

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Aziz-ur-Rehman

Mr. Justice Adnan-ul-Karim Memon

C.P No. D- 1983 of 2019

Rafique Ahmed ShaikhPetitioner

Versus

National Industrial Relations Commission (NIRC)
& 03 othersRespondents

Date of hearing: 28.05.2019

Date of order: 28.05.2019

Mr. Altamash Arab, Advocate for the Petitioner.

Mr. Faisal Mahmood Ghani, Advocate for the Respondent No.4.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON, J:- Basically, the Petitioner is seeking direction to the Respondent-K. Electric Ltd to comply with the Order dated 30.03.2018 passed by the learned Full Bench of National Industrial Relations Commission, Islamabad at Karachi, in Appeal No.12 (15)/2018-K [Rafique Ahmed Shaikh vs. K.Electric Ltd].

2. We queried from the learned Counsel for the Petitioner as to how the instant Petition is maintainable for execution of the order dated 30.03.2018 passed by the learned Full Bench of NIRC at Karachi, on the premise that the learned Bench is empowered under Section 57 of National Industrial Relation Act, 2012 to execute its orders. Besides, this Court is not executing Court of the learned NIRC Bench.

3. Mr. Altamash Arab, learned Counsel for the Petitioner, in reply to the query, has submitted that this Court vide order dated 15.11.2018 passed in C.P No.D-7291/2018 [*available at Page-59 of*

the Memo of Petition] has already taken cognizance of the matter and expected from the Full Bench of NIRC to decide the Appeal of the Petitioner but unfortunately the direction of this court was not complied with in its letter and spirit, compelling the petitioner to approach this court; that the Respondent-Company has also failed and neglected to comply the order dated 30.03.2018 passed by the learned NIRC, which is required to be enforced on the premise that the learned Full Bench of NIRC is functioning as a Court of Appeal against the orders of Single Bench of NIRC and to deal with the issues of unfair labour practices and its orders are to be enforced in accordance with law. He emphasized that this court has supervisory jurisdiction under Article 199 and 203 of the Constitution to issue appropriate directions in the matter; that the direction of this Court in the matter shall be adhered to, more particularly in the labour cases; Learned Counsel further stated that the matter before the learned NIRC is being adjourned from time to time, but the order passed by this Court as discussed supra has not yet been complied with in its letter and spirit. He lastly prayed for direction to the Full Bench of NIRC to decide the *lis* between the parties expeditiously in accordance with law and in the meanwhile, the Respondent-K. Electric Ltd may be directed to implement the order dated 30.03.2018 passed by the learned NIRC.

4. Notice of this Petition was issued to the Respondents and in response to that Notice Mr. Faisal Mahmood Ghani, learned counsel has filed objections / comments and counter affidavit on behalf of K-Electric Company, who has raised the preliminary legal objection with regard to maintainability of the instant Petition and argued that the instant Petition is not maintainable against the K-Electric Ltd being non-statutory entity. 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 for adjudication on 18.06.2019 and this Court has no jurisdiction under Article 199 of the Constitution to entertain this Petition. He next contended that the Petitioner had filed Appeal before learned Full Bench of NIRC, impugning the order dated 08.03.2018 passed by the learned Single Bench of the NIRC, whereby the stay application of the petitioner was dismissed, whereas in Appeal against this order only operation of the impugned order was suspended and the matter is fixed for evidence of the petitioner; that petitioner, in order to circumvent the legal forum has approached this court, with unclean hands, which is not warranted under the law. In support of his contention, he relied upon comments filed on behalf of Respondent-K. Electric Company and case law cited therein; that the petitioner had already filed Constitution Petition No. D-7291 of 2018 before this court, which was disposed of vide order dated 15.11.2019 and on the same cause of action he cannot file this Petition; that interlocutory order passed by the learned Single Bench, therefore, stood merged in the final order of withdrawal and stood vacated. In support of his contention, he relied upon the cases of SUO MOTU Case No.11 of 2011 [PLD 2014 SC 389] and Federation of Pakistan through Secretary Ministry of Interior v. General (R) Pervez Musharraf and others [PLD 2016 SC 570]; that allegations leveled in his Grievance Petition does not fall within the ambit and preview of unfair labour practice. He lastly prayed for dismissal of the instant Petition with cost.

5. We have heard learned counsel for the parties on the issue of maintainability of the instant petition and perused the material available on record and case law cited at the Bar.

6. Prima-facie, the case of the Petitioner is that he was forced to resign, from the post of Deputy General Manager CA, by K. Electric Company vide letter dated 01.02.2018 and the same was purportedly accepted on the same day. Petitioner being aggrieved by and dissatisfied with the aforesaid acceptance of his Resignation by the Respondent-Company, assailed the same before the learned Single Bench of NIRC by filing Grievance Petition under Section 54 (e) of Industrial Relations Act, 2012. The learned Single Bench vide order dated 08.02.2018 suspended the operation of the resignation letter dated 01.02.2018, however finally vide order dated 09.03.2018 recalled ad-interim order and posted the matter for evidence of the parties. Petitioner being aggrieved by and dissatisfied with the order dated 09.3.2018 impugned the same before the Full Bench of NIRC under Section 58 of IRA, 2012. The learned Full Bench, after hearing the parties vide order dated 30.03.2018 suspended the operation of impugned order dated 09.03.2018 passed by Single Bench and adjourned the matter, which is now fixed on 18.06.2019.

7. It appears that the present matter does not require detailed deliberations and this petition can be disposed of at the Katacha Peshi stage, for the simple reason that the Petitioner has come before this Court for implementation of ad-interim order passed by the learned Full Bench of NIRC, which is still in operation. Per learned counsel the matter is still subjudice and fixed on 18.06.2019 before the Full Bench of NIRC in Appeal No.12 (15)/2018-K, and the same is yet to be decided.

8. Perusal of the order dated 30.03.2018 passed by the learned Full Bench of NIRC, which explicitly shows the following factual position of the case:-

“Learned counsel for the respondent has submitted his power of attorney and letter of authority along with cross objections on the

maintainability of the instant appeal. Copy handed over to the learned counsel for the appellant. Arguments of both the learned counsel for the parties heard on the application for grant of interim injunction.

Learned counsel for the appellant tried to reiterate the contents of the appeal and his petition for suspension of impugned order while learned counsel for the respondent has controverted the contentions raised by learned counsel for the respondent and furiously attacked the maintainability of the CMA. Arguments heard.

It is emphasized by the learned counsel for the appellant that if the impugned order is not suspended then the appellant should suffer a lot because not only the instant appeal but also the petition pending before the learned Single Member would become infructuous that fixed is for the evidence of the petitioner which cause an irreparable loss to the cause of the appellant. Contentions raised need consideration. The impugned order is suspended till the next date of hearing of the appeal on merits.

To come up on 09-05-2018.”

9. We may observe here that this Court vide order dated 15.11.2018 passed in C.P No.D-7219/2018, issued certain directions to Full Bench of NIRC for swift disposal of the matter between the parties on the day fixed for hearing.

10. In the light of forgoing factual position of the case, we therefore, under the circumstances, and without touching the merits of the case, dispose of this Petition by expecting from the learned Full Bench of NIRC to hear and decide the Appeal No.12 (15)/2018-K, of the petitioner in accordance with law, preferably within a period of one month. Meanwhile, till such time the operation of impugned acceptance of Resignation Letter dated 01.02.2018 [available at Page-27 of the Court's file] shall remain in abeyance.

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

JUDGE

JUDGE

Nadir/-