

## IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

### **C.P No.D-635 of 2018**

M/s Gerry's Dnata (Pvt) Ltd, and others.....Petitioners

Versus

Learned Full Bench of National Industrial

Relations Commission and others .....Respondents

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**Date of hearing: 08.02.2018**

Mr. Muhammad Faruq Ghani Advocate for the  
Petitioners.

Mr. M.A.K. Azmati Advocate for the Respondents.

MR. Shaikh Liaquat Hussain, Assistant Attorney  
General.

### **ORDER**

**ADNAN-UL-KARIM MEMON,J:-** By invoking extraordinary  
Constitutional jurisdiction of this Court under Article 199 of  
Constitution of Islamic Republic of Pakistan, 1973, the Petitioners  
have filed the instant Petition with the following prayer(s):-

- i) To declare and set aside the order dated 03.01.2018 passed by Respondent No.1 (learned Full Bench of NIRC) at Islamabad without issuing any notice in Complaint Nos. 7(01)/2018-K, 7(139)/2017-K, 7(138)/2017-K, 7(137)/2017-K, 7(136)/2017-K, 7(135)/2017-K, which is illegal, void and without lawful authority in view of the order dated 20.11.2017 passed by the Hon'ble Supreme Court of Pakistan in C.P. No. 2352/2016 and 2394 of 2016.***

- ii) ***To declare that the complaints as Annexures P/9 to P/9/F and Appeal No. 12(111)/2016-K, keeping in view the order dated 20.11.2017 passed by the Hon'ble Supreme Court of Pakistan in C.P. No. 2352 and 2394 of 2016 has now become void and without jurisdiction, the same is liable to be set aside.***
- iii) ***To direct the Respondent No.1 to refrain from proceeding further with the complaints as Annexure P/9 to P/9F and new Appeal No. 12(111)/2016.***

2. Brief facts of the case are that the Petitioner's Company is a joint in venture of UAE Company and Pakistani Company incorporated under the Companies Ordinance, 1984 and is Trans Provincial Establishment and are engaged in the business of ground handling services to Airlines. Private Respondents are claiming to be employed in the Establishment of Petitioner's Company and they are actively engaged in Trade Union Activities. They raised an Industrial dispute and filed Petitions under section 54 read with section 31 of the Industrial Relations Act 2012 before the learned Single Member National Industrial Relations Commission with the prayer to set aside the impugned transfer letter dated 03.03.2014. The learned Single Member of NIRC Karachi after hearing the parties dismissed the stay applications as well as main petitions. Private Respondents approached the learned Full Bench of NIRC but the appeals were dismissed vide order dated 06.08.2015 with the observation that NIRC does not ordinarily interfere in the matters of transfer or micro managed the affairs of an organization as an employer has inherent right to transfer any of its employees. Both the parties being aggrieved by and dissatisfied with the impugned orders passed by the learned Full Bench of NIRC dated 06.08.2015 filed petition Nos.D-4840

of 2015 and 4841 of 2015 before this Court. This Court then vide order dated 04.06.2016, disposed of the aforesaid petitions on 04.06.2016. Petitioners' Company being aggrieved by and dissatisfied with the judgment passed by this Court in the aforesaid cases preferred Civil Petitions No. 2352 and 2394 of 2016 before the Hon'ble Supreme Court of Pakistan. The Hon'ble Supreme Court vide order dated 20.11.2017 was pleased to dispose of the Petitions with the observation that the learned Single Judge of NIRC shall attend to all the questions hinted to above while deciding this case:-

3. Notice of this Petition was issued to the Respondents and in response to that Notice Mr. M.A. K. Azmati learned counsel has filed power on behalf of Respondents No. 2 to 7.

4. Mr. Muhammad Faruq Ghani, learned counsel for the Petitioners has contended that this Court as well as Hon'ble Supreme Court have not set aside the transfer letters dated 31.07.2015 and 01.08.2015 issued by the Petitioners' Company but had only remanded the main case for recording of evidence by learned Single Bench of NIRC; that during pendency of the aforesaid Civil Petitions before the Hon'ble Supreme Court of Pakistan, Respondents No. 2 to 6 filed a new case No. 4A(266)/2016 before learned Single Bench of NIRC, which was dismissed vide order dated 04.11.2016. Learned counsel next submitted that Respondents No. 2 to 6 filed an appeal No. 12(111)/2016-K before of the Full Bench of NIRC which had become infructuous in view of the fact that the Hon'ble Supreme

Court of Pakistan has already passed an order dated 20.11.2017; that on the date of hearing before the learned Full Bench of NIRC on 19.12.2017 Petitioners' Company filed power and submitted a copy of order dated 20.11.2017 passed by the Hon'ble Supreme Court; that on the aforesaid date of hearing learned Full Bench of NIRC did not grant any stay order and fixed the date on 14.02.2018 for hearing of the said Appeal, keeping in view the order dated 20.11.2017 passed by the Hon'ble Supreme Court of Pakistan. Learned counsel further submitted that Respondents No. 2 to 6 mala fidely filed a complaint before the learned Full Bench of NIRC at Islamabad, and without issuing a notice to the Petitioners' Company by making a false statement before the learned Full Bench of NIRC that the stay order is operating in the matter, which mislead the learned Bench to pass status quo order. Learned counsel next contended that contempt application filed by the Respondents No. 2 to 6 was not required to be filed due to the fact that the Hon'ble Supreme Court had already passed order dated 20.11.2017 therefore Appeal No.12 (111)/2016 by the Private Respondents had become infructuous as such complaint/contempt application filed by the Respondents No. 2 to 7 are not maintainable in law, which directly or indirectly effected the order passed by the Hon'ble Supreme Court of Pakistan in the aforesaid matter, which is unlawful act on the part of the Private Respondents; that the learned Full Bench of NIRC at Islamabad has wrongly entertained the complaint/ application filed by the Private Respondents and passed the impugned order dated

03.01.2018, which is badly effecting the basic rights of the Petitioners' Company involved in the matter.

5. Mr. M. A. K. Azmati, leaned counsel for the Respondents No. 2 to 7 has raised the preliminary legal objection that the instant Petition is not maintainable against the order dated 03.01.2018 passed by the learned Full Bench of NIRC. He next contended that the matter is still subjudice before the Full Bench of NIRC in appeal No. 12(111)/2016-K, which is fixed on 14.02.2018 for hearing of arguments and this Court has no jurisdiction to entertain this Petition.

6. We have heard learned counsel for the parties and perused the material available on record.

7. Without touching merits of the case, we may observe that this Court vide order dated 04.06.2016, disposed of the aforesaid petitions with the following observation:-

***“In view of the above discussion the petitions are admitted to regular hearing and the impugned orders passed by learned Single Member and Full Bench NIRC, to the extent of dismissal of main cases are set aside being not sustainable under the law. The matters are remanded back to the learned Single Member NIRC with the directions to decide the main cases on merits after recording evidence.”***

Petitioners' Company being aggrieved by and dissatisfied with the impugned judgment dated 04.06.2016 passed by this Court in the aforesaid petitions preferred Civil Petitions No. 2352 and 2394 of 2016 before the Hon'ble Supreme Court of Pakistan.

The Hon'ble Supreme Court vide order dated 20.11.2017 was pleased to observe as under:-

**5. “ Whether the order transferring the respondents could be hit by Section 31 of the Industrial Relations Act, 2012, whether the respondents acted upon the order transferring them by reporting their arrival and assuming the charge, whether at the relevant time the respondents could be clothed with any locus standi to resist the orders transferring them and where a lis was set at rest another regarding eh same could be lodged, are the questions which could not be decided without recording evidence. We despite having reservations about the way the writ petitions have been disposed of would not interfere with the impugned judgment.**

**6. For the reasons discussed above, this petition along with CMAs are disposed of with the observation that the learned Single Judge, NIRC shall attend to all the questions hinted to above while deciding this case.”**

8. We have noticed that the learned Full Bench of NIRC at Islamabad passed the order dated 03.01.2018, which reads as follows:-

**“The instant complaint/contempt application is under section 57 of the Industrial Relations Act, 2012. The learned counsel for the complainant contended that he has filed an appeal before the Full bench NIRC at Karachi whereby the impugned order dated 04.11.2016 was suspended and that is up till now continue but instead of that in violation to the supra interim order, the respondent establishment is not allowing to the complainant to mark his attendance and even the monthly salary is not also paid to him. The main appeal is fixed before the Full Bench at Karachi on 14.02.2018, hence the instant complaint/contempt application be also put up before the same full bench. In the meanwhile status quo be maintained till next date.”**

9. At the very outset, learned counsel for the Petitioners states at the bar that the impugned order dated 4.11.2016 passed by the learned Single Bench of NIRC has not been suspended by the Full Bench of NIRC and the matter is still subjudice before the Full

Bench of NIRC in Appeal No.12 (111)/16-K and fixed on 14.02.2018, hence immediate indulgence of this Court is required otherwise an adverse action shall be taken against the Petitioners' Company on the complaints filed by the Private Respondents, rendering the Petitioners' Company remediless for the time being. Be that as it may, since we have noted that during pendency of lis, before the Full Bench of NIRC, the impugned order of status quo has been passed in complaint No 7(01)/2017-K, which adversely affecting the legal right of the Petitioners' Company and it is yet to be ascertained whether the aforesaid order dated 4.11.2016 has been suspended or otherwise, therefore it is for the learned full Bench of NIRC to decide this factum.

9. In view of the above facts and circumstances of the case, we direct the Respondent No.1 to decide the complaint/contempt applications filed by the Private Respondents No.2 to 7 and an application for recalling/setting aside of the order dated 3.1.2018 if any filed by the Petitioners' Company within a reasonable period of time, in accordance with law. Meanwhile, till such time operation of impugned orders dated 3.1.2018 shall remain suspended.

10. The instant Petition stands disposed in the above terms along with pending application(s).

JUDGE

JUDGE

**Shafi Muhammad P.A**