

# IN THE HIGH COURT OF SINDH, KARACHI

PRESENT:

***Mr. Justice Salahuddin Panhwar***  
***Mr. Justice Amjad Ali Sahito***

## Constitution Petition No.3867 of 2018

Petitioner: Trading Corporation of Pakistan (Pvt.) Limited  
through Mr. Rafiq Ahmed Kalwar, Advocate

Respondents: Khan Muhammad son of Gulab Khan  
through Mr. Muhammad Latif Sagar, Advocate

The State  
through Mr. Muhammad Qasim,  
Assistant Attorney General for Pakistan

Date of hearing: 02.09.2024

Date of short order: 02.09.2024

## **J U D G M E N T**

**AMJAD ALI SAHITO, J.** Through this Constitution Petition, the Petitioner/Trading Corporation of Pakistan (Pvt.) Limited has impugned the concurrent decision of the Single Member and Full Bench of the National Industrial Relations Commission, Karachi (**“NIRC”**) made under the Industrial Relations Act, 2012 (**“IRA of 2012”**) whereby the Appeal filed by the Petitioner’s Corporation was dismissed in limine and the Order dated 15. 12.2014 passed by Single Bench was maintained. Hence, the petitioner has approached this Court to set aside the impugned orders passed by (**“NIRC”**).

2. The brief facts of the case are that Respondent No.1 was appointed as Junior Clerk on 19.04.1981 in the Rice Export Corporation of Pakistan (RECP) and subsequently retired as Assistant on 31.10.1997 by exercising option under the Voluntary Retirement Scheme (VRS) announced by the RECP vide Circular dated 16.10.1997. However, after receiving all benefits under the said Scheme, the services of Respondent No.1 were retained on a contingent basis to complete the work in hand. On 19.01.2001, RECP was merged into the Trading Corporation of Pakistan (TCP) and subsequently, he continued to serve it on a contingent basis. In April 2010 Respondent No.1 was appointed

as Assistant in TCP on a regular basis and thereafter he was promoted to the post of Assistant Manager on the same position, he retired on 13.04.2014 on attaining the age of superannuation.

**3.** Learned counsel for the petitioner mainly contended that the impugned order is based on misreading and non-reading of the facts; that Respondent No.1 had already exercised the option of Voluntary Retirement Scheme (VRS) and received benefits under the said Scheme, therefore, he is not entitled to any pensionary benefits; He further contended respondent No. I was working as an assistant manager on a regular basis which does not fall within the definition of a workman and learned NATIONAL INDUSTRIAL RELATIONS COMMISSION KARACHI BENCH has no jurisdiction to adjudicate upon the matter; that the services of Respondent No.1 were retained with RECP only to complete the task already given to him before exercising his option of RVS; however, due to merger of RECP into TCP, he presumed himself as an employee of TCP; that while the availing option of RVS, Respondent No.1 was not sure that his services would be retained and RECP would be merged in TCP. He lastly prays for setting aside the impugned Order.

**4.** On the other hand, learned counsel for Respondent No.1 vehemently opposed the contention so raised by the learned counsel for the petitioner and contended that the respondent was initially appointed as an assistant and thereafter promoted to assistant manager, his nature of duties was manual and his service fall within the definition of a workman and no evidence brought on the record in rebuttal by the petitioner; that while supporting the impugned order submits that the Petitioner has come to this Court against concurrent findings of the Courts below and the Respondent No.1 is entitled to all pensionary benefits as given to the regular employee of TCP; that though Respondent No.1 opted VRS Scheme subsequently, after retaining his services in RECP and thereafter in TCP, he was appointed as Assistant on regular basis and at the time of retirement, he was Assistant Manager. He lastly prays for the dismissal of the instant petition.

**5.** Learned Assistant Attorney General while supporting the impugned order adopted the arguments made by learned counsel for Respondent No.1.

**6.** Heard the learned counsel for the respective parties and perused the material available on record.

7. A specific question was put to the learned counsel for the petitioner as to whether any remedy is available with the petitioner after filing an Appeal against orders of **NIRC** and as to whether the writ jurisdiction of this Court can be exercised as a substitute of appeal or revision despite the fact that an Appeal against the orders passed by **NIRC** is final under the (**“IRA of 2012”**) learned counsel could not reply satisfactory. However, he submits that respondent No.1 was working as an assistant manager on a regular basis and did not fall within the definition of workman and learned NATIONAL INDUSTRIAL RELATIONS COMMISSION KARACHI BENCH has no jurisdiction to adjudicate upon the matter.

8. So far, learned counsel for the petitioner questioned the impugned orders of NIRC, we are not influenced with his arguments as this Court has to look into the matters under constitutional jurisdiction which are passed without lawful authority and jurisdiction. Object of Article 199 of the Constitution of Pakistan is to foster justice, protect rights and correct any wrongs, for which, it empowers the high court to rectify or excessive exercise of jurisdiction of lower courts and address procedural illegality or irregularity that may have prejudiced a case. Nevertheless, the impugned orders have been passed by the **NIRC** within the lawful authority and jurisdiction; therefore, the same is not open to Constitutional jurisdiction. More so, the petitioner is possessed with a remedy of appeal and he cannot invoke the Constitutional jurisdiction after exhausting the remedy of appeal, which is final. If the Constitutional jurisdiction is exercised without any jurisdictional defect or infringement of fundamental rights then the intent and purpose of the Legislature would be frustrated. So far question regarding the appreciation of evidence is concerned, it needs no reiteration that appraisal of evidence is the function of the Single Bench firstly and then the Full Bench. Nothing is pointed out that there is mala fide, arbitrary, and perverse or the **NIRC** has acted in excess of its jurisdiction, which may be considered exercising of writ jurisdiction. The Industrial Relations Act, 2012 does not provide the right of second appeal to any party of the proceedings. In this regard, we are also fortified with the observations of the Hon’ble

Supreme Court of Pakistan made in **ARIF FAREED v. BIBI SARA and others [2023 SCMR 413]** and **M. HAMAD HASSAN v. Mst. ISMA BUKHARI and 2 others [2023 SCMR 1434]**.

**9.** So for the plea raised by learned counsel for the petitioner that respondent No.1 was working as an assistant manager on a regular basis and does not fall within the definition of workman and learned NATIONAL INDUSTRIAL RELATIONS COMMISSION KARACHI BENCH has no jurisdiction to adjudicate upon the matter. It suffices to say that in rebuttal the learned counsel for the respondent argued that the respondent was initially appointed as an assistant and thereafter promoted to assistant manager, his nature of duties was manual and his service fell within the definition of a workman and no evidence brought on the record in rebuttal by the petitioner. We have also perused the material available on the record as well as the order passed by Single Bench, no evidence has been brought on the record by the petitioner that respondent No.1 does not fall within the definition of workman nor has such evidence been adduced before the Single Bench that he was working in the capacity of the officer.

**10.** According to sub-section XXXIII of section 2 of the Industrial Relations Act, 2012 worker and workman is defined as under:-

“worker” and “workman” mean person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment are express or implied, and, for the purpose of any proceedings under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity.

**11.** To appreciate the above proposition of law, there are certain classifications of Workmen under Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, which are classified as under:-

1. Permanent,
2. Probationers,

3. badlis,
4. Temporary,
5. Apprentices,
6. Contract worker

**12.** "**Workman**" means any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or electrical work for hire or reward. Further, it provides definitions that are:-

- b) A "**permanent workman**" is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lockout or strike) or involuntary closure of the establishment; and includes a badli who has been employed for a continuous period of three months or for one hundred and eighty three days during any period of twelve consecutive months.
- c) "**Probationer**" is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months service therein. If a permanent employee is employed as a probationer in a higher post he may, at any time during the probationary period of three months, be reverted to his old permanent post.
- d) A "**badli**" is a workman who is appointed in the post of a permanent workman or probationer, who is temporarily absent.
- e) A "**temporary workman**" is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a period not exceeding nine months.
- f) An "**apprentice**" is a person who is an apprentice within the meaning of the Apprenticeship Ordinance, 1962 (LVI of 1962)].
- g) "**Contract Worker**" means a workman who works on contract basis for a specific period of numeration to be calculated on piece rate basis."

**13.** From the bare perusal of the above definition, the worker and workman mean that person not falling within the definition of "**employer**" who is employed as a supervisor or as an apprentice but does not include a person, who is

employed mainly in managerial or administrative capacity. On the other hand, the 'employer' as defined in the Ordinance/Act includes a person, who is proprietor, director, manager, secretary, agent or officer or person concerned with the management of the affairs of the establishment. The term 'officer' is specifically mentioned in the definition of the term 'employer' However, as has been noted from the above definition, the Courts have not considered the designation of a person to be a factor determining his status of employment in an establishment to be that of an officer or a workman rather the Court has always considered the nature of duties and functions of a person to be the factor, which will determine his status as to whether he is a workman or not. Our view is supported by the decision rendered by the Hon'ble Supreme Court in the case ***of National Bank of Pakistan and another v. Anwar Shah and others (2015 SCMR 434)***.

**14.** During the course of arguments, Respondent No.1 produced an Office Order, which reflects that he retired as Assistant Manager on 13.04.2014. Respondent No.1 also produced one application addressed to the Chairman, Trading Corporation of Pakistan, wherein he has requested that he receive a notice from Full Bench, NIRC in Appeal No.12(04)/2015-K against the order passed in Case No.4B(26)/2013-K wherein he has requested that it has been mentioned by the TCP that the Respondent was a Manager (Assistant Manager) and not a worker. Accordingly, he was working as a Manager, as such, he requested that his case may be revised and a retirement order as Manager may be issued instead of Assistant Manager. In reply to his application, TCP issued a letter dated 02.10.2015 whereby TCP informed that ***“It is to inform you that pleadings of the parties are not findings/judgments of Court and cannot be enforced or acted upon, hence your requests could not be acceded to”***. From the above, it appears that one side learned counsel for the petitioner is/was arguing that the Respondent is not a worker and falls within the definition of employer and the other side, the petitioner did

not treat him as Manager which apparently differs from his own stance.

**15.** The petitioner was appointed in RECP vide order dated 19.04.1981 as Junior Clerk/Typist as a regular employee. Before the issuance of the Circular for Voluntary Retirement Scheme (VRS) the Chairman RECP wrote a U.O. to Secretary Commerce, Islamabad on 23.08.1997 followed by a reminder dated 28.09.1997 for obtaining approval for VRS which disclosed that if any officer does not accept the VRS, the services of all employees will be terminated as per rules of TCP. Thereafter, in the year 1997, the RECP Management with the approval of the Federal Government announced VRS vide Circular dated 16.10.1997 whereby on 01.11.1997, 15 officers who did not opt for VRS were terminated from the service of defunct RECP, whereas staff members of ECP and CEC filed a case before the Commission which was decided on 16.04.1998 by directing the Management of RECP/CEC to act upon the directions of Federal Government to retire all employees at any cost to achieve merger process to show strength of employees as Zero.

**16.** The Respondent also submitted his VRS option with the condition that subject to payment of all benefits in case of retention in RECP after 31.10.1997 and subsequent transfer in TCP till the relieving order. His form was accepted vide letters dated 31.10.1997 and 05.11.1997 and the Management of RECP issued an office order dated 05.11.1997 by engaging some employees on a retention basis to complete the work in hand and to achieve the target of the Federal Government for the merger process of RECP into TCP and this retention was effective from 01.11.1997 to 04.04.2010 and this action shows that there was no break in the service of Respondent and his conditional option was accepted on 31.10.1997 and immediately taken in service from next day i.e. 01.11.1997. It is stated that in the year 1999 when these two corporations i.e. RECP and CEC were going to be merged in TCP and the Respondent No.1 submitted his application

dated 04.03.1999 requesting Chairman RECP to ensure his regularization/permanent absorption in TCP and prior to merger all the Board of Directors all these Corporation passed a Special Resolution regarding scheme of arrangement on the basis of which J.M. No.36/1999 was filed before this Court and on 17.11.1999, judgment was passed which clearly speaks for protection of rights and interest of the employees and the management of TCP relying upon the order/opinion of the judgment of this Court regularized the service of one Ghulam Abbas retaineed Deputy Manager in TCP vide order dated 15.08.2008 and prior to his regularization, the TCP Management appointed/retained two officers from RECP and one from CEC on regular basis and since the Respondent NO.1 was not regularizing as such he had submitted an application dated 02.08.2008 and many other applications; however, in light of the Board of Directors, his appointment in fresh cadre w.e.f. 05.04.2010 causing a monthly decrease in salary up to the tune of Rs.7000/- per month being retaineed, the Respondent was only beneficiary of monthly salary and as per existing rules, the salary cannot be decreased for which he requested the Management but no response was given.

**17.** On 04.08.2009 Staff Officer / Acting PS of Minister for Commerce, Islamabad conveyed the minutes of the meeting between the Commerce Ministry and the delegation of office-bearers of TCP Employees Union (CBA) in which it was decided that who had completed five years' service in TCP be regularized and in compliance of such directions of Ministry of Commerce, the Management of TCP regularized more than 100 employees leaving the employee of CEC and RECP who were retained under VRS. It was claimed by the Respondent that he being a retained employee of defunct RECP is in continuous service of TCP without any interruption/break right from his initial in RECP till the merger of RECP into TCP on 19.01.2001; however, he remained served on the same terms and condition as in RECP and has never considered/treated/worked as on contingent employee in any of the establishment RECP or TCP but order dated



21.04.2010 he was treated as contingent person who was appointed on regular basis w.e.f. 05.04.2010 without explaining/considering the period of his longer service in RECP as such the act/order of TCP by regularizing him vide order dated 21.04.2010 w.e.f. 05.04.2010 and not counting his service of retention period which he served against conditional option from 01.11.1997 to 04.04.2010 for all purposes of retirement or any other benefits including pensioner benefits violate the judgment dated 19.01.2001 passed by this Court, therefore, Single Bench passed orders in his/respondent favour and directed to the petitioners to regularize the service of the respondent with effect from 19.01.2001 instead of 05.04.2010 and the respondent also entitled to all benefits as per TCP rules and regulation. The appeal preferred by the petitioner was also dismissed in limine.

**18.** In the light of the above facts and circumstances of the case, we do not see any illegality, infirmity or material irregularity in the orders passed by the learned Single Member and Full Bench of the National Industrial Relations Commission, Karachi (**"NIRC"**)

**19.** Resultantly, the instant petition is meritless and is dismissed along with the listed application(s).

**20.** These are the reasons of our short order dated **02.09.2024** whereby we dismissed the captioned Petition.

**JUDGE**

**JUDGE**