

[Supreme Court of Pakistan]

Present: Syed Mansoor Ali Shah and Muhammad Ali Mazhar, JJ

MUHAMMAD NAEEM---Petitioner

Versus

FEDERATION OF PAKISTAN and others---Respondents

C. P. No. 4294 of 2019, decided on 25th November, 2022.

(Against the judgment of Peshawar High Court, Peshawar dated 01.10.2019, passed in W.P. No. 4666-P of 2018)

(a) Civil Servants Act (LXXI of 1973)---

---S. 2(1)(b)---Government Servants (Efficiency and Discipline) Rules 1973, R. 2(1)--- Government Servants (Conduct) Rules 1964, R. 3(1)(b)---Penal Code (XLV of 1860), Ss. 21 & 161---Term 'public servant' as provided in sections 21 & 161 of P.P.C.---Scope---Definition of "public servant" as provided in section 21 of the P.P.C. is only for the purpose of application of the provisions of that substantive criminal law, as well as of the related procedural criminal law, the Code of Criminal Procedure 1898, and the extended definition of that term as given in Explanation of section 161, P.P.C.---Said definitions do not confer any civil status, capacity or position on the persons falling in the scope thereof.

Terms "civil servant" and "government servant", having almost the same meaning and scope, are commonly used interchangeably in the civil service laws of the country. The term "public servant" as defined in section 21 of the P.P.C. for the purpose of application of that law is, however, of wide import and scope than those terms. It cannot, therefore, be referred to or used as an equivalent or synonym of them, in the context of a person's civil status, capacity or position. In the ordinary English language, the words "civil servant" and "public servant" may have the same meaning, but this is not so in the legal language as commonly used in the laws of the country (Pakistan). It may be said that in legal parlance, particularly of the service and criminal laws, all civil servants are public servants as defined in section 21 of the P.P.C., but not all such public servants are civil servants.

The definition of "public servant" as provided in section 21 of the P.P.C. is only for the purpose of application of the provisions of that substantive criminal law, as well as of the related procedural criminal law, the Code of Criminal Procedure 1898, and the extended definition of that term as given in Explanation of section 161 (which brings the employees of any corporation or other body or organisation set up, controlled or administered by, or under the authority of, the Federal Government, within the ambit of the term "public servant") is only for the purpose of application of that section and sections 162, 163, 164, 165, 166, 167, 168, 169 and 409 of the P.P.C. These definitions do not confer any civil status, capacity or position on the persons falling in the scope thereof. The reference to the definition of "public servant" as provided in a criminal law, the P.P.C., for claiming the civil status of being a government servant/officer is therefore misconceived.

Professor Alaud Din v. Government of Punjab PLD 1979 Lah. 324 ref.

(b) National Bank of Pakistan Ordinance (XIX of 1949)---

---S. 3(2)---Civil Servants Act (LXXI of 1973), S. 2(1)(b)---Employees of National Bank of Pakistan (NBP)---As per section 3(2) of the National Bank of Pakistan Ordinance, 1949, NBP is a body corporate, and its employees are employees of a statutory corporation, not of the Federal Government---Employees of NBP are therefore not "government servants" or "civil servants" as defined in the Civil Servants Act, 1973.

Deedar Bhayo v. NBP 2013 SCMR 894 and Mubeen-Us-Salam v. Federation PLD 2006 SC 602 ref.

(c) National Bank of Pakistan Ordinance (XIX of 1949)---

---S. 3(2)---Civil Servants Act (LXXI of 1973), S. 2(1)(b)---Constitution of Pakistan, Art. 199---Employees of National Bank of Pakistan (NBP)---Recourse to writ jurisdiction of the High Court in service matters---National Bank of Pakistan (NBP), being a statutory corporation, is amenable to the writ jurisdiction of the High Courts under Article 199 of the Constitution, and its employees when are governed or proceeded against under the statutory rules can also avail the recourse to the writ jurisdiction for the redressal of their grievances in respect of their service matters---However, such legal position does not merge the NBP, a separate juristic person, into

the Federal Government, nor in any manner blurs the distinction between NBP, a statutory corporation, and the Federal Government, a constitutional body, or in any manner turn the employees of the NBP into the employees of the Federal Government.

Deputy Managing Director, NBP v. Ata-ul-Haq PLD 1965 SC 201; Salah-ud-Din v. Frontier Sugar Mills PLD 1975 SC 244; University of Dacca v. Zakir Ahmed PLD 1965 SC 90; Deedar Bhayo v. NBP 2013 SCMR 894; Mubeen-Us-Salam v. Federation PLD 2006 SC 602; K.D.A. v. Wali Ahmed 1991 SCMR 2434; Principal, Cadet College v. Shoab Qureshi PLD 1984 SC 170 and State of Assam v. Barak Upatyaka (2009) 5 SCC 694 ref.

Amjad Ali, Advocate Supreme Court for Petitioner.

Nemo for Respondents.

Date of hearing: 25th November, 2022.

ORDER

SYED MANSOOR ALI SHAH, J.---The present case stems from a Notification dated 30.12.2015 ("Notification") issued by the Finance Division (Internal Finance Wing), with the concurrence of the Law Division, Government of Pakistan, whereby it has been clarified that National Bank of Pakistan ("NBP") is a body corporate and its employees are not "civil servants" nor have they been declared as "public servants" within the meaning of section 21 the Pakistan Penal Code, 1860 ("P.P.C."). Pursuant to the said Notification, the Head Office of the NBP informed this legal position to all employees of the NBP through an Information Circular, dated 15.01.2016 ("Circular"), and asked the employees having passports with an entry of their occupation as a "Government Officer", to get changed the same immediately to prevent the liability of any offence under the Passports Act, 1974.

2. The petitioner, an employee of the NBP, challenged the said Notification and Circular in the Peshawar High Court through a writ petition, asserting that the employees of the NBP are government servants/officers as they fall within the scope of the definition of "public servant" provided in clause ninth of section 21 and Explanation of section 161 of the P.P.C. The High Court dismissed the writ petition, vide its judgment dated 01.10.2019 ("impugned judgment"), by holding that the NBP is a statutory body and its employees are not civil servants or government servants. The petitioner has sought leave to appeal against this judgment of the High Court, through the present petition.

3. We have heard the arguments of the learned counsel for the petitioner and examined the record of the case.

4. First of all, it would be appropriate to make it clear that the terms "civil servant" and "government servant", having almost the same meaning and scope, are commonly used interchangeably in the civil service laws of Pakistan.¹ The term "public servant" as defined in section 21 of the P.P.C. for the purpose of application of that law is, however, of wide import and scope than those terms. It cannot, therefore, be referred to or used as an equivalent or synonym of them, in the context of a person's civil status, capacity or position. In the ordinary English language, the words "civil servant" and "public servant" may have the same meaning, but this is not so in the legal language as commonly used in the laws of Pakistan. It may be said that in legal parlance, particularly of the service and criminal laws, all civil servants are public servants as defined in section 21 of the P.P.C., but not all such public servants are civil servants.

5. The definition of "public servant" as provided in section 21 of the P.P.C. is only for the purpose of application of the provisions of that substantive criminal law, as well as of the related procedural criminal law, the Code of Criminal Procedure, 1898, and the extended definition of that term as given in Explanation of section 161 (which brings the employees of any corporation or other body or organisation set up, controlled or administered by, or under the authority of, the Federal Government, within the ambit of the term "public servant") is only for the purpose of application of that section and sections 162, 163, 164, 165, 166, 167, 168, 169 and 409 of the P.P.C.² These definitions do not confer any civil status, capacity or position on the persons falling in the scope thereof. In the present case, the matter relates to the civil status of the employees of the NBP to be mentioned in their passports, not to the application of certain provisions of the criminal laws to them or to the functions performed by them. The reference by the petitioner to the definition of "public servant" as provided in a criminal law, the P.P.C., for claiming the civil status of being a government servant/officer is therefore misconceived.³ The NBP, as per section 3(2) of the National Bank of Pakistan Ordinance, 1949, is a body

corporate, and its employees are employees of a statutory corporation, not of the Federal Government. They are therefore not "government servants" or "civil servants" as defined in the Civil Servants Act, 1973.⁴

6. We are cognizant of the legal position that the NBP, being a statutory corporation, is amenable to the writ jurisdiction of the High Courts under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973,⁵ and its employees when are governed or proceeded against under the statutory rules can also avail the recourse to the writ jurisdiction for the redressal of their grievances in respect of their service matters.⁶ However, this legal position does not merge the NBP, a separate juristic person, into the Federal Government, nor in any manner blur the distinction between NBP a Statutory Corporation and the Federal Government, a constitutional body or in any manner turn the employees of the NBP into the employees of the Federal Government.⁷

7. For the above reasons, we agree with the conclusion of the impugned judgment. The petition is meritless. It is, therefore, dismissed and the leave to appeal is declined.

MWA/M-78/SC Petition dismissed.