

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –5907 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Overseas Pakistan Foundation

Versus

N.I.R.C (Full Bench) and 02 others

Date of hearing & order : 24.12.2020

Mr. Ghulam Asghar Pathan, advocate for the petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J. Through the captioned Constitutional petition, the petitioner-foundation has impugned the order dated 07.09.2020 passed by the learned Full Bench of National Industrial Relation Commission (NIRC) in Appeal No.12(48)/2018-Q, whereby the order dated 15.05.2018 passed by the learned Single Member Bench of NIRC Quetta Bench, Quetta, in Case No.4B(28)/2016 was maintained by setting aside the Office Order dated 03.03.2014 issued by Director (HR) Overseas Pakistanis Foundation (Human Resource Wing) and the services of respondent No.3 were reinstated.

2. Brief facts of the above-referred petition are that respondent No.3 was appointed as a Steno-typist in the respondent-foundation vide Office Order dated 05.06.2012, and after completion of his probationary period he continued his job. During the tenure of service, respondent No.3 was served with an explanation letter dated 08.01.2014 with the allegation that he did not possess second class I.Com / D.Com with two years' experience. He denied the allegations vide letter dated 15.01.2014, however, the petitioner-foundation could not be satisfied with the aforesaid reply and discharged him from service vide impugned Office Order dated 03.03.2014. He being aggrieved by and dissatisfied with the aforesaid office order, filed Grievance Petition under Section 33(8) of The Industrial Relations Act, 2012 before NIRC, Quetta Bench, Quetta, which was allowed vide order dated 15.05.2018. Petitioner-foundation being aggrieved by and dissatisfied with the said order assailed the same

before the Full Bench of NIRC at Karachi, which was dismissed vide order dated 07.09.2020, hence this petition.

3. We directed the learned counsel to satisfy this Court about maintainability of this petition on the premise that the termination letter of the private respondent was already declared nullity in the eyes of law by both the Courts below / NIRC and now there are concurrent findings against the petitioner-foundation.

4. Mr. Ghulam Asghar Pathan, learned counsel for the petitioner-foundation has contended that the impugned orders passed by the learned Full Bench of NIRC and Single Member Bench of NIRC are full of errors based on misreading and non-reading of evidence ; that the findings of the learned Courts below are arbitrary and perverse ; that the averments of the petitioner-foundation made before the learned NIRC were not considered in the impugned orders, therefore, both the orders are nullity in the eyes of law ; that both the learned Courts below have failed to appreciate the legal aspects of the matter ; that the learned Single Member Bench of NIRC as well as Full Bench of NIRC have failed to appreciate that respondent NNo.3 was not permanent worker of the petitioner-foundation, therefore, the impugned orders are illegal and against the law, thus are liable to be set aside ; that both the learned Courts below have failed to appreciate the case law cited by learned counsel for the petitioner-foundation and ignored Article 5 of The Limitation Act; that respondent No.3 was rightly terminated from service, therefore he was not required to be reinstated in service with back benefits ; that respondent No.3 ought not to have been treated as a permanent worker of the petitioner-foundation by the learned NIRC ; that the learned Full Bench of NIRC failed to consider the grounds of appeals agitated by the petitioner-foundation ; that both the learned Courts have failed to appreciate that the Grievance Application of respondent No.3 was not maintainable before the learned NIRC being barred by law as discussed supra, therefore, both the impugned orders cannot be sustained on this score alone, and are thus liable to be set aside ; that the learned NIRC erred in granting back benefits to respondent No.3 ; that respondent No.3 has failed to prove through cogent evidence that he remained jobless during the intervening period; that the petitioner-foundation did not come within the ambit of commercial establishment as per the definition of labour laws, therefore, the learned NIRC had no jurisdiction to entertain the *lis* between the parties. He further argued that the impugned orders are bad in law, and illegal in terms of its jurisdiction on the premise that NIRC admitted that the matter of respondent

No.3 was time-barred, but despite this NIRC assumed jurisdiction. He pointed out that the learned Full Bench of NIRC has erred in deciding the matter in the light of bar contained under Section 33 of the Industrial Relations Act, 2012. He further argued that learned Full Bench of NIRC placed reliance upon the term fresh cause of action in a time-barred matter which was/is a blatant violation of precedents set forth by the Hon'ble Supreme Court in various cases. He next argued that the learned Full Bench of NIRC has failed to appreciate the factual as well as legal aspects of the case and decided the matter erroneously on the premise that the private respondent was not qualified to hold the post. Per learned counsel, respondent No.3 was served with show cause notice requiring explanation about his qualification issued under the regulations ; that the disciplinary proceedings were initiated against him and he was found guilty of the charges and finally his services were terminated under the law. He prayed for setting aside the orders of both the Courts below.

5. We have heard learned counsel for the petitioner on the maintainability of this petition and perused the material available on record.

6. From the record it reveals that the duties assigned to respondent No.3 were permanent, which fall within the ambit of a 'worker and workman', therefore, we concur with the view taken by the learned Benches of NIRC that the services of the Applicant / respondent No.3 come under the definition of "worker" or "workman" within the meaning of Section 2(g) of The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968.

7. In view of the foregoing, we are of the considered view that the learned Benches of NIRC had the jurisdiction to entertain the grievance application of respondent No.3.

8. Reverting to the claim of the Petitioner-foundation that they have been condemned unheard by the learned Benches of NIRC on the legal issue involved in the matter, the record reflects that the learned NIRC dilated upon the issues in an elaborative manner and gave its findings by appreciating the material placed by the parties. Therefore, we do not agree with the assertion of the learned counsel that they were unheard on the issues. Concurrent findings arrived at by both the Courts below cannot be lightly interfered with unless some question of law or erroneous appreciation of evidence is made out. The learned Full Bench of NIRC has considered every aspect of the case and thereafter passed the impugned Judgment / order.

9. We have also noted that in the present case, there is no material placed before us by which we can conclude that impugned orders have been erroneously issued by both the Courts below, therefore, no ground exists for re-evaluation of the evidence / material. Thus, we maintain the order dated 15.05.2018 passed by learned single Member Bench of NIRC and the order dated 07.09.2020 passed by learned Full Bench of NIRC. On the aforesaid proposition, we are fortified by the decisions rendered by the Hon'ble Supreme Court of Pakistan in the cases of Dilshad Khan Lodhi vs. Allied Bank of Pakistan and others, **2008 SCMR 12 1530** and General Manager National Radio Telecommunication Corporation Haripur, District Abbottabad vs. Muhammad Aslam and others, **1992 SCMR 2169**.

10. Before parting with this order we may observe that petitioner is at liberty to take appropriate measures within a reasonable time if respondent No.3 is found to be disqualified for the post as per Service Regulations, 1993, after fulfilling all codal and legal formalities as provided under the law.

11. In light of the above facts and circumstances of the case, we are of the view that this Court in its Constitutional jurisdiction cannot interfere in the concurrent findings recorded by the two competent fora below as we do not see any illegality, infirmity, or material irregularity in their Judgment / order warranting interference of this Court. Hence, the instant Petition is found to be meritless and is accordingly dismissed in limine along with the listed applications with no order as to costs.

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Shahzad*
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