

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial

Mr. Justice Muhammad Hassan (Akber)

### Constitutional Petition No. D - 71 of 2020

[Pfizer Pakistan Ltd. vs. Full Bench of NIRC & Others]

along with

Constitutional Petitions No. D - 72 of 2020

to

Constitutional Petitions No. D - 95 of 2020

Mr. Faisal Mehmood Ghani, advocate for petitioner.

Mr. Abdul Ghaffar, advocate for respondent No.2.

Mr. Muhammad Yousuf Patel, advocate for respondent No.3.

M/s. Muhammad Habib Kazi & Yousuf Khalid Anwar, advocates for respondent-4.

Date of Hearing : 20.05.2025

Date of Decision : 27.06.2025

### JUDGMENT

**Omar Sial, J:** Impugned before us is the Order dated 09.10.2019 (“Appellate Order”) passed by the learned full bench of the National Industrial Relations Commission (“NIRC”) at Karachi in 25 connected appeals.<sup>1</sup> The said Order reversed the findings dated 19.2.2019 of the single bench of the NIRC (“Original Order”) and held Amir Anjum and others (Respondents No.2) to be regular employees of both Pfizer Pakistan Limited and Wyeth Pakistan Limited. Pfizer Pakistan, aggrieved by such a declaration, seeks to restore the Original Order.

2. Initially, Anjum and others filed the petition under section 54(e) of the Industrial Relations Act, 2012 (“IRA, 2012”), against Pfizer Pakistan only. Their case is that they were engaged in the Engineering Department of Pfizer Pakistan as electricians, generator operators, and boiler operators. However, unlike the workers in the pharmaceutical manufacturing department, they were not members of the trade union. They were unjustly deprived of the additional perks, such as bonuses, leave, etc, that the trade union members of Wyeth Pakistan Ltd Employees Union and

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<sup>1</sup> Appeal No.(s) 12A(20)/2019-K, 12A(147)/2019-K to 12A(170)/2019-K

Pfizer Pakistan Employees Union could enjoy because of their collective bargaining agent. They prayed that they be issued appointment letters, be regularized as employees, and be allowed to participate as members in the trade union.

*Was Pfizer Pakistan the employer of Anjum and others?*

3. Pfizer Pakistan claims that it has never operated from the factory situated at “S-33, Hawks Bay Road, SITE, Karachi” (“factory”) (shown in the title of the petitions) and that it has no privity of contract with Anjum and others. The basis of Anjum and others' claim, though not mentioned in the petition, has been explained to us by the appellant's counsel as follows. The factory was owned and operated by Wyeth Pakistan Limited. In 2009, Pfizer USA internationally acquired Wyeth. On this basis, the claim was initially filed against Pfizer Pakistan only, and subsequently, Wyeth Pakistan Limited and MTK & Co Contractor were also impleaded as respondents.

4. The counsel for the appellant, Pfizer Pakistan, has argued that although Wyeth was acquired by Pfizer internationally. However, in Pakistan, they continued to operate as separate legal entities independent of each other. Pfizer Pakistan never owned or operated the factory. Nothing has been brought on the record by Anjum & others to demonstrate that Wyeth Pakistan ceased to exist independently of Pfizer Pakistan and merged with it. This assertion is further bolstered by the admitted fact that Pfizer Pakistan and Wyeth Pakistan both continued to have separate trade unions. Hence, in line with the foundational tenets of company law, i.e., the doctrine of separate legal personality, the said two sister concerns are independent. However, respectfully, the reliance placed on the counsel for the petitioner on the case law cited is misplaced as the same pertains to the doctrine of merger in a different set of circumstances.<sup>2</sup>

5. Upon a review of the law by us, we note that Section 2(x) of the IRA, 2012 defines establishment as, “...*any factory...which employs workmen directly or through a contractor for the purposes of carrying out any business or industry.*” Whereas, section 2(ix) defines an employer, “*in relation to an establishment, means any person or body of persons, whether*

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<sup>2</sup> PLD 2016 SC 358, Sahabzadi Mehrunnisa v. Mst. Ghulam Sughran, 1992 SCMR 663, A & B Food Industries Limited v. Commission Income Tax Sales, 2003 CLD 463, Adamjee Insurance Company Limited v. Muslim Commercial Bank Limited, Islamabad

*incorporated or not, who or which employs workmen in the establishment under a contract of employment.”* The establishment under consideration is the factory. Wyeth Pakistan Limited admittedly operated this factory, as Anjum and others in their cross-examination admitted, “It is correct that presently M/S Wyeth Pakistan Limited is in a *situation at Plot No. S-33, Hawksbay, Karachi. Voluntarily says that it was Pfizer Pakistan Limited which has been merged with M/S Wyeth Pakistan Limited. We have not filed any proof of merger.*” Pfizer Pakistan has also placed on record an Asset Purchase Agreement dated 19.05.2017, which demonstrates that the title to the establishment was held by Wyeth Pakistan Limited, who sold the same to ICI Pakistan Limited. Pfizer Pakistan did not own or operate the establishment where Anjum and others were employed. Accordingly, Pfizer Pakistan does not fall within the definition of an employer under the IRA, 2012. Hence, Anjum and others' case against Pfizer Pakistan fails.

*Was Wyeth Pakistan the employer of Anjum and others?*

6. There is no dispute over the fact that the factory was owned and operated by Wyeth Pakistan Limited. It has also not been denied that Anjum and others were engaged in providing electrical services at the factory. However, the case of Wyeth Pakistan Limited is that Anjum and others were not its employees but those of an independent contractor, namely MTK & Co. Contractor.

7. We note that employer, in section 2(ix) of IRA, 2012, has been defined as, “*any person or body of persons, whether incorporated or not, who or which employs workmen in the establishment under a contract of employment and includes...(b) any person responsible for the management and control of the establishment.*” If Anjum and others had demonstrated at trial that the control and management of their jobs continued to vest with Wyeth Pakistan, they would have successfully pleaded their case against Wyeth Pakistan. However, no evidence has been presented to substantiate such an assertion. They have outrightly denied dealings with the MTK & Co Contractor and have stated that he is not known to them. Whereas, MTK & Co Contractor’s witness has confirmed that all the petitioners were its employees.

8. Ordinarily, employment is presumed to exist between an independent contractor and its workers. However, this is a rebuttable presumption that can be dislodged on the touchstone of the control and integration test, along with other incidental factors.<sup>3</sup> This test is aimed at thwarting establishments' attempts to sabotage the protected rights of their employees by creating a false illusion of an independent employer. The Appellate Order is also premised on the rampant existence of such a practice on the part of the employers and assumes that such was the intent of Pfizer Pakistan and Wyeth Pakistan. However, respectfully, matters can not be adjudicated on assumptions and general market practices but on the touchstone of law as applicable to the facts of the case.

9. The legal test that has developed in this area has been summarized as follows in 2024 SCMR 1548, IFFCO Pakistan (Pvt) Limited v. Ghulam Murtaza;

*“(b) the employee of the contractor shall be the employees of the company if the contractor engaged the workers for running of affairs of the company and not for some other independent work which has no concern with the production of the company;*

*(c) if the employees are working in a department of the company which constituted one of the principal organs of the company, the machines belong to the company, the raw material is supplied by the company and the said department is controlled by the supervisors of the company, the employees of the contractor shall be the employees of the company;*

*(d) the employees, engaged directly or through a contractor, would be deemed to be the employees of the company for whose benefit they perform functions;*

*(e) even though ‘control’ test is an important test, it is not the sole test; a multiple pragmatic approach weighing up all the factors and against the employment has to be adopted, including an ‘integration’ test; and*

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<sup>3</sup> 2013 SCMR 1253, Fauji Fertilizer Company Limited v. National Industrial Relations and 2024 SCMR 1548, IFFCO Pakistan (Private) Limited v. Ghulam Murtaza & others

*(f) if the contract is found to be not genuine and a device to deprive the employees from their legitimate rights/benefits, the so called contract employees will have to be treated as employee of the company.”*

10. Anjum and others have led no evidence to demonstrate a case on the touchstone of the factors above. In fact, during the pendency of the case, owing to the expiry of the agreement between Anjum and others and MTK & Co. Contractor, the employment of Anjum and others stood terminated. Instead of challenging the dismissal, Anjum and others accepted the outstanding dues from MTK & Co Contractor, which were payable to them upon termination. Their counsel has conceded to this fact. Thereafter, they filed a contempt application against Pfizer Pakistan, Wyeth Pakistan, and MTK Co. & contractor. This conduct itself is against the doctrine of approbation and reprobation.<sup>4</sup> Having failed to challenge the termination order via a grievance petition and, in fact, having acquiesced to it by receiving the full and final dues against their settlement, Anjum and others, on account of their conduct alone, are barred from claiming a right to regular employment.

11. For the above reasons, these petitions stand allowed.

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<sup>4</sup> 2023 SCMR 1427, Asrar Ahmed v. Chairman Pakistan Aeronautical Complex Board Kamra