

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Muhammad Junaid Ghaffar, J.**  
**Agha Faisal, J.**

C P D 255 of 2022 : Sakhil Zar vs.  
K-Electric Ltd. & Others

For the Petitioner : Mr. Muhammad Mazan Buladi, Advocate

For the Respondent : Mr. Syed Yasir Ahmed Shah  
Assistant Attorney Sindh

Mr. Shaukat Ali Chaudhry, Advocate

Syed Asif Ali, Advocate

Date/s of hearing : 22.11.2022

Date of announcement : 22.11.2022

## ORDER

**Agha Faisal, J.** Briefly stated, post conclusion of disciplinary proceedings<sup>1</sup> the petitioner was dismissed from service on account of unsanctioned absence from duty. In appeal, the learned Member NIRC<sup>2</sup> observed that while the culpability of the petitioner was not in any doubt, however, taking a *lenient view* varied the punishment and reinstated the petitioner, albeit without back benefits. The petitioner never appealed the aforementioned decision; however, the respondent did and vide order dated 14.10.2021 (“Impugned Order”) the appeal of the respondent was allowed by the Full Bench NIRC and the order of the Member NIRC was set aside, hence, this petition.

2. Petitioner’s counsel admitted that the sustaining of culpability, by the Member NIRC, was never challenged; however, sought to agitate that the restoration of the original punishment could not be maintained. Respondent’s counsel submitted that the culpability of the petitioner was admittedly beyond doubt and the learned Full Bench NIRC had rightly deprecated interference in the consequence while maintaining culpability.

3. Heard and perused. The finding of guilt, maintained by the Member NIRC, has never been challenged by the petitioner. Therefore, the issue to be

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<sup>1</sup> In respect whereof no cavil has been articulated.

<sup>2</sup> Vide order dated 10.06.2021.

considered by us was whether the learned Full Bench NIRC had rightly restored the original dismissal order.

4. The august Supreme Court has maintained a strict view with regards to unlawful absence from duty and held that under such circumstances even the requirement of an inquiry could be dispensed with; since there was no factual dispute<sup>3</sup>. In *Sarfaraz Ahmed*<sup>4</sup> the Supreme Court relied upon *Shan Elahi*<sup>5</sup> to reiterate that an employer was duly entitled to dismiss, remove or terminate an employee with effect from the date of unauthorized absence and the penalty of dismissal from service would be maintained.

5. In the present facts the petitioner was admittedly absent from duty without sanction. An inquiry was held and upon conclusion thereof findings of culpability led to his termination. The findings of culpability were maintained by the Member NIRC and the same was never challenged by the petitioner. However, while maintaining the findings of culpability the Member NIRC reinstated the petitioner merely by taking a *lenient view*. The learned Full Bench NIRC considered such an order without legal sanction and nothing has been brought on record by the petitioner's counsel for us to consider otherwise. In view of the dicta illumined by the august Court, it is apparent that no case for reduction of penalty, while maintaining culpability in the circumstances under consideration, is made out.

6. Article 199 of the Constitution contemplates the discretionary<sup>6</sup> writ jurisdiction of this Court and the said discretion may be exercised in the absence of an adequate remedy. In the present matter *admittedly* there existed an adequate remedy, however, the same was duly availed / exhausted. The petitioner's counsel remained unable to articulate before us today as to why the impugned findings could not be rested on the law / record relied upon. It merits no reiteration that writ jurisdiction is not yet another forum of appeal and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law<sup>7</sup> that where the fora had exercised its discretion in one way and that the discretion had been judicially exercised on sound principles, interference in such discretion would not be merited unless the same was contrary to law or usage having the force of law. It is our considered view that no manifest illegality has been identified

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<sup>3</sup> Per Ayesha A. Malik J. in *Secretary Punjab vs. Syed Zakir Ali* reported as 2022 SCMR 951.

<sup>4</sup> *DIGP Lahore vs. Sarfaraz Ahmed* reported as 2022 PLC (CS) 278.

<sup>5</sup> *WAPDA vs. Shan Elahi* reported as 1998 SCMR 1890.

<sup>6</sup> Per Ijaz Ul Ahsan J. in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.

<sup>7</sup> Per Faqir Muhammad Khokhar J. in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323.

in the order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned.

7. In view hereof, we are constrained to observe that no case has been set forth to entertain this matter in the writ jurisdiction of this Court, hence, this petition, along with pending application/s, was dismissed vide our short order announced in Court earlier today upon conclusion of the hearing. These are the reasons for our short order.

JUDGE

JUDGE