

Order Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C. P. No. D – 457 of 2021

Before:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Sangi

Date of hearing: 12-08-2021

Date of decision: 23-09-2021

Mr. Muhammad Ali Khan, Advocate for the petitioner.
Mr. Jamshed Ahmed Faiz, Advocate for respondents No.3 to 11.
Mr. Zulfiqar Ali Naich, Assistant Advocate General Sindh.

ORDER

Muhammad Junaid Ghaffar, J. – Through this petition, the petitioner has impugned order dated 25-02-2021 passed by respondent No.1 (Registrar of Trade Unions), whereby he has accepted the change of office bearers of respondent No.2 (Fauji Fertilizer Company Mazdoor Union).

2. Precisely, the facts, as stated, are that the petitioner is a contractor of Fauji Fertilizer Company Limited (“FFC”) and is aggrieved by the above order, as it has entered into two agreements with FFC; both dated 10-02-2020, pursuant to which, the petitioner has been engaged as a contractor for loading of urea bagged product at the plant of FFC at Mirpur Mathelo and for insertion, filling and stitching of urea product into bags again at the same plant. For the present purposes, these agreements are not a matter of dispute nor has FFC been joined as a respondent.

3. Learned Counsel for the petitioner has contended that through impugned order non-workers, who had participated in the election of the respondent-Union, have been joined and accepted as office-bearers; that this unilateral action has seriously prejudiced the petitioner; that the petitioner had agitated the inclusion of 41 members as voters in the election, out of which some of them have also been elected as office-bearers, which could not have been permitted by the Registrar as they are not employees of the petitioner; that when the petitioner was handed over the assignment to work as a contractor, at the relevant time, 250 workers were working with the previous contractor and they were taken into employment on the same terms and conditions; that the Registrar despite conducting an inquiry in respect of these 41 irrelevant persons and despite the report of Labour

Officer / Senior Inspector of Factories, Ghotki dated 11-02-2021, wherein it has come on record that these 41 workers have never been employed by the petitioner, has passed the impugned order; that the objection regarding maintainability of this petition is misconceived as the petitioner has no remedy under the Sindh Industrial Relations Act, 2013 (“IRA-2013”). In support, he has relied upon Farid Ahmad v. Pakistan Burmah-Shell Ltd. and others (1987 SCMR 1463), and has prayed for setting aside of the impugned order.

4. On the other hand, Counsel for respondents No.2 to 11 has vehemently opposed the maintainability of the petition and submitted that alternate remedy ought to have been availed under Section 43 of the IRA-2013; that factual ascertainment is involved, hence, Labour Court is the appropriate forum; that respondents and these 41 workers are also employees of the petitioner as well as FFC; that the petitioner has no right to interfere in the affairs of a union, and therefore, no case is made out. In support, he has relied upon Fauji Fertilizer Company Ltd. through Factory Manager v. National Industrial Relations Commission through Chairman and others (2014 PLC 10).

5. Learned AAG has also supported the arguments of respondents’ Counsel, and according to him, petition is not maintainable and Labour Court ought to have been approached.

6. We have heard all the learned Counsel as well as learned AAG and perused the record.

7. It appears that FFC, from time to time, engages contractors for performing various jobs within the factory premises, and in terms of IRA-2013 as well as the dicta laid down by the Hon’ble Supreme Court in the case of Fauji Fertilizer (Supra), the employees of the contractor for that matter are to be treated as employees of an establishment within the contemplation of the Labour Laws including IRA-2013 for the present purposes. The question before us to this effect is not in dispute that petitioner is an establishment and the union is working within the establishment and both are covered by IRA-2013. The only issue is that whether the impugned order of the Registrar is correct in law; and whether the same can be looked into by this Court in its Constitutional jurisdiction.

8. First we would like to deal with the question of maintainability of this petition. Section 9(1), (7) and (10) of IRA-2013 are relevant, and reads as under:

“9. Registration. – (1) The Registrar, on being satisfied that the trade union has complied with all the requirements of this Act, shall register the trade union in a prescribed register and issued a registration certificate in the prescribed form within a period of fifteen days from the date of receipt of the application.

(7) Notwithstanding anything contained in any other provision of the Act, every alteration or change made in the constitution of a registered trade union and every proceedings of election of its office-bearers or change of its office-bearers or otherwise, the trade union, shall, by registered post, notify to the Registrar within fifteen days of such election or change for the approval of the Registrar.

(10) In case there is a dispute in relation to the election of the office-bearers or change of office-bearers or alteration made in the constitution of a trade union, the Registrar or any trade union aggrieved by the refusal of the Registrar, any office-bearer or member of the trade union may file an appeal to the Labour Court, which shall within seven days of the receipt of the appeal, pass an order either directing the Registrar to register the change or alteration in the constitution or in the office-bearers of the trade union or may, for reasons to be recorded in writing, direct the Registrar to hold fresh elections of the trade union under his supervision.”

Perusal of the aforesaid provisions reflects that the Registrar, on being satisfied that all requirements of this Act have been fulfilled, shall register the trade union, and to this effect that the respondent No.2 is a trade union, is not in dispute. Sub-section (7) further provides that for every alteration or change in the constitution of a registered trade union and all proceedings of elections of its office-bearers and/or change of the same has to be notified within 15 days of such elections for the approval of the Registrar. Sub-section (10) further provides that in case there is a dispute in relation to the election of office-bearers or change of office-bearers or alteration made in the constitution of a trade union, the Registrar or any trade union aggrieved by the refusal of the Registrar, any office-bearer or a member of a trade union may file an appeal to the Labour Court. The present matter is in respect of election of the office-bearers and so also acceptance of change of office-bearers of the union, whereas, there are only two parties who can avail the remedy of appeal; one is the Registrar and the other is any trade union, and that too could only be in case of refusal by the Registrar to record, change and/or accept elections of the office-bearers. The Petitioner-Company / any establishment apparently has been left out consciously or has been deprived the right of such appeal; hence, cannot approach the Labour Court for any remedy by way of an appeal in terms of the aforesaid provision. Whereas, it has nexus with and a direct effect of the change in office bearers and its acceptance after such elections. If the office bearers are not employees under the law; then they

cannot be the office bearers of the Union so as to enter into any negotiation with the Petitioner. In that case, we are of the view that the petition is very much maintainable and the petitioner cannot be non-suited on this ground. Under the erstwhile Industrial Relations Ordinance, 1969, while dealing with a similar objection regarding maintainability of a petition against an order of the Registrar and on availing remedy in terms of section 10 and 11 of the said Ordinance a learned Single Judge of this Court in the case Messrs Forbes Forbes Campbell & Co. (Pvt.) Ltd. v. Registrar of Trade Unions and another (1999 PLC 312) has been pleased to repel the same by holding that employer could not invoke section 10 or 11 ibid against an order of the Registrar as it had no participation in registration of a Union; however, a petition cannot be dismissed merely on this ground that a certificate issued to a Union could only be cancelled having recourse to s.10 of the Ordinance. The relevant finding reads as under;

As regards the issue of jurisdiction, it would be seen that section 10 of the I.R.O. provides for the cancellation of the registration of a Trade Union if the Labour Court so directs upon a complaint in writing made by the Registrar in the circumstances provided for in said section. Section 10 has to be read with the preceding sections of the I.R.O. most significantly sections 5 to 7, which provide for the application for registration as a Trade Union and the requirements thereof and section 8, which provides for the process of registration culminating in the issuance of a certificate of registration as a trade union under section 9. In none of these sections does the Employer have any participation either in an active or passive role as the entire matter is between the workers and the Registrar. Consequently, in my opinion the Petition cannot merely be dismissed on the ground that the certificate issued by the Registrar can only be cancelled by having recourse to section 10, as the Employee i.e. Petitioner in the present case cannot invoke the provision of section 10 of the I.R.O. or for that matter section 11, which provides for appeals emanating from section 10. In this regard reference can be made to the case of Quetta Municipal Authority v. Registrar Trade Union and 3 others and Bata Shoe Company (Pak) Ltd. v. Registrar of Trade Union of Sindh and 2 others (supra). Regarding the cases cited at Bar by Mr. S. Ishtiaq Ali Kanhorvi, learned counsel for Respondent No.2, it would be seen that as far as Muhammad Shakeel v. Registrar of Industrywise Trade Union (supra) is concerned, the facts thereof were different as there the Petitioner after initiating parallel proceedings under section 10 of the I. R. O. has invoked the writ jurisdiction of the Lahore High Court seeking the same relief i.e. cancellation of the registration of the Pakistan WAPDA Hydro Electric Central Labour Union through the Registrar. Accordingly, a learned Single Judge of the Lahore High Court came to the conclusion that in the circumstances of the case, the Petition was not maintainable. The principle of law laid down in Ali Sher and 2 others v. Registrar of Trade Union Sindh and 7 others (which is the other case relied upon by Mr. Kanhorvi) also does not advance the respondent No.2's case as to non-maintainability of the Petition as there a learned Single Judge of this Court came to the conclusion that under section 10 of the I.R.O. cancellation of the Registrars Certificate could only be ordered by Labour Court on a complaint by the Registrar himself and that the Registrar's obligation which was discretionary could not enforced through a writ petition. Again there the Employees were asserting their rights and not the Employer as in the present case. It is a well settled principle which does not need elucidation that where the law does not provide for any appeal to an aggrieved person from the order of a judicial or quasi judicial authority, the writ jurisdiction of the High Court can always be invoked. As regards the case Messrs Pakland Cement Ltd. etc. v. the Registrar of Trade Unions etc. (supra) it may be observed that a learned Single Judge of this Court came to the conclusion that the question whether or not a person was a worker within the definition of that term as provided in section 2 (xxviii) of the I.R.O. was question of fact and hence declined to interfere in writ jurisdiction on this basis. In that case the petitioners has again challenged the registration of the Respondent Trade Union on the basis that the persons who had formed said Union were not employed by the petitioners as they were inter alia their ex-employees. In my view this case is also distinguishable from the facts of the present case as in the latter case apparently the material was sufficient on the record on the basis of which the Registrar came to the conclusion that the respondent workers qualified to be treated as such as per definition of that term provided in section 2(xxviii) of the I.R.O. In the present case as per the parawise comments filed by the Registrar it appears that apart from the workers representations there was nothing from the Petitioners' side except their letters denying

that the seamen were employed by them, which apparently the seamen could not controvert. In this regard reference can be made to *Abdul Razzaq v. Messrs Ahsan Sons Ltd and 2 others* (1992 SCMR 505).

As regards the issue whether or not the petitioner is an aggrieved person, it would be seen that upon registration of the Respondent Union certain results would flow not the least of which would be the recognition of the Seamen as workers of the petitioner with the further consequence of tile enforcement of their rights provided under the I.R.O. In these circumstances, it cannot be said that the petitioner would not be effected by the impugned registration and hence debarred from invoking the Constitutional jurisdiction of this Court. Accordingly, in my view the Petitioner's squarely fit into the meaning of the term "aggrieved" person" and have the right to file this petition in the circumstances of the case.

9. Following the same principle again under the erstwhile Industrial Relations Ordinance, 1969, the very Registration of a Trade Union came for scrutiny before a learned Single Judge of this Court in the case of *S.G. Fibre Employees' Union through General Secretary v. Registrar of Trade Unions, Government of Sindh and 5 others* (2003 PLC 58) and it was held that when there is allegation that the Registrar had failed to apply its mind judicially while registering a Union, a petition would be maintainable. It was further held that Constitutional remedies would be available where any statutory or executive authority entrusted with responsibility for taking certain action in accordance with law had not done so. And lastly it was held that what was justiciable was the question whether Registrar of Trade Union had exercised his mind judicially while issuing Registration to the Union. The relevant finding of the Court is as under.

29. A perusal of the foregoing decisions would, therefore, show that a petition would always be maintainable where the allegation was that the Registrar of Trade Unions had not applied his mind judicially as to whether the trade union should be registered or not and had passed a whimsical and slipshod order. This would be in consonance with the well-established principle that Constitutional remedies would always be available where any statutory or executive functionary entrusted with responsibility for taking certain action in accordance with law has not done so. As held in *Essa Cement Factory Workers Union v. Registrar. Trade Unions, Hyderabad Region* (supra) even disputed facts are not immune from scrutiny by the High Court in exercise of its Constitutional jurisdiction and when it was not possible for the Court itself to hold an inquiry in this regard, the matter can be referred to the Registrar for further inquiry.

10. It is also pertinent to observe that under the Industrial Relations Act, 2012, ("**IRA 2012**") which is applicable on all trans provincial organizations and companies, section 12¹ thereof is analogous to the present provision under discussion i.e. section 9 (10) of IRA-2013 as above. In like manner, in proceedings culminating under Section 9(6) of IRA 2012, an appeal has been provided under Section 12 *ibid*; however, such right of appeal is provided only to (i) a trade union (ii) members of a trade union and (iii) an officer of a trade union. It is not provided to an employer or an establishment where the trade union

¹ 12. **Appeal against order/decision etc. of Registrar:** A trade union, its members or an officer may prefer an appeal against the order, decision and proceeding conducted by the Registrar within thirty days before the Commission.

functions. A learned Judge of the Islamabad High Court has dealt with an identical issued under IRA 2012 in the case of National Electric Power Regulatory Authority v. Registrar of Trade Unions, N.I.R.C. (2015 PLC 148) and has been pleased to hold that:-

"12. Next, whether any alternate remedy was available to NEPRA under the Act of 2012? section 12 provides for an appeal against the orders/decisions of the respondent No.1 i.e. the Registrar. The right of appeal is restricted to a trade union, its members or an officer. An 'officer' is defined in section 2(xxii). Section 12, therefore, does not provide a right of appeal to an employer even if the order is without jurisdiction. Section 58 provides for appeals against orders passed by any Bench of the Commission, and not to matters relating to the registration of a trade union passed by the respondent under the Act of 2012. However, in the present case, NEPRA has been able to make out a case of the impugned proceedings and orders being without jurisdiction and coram non-judice. Any act without jurisdiction is a nullity in law and, therefore, the same is open to judicial review in exercise of the powers vested in this Court under Article 199 of the Constitution. The Supreme Court has held in case of Essa Cement Industries Workers' Union v. Registrar of Trade Unions, Hyderabad Region, Hyderabad and 4 others [1998 PLC 500] that jurisdictional facts are not immune from the scrutiny of the High Court in the exercise of its jurisdiction under Article 199 of the Constitution. It has already been held that the impugned orders are without jurisdiction and coram non-judice, and since an efficacious alternate remedy was not available to the petitioner, therefore, the petition is maintainable under Article 199 of the Constitution."

11. Similar view has been expressed in the case of Shell Pakistan Limited v Registrar Trade Union (2020 PLC 57). As to reliance on section 43 of the IRA-2013, by the learned Counsel for the Respondent-Union, the same also appears to be misconceived, as section 43² is in respect of any grievance or enforcement of any right guaranteed or secured to the Collective Bargaining Agent or any employer by or under any law or any award or settlement. The issue in hand does not fall into any of such circumstances; hence, reliance on the same is of no avail. In view of such position the objection regarding maintainability of the petition stands overruled.

12. Insofar as the impugned order is concerned, it would be advantageous to refer to the said order, which reads as under:

"This is with reference to the letters dated 30.12.2020 received from Chairman Election Committee whereby intimation of change /election of office bearers of Fauji Fertilizers Co. Mazdoor Union Mirpur Mathelo was given to this office and applications as made by the M/s. Rafique Ahmed & Co. Contactor of Fauji Fertilizers Company Mirpur Mathelo District Ghotki were also received in this office on 29.12.2020 and 26.01.2021 thereby raised objections on the above said change / election of office bearers that 250 employees on his payroll which are also members of Fauji Fertilizers Co. Mazdoor Union Mirpur Mathelo as their monthly subscription fund for the said union has been deducted but 41 irrelevant persons have participated in the proceeding of said

² 43. Application to Labour Court;- Any collector bargaining agent or any employer may apply to the Labour Court for the redressal of any grievance or enforcement of any right guaranteed or secured to it or him by or under any law or any award of settlement.

election in violation of the law as they are not employees employed by him nor members of the union.

The matter has been taken into consideration and Labour Officer (Factories) Ghotki was directed to conduct inquiry as to ascertain the veracity of claim as alleged in letters dated 04.02.2012 made by General Secretary of the union and by M/s. Rafique Ahmed & Co. Contractor Fauji Fertilizers Co. Mirpur Mathelo vide its letters dated 29.12.2020 and 26.01.2021.

The Labour Officer (Factories) Ghotki submitted inquiry report vide letter dated 11.02.2021 thereby reported that during the inquiry it is observed from the payroll and other record that M/s. Rafiq Ahmed & Company has 250 workers whereas, 41 workers are employees of M/s. Shah Din Sons & Co. and they have never been employed by M/s. Rafiq Ahmed & Co. The record provided by the claiming General Secretary Mr. Noor Ahmed Siyal showing 292 members of the union.

On scrutiny of documents attached with the above referred intimation of change/election; contents of applications dated 29.12.2020 and 26.01.2021 made by M/s. Rafique Ahmed & Co. Contractor of Fauji Fertilizers Company Mirpur Mathelo District Ghotki; contents of letters of General Secretary of the union vide dated 04.02.2012 and 17.02.2021 and record of Fauji Fertilizers Co. Mazdoor Union Mirpur Mathelo, it reveals that similar objection as to the membership of said 41 workers and their participation in the election of office bearers of Fauji Fertilizers Company Mazdoor Union Mirpur Mathelo which was held on 28.02.2018 was raised by the M/s. Qadri & Co. Daharki who had agreement as contractor with M/s. Fauji Fertilizers Co. Mirpur Mathelo at that time consequent upon said change / election of office bearers of the union was rejected by this office vide order dated 25.05.2018. Being aggrieved and dissatisfied with the rejection of the change / election of office bearers vide this office order dated 25.05.2018, the representatives of the Fauji Fertilizers Co. Mazdoor Union Mirpur Mathelo had filed an Election Appeal No.04 of 2018 under Section 9(7) of the Sindh Industrial Relations Act, 2013 before Honourable Sindh Labour Court No. VII, Sukkur. The Honourable Labour Court was set aside the impugned order (rejection order / letter dated 25.05.2018) issued by this office with direction to respondent No.1 (Registrar of Trade Unions, Hyderabad) to accept the change of office bearers vide its detailed judgment dated 16.01.2019 wherein Hon'ble Court was discussed and decided the issues including issue of 41 workers as these 41 workers are the members of the trade union who has contested the election and they have every right to vote of their favourite trade union. It is not out of context to mention here that being aggrieved with the judgment dated 16.01.2019 passed by the Learned Sindh Labour Court No. VII, Sukkur the management of M/s. Qadri & Co. Daharki had filed a Constitution Petition No.S-30 of 2019 before the Honourable High Court of Sindh Bench at Sukkur and the said Constitution Petition was pleased to disposed of by the Honourable High Court vide its order dated 10.12.2020 in terms of the arguments advanced by the Counsel of petitioner and respondent Nos. 1 to 8 counsel and statement filed by the Counsel on behalf of the respondent Nos.1 to 8.

In view of the above, the change/election of following office bearers of Fauji Fertilizers Co. Mazdoor Union, Mirpur Mathelo made through secret ballot held on 28.12.2020 as communicated by the Chairman Election Committee vide its letter dated 30.12.2020, is hereby accepted as found in accordance with the provisions of the constitution of Fauji Fertilizers Co. Mazdoor Union Mirpur Mathelo and the law.

<u>S.NO.</u>	<u>NAME</u>	<u>DESIGNATION</u>
1.	Mr. Moaj Ali.	President.
2.	Mr. Gul Muhammad Bhutto.	Senior Vice President.
3.	Mr. Ikhlauque Ahmed Lashari	Vice President.
4.	Mr. Noor Ahmed Siyal.	General Secretary.
5.	Mr. Fiaz Ahmed Buriro.	Joint Secretary.
6.	Mr. Allah Dino Mahar.	Finance Secretary.

7. Mr. Moor Ali Sameejo. Office Secretary.
 8. Mr. Muhammad Ameen Mahar. Information Secretary.”

Perusal of the aforesaid order reflects that the Registrar on the complaint of the petitioner that only 250 employees are on their payroll, who are also members of the union in question and are paying monthly subscription fund, but 41 irrelevant persons have participated in the election, whereas, they are not employees of the petitioner nor could be members of the union, directed the Labour Officer, Ghotki to conduct an inquiry so as to ascertain the veracity of the claim as alleged in the letter dated 04-02-2012 filed by the Secretary of the Union and letters dated 29-12-2020 and 26-01-2020 filed by the petitioner / contractor. The Labour Officer furnished his inquiry report dated 11-02-2021, and the said report reads as under:

“With reference to your good office letter as quoted above, the undersigned has conducted the inquiry in detail and submitting the facts as under:

- a. Statement of M/s Rafique Ahmed & Co.....Annexure “1”
 b. Statement of M/s Claiming General Secretary.....Annexure “2”
 Mr. Noor Ahmed Sial

- a. Statement of M/s Rafique Ahmed & Co.
 After gone through the statement of M/s Rafique Ahmed & Co. and record provided by him, it is observed from the payroll and other record that M/S Rafique Ahmed & Co. has 250 workers whereas, 41 workers are employees of M/S Shah Din Sons & Co. and they have never been employed by M/S Rafique Ahmed & Co. hence, it is evident as per record, that the 41 disputed workers are employee of M/S Shah Din Sons & Co.

Furthermore, following documents have also been provided before the inquiry to establish that M/S Rafique Ahmed & Co. has only 250 workers and 41 workers are not his employees:

- i. Copy of payroll of M/S Rafique Ahmed & Co. showing 250 workers indicating deduction of the union fund. Annex “A”.
- ii. Copy of letter of ADL-HYD dated 07.11.2017 wherein, it is clearly declared that 41 workers are not member of the union. Annex “B”.
- iii. Copy of letter of ADL-HYD dated 07.11.2017 wherein, it is clearly declared that 41 workers are not member of the union. Annex “C”.
- iv. Copy of ADL office dated 16.05.2018, wherein, it is clearly declared that nonmembers cannot participate in election process. Annex “D”.
- v. Copy of Hon’ble High Court order dated 10.12.2020 along-with statement of the union that “the 41 workers mentioned at

page no. 130 to 138 have / had no relationship with the petitioner in the past and will no such relationship in the future. Annex “E”.

b. Statement of Mr. Noor Ahmed Siyal claiming General Secretary (M/S Rafique Ahmed & Co.)

Mr. Noor Ahmed Siyal was asked to record his statement for further proceedings, but he said the submitted documents along-with covering letter may be treated as my statement in the inquiry. After analyzing the record provided in the inquiry by him and found that the copy of register titled as Membership Fauji Fertilizer Co. Limited, Mirpur Mathelo showing 292 union members and photocopy of union fund @ Rs. 100/- are uncertain and non-verified, they failed to provide proper copy of union membership Form “C” and union bank account details. The copies of Union fund record of Rs. 100 per each & unverified copy of detail of union membership register are attached herewith as Annexure “F”.

c. Whereas Mr. Abdul Haq Khatian has unlawfully contested in the election held on 28th Dec. 2020, who have been retired from his services by his employer M/S Qadri and Company, same union has been directed that Mr. Abdul Haq Khatian who has been nominated as General Secretary in the election does not come within the definition of workmen as such necessary action may be taken for the above alleged illegal act on the part of the union. Vide Registrar of Trade Union Hyderabad vide letter No. RDL-RTU(1553)/HYD/208/577 dated 16/05/2018.....Annexure “G”

d. It is worth mentioning that the Union Ex. General Secretary approached himself to the Registrar Trade Union vide his letter No. FFC.MU.340.2016 dated 25.02.2016 & shown some apprehensions that 41 workers are creating trouble in the way of Industrial peace and trying their un-lawfully merger in the existing union.....Annexure “H”

Conclusion:

After going through the statements / record provided in this inquiry, it may be concluded that the 41 disputed workers are not employed with the M/S Rafique & Co. whereas, the record provided by the claiming General Secretary Mr. Noor Ahmed Siyal is ambiguous, through which the membership of 41 disputed workers cannot be verified, and participation of Mr. Abdul Haq Khatian cannot be justified because of his unlawful contest in the election on the seat of General Secretary. Further all the record/ documents are attached herewith for your kind perusal please.”

In the report of the Inquiry Officer, it has been confirmed that 41 employees in question have never been engaged or employed by the petitioner. He has further reported that statement of General Secretary of the Union was called; however, he only submitted documents along with letter, and after analyzing the record, it was found that copy of register titled as “Membership of FFC Mirpur Mathelo” showing 292 members are uncertain and non-verified, whereas, they failed to provide proper copy of union membership in Form “C” as well as the bank accounts’ details. On the basis of this, he went on to hold that the disputed workers are not employed

with the petitioner, whereas, the record provided by the General Secretary of the Union is ambiguous through which the membership of these 41 workers cannot be verified, whereas, the participation of one Mr. Abdul Haq Khatian cannot be justified because of his unlawful contest in the election on the seat of General Secretary as he stands retired.

Despite this fact finding report called by the Registrar himself, he went on to overrule this finding of fact without specifically dealing this very report either in words; or with support of any material. Instead he has taken into consideration certain facts of an earlier dispute raised by the union with the previous contractor and the litigation between them. No cogent reasoning or for that matter discussion is found in the impugned order so as to upset the finding of the Labor Officer to whom the assignment was given by the office of the Registrar with a specific purpose of ascertaining the status of the 41 employees in question. Once an adverse finding is on record, then it was incumbent upon the office of the Registrar before overturning it to discuss the same and come with its own finding of fact which should be better and weighty as compared to the finding of the officer concerned who was assigned this task by himself. If the matter had not been assigned to the Labor Officer for an enquiry, then it would have been a different story; but as noted this is not the case in hand.

13. Earlier, in similar facts, an objection was raised by M/s Qadri & Company, the earlier contractor, in respect of these very 41 workers and the change of election of office-bearers. The then Registrar refused to accept the change of office-bearers vide order dated 25-05-2018, which was then impugned through Appeal No.04 of 2018 under Section 9(7) of the IRA-2013 by the Union before the Sindh Labour Court No. VII at Sukkur, wherein the said order was set aside and then further remedy of Appeal was sought by the Contractor M/s Qadri & Company, through Constitution Petition No. S-30 of 2019. It would be advantageous to refer to the order of the then Registrar dated 25-05-2018 and the order of this Court dated 10-12-2020, whereby C. P. No. S-30 of 2019 was disposed of on the statement of the respondents' Counsel, which are reproduced as under:

Order dated 25-05-2018

“This is with reference to the letters dated 19.02.2018 and 05.03.2018 received from Chairman Election Committee whereby alleged intimation of change/election of office bearers of FFC Mazdoor Union Mirpur Mathelo was given to this office and complaints/applications against the said change/election of office

bearers of the union as made by the M/s, Qadri & Company, Daharki were also received in this office on 26.02.2018 and 01.03.2018.

The matter has been taken into consideration and comments were called from you to ascertain the veracity of claim as alleged in letters dated 19.02.2018 and 05.03.2018 made by the Chairman Election Committee and complaints against the change/election as made by M/s, Qadri & Company, Daharki vide its letters dated 26.02.2018 and 01.03.2018.

On scrutiny of documents attached with the above referred alleged intimation of election; constitution of the FFC Mazdoor Union, Mirpur Mathelo and contents of reply submitted by you vide letter dated 21.05.2018, it appeared from the minutes of meeting of General Body of the union held on 15.02.2018 that an Election Committee consisting upon Chairman, Vice Chairman and four Members was appointed by the General Body for holding/conducting the election of office bearers of FFC Mazdoor Union, Mirpur Mathelo on the date i.e. 25.02.2018 but said election of office bearers has been conducted by the Election Committee on 28.02.2018 instead of 25.02.2018 as appeared from the letter of intimation of election dated 02.03.2018 received from Chairman Election Committee. It is also transpired that 41 workers who were shown to have participated in the election by allowing membership of FFC Mazdoor Union Mirpur Mathelo are actual workers employed in the establishment of M/s, ASB Sons & Company Daharki with which your union is not connected which was original formed by the contractors workers now employed by M/s, Qadri & Company Daharki. Not only that but it is on record that your union entered into bilateral negotiations with M/S, Qadri & Company Daharki consequent upon various agreements were taken place between your union and M/s, Qadri & Company Daharki. It is not out of context to mention here that M/s, Qadri & Company Daharki and M/s, ASB Sons & Company Daharki are two separate establishments which Employers are also different persons which do not constitute 'group of establishments' in terms of Section 2 (xii) of the Sindh Industrial Relations Act, 2013 which is reproduced here as under:-

2 (xii)- "group of establishments" means establishments belonging to the same employer and the same industry.

Furthermore, appeared that Mr. Abdul Haq Khatian shown to have been elected as General Secretary in the alleged election of FFC Mazdoor Union Mirpur Mathelo is a retired person who is not in the employment of M/s, Qadri & Company Daharki as such is not entitled to retain membership of the union and contest the election of office bearers of FFC Mazdoor Union unless he has joined any other establishment in capacity of workmen as defined under the provisions of the Sindh Industrial Relations Act, 2013. As the law is very much elaborated by judgments as delivered by the Honourable High Court of Sindh in a reported case Habib Sugar Mills Vs. Registrar of Trade Unions and others (2001 P L C 441) as well as Honourable Lahore High Court in case of Muhammad Munir Vs. Registrar Industry-wise Trade Unions, NIRC, Lahore and others (2014 P L C 159) that non workmen is not eligible to hold any post of a trade union of workmen in terms of the criteria given under Section 6 (1) (d) of the Sindh Industrial Relations Act, 2013.

In view of the above the alleged election of office bearers of FFC Mazdoor Union, Mirpur Mathelo as communicated by Chairman Election Committee vide its letters dated 19.02.2018 and 05.03.2018, is hereby rejected having not been found in accordance with law.”

Order dated 10-12-2020

“The matter was heard at length and during course of arguments Mr. Jamshed Ahmed Faiz advocate for respondents Nos. 1 to 8 has drawn attention towards clause 40 at page 110 of the petition, which appears in Annexure R-1 (page No.105), which is an agreement of contract for loading of urea bagged product between petitioner and Fouji Fertilizer Company and indicates that the term of contract was 24 months which was subsequently extended for 03 months twice (page Nos. 112 and 114 of the petition) and thereafter they have no locus in respect of contract of the bagging and loading with Fouji Fertilizer Company, so also the answering trade union which represents workers of bagging and loading.

At this juncture, Mr. Muhammad Ali Khan Advocate for petitioner has stated that infact the petitioner's main grievance is regarding 41 workers whose names are available at page 132 to 138 of the petition who have been shown as workmen during the contractual period of the petitioner and also shown as members of the answering trade union but infact they had never any relationship with the petitioner as they were not at payroll of the petitioner at any time besides Mr. Abdul Haque has also no relationship with the petitioner as worker. He submits that it will create problem for the petitioner, as they may prefer any adverse claim against the petitioner through the answering trade union.

Mr. Jamshed Ahmed Faiz Advocate for respondents Nos. 1 to 8 in response submits that after expiry of contract of the petitioner with Fouji Fertilizer Company, neither 41 workmen as well as the remaining members of trade union will have any relation with the petitioner nor they will bargain with the petitioner regarding the members of trade union including 41 workmen mentioned at page 132 to 138 of the petition. He further contends neither they will have any relation in future nor those 41 workmen had any sort of relation with the petitioner in the past. However, regarding Mr. Abdul Haque he contends that his name has also been included in the list of 251 workmen who in the past remained under employment of the petitioner. Mr. Jamshed Ahmed Faiz Advocate, after consultation with his clients regarding this aspect, has filed statement in writing to this effect, which is taken on record. After perusal of the said statement Mr. Muhammad Ali Khan Advocate for the petitioner was satisfied and concedes that after filing such statement, he has no objection if the instant const. Petition is disposed of.

In the existing position of affairs, it is evident that when answering trade union admits that neither they will have any relation with the petitioner on behalf of their members in respect of bargaining in future including 41 employees mentioned above for whom it has categorically stated that they had no relation with the petitioner in the past and will have no such relation in future also. I am of the view that in these circumstances, the petitioner after expiry of the contract of loading urea bagged products with Fouji Fertilizer Company has no locus as such the instant const. petition becomes infructuous and the same is disposed of in the above terms.”

Perusal of the earlier order of the Registrar dated 25.5.2018 reflects that these 41 workers, at the relevant time, were shown to be employees of an earlier contractor M/s ASB Sons & Company as the union was then formed against the said establishment. It was further observed that M/s Qadri & Company, Daharki and M/s ASB Sons & Company or two separate establishments in terms of Section 2(xii) of IRA-2013. It was further observed that Mr. Abdul Haq Khatian shown to be elected as the General Secretary was a retired person no more in the employment of the then contractor M/s Qadri & Company, hence, not entitled for membership of union. This order was though set aside by the Sindh Labour Court, however, it went into further challenge by way of C. P. No. S-30 of 2019, and by that time when the said petition was taken up for disposal, the present petitioner had entered into as a contractor and the very same Counsel of the respondents made a statement that after expiry of the contract between FFC and the then contractor, neither 41 workers nor any other remaining member of the trade union will have any relation with the petitioner nor will they bargain with the petitioner. It was further admitted that these 41 workers will not have any relation in future nor these workmen had any sort of relationship with the petitioner in the past. As to the membership of Mr. Abdul Haq Khatian, the respondents' Counsel also filed a statement, and thereafter, the Court was pleased to observe that these 41 workers were never employees of the then petitioner nor in the past they had any relation and in future as well. These facts have not been denied before us and this clearly reflects that insofar as the status of these 41 workers is concerned, it always remained in dispute and the Respondent-Union was never in a position to establish that these 41 workers were ever employed by the present petitioner or for that matter with the predecessor-in-interest, i.e. the earlier contractor or even with FFC. Nothing has been placed on record to justify their employment with any of the contractors or of the parent company, and therefore, they could not be entitled to be members of the Union and so also to be then elected as office-bearers. This factual position has not been controverted in any manner on behalf of the respondents.

14. We have specifically confronted the respondents' Counsel regarding the inquiry conducted by the Labour Officer, wherein ample opportunity was provided to the Respondent-Union to establish their relationship with the present petitioner, and apparently, they had failed to do so, and again before us, he was not in a position to satisfactorily respond. If the members and or officer bearers were in employment of the Petitioner, they could have

come forward and filed their affidavits to that effect and would have been in a position to rebut the contention of the Petitioner; but they chose not to. In the case of Hakimsons³, the employer was objecting to the registration of a trade union on the ground that its members were no longer in service as they stood terminated; and the said objection was replied inasmuch as thirty affidavits were filed by the workers before the Registrar; who prima facie, found they were, in fact employed in the petitioner company, and the grant of such registration was upheld by the Hon'ble Supreme Court. In view of these undisputed facts, we do not see as to how the Respondent-Union could claim that these 41 workers including Mr. Abdul Haq Khatian can be members of the union and then can contest election of the union and become office-bearers. They cannot be imposed upon the petitioner-company if they are not in their employment.

15. In view of hereinabove facts and circumstances of the case, in our considered opinion the Registrar was not justified in passing the impugned order, as he himself had ordered an inquiry, for which he was competent and obliged to⁴; which inquiry clearly established that the 41 workers in question were never in the employment of the Petitioner, whereas, he, without giving any justifiable reasons, overruled the said inquiry even without discussing it and also fell in error in relying upon the earlier proceedings emanating from CP No.S-30 of 2019, which in fact had also gone against the stance of the Respondent Union; therefore, the impugned order is liable to be set-aside and it is so ordered. The petition is allowed in the above terms. The Registrar, if required, may accept the officer bearers from the available list of elected persons who are in employment; or if deemed necessary order conducting fresh elections of the officer bearers from the employed workmen whose names are already in the undisputed list.

16. Petition is allowed in the above terms.

Dated: 23.09.2021

J U D G E

J U D G E

Abdul Basit

³ Hakimsons Chemical Industries Private Limited v The Registrar of Trade Unions (1999 SCMR 234)

⁴ See Para 7 of the Hakimsons Case (Supra)