

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-2951 of 2017

Gulzar Ali.....Petitioner

Versus

Full Bench of National Industrial Relations Commission,
and othersRespondents

Date of hearing: 26.05.2017

Mr. M.Latif Saghar Advocate for the Petitioner.

Mr. Faisal Mehmood Ghani Advocate for Respondents No.2 to 4.

ORDER

ADNAN-UL-KARIM MEMON,J:- Petitioner is seeking suspension of Termination Letter dated 10.04.2017 issued during the operation of stay order passed by Full Bench of Respondent No.1/National Industrial Relations Commission.

2. Facts of the case, in nutshell are that Petitioner was appointed as Associate-Engineer in K-Electric Company, during his service he was issued Charge Sheet dated 17.12.2013, Petitioner apprehended his termination, and due to non-availability of NIRC Bench at Karachi, he approached this Court in C.P No.5387/2013 and C.P No.1520/2014 and sought restraining orders. Upon availability of NIRC Bench and in terms of directions contained in the order dated 15.01.2015 passed by this Court in C.P. No.1520/2014 the Petitioner filed petition under Section 54(E) of IRA 2012 before the Single Bench of NIRC. The learned Single Bench of NIRC was pleased to pass order dated 23.01.2015,

restraining the Respondent-Company not to take any adverse action against the Petitioner on the basis of charge sheet dated 17.12.2013. Subsequently vide Order dated 29.03.2016, learned Single Bench of NIRC in Case No. 4A(20)/2015-K and 4A(21)/2015-K was pleased to dismiss both the Stay Applications of the Petitioner, however, the main Petition was kept pending for recording of evidence. Petitioner being aggrieved by and dissatisfied with the Order dated 29.03.2016 passed by learned Single Bench of NIRC, and due to non-availability of the Full Bench of NIRC, approached this Court by filing Constitution Petition No.1863/2016 and this Court vide Order dated 05.04.2016 directed the parties to maintain Status-quo. Upon availability of Full Bench of NIRC at Karachi, the Petitioner filed Appeal No. 12(69)/2016-K against the order dated 29.03.2016 and the Full Bench of NIRC was pleased to suspend the operation of impugned Order dated 29.03.2016 passed by the learned Single Bench of NIRC. In the meanwhile, the Petitioner was dismissed from service vide Impugned Termination Letter dated 10.04.2017, against that he filed Appeal before the Full Bench of NIRC but due to non-availability of the Full Bench of NIRC, Petitioner has approached this Court.

3. Notice of this Petition was issued to the Respondents and in response to that Notice Mr. Faisal Mehmood Ghani, learned counsel has filed objections / comments and counter affidavit on behalf of K-Electric Company.

4. Mr. M. Latif Saghar, leaned counsel for the Petitioner has argued that Petitioner has been terminated from service in

defiance of the order dated 30.11.2016 passed by Full Bench of NIRC Karachi. Per learned counsel, since the full Bench of NIRC having jurisdiction to adjudicate the matter of the Petitioner is not available at Karachi therefore till then the operation of the Impugned Letter dated 10.04.2017 may be suspended. It is further contended by the learned counsel for the Petitioner that in the similar circumstances, Petitioner filed Constitution Petition No. 1863/2016, before this Court against the Respondent-Company due to non-availability of the Full Bench of NIRC and this Court was pleased to entertain the Constitutional Petition of the Petitioner and vide order dated 05.04.2016 directed the parties to maintain status-quo. It is further contended that this Court is competent to restore previous position of the Petitioner, which ceased to exist because of Stay Order dated 30.11.2016 passed by Respondent No.1/Full Bench of NIRC. Learned counsel relied upon the case of Government of Punjab and others v. Saleem Hussain Gardezi (1982 SCMR 1116), Raja Talat Mehmood v. Ismat Ehtisham-ul-Haq (1999 SCMR 2215), Ikram Hussain v. Daily Mashrik (1992 PLC 136), Din Muhammad v. Abdul Rehman Khan (PLJ 1992 SC 62), Bakhtawar etc v. Ameen etc (1980 SCMR 89), Fazal Illahi Ejaz v. Government of Punjab and others (PLD 1980 SC 171), unreported case of Shahnawaz and others v. Member NIRC (C.P No.D-2147/2017) and Iqbal Ahsan Baig v. Secretary Education (1989 PLC CS 438).

5. Learned counsel for K-Electric Company has raised the preliminary legal objection that the instant Petition is not maintainable against the K-Electric Company being non-statutory

company having no statutory rules of service. He next contended that, alternate remedy is available to the Petitioner, who has already availed the same by filing an appeal before the Full Bench of NIRC/Respondent No.1 and the said Appeal is pending under adjudication and this Court has no jurisdiction to entertain this Petition. He next contended that the Petitioner had filed appeal before learned full Bench of NIRC, impugning the order dated 29.03.2016 passed by the learned Single Bench of the NIRC, whereby the stay applications of the petitioner were dismissed. Whereas in Appeal against this order only operation of dismissal order was suspended but no prohibitory order was issued by full Bench of NIRC. Therefore, there is no restraining order operating against the Respondent-Company and the impugned Termination Letter dated 10.04.2017 has rightly been issued by the Respondent-Company. Reliance is placed upon the case of S.M.Gharib Nawaz Daccawala v. KESC decided by Hon'ble Supreme Court in C.P No.106-K/2007, Dr. Zubair Chaudhary v. KESC decided by this Court in C.P No.D-613/2008, which was upheld by Hon'ble Supreme Court and the case of Pakistan Telecommunication Company Ltd. V. Iqbal Nasir and other reported as (PLD 2011 SC 132), Pakistan International Airline Corporation v. Tanveer-ur-Rehman (PLD 2010 SC 676), Syed Nazeer Gilani v. Pakistan Red Crescent Society and another (2014 SCMR 982), Habib Bank Ltd v. The State (SBLR 2013 SC 1) and Abdul Wahab and others v. Habib Bank Ltd and others (2013 SCMR 1383).

6. We have heard learned counsel for the parties and perused the material available on record and case law cited at the Bar.

7. Without touching merits of the case, we may observe that the learned Full Bench of NIRC vide order dated 30.11.2016 suspended the operation of the impugned order dated 29.03.2016 passed by the learned Single Member of NIRC, whereby stay application of the petitioner was dismissed. Per learned counsel the matter is still subjudice before the Full Bench of NIRC, which is not available at Karachi to adjudicate the matter of Petitioner hence immediate indulgence of this Court is required otherwise all the cases of the petitioners filed before NIRC against K. Electric Company would become infructuous rendering the petitioner remediless for the time being. Be that as it may, since we have noted that during pendency of lis before the NIRC and after suspension of the dismissal order, the impugned action has been taken against the petitioner. We direct the Respondent No.1 to decide the case of Petitioner within a period of 60 days in accordance with law. Meanwhile, till such time operation of impugned Termination Letter dated 10.04.2017 shall remain suspended.

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

JUDGE

JUDGE

