

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

**Constitutional Petition No. D -848 of 2021**

M/s. Gerry's Dnata (Pvt.) Ltd.

*Versus*

Learned Member and 02 others

Date of hearing &  
Decision : 03.02.2021

Mr. Muhammad Faruq Ghani, advocate for the petitioner.

**ORDER**

By invoking extraordinary Constitutional jurisdiction of this Court under Article 199 of Constitution of Islamic Republic of Pakistan, 1973, the Petitioner has filed the instant Petition with the following prayer(s):-

- i) *To declare that the impugned orders to summon for Vice President (V.P.) of the Petitioner Company dated 31.12.2020 and 29.02.2021 be declared as void and not maintainable under the law and without jurisdiction and is liable to be set aside as the same are in violation of Industrial Relations Act, 2012.*
- ii) *To direct the Respondent No.1 (learned Member National Industrial Relations Commission Bench No.2) to refrain from proceeding further in respect to the Complaint letter dated 02.09.2020 filed by the respondent No.2 and suspend the operation of impugned orders to summons V.P. dated 31.12.2020 & 29.10.2021.*

2. Brief facts of the case are that the Petitioner's Company is a joint 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 respondent is claiming to be employed in the Establishment of Petitioner's Company; and, during his tenure of service, disciplinary proceedings were initiated against him on account of unfair labour practice, and was found guilty of serious acts of misconduct under the Industrial and Commercial Employment (Standing Order) Ordinance, 1968. Finally, his services were dispensed with vide order dated 23.12.2015. He being aggrieved by and dissatisfied with his termination letter approached the learned National Industrial Relations Commission Karachi Bench whereby the petitioner-company was restrained vide

order dated 28.12.2015 from taking any adverse action towards employment of the petitioner based on charge sheet dated 07.12.2015. Finally, the learned Single Bench of NIRC vide order dated 05.09.2018 dismissed his complaint. However, private respondents did not stop here and lodged another complaint dated 02.11.2020 before the learned Bench of NIRC at Karachi which was entertained vide order dated 31.12.2020 with direction to Mr. Haris Raza to appear in person on 22.01.2021. The matter was taken up on 29.01.2021 by the learned Bench of NIRC and due to failure of appearance by Mr. Haris Raza bailable warrants of arrest in the sum of Rs.50000/- were issued against him and the matter was adjourned to 04.02.2021. Petitioner-company being aggrieved by and dissatisfied with the aforesaid order as approached this Court on 01.02.2021

3. At this outset, we inquired from the learned counsel as to how the petitioner-management is aggrieved by the summoning of the Vice President of the petitioner-company by the learned NIRC. Mr. Muhammad Faruq Ghani learned counsel for the petitioner replied that the summoning for Vice President of the petitioner-company by the learned NIRC was an erroneous decision and is liable to be set aside. He further argued that issuing of summons for Vice President of the petitioner-company based on the time-barred complaint dated 02.11.2020 submitted by private respondents to the NIRC after 02 years of the order dated 05.9.2018 passed by the learned Single Bench of NIRC was/is suffering from laches and legally not sustainable on the premise that no appeal was preferred by the private respondent which has attained finality. In support of his contention, he relied upon the cases of Iftikhar Ahmad and others v. President, National Bank of Pakistan and others, PLD 1988 Supreme Court 53, Searle Pakistan Limited through Deputy Director v. Full Bench, National Industrial Relations Commission Islamabad, and 2 others, 2002 PLC 87, Almas Ahmad Fiaz v. Secretary Government of the Punjab Housing and Physical Planning Development Lahore and another, 2006 SCMR 783, Maulana Nur-ul-Haq v. Ibrahim Khalil, 2000 SCMR 1305, and Ghulam Sarward v. Daya Ram, 1975 SCMR 179. Per learned counsel the question of limitation was not determined before summoning of the Vice President of the petitioner-company. He further argued that it is the basic principle that if a mandatory condition for the exercise of jurisdiction by a Court is not fulfilled, then the entire proceeding which follows become illegal and suffers from want of jurisdiction as the case of the petitioner is akin to the case decided by the Hon'ble Supreme

Court of Pakistan in the case of Almas Ahmed Faiz supra. He prayed for allowing the instant petition.

4. We have heard learned counsel for the petitioner and perused the material available on record.

5. We have perused the contents of the complaint lodged by the private respondents before the learned Single Bench of NIRC with certain pleas. The learned Bench in its wisdom summoned the Vice President of the petitioner-company to appear in person on 22.01.2021, however, he failed and neglected to put his appearance in the Court compelling the learned NIRC to issue his bailable warrants of arrest in the sum of Rs.50000/- and the matter was adjourned to 04.02.2021. Prima facie, the matter arising out of Case No.4A(457)/2015-K (re-Aftab Hussain v. Gerrys' Dnata) between the parties is subjudice before the learned Single Bench of NIRC and yet to be decided under law, interference at this stage by this Court is not required.

6. Adverting to the grounds raised by the learned counsel for the petitioner-company that the NIRC was not competent to summon the Vice President for his appearance in Court, prima facie this assertion is misconceived for the simple reason that the learned Bench of NIRC is competent under section 54 & 55(1)(iii)(a)(b)(c)(d) and 57(a) of the Industrial Relations Act, 2012 to adjudicate and determine the industrial dispute between the parties and to punish any person who obstructs or abuses its process or disobeys any of its orders or directions or does anything which tends to prejudice the case of parties before it. So far as the other grounds agitated by the petitioner are concerned, in our view, let at the first instance the order dated 29.01.2012 passed by the learned Single Member of NIRC passed in Case NO.4A (457)/2015-K be complied with in its letter and spirit.

7. These are observations and reasons for a short order whereby this petition was dismissed with costs.