

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro  
Mr. Justice Adnan-ul-Karim Memon

**Constitutional Petition No.D-7068 of 2021**

(IFFCO Pakistan (Private) Limited v. Ghulam Murtaza and 19 others)

**Constitutional Petition No.D-7069 of 2021**

(IFFCO Pakistan (Private) Limited v. Manthar Ali and 13 others)

**Constitutional Petition No.D-4395 of 2017**

(IFFCO Pakistan (Private) Limited v. The Registrar Trade Unions and 04 others)

**Constitutional Petition No.D-7070 of 2021**

(IFFCO Pakistan (Private) Limited v. Sajjad Ahmed and 06 others)

**Constitutional Petition No.D-7071 of 2021**

(IFFCO Pakistan (Private) Limited v. Sajjad Ahmed and 11 others)

**Constitutional Petition No.D-7072 of 2021**

(IFFCO Pakistan (Private) Limited v. Mazhar Ali and 15 others)

**Constitutional Petition No.D-7073 of 2021**

(IFFCO Pakistan (Private) Limited v. Naseebullah and 14 others)

**Constitutional Petition No.D-7074 of 2021**

(IFFCO Pakistan (Private) Limited v. Harrison and 11 others)

**Constitutional Petition No.D-7075 of 2021**

(IFFCO Pakistan (Private) Limited v. Abdul Razzak and 21 others)

**Constitutional Petition No.D-7076 of 2021**

(IFFCO Pakistan (Private) Limited v. Ghulam Murtaza and 07 others)

**Constitutional Petition No.D-7077 of 2021**

(IFFCO Pakistan (Private) Limited v. Naseebullah and 14 others)

**Constitutional Petition No.D-7078 of 2021**

(IFFCO Pakistan (Private) Limited v. Ummar Hayat and 09 others)

**Constitutional Petition No.D-7079 of 2021**

(IFFCO Pakistan (Private) Limited v. Zeeshan Ahmed and 03 others)

**Constitutional Petition No.D-7080 of 2021**

(IFFCO Pakistan (Private) Limited v. Ghulam Murtaza and 03 others)

**Constitutional Petition No.D-7081 of 2021**

(IFFCO Pakistan (Private) Limited v. Syed Mehboob and 07 others)

**Constitutional Petition No.D-7082 of 2021**

(IFFCO Pakistan (Private) Limited v. Zeeshan Ahmed and 03 others)

**Constitutional Petition No.D-7083 of 2021**

(IFFCO Pakistan (Private) Limited and 02 others v. Javed Iqbal and 09 others)

**Constitutional Petition No.D-7084 of 2021**  
(IFFCO Pakistan (Private) Limited v. Javed Iqbal and 9 others)

M/S Muhammad Ali Khan and Shuja-u-din, advocates for petitioners

Choudhry Azhar Illahi, advocate for the petitioner in CP No.D-4395 of 2017

Mr. Matloob Hussain Qureshi, advocate for respondents

Mr. Waqas Asad Sheikh, advocate for respondents has filed power on behalf of respondents.

Respondents in person

Date of hearing: 06.02.2023.

Date of Decision: 14.02.2023.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** – Through this common order, we intend to decide the present petitions as the controversy and questions raised, on behalf of the petitioners, are common except the issue involved in CP No.D-4395 of 2017, whereby Petitioner- IFFCO Pakistan (Private) Limited has filed this petition against the order dated 19.05.2017 passed by the learned Registrar Trade Unions of NIRC Islamabad in Case No.3(37)/2015, *inter-alia* on the ground that the registration of respondent union violates provisions of section 2(xviii), 7(v) 8(d), 8(2)(a) and provision of Section 19 of Industrial Relations Act, 2012.

2. Petitioner- IFFCO Pakistan (Private) Limited has filed these bunch of petitions against the order dated 13.9.2021 passed by the learned Full Bench of NIRC in Appeal Nos 12(01)/2021-K and order dated 9.11.2020 passed by the learned Single Bench of NIRC in case No. 4A (59)/2014-K, *inter-alia* on the ground that learned NIRC has no jurisdiction to decide the issue of the workers of the third party contractor based on the purported plea of unfair labor practice, as there exists no relationship between the petitioner-company and private respondents. For convenience's sake, an excerpt of the order dated 13.09.2021 is reproduced as under:-

*“8. It is not denied by the appellants that the respondents have been working in the premises of appellant Company, however, the only justification which they are making is that, they were the employees of contractor which fact has not been proved, rather the alleged contract/ agreement placed on file pertains to the year 2008, long before the litigations, the period of which has already expired and no agreement etc had been placed on record either with regard to renewal of the same or new contract if executed. The appellant alongwith written reply has placed on record copies of agreement executed between the Company (appellant) and the contractors. An agreement with M/s Gul*

*Muhammad Enterprises available in case file as R/1, with executed on 10.07.2007, the clause regarding Renewal / Termination provides as under:*

*“1. This contract shall come into force on and w.e.f. 01.07.2007 and shall remain valid till 30-June-08 and will be subject to termination by either party by giving 30 days advance notice to the other party or on the payment of service charges then in effect to the other party in lieu of notice. In case further extension of the contract is required it may be renewed on such terms as mutually agreed between the parties before its expiry.”*

*Another agreement made by the appellant with Hasnain Tanveer Associates (Pvt.) limited dated 21.05.2009 available in case file as R/2 and clause 9 ‘Duration and Termination’ provides the enforcement of the same as follow:-*

*‘9.1 This agreement shall become effective as of the dated stated above and shall continue for a period of twelve months thereafter.’*

*Similar type of agreement has also been executed by the appellant with Mr. Amanullah on 01.01.2008 in the case file available as R/3 and the termination / expiry mentioned as follow:-*

*“The company has the right to terminate the agreement immediately and without notice and to terminate the services of all the staff concerned. Service provider may terminate this agreement by giving thirty days’ notice in writing to the Company.”*

*The appellant himself filed copies of expired agreement which obliged us to say that presently no agreements with the contractors are in the field. Further the Single Bench held that the respondents are employees of appellant (EFFCO) and not the contractors which findings have been accepted by the contractors by not preferring any appeal. The respondents have been working within the premises of the appellant Company and for the appellant Company. The claim of the respondents that they are being not permitted to become member of the CBA union although the nature of job / duty of members of that union are same/identical but there is much difference in the salaries and other emoluments, thus they are treated discriminately, this argument have force. The petition before the learned Single Bench was filed under Section 54(e) of the IRA, 2012. Section 54 of the Act, provides the function of the Commission, the relevant sub section (e) is reproduced herein below:-*

*‘(e) to deal with cases of unfair labour practices specified in sections 31 and 32 on the part of employers, workers, trade unions either of them or persons acting on behalf of any of them, whether committed individually or collectively,’*

*The unfair labour practice on the part of the employer enumerated in Section 31 of the IRA2012, the relevant part for convenience is reproduced herein below:-*

- (1) No employer or trade union of employers and no person acting on behalf of either shall-*
  - (a) impose any condition in a contract of employment seeking to restrain the right of a person who is a party to such contract or join a trade union or continue his membership of a trade union;*
  - (b) refuse to employ or refuse to continue to employ any person on the ground that such person is, or is not a member or officer of a trade union;*
  - (c) discriminate against any person in regard to any employment, promotion, condition of employment or working*

condition on the ground that such person is, or is not, a member or officer of a trade union;

(d) dismiss, discharge, remove from employment or transfer or threaten to dismiss, discharge or remove from employment or transfer a workman or injure or threaten to injure him in respect of his employment by reason that the workman:

- (i) is or proposes to become, or seeks to persuade any other person to become, a member or officer of a trade union; or
- (ii) participates in the promotion, formation or activities of a trade union; *Emphasis provided*

9. *The respondents case before the learned Single Bench was that they are being deprived from statutory benefits of employments as available to the other employees who become members of the CBA union but they are neither permitted to join CBA union nor providing facilities / benefits at par with the CBA members, although the nature of job/duties are same and they are being treated unfairly. The above mentioned sub-sections of Section 31 of the Act, also clearly demonstrates that the employer or other on his behalf shall not discriminate any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is, or is not, a member or officer of a trade union. Thus any discrimination as provided above is within the ambit of commission of unfair labour practice.*

10. *On the strength of the discussion and the case law referred herein above, there is sufficient material available to dismiss the appeal which is hereby dismissed, with no order as to cost. The file be consigned to record room after due completions."*

3. M/S Muhammad Ali Khan and Shuja-u-din, learned counsel for the petitioners have submitted that no specific instance of committing unfair labor practice on the part of the petitioner-company has been brought on record by the private respondents to attract the jurisdiction of the NIRC; and in the absence whereof, grievance petitions before the learned single member of NIRC was not competent as there existed no relationship of employment between the Petitioner Company and private respondents. Learned counsel further submitted that the learned benches of NIRC failed to appreciate the issue of unfair labor practice and could have outrightly dismissed the cases of the private respondents, but unfortunately, allowed the grievance applications of the private respondents and erroneously held that they were /are employees of the petitioner establishment and incorrectly allowed them to perform their duties in Petitioner Company. Learned counsel further submitted that the learned bench of NIRC failed to appreciate that the third-party contractor employees and/or contract employees cannot form the Trade Union activities under National Industrial Act-2012 (NIRC-2012). Learned counsel next argued that the prayer regarding regularization of the service of the private respondents has already been declined, which shows the status of the private respondents, thus their further activities in the petitioner's company to form association and/or trade union are illegal and if allowed would violate the law. Learned counsel pointed out that in the petitioner-company, there is a registered Trade Union i.e IFFCO

Pakistan Limited Employees Union, which is certified CBA under the National Industrial Act-2012, whereas the respondents have no membership with the said union because they are employees of third-party contractors. He lastly prayed for setting aside both the decision rendered by the learned NIRC Benches.

4. Private respondents in all the petitions supported the orders passed by the learned benches of NIRC and asserted that they were hired by the petitioner company and have been working for last many years on regular posts and demanded their regular status from the company, which prompted the petitioner to terminate their services, compelling them to approach the learned Single Bench of NIRC by filing case No. 4A (59)/2014-K, which was allowed order dated 9.11.2020. Petitioner-company being aggrieved by and dissatisfied with the said decision filed Appeal Nos 12(01)/2021-K and other connected appeals, before the learned Full Bench of NIRC which were dismissed vide separate orders dated 13.9.2021 and now the petitioner-company has approached this court against the concurrent findings. They prayed for the dismissal of the petitions.

5. We have heard the learned counsel for parties and some of the private respondents who are present in person and also perused the material available on record as well as case law cited at the bar.

6. The petitioner-M/s IFFCO (Private) Limited claims Trans-Provincial Establishment status in terms of the provision of the Industrial Relation Act-2012; and is engaged in the business of manufacturing/production of cooking oil. The main thrust of the arguments of the petitioner-company is that the learned benches of NIRC have no jurisdiction to entertain the grievance petitions of the private respondents being employees of third-party contractor as such their grievances based on unfair labor practice was/is not maintainable before the NIRC.

7. We have examined the decision of the learned single bench of NIRC whereby the private respondents were held to be employees of the petitioner-company in terms of decisions of the Hon'ble Supreme Court of Pakistan on the subject issue and allowed them to perform their duties in the petitioner-company and formed their lawful trade union. The findings of the learned single bench of NIRC were assailed before the Full Bench of NIRC whereby the decisions of the single bench were maintained vide separate orders dated 13.09.2021.

8. 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 unfair labor practice and their forming trade union as discussed supra. Besides no reasonable ground has been shown by the petitioner-company to interfere under Article 199 of the Constitution.

9. As regards the question that the private respondents are/were not the employees of the petitioner-company, but of the contractor, suffice it to say that it is a normal practice on behalf of such companies to create a pretense and on that pretense to outsource the employment against permanent posts and it is on the record that the petitioners have been in service starting from as far back as. This all seems to be a sham pretense evidence has already been recorded on the issue. Moreover, we have seen from the stance of the petitioner company and the documents attached therewith, which shows that the respondents are being paid their salaries from the account of the petitioner company. The Honorable Supreme Court in the case of Fauji Fertilizer Company Limited through Factory Manager Versus National Industrial Relation Commission through Chairman and others (2013 SCMR 1253) and held that normally, the relationship between employer and employee does not exist between a company and the workers employed by the Contractor; however, in the case where an employer retains or assumes control over the means and method by which the work of a Contractor is to be done, it may be said that the relationship of employer and employee exists between him and the employees of the contractor. Further, an employee who is involved in the running of the affairs of the company; under the direct supervision and control of the company; working within the premises of the company, and involved directly or indirectly in the manufacturing process, shall be deemed to be employees of the company.

10. In the instant case, the employees of the contractor were involved in running the affairs of the petitioner-company such, etc.; therefore, for all intents and purposes, they are employees of the company through the contractor and the aforesaid judgment of the honorable Supreme Court fully applies to the case in hand.

11. Keeping in view the rule of parity and equity, all the respondents even if considered to be the employees of the contractor, which is not the correct position, having been performing duties of permanent nature ought to have been considered for the relief demanded by them based on strength of their respective service. a similar issue came under consideration before the Honorable Supreme Court in Civil Appeal

No.1549/2014 vide order dated 24.5.2019 has observed that the above arrangement, in the facts and circumstances of the case, is merely a vehicle of oppression and exploitation of the poor helpless employees, who on account of widespread unemployment, economic and social disparities and for their bare survival, are compelled to accept the job offered to them suiting the organization.

12. We have noticed that the Honorable Supreme Court vide order dated 29.10.2018 in Civil Petitions No.4609 to 4614 of 2017 has already settled the issue of outsourced employees. A similar view was also taken into the consideration by the Honorable Supreme Court in the case of M/s. State Oil Company Limited vs. Bakht Siddiq and others (2018 SCMR 1181); therefore the stance of the petitioner-company cannot be taken into consideration in the light of the findings of the Honorable Supreme Court in the aforesaid judgments.

13. Looking at the issues of employment through third-party contractors that have already been resolved by the learned Three Members Bench of the Hon'ble Supreme Court in its various pronouncements, therefore, no further elaboration is required on our part.

14. In the present case also, the petitioner-Company cannot be allowed to continue in its similar practice and planning to exploit its workers and to defeat the spirit and purpose of the judgments of the Honorable Supreme Court as discussed supra, by describing the employment of the respondents as employees of third party contractor, who have been performing their duties with third-party contractors, especially for petitioner -company and are being paid by the petitioner-Company. This pretense is just to avoid forming the union and service benefits. We do not appreciate this practice, which amounts to circumventing the law and the judgments of the Honorable Supreme Court. Reliance is placed on the cases of Muhammad Mubeen-us-Salam and others v. Federation of Pakistan through Secretary, Ministry of Defense and others, **PLD 2006 SC 602**, Bakhtawar, etc. v. Amin, etc., **1980 SCMR 89**, Abdul Ghaffoor and others v. the President National Bank of Pakistan and others, **2018 SCMR 157**, Messrs Sui Southern Gas Company Limited v. Registrar of Trade Union and others, **2020 PLC 153**, Fauji Fertilizer Company Limited through Factory Manager v. National Industrial Relations Commission through Chairman and others, **2014 PLC 10**.

15. 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 13.9.2021 passed by the learned Full Bench of NIRC in Appeal Nos 12(01)/2021-K and

the order dated 9.11.2020 passed by the learned Single Bench of NIRC in case No. 4A (59)/2014-K. Accordingly, the captioned petitions are dismissed with no order as to costs. As result whereof, CP No.D-4395/2017 filed by the petitioner calling in question the order dated 19.05.2017 passed by Registrar Trade Unions for registration of respondent No.2 under Article 199 of the Constitution is not maintainable for the reason that the decision is covered by the observation given by the learned Benches of NIRC; besides, petitioner has failed to point out any material irregularity and perversity in the findings of the learned Registrar Trade Unions in Case No.3(37)/2015 vide order dated 19.05.2017, therefore, this Court has no option but to dismiss this petition in terms of the findings given in the preceding paragraphs.

**JUDGE**

**JUDGE**

Nadir\*