

ORDER SHEET

**IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT**

WRIT PETITION NO.10870 OF 2017.

Syed Asim Ather and Vs. Habib Bank Limited and
others others

Sr. No. of order/ Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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**15.01.2018 Mr. Jamshaid Akhtar Khokhar, Advocate for the
petitioners.**

The petitioners, employees of Habib Bank Limited, have assailed the order dated 21.12.2017 passed by the respondent No.5, by which they have been retired from service with immediate effect and as such by filing instant writ petition, they have made following supplications:-

“...by accepting this petition, the impugned order dated 21.12.2017 passed by respondent No.5 may kindly be declared malafide, without show cause notices, without justification by incompetent authority and without conducting regular inquiry as well as violation of Principle of Audi Alteram Patern and the same are liable to be set-aside in the interest of justice.

2. Contention of learned counsel for the petitioners is that the petitioners are employees of statutory body and management of the bank is not competent to pass the impugned order, without any inquiry or affording right of hearing to the petitioners. Reliance has been placed on “Bahadur Khan and others versus Federation of Pakistan through Secretary M/o Finance, Islamabad and others” (2017 SCMR 2066).

3. Contention heard.

4. From the language of impugned retirement orders, it transpires that only relationship of master and servant exists between the parties. The alternate remedy of filing suit for recovery of any amount due/pay etc or the damages, or approaching court under relevant labour laws as the case may be, is available to the petitioners.

Moreover, in the impugned orders, no stigma has been attributed to the petitioners, which need probe, inquiry or investigation. Rather the petitioners have been granted "the additional benefits in addition to all benefits as per terms and conditions of employment."

5. The next moot point is as to whether Habib Bank Limited/respondent is amenable to writ jurisdiction of this Court under Article 199 (1)(C) of the Constitution of Islamic Republic of Pakistan, 1973 (The Constitution). It is hard fact that Habib Bank Limited was a nationalized bank, however, in the year 2004, Government of Pakistan privatized it and Agha Khan Foundation (AKFED) acquired 51% bank's shareholding and the management control. The remaining 41.5% shareholding by Government of Pakistan was divested in April, 2015, whereas AKFED continued to retain 51% shareholding in Habib Bank Limited, while the remaining shareholding is presently held by the individuals, local and foreign institutes and funds including CDC group PLC, which held 5% shares

and international financial corporation which held 3% shares (extract from official website of H.B.L). After privatization of the bank, it is functioning as a limited company. As such the State/Federation has no financial interest in the bank or control in respect of affairs of the bank. The State Bank of Pakistan/respondent also does not have any financial interest in the bank and it is just a regulatory body for all the banks operating and functioning in Pakistan, including Habib Bank Limited in terms of the Companies Ordinance, 1962.

The legal question whether Habib Bank Limited/respondent is “person” within the purview of Article 199(1)(C) of The Constitution, can be settled and determined through “function test” i.e. the extent of financial interest of State and its domain. Applying the “function test” to Habib Bank Limited/respondent as noticed in para No.5 supra, it is a private entity and not performing any function in relation to the affairs of the State/Federation. In case “Abdul Wahab and others versus HBL and others” (2013 SCMR 1383), while examining similar question particularly with regard to Habib Bank Limited, it was held as under:-

“However, in order to bring the Bank within the purview of the connotation(s) of a person and authority appearing in Article 199, 199(5) and 199(1)(C) of the Constitution and also for the purpose of urging that appropriate order, in the nature of a writ can be issued

independently by this Court under Article 184(3) (Constitution), to the Bank, the learned counsel for the petitioners has strenuously relied upon the function test and in this respect it is submitted that the State/Federation has a considerable, shareholding in the Bank and representation in the managing affairs thereto therefore, it shall qualify having the status of a person/authority within the meaning of the law, besides, the Bank is being regulated by and under the authority of the SBP thus on this account as well it (Bank) has the status mentioned above, therefore, this Court should exercise its jurisdiction in terms of the Article supra. In this context, it may be held that for the purposes of resorting to the function test, two important factors are the most relevant i.e. extent of financial interest of the State/Federation in an institution and the dominance in the controlling affairs thereof. But when queried, it is not shown if the State/Federation has the majority of shareholding, or majority representation in the Board of Management of the Bank. As regards the authority and the role of SBP (in the above context), SBP is only a regulatory body for all the banks operating in Pakistan in terms of Banking Companies Ordinance, 1962 and suffice it to say that such regulatory role and control of SBP shall not clothe the Bank, with the status of a person or the authority performing the functions in connection with the affairs of the Federation. Rather it shall remain to be a private entity. In support of the above, reliance can be placed on two judgments of this Court reported as Salauddin and 2 others v. Frontier Sugar Mills and Distillery Ltd. Takht Phai and 10 others (PLD 1975 SC 244), which prescribes that regulatory control does not make a person performing functions in relation to the federation or a

province". Likewise in Pakistan Red Crescent Society and another v. Syed Nazir Gillani (PLD 2005 SC 806) it was held "such control must be particular to the body in question and must be persuasive... On the other hand, when the control is merely regulatory whether under the statute or otherwise it would not serve to make the body a State therefore, we have no hesitation to hold that the Bank is a private institution for all intents and purposes. And we vide short order dated 17.10.2012 has deferred our decision on the issue if such a private person is amenable to writ jurisdiction in the context of Article 199(1)(c) of the Constitution."

6. In case "Abdul Rehman versus President Habib Bank Limited and others" (2009 PLC (C.S.) 888 [Karachi High Court]), it was authoritatively held as under regarding legal status of Habib Bank Limited:

"There is no cavil with the fact that after privatization of the Habib Bank Limited, it is run by a private party, therefore, the Bank has no concern with the affairs of Federation or a Province which is condition precedent for maintainability of Constitutional Petition."

7. The observations recorded in case "Abdul Malik versus Habib Bank Ltd. through President, Habib Bank, Karachi and 3 others" (2008 CLC 339 Quetta) are also relevant to resolve this legal question, which are reproduced as under:-

"...under Article 199 of the Constitution of Pakistan, this Court if satisfied that no other adequate remedy is provided by law, on the application of an aggrieved person, can make an order directing a

person performing within territorial jurisdiction of the Court functions in connection with the affairs of the Federation, a Province or a Local Authority to refrain from doing anything he is not permitted by law to do so or to do anything he is required by law to do so or declare that any act done or proceedings taken by a person performing functions in connection with the affairs of the Federation, a Province or a Local Authority has been done or taken without lawful authority and is of no legal effect. It is not disputed that after privatization of Habib Bank Limited, it is being run by a private party and bank has no concern with the affairs of Federation or a Province, which is condition precedent qua maintainability of constitutional petition. In this regard we are fortified by the judgments reported in PLD 1966 SC 445 and 2005 MLD 1798”

Similar view has been taken in case “United Bank Limited Pensioners Welfare Association of Pakistan through President vs. United Bank Limited through President and 5 others” (2011 CLC 831), “UIMCB Ltd through Authorized representative vs. State Bank of Pakistan through Governor and 2 others” (2010 CLC 338) and in Writ Petition No.10109 of 2010 “Noor Badshah versus The United Bank Limited, etc” decided on 11.09.2014 by this Court.

8. The pith and substance of above deliberations is that after privatization of Habib Bank Limited, it is being run by a private party and bank has no concern with the affairs of Federation or Province, the condition precedent qua maintainability of petition under Article 199(1)(C)

of The Constitution. Thus, this writ petition against the private bank by its employees, is not competent.

Consequently, the instant writ petition, being devoid of merits, is dismissed in limine.

(MUJAHID MUSTAQEEM AHMED)
JUDGE

APPROVED FOR REPORTING.

Judge

Khalid