

Form No.HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

ICA No. 18654 of 2023

Mst. Asma Abdul Waris

vs.

State Bank of Pakistan & 04 others

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary
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20.03.2023 Mr. Nadeem Ahmad Sheikh, Advocate for appellant.

Through this Intra Court Appeal, filed under Section 3 of the Law Reforms Ordinance, 1972, the appellant has called in question order dated 22.02.2023 passed by learned Single Judge of this Court, whereby constitutional petition (WP No.12119 of 2023) filed by the appellant has been dismissed.

2. It is contended by learned counsel for the appellant that the learned Single Judge did not appreciate that in similar matters, appeals in service matter against orders passed by the different Banks had been entertained by the State Bank of Pakistan and relief was granted to the employees relating to their reinstatement in service and the appellant has been discriminated against by order passed by State Bank of Pakistan dated 09.01.2023 declining to interfere in the orders passed by respondent No.2/bank due to lack of jurisdiction.

3. In her constitutional petition, the appellant has prayed as under:

“In view of the above, it is, therefore, most respectfully prayed that a writ may kindly be issued in favor of the petitioner and against respondent No.1 while setting aside the impugned

order dated 09.01.2023 and directing respondent No.1 to decide the representation of the petitioner at the par with Liaqat Ali case for the sake of justice and equity.”

4. The order dated 09.01.2023 passed by State Bank of Pakistan, challenged through the constitutional petition, is reproduced below:

“1. This representation has been heard by the State Bank of Pakistan (hereinafter referred to as Respondent No. 1) in compliance with the directions issued by the Hon'ble Lahore High Court, Lahore passed vide Order dated 17.11.2022 in ICA NO. 72454 of 2022 titled 'Mst. Asma Abdul Waris vs State Bank of Pakistan, etc'.

2. The Petitioner, Ms. Asma Abdul Waris, claims that she joined United Bank Limited (hereinafter referred to as Respondent No. 2) as Assistant Vice President/Branch Manager on 01.04.2017. She was promoted as Vice President in March 2022 but her promotion was withheld due to an ongoing inquiry for opening of fake bank accounts. An inquiry dated 13.05.2022 was conducted against her and she was unlawfully terminated from service by the Respondent No. 2. The Petitioner alleged that she also made representations to Respondent No. 1 to exercise its powers for her reinstatement, however, Respondent No. 1 did not exercise its powers.

3. It is pertinent to mention that the State Bank of Pakistan does not intervene in HR matters of employees of banks as held by the Hon'ble courts in case of Noor Badshah VS United Bank limited and others (2015 PLC (C.S.) 468 Lahore High Court, Lahore) and MCB Bank Limited VS State Bank of Pakistan and others (2010 CLD 338 Lahore High Court, Lahore).

4. Nevertheless, in compliance with the Order dated 17.11.2022 issued by the Hon'ble Lahore High Court, the matter was fixed for hearing on 30.12.2022 at SBP Banking Services Corporation office Faisalabad which was attended by the Petitioner and the representative of Respondent No. 2. During hearing the Petitioner and

Respondent No. 2, explained the issue However, the Petitioner was informed of the aforementioned legal limitations of the State Bank of Pakistan. Further, it was also communicated to the Petitioner that as per available records, no application/email is pending with Respondent No.1.

5. In view of foregoing, the subject petition stands dispose of.”

5. In the aforesaid order, it has specifically been mentioned that State Bank of Pakistan does not intervene in HR matters of employees of Banks as it has no jurisdiction to entertain the same in view of the principles laid down by Lahore High Court in the judgments reported as *Noor Badshah vs. United Bank Limited and others* (2015 PLC (C.S.) 468 and *MCB Bank Limited vs. State Bank of Pakistan and others* (2010 CLD 338). The operative part of judgment of Noor Badshah’s case, in which case of MCB Limited has also been referred, is reproduced below:-

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12. *In order to answer this question, it is necessary to determine whether the State Bank of Pakistan (SBP) has failed to perform any of its statutory and legal obligations regarding petitioners service disputes i.e. increments and recalculation of their pensionary benefits. As regards the authority and the role of SBP is concerned, SBP is only a regulatory authority for all the Banks operating in Pakistan and its functions are contemplated under the Banking Companies Ordinance, 1962 (Ordinance 1962) with respect to the activation and operation of banks and for carrying out purpose of Banking Companies Ordinance, 1962 and matters ancillary thereto. Perusal of various provision of Banking Company Ordinance, 1962 shows that the dispute between the petitioners and respondent Bank is not covered under the provision of Ordinance, 1962 and that such regulatory role and control of SBP shall not clothe the Bank with the status of*

"person" or "authority" performing function in connection with affairs of Federation. Learned counsel for the petitioner has not referred any statutory provision under which the State of Bank being a regulator have a statutory duty and obligation to direct the Bank to perform its functions in respect of its employees term and condition of service. In similar situation, while dealing with question of maintainability of writ petition against Muslim Commercial Bank, in case UIMCB Ltd. through Authorized representative v. State Bank of Pakistan through Governor and 2 others (2010 CLD 338), it was held as under:---

"Analyzing the question with reference to section 41 of the Ordinance, it may be held that the State Bank has the power to give direction to the banks, if it is in the public interest and /or to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interest of the banking company, or to secure, the proper management of any banking company generally (underlined to supply emphasis). This power of the State Bank of Pakistan is not unlimited omnipotent, unbridled rather is circumscribed by the condition of being in the public interest, though public interest cannot always be constructed to mean all the people or most of the people, but obviously so many of them as contradistinguishes them from the few. Only for the reason that a few ex-employees of the MCB have formed a registered body would not mean to confer the petitioner with the status of the public whose interest should be served in terms of section 41(a); moreover, any impugned action or inaction on part of the MCB, does not fall within the concept of preventing the affairs of the banking company being conducted detrimental to the interest of the depositors, or prejudicial to the interest of the banking company, or for securing the proper management thereof, which again is the prerequisite for the exercise of the power of the State Bank of Pakistan on account of section 41(b)(c). The issue raised by the petitioner in this case

examined from any provision. Subsection (2) of section 41 of the Ordinance, also does not come to rescuer the petitioner as the directions, guidelines and instructions contemplated by this subsection are with respect to the activities and operations of the banks and the institutions for carrying out the purposes of the Ordinance and the matters ancillary thereto. The learned counsel for the petitioner has not been able to substantiate, if the grievance voiced in the petition is covered by section 41(2) of the Ordinance, therefore, I am quite clear in my view that no direction in the constitutional jurisdiction can be issued to the State Bank of Pakistan for further directing the MCB to perform any of the acts as are mentioned in the section."

The august Supreme Court in Abdul Wahab's case supra also held as under:---

"As regards the authority and the role of the SBP (in the above context), SBP is only a regulatory body for all the banks operating in Pakistan in terms of Banking Companies Ordinance, 1962 and suffice it to say that such regulatory role and control of SBP shall not clothe the Bank, with the status of a person or the authority performing the functions in connection with the affairs of the Federation. Rather it shall remain to be a private entity".

In view of above discussion, the SBP having not failed to perform any of its statutory obligation towards petitioner is not a necessary party in this petition and no direction can be issued to SBP for release of increments or recalculation of pensionary benefits of the petitioners."

6. The perusal of the afore referred judgment shows that the State Bank of Pakistan although supervises functioning of other banks yet it has got no jurisdiction in the service matters (HR matters) of employees of the said banks, however, the appellant seeks direction to State Bank of Pakistan to decide her representation as it is

claimed by learned counsel for the appellant that some orders were passed in the case of similarly placed persons, wherein appeals/representations were entertained by State Bank and decided. Refers to order dated 04.07.2017 passed in the case of “Liaqat Ali vs. UBL” and order dated 21.08.2017 passed in the case of “Ijaz Hussain vs. UBL” relating to the same bank, however, it is noted that in the said orders question of jurisdiction of the State Bank of Pakistan to entertain appeals in service matters of employees of banks had not arisen and had not been decided, whereas in the present case, the State Bank has specifically raised the question relating to maintainability of appeal by relying upon the afore referred judgments of this Court, therefore, question of discrimination does not arise.

7. It is contended by learned counsel for the appellant that State Bank had jurisdiction to entertain appeal in terms of Section 11 of the Banking Companies Ordinance, 1962 (“**Ordinance**”), which is reproduced below:

“11. Prohibition of employment of managing agents and restrictions on certain forms of employment.--- (1) No banking company,---

(a) shall employ or be managed by a managing agent; or

(b) shall employ or continue the employment of any person—

(i) who is, or at any time has been, adjudicated insolvent or has suspended payment, or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude; or

(ii) whose remuneration or part of whose remuneration takes the form of commission or a share in the profits of the company:

Provided that nothing contained in sub-clause (ii) shall apply to the payment by a banking company of—

- (a) any bonus in pursuance of a settlement or award arrived at or made under any law relating to industrial disputes or in accordance with any scheme framed by such banking company or in accordance with the usual-practice prevailing in banking business; or
- (b) any commission to any broker (including guarantee broker), cashier-contractor, clearing and forwarding agent, auctioneer or any other person, employed by the banking company under a contract otherwise than as a regular member of the staff of the company; or
- (c) shall be managed by any person,---
- (i) who is a director of any other company not being a subsidiary company of the banking company or a company registered under section 26 of the Companies Act, 1913 (VII of 1913), except with the previous approval of the State Bank; or
- (ii) who is engaged in any other business or vocation; or
- (iii) who has a contract with the company for its management for a period exceeding five years at any one time:

Provide that any contract with the company for its management may be renewed or extended for a further period not exceeding five years at a time if and so often as the directors so decide:

Provided further that nothing in this clause shall apply to a director, other than the managing director, of a banking company by reason only of his being such director.

(2) Where a person holding the office of a chairman or director or manager or chief executive officer (by whatever name called) of a banking company is, or has been found any tribunal or other authority (other than a criminal court) to have contravened the by provision of any law and the State Bank is satisfied that the contravention is of such a nature that the association of such person with the banking company is or will be detrimental to the interest of the banking company or its depositors or otherwise undesirable, the State Bank may make an order that person shall cease to hold the office with effect from such date as may be specified therein and thereupon, that office shall, with effect from the said date, become vacant.

(3) Any order made under sub-section (2) in respect of any person may also provide that he shall not, without the previous permission of the State Bank in writing, in any way, directly or indirectly, be concerned with, or take part in the management of the banking company or any other banking company for such period not exceeding five years as may be specified in the order.

(4) No order under sub-section (2) shall be made in respect of any person unless he has been given an opportunity of making a representation to the State Bank against the proposed order:

Provided that it shall not be necessary to give any such opportunity if, in the opinion of the State Bank, any delay would be detrimental to the interests of the banking company or its depositors.

(5) Any decision or order of the State Bank made under this section shall be final for all purposes.”

Suffice it to say that aforesaid Section deals with prohibition of employment of managing agents and restrictions on certain forms of employment and does not relate to the service matters of other employees of banks or their cases about terms and conditions of service and termination, consequently the reliance of the counsel for appellant on the said Section is misplaced. Moreover, in Noor Badshah case (supra) it has also been held that power of State Bank to give directions provided in Section 41 of the Ordinance is not applicable to service matters of bank employees. The learned Single Judge considered the said aspect of the matter in the impugned order relating to application of Section 11 of the Ordinance while dismissing the constitutional petition of the appellant, relevant portion of which is reproduced below:

“Learned counsel for the petitioner submits that since the inquiry against the petitioner was conducted pursuant to a complaint filed before State Bank of Pakistan, the fate of her termination

was also to be decided by the State Bank of Pakistan. Adds that the petitioner has been made to suffer for the mis- deeds of the others. Further adds that according to Section 11 of the Banking Companies Ordinance, 1962, the said bank has authority to regulate the matters relating to the employment of managing agents and restrictions on certain forms of employment, hence the impugned order is not sustainable.

3. After hearing learned counsel for the parties and going through the documents appended with this petition, I have noted that admittedly the petitioner was an employee of the United Bank Limited and she was terminated from service while serving as Manager, meaning thereby she was not the employee of the State Bank of Pakistan, hence it had no jurisdiction to deal with the matter relating to the terms and conditions of service of the petitioner.

*4. Now coming to the plea of the petitioner that in terms of section 11, *ibid*, the State Bank of Pakistan was to decide the fate of representation of the petitioner, I am of the view that the said provision does not empower the State Bank of Pakistan to deal with any matter relating to terms and conditions of service of an employee of a private bank, hence the said provision does not come to the rescue of the petitioner.*

5. Insofar as the contention of learned counsel for the petitioner that since action was taken against the petitioner pursuant to a complaint filed before the State Bank of Pakistan is concerned, suffice it to note that any person can file complaint before the State Bank of Pakistan complaining mal-administration on the part of a banking company but the said fact does not empower the State Bank of Pakistan to deal with any matter relating to terms and conditions of service of an employee of a private bank.

6. For what has been discussed above, I see no force in this petition, which is accordingly dismissed in limine.”

8. The learned Single Judge rightly concluded that the State Bank of Pakistan had no jurisdiction to hear and decide service matters of employees of Banks such as the appellant's case and where a jurisdiction is not vested by

law, the courts would not ordinarily confer said jurisdiction on any authority for the reason that jurisdiction could not be conferred by parties even by consent. Reliance in this regard may be placed upon the judgments reported as 2022 SCMR 2044 (**EDEN BUILDERS (PVT.) LIMITED, LAHORE versus MUHAMMAD ASLAM and others**) and PLD 2008 Lahore 175 (**Water And Power Development Authority through Chairman, WAPDA and 4 others versus Abdul Shakoore through Legal Heirs**). Besides it is settled by now that where a thing is required to be done in a particular manner, it must be done in the said manner and not otherwise as the same would be against the intention of legislature and not sustainable. Reliance in this behalf may be placed on 2022 SCMR 2080 (**Mall Development (Pvt.) Ltd. versus Waleed Khanzada and others**), wherein it is mentioned that when the law provides a particular manner of doing things, they must be done in that manner or not at all. Anything done to the contrary would be illegal, ex-facie erroneous and unsustainable in law. Same principle has been laid down in judgments reported as 2021 SCMR 1979 (**Attaullah Khan versus Ali Azam Afridi and others**), PLD 2018 SC 189 (**Muhammad Hanif Abbasi versus Imran Khan Niazi**), 2017 SCMR 1427 (**The Collector of Sales Tax, Gujranwala versus Super Asia Mohammad Din and Sons**), 2016 CLD 2025 (SC) = PLD 2016 SC 995 (**Shahida Bibi and others versus Habib Bank Limited and others**), PLD 2013 SC 255 (**Muhammad Anwar and others versus Mst. Ilyas Begum and others**), 2014 SCMR 1015 (**Zia Ur Rehman versus Syed Ahmed Hussain and others**), PLD 2011 SC 512 (**Khalil-ur-Rehman and another versus Dr. Manzoor Ahmed and**

others) and 2007 SCMR 1086 (*Muhammad Akram versus Mst. Zainab Bibi*).

9. In view of what has been discussed above, the impugned order passed by learned Single Judge is in consonance with the judgments earlier passed by this Court as well as law on the subject and no illegality, jurisdictional defect or mis-reading of record has been pointed out in the said well-reasoned order for us to warrant any interfere in the same.

10. For what has been discussed above, this appeal being devoid of any merit is *dismissed*.

(CH. MUHAMMAD IQBAL)
JUDGE

(MUZAMIL AKHTAR SHABIR)
JUDGE

*naveed

APPROVED FOR REPORTING: