

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-50 of 2022
(Syed Aftab Ahmed v NIRC & others)

Date _____ Order with signature of Judge _____

Before:-

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:-16.04.2026.

Dr.Raana Khan advocate for the petitioner.
Mr. Asim Iqbal advocate for the Respondent No.2
Ms. Wajiha Mehdi, Assistant Attorney General
M/s Aamir Shahzad and Nadira Tabassum,
DGM HR legal for K-Electric

ORDER

Adnan-ul-Karim Memon , J Petitioner Syed Aftab Ahmed has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking following relief(s):-

- i) *Set aside that the impugned order dated 21.12.2021 passed by the learned full bench of NIRC/Respondent No.1 being illegal, without application of judicial mind and of no legal consequences;*
- ii) *Declare the termination letter issued on 21.03.2012 by Respondent No.2 as illegal and of no legal consequences;*
- iii) *Reinstate the petitioner in service with full back benefits including salary, perk and promton (the appeal of full back benefit filed before full bench of NIRC under case No. 12-A/95/2020 was also dismissed on the same day, under same order of full bench dated 21.12.2021;*
- iv) *To direct the Respondent No.2 to straight away release salary of the petitioner from 04.08.2020 when the order of reinstatement was passed by single bench until 21.12.2021 and thereafter, till disposal of this present petition filed at this Hon'ble High Court of Sindh*
- v) *To pass any toher appropriate order or grant appropriate relief as deemed fit and proper in the circumstances of the case in the interest of justice, equity and good conscience.*

2. The petitioner, Syed Aftab Ahmed, present along with his learned counsel, has filed the instant Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, being aggrieved and dissatisfied with the impugned judgment dated 21.12.2021 passed by the learned Full Bench of the National Industrial Relations Commission (NIRC), whereby the appeal filed by Respondent No.2 (K-Electric) was allowed, the judgment dated 04.08.2020 passed by the learned Single Member NIRC was set aside, and the petitioner's grievance petition as well as his appeal for full back benefits were dismissed. It is the case of the petitioner that he was appointed in 1995 as a Meter Reader and had

rendered approximately 17 years of continuous, honest, and unblemished service. During the course of employment, he diligently performed field duties under difficult working conditions; however, due to alleged bias and hostile attitude of a supervisory officer, he was overburdened with work and denied equal treatment, while his junior colleagues were promoted to the post of Meter Inspector despite being less meritorious. The petitioner submits that on 02.03.2012, he was served with a charge sheet alleging misconduct under clause 15(3)(b) and (c) of the Standing Orders Ordinance, 1968, on the basis of alleged irregularities reported in Site Inspection Reports and Regional Surveillance Department findings. He contends that the charge sheet was issued belatedly, as the inspection reports were dated January 2012, whereas the charge sheet was issued after an unexplained delay, rendering it time-barred and legally defective. He further submits that the charge sheet lacked essential particulars, including the names, dates, and identity of the inspecting officers, thereby making the allegations vague and defective in law. The petitioner further assails the departmental inquiry on the ground that it was conducted in undue haste within a few hours, without affording proper opportunity of defence. Crucially, the relevant RSD officials, whose reports formed the basis of the charge, were not produced for examination or cross-examination, thereby violating principles of natural justice and fair trial under Article 10-A of the Constitution. He also contends that the inquiry officer relied upon unproved documents, causing grave prejudice and rendering the proceedings illegal and void ab initio. It is further the case of the petitioner that he was dismissed from service on 21.03.2012 through a disproportionate penalty of termination, despite having rendered long and satisfactory service, and despite the alleged misconduct not falling within the definition of theft, fraud, dishonesty, or wilful damage as contemplated under the Standing Orders Ordinance, 1968. He asserts that the punishment awarded was excessive and not commensurate with the alleged misconduct. The petitioner also explains the procedural history, stating that due to repeated jurisdictional disputes between Labour Courts and NIRC, his matter remained pending and he was compelled to approach different forums. Ultimately, the learned Single Member NIRC vide judgment dated 04.08.2020 partly allowed his grievance, reinstated him into service, but wrongly restricted back benefits, thereby denying him full consequential relief. Being aggrieved, both parties filed cross appeals before the Full Bench of NIRC. The petitioner challenged denial of full back benefits, while the respondent challenged reinstatement itself. However, vide impugned order dated 21.12.2021, the Full Bench accepted the employer's appeal, set aside the reinstatement order, and dismissed the petitioner's appeal as well. Assailing the impugned judgment, the petitioner contends that the Full Bench failed to properly appreciate the factual and legal record, misread material facts, and wrongly treated the case as barred by

delay and procedural defects. It is further argued that the petitioner cannot be penalized for jurisdictional confusion prevailing during 2012–2014, when NIRC was not effectively functional and jurisdictional issues were sub judice before the High Court. The petitioner asserts that he continuously pursued his remedy without negligence or delay on his part. On these premises, the petitioner submits that the impugned order is based on misreading of law, non-application of judicial mind, and disregard of settled principles of natural justice. It is further alleged that the judgment is violative of Articles 10-A, 18, 23, and 24 of the Constitution, and has resulted in unjust deprivation of livelihood since 2012. In conclusion, the petitioner prays that the impugned order dated 21.12.2021 passed by the learned Full Bench of NIRC be set aside, the termination dated 21.03.2012 be declared illegal, and the petitioner be reinstated into service with full back benefits, including salary, allowances, and promotional benefits.

3. Learned counsel for the petitioner submits that a former Meter Reader in K-Electric, was terminated from service on 21.03.2012 after rendering about 17 years of unblemished service, without even a prior warning, on what is described as a frivolous and legally unsustainable charge. It is contended that immediately after termination, the petitioner diligently pursued his remedy by submitting grievance notices dated 02.04.2012 and 18.04.2012, followed by filing proceedings before the Labour Court in July 2012. The Labour Court, however, returned the matter on 07.08.2012 for want of jurisdiction, directing the petitioner to approach the proper forum. Thereafter, the petitioner approached NIRC on 27.08.2012, where the matter remained pending due to jurisdictional uncertainty arising from ongoing proceedings before this Court regarding the applicability of the Industrial Relations Act, 2012. Even a related NIRC order dated 03.09.2012 kept proceedings in abeyance, and subsequently the Labour Court again declined jurisdiction on 08.04.2013. It is further argued that due to this continued legal and institutional deadlock, and no fault of the petitioner, the matter remained in limbo until this Court finally decided the issue of jurisdiction on 04.08.2014. Meanwhile, the petitioner, in order to safeguard his rights, also submitted a fresh petition before NIRC on 16.04.2013, as the earlier petition filed on 27.08.2012 was reportedly not traceable from the record of NIRC. It is therefore submitted that any alleged delay cannot be attributed to the petitioner, as he remained continuously vigilant and was actively pursuing his remedies before appropriate forums throughout the period. On merits, learned counsel submits that the charge sheet issued on 02.03.2012 is fundamentally defective, vague, and time-barred. It is pointed out that the alleged inspection reports were of January 2012, yet the charge sheet was issued after an unexplained delay of about 49 days. Moreover, essential particulars such as date, time, location, and identity of the reporting RSD

officials were not mentioned, rendering the charge imprecise and incapable of proper defence. It is further argued that the charge under clauses 15(3)(b) and (c) of the Standing Orders Ordinance, 1968 is misconceived, as the allegations do not constitute theft, fraud, dishonesty, or wilful damage, and therefore the entire foundation of the disciplinary proceedings is illegal. With respect to the inquiry proceedings, it is submitted that the inquiry was conducted in undue haste on 16.03.2012, concluded within a few hours, and in violation of due process. Crucially, the material witnesses from the Regional Surveillance Department, whose reports formed the basis of the allegations, were not produced for examination or cross-examination, depriving the petitioner of a fair opportunity of defence. Reliance on unproved documents, without affording the petitioner the right to confront the evidence, is argued to be in clear violation of principles of natural justice and settled law, rendering the inquiry proceedings perverse and void ab initio. Learned counsel further contends that once the foundation of the charge sheet is defective and the inquiry itself is vitiated, all consequential proceedings, including termination, automatically fall to the ground in view of well-settled legal principles. On these premises, it is argued that both the Single Member NIRC judgment dated 04.08.2020 granting reinstatement and the subsequent Full Bench judgment dated 21.12.2021 reversing the same suffer from misreading of evidence, improper appreciation of facts, and non-application of judicial mind. It is therefore prayed that the impugned judgment be set aside, with consequential relief of reinstatement and full back benefits in accordance with law.

4. Learned counsel for Respondent K-Electric supported the impugned judgment dated 21.12.2021 passed by the learned Full Bench of NIRC and submitted that the same is lawful, well-reasoned, and based on proper appreciation of facts and law. It is contended that the petitioner, was appointed as Meter Reader in 1995 and was served with a charge sheet dated 02.03.2012 on allegations of misconduct. He submitted a reply which was found unsatisfactory, whereafter a regular inquiry was conducted in accordance with law, during which he was afforded full opportunity of defence. On conclusion of inquiry, the charges were held proved and the respondent was lawfully terminated from service on 21.03.2012. Learned counsel submits that the petitioner thereafter pursued multiple forums by first filing a grievance petition before the Labour Court, which was returned on 07.08.2012 for want of jurisdiction. Instead of immediately presenting the returned petition before the competent forum, he filed a fresh grievance petition before NIRC on 27.08.2012, which remained pending, and thereafter again instituted proceedings before different forums, including applications and petitions before Labour Court and this Court. Ultimately, after

disposal of jurisdictional issues, he filed another grievance petition before NIRC on 16.04.2013, which was admittedly after an unexplained delay of about eight months. It is argued that the learned NIRC rightly held that the grievance petition was barred by delay and laches, as the respondent failed to refile the returned petition promptly and instead initiated a fresh petition without explaining each day's delay, rendering the proceedings not maintainable in law. Reliance was placed on settled principles of limitation and diligence, as also reflected in reported case law, that a litigant must act promptly and cannot benefit from negligence or delayed filing. Learned counsel further submits that the inquiry proceedings were fair and lawful, as the petitioner was provided due opportunity of defence, and the findings of the Inquiry Officer were based on material evidence. The learned Single Member, however, had erroneously set aside the termination and granted reinstatement, without properly appreciating the evidence and legal defects in maintainability and rightly upset by the Full Bench of NIRC. It is therefore contended that the Full Bench of NIRC correctly interfered with the order dated 04.08.2020, as the Single Member had misread the record and ignored the established principle that unexplained delay in initiating proceedings renders the claim not maintainable. Accordingly, it is prayed that the respondent's appeal was rightly allowed, the grievance petition of the petitioner was correctly dismissed, and the impugned judgment of Full Bench of NIRC calls for no interference by this Court. Learned counsel submits that the present constitutional petition is not maintainable, as it in essence seeks reappraisal of facts and substitution of findings recorded by the forums below, which is impermissible in the exercise of constitutional jurisdiction under Article 199 of the Constitution. It is argued that the learned Full Bench of NIRC has rendered findings on the basis of the material available on record after due appreciation of evidence, and no case of jurisdictional defect, mala fide, or gross illegality has been made out by the petitioner to justify interference by this Court. Reliance is placed on the settled principle laid down by the Supreme Court authoritative pronouncements, that the High Court in constitutional jurisdiction does not sit as a court of appeal and cannot substitute its own view for that of the competent forum merely because another view may be possible. Learned counsel further contends that interference under Article 199 is warranted only where there is patent illegality, want of jurisdiction, or violation of settled principles of law, and not merely because the petitioner is dissatisfied with concurrent findings of fact. It is submitted that the attempt of the petitioner is to convert constitutional jurisdiction into a parallel appellate forum, which is contrary to the well-settled jurisprudence of the superior courts, wherein it has been held that constitutional jurisdiction cannot be invoked to re-examine findings of inferior courts or tribunals as if in a regular appeal. It is further submitted that where a statutory forum with adequate appellate and

revisional mechanism exists, the constitutional jurisdiction cannot be invoked to bypass such remedies, as doing so would amount to circumventing legislative intent and creating an unintended additional tier of appeal. The legislature, having consciously provided a structured remedy, has not envisaged conversion of Article 199 jurisdiction into a second appeal. On these premises, learned counsel submits that since the impugned judgment of Full Bench of NIRC suffers from no jurisdictional defect or illegality warranting interference, the petition is misconceived and is liable to be dismissed.

5. learned AAG supported the stance of the learned counsel representing K-Electric and prayed for dismissal of the petition.

6. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

7. The learned Single Member of NIRC, vide judgment dated 04.08.2020, after recording the pleadings, evidence, and arguments of both parties, observed that the petitioner, had been serving as a Meter Reader in K-Electric since 1995 and had rendered about 17 years of service without any prior adverse record. It was noted that during service he was served with a charge sheet dated 02.03.2012 alleging negligence in checking meters, to which he submitted a reply; thereafter an inquiry was conducted and his services were terminated on 21.03.2012. The learned Single Member recorded the stance of the respondent employer that a proper inquiry was conducted, opportunity of defence was afforded, and the petitioner was found guilty of misconduct on the basis of inquiry proceedings. However, the petitioner challenged the legality of the inquiry, contending that it was conducted in haste, without proper opportunity of cross-examination, and without examining material witnesses. After examining the record, evidence, and submissions, the learned Single Member observed that although the petitioner was served with a charge sheet and inquiry was conducted, the allegations did not disclose gross misconduct within the meaning of the relevant Standing Orders. It was further observed that the petitioner's duties were limited to meter reading and that the alleged lapse, even if assumed, appeared to be in the nature of inefficiency rather than misconduct warranting dismissal. The NIRC bench further noted that the inquiry proceedings suffered from procedural deficiencies and that the punishment of termination was harsh and disproportionate in view of the petitioner's long and unblemished service of 17 years. It was therefore concluded that the termination order dated 21.03.2012 could not be sustained in law, resulting in reinstatement of the petitioner, albeit with restricted back benefits limited to basic pay for the intervening period.

8. In essence, the learned Single Member allowed the grievance petition to the extent of reinstatement, while denying full back benefits on equitable considerations, holding that the punishment imposed was excessive and not commensurate with the alleged misconduct.

9. It appears from the record that the respondent's witness, Mr. Haresh Kumar, Manager Inspection (RSD), filed his affidavit-in-evidence along with various documents, including the charge sheet, notice of inquiry, inquiry proceedings, termination letter, and appeal documents, which were exhibited as part of the record. During cross-examination, the witness admitted that he had joined the respondent company in 2002 and, therefore, lacked direct knowledge regarding several material aspects of the petitioner's long service of approximately 17 years as Meter Reader, including whether he had ever been issued any prior warning or show cause notice. He, however, stated that the petitioner used to inspect approximately 150 to 200 meters daily and acknowledged the existence of multiple categories of staff in the area, including inspectors and supervisors. He further stated that two other officials were also found responsible in relation to the incident, though he was unable to specify their names. The witness also admitted that recovery had been effected from consumers in the form of fines, and that the alleged meter discrepancies were detected after the petitioner's inspection. He further conceded that he was the head of the RSD team at the relevant time, and that his subordinates had identified defects such as a hole in the meter. However, he expressed lack of knowledge regarding the initiation of any FIR against the consumers.

10. In his cross-examination of the petitioner, he confirmed that he was serving as a Meter Reader in K-Electric and was responsible for checking a large number of meters daily. He also acknowledged receipt of the petitioner's reply to the charge sheet and the issuance of inquiry notice, and that the petitioner attended the inquiry proceedings and signed the inquiry documents. The petitioner, when cross-examined, maintained that he had consistently performed his duties honestly and had reported issues whenever found. However, he stated that any reply given by him to the charge sheet was under pressure and compulsion, though this assertion was not mentioned in his affidavit-in-evidence. He admitted receipt of the charge sheet, participation in the inquiry proceedings, and termination thereafter on 21.03.2012. He also acknowledged that the photographs relied upon in his grievance petition were not produced during the departmental inquiry. He further stated that although he had raised grievances verbally with his superiors regarding workload and assignment issues, he had not made formal written complaints. He also confirmed that he did not report his issues to the office-bearers of the union at the relevant time. On the basis of the

above cross-examination and admissions, it emerges from the record that while the petitioner had participated in the inquiry proceedings, certain procedural and evidentiary aspects regarding the production and examination of material witnesses remained disputed between the parties.

11. At the outset, the principal defence of the respondent rests on the plea of “due inquiry and proved misconduct” as well as alleged “delay and laches” in filing of proceedings. However, both grounds lose force when examined in light of the settled principles of service jurisprudence and the factual matrix of the present case.

12. The so-called delay cannot be viewed in isolation where the record clearly demonstrates that the petitioner was continuously pursuing his remedy before different forums and was repeatedly constrained by jurisdictional uncertainty prevailing at the relevant time. The petitioner cannot be penalized for institutional confusion and shifting of jurisdiction between Labour Courts, NIRC, and constitutional proceedings before this Court. It is well-settled that where a litigant is bona fide pursuing remedies before a wrong forum under a genuine legal ambiguity, the period spent in such proceedings cannot be held against him.

13. Equally, the plea of res judicata is misconceived, as none of the earlier proceedings were decided on merits; rather, they were either returned for want of jurisdiction or kept in abeyance due to pendency of constitutional matters. Such orders do not constitute adjudication of rights so as to bar subsequent proceedings.

14. On merits, the respondent’s case that a lawful and fair inquiry was conducted is not borne out from the record in its true perspective. The inquiry proceedings, as reflected from evidence, suffered from material procedural deficiencies. The most crucial aspect is the non-production and non-examination of the material witnesses from the Regional Surveillance Department, whose reports formed the sole foundation of the charge. The denial of cross-examination of such material witnesses strikes at the root of fair trial guaranteed under Article 10-A of the Constitution. Mere production of documents without proving their contents through competent witnesses renders the inquiry evidentiary deficient and legally unsustainable.

15. Furthermore, the respondent’s witness admitted lack of direct knowledge of several material facts, including prior record of the petitioner and involvement of other responsible officials. This itself creates reasonable doubt regarding the attribution of sole responsibility to the petitioner in a multi-person operational setup. The record also indicates that other officials were similarly situated, yet

selective action was taken against the petitioner, which raises serious questions of fairness and uniform application of disciplinary standards.

16. The argument that misconduct was duly proved also does not stand scrutiny, as the nature of allegations, even if assumed to be correct, pertained at best to alleged inefficiency or omission in reporting discrepancies, which does not automatically fall within the ambit of “misconduct” as defined under the Standing Orders Ordinance, 1968, particularly when there is no element of dishonesty, fraud, or wilful misconduct established on record. Long service of about 17 years without prior adverse remarks further strengthens the inference that the penalty of termination was disproportionate and harsh.

17. It is also well settled that once the foundation of the inquiry is vitiated due to denial of fair opportunity and non-production of material witnesses, the entire superstructure of disciplinary action collapses. The Full Bench, while reversing the Single Member’s judgment, appears to have given undue weight to procedural delay while overlooking the fundamental defect in the inquiry process and proportionality of punishment.

18. The reliance placed by the respondent on the self-limiting scope of jurisdiction under Article 199 of the Constitution is misdirected in the facts and circumstances of the present case. The petitioner is not seeking reappraisal of evidence as a matter of routine appellate review; rather, the challenge is founded on patent illegality, misreading and non-reading of material evidence, and jurisdictional error committed by the Full Bench of NIRC, which squarely falls within the permissible scope of judicial review. The constitutional jurisdiction is not ousted merely because a statutory forum has decided the matter, particularly where the decision suffers from violation of mandatory legal requirements, misapplication of law, and disregard of settled principles of natural justice. The bar against acting as an appellate court does not extend to shielding findings which are perverse, based on misreading of record, or arrived at in disregard of material evidence. In the present case involves serious procedural infirmities, including denial of fair opportunity, non-examination of material witnesses, and reliance on untested documentary evidence, which go to the root of the impugned proceedings and render the findings unsustainable in law. In such circumstances, interference under Article 199 is not only permissible but necessary to prevent miscarriage of justice. The plea of availability of alternative statutory remedy is of no avail where the impugned order itself is without lawful authority or suffers from jurisdictional defects, as settled by superior courts. The petitioner is not attempting to convert constitutional jurisdiction into a second appeal; rather, he is invoking the supervisory jurisdiction of this Court to correct illegality and ensure

adherence to due process. Accordingly, the objections raised by the respondent regarding maintainability are misconceived, and the Full Bench judgment, being vitiated by misapplication of law and improper appreciation of material record, is liable to interference under Article 199 of the Constitution.

19. In view of the foregoing, this Court finds that the respondent has failed to demonstrate any legal or factual infirmity in the reasoning of the learned Single Member NIRC warranting complete reversal. The impugned judgment, to the extent it sets aside reinstatement, suffers from misapplication of principles of fair trial, improper appreciation of evidence, and failure to consider the doctrine of proportionality in service jurisprudence.

20. Consequently, petition is allowed and the impugned judgment dated 21.12.2021, cannot be sustained in law. The findings of the learned Single Member dated 04.08.2020 are based on proper appreciation of the record and settled legal principles and are accordingly affirmed, with modification that the denial of back benefits is set aside and the petitioner is held entitled to consequential monetary benefits in accordance with law. It is, however, noted that during the pendency of the present proceedings, the petitioner has attained the age of superannuation on 31.01.2025, therefore reinstatement shall be treated as having run its course for all legal and monetary purposes.

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