JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.3159/2017
Rao Muhammad Taufiq
Versus.
FOP, and others

Date of Hearing: 17.10.2017
Petitioner by: G.M. Chaudhary, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Rao Muhammad Taufiq, who is the Chairman of All Pakistan NBP Officers Association, seeks a declaration to the effect that the appointments of respondents No.6 to 20 in the National Bank of Pakistan (respondent No.2) are unlawful and void. Furthermore, the petitioner seeks a direction to the State Bank of Pakistan (respondent No.4) to investigate the matter regarding the appointments of respondents No.6 to 20 without certifying the requirements of "fit and proper test" prescribed by the State Bank of Pakistan. The petitioner also prays for the names of respondents No.2, 3, 6 to 20 to be placed on the Exit Control List.

2. Learned counsel for the petitioner submitted that through an advertisement published in the newspapers, applications were invited from qualified candidates for appointments against various positions in the head office of respondent No.2/bank at Karachi; that appointments were made by respondents No.2 and 3 against posts which did not exist in respondent No.2/bank; that for instance, there is no post of a Senior Executive Vice President in respondent No.2/bank; that the appointments of respondents No.6 to 20 have been made in violation of the applicable rules and the norms of transparency; that none of the said respondents had qualified the fit and proper test prescribed by the State Bank of Pakistan; that respondents No.6 to 20 were given contractual appointments; that in view of the law laid down by the Honourable Supreme Court in Muhammad Akram's case (PLD 2016 SC 961), a temporary appointment could not be made against the regular post; that the said appointments were the consequence of nepotism and favoritism; and that respondent No.7 was paid his salary in US $ even though he was serving in Pakistan.

3. Learned counsel for the petitioner was asked to satisfy the Court on whether this Court had the territorial jurisdiction to adjudicate upon the matter since the advertisement inviting applications for appointments in respondent No.2/bank had clearly mentioned that the appointees would be based at respondent No.2/bank's head office at Karachi, and since the addresses on the respondents' letters of appointment show that (save respondent No.6), the addresses of all the other appointees, whose appointment letters have been annexed with the writ petition, are residents of Karachi.

4. Learned counsel for the petitioner submitted that the National Bank of Pakistan is a national institution, and even though the respondents No.2 to 6 may be performing their duties at Karachi, writ petition challenging their appointments could be filed before any of the High Courts. He further submitted that since respondents No.1 to 2 are performing their functions in connection with the affairs of the Federation, a writ petition against their appointments could be filed before any of the High Courts.

5. I have heard the contentions of the learned counsel for the petitioner.

6. The advertisement annexed at page-22 of this petition shows that applications were invited from qualified candidates for appointments against posts at respondent No.2/bank's head office at Karachi. The petitioner has challenged the contractual appointments of respondents No.6 to 20 made by respondents No.2 and 3. The addresses of respondents No.6 to 20 given in the memorandum of the writ petition are at Karachi. The letters of appointment annexed with the writ petition show that the addresses of the appointees, except respondent No.6 are at Karachi. Learned counsel for the petitioner did not deny that the appointment process in response to the above-mentioned advertisement was also carried out at Karachi. Therefore, it is my view that the dominant nexus of this petition is with Karachi.

7. The Division Bench of this Court vide judgment dated 03.07.2017, passed in I.C.A. No.250/2017 titled "N.B.P. Officers Welfare Association etc. Vs. Federation of Pakistan, through Secretary, Ministry of Finance etc.", dismissed an appeal against an

order passed by this Court whereby a writ petition challenging fifty seven appointments in the National Bank of Pakistan, was dismissed primarily on the ground that since the officers whose appointments/absorption were challenged were performing their duties at Karachi, this Court did not have the territorial jurisdiction to adjudicate upon the said petition. Paragraphs-7 to 11 of the said judgment is reproduced herein below:-

> ***"7. The grounds on which W.P.No.3579/2016 was dismissed were that since the Head Office of NBP was situated at Karachi, and that since 56 out of the 57 officers, whose appointments/absorptions had been challenged resided at Karachi, this Court did not have the territorial jurisdiction to adjudicate upon the matter. In the said judgment under appeal, it was inter-alia observed that the appellants could invoke the jurisdiction of the Court where the decision to make the appointments/absorptions in question was taken, and where the allegedly unlawfully appointed/absorbed officers resided.***
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> ***8. Learned counsel for appellants admitted that other than respondent No.39, all other private respondents i.e. respondents No.5 to 38 and 40 to 57 work and reside at Karachi. He also admitted that the decision to make the impugned appointments/absorptions was taken at Karachi. We agree with the observation of the learned Single Judge-in-Chambers that it would have caused inconvenience and hardship to the said respondents if the petition would have been entertained at Islamabad. Furthermore, the Head Office of the NBP is also located at Karachi. Therefore, the dominant nexus of this case is with Karachi.***
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> ***9. The seat of Government (Ministry of Finance) or authority or residence of the person to whom the writ is to be issued, is not the sole criterion for conferring territorial jurisdiction and writs may also issue to governments, authorities or persons outside the territory of a High Court provided the cause of action (in whole or in part) arises within the limits of the normal territorial extent of the High Court. In the case at hand, the cause of action has also not accrued to the appellants/petitioners at Islamabad. All the appointees, but one are working and residing at Karachi, and the decision to appoint/absorb them was also made at Karachi.***
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> ***10. The only relief sought in the writ petition against the State Bank of Pakistan and the Ministry of Finance is that they should take measures to inter alia remove the Board of NBP due to corruption and illegalities committed in making the said appointments/absorptions. Since no findings by a Court of competent jurisdiction have been given regarding any corruption committed by the Board of NBP, the said relief is premature.***
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> ***11. In this view of the matter, we do not find any reason to interfere with the impugned judgment dated 23.05.2017. Since the dominant nexus of the subject matter of this appeal lies beyond the territorial jurisdiction of this Court, the appellants are at liberty to invoke the jurisdiction of the Hon'ble High Court of Sindh at Karachi. Consequently, this appeal is dismissed in limine with no order as to costs."***

8. The appointments questioned by the petitioner were all made by the Board of respondent No.2/bank at Karachi. True, the regulatory control over respondent No.2/bank lies with the State Bank of Pakistan (respondent No.4), but this by itself would not vest this Court with the jurisdiction over the matter at hand. Entertaining a writ petition against the appointments of respondents No.6 to 20 (all of whom are based at Karachi) would cause a grave inconvenience and hardship to the said respondents. The Honourable High Court of Sindh at Karachi is vested with the same jurisdiction under Article 199 of the Constitution as this Court. The petitioner's reluctance to institute a writ petition to challenge the legality of respondents No.6 to 20's appointments before the Honourable High Court of Sindh at Karachi, is not understandable. As mentioned above, the dominant object of this petition is to challenge appointments made in respondent No.2/bank at Karachi. It is an admitted position that none of the respondents whose appointments have been challenged are performing their duties within territorial jurisdiction of this Court. Therefore, I am of the view that it would be inequitable for this Court to assume jurisdiction in the matter at hand. In taking this view, I derive support from the law laid down in the following cases:-

(i) In the case of Sandalbar Enterprises (Pvt.) Ltd. Vs. Central Board of Revenue and others, (PLD 1997 SC 334), it has been held as follows:

> "We may observe that it has become a common practice to file a writ petition either at Peshawar, or Lahore, or Rawalpindi or Multan etc. to challenge the order of assessment passed at Karachi by adding a ground for impugning the notification under which a particular levy is imposed. This practice is to be depreciated. The court is to see, what is the dominant object of filing of the writ petition. In the present case, the dominant object was not to pay the regulatory duty assessed by a Customs official at Karachi."

ii) In the case of Messrs Sethi and Sethi Sons Versus Federation of Pakistan through Secretary, Ministry of Finance (2012 PTD 1869), the petitioner had, through a writ petition, challenged notices issued by the respondent at Karachi. The petitioner had also sought the quashment of an FIR registered at Karachi. The Hon'ble Lahore High Court held that since the dominant

object of the Constitutional petition had nexus with Karachi, the writ petition filed before the Hon'ble Lahore High Court was not maintainable. At paragraph 21 of the report, it was held as follows:-

> ***"21. There is yet another dimension to the above principle. In managing its day-to-day affairs a PERSON, performing functions in connection with the affairs of the Federation may often delegate its powers to its officers. Such delegation ordinarily limits the power of the officer within a specified territorial domain. In such a situation, the all encompassing countrywide territorial jurisdiction of the PERSON is localized to a specific limited territorial jurisdiction. For example, Collector of Customs, an officer of FBR, has specific territorial jurisdiction limited to a particular area, as opposed to the countrywide territorial jurisdiction enjoyed by FBR. Such an officer, therefore, performs a localized function in connection with the affairs of the Federation in a particular area and will be considered to be performing functions within the territorial jurisdiction the territorial jurisdiction of the High Court within whose territorial jurisdiction the Officer/PERSON falls. In the present case the Deputy Director is an Officer of the Directorate General of the Intelligence and Investigation, FBR at Karachi. As per Order dated 9-12-2010 issued by the FBR, the said Officer enjoys specific territorial jurisdiction confined to Karachi. Similarly a person having territorial jurisdiction limited to Karachi has registered the F.I.R. at Karachi. Therefore, it cannot be said that the Deputy Director or the Directorate is performing functions all over Pakistan as compared to FBR, therefore, only the High Court with corresponding territorial jurisdiction will assume jurisdiction in the matter.***

9. In view of the above, this petition is <u>dismissed in limine</u> as not maintainable. Having held so, there is no need to delve into the merits of the case. The petitioner is at liberty to seek relief, should it so desire, from the Hon'ble High Court of Sindh at Karachi. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Announced in open court on_____/2017.

JUDGE

Sultan*

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