

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-1060 of 2024
[International Industry v. Jehangir Nawaz & others]

Date	Order with signature of Judge(s)
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Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and Order: 12.03.2026

M/s. Mujtaba Bajwa & Shoukat Ali Chaudhari advocate for the petitioner
Mr. Nayyar Abbas advocate for the Respondent No.1
Mr. Wajiha Mehdi, Assistant Attorney General

ORDER

Adnan-ul-Karim Memon, J. – Petitioner has filed this Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, seeking the following relief:-

- i) *To set aside the orders 23.01.2024 and 31.5.2025 passed by the Hon'ble Full Bench and Single Bench of NIRC, respectively;*
- ii) *Dismiss the grievance application filed by the Respondent No.1*

2. The petitioner, M/s International Industries (Pvt.) Ltd., a manufacturer of steel and polymer pipes incorporated in Pakistan and listed on the Pakistan Stock Exchange, approached this Court challenging the final order dated 23.01.2024 passed by the Full Bench of the National Industrial Relations Commission (NIRC), Karachi, in Appeal No. 124(208)/2022-K.

3. The petitioner's counsel contends that the grievance application filed by Respondent No.1 was time-barred and that the Single Bench and Full Bench of NIRC acted without jurisdiction, disregarding facts, pleadings, and evidence. Learned counsel for the petitioner submitted that Respondent No.1 was never an employee of the petitioner company but of an independent contractor, M/s Al-Falah Contractor. He emphasized that the petitioner had filed preliminary legal objections and applications under Order 1 Rule 10 CPC to implead the contractor, which were dismissed without any reason. The petitioner's counsel further contended that after the enactment of IRA 2012, the grievance application was returned for lack of jurisdiction, and subsequent appeals and revisions were disposed of in favor of the petitioner company. He submitted that an affidavit-in-evidence was filed on behalf of the company, and cross-examination of the respondent was eventually barred, but the Bench of NIRC allowed the grievance

application of Respondent No.1 with all back benefits. The petitioner's counsel argued that the Full Bench erred in holding that the Respondent No.1 was an employee of the company and wrongly relied on the case of Fauji Fertilizer Company 2013 SCMR 1453 and Bukht Siddiqi 2018 SCMR 1181, which involved fraudulent agreements with service providers, a fact not present in the present case. It was emphasized that the grievance petition filed on 24.03.2009 was hopelessly time-barred, and the Full Bench incorrectly considered that the respondent was an employee rather than a contractor's worker. He prayed to allow the petition.

4. Learned counsel for the Respondent No.1 contended that the respondent No.1 was an employee of the petitioner company, working under the company's supervision and control, performing core functions within the factory, and was deprived of statutory entitlements. He added that evidence showed that the contractor had no independent machinery, premises, or personnel, and all work, raw material, and management were under the petitioner company. Citing the cases of the Supreme Court and argued that where a company retains control over the work of a contractor's employees, they are deemed employees of the company. He submitted that the Full Bench, after hearing arguments, allowed certain appeals partially, set aside the Single Bench order for some employees, and remanded cases to provide an opportunity to adduce evidence regarding subsequent employment. However, other appeals filed by the petitioner company were also dismissed, and reinstatement orders were subject to superannuation where applicable. He prayed for dismissal of the present petition on the same analogy.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The learned Full Bench of the National Industrial Relations Commission (NIRC), Karachi, disposed of appeals arising from the consolidated judgment dated 31.05.2022 passed by the Single Member, NIRC, in cases No. 4B(16)/2017-K to 4B(19)/2017-K, the appeals included applications under Order 41 Rule 27 CPC for the production of additional evidence.

7. It appears from the record that the matters were initially filed under Section 41 of the Industrial Relations Act, 2002, before Labour Court No. VI, Karachi, which returned them for presentation before the proper forum. Subsequent revision before the Sindh Labour Appellate Tribunal was disposed of by consent, and the cases were transferred to the NIRC. The private Respondents in appeals claimed they were directly employed by the Petitioner company, performing core manufacturing work under the company's supervision, and submitted that the company purportedly engaged a contractor to evade statutory obligations, terminating them in early 2009 without notice, prompting grievance

petitions, showing them to be employee of company, however, the Petitioner company denied any employer-employee relationship, asserting the Respondents workers were contractors' employees whose services were validly terminated. It is urged that the evidence included affidavits of the Respondents and their witness, M. Aslam Khan, while the cross-examination was barred and the recall application was also dismissed, leaving the statements unrebutted. It appears from the record that one Sami-ud-Din, Divisional Manager of the Petitioner company, testified that all machinery, buildings, and operations belonged to the company, and the contractor had no independent resources, with workers performing essential functions under company control. Applying the principle from *Fauji Fertilizer Company*, the Full Bench held that such control establishes an employer-employee relationship. The Full Bench found the grievance petitions timely and within the Commission's jurisdiction. Regarding additional evidence under Order 41 Rule 27 CPC, it was noted that employees had been gainfully employed elsewhere during ousting, which could not be cross-examined, warranting further evidence. Consequently, appeals No.12A(206)/22-K and 12A(207)/22-K were allowed partially, remanding the cases for evidence on subsequent employment, while appeals No. 12B(208)/22-K and 12B(209)/22-K were dismissed. Reinstatement of Sultan Akbar, Rehmani Gull, and Sher Rehman was subject to superannuation at age sixty, prompting the petitioner company to file the present petition against private Respondent No.1.

8. During arguments, the counsel for the Petitioner heavily relied upon the decision of the learned FCC, and it was noted that petitions by Muhammad Zubair Khan, Muneeb Hussain, Muhammad Farooq Shah, Salah ud Din, and Muhammad Yamin before the learned FCC challenged a Peshawar High Court decision dated 04.06.2024. In that case, the Petitioners, employed via a contract between NBP and M/s A.A. Janitorial Services (Pvt.) Ltd., sought regularization, claiming discrimination and citing similar cases. The learned FCC observed that the Petitioners were employed by the outsourcing company, not NBP, and that employment under a contract does not create a vested right to regularization. It was observed that outsourcing arrangements were/are legitimate, and Article 25 of the Constitution, anti-discrimination provision does not automatically entitle such regularization of service. Consequently, the learned FCC upheld the learned High Court's dismissal order, finding the petitions meritless and refusing leave to appeal. The Petitioner's counsel in the present case, argues this decision applies to the present case.

9. The core issue in this petition by M/s International Industries (Pvt.) Ltd. is whether Respondent No.1 and similar employees, engaged through M/s Al-Falah Contractor, can be treated as direct employees.

10. The learned FCC, in the NBP janitorial staff case in CPLA Nos. 3615-3619/2024, clarified that employment via a contractor does not automatically grant direct employment or regularization rights. It was held that direct employment arises only if the company exercises employer-like control, such as supervising work, assigning core duties, providing materials, and integrating workers into operations.

11. In contrast, the NIRC Full Bench had relied on Fauji Fertilizer Co. vs. NIRC (2014 SCMR 1453), which held that substantial control over contractor workers performing core functions may establish an employer-employee relationship, a view now altered by the recent learned FCC judgment.

12. However, the facts obtained in the present case seem to be different, as the cross-examination of RW Sami Uddin reveals that the workers were effectively working under the petitioner Company rather than as independent contractors. He admitted that the workers performed their duties within the premises of the Company, and that all machinery, buildings, plants, and raw material belonged to M/s International Industries. He further admitted that the contractor had no equipment, machinery, building, or raw material on the premises. It was also admitted that the Company supervised production standards, provided training to crane operators, and permitted contract workers to enter the premises for work. Moreover, no approval of the Board of Directors for engaging the contractor was produced, nor was any document showing payment by the Company to the contractor, or the mode and rate of such payment mentioned in the written reply. These admissions indicate that the work was carried out under the supervision and control of the petitioner Company, and the contractor had no independent infrastructure, leading to the inference that the workers were effectively employees of the Petitioner Company. In this regard, unlike the NBP case, also discussed supra, justifying NIRC's jurisdiction and intervention.

13. The petitioner's counsel's argument regarding time-barred grievance petitions is required to be examined in light of statutory provisions under the Industrial Relations Act (IRA) 2012. The Full Bench found that the petitions were within the Commission's jurisdiction, considering the delays caused by procedural transfers, returns, and revisions from the Labour Court and Appellate Tribunal. In industrial law, such procedural technicalities often do not invalidate a substantive claim of an employer-employee relationship when statutory entitlements are at stake. While the learned FCC in the NBP case emphasized that outsourcing does not automatically create employment rights, it relied on the fact that the employees were merely posted at the Bank with no control over core operations or integration into the employer's business.

14. In the present case, Respondent No.1 performed core manufacturing work under the petitioner's direct supervision, satisfying the legal test for employer control. Unlike the FCC NBP case, where workers had no substantive integration, here the Full Bench rightly relied on IRA 2012 to recognize an employer-employee relationship. The Full Bench's partial allowance of appeals and remand for further evidence aligns with industrial justice, ensuring due process and protection of statutory rights. Thus, the petitioner's plea to set aside NIRC orders lacks merit, and the Full Bench's decision is legally sound and justified.

15. In view of the above facts and circumstances of the case, Respondent No.1 is effectively entitled to the relief under IRA 2012, and the Petitioner company cannot rely solely on contractor arrangements to avoid these obligations in terms of admissions of the Petitioner-company.

16. This petition is devoid of merit and is dismissed along with pending application(s).

JUDGE

JUDGE

Shafi