a petition for redressal of grievance in the mode or in accordance with the procedure provided in section 33 of the Act. In this behalf a worker/workman is required to bring to the notice of his

employer in writing the grievance with ⁱⁿ 90 days of the cause by which grievance arises and if the employer, under subsection (4) of section 33 fails to make/communicate decision within 15 days of the grievance or the decision rendered is not satisfactory then the matter can be agitated before the Commission. Under proviso to subsection (4) a worker/workman who desires to take the matter to the commission shall do so within a period of 60 days from the date of commencement of the employment or as the case may be from expiry of the period mentioned in subsection (2) or subsection (3) as the case may be".

7. As a result of above discussion, it has come to limelight that the departmental appeal cannot be treated as the grievance notice. So while deciding the case, the Learned Member did not commit any illegality. Hence the appeal is without any legal force and is hereby dismissed. Parties to bear their own cost. File be consigned to record room after due completion.

Announced in open Court.

Dated: 29.11.2023

(Abdul Rasool Memon)
Chairman

(Syed Noor-ul-Hassnain)
Member

(Abdul Qayyum Khan)
Member