

PLJ 2017 Quetta 54 (DB)

Present: JAMAL KHAN MANDOKHAIL AND ZAHEER-UD-DIN KAKAR, JJ.

JUMA KHAN & others--Petitioners

versus

**M/s. HABIB BANK LIMITED through President
and others--Respondents**

C.P. No. 494 of 2012, decided on 14.3.2017.

Industrial Relation Ordinance, 2002--

---S. 46--Constitution of Pakistan, 1973, Art. 199--Constitutional petition--Employees of bank--Retrenched from employment--Additional compensation--From perusal of record it appears that petitioners were retrenched from employment of respondent's No. 1 Bank *vide* letter dated 10.3.2006 and *vide* order dated 20.5.2008, Respondent No. 1 had paid Rs. 400,000/- each as compensation to petitioners, which they had accepted--It would be imperative to mention here that after retrenchment petitioners filed an application under Section 46 of IRO, 2002 before Respondent No. 2 for compensation, which was later on withdrawn by petitioners and said application was dismissed as withdrawn by Respondent No. 2--Now claim of petitioners is that in light of order dated 12.1.2010 passed by Hon'ble Supreme Court of Pakistan in H.R Case No. 710-P of 2009, they are further entitled for Rs. 350,000/- as compensation--Admittedly, above order was passed on basis of a settlement between parties, in which Habib Bank was agreed for payment to 2343 employees retrenched under Bank's order dated 10.3.2006 at rate of Rs. 350,000/- per retrenched employee as additional compensation--Petition was dismissed. [P. 55 & 56] A & B

Mr. Azam Jan Zarkoon, Advocate for Petitioners.

Mr. Muhammad Riaz Ahmed, Advocate for Respondent No. 1

Date of hearing: 8.3.2017.

JUDGMENT

Zaheer-Ud-Din Kakar, J:--Through this Constitutional Petition, the petitioners have impugned the orders dated 16th December 2011 and 29th May, 2012, passed by the Respondents No. 2 and 3, respectively.

2. It is the case of the petitioners that they served the Habib Bank more than ten years as Guards, Messengers, Peons etc. On 10.3.2006, the Respondent No. 1 retrenched the bank employees including the petitioners, where their retrenched benefits were not allowed to them, they filed grievance application in the Labour Court, however, Rs. 400,000/- each were given to them as compensation, where to the other retrenched employees were paid Rs. 20 to 60 lac as compensation. According to the petitioners that, as per order dated 12.1.2010, passed by Hon'ble Supreme Court of Pakistan in H.R Case No. 710-P of 2009, they are further entitled for additional compensation at the rate of Rs. 350,000/- each.

3. Learned counsel for the petitioners contended that the petitioners were the employees of the Habib Bank Limited, who were retrenched. He stated that some of the other employees were also retrenched, however, they were granted an additional allowance as per order dated 12.1.2010, passed in H.R Case No. 710-P of 2009, by the Hon'ble Supreme Court of Pakistan, and now the petitioners are also entitled for Rs. 350,000/- each as additional allowance, therefore, the Respondent No. 1 be directed to pay said amount to the petitioners.

4. On the other hand, learned counsel for Respondent No. 1 vehemently opposed the contention so raised by the learned counsel for the petitioners and stated that the petitioners received Rs. 400,000/- each from Respondent No. 1, therefore, they are not entitled further for Rs. 350,000/- as per order dated 12.1.2010, because the said order passed after settlement between the parties and the said judgment is not called as judgment *in rem*.

5. We have heard learned counsel for the parties and have gone through the record available. From perusal of the record it appears that the petitioners were retrenched from the employment of Respondent's No. 1 Bank *vide* letter dated 10.3.2006 and *vide* order dated 20.5.2008, the Respondent No. 1 had paid Rs. 400,000/- each as compensation to the petitioners, which they had accepted. It would be imperative to mention here that after retrenchment the petitioners

filed an application under Section 46 of IRO, 2002 before Respondent No. 2 for compensation, which was later on withdrawn by the petitioners and the said application was dismissed as withdrawn by the Respondent No. 2.

A

Now the claim of the petitioners is that in the light of order dated 12.1.2010 passed by the Hon'ble Supreme Court of Pakistan in H.R Case No. 710-P of 2009, they are further entitled for Rs. 350,000/- as compensation. A bare perusal of order dated 12.1.2010, clearly shows that on the basis of settlement between the parties, the Habib Bank Limited agreed to pay an additional sum of Rs. 820.050 millions as ex-gratia payment to the 2343 employees retrenched under the Bank order dated 10.3.2006 at the rate of Rs. 350,000/- per retrenched employee. For convenience, relevant para-3 of the said judgment is reproduced herein below:

"Full-fledged arguments were addressed by the learned counsel for the Bank as well as the learned *amicus curiae*. At the conclusion of the arguments, upon our investigation, the representatives of the retrenched employees and the Management of the Bank, with the assistance of the learned counsel for the Bank and *amicus curiae*, entered into negotiation for some settlement. The Bank eventually agreed to pay an additional sum of Rs. 820.050 millions as ex-gratia payment to the 2343 employees retrenched under the Bank's order dated 10.3.2006 at the rate of Rs. 350,000/- retrenched employee. The representatives of the retrenched employees left it to us to determine the reasonableness of the additional compensation, which in our view was fair in the circumstances. The offer made by the Bank in writing, copy of which is placed on file is, therefore, duly accepted and the retrenched employees numbering 2343 shall be paid the additional ex-gratia payment in accordance with the terms of the offer."

B

6. Admittedly, the above order was passed on the basis of a settlement between the parties, in which the Habib Bank was agreed for payment to the 2343 employees retrenched under the Bank's order dated 10.3.2006 at the rate of Rs. 350,000/- per retrenched employee as additional compensation. The above order of the Hon'ble apex Court is not a judgment *in rem* but is *in personam*. In this regard, the Hon'ble Supreme Court of Pakistan, in case titled "*Pir Bakhsh v. Chairman Allotment Committee*" (PLD 1987 SC 145) elucidated the concept of judgment *in rem* and the judgment *in personam* and observed as follows:

"The High Court in dislodging the appellants held that the judgment of the Supreme Court was not a judgment *in rem*, but *in personam*. The terms "*in rem*" and "*in personam*" are of Roman Law used in connection with actin, that is, actin *in rem* and action *in personam* to denote the nature of actions, and with the disappearance of the Roman forms of procedure, each of the two terms "*in rem*" and "*in personam*" got tagged with the word judgment to denote the end-products of actions *in rem* and actions *in personam*. Thus, according to the civil law an action in which a claim of ownership was made against all other persons was an action *in rem* and the judgment pronounced in such action as a judgment *in rem* and binding upon all persons whom the Court was competent to bind, but if the claim was action *in personam* and the decree was a decree *in personam* and binding only upon the particular person or persons against whom the claim was preferred or persons who were privies to them. "

7. Similarly, the learned Lahore High Court, Lahore in case titled *Ejaz Rasool v Member National Industrial Relations Commission and 5 others* 2014 PLC (CS) 288 observed as under:

"The dictums laid down by the Hon'ble Supreme Court of Pakistan show that "judgment *in rem* is different from the judgment *in personam*". A judgment *in rem* is a judgment against a thing as contradistinguished from a judgment against a person or a judgment whereby a status is determined. A judgment *in rem* is an adjudication pronounced upon the status of some particular subject-matter by a Tribunal/Court having competent authority for that purpose. It differs from a judgment *in personam* as this judgment is in form as well as substance between the parties claiming the right, and that it is so inter parties appears by the record itself. A judgment *in rem* is founded on a proceedings instituted, not against the person as such, but against or upon the thing or subject-matter itself proceeding to determine the state or condition of the thing itself and the judgment is solemn declaration of the status of the thing, and it *ipso facto* renders it what it declares it to be."

8. In view of the above discussion, it is clear that the petitioners had already received Rs. 400,000/- as compensation after retrenchment order, therefore, the petition, being devoid of force, is dismissed.

(N.K.)

Petition was dismissed.