

# IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

## **Constitutional Petition No. D -5878 of 2019**

Khalid Mansoor

*Versus*

National Industrial Relations Commission Islamabad  
(Full Bench at Karachi) and 02 others

Date of hearing  
& order : 23.02.2021

Mr. Saif Sohail Younus, advocate for petitioner.  
Mr. Ali Ahmed Turrabi, advocate for respondent No.2.  
Mr. J.K. Jiskani, advocate for respondent No.3.

### **ORDER**

**ADNAN-UL-KARIM MEMON, J.** - Through this petition, the petitioner is asking for setting aside the order dated 22.08.2019 passed by the Full Bench of National Industrial Relations Commission Islamabad (NIRC-FB) in Appeal No.12A (12)/17-K No.7A (98)/2017-K, whereby order dated 14.04.2017 passed by the learned Single Bench of National Industrial Commission, at Karachi in Case No.4B (255)/2014-K was reversed; and, his grievance application for setting aside his termination from service was dismissed. The petitioner is also seeking reinstatement in service with back benefits, which was dispensed with vide order dated 24.9.2010 by the respondent-Pakistan Steel Fabricating Company (Company).

2. The case of the petitioner is that he was appointed as Fitter-III vide officer order dated 1.11.1983 in M/S Pakistan Steel Fabricating Company and thereafter promoted/placed as HSWI with effect from 24.4.1990 vide letter dated 09.12.1991, he continued to perform the same duties. During his tenure of service, he was charge-sheeted on 22.7.2010 with the allegation that he obtained a promotion in higher grade-VI by submitting a forged Secondary School Certificate. He denied the allegations on the premise that he obtained his service based on a Middle Pass Certificate, thus the question of submitting a forged copy of Secondary School Certificate did not arise at all. During inquiry proceedings, he also denied to the extent that he obtained his promotion in the year 1989 based on Secondary School Certificate, however, he was found guilty on the allegations of producing a fake certificate and was finally

terminated from service vide letter dated 24.9.2010. He preferred Departmental appeal to the competent authority which was not acceded to vide office memorandum dated 04.11.2010. He being aggrieved by and dissatisfied with the aforesaid termination order as well as appellate order preferred Grievance Application No.2 of 2011 before the learned Sindh Labour Court (SLC) No.4 Karachi which was later on transferred to National Industrial Commission (NIRC) Bench at Karachi vide order dated 4.9.2014 and the same was hotly contested by the respondents and finally decision came in his favour vide judgment dated 14.4.2017. The respondents being aggrieved by and dissatisfied with the aforesaid judgment preferred Appeal NO.12A (12)/17-K before the Full Bench (FB) of NIRC at Karachi, whereby the decision of the learned Single Bench was reversed and appeal was allowed vide order dated 22.08.2019. The petitioner being aggrieved by and dissatisfied with the aforesaid decision filed this petition on 16.09.2019.

3. Mr. Saif Sohail Younus, learned counsel for the petitioner, contended that the NIRC-FB failed to appreciate the record and also failed to read the same in juxtaposition with the order dated 14.04.2017 passed by the single Bench; that the NIRC-FB had to give very cogent and substantial reasons and findings to disagree and/or deviate from the decision passed by NIRC-SB on 14.04.2017; that the learned NIRC-FB in the impugned decision, observed that the record revealed that the petitioner had submitted an application dated 9.2.1983 stating therein that he fulfilled the requirements of the memorandum dated 21.11.1989 and posing himself as Metric qualified candidate; that petitioner submitted that these were assumptions which the NIRC-FB had made up on its own to disagree with the decision of NIRC-FB whereas the latter had specifically noted at typed page 5/paragraph 9 of the order dated 14.4.2017 that the Admin Incharge who had appeared as witness for the Respondents did not file any document with his affidavit in evidence to substantiate his allegations; that the learned NIRC-FB further ruled that the petitioner had submitted during his cross-examination that on the basis of forged matric certificate he was found guilty; that the petitioner did not made any admission as assumed by the NIRC-FB; that the learned NIRC-FB failed to appreciate that the respondent No.3's witness, who had appeared before it had presented hearsay evidence. This witness adopted the affidavit filed by respondent No.2, which itself did not produce any independent witness, therefore, the main evidence/deposition was/is of no effect; that the authority which issued the petitioner the charge sheet dated 22.7.2010, show cause notice dated 06.09.2010 and even the dismissal order dated 24.9.2010 were not competent officers to carry out such

exercise under the law; that the petitioner was not paid for his services, and his dues remain unpaid which was/is malice on part of the respondents 2 & 3. He lastly prayed for allowing the instant petition with costs.

4. Mr. J.K. Jiskani, learned counsel for the respondent No.3, refuted the claim of the petitioner and argued that the learned NIRC-FB after hearing both parties at length by appreciating the evidence available on record, rightly concluded the matter and committed no illegality in passing well-reasoned order in appeal of respondent No.3; that the learned NIRC-SB passed order on technicalities; that the respondent No.3 had no enmity or any personal grudge with petitioner or reap any benefit in planting application of petitioner for extending illegal benefits to petitioner, which petitioner accepted and never asked about such illegal benefits taken thus is absolutely incorrect, false and whimsical; that the grounds have no weight and merely presumptions thus there is no iota incorrect or baseless in the orders of respondent No.1, which has been impugned herein and the petitioner is not liable for any mercy on committing fraud and cheating with respondent No.3; that all the notifications, charge sheets, show cause notices and order of penalty are to be issued by Administration Incharge of the organization after approval of the competent authority. He prayed for dismissal of the instant petition.

5. Mr. Ali Ahmed Turabi learned counsel for respondent No.2 has adopted the arguments of learned counsel representing the respondent-company.

6. We have considered contentions of the learned counsel for the petitioner and learned Counsel representing the respondent-company as well as learned counsel for respondent No.2 and have minutely gone through the material available on record.

7. In the first place, we would like to examine the issue of maintainability of the instant Petition under Article 199 of the Constitution, 1973.

8. This petition is maintainable under Article 199 of the Constitution 1973 on the premise that this is a case of misreading and non-reading of evidence by the learned full bench of NIRC. So far as findings of the learned NIRC are concerned the findings arrived by the forum below was based on consideration of no evidence at all, on the plea, that petitioner had played fraud upon the respondents by producing a photocopy of the Matriculation Certificate which was not genuine and on that account, his services were terminated. Per learned counsel, it was an act of misconduct on the part of the petitioner. We have

noticed that misconduct has been defined under clause (3) of Standing Order 15 of the Ordinance, 1968. This does not include the act attributed to the petitioner. There is nothing to show that during his employment, in the establishment of the respondent-company, the petitioner had committed any act of misconduct as defined by Standing Order 15 of the Ordinance, 1968. Hence services of the petitioner could not have been terminated on the ground of his being guilty of misconduct as such the major penalty imposed upon the petitioner was/is unjustified. Thus this petition is maintainable under Article 199 of the Constitution 1973. On the aforesaid proposition, we are fortified with the decision of the Honorable Supreme Court in the case of *M/s. MILLAT TRACTORS LIMITED versus PUNJAB LABOUR COURT No.3, LAHORE, and 2 others.* ( 1996 SCMR 883).

9. Thrashing out the record further, which reveals that the petitioner joined the services of Pakistan Steel Fabricating Company Limited as a Fitter in the year 1983. During employment, the petitioner was designated as H.S.W.1 (High Skilled Worker-1), and thereafter such post was re-designated as Foreman / Junior Officer on 07.06.1992 under the career planning policy introduced by the respondent-company. The prime allegations against the petitioner are that he obtained promotion based on a fake document i.e. Matriculation Certificate. The plea taken by the respondent-company is that the petitioner had disclosed in his application dated 09.02.1983 and posed himself to be studied up to class X and on that basis, he was promoted. We have perused the contents of the application dated 09.02.1983 and Office Memorandum dated 21.11.1989 concerning the pay scale of Government Technical Granting Centre (TTC) Trainees. A perusal of the evidence of the respondent-company explicitly shows that the purported Matriculation Certificate was not confronted to the petitioner nor it was produced in evidence. The cross-examination of the witness of the respondent-company who admitted in evidence that regarding the application, a copy of the metric certificate had not been attached with his affidavit in evidence. He further admitted that the revision of pay scale PTC training wherein nothing was mentioned about the submission of a metric certificate. He further admitted that the prospectus issued by the Government of Sindh, where for moving in Group-B minimum qualification was required for admission eight class. He further admitted that the inquiry officer had not filed any affidavit in evidence as well as the person, who filed reply/comments. He further admitted that he signed the affidavit in evidence in the office of the Law Department as the same was prepared by them. He further admitted that

since joining of the petitioner in service in 1983 till he moved the application in the year 2010 for promotion he was never issued any show-cause notice that he had submitted a false matric certificate.

10. Prima facie, the appointment of the petitioner was not based on fake documents rather his promotion was obtained through the document which was, later on, found fake (as per respondent-company), however, this piece of evidence ought to have been brought on record through concrete evidence and the same purported document ought to have been confronted to the petitioner in evidence, which has not been done in the present case, thus, the petitioner could not be found guilty of the charge leveled in the charge sheet dated 22.07.2010; even the petitioner denied the allegations in the inquiry proceedings initiated against him, therefore, it should have been incumbent upon the inquiry officer to bring on record the evidence that he procured his promotion in higher Grade VI based on Matric Certificate and other documents disclosed in the inquiry proceedings. Besides the above, we have noticed that the petitioner was promoted to Grade-VI in the year 1989. However, his alleged Matric Certificate was sent to the concerned Board for verification in the year 2010, after the lapse of considerable time; and, thereafter he was charge-sheeted for having a bogus Matric certificate. Resultantly, the inquiry officer found him guilty of the charge, without procuring the attendance of witnesses from the concerned Board or the department to substantiate the allegations of fraud and forgery by recording the evidence; even the alleged Matric certificate was neither produced along with an affidavit in evidence of witness of respondent-company nor confronted to the petitioner; and/or exhibited in evidence, despite the lack of evidence, his service was dispensed with on 24.09.2010.

11. Prima facie, the petitioner was estopped by the respondent-company to work through the impugned order dated 24.09.2010, therefore, we deem it appropriate to take into consideration the issue of back benefits on the premise that he has specifically pleaded that he was wrongly terminated from service as such he is entitled to the consequential benefits.

12. In the light of evidence brought on record, we concluded that the order dated 14.04.2017 passed by the learned Single Bench of NIRC in case No.4-B (255) / 2014-K was based on proper appreciation of evidence, whereas, the

order dated 22.08.2019 is perverse and against the evidence thus the same is liable to be set aside.

13. The instant Constitution Petition is allowed along with the pending application(s) with the cost of the petition. Consequently, the respondents are directed to reinstate him in the service forthwith along with back benefits.

14. These are the reasons for our short order dated 23.02.2021, whereby we have allowed the petition with costs.

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