

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D – 1368 of 2022
(Pakistan State Oil Company Limited versus Khurram Saleem and others)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing & orders: 04.8.2026

Mr. Khalid Mehmood Siddiqui, advocate for the petitioner.
Mr. Ehsanullah, Advocate for Respondent No.1.
Mr. Ghulam Nabi Deeshak, Advocate for Respondent No.2.
Mr. Muhammad Akbar Khan, Assistant Attorney General.

ORDER

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

In view of the foregoing on facts and grounds, it is humbly prayed that this Hon'ble Court may be pleased to call R&P from NIRC, allow this Constitutional Petition, set aside the impugned judgments dated 25.01.2022 and 10.02.2021 passed by the Single/Full Bench of NIRC.

2. The case of the petitioner, Pakistan State Oil Company Limited (PSO), is that it is an oil marketing company engaged in the marketing and distribution of petroleum products throughout Pakistan. The petitioner submits that, in the course of its business, it outsourced certain ancillary services to Respondent No.2, an independent contractor, who was exclusively responsible for the recruitment, supervision, discipline, and payment of wages of its own employees. According to the petitioner, Respondent No.1 was at all material times an employee of Respondent No. 2 and had no employer-employee relationship with PSO. During the course of his employment, Respondent No.2 initiated disciplinary proceedings against Respondent No.1 on charges of insubordination, failure to perform assigned duties, non-compliance with prescribed uniform guidelines, and habitual late attendance and absenteeism. A show-cause notice was issued to Respondent No.1, to which he submitted a written reply. Thereafter, a regular departmental inquiry was conducted in accordance with law, in which Respondent No.1 fully participated. Upon conclusion of the inquiry and after the charges were found proved, Respondent No.1 was dismissed from service by Respondent No.2 through order dated 27.04.2012. The petitioner further submits that although Respondent No.1 served a grievance notice only upon Respondent No.2, he subsequently instituted a grievance petition before the National Industrial Relations Commission (NIRC) against both Respondent No.2 and the petitioner, seeking reinstatement and regularization in the service of PSO on the plea that he

had been performing duties of a permanent nature. In the said proceedings, Respondent No. 1 also alleged that he had never been served with the show-cause notice and had no knowledge of the inquiry proceedings. The petitioner asserts that this plea was demonstrably false, as the documentary record clearly established that Respondent No.1 had submitted a written reply to the show-cause notice and had actively participated in the departmental inquiry. The petitioner as well as Respondent No.2 contested the grievance petition by filing their respective replies and maintaining that no employer-employee relationship ever existed between PSO and Respondent No.1. It was specifically pleaded that Respondent No.1 remained exclusively an employee of the contractor, who alone exercised control over his appointment, supervision, disciplinary proceedings, and eventual dismissal after completion of due process. It is the petitioner's case that despite the above facts and evidence, the learned Single Bench of the NIRC allowed the grievance petition by placing reliance upon the judgment of the Hon'ble Supreme Court reported as Bakht Siddique and others Vs PSO and others **2018 SCMR 1181**, relating to the regularization of contractor employees working in PSO. The petitioner-company preferred an appeal before the Full Bench of the NIRC; however, the same was dismissed through judgment dated 25.01.2022, affirming the order of the learned Single Bench dated 10.02.2021. Being aggrieved by the aforesaid judgments, the petitioner has invoked the constitutional jurisdiction of this Court.

3. It is contended by the learned counsel for the petitioner that the impugned judgments are contrary to law and the evidence available on record, suffer from misreading and non-reading of material evidence, and fail to appreciate that Respondent No.1 was an employee of the independent contractor who had already been lawfully dismissed after a fair and regular disciplinary inquiry. The petitioner further submits that the findings recorded by the NIRC are neither reasoned nor speaking, as no finding has been returned regarding the legality of the disciplinary proceedings or the dismissal order passed by Respondent No.2. It is further contended that the reliance placed upon **2018 SCMR 1181** is wholly misconceived because the said judgment concerns the regularization of contractor employees and has no application to a case where the concerned employee had already been dismissed by the contractor on proven charges of misconduct after due process of law. The petitioners' counsel also submits that the grievance petition itself was not maintainable against PSO, as no grievance notice under Section 33 of the Industrial Relations Act, 2012 had ever been served upon the petitioner. It is further asserted that the NIRC erroneously relied upon a disputed list of employees, ignored the findings of the departmental inquiry establishing misconduct, and failed to specify either the date or legal basis of the alleged regularization while completely overlooking the absence of any employer-

employee relationship between PSO and Respondent No. 1. In these circumstances, the petitioner prays that this Court to call for the record and proceedings from the National Industrial Relations Commission, set aside the judgments dated 10.02.2021 and 25.01.2022 passed by the learned Single Bench and Full Bench of the NIRC.

4. Learned counsel for the private Respondent No.1 supported the judgments of both the learned Single Bench and the Full Bench of the National Industrial Relations Commission (NIRC), contending that the petitioner had failed to establish that Respondent No.1 was exclusively an employee of the contractor. It was argued that although Respondent No. 1 was shown on the contractor's record, he had continuously performed duties as a Lift Operator at the petitioner's establishment (PSO House) since 1979 under the direct supervision and control of PSO. Counsel submitted that the petitioner had failed to produce any outsourcing agreement demonstrating that lift operations had been lawfully outsourced or that any independent and identifiable work had been assigned to the contractor. Learned counsel further argued that the evidence on record established that Respondent No.1 was, in substance, an employee of PSO. Reliance was placed upon the admissions made by the petitioner's own witness, who acknowledged that Respondent No. 1 had been working at PSO's Head Office and that his name had been forwarded by the Ministry of Petroleum to the Cabinet Sub-Committee for regularization in PSO. According to the learned counsel, this admission clearly established that the Government itself had treated Respondent No.1 as a person entitled to consideration for regularization in the petitioner's establishment and not as an employee of the contractor. It was further submitted that the contractor merely supplied manpower to PSO and that such an arrangement did not sever the employer-employee relationship between PSO and the workers who were performing perennial and permanent functions under its direct supervision. Counsel contended that the outsourcing arrangement introduced by the petitioner at a later stage was only an attempt to deprive long-serving employees of their statutory rights under labour laws. On these premises, learned counsel maintained that the learned Single Bench had rightly declared Respondent No.1 to be an employee of PSO and that the Full Bench had correctly affirmed those findings after appreciating both the oral and documentary evidence on record. Learned counsel relied upon the judgment in the cases of *State Oil Company Limited v. Bakht Siddique* (2018 SCMR 1181), *Iffco Pakistan (Private) Limited v. Ghulam Murtaza* (2024 PLC 226) and *Abdul Ghafoor v. President National Bank of Pakistan* (2018 SCMR 157). It was, therefore, prayed that the constitutional petition be dismissed and the concurrent judgments of the learned Single Bench dated 10.02.2021 and the Full Bench dated 25.01.2022 be maintained.

5. Learned counsel for Respondent No.2 supported the case of the petitioner company and submitted that Respondent No.2 was an independent outsourcing service provider engaged in supplying manpower to the petitioner under a contractual arrangement. It was argued that Respondent No.1 had been appointed

by Respondent No.2 as a Lift Operator on a contractual basis with effect from 12.09.2001, and although he was posted at the petitioner's Head Office, his appointment, salary, service benefits, supervision in employment matters, and disciplinary control remained exclusively with Respondent No.2. Learned counsel further submitted that Respondent No.2 had lawfully initiated disciplinary proceedings against Respondent No.1 by issuing a show-cause notice, followed by an independent domestic inquiry in which Respondent No.1 was afforded full opportunity to defend himself. Upon being found guilty of misconduct, he was dismissed from service through order dated 27.04.2012 after due process of law. It was contended that the entire disciplinary proceedings were conducted by Respondent No.2 alone, thereby demonstrating that Respondent No.1 was its employee and not that of the petitioner. It was also argued that no employer-employee relationship ever existed between the petitioner and Respondent No.1. The mere fact that Respondent No.1 was deployed at the petitioner's premises pursuant to the outsourcing agreement did not entitle him to seek regularization or reinstatement in the petitioner's service. Learned counsel submitted that the grievance petition against the petitioner was, therefore, misconceived and not maintainable. Finally, learned counsel contended that both the learned Single Bench and the Full Bench of the NIRC failed to properly appreciate the undisputed documentary evidence establishing that Respondent No.1 was exclusively an employee of Respondent No.2, who alone exercised disciplinary authority over him and had lawfully terminated his services. Accordingly, learned counsel supported the petitioner's challenge to the impugned judgments and prayed that the same be set aside.

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. It appears from the record that after hearing learned counsel for the parties and examining the record, the Full Bench of the National Industrial Relations Commission held that there was no illegality or infirmity in the judgment of the learned Single Bench. The Full Bench observed that the evidence on record established that Respondent No.1 had continuously worked at PSO House and that the petitioner's own witness admitted this fact. It further noted that Respondent No.1's name had been forwarded by the Ministry of Petroleum to the Cabinet Sub-Committee for consideration of regularization in PSO, which, according to the Commission, indicated that he was being treated as a worker of the petitioner's establishment rather than that of the contractor. The Commission also relied upon the admission of Respondent No.2's witness that the contractor merely supplied manpower to PSO. It held that the mere supply of manpower through a contractor did not sever the employer-employee relationship between the principal employer and the worker, particularly where the employee was

performing permanent duties under the direct control and supervision of the principal employer. The Commission further observed that although Respondent No.1 had been working since 1979, the outsourcing arrangement was executed much later, which appeared to be an attempt to deprive him of the benefits and protections available under the labour laws. On the basis of these findings, the Full Bench concluded that the learned Single Bench had rightly declared Respondent No.1 to be an employee of PSO. Consequently, the appeal filed by the petitioner was dismissed, the judgment dated 10.02.2021 was maintained, and no order as to costs was made.

8. The learned Single Bench of the National Industrial Relations Commission, after examining the pleadings, documentary evidence and the statements of the witnesses, held that although no formal appointment letter issued by PSO was produced by the petitioner, it was an admitted fact, which has come on record through the witness of the petitioner company that he had continuously worked at the Head Office of PSO as Lift Operator. The single Bench Commission observed that the documentary evidence, particularly the material relating to the Cabinet Sub-Committee on Regularization, showed that the petitioner's name had been included amongst the employees recommended for regularization in PSO, thereby establishing that he was performing duties in the petitioner's establishment for considerable period of time. The learned Single Bench further relied upon the judgments of the Hon'ble Supreme Court rendered in the cases of Bakht Siddique and others and Pakistan State Oil Company Ltd. v. Ghulam Ali and others (CPLA No. 95-K of 2017), wherein employees working through contractors in PSO on permanent and perennial jobs were held entitled to regularization. The Commission found that the petitioner's case was identical to those employees and observed that the outsourcing arrangement was merely a device adopted to deny permanent employees the protection and benefits available under labour laws. Consequently, the learned Single Bench declared the petitioner to be an employee of PSO, held that his termination by the contractor was illegal, and directed PSO to reinstate him in service within thirty days. However, with regard to back benefits, the Commission held that the petitioner would be entitled only to basic pay for the intervening period, as neither party had produced evidence regarding his gainful employment during the period of his termination.

9. We have tentatively assessed the record and considering the evidence recorded by the NIRC, which shows that the petitioner and Respondent No.2 examined their respective witnesses. Rao Muhammad Idrees, appearing on behalf of PSO, who admitted that the petitioner had been working at PSO's Head Office and that his name appeared in the list forwarded by the Ministry of Petroleum in connection with the Cabinet Sub-Committee proceedings regarding the regularization of contract and daily wage employees. He, however, denied the

correctness of the said list and maintained that PSO had neither initiated disciplinary proceedings nor issued any charge-sheet to respondent No.1. Similarly, Arsalan Bhatti, witness for Respondent No.2 (HRSG), deposed that HRSG and PSO were separate legal entities and that HRSG merely supplied manpower to PSO under a contractual arrangement. He confirmed that respondent No.1 had been working at PSO's Head Office and stated that although he was performing duties at PSO, he had been employed by HRSG. However, no formal appointment letter was produced in evidence, but it has been shown that the respondent No.1 was working at the PSO office as a lift operator, as HRSG had no such facility to hire for the aforesaid purposes, meaning salary was being paid to the respondent No.1 by the management of PSO, not by the respondent No.2 as third party contractor.

10. It is an admitted position on record that Respondent No.1 continuously performed duties as a Lift Operator at the petitioner's establishment, namely PSO House. It is equally admitted that Respondent No.2 was engaged by the petitioner as a manpower contractor and that Respondent No.1 was appointed, subjected to disciplinary proceedings and ultimately dismissed through orders passed by Respondent No.2. The documentary evidence further shows that the show-cause notice, domestic inquiry and dismissal order all emanated from Respondent No.2, but the question remained unanswered that as to why the disciplinary proceedings were initiated against the private respondent No.1 by the respondent No.2 as he was working with PSO and not with respondent No.2 and however, they could not assess the performance of respondent No.1 and terminated his services without regular inquiry. However, the NIRC has determined the issue; therefore, this Court cannot dilate upon the subject issue furthermore.

11. The principal controversy, therefore, is not whether Respondent No.1 worked at the petitioner's premises, but whether such deployment created an employer-employee relationship with the petitioner notwithstanding the contractual arrangement with Respondent No.2.

12. The learned Single Bench answered this question in the affirmative by placing reliance upon the decisions of the Hon'ble Supreme Court in **Bakht Siddique and others** and **Pakistan State Oil Company Ltd. v. Ghulam Ali and others (2018 SCMR 1181)**. The Full Bench, after independently reappraising the evidence, affirmed those findings and dismissed the appeal on the same analogy.

13. It is well settled that the constitutional jurisdiction of this Court under Article 199 of the Constitution is supervisory and not appellate. Concurrent findings of fact recorded by specialized labour forums are ordinarily not interfered with unless they are shown to suffer from jurisdictional defect, patent

illegality, perversity, misreading or non-reading of material evidence, or are so unreasonable that no prudent person could have reached such conclusions. Mere possibility of another view on the evidence does not justify interference in constitutional jurisdiction. The case laws relied upon by respondent No.1 are relevant on the subject issue and support the case of respondent No.1.

14. The petitioner's principal contention is that Respondent No.1 was exclusively an employee of Respondent No.2, who alone exercised disciplinary control over him, and therefore the judgments under challenge have ignored the legality of the domestic inquiry and dismissal proceedings. It has also been contended that no grievance notice under Section 33 of the Industrial Relations Act, 2012 was ever served upon the petitioner and that the reliance placed upon **2018 SCMR 1181** is distinguishable because the said judgment dealt with regularization of contractor employees and not with a case where an employee had already been dismissed by the contractor after a domestic inquiry.

15. Conversely, the private respondent No.1 has relied upon the admissions made by the petitioner's own witness that Respondent No.1 continuously worked at PSO House and that his name had been forwarded to the Cabinet Sub-Committee for regularization in PSO. The NIRC has treated these admissions, coupled with the admitted performance of perennial duties under the direct supervision of PSO, as sufficient to conclude that the outsourcing arrangement did not displace the real employer-employee relationship.

16. The record further reveals that both the learned Single Bench and the Full Bench concurrently found that Respondent No.1 was performing permanent and perennial functions in the petitioner's establishment and that the outsourcing arrangement could not deprive him of statutory labour rights. These findings are based upon documentary evidence, admissions made by the petitioner's own witness, and the binding precedents relied upon by the Commission. At the same time, the record also reflects that the disciplinary proceedings and dismissal order were admittedly undertaken by Respondent No.2, a contention which was specifically pressed by the petitioner.

17. Whether the impugned judgments suffer from non-consideration of the legal effect of the domestic inquiry, the maintainability objection under Section 33 of the Industrial Relations Act, 2012, and the applicability of **2018 SCMR 1181** are questions of law which require careful examination. However, unless it is demonstrated that the concurrent findings are perverse, unsupported by evidence, or based upon a misreading or non-reading of material evidence, this Court would ordinarily refrain from substituting its own appraisal of evidence for

that of the specialized labour forum exercising exclusive jurisdiction under the Industrial Relations Act, 2012 based on evidence.

18. Accordingly, the Constitutional Petition, being devoid of merit, is dismissed. The judgments dated 10.02.2021 and 25.01.2022 passed by the learned Single Bench and the Full Bench of the National Industrial Relations Commission are maintained. The parties shall bear their own costs.

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