

NATIONAL INDUSTRIAL RELATIONS COMMISSION, LAHORE**CASE NO. 4B(178)/2020-L****Najeeb Hanif S/o Muhammad Hanif****Vs.****Allied Bank Limited through its President & 03 others****Before: Mr. Muhammad Sirajul Islam Khan, Member****Present:** Khawaja Omer Masood, advocate for petitioner.
Mr. Pervaiz I Mir, advocate for respondents.

Date of Arguments: 21.06.2023

ORDER
27.07.2023

This petition has been filed under section 33 (4) of Industrial Relations Act (IRA), 2012, with the prayer that the letter of dismissal dated 26.03.2020 may very kindly be set aside being arbitrary, malafide, unlawful and devoid of any merit and the petitioner may very kindly be reinstated in service with all the consequential back benefits.

2. The brief facts of the case are that petitioner was inducted in the respondent bank as Teller (MG-12) on 22.06.2015 and by course of time petitioner was promoted to Banking Services Officer (MG-11) in the year 2018. That an FIR No. 8/19 dated 06.02.2019 was lodged against the petitioner in FIA CBC Punjab Zone Lahore and petitioner was arrested. That the petitioner got the post arrest bail confirmed vide order dated 01.04.2019 and after getting bail

petitioner remained in the payroll of the establishment of Allied Bank Limited. That a charge sheet dated 20.06.2019 was issued to the petitioner which was duly replied by the petitioner and afterwards an inquiry notice was issued to the petitioner on 24.07.2019 and afterwards petitioner was issued a letter of dismissal on 26.03.2020. Feeling aggrieved, the petitioner chose this forum through the instant petition.

3. Upon issuance of notices, respondents entered appearance through their counsel and filed an application under order 7 rule 11, CPC for rejection of the titled petition. Learned counsel for the respondents further contended that the petitioner does not fall within the ambit of workman because petitioner on its own has admit that he was Banking Services Officer (BSO) MG-11 which is OG-III as such the instant petition is not maintainable because petitioner is not covered under the definition of workman. Learned counsel for the respondents further contended that petitioner did not reply the charge sheet within the given time of 07 days and petitioner has not fulfilled the mandatory requirement of serving the grievance notice to the respondents. Learned counsel for the respondents further contended that the misconduct of the petitioner has been established during the domestic inquiry in which he fully participated and was provided full

opportunity to prove his innocence but he failed and declared guilty. Learned counsel for the respondents hence prayed that the instant application may kindly be accepted and the grievance petition of the petitioner may kindly be dismissed.

4. On the other hand, learned counsel for the petitioner vehemently opposed the contentions of learned counsel for the respondents and argued that though the petitioner was Banking Services Officer (BSO) MG-11 but he was performing manual and clerical functions and that he has not performed his duties in the managerial or supervisory capacity, hence, by virtue of his duties, he falls within the ambit of workman. Learned counsel for the petitioner further contended that the order dated 26.03.2020 is without any lawful reason hence liable to be set aside. Prayed that the application filed by the respondents may kindly be rejected and petitioner may kindly be reinstated into service with all back benefits.

5. Arguments heard and record perused.

6. Contention of the learned counsel for the petitioner is that by virtue of his duties petitioner falls within the definition of workman although he was Banking Services Officer (BSO) MG-11. In contrary, the version of learned counsel for the respondents is that the petitioner was performing duties in the managerial and supervisory

capacity, as such he does not fall within the definition of workman. It has been held in case law reported as 2015 SCMR 434:

“Workman”--- status of---Grievance petition filed before the Labour Court--- Maintainability---Person who approached a Labour Court for redressal of his grievance claiming himself to be a workman and such status of workman was denied by the employer, it became a bounden duty of such person to demonstrate through evidence that his nature of duties and functions were that of workman and not that of a managerial or administrative capacity and that he was not an employer”

“---S. 2(xxxiii)--- “Workman”---Scope--- National Bank of Pakistan--- Officers Grade I to III were not “workmen”--- On the basis of union’s claim no declaration could be given that the officers Grade-I to III in the establishment of national bank of Pakistan were workmen--- Order passed by National Industrial Relations Commission to the effect that officers Grade-I to III were not workmen was upheld---Appeal was allowed accordingly”.

In the cases *“Ganga R. Madhani v. Standard Bank Limited & others (1985 SCMR 1511), Muhammad Nawaz Bhatti v. President, Muslim Commercial Bank Limited, Karachi and others (2008 PLC 260), Muslim Commercial Bank Limited and others v. Muhammad Shahid Mumtaz and another (2011 SCMR 1475) and Habib Bank Limited v. Gulzar Khan and others (2019 SCMR 946)”*, the Hon’ble Supreme Court of Pakistan held that Manager of the Bank or the officers of the Management Cadres and also power of attorney holders cannot maintain their grievance petitions before the Labour Courts/NIRC. The consistent view, however, remained the same that the initial burden to prove himself a workman is upon the person approaching the Labour Court/NIRC claiming himself to be a workman, which the petitioner miserably failed.

7. Keeping in view the principle laid down in the above mentioned case laws, I am of the considered opinion that the petitioner being Banking Services Officer BSO (MG-11) does not fall within the definition of workman, hence, he cannot invoked the jurisdiction of this Commission. When this Commission has no jurisdiction to entertain the present petition, then it would be a futile exercise to touch the merits of the case, hence the instant petition is returned to the petitioner for its presentation before the appropriate forum, if so desires. No orders as to costs. File be consigned to record room.

(Muhammad Sirajul Islam Khan)
Member

Announced in Open Court

27.07.2023