

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-4863 of 2023  
(*M/s Frontier Constabulary versus Saleem-ur-Rehman & others*)

Date	Order with signature of Judge
------	-------------------------------

Mr. Justice Adnan-ul-Karim Memon  
Mr. Justice Zulfiqar Ali Sangi

**Date of hearing and order: 17.3.2026**

Syed Anayat Hussain Shah Bukhari advocate for the petitioner  
Nemo for Respondent No.1.  
Ms. Wajiha Mehdi, Assistant Attorney General

-----

**ORDER**

**Adnan-ul-Karim Memon, J.** The petitioner company has filed the present Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking that this Court may call for the record of the proceedings from the lower forums in the stated applications and appeal, and upon examination, set aside the impugned orders dated 27.10.2021, 06.12.2018, and 22.06.2023, on the grounds that the same are illegal, without jurisdiction, and passed without proper application of judicial mind. The petitioner further prays that the matter be remanded for decision afresh on merits by the competent forum.

2. Learned counsel for the petitioner company contended that the private respondent No.1 was employed as a Security Guard but had voluntarily abandoned service upon transfer to another location and did not join his new place of posting. It was argued that the grievance petition was filed on an incorrect/old address despite the respondent having knowledge of the petitioner's changed office location, due to which no notice was ever received and the matter was wrongly proceeded ex-parte. Consequently, the ex-parte order dated 06.12.2018 was obtained through fraud and misrepresentation. Upon coming to know of the said order during execution proceedings, the petitioner filed an application under Section 12(2) CPC for recall of the ex-parte order; however, the same was dismissed in a cursory manner. It was further submitted that both the dismissal order dated 27.10.2021 and the appellate order dated 22.06.2023 suffer from illegality, lack of proper appreciation of facts, and non-application of judicial mind. The counsel prayed that the impugned orders be set aside and the matter be remanded for decision on merits after providing an opportunity of hearing to the petitioner.

3. Learned Assistant Attorney General (AAG), while opposing the submissions of the petitioner's counsel, contended that the present petition is

misconceived, not maintainable, and liable to be dismissed. She submitted that the petitioner has attempted to assail concurrent findings of fact recorded by the competent forums without pointing out any jurisdictional defect or legal infirmity warranting interference under Article 199 of the Constitution. It was argued that the plea of non-service of notice is baseless and contrary to the record, as the respondent had duly served the grievance notice as well as subsequent notices through recognized modes, including courier service, at the address admittedly mentioned in the petitioner's own service record. The alleged change of address was neither intimated to the respondent nor substantiated before the forums below through any cogent evidence. Therefore, the ex-parte proceedings were rightly initiated due to the petitioner's own negligence and willful non-appearance. The learned AAG further contended that the application under Section 12(2) CPC was rightly dismissed, as the petitioner failed to specifically plead or prove any element of fraud or misrepresentation, which are sine qua non for invoking the said provision. Mere bald allegations without supporting material do not confer any right of recall of a validly passed order. She emphasized that the petitioner also failed to disclose essential facts, including the date of shifting of office, which clearly reflects lack of bona fides. It was further submitted that the findings of the learned Single Member as well as the Full Bench are based on proper appreciation of evidence and are in accordance with law. No procedural illegality or violation of principles of natural justice has been demonstrated. Rather, the petitioner is seeking to prolong the matter and avoid compliance of lawful orders passed in favour of the respondent. Lastly, the learned AAG argued that constitutional jurisdiction is not meant to re-appraise evidence or disturb concurrent findings of fact, particularly where no jurisdictional error is shown. She therefore, prayed that the petition be dismissed with costs, as the same is devoid of merit and has been filed merely to delay the execution of lawful orders.

4. We have heard the learned counsel for the petitioner on the maintainability of the petition and perused the record with his assistance.

5. The learned Full Bench of NIRC, after hearing the parties and examining the record, observed that the private respondent had served the grievance notice and subsequent court notices upon the petitioner at the address mentioned in the service record, and the same were duly delivered. The plea of change of address was found unsubstantiated, as no specific date or evidence of such change was provided by the petitioner. The Bench further noted that the petitioner failed to raise proper grounds of fraud or misrepresentation in its application under Section 12(2) CPC. It was also observed that the petitioner had not conducted any disciplinary proceedings against the respondent prior to his removal, which weakened its stance. In these circumstances, the Full Bench concluded that the ex-parte order was lawfully passed and did not suffer from any illegality or

procedural irregularity. Consequently, the appeal filed by the petitioner company was found to be without merit and was dismissed, while maintaining the orders of the learned Single Member of NIRC.

6. It emerges from the record that the controversy in the present petition revolves around three core aspects, namely: (i) maintainability of the constitutional petition against concurrent findings of the fora under the Industrial Relations Act, 2012, (ii) legality of the ex-parte order dated 06.12.2018 in light of alleged non-service, and (iii) scope and application of Section 12(2) CPC for recall of such order.

7. As regards maintainability, it is now a settled principle of law that constitutional jurisdiction under Article 199 of the Constitution is not to be exercised as an appellate forum to re-appraise evidence or disturb concurrent findings of fact recorded by competent tribunals, unless the impugned orders suffer from jurisdictional defect, patent illegality, or material irregularity. Reliance in this regard can be placed on the dictum laid down by the Supreme Court in *Messrs Mustafa Impex v. Government of Pakistan* (PLD 2016 SC 808), wherein it was held that interference in writ jurisdiction is limited to cases of coram non iudice, mala fide, or violation of law. In the present case, the petitioner has failed to point out any such jurisdictional defect; rather, the petition essentially seeks re-evaluation of factual controversies already adjudicated upon by the competent forums. Therefore, the petition is not maintainable on this score alone.

8. With respect to the plea of non-service and legality of ex-parte proceedings, the record reflects that notices were sent at the address admittedly appearing in the service record of the petitioner company and were duly served through recognized modes. The plea of change of address has neither been substantiated by any documentary evidence nor was any specific date of such change disclosed. It is a settled principle that a party cannot take advantage of its own omission or negligence. It is well settled that ex-parte proceedings are valid where service is properly effected and non-appearance is willful. In the instant case, the concurrent findings of the forums below clearly establish proper service; thus, the ex-parte order dated 06.12.2018 cannot be termed illegal or without jurisdiction.

9. Turning to the application under Section 12(2) CPC, the law is well-settled that such provision can only be invoked where a judgment or order has been obtained by fraud or misrepresentation of facts, and the burden to establish the same lies heavily upon the applicant. Mere allegations are insufficient unless supported by cogent evidence. Primarily, fraud must be specifically pleaded and

strictly proved. In the present case, the petitioner failed to plead necessary particulars of fraud or misrepresentation, nor was any evidence produced in support thereof. Even the alleged change of address, forming the basis of the plea of fraud, remained unsubstantiated. Therefore, the dismissal of the application under Section 12(2) CPC by the learned Single Member of NIRC, as well as its affirmation by the Full Bench of NIRC, is in accordance with law.

10. Furthermore, the contention of the petitioner regarding voluntary abandonment of service by the respondent also lacks merit, as admittedly no disciplinary proceedings, show cause notice, or inquiry was conducted in terms of the applicable labour laws. It is a settled proposition that termination of service without due process is void and of no legal effect, as this omission on the part of the petitioner further weakens its stance and supports the conclusion drawn by the fora below.

11. The findings recorded by the learned Single Member and upheld by the learned Full Bench of NIRC are based on proper appreciation of evidence and are neither perverse nor arbitrary. No violation of principles of natural justice or mandatory provisions of law has been demonstrated. Rather, the conduct of the petitioner reflects negligence and an attempt to delay compliance with lawful orders.

12. In view of the foregoing, this Court finds that the impugned orders do not suffer from any illegality, jurisdictional defect, or material irregularity warranting interference in constitutional jurisdiction. Consequently, the instant Constitutional Petition is found not maintainable against the concurrent findings of two fora therefore is dismissed along with pending application(s), with no order as to costs.

JUDGE

JUDGE