

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-5344 to 5350 of 2023

Date

Order with signature of Judge

C.P. No.D-5344/2023

FRESH CASE:

1. For order on CMA No.24582/2023 (Urgent).
2. For order on CMA No.24583/2023 (Exemption).
3. For order on CMA No.24584/2023 (Stay).
4. For hearing of main case.

C.P. No.D-5345/2023

FRESH CASE:

1. For order on CMA No.24585/2023 (Urgent).
2. For order on CMA No.24586/2023 (Exemption).
3. For order on CMA No.24587/2023 (Stay).
4. For hearing of main case.

C.P. No.D-5346/2023

FRESH CASE:

1. For order on CMA No.24588/2023 (Urgent).
2. For order on CMA No.24589/2023 (Exemption).
3. For order on CMA No.24590/2023 (Stay).
4. For hearing of main case.

C.P. No.D-5347/2023

FRESH CASE:

1. For order on CMA No.24591/2023 (Urgent).
2. For order on CMA No.24592/2023 (Exemption).
3. For order on CMA No.24593/2023 (Stay).
4. For hearing of main case.

C.P. No.D-5348/2023

FRESH CASE:

1. For order on CMA No.24594/2023 (Urgent).
2. For order on CMA No.24595/2023 (Exemption).
3. For order on CMA No.24596/2023 (Stay).
4. For hearing of main case.

C.P. No.D-5349/2023

FRESH CASE:

1. For order on CMA No.24597/2023 (Urgent).
2. For order on CMA No.24598/2023 (Exemption).
3. For order on CMA No.24599/2023 (Stay).
4. For hearing of main case.

C.P. No.D-5350/2023

FRESH CASE:

1. For order on CMA No.24600/2023 (Urgent).
2. For order on CMA No.24601/2023 (Exemption).
3. For order on CMA No.24602/2023 (Stay).
4. For hearing of main case.

Dated; 8th November 2023

Syed Mustafa Ali, Advocate for Petitioner in all petitions.

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1. Urgency granted.
2. Exemption granted subject to all just exceptions.

3&4. Through above Constitutional Petitions, the petitioner i.e. Afiniti Software Solutions (Pvt.) Ltd. has challenged the combined Order dated 15.09.2023 passed by the Full Bench of National Industrial Relations Commission, Islamabad at Karachi in Appeals Nos.12A(116)2022 to 12A(122)2022, whereby, according to learned counsel for the petitioner, the order passed by the learned Single Member, NIRC at Karachi dated 10.02.2022 has been confirmed and the appeals have been dismissed in the following terms: -

“9. The perusal of record transpires that, admittedly, all the Respondents / Petitioners joined the Appellant / Respondent, they went on performing their duties without any complaint throughout their service career; the Appellant / Respondents terminated their services being redundant and surplus to the requirement of the Appellant / Respondent but the Appellant / Respondent unfortunately violated the provision of Schedule, Section 11-A Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 which runs as under:

“Notwithstanding any thing contained in Standing Order 11, no employer shall -2 [terminate employment of more than fifty percent of the workmen or] close down the whole of the establishment without prior permission of the Labour Court in this behalf, except in the event of fire, catastrophe, stoppage of power supply, epidemics or civil commotion”

10. It is evident from what has been quoted above that prior to the terminations of the services of the Respondents / Petitioners Appellants were required to seek permission from the Labour Court unless the procedure laid down under Section 11-A for the termination of the employment is granted any action taken by the establishment will be nothing but a nullity in the eye of law.

In view of our above discussion, we are of the confirmed view that the impugned order does not warrants any interference, while maintaining the same the appeals being without force and substance are hereby dismissed. No order as to costs. File be consigned to record room after due completion.”

Learned counsel for the petitioner submits that both the forums below have seriously erred in law and facts while relying on the

provisions of Standing Order 11-A of Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 and while referring to the provisions of Standing Order 12, as according to learned counsel for the petitioner, neither the provisions of Standing Order 11-A, *ibid*, were attracted in the instant case, as the petitioner never terminated the services of more than fifty percent of the workmen, nor close down or closure of an establishment, whereas, the provisions of Sub-Order (1) of Order 12, *ibid*, gives the powers to the employer to terminate the employee of a permanent workman for any reason other than misconduct, one month's notice shall be given by the employer or the workman or to pay one month's wages calculated on the basis average wages earned by the workman during the last three months shall be paid in lieu of such notice, whereas, in the case of respondents petitioner has paid two months' salary in lieu of notice and all the respondents have been paid their dues and out of 18 drivers, who were terminated, only seven (7) have challenged their termination before the National Industrial Relations Commission, Islamabad at Karachi, who has been pleased to pass the impugned order in violation of law.

Contentions raised require consideration. Let notice be issued to the respondents as well as to the D.A.G., to be served through first three modes, for 23.11.2023, when reply/comments, if any, shall be filed with advance copy to the learned counsel for the petitioner. In the meanwhile, the operation of impugned order shall remain suspended till next date of hearing.

ACTING CHIEF JUSTICE

J U D G E