

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ

Mr. Justice Ijaz ul Ahsan

Mr. Justice Munib Akhtar

CIVIL APPEAL NO.681 OF 2020

[Against the judgment dated 30.12.2019, passed by the High Court of Balochistan, Quetta in C.P.No.869 of 2016]

National Bank of Pakistan and another.

...Appellant(s)

Versus

Zahoor Ahmed Mengal.

...Respondent(s)

For the Appellant(s) : Mr. Kaleemullah Qureshi, ASC
(via video link from Quetta)

For the Respondent(s) : Mr. Kamran Murtaza, Sr.ASC
(via video link from Quetta)

Date of Hearing : 26.11.2020

O R D E R

GULZAR AHMED, CJ.- We have heard the learned counsel appearing for the parties and have also gone through the record of the case.

2. This appeal is by leave of the Court. Necessary facts of the matter are that the respondent was employed as Officer Grade-II with the appellants-National Bank of Pakistan **(the Bank)** and was posted in the Satellite Town Branch, Quetta. He absented himself from duty from 31.10.2014 and was issued notice dated 08.07.2015, wherein he was asked to report for duty within three days of the said notice and to justify his absence. Again on 27.07.2015, absence notice was issued to the respondent and he was again directed to report for duty within three days of the issuance of the notice. The respondent did not join

duty, rather gave a reply dated 05.08.2015 in which he acknowledged the absence notice dated 27.07.2015 and stated that since November, 2014, he could not join the Branch due to threat to his life on account of tribal feud and that he has sent an application but has not received any response from the Branch. He has further stated in this very letter that it is extremely difficult for him to attend the office furthermore, due to life threat. In the letter, he has further stated that he may be allowed one more year's leave without pay. He was again issued absence notice dated 06.08.2015 but he did not join duty. On 02.02.2016, he reported for duty for one day and on this very day he gave an application and thereafter, failed to report for duty. Ultimately, through Memorandum dated 07.04.2016, the service of the respondent was terminated for remaining absent from 31.10.2014.

3. Mr. Kaleemullah Qureshi, learned counsel for the appellants has contended that where the very absence from duty was admitted, there was no need for conducting of disciplinary proceedings and that the High Court has wrongly assumed that order of termination from service was passed under the National Bank of Pakistan Rules, 1980. He further contended that the High Court has also wrongly noted in the impugned judgment that the period of absence of the respondent has been condoned and his joining report was accepted by issuing a stern warning to the respondent. He contended that there is no evidence on the record showing condonation of absence or accepting joining or issuing of stern warning.

4. Mr. Kamran Murtaza, learned Sr.ASC for the respondent, on the other hand, has supported the impugned judgment but has frankly conceded that from 31.10.2014 to 07.04.2016, the respondent has remained absent from duty except for one day i.e. 02.02.2016.

5. It is quite evident from the record and also admitted by the learned counsel for the respondent that the respondent had remained absent from 31.10.2014 to 07.04.2016 except for one day i.e. 02.02.2016, when he stated to have reported for duty. It is also apparent from the record that respondent was issued notices by the appellants to join duty but he did not join duty, rather took a plea that on account of tribal feud he is unable to work in the Bank having threat to his life. Though such ground was taken by him but as stated by the learned counsel for the appellants, the respondent did not provide any material or evidence showing that in fact there was any tribal feud or there was threat to his life and even no instance in this regard whatsoever was pointed out by the respondent. Not even an FIR of any incident showing threat to the life of the respondent was provided to the appellants.

6. From the record it is evident that the respondent has remained absent from duty and that he has filed some applications with the Bank asking for leave but such applications for leave were not allowed, rather through absence notices dated 08.07.2015, 27.07.2015 and 06.08.2015, the respondent was directed to join duty but he chose not to do so.

7. In the face of such absence from duty of the respondent, which being admitted, there was no need to hold a regular enquiry because this Court in the case of Federation of Pakistan through Secretary, Ministry of Law and Justice Division, Islamabad vs. Mamoon Ahmed Malik (2020 SCMR 1154), has already held that where the fact of absence from duty being admitted on the record, there was no need for holding of a regular enquiry for that there was no disputed fact involved to be enquired into.

8. As regards the observation of the High Court that the absence period of the respondent was condoned as his joining report was accepted by issuing stern warning to the respondent, no document is available on the record which may show the period of absence of the respondent was condoned or his joining accepted or he was issued stern warning by the appellants. The only thing evident from the record is that by Memorandum dated 07.04.2016, the service of respondent was terminated from 31.10.2014 and the intervening period, from the date of absence from duty till the date of termination, was treated as Extra Ordinary Leave (**EOL**) without pay not counting towards Service, Promotion, Increment & Pensionary Benefits, etc. The treatment of absence period as EOL without pay has already been dealt with by this Court in the case of NAB through its Chairman vs. Muhammad Shafique (2020 SCMR 425) and Kafayat Ullah Khan vs. Inspector General of Police, Islamabad and another (Civil Appeal No.1661 of 2019), where it has been held that while imposing penalty on the employee in the case of unauthorized absence, the absence period treated as an EOL is not a punishment, rather is a treatment given to the absence period, which employer is entitled to do.

9. As regards the observation of the High Court in the impugned judgment that the order of termination has been passed under the National Bank of Pakistan (Staff) Service Rules, 1980. The very Memorandum dated 07.04.2016, by which the service of the respondent was terminated, is reproduced as follows: -

“Human Resources Management & AW

No.RO/QTA/HRM/AW/PF/ZH/OG-II/

Dated 07.04.2016

MEMORANDUM

UN-AUTHORIZED ABSENCE FROM DUTY REPLY FOR THE
ABSENC NOTICE DATED 27.07.2015-MR.ZAHOOR
AHMED OG-II (CASH OFFICER) PF#2440189 (SAP ID #
5539) NBP, S.TOWN BRANCH QUETTA

Refer joining report dated 02.02.2016 along with 04 pages application dated 02.02.2016 and 02 pages application dated 04.04.2016, of Mr. Zahoor Ahmed, received from Manager, NBP, S.Town Branch Quetta vide letter No.NBP/STQ/JOINING/2016/133 and No.STQ/NBP/STAFF/2016/134 dated 04.02.2016, forwarded to Head Office vide RO. Quetta letter No.RO/QTA/HRM/AW/PF/ZA/OG-II/1269 dated 10.02.2016.

The competent authority at Head Office vide letter No.PAW/I-MISC/RO(QTA)/UA/75/2015/4288 dated 29.03.2016 has advised that the services of Mr. Zahoor Ahmed OG-II have been terminated from the Bank on account of unauthorized absence with effect from the date of absence i.e. 31.10.2014, the intervening period from the date of absence from duty till the date of termination will be treated as Extra Ordinary Leave without pay not counting towards Service, Promotion, Increase/Increment & Pensionary Benefits etc.

Therefore, he is advised accordingly with the instruction to adjust all direct/indirect loans/liability outstanding against him immediately, otherwise, legal proceedings will be initiated for recovery against him and his Guarantor.”

There is no mention whatsoever in this Memorandum that it was passed under the National Bank of Pakistan (Staff) Service Rules, 1980. It seems that the learned Division Bench of the High Court, who has passed the impugned judgment has merely relied upon the submission of the learned counsel for the respondent and assumed the same to be correct and thereafter, proceeded on such erroneous assumption and found the Memorandum of termination from service of the respondent to be illegal.

10. In our view, this very treatment of the Memorandum dated 07.04.2016 by the learned Division Bench of the High Court was not appropriate for it ought to have looked into the Memorandum to ensure and be satisfied that what was orally argued by the learned counsel for the respondent was correct. The Memorandum dated 07.04.2016 having not at all stated that it has been issued under the National Bank of Pakistan (Staff) Service Rules, 1980, finding such Memorandum to be illegal by the learned Division Bench of the High Court was absolutely erroneous and unjustified and was not in accordance with the law.

11. We, therefore, find that the impugned judgment passed by the learned Division Bench of the High Court could not be sustained. The same is, therefore, set aside and the appeal is allowed.

CHIEF JUSTICE

JUDGE

Bench-I
Islamabad
26.11.2020
APPROVED FOR REPORTING
Rabbani/*

JUDGE