JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 3555 of 2020

HABIB BANK LIMITED
Versus
RAO MUHAMMAD IFTIKHAR and others

Petitioner's	**:**	**Mr. Tariq Mehmood, Advocate.**
Respondent No.3	**:**	**M/s. Armaghan Saqib Khan and Sheraz Gull Abbasi, Advocates**
Date of hearing	**:**	**24.02.2022.**

SAMAN RAFAT IMTIAZ, J. Through this writ petition, the Petitioner has assailed the Order dated 11.08.2020 ("**Impugned Order**") passed by the Full Bench of the National Industrial Relations Commission, Islamabad ("NIRC") whereby the Respondent No.1's appeal was allowed and he has been reinstated with full back benefits.

2. Brief facts, as per the memo of petition, are that the Respondent No.1 was an officer of the Petitioner-Bank who was working in managerial capacity as Assistant Manager-I at HBL, Mailsi Branch and was also attorney of the Petitioner vide power of attorney with vast powers in fiduciary capacity to act and perform for and on behalf of the Petitioner.

3. On 03.09.2009, the Petitioner issued Respondent No.1 a Show Cause Notice with the charges of (i) Gross Negligence (ii) Breach of trust (iii) Concealment of facts (iv) Misuse of official assignment and (v) Breach of rules and regulations of the Petitioner-Bank. The Respondent No.1 replied to the same but the reply was not found satisfactory hence an inquiry was conducted in accordance with the law after providing full opportunity to Respondent No.1 to defend himself. The charges against Respondent No.1 were proved and on receipt of Inquiry Report from the Inquiry Officer, the Competent Authority considered all the aspects of the case and found Respondent No.1 guilty of misconduct. As such, the Respondent No.1 was dismissed vide order/letter dated 31.12.2009.

4. The Respondent No.1 filed grievance petition on 06-04-2010 under the Industrial Relations Act, 2008 before the Labour Court at Multan which was

returned on 23.11.2015 for filing the same before the appropriate forum due to promulgation of the Industrial Relations Act, 2012 ("**IRA, 2012**"). On 29.12.2015, Respondent No.1 approached the NIRC, Islamabad for filing of his Grievance Petition, which was dismissed by the learned Single Member, NIRC vide order dated 08.10.2019 holding that the Respondent No. 1 was not a 'workman'; that departmental appeal does not qualify as grievance notice; and that unusual transactions were not commensurate with the salary of the Respondent No. 1.

5. Feeling aggrieved of the said order, the Respondent No.1 filed an appeal before the learned Full Bench, NIRC. Vide Impugned Order dated 11.08.2020, the learned Full Bench, NIRC, accepted the appeal of Respondent No.1 by setting aside the order dated 08.10.2019 passed by the learned Single Member, NIRC and Respondent No.1 was reinstated with full back benefits holding that the Respondent No. 1 was a 'workman'; that there is no reason not to consider a departmental appeal as a grievance notice as no particular form has been prescribed; and that evidence showed that the Respondent No. 1 was only marginally involved and as such the punishment awarded was not commensurate with his guilt. The Petitioner, being aggrieved of the Impugned Order passed by the learned Full Bench NIRC, filed the instant Writ Petition.

6. Learned counsel for the Petitioner, *inter alia*, contended that the Impugned Order is ultra vires the provisions of the law and also the provisions of the Constitution of Islamic Republic of Pakistan, 1973; that the learned Full Bench, NIRC failed to appreciate the fact that Respondent No.1 was working in managerial capacity holding Power of Attorney exhibited as Ex-R/4 containing wide powers to act on behalf of the Petitioner Bank and as such was not a workman; that the Respondent No.1 did not serve a Grievance Notice upon his 'employer' within the stipulated time as required; that he was charged with misconduct which is a serious matter with direct nexus to public faith and confidence in financial institutions and also with the trust reposed by the Petitioner Bank in its employees; that the said misconduct was established on record; that Respondent No.1 himself admitted the charge during the course of cross-examination; and that the Impugned Order is against the law and facts of the case and the same is not sustainable; whereas the order dated 08.10.2019 passed by the learned Single Member, NIRC was well reasoned and passed after due consideration of law on the subject. Learned counsel for the Petitioner relied on

the cases tilted as *Habib Bank Limited Vs. Gulzar Khan,* 2019 SCMR 946, *Khushal Khan Vs. Muslim Commercial Bank Ltd.,* 2002 SCMR 943, *Ganga R. Madhani Vs. Standard Bank Ltd.*, 1985 SCMR 1511, *Muslim Commercial Bank Ltd. Vs. Muhammad Shahid Mumtaz,* 2009 PLC 281, *Muhammad Naeem Vs. General Manager, Muslim Commercial Bank Circle Office, Quetta,* 2007 PLC 580, *Almas Ahmad Fiaz Vs. Secretary Government of Punjab Housing and Physical Planning Development, Lahore,* 2006 SCMR 783. He prayed for the acceptance of instant petition by setting aside the Impugned Order dated 11.08.2020 being illegal, unjust, unlawful, arbitrary without any lawful authority and jurisdiction and ultra vires the provisions of the law and the Constitution of the Islamic Republic of Pakistan, 1973.

7. Learned counsel for the Respondent No.1, submitted that there is no illegality or infirmity in the Impugned Order of the learned Full Bench of NIRC and prayed for dismissal of the instant writ petition of the Petitioner. He submitted that it is an admitted fact that the Respondent No. 1 was a grade III employee and as such holding a Power of Attorney is immaterial if otherwise the employee is a workman; even otherwise the said Power of Attorney was never used; that the burden of proof that Respondent No. 1 was not a workman was upon the Petitioner; that it is not the designation but the nature of duties that determines the status of an employee as to whether or not he is a workman; that the Respondent No. 1 had no hiring or firing powers nor was any one working under him; that the Petitioner admitted he was an 'inputer'; and that President of the Petitioner bank is the "employer" as per IRA, 2012 because he has hiring and firing authority as per Chapter F: Appendix I of the Petitioner's Staff Service Rules as such grievance notice was correctly served upon 'employer' as required by law. He relied on the cases reported as *Habibullah vs. Divisional Superintendent, Pakistan Railways,* 1981 PLC 605, *Tariq Mehmood Vs. Messrs Allied Bank of Pakistan Ltd.,* 2013 PLC 199, *Board of Directors MEPCO Ltd. Vs. Abid Sarwar,* 2010 PLC 460 and *M/s United Bank Limited Vs. Muhammad Afzal Solangi*, 2018 PLC 287.

8. Arguments heard. Record perused.

9. The Petitioner has raised several arguments to show that the Impugned Order is based on non-reading and misreading of evidence and the findings therein are contrary to the facts and law involved in the case. The first being that the

Respondent No. 1 is not a 'workman' within the meaning ascribed to the term under the IRA, 2012 as such the learned Full Bench NIRC was wrong to hold that the NIRC had jurisdiction to entertain the matter.

10. A bare perusal of the record shows that it is admitted by both parties that the Respondent No. 1 was promoted to the position of 'Assistant Manager'. Nevertheless, the Respondent No. 1 claimed that as Assistant Manager, his duties did not include anything apart from voucher punching and dealing in debit and credit [entries].

11. On the other hand, the attorney of the Petitioner bank stated that the Respondent No. 1 was an Assistant Manager who, as and when needed, was also performing the duties of an 'inputer' that is required to enter voucher data in the computer. In order to establish the full scope of powers and authority of the Respondent No. 1, the Petitioner relied upon the Power of Attorney dated 09.09.2008 produced as Exhibit 'R/4', whereby the Respondent No. 1 had been appointed as Attorney of the bank.

12. As noted above the parties are in agreement that the Respondent No. 1 was an Assistant Manager at the relevant time. However, there is no cavil to the proposition that the status of an employee as to whether or not he is a 'workman' is not determined by title or designation rather it is on the basis of nature of duties as acknowledged in the cases of *National Bank of Pakistan versus Anwar Shah*, 2015 SCMR 434 and *Mahmood Hussain Larik versus Muslim Commercial Bank Limited*, 2009 SCMR 857. As far as duties are concerned, the Respondent No. 1 claimed his duties were limited essentially to data entry whereas according to the Petitioner the scope of duties of the Respondent No. 1 also included the powers conferred upon him vide the Power of Attorney.

13. The said Power of Attorney executed by the Petitioner bank appointing the Respondent No. 1 as its attorney, included the following powers:

> *"1. To open and operate on Current, Overdraft, Loan, Cash Credit or other account or accounts in the name of the Bank or deposit any moneys with or borrow or obtain other accommodation, money or facilities upon or without security from any bank or banks or from the State Bank of Pakistan and its subsidiary named "SBP Banking Services Corporation (Bank)" or any firm, person or company in Pakistan or any Foreign country.*

2. *To draw, make, accept, execute, discount, re-discount, retire and negotiate bills, hundies, drafts, cheques, warrants, promissory notes and other negotiable instruments.*

3. *To buy, sell, hypothecate, pledge, mortgage, endorse and transfer Government Securities and Shares of Joint Stock Companies and all other securities and execute and countersign Letters of Guarantee and other indemnities…..*

4. *To receive deposits, to sign receipts and to give effectual discharges in the name of the Bank;*

5. *To receive and hold in safe custody any kind of Securities or other movable property whatsoever;*

6. *To recover and take possession of and manage all lands, houses, buildings and other property mortgaged to or otherwise belonging to the Bank and to let on lease or otherwise manage the same and for any such purpose to exercise all such powers and authorities and adopt proceedings as the Bank might or could exercise;*

7. *To purchase or take on lease or other terms any lands, houses or buildings for the purpose of offices or premises suitable for carrying on the business of the Bank or for the residence of its officers and staff at any place and to build, alter and furnish any offices, houses or premises;*

8. *To assign and re-assign Policies of Insurance standing in the name of the Bank or in which the Bank is interested in any way, to file proofs and to recover any sum or sums which may become due thereunder;*

9. *To commence, prosecute, continue and defend all actions, suits or legal proceedings whether civil, criminal or revenue including proceedings to procure or establish the bankruptcy or insolvency of any person or firm or liquidation or winding up of any company; to compromise or refer to arbitration any claims or disputes either in such suits or proceedings or otherwise; to appoint Solicitors, Advocates, Pleaders, Vakils andother legal agents; to make, sign, verify, execute plaints, petitions, written statements, tabular statements, vakalat-namas, warrants of attorney or any other papers expedient or necessary in the opinion of the Attorney to be made, signed, executed, verified, presented or filed;*

10. *To present for filing and registration all papers and documents required under the Companies Acts in force in Pakistan or any other place in respect of the registered office of the Bank in the respective country."*

14. The learned counsel for the Petitioner relied upon the case of *Habib Bank Limited versus Gulzar Khan*, 2019 SCMR 946. In such case, in view of the fact that under Section 9 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, a branch manager is competent to file a suit on behalf of a bank,

the Honorable Supreme Court held that a person so authorized cannot be considered a 'workman'. As may be seen from the above reproduction of the Respondent No.1's Power of Attorney, the Respondent No. 1 was empowered to, *inter alia,* commence, prosecute, continue and defend all legal proceedings on behalf of the Petitioner bank jointly with another Attorney of the bank under clause 9.

15. In the case of *Ganga R. Madhani versus Standard Bank Limited*, 1985 SCMR 1511, the Honorable Supreme Court held as follows:

> *"11. It would, thus, be noticed that* ***in determining the status of an employee, i.e., deciding as to whether or not he is a 'workman', what is to be seen is the overall nature of the duties assigned to the person in question and the main or primary functions that he is required to perform and not the work that he might have to do incidentally in the course of performance of his normal duties, because even a person employed at the highest managerial or supervisory level has, sometimes, to perform functions or do some work which may be termed as 'manual' or 'clerical'.*** *No doubt, in the present case some of the duties assigned to the appellant were of a routine nature and he was required to maintain Fixed and Short Term Deposit registers and was also required to prepare balance sheets, salary vouchers and bills, etc.* ***But it is pertinent to note that he had also been given a Power of Attorney by the respondent-Bank authorising him to perform, jointly with another attorney of the bank, a large number of functions which are clearly of managerial nature.*** *The Power of Attorney is available at page 102 of the Paper Book and it would be useful to reproduce some of the paragraphs thereof to show the nature of the functions entrusted to him thereby:--*
>
> > *"3.To buy, sell, hypothecate, pledge, mortgage, endorse and transfer Government securities, municipal, Port and Improvement Trust Bonds, and Shares of Joint Stock Companies and all other Securities and execute and countersign Letters of Guarantees and other indemnities;*
> >
> > *"4 To receive deposits, to sign receipts and to give effectual discharges in the name of the bank;*
> >
> > *5 .....*
> >
> > *6. To recover and take possession of and manage all lands, houses, buildings and other property mortgaged to or otherwise belonging to*

the bank and to let on lease or otherwise manage the same and to make sale and dispose of lands, houses, buildings, goods, merchandise, and property of every description, whether belonging to the bank absolutely or in trust or as security and for any such purpose to exercise all such powers and authorities and adopt proceedings as the bank might exercise;

7. To purchase or take on lease or other terms any lands, houses or buildings for the purpose of offices or premises suitable for carrying on the business of the bank or for the residence of its officers and staff at any place and to build, alter and furnish and to recover any sum or sums which may become due thereunder;

8. To assign and reassign Policies of Insurance also in the name of the bank or in which the bank is interested in any way, to file proofs and to recover any sum or sums which may become due thereunder".

12. ***A reading of the above-mentioned paragraphs clearly shows that powers thereby conferred on and functions thereby required to be performed by the appellant can neither be termed as manual nor clerical work and evidently involve the exercise of discretion and taking of important decisions.*** *It is noteworthy that he has also been given in clear and unambiguous words the power to manage some of the affairs of the bank. He was also given a number of powers which he can exercise by himself. This is clear from a reading of paragraph No. 10 of the Power of Attorney which authorises him to do all acts, deeds and things, which are necessary requisite or expedient for the better or efficient performance of several acts, relating to the affairs of the bank.*

Similarly paragraph No. 11 authorises him to do things, perform functions and transact in the name of and on behalf of the respondent-Bank alone and singly, or jointly with any other Attorney or officer of the bank, a large number of functions which can, by no means, be said to be manual or clerical in nature. As such we are of the view that the learned Division Bench of the High Court of Sind and Baluchistan I at Karachi, had rightly held that Gangs Ram appellant was not al 'workman' within the meaning of clause (i) to section 2 of the 1968 Ordinance.
". [Emphasis added].

16. Similarly, in the case of *Muslim Commercial Bank Limited versus Muhammad Shahid Mumtaz*, 2011 SCMR 1475, the Honorable Supreme Court held that the respondent in such case was not a workman given the nature of

powers he had been conferred vide his power of attorney. The relevant paragraphs of the said judgment are reproduced herein below:

> *"8. The powers conferred on the respondent by the power of attorney are material for fixing his status in the context as to whether or not he was a workman. For this purpose, all the powers conferred are relevant but the most significant ones are the following:---*
>
> > *"(2) To engage, employee, control and dismiss Clerks, Servants and others whether engaged by the said Attorney or by the Bank or otherwise.*
> > *(4) To settle and adjust all average and other losses and claims under Policies of Insurance of all kinds and all other accounts and reckonings whatsoever and to compromise and compound all debts and claims whatsoever claimable by the Bank and to submit to Arbitration all differences and disputes whatsoever.*
> >
> > *(6) To take on lease or other tenancy any land, houses, buildings for the purposes of offices or premises suitable for carrying on the said business or any of them and to build, alter and furnish any office, house or premises.*
> >
> > *(8) To make, sign, seal, execute, deliver and endorse all receipts, deeds, redemption of mortgage deeds, conveyance, transfers and instruments.*
> >
> > *(12) To draw, accept, endorse, sign and negotiate all Bills of Exchange, Dividend Warrants and any orders for payment of money in which the Bank is or may be interested or concerned and to which its endorsement or signature may be necessary or requisite.*
> >
> > *(17) AND GENERALLY to do all such acts, deeds and things not specifically mentioned hereinabove but which are necessary or expedient to carry on and manage the business of the Bank and all such other acts which are incidental to the promotion of Banking business."*
>
> *9. The above powers, particularly the one of hire and fire in para 2, sufficiently demonstrates the nature of his duties and functions as managerial and supervisory and not clerical in nature, as claimed by him."*

17. Examining the Respondent No. 1's Power of Attorney reveals that the powers under clauses 3, 4, 6, 7, 8 thereof are the powers, which convinced the Honorable Supreme Court in the cases of *Ganga R. Madhani* and *Muslim Commercial Bank Limited (Supra)* that the attorney was not a 'workman'.

18. Therefore, I find that the learned Full Bench, NIRC erred in concluding that the Respondent No. 1 was admittedly working as 'inputer' and that said position is equal to cashier in some way. Obviously the learned Full Bench, NIRC misread the evidence in this regard. In fact what was stated in cross-examination by the attorney of the Petitioner was that Respondent No. 1 was Assistant Manager and was also performing the duties of an 'inputer' as and when needed.

19. It also escaped the notice of the learned Full Bench, NIRC that Respondent No. 1 could not have been working as the equivalent of a cashier in the capacity of Assistant Manager at the relevant time as it was admitted by the Respondent No. 1 that he was serving as cashier prior to the promotion to the position of Assistant Manager and that while he was Assistant Manager at Hurry Chan Branch there was a cashier and a peon appointed in the lower staff. As explained by the Petitioner's attorney, the Respondent No. 1 had been performing the role of an 'inputer' as and when required. However, it is clear from *Ganga R. Madhani (Supra)* i.e., that even a person employed at the highest managerial or supervisory level may sometimes be required to perform clerical work but that would not make him a workman. Therefore, the fact that the Respondent No. 1 was also performing data entry functions while serving as Assistant Manager does not by itself establish that he was a workman.

20. What was required to also consider the powers conferred upon the Respondent No. 1 vide the Power of Attorney instead of basing the entire decision on just some of the clerical functions he was performing. However, the learned Full Bench, NIRC dismissed the Power of Attorney simply because it provided for the exercise of powers jointly with another attorney. The same was the case in *Ganga R. Madhani (Supra)* yet the Honorable Supreme Court held that the attorney was not a workman.

21. Lastly, the learned Full Bench, NIRC gave undue weightage to the fact that the Respondent No. 1 did not have hiring or firing powers. The Honorable High

Court of Sindh in *Dilshad Khan Lodhi versus Allied Bank of Pakistan through President and 3 others*, 2005 PLC (Labour) 130 rightly held that merely because an employee does not have powers to hire or fire would not bring him within the ambit of a 'workman'.

22. Following the holding of the Honorable Supreme Court of Pakistan in the above mentioned cases, I find that the Respondent No. 1 cannot be considered a 'workman' in view of the powers that he enjoyed under his Power of Attorney notwithstanding the fact that he was also required to do some work which could be described as 'clerical'.

23. Since it is held that the Respondent No. 1 was a 'workman' within the meaning of the term ascribed to it under IRA, 2012, he was not entitled to invoke the jurisdiction of the NIRC and the NIRC had no jurisdiction to entertain the Respondent No. 1's grievance petition on this ground alone.

24. In view of the foregoing, this Petition is allowed and the Impugned Order passed by the learned Full Bench NIRC is hereby set aside and the Order dated 08.10.2019 passed by the learned Single Bench, NIRC is restored.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on **25.04.2022**.

JUDGE