

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-593 of 2022

**M/S Sui Southern Gas Company
Limited**

Petitioner: Through Mr. Khalid Waheed Khan, advocate

Respondent No.1: Through Mr. Ali Asadullah Bullo, advocate

Date of hearing
& Decision: 31.01.2023.

ORDER

The petitioner- M/s Sui Southern Gas Company Limited ('SSGCL'), through the captioned petition, is asking for setting aside the order dated 29-12-2021 passed by the National Industrial Relations Commission (NIRC) Full Bench at Karachi in Appeal No. 12A (20)/2021-Q bearing C.M.A No.24(24)/2021-Q, whereby the order dated 17-03-2021 passed by the learned Single Member of NIRC-Quetta in Case No. 4A(13)/2018-Q bearing C.M.A No. 24(18)/2018-Q was maintained, whereby the matter was remanded to Sui Southern Gas Company Limited (SSGCL) to treat the date of birth of private respondent as "1982 " as well as the respondent No.1 was allowed to get it corrected his date of birth in CNIC as "1970" instead of "1982" from the NADRA authorities and further the SSGCL was directed to make necessary amendments/ entries about correction of date of birth of respondent as "1970" instead of "1982" in the service record of respondent No.1 maintained by SSGCL.

2. The case of the SSGCL is that respondent No.1 was appointed as Chowkidar in SSGCL; he was removed from service in the year 1997, however, on 14.02.2009, the respondent along with many other employees was reinstated in service under the Sacked Employees (Reinstatement) Ordinance, 2009; that the respondent No.1 was served with show cause notice dated 04.09.2015 on the allegation that at the time of reinstatement into service, the respondent No.1

submitted CNIC wherein he mentioned his date of birth as 1982, whereas at the time of his initial appointment, he submitted CNIC in which his date of birth was mentioned as 1970; that the respondent No.1 submitted his reply which was found unsatisfactory, hence he was served with charge sheet dated 20.10.2017 which was also replied by him. However, the aforesaid stance was discarded by SSGCL and finally, the learned SB-NIRC vide order dated 17-03-2021 allowed the petition filed by respondent No.1 in Case No. 4A(13)/2018-Q bearing C.M.A No. 24(18)/2018-Q. An excerpt whereof is reproduced as under:

“8. In view of what has been discussed herein above, the petition in hand is allowed, the show cause notice vide Memorandum Ref: No.IR-HO/1.1-E/Emp. No.25849/2338 dated 04th September, 2015 issued by General Manager (HR) SSGCL, charge sheet vide Memorandum Ref: No.IR-HO/1.1-E/Emp: No.25849/636 dated 20th October, 2015 issued by General Manager (HR) SSGCL, inquiry proceedings as well as inquiry report dated 30th November, 2015 issued by Inquiry Officer are declared illegal, as such, set aside, consequently the matter is remanded to respondents to consider the date of birth of petitioner as "1970" as well as the petitioner is allowed to get correct his date of birth in CNIC as "1970" instead of "1982" from the NADRA authorities and further the respondents are directed to make necessary amendments/ entries with regard to correction of date of birth of petitioner as "1970" instead of "1982" in the service record of petitioner maintained by SSGCL/ respondents. The petition is disposed of in the above terms. There is no order as to costs. File after completion and compilation be consigned to record.”

3. Petitioner-company being aggrieved by and dissatisfied with the aforesaid decision filed the statutory appeal which was dismissed by the NIRC-FB in Appeal No. 12A (20)/2021-Q vide order dated 29-12- 2021. For convenience's sake, an excerpt whereof is reproduced as under:

“7. Arguments heard and record perused.

8. The crucial point involved in the present appeal is that whether the date of birth of respondent is 1970 or 1982. Admittedly, the respondent at the time of his initial appointment has produced the Manual National Identity Card in which the date of birth of the respondent is recorded as 1970. Contention of the learned counsel for the appellant is that the respondent after reinstatement in service had submitted Computerized National Identity Card (CNIC) issued by NADRA in which the date of birth is mentioned as 1982 whereas at the time of his initial appointment he submitted his NIC in which his date of Birth was recorded as 1970 so he had concealed the real fact and has committed fraud which amounts to misconduct, but perusal of the record reveals that the representative of appellant namely Muzaffar- ul-Mehdi, Deputy Manager (IR) while appearing in the witness box as 35 DW-1 has produced the copy of affidavit, placed on file EX D/1-K, which was submitted by the respondent before the Enquiry Officer wherein he has stated on oath that his actual date of birth is 1970 whereas the date birth was wrongly mentioned in his CNIC as 1982. In the said affidavit the respondent has also prayed that he was given time to correct his date of birth in his CNIC, so the arguments of the learned counsel for the appellant that the respondent has committed fraud by concealing real facts, do not carry much weight. During the course of arguments, the respondent has stated that he has

obtained another CNIC from NADRA in which his actual date of birth has been recorded as 1970.

For what has been discussed above, we are of view that the learned Single Bench has rightly passed the impugned order and did not commit any illegality and irregularity while passing the same; hence the same warrants no interference and the instant appeal having no force is hereby dismissed. No orders as to costs. File be consigned to the record room.”

3. Mr. Khalid Waheed Khan, learned counsel for the petitioner-company, submitted that the impugned orders passed by the learned SB-NIRC and FB-NIRC are not under the law and are liable to be set aside; that grievance petition filed by the private respondent under Section 31 of Industrial Relation Act, 2012 before single bench NIRC, Quetta bearing No. in case No. 4A (13)/2018-Q & C.M.A. No. 24(18)2018/2018-Q was not maintainable as the aforesaid section does not provide any remedy regarding the grievance of an individual, thus the NIRC lacked the jurisdiction and directions issued was without legal justification; that Grievance Petition, if any, should have been filed under section 33 of said Act-2012 after giving grievance notice to the petitioner company which was/is mandatory under section 33 of Sub-section 2 of Industrial Relation Act, 2012, this aspect was also not considered by the Full Bench, Karachi; that it is well settled law that when the trial court failed to consider the question of law, then it is primary duty of this court to set at naught the decision of the lower court; that both the court below have failed to appreciate the material available on record, causing grave injustice and prejudice to the Petitioner-company to take the private respondent on job who has played fraud and misrepresentation with the petitioner company ; that learned SB-NIRC while holding that the allegations leveled against the private respondent were true and correct (duly admitted by the Respondent No.1 himself), however, surprisingly the Petitioner Company was directed to allow the private respondent for a so-called correction of date of birth with an age difference of about twelve years, which direction was uncalled for; that the allegations leveled against the private respondent in the Show Cause, the Charge Sheet followed by a full-fledged free and fair Inquiry were not only limited to the performance of dual job but rather there were number of allegations against the private respondent; that the private respondent has concealed the real facts from the Courts and also deceived the Petitioner Company about his previous employment at the time of his reinstatement in service, which falls strictly under the ambit of Section 15(3) (b) of the Industrial and Commercial (Standing Orders) Ordinance 1968. He further

submitted that the respondent was found guilty of misconduct by seeking correction in date of birth in CNIC is an illegal act on his part; that respondent had deceived the company by not disclosing the factual position which was tantamount to serious misconduct/fraud on his part, therefore, the respondent is liable to be punished under Section 15 (2) (iv) of the Industrial and Commercial (Standing Orders) Ordinance 1968; that respondent was provided a free & fair opportunity/chance to defend his case which is also apparent from the record as the respondent fully took part in Inquiry Proceedings therefore, the respondent's stance regarding not giving the opportunity of hearing and was condemned unheard is baseless, concealment of facts and without any substantial evidence; that the respondent has approached the Courts with unclean hands. Hence, he is/was not entitled to any relief as claimed; that respondent himself signed every page of the Inquiry Proceedings along with the signature of the other Co-worker which is also evident from the Inquiry Proceeding, wherein the misconduct against the private respondent was proved beyond the shadow of a doubt, which conduct is a sheer violation under the law. He lastly prayed for allowing the instant petition by setting aside the orders passed by the learned Benches of NIRC.

3. Mr. Ali Asadullah Bullo, learned counsel for respondent No.1, supported the impugned orders dated 29-12- 2021 and 17-03-2021 passed by learned FB and SB-NIRC and contended that while issuing the CNIC, by NADRA authority, the wrong date of birth of was mentioned, whereas the actual date of birth was mentioned in the old NIC submitted at the time of initial appointment with SSGCL is correct, whereas the respondent could not notice the wrong, but the reply so furnished by the respondent was found to be unsatisfactory, hence he was served with a charge sheet dated 20-10-2017, which too was replied by him and also inquiry was initiated. It is further contended that the respondent No.1 was initially appointed in the establishment of SSGCL as temporary assignee Chowkidar/ Watchman vide Memorandum dated 04-10-1995, disclosing his date of birth as "1970", however, his services were terminated vide letter dated 28th October, 1997 and then he was reinstated into service vide letter of reinstatement dated 10th April, 2009 and at the time of his reinstatement, he mentioned his date of birth to be 1982 as per his computerized CNIC issued by NADRA wherein the same date of birth is disclosed as 1982; that later on, respondent No.1 submitted an affidavit before the petitioner-

company wherein he stated that in the MNIC previously obtained by him his correct date of birth i.e. "1970" wherein in the CNIC issued by the NADRA, the date of birth has been mentioned as 1982 and due to lack of knowledge and such mistake was neither intentional nor deliberate, hence the petitioner-company was required to provide opportunity to correct the wrong, but without adhering to his requests, the learned Member, N.I.R.C, Quetta Bench, was pleased to accept the petition of the private respondent and in consequence thereof his date of birth was corrected by the NADRA. Furthermore, the appeal filed by the petitioner company was dismissed on the same analogy. He lastly prayed for the dismissal of the instant petition as the petitioner company has availed and exhausted the remedy and now it is not open for this court to reappraise the evidence of the parties under Article 199 of the Constitution.

4. We have considered contentions of the learned Counsel representing the SSGCL as well as learned counsel for respondent No.1 and have minutely gone through the material available on record.

5. The parties are at loggerheads on the issue of correction in date of birth. The petitioner-company claims that at the time of the initial appointment of the private respondent, he furnished the documents disclosing his actual date of birth as 1970, however when he was reinstated in service under the Sacked Employees (Reinstatement) Act, 2010, he submitted his Computerized National Identity Card (CNIC) issued by NADRA in which the date of birth was mentioned as 1982 whereas, at the time of his initial appointment, he submitted his NIC in which his date of Birth was recorded as 1970 so he had concealed the real fact and committed fraud which amounts to misconduct. To cater to this anomaly, the learned NIRC appreciated the evidence of the representative of the petitioner-company namely Muzaffar- ul-Mehdi, Deputy Manager (IR) who produced the copy of the affidavit, which was submitted by the respondent before the Enquiry Officer wherein he had stated on oath that his actual date of birth was/is 1970 whereas the date birth was wrongly mentioned in his CNIC as 1982. In the said affidavit the respondent prayed that he was given time to correct his date of birth in his CNIC, so the arguments of the learned counsel for the petitioner that the respondent had committed fraud by concealing real facts, do not carry much weight. Besides respondent has already obtained the correct copy of his CNIC from NADRA in which his actual date of birth has been recorded as 1970, thus

the question of tempering or giving misstatement and /or misleading the petitioner-company and /or causing any colossal loss to the company on the subject issue is uncalled for. Since truth has prevailed and the record has been made straight, as no loss has been caused to the company, which has been averted when the respondent himself endeavored to get it corrected from the competent authority, therefore proposed impugned action against the respondent is not required.

6. Primarily the concurrent findings of two competent forums are not opened to question in the constitutional petition as this is the general rule that this Court under Article 199 of the Constitution will not interfere with the concurrent findings of the two competent forums/Courts below. But it is not an absolute rule. Some of the well-recognized exceptions are where (i) the Courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. However, in the present case, both learned Benches of NIRC consistently held that Petitioner Company has no case at all to claim punitive action against the private respondent based on his alleged misconduct as discussed supra.

7. We have gone through the orders rendered by both the learned Single Bench and Full Bench of NIRC and in our considerate view that both orders passed by the Benches of NIRC are in line with the provisions of law, therefore, there is no ground for re-evaluation of the material placed on record at our end. Thus we maintain the order dated 29.12.2021 passed by the learned Full Bench of NIRC. Accordingly, this petition is dismissed with no order as to costs. Above are the reasons in the aid of short order dated 31.01.2023, whereby we have dismissed the instant petition.

JUDGE

JUDGE