JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.165 of 2020
Habib Bank Limited
Versus
Learned Full Bench, National Industrial Relations Commission and others

Dates of Hearing:	21.09.2023, 16.10.2023 and 26.03.2024.
Petitioner by:	M/s Muhammad Usama Rauf and Tariq Mahmood, Advocates.
Respondent by:	Mr. Muhammad Arif Khawaja, Advocate along with respondent No.2 in-person.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Habib Bank Limited (**"HBL"**), impugns the order dated 23.09.2019 passed by the learned Full Bench of the National Industrial Relations Commission (**"NIRC"**), Islamabad, whereby respondent No.2's appeal against the judgment dated 17.12.2007 passed by the learned Presiding Officer, Punjab Labour Court, Rawalpindi, was allowed. Furthermore, it was directed that respondent No.2, Muhammad Khan, be reinstated in service with all back benefits.

2. The record shows that on 24.08.2002 while respondent No.2 was serving as a Cashier at Hameed Branch, District Attock, he was issued a statement of allegations and charges. The allegation against respondent No.2 was that on 07.06.2002, while he was serving as Cashier Attock City Branch, he gave short payment to M/s Dong Fang Electric Corporation through cheque for an amount of Rs.23,599,600/-; that the cash was shipped through M/s Phoenix Armour which had been arranged and prepared by respondent No.2; that the cash shipped by respondent No.2 in such a way that resulted in the embezzlement of Rs.250,000/-. Respondent No.2 was alleged to have committed misconduct by misappropriating an amount of Rs.250,000/- through fraudulent means and committed dishonesty as well as breach of trust.

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3. Vide letter dated 17.09.2002 from HBL, Mr. Fazl-e-Hakim was appointed as Chairman of the Inquiry Committee with the mandate to conduct the inquiry into the allegations levelled against respondent No.2. The inquiry proceedings culminated in the issuance of a report which shows that the Inquiry Committee had found that respondent No.2 was guilty of the charges levelled against him and recommended the imposition of a major penalty of dismissal from service on respondent No.2 as well as the initiation of proceedings for the recovery of Rs.250,000/- from him. Thereafter, on 12.03.2003, HBL issued a notice to respondent No.2 under Section 3 of the Removal from Service (Special Powers) Ordinance, 2000 (**"RSO"**) calling upon him to show cause as to why the penalty recommended by the Inquiry Committee should not be imposed on him. On 24.03.2003, respondent No.2 submitted a reply to the said show cause notice. Vide letter dated 14.04.2003, HBL informed respondent No.2 that the competent authority had decided to dismiss him from service with immediate effect.

4. Aggrieved by the said letter dated 14.04.2003, respondent No.2 preferred an appeal before the Federal Service Tribunal (**"FST"**), which remained pending until its abatement through FST's letter dated 27.06.2006 on the basis of the law laid down by the Hon'ble Supreme Court in its judgment reported as Muhammad Mobeen-us-Salam Vs. Federation of Pakistan (PLD 2006 SC 602).

5. On 09.07.2006, respondent No.2 sent a grievance notice to HBL. Having not received any plausible response from HBL, respondent No.2 on 19.07.2006, filed a grievance petition under Section 42 of the Industrial Relations Ordinance, 2002 (**"the 2002 Ordinance"**) before the Punjab Labour Court challenging the letter dated 14.04.2003 whereby he had been dismissed from service. Respondent No.2 had also sought his reinstatement in service with full back benefits. HBL contested the said grievance petition by filing a reply thereto. After the recording of evidence, the

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Punjab Labour Court, vide judgment dated 17.12.2007, dismissed the grievance petition on the sole ground that the grievance notice had not been issued by respondent No.2 within the limitation period provided by law.

6. Aggrieved by the said judgment dated 17.12.2007, respondent No.2 preferred an appeal to the High Court under Section 47(3) of the 2002 Ordinance. The Industrial Relations Ordinance, 2008 was enacted on 06.12.2008 which resulted in the constitution of the Labour Appellate Tribunals. Consequently, the appeal filed by respondent No.2 was transmitted to the Punjab Labour Appellate Tribunal through transfer order dated 26.01.2009. Vide judgment dated 07.05.2014, the Punjab Labour Appellate Tribunal allowed respondent No.2's appeal and remanded the matter back to the Labour Court for a decision on the merits of the case. The said order dated 07.05.2014 was assailed by HBL in writ petition No.423/2015 before the Hon'ble Lahore High Court, Rawalpindi Bench. Vide order dated 25.03.2016, the said writ petition was allowed on the ground that after the establishment of the Industrial Relations Commission, the Punjab Labour Appellate Tribunal did not have jurisdiction in the matter. The matter stood remitted to the learned Full Bench, NIRC, which vide order dated 23.09.2019 allowed respondent No.2's appeal against the judgment dated 17.12.2007 passed by the Punjab Labour Court and directed that respondent No.2 be reinstated in service with all back benefits. The said order dated 23.09.2019 has been assailed by HBL in the instant writ petition.

7. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant writ petition, submitted that respondent No.2 was dismissed from service after subjecting him to a regular inquiry during which he had exercised his right to cross-examine the witnesses; that respondent No.2 was dismissed from service on 14.04.2003 but he had sent the grievance notice to HBL on 09.07.2006; that since the said grievance notice had been sent beyond the period prescribed for

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doing so under Section 46(1) of the 2002 Ordinance, the grievance petition filed by respondent No.2 should have been dismissed as incompetent; and that the learned Full Bench, NIRC, after holding that the non-issuance of a grievance notice was not fatal, should have remanded the matter to the learned Member, NIRC instead of deciding the appeal on merits. Learned counsel for the petitioner / HBL prayed for the writ petition to be allowed in terms of the relief sought therein.

8. On the other hand, learned counsel for respondent No.2 submitted that the learned Full Bench, NIRC, while giving a decision on merits, relied on the evidence that had been recorded by the Punjab Labour Court; that the penalty of dismissal from service was imposed on respondent No.2 under the provisions of the RSO which do not require the issuance of a grievance notice; that respondent No.2 had filed an appeal under Section 10 of the RSO before the FST which abated due to the law laid down in the case of Muhammad Mobeen-us-Salam Vs. Federation of Pakistan *(supra);* that soon after the abatement order dated 27.06.2006 was passed by the FST, respondent No.2 on 09.07.2006, sent a grievance notice to HBL; that the learned Full Bench, NIRC correctly held that respondent No.2's grievance petition could not be dismissed due to non-issuance of a grievance notice within a period of one month provided in Section 46(1) of the 2002 Ordinance of the order dated 14.04.2003 for respondent No.2's dismissal from service; that National Accountability Bureau had also inquired into the matter regarding the short funds and had cleared respondent No.2; that the missing amount of Rs.250,000/- has already been received by HBL; and that the impugned order dated 23.09.2019 passed by the learned Full Bench, NIRC does not suffer from any jurisdictional irregularity so as to warrant interference in the Constitutional jurisdiction of this Court. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

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9. 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 6 above and need not be recapitulated.

10. It is an admitted position that respondent No.2 was proceeded against and penalized under the provisions of the RSO. Therefore, he had filed an appeal against the order dated 14.04.2003 whereby he was dismissed from service before the FST under Section 10 of the RSO. It is also an admitted position that the provisions of the RSO do not require an employee to issue a grievance notice to his employer against an order of which he is aggrieved. Therefore, the non-issuance of a grievance notice prior to filing an appeal before the FST was not fatal.

11. It is only after the proceedings before the FST abated as a consequence of the law laid down by the Hon'ble Supreme Court in the case of Muhammad Mobeen-us-Salam Vs. Federation of Pakistan (*supra*) that respondent No.2 on 09.07.2006 sent a grievance notice to HBL. This notice has been sent within a period of 30 days of 27.06.2006 i.e. the date on which respondent No.2's appeal stood abated. Therefore, respondent No.2 could not have been non-suited for not having sent a grievance notice to HBL within 30 days of the letter dated 14.04.2003 whereby he was dismissed from service.

12. The learned Full Bench, NIRC, while deciding respondent No.2's appeal, had the benefit of the evidence recorded in the case by the Punjab Labour Court. It is on the basis of this evidence that the learned Full Bench, NIRC came to the conclusion that the said letter dated 14.04.2003 whereby respondent No.2 was dismissed from service was not sustainable. It was not obligatory on the learned Full Bench, NIRC to have remanded the matter to the learned Member, NIRC after holding that respondent No.2 could not be non-suited for not having sent a grievance notice within 30 days of 14.04.2003. It is well settled that an appeal is a

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continuation of the proceedings before the original forum, and therefore the appellate forum can decide the *lis* on merits as all the evidence is before the said appellate forum.

13. The learned Full Bench, NIRC's observation that neither the statements of witnesses were recorded in respondent No.2's presence nor were such witnesses cross-examined in his presence is not correct as respondent No.2, while giving evidence as PW-1, had deposed *inter alia* that at the time of the recording of the witnesses' statements, he was present before the Inquiry Committee and that he had cross-examined the bank manager.

14. As regards the merits of the case, the learned Full Bench, NIRC set-aside respondent No.2's dismissal order dated 14.04.2003 by holding as follows:-

> ***"... it is an admitted fact that the cash was handed over by the appellant to M/s Phoenix for delivery to M/s Dong Fang Electrical Corporation on 07-06-2002 and the manager of the Bank asked the cashier on the next day i.e 08-06-2002 to go to check the cash, while the cash had already been opened by the employees of the client for disbursement in absence of cashier. The time of inclusion of bundles of Rs.500 instead of Rs.1000 cannot be confirmed as there are three probable occasions vis one is the delivery of Kashmir Road Branch, second is appellant's Branch and third is client's premises. Therefore, the respondent could not prove that the bundles of Rs.500/- were placed by the appellant."***

15. It has not been demonstrated by the learned counsel for HBL that the above findings of the learned Full Bench, NIRC are contrary to the evidence on the record. Therefore, I have no reason to interfere with the impugned order dated 23.09.2019 passed by the learned Full Bench, NIRC. Consequently, the instant petition is dismissed with no order as to costs.

16. It may be mentioned that the learned Full Bench, NIRC ordered for respondent No.2's reinstatement in service with full back benefits subject to the caveat that he was not gainfully employed after his dismissal from service. Hence, respondent No.2's entitlement to back benefits would be dependent on him proving that during the period between 14.04.2003 when he was dismissed from service and 23.09.2019 when the learned Full

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Bench, NIRC decided his appeal, he was not gainfully employed.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 02.04.2024.

(JUDGE)

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