JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1371 of 2021
Zohra Jabeen
Versus
First Woman Bank and others

Dates of Hearing:	20.05.2021, 10.06.2021, 24.06.2021 and 05.08.2021
Petitioner by:	Mr. Mansoor Ahmad, Advocate
Respondents by:	Mr. Shahid Anwar Bajwa, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Mst. Zohra Jabeen, impugns the order dated 11.08.2020 passed by the learned Full Bench, National Industrial Relations Commission **("N.I.R.C.")**, allowing the appeal filed by respondent No.1, First Women Bank **("F.W.B.")**, against the order dated 25.09.2019 passed by the learned Member, N.I.R.C. Vide the said order dated 25.09.2019, the learned Member, N.I.R.C. allowed the petitioner's grievance petition against her dismissal from service, and respondent No.1 was directed to reinstate her in service with full back benefits.

2. The facts essential for the disposal of this petition are that on 17.01.2006, she was appointed as an Assistant in F.W.B. on regular basis. On 25.06.2009, she was promoted to Officer Grade-III. From 2009 to 2016, she worked as a cashier at the *Chandi Chowk* Branch of F.W.B.

3. On 05.11.2015, the petitioner was sent on relieving duty to F.W.B.'s branch in G-9/3, Islamabad for a period of three days. While she was at the said branch, on 06.11.2015, a cheque for an amount of Rs.4,05,567/- was presented for deposit in the account of Muhammad Anwar. There was another account holder in the said branch by the name of M. Anwar. The petitioner credited the said amount in the account of M. Anwar instead of Muhammad Anwar. This error was discovered in March 2016.

4. On 29.04.2016, F.W.B. issued a *"letter of charge"* to the petitioner wherein she was accused of (i) having posted a number of wrong entries with *malafide* intention, one of them amounting to

Rs.4,05,567/- credited on 06.11.2015 in the account No.0026009467720001 of M. Anwar which should have been credited to account No.0026008954520001 of another account holder by the name of Muhammad Anwar, (ii) borrowing Rs.56,000/- from Mr. Nadir Khan Durrani and Rs.5,000/- from Malik Kashif Noman, who are customers of the bank, and (iii) being absent without leave since 15.04.2016. The petitioner was called upon to explain as to why disciplinary action should not be taken against her.

5. In her reply dated 06.05.2016, the petitioner explained that she had erroneously credited the cross cheque for Rs.4,05,567/- in a account of M. Anwar. She further explained that on her request M. Anwar, in whose account the said amount had been erroneously credited, returned Rs.3,72,000/- and committed to return the balance amount in the near future. She admitted to have borrowed money for her domestic needs from Rahbar Trust Foundation but not from any of F.W.B.'s customers. The petitioner also explained that she had not been able to attend the office due to tension which had also caused severe skin allergy, and that she had submitted a medical certificate in support of the said assertion.

6. The inquiry report dated 01.06.2016 shows that the charges against the petitioner were read over to her. Other than the charge of borrowing money from account holders of F.W.B., she admitted the remaining two charges levelled against her. The conclusion of the Inquiry Officer was that the petitioner was responsible for bringing a bad name to F.W.B. and that her professional competence and integrity was substandard. All the charges levelled against her were found to have been proved. Vide letter dated 28.06.2016, the penalty of dismissal from service was imposed on her. On 27.07.2016, the petitioner issued a grievance notice under Section 33 of the Industrial Relations Act, 2012 ("I.R.A.") to F.W.B. seeking the withdrawal of the said dismissal order. Vide letter dated 16.08.2016, F.W.B. turned down the request made by the petitioner in her grievance notice.

7. On 19.09.2016, the petitioner filed a grievance petition under Section 33 of the I.R.A. before the N.I.R.C. The said petition was

contested by F.W.B. Vide order dated 25.09.2019, the learned Member, N.I.R.C. allowed the said petition and reinstated the petitioner with full back benefits. Vide order dated 11.08.2020, the learned Full Bench, N.I.R.C. allowed F.W.B.'s appeal; the learned Member, N.I.R.C.'s order was set aside; and the petitioner's grievance petition against her dismissal from service was dismissed. The said order dated 11.08.2020 has been assailed by the petitioner in the instant writ petition.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:-

8. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the deposit of the cheque in the account of M. Anwar instead of Muhammad Anwar in whose account the cheque was supposed to be deposited was a *bonafide* human error and not the result of any wrongdoing or *malafides* on the petitioner's part; that no sooner that the said error was discovered, the petitioner substantially remedied the loss by recovering Rs.3,72,000/- from M. Anwar in whose account Rs.4,05,567/- were erroneously credited; that after the said recovery, Rs.3,72,000/- were credited in the account of Muhammad Anwar in whose account the amount had to be deposited in the first place; that M. Anwar, in whose account the amount had been erroneously credited, promised to return the remaining amount of about Rs.33,000/-; that the remaining amount had been deposited in Muhammad Anwar's account by the Branch Manager; that the Branch Manager had accompanied the petitioner when she requested M. Anwar to return the amount erroneously credited in his account; that in the reply to the letter of charge, the petitioner admitted her mistake; that no loss had been caused to F.W.B. or any of its customers due to any act or omission on the petitioner's part; that the petitioner had not been charged with having doubtful integrity or having committed professional misconduct; that the petitioner was not even alleged to have been casual in discharge of her duties; and that in the petitioner's sixteen years of service with F.W.B., this is the only mistake committed by her.

9. Learned counsel for the petitioner further submitted that a cashier does not have the power to encash a cheque or entertain a deposit slip if the amount exceeds Rs.3,00,000/- unless he/she is authorized by the Operations Manager or the Branch Manager; that the major penalty of dismissal from service was imposed on the petitioner on the basis of a photocopy of a voucher, which was not duly exhibited and is not a part of the evidence; that the provisions of the *Qanun-e-Shahadat* Order, 1984 are applicable to the proceedings before the N.I.R.C.; that it is well settled that a photocopy of a document, which is not a primary but a secondary document, is inadmissible in evidence; that F.W.B.'s witness, Mrs. Rozeena Raja, in her cross-examination, admitted that the deposit slip and the original cheque had not been produced in evidence; that the petitioner had submitted a leave application but the same had not been processed by F.W.B.; that the finding of tampering with the medical certificate could not have been made without summoning the Doctor who had supposedly denied his handwriting of the medical certificate; that the petitioner had not taken any loan from any of F.W.B.'s customers but from the Rahbar Trust Foundation; that the petitioner had a clean past and could not have been dismissed from service on a solitary *bonafide* error; and that the impugned order dated 11.08.2020 passed by the learned Full Bench, N.I.R.C. is patently illegal and suffers from misreading of evidence.

<u>CONTENTIONS OF THE LEARNED COUNSEL FOR F.W.B.</u>:-

10. On the other hand, learned counsel for F.W.B. submitted that in the letter of charge dated 29.04.2016, it was alleged that the petitioner was absent without leave since 15.04.2016 and that she had neither applied for leave nor had any leave been granted to her; that the said letter was issued more than one month after the petitioner's absence from duty; that in the reply to the said letter of charge, the petitioner did not say that she had submitted any leave application; that this amounts to an admission that she did not submit an application for leave; that an inquiry was conducted against the petitioner on 26.05.2016 and during the inquiry proceedings, she accepted the charge of being absent without leave since 15.04.2016; that by accepting the said charge, the petitioner

impliedly admitted that she had not applied for leave; that the petitioner claims to have applied for leave from 18.04.2016 to 18.05.2016 but in her grievance notice as well as grievance petition, she did not plead that she had submitted a leave application; that the leave application annexed by the petitioner at page 86 of this petition is not in F.W.B.'s record; that during the inquiry, the petitioner did not cross-examine F.W.B.'s representative on her leave status; that during the inquiry, the petitioner had admitted that she remained absent but had submitted a leave application to Ms. Zohra Usmani, HR Officer at the Area Office, Islamabad, supported by a medical certificate; that the medical certificate relied upon by the petitioner is undated; that the petitioner did not produce the Doctor who had allegedly authored the medical certificate to verify the same; and that during the inquiry proceedings, F.W.B.'s representative stated that she had visited the *Benazir Bhutto* Hospital and met Dr. Qudus, Skin Specialist, who denied having written *"avoid sunshine and one month's rest"* on the medical certificate.

11. Learned counsel for F.W.B. further submitted that in her cross-examination during the proceedings before the N.I.R.C., the petitioner deposed that she had sent her leave application during the inquiry proceedings; that the inquiry notice was issued to the petitioner on 17.05.2016 and the inquiry proceedings started on 26.05.2016, therefore, on her own showing, the petitioner submitted the leave application after 26.05.2016; and that in her cross-examination, the petitioner deposed *inter alia* that she does not remember the date of the leave application, and that there is no date mentioned on the leave application (Mark-R/K).

12. Furthermore, it was submitted that it is an admitted position that the petitioner is a worker as defined in Section 2(xxxiii) of the I.R.A.; that under Standing Order No.8(2) in the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 **("the 1968 Ordinance")**, a leave application can be submitted on the day the worker is to proceed on leave but not subsequently; that under Standing Order No.15(3)(e) of the said Ordinance, *"absence without leave for more than ten days"* is treated as misconduct; that unlike

the Civil Servants Act, 1973, there is no distinction in the penalty that can be imposed on misconduct under the 1968 Ordinance; and that since the petitioner had admitted two of the three charges against her, the penalty of dismissal from service was correctly imposed on her. Learned counsel for F.W.B. prayed for the writ petition to be dismissed.

LEARNED COUNSEL FOR THE PETITONER'S SUBMISSIONS IN REJOINDER:-

13. In rejoinder, learned counsel for the petitioner submitted that F.W.B. has its own leave rules under which an employee is entitled to thirty days' leave for every completed year of service; that the petitioner's absence from duty after 15.04.2016 could be treated as part of her leave entitlement; that the cross-examination of the bank's witness, Mrs. Rozeena Raja, shows that the petitioner had submitted a leave application but the same had neither been approved nor rejected; that she had also deposed that the leave application was accompanied with a prescription and that she had been authorized to check whether the prescription was forged or not; that the said testimony makes it abundantly clear that the petitioner had submitted a leave application but the same had not been decided by F.W.B.; that F.W.B. is in the best position to state when the leave application was submitted; that F.W.B. has its own policy for disciplinary action against its employees which does not provide for dismissal from service on the ground of absence without leave; and that the penalty imposed on the petitioner by F.W.B. and upheld by the learned Full Bench, N.I.R.C. is unduly harsh and disproportionate to the charges against her. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the order dated 25.09.2019 passed by the learned Member, N.I.R.C. to be restored.

14. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 7 above, and need not be recapitulated.

15. The petitioner was alleged to have committed *"gross misconduct"* on the basis of the following three charges levelled against her in the letter of charge dated 29.04.2016 which are reproduced herein below with all grammatical errors:-

> ***"1. That you unauthorized posted a number of wrong entries with malafide intention, one of them is amounting to Rs.405,567/- credited in the account No.0026009467720001 title of account M. Anwar which should have been credited to A/c No.002600895452001 title of account Mr. Mohammad Anwar / Idrees Anwar on 6th November 2016.***
>
> ***2. It has also been brought in to the notice of the bank that you have been borrowed money from customers/account holder of the Bank. The details of a few unauthorized borrowing from customers are stated as under:***
>
> > ***(i) Rs.56,000/- from Mr. Nadir Khan Durrani of Asghar Agencies in the month of January, 2016.***
> > ***(ii) Amount of Rs.5000/- from Mr. Malik Kashif Noman holder of account no.001801264042001.***
>
> ***3. It is further reported against you that you are absent without leave from your duty since April 15, 2015. Neither you applied for any leave nor any leave has been granted to you. Hence you are being marked absent without leave since 15.04.2015."***

<u>DEPOSIT OF RS.405,567/- IN THE ACCOUNT OF M. ANWAR INSTEAD OF MUHAMMAD ANWAR</u>:-

16. In her reply dated 06.05.2016 to the said letter of charge, the petitioner admitted depositing Rs.405,567/- in M. Anwar's account instead of Muhammad Anwar's but asserted that she had done so erroneously. She also asserted that she along with the Branch Manager were able to recover Rs.372,000/- from M. Anwar.

17. In the letter of charge dated 29.04.2016 issued by F.W.B. to the petitioner, it was alleged that the charges against her constituted acts of *"gross misconduct"* on her part. F.W.B.'s letter dated 28.06.2016 whereby she was dismissed from service also provides in explicit term that the petitioner had been *"found guilty of having committed acts of misconduct."*

18. Standing Order No.15(4) of the 1968 Ordinance prevents an employer from dismissing a workman or worker from service on the ground of misconduct without due process, i.e. an independent inquiry before dealing with the charges. Standing Order 15(3) of the 1968 Ordinance provides that the following acts and omissions shall be treated as misconduct:-

"(a) wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;
(b) theft, fraud, or dishonesty in connection with the employer's business or property;
(c) willful damage to or loss of employer's goods or property;
(d) taking or giving bribes or any illegal gratification;
(e) habitual absence without leave or absence without leave for more than ten days;
(f) habitual late attendance;
(g) habitual breach of any law applicable to the establishment;
(h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;
(i) habitual negligence or neglect of work;
(j) frequent repetition of any act or omission referred to in clause (1);
(k) striking work or inciting others to strike in contravention of the provisions of any law, or rule having the force of law; and
(l) go-slow."

19. The learned Full Branch, N.I.R.C., while reversing the decision of the learned Member, N.I.R.C. did not determine whether the petitioner's admitted act of depositing the cheque in the account of a wrong account holder amounted to *"misconduct"* under Standing Order No.15(3) of the 1968 Ordinance. The letter of charge and the letter of dismissal do not specify any sort of misconduct that the petitioner had committed. The deposit of an amount in the account of a wrong account holder could at best be *"habitual negligence or neglect of work."* In the case of Saifi Development Corporation Ltd. Vs. Workers Union (PLD 1965 Karachi 347), the Hon'ble Mr. Justice Wahiduddin Ahmed (as he then was) after making reference to Standing Order No. 13(3)(i) of the Industrial and Commercial (Standing Orders) Ordinance, 1960, which is in *pari materia* to Standing Order No.15(3)(i) of the 1968 Ordinance, interpreted the expression *"habitual negligence or neglect of work"* in the context of misconduct, in the following terms:-

> ***"It appears to me that the view of the learned Industrial Court in this respect is perfectly correct because the words "negligence or neglect of work" are not used in disjunctive sense. There are very good ground to hold so. Firstly, neglect of work is also a kind of negligence and being of a lesser kind would be covered by it, which has a broader meaning. Secondly, it is a well recognized principle of law that to carry out the intention of the Legislature, it is occasionally found necessary to use the conjunction "or" and "and" one for the other. Since the sub-clause in question is penal, I am inclined to construe it favourably to the employees. I would, therefore, hold that the neglect of work mentioned in this subsection must be of a habitual nature. I am in respectful agreement with the learned Chairman of the Industrial Court that***

> ***one single instance of sleeping while on duty cannot be termed as habitual negligence or neglect of work so as to bring it within the mischief of the above-mentioned Standing Order."***

20. In the said report, it was held that *"a single instance of negligence or neglect of work cannot bring the case within the mischief of Standing Order 13(3)(i)."* Additionally, in the case of OPAL Laboratories (Pvt.) Ltd. Vs. Raheela (1995 PLC 451), the Labour Appellate Tribunal, Sindh, held as follows:-

> ***"Under Standing Order 15(3) all the workers were dismissed from service for misconduct. The only clause applicable to their case is Standing Order 15(3)(i) "habitual negligence and neglect of work." One or two instances of neglect during the entire career cannot be regarded as "habitual." It means neglect of work by habit which connotes continuous course of conduct."***

21. Ordinarily, ill motive or *mens rea* are not necessary concomitants of the expression "misconduct" in context of disciplinary proceedings. There can be misconduct without any misbehaviour involving some form of guilty mind or *mens rea*. For instance gross or habitual negligence in performance of duty may not involve *mens rea* but may still constitute misconduct for disciplinary proceedings. However, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct under Standing Order No.15 of the 1968 Ordinance unless it is habitual and recurring or unless the consequences directly attributable to negligence cause damage to the employer in terms of reputation or otherwise.

22. Although in the letter of charge, the petitioner was specifically alleged to have made a deposit in the account of a wrong account holder with a *"malafide intention,"* allegations of *mala fides* are more easily made than proved. In the case of Federation of Pakistan Vs. Saeed Ahmad Khan (PLD 1974 SC 151), it was held as follows:-

> ***"'Mala fides' literally means 'in bad faith'. Action taken in bad faith is usually action taken maliciously in fact, that is to say, in which the person taking the action does so out of personal motives either to hurt the person against whom the action is taken or to benefit one-self. Action taken in colourable exercise of powers, that is to say, for collateral purposes not authorized by the law under which the action is taken or action taken in fraud of the law are also mala fide. . . . ."***

23. Furthermore, in the case of Tabassum Shahzad Vs. I.S.I. (2011 SCMR 1886), it was held *inter alia* that malice and *mala fide* are questions of fact which have to be proved by leading evidence, and that vague allegation of *mala fides* would be of no avail to a party.

24. The onus to prove *mala fides* lies on the person who alleges *mala fides*. It is not F.W.B.'s case that the petitioner had committed the said act in collaboration or collusion with M. Anwar or even that the petitioner and M. Anwar knew each other. It ought to be borne in mind that when the deposit in the account of a wrong account holder was made, the petitioner was not performing duties at her regular place of posting but was on relieving duty at another branch of F.W.B. It is also not F.W.B.'s case that the petitioner was the beneficiary of any of the amount erroneously deposited in the account of M. Anwar. There is nothing on the record to show that the petitioner was censured for any such act or omission during her entire career of 16 years with F.W.B. Therefore, a safe inference would be that F.W.B. was unable to prove that the petitioner was actuated by *mala fide* motive or bad faith in depositing the said amount in the account of M. Anwar. The alleged error in the petitioner's act of depositing an amount in the account of an account holder whose name is similar to the account holder in whose account the amount should have been deposited cannot be held to reflect on the petitioner's integrity.

25. No financial loss or loss of reputation can be said to have been caused to F.W.B. by the petitioner's act since the entire amount erroneously deposited in the account of M. Anwar was subsequently deposited in the account of Muhammad Anwar. An amount of Rs.3,72,000/- was returned by M. Anwar whereas Rs.33,000/- was deposited by the Branch Manager. There is also nothing on the record to show that Muhammad Anwar had closed his account with F.W.B. due to this incident.

26. The learned Member N.I.R.C. had taken the view that the petitioner's error was not so grave as to invite the extreme penalty of dismissal from service. While reversing the decision of the learned Member N.I.R.C., the learned Full Bench N.I.R.C. did not

give any finding as to how the penalty imposed on the petitioner was proportionate to the act of negligence committed by her. In the charge, *"gross misconduct"* and "*mala fide intention*" was attributed to the petitioner but the learned Full Bench, N.I.R.C. misread the evidence by not appreciating that F.W.B. had failed to prove *mala fide* alleged to have been committed by the petitioner. When there is absolutely no evidence on record or otherwise giving rise to inference of dishonesty *mala fide*, an inferential finding holding a worker or workman guilty of misconduct for a solitary act of negligence would be totally arbitrary and perverse. In the case of Auqaf Department Vs. Secretary, Ministry of Religious Zakat, Usher and Minorities Affairs, Government of Pakistan, Islamabad (2009 SCMR 210), it was held that *"in regard to finding of fact recorded by the respondent writ of "certiorari" could only be issued, if in recording such findings, the respondent had acted on evidence which was legally inadmissible or had refused to accept admissible evidence or if the findings were not supported by any evidence at all."*

27. The learned Full Bench, N.I.R.C. could not have returned a finding that the petitioner had committed misconduct by depositing the amount in the account of the wrong account holder without determining whether such act came within the meaning of misconduct under Standing Order No.15(3) of the 1968 Ordinance. In the case of Millat Tractors Limited Vs. Punjab Labour Court No.3, Lahore (1996 SCMR 883), the Hon'ble Supreme Court upheld the order for reinstatement in service of a workman whose services had been terminated on the allegation of misconduct. The workman in the said case was reinstated in service because the act attributed to him did not come within the meaning of misconduct as defined in Standing Order No.15(3) of the 1968 Ordinance.

28. In view of the above, I am of the opinion that the learned Full Bench, N.I.R.C.'s decision to reverse the learned Member, N.I.R.C.'s decision to allow the petitioner's grievance petition against her dismissal from service without determining whether the admitted error or negligence on the petitioner's part to deposit Rs.4,05,567/- in the account of M. Anwar instead of Muhammad Anwar constituted

misconduct under Standing Order No.15(3) of the 1968 Ordinance, is not sustainable and liable to be set aside.

BORROWING MONEY FROM F.W.B.'S CUSTOMERS:-

29. In the operative part of the learned Full Bench, N.I.R.C.'s order dated 11.08.2020, the only reference to the said allegation against the petitioner is in paragraph 11 of the said order, which is reproduced herein below:-

> ***"11. So far as the allegation of getting amount of loan is concerned, she also submitted her reply that her act was not related to her official duties."***

30. There is no finding whatsoever in the said order dated 11.08.2020 on whether the said charge had been proved against the petitioner. While reversing the decision of the learned Member, N.I.R.C., it was obligatory on the Full Bench, N.I.R.C., as an appellate forum, to give its findings on whether the penalty of dismissal from service imposed on the petitioner could have been justified on the said charge. If the learned Full Bench, N.I.R.C. had concurred with the learned Member, N.I.R.C. in allowing the petitioner's grievance petition with respect to the said charge, it ought to have expressly so mentioned in its order dated 11.08.2020.

ABSENCE FROM DUTY WITHOUT LEAVE:-

31. In paragraph 10 of the order dated 11.08.2020, the learned Full Bench, N.I.R.C. has recorded the petitioner's stance taken in her reply to the charge of absence from duty without leave. The said paragraph is reproduced herein below:-

> ***"10. Record shows that she also submitted her reply to another allegation of her absence from duty that she applied for leave on medical ground but same was not granted whereas medical leave could not be disallowed, therefore, the said allegations were also not sustainable."***

32. In paragraph 12 of the said order, the learned Full Bench, N.I.R.C. observed that a copy of the inquiry proceedings tendered in evidence by F.W.B. show that the petitioner had admitted the charge of absence from duty without leave. This admission became the sole ground for the learned Full Bench, N.I.R.C. to hold that the petitioner had committed misconduct. As can be gauged from the contents of paragraph 10 above, the learned counsel for F.W.B. addressed detailed and impressive arguments in support of the Full Bench,

N.I.R.C.'s decision to hold that the petitioner had committed misconduct by absenting herself from duty without sanctioned leave. However, this Court, while deciding whether or not to issue a writ of *certiorari,* cannot supplement the order of a tribunal with reasons that are not present in such an order.

33. In the case at hand, the petitioner's stance was that she had submitted a leave application but the same was neither allowed nor turned down by F.W.B. Ms. Rozina Raja, the Manager (Operations) of F.W.B., in her cross-examination, had *inter alia* deposed as follows:-

> ***"I do not remember the date of application for leave. There is no submission date on Mark R/K. Volunteer it is an un-approved application. It is correct that application Mark-K accompanied with prescription. It is correct that the leave application was on medical ground as sick leave. The Mark R/K the application was neither recommended nor rejected. Volunteer the prescription attached with the application is forged."***

34. The learned counsel for F.W.B.'s submission that the petitioner's leave application is not in the bank's record is not consistent with the aforementioned testimony of F.W.B.'s witness. The learned Member, N.I.R.C. had, in its order dated 25.09.2019, held *inter alia* that the petitioner had *"proved that she had submitted an application for leave, but availed the leave without waiting for approval."* For the learned Full Bench, N.I.R.C. to overturn the said findings of the learned Member, N.I.R.C., it was obligatory on the appellate forum to have given reasons for taking a different view from the original forum. Such reasons are nowhere to be found in the order dated 11.08.2020 passed by the learned Full Bench, N.I.R.C. In the case of Muhammad Majid Vs. Secretary, Ministry of Manpower and Overseas Employment, Islamabad (PLD 2017 Islamabad 19), this Court held as follows:-

> ***"The requirement to give reasons is equally applicable to appellate orders. The order disposing the appeal must indicate that there has been proper application of mind by the authority to all the pleas raised and the reasons for the decision are also to be explicit in the order itself."***

35. Whether or not the petitioner had applied for leave; the date of the leave application; whether F.W.B. was justified in not allowing or turning down the leave application; whether the petitioner's absence from duty without approval of her leave application justified the penalty of dismissal from service; or whether there was a forged

medical certificate attached to the leave application were all matters for the Full Bench, N.I.R.C. to consider and decide before overturning the decision of the learned Member, N.I.R.C. This Court, in exercise of its jurisdiction under Article 199 of the Constitution, cannot determine these questions, or in other words do what the learned Full Bench, N.I.R.C. was supposed to have done. The High Court in writ jurisdiction has full powers to do justice but cannot substitute its own decision for the decision of the tribunal below.

36. In view of the above, the instant petition is allowed; the impugned order dated 11.08.2020 passed by the learned Full Bench, N.I.R.C. is set aside; the matter is remanded to the learned Full Bench, N.I.R.C. for a decision afresh bearing in mind the observations made herein above. Since the dispute between the parties has been pending since more than five years, it is expected that the learned Full Bench, N.I.R.C. would decide F.W.B.'s appeal within a period of two months from the date of receipt of this judgment. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 27/08/2021

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**