IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.D-4153 of 2023

M/s Pakistan Beverages Limited Vs. Muhammad Afzal and others

Before: **Mr. Justice Muhammad Junaid Ghaffar**
Mr. Justice Adnan ul Karim Memon

Date of hearing: **25.03.2024**.
Date of short order & Reasons: **25.03.2024**.

Petitioner through	M/s Muhammad Ali advocate and Ovais Ali Shah advocate
Respondents through	Bacha Fazal Manan advocate
Respondents Nos. 14 &15	Mr. Kashif Nazir Advocate Assistant Attorney General

O R D E R

Adnan-ul-Karim Memon, J. This petition, is in the nature of Certiorari under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and is directed against the order dated 15.08.2023 passed by the learned Full Bench of National Industrial Relations Commission, Islamabad, (**F-NIRC**) in Appeal No. 12-A (262)/2022-K, affirming the view of learned Single Member of National Industrial Relations Commission, (**S-NIRC**) vide order dated 14.09.2022, whereby both the forums non-suited the petitioner M/s Pakistan Beverages Limited (**Company**) on the ground that private respondents were terminated from service of Company in the year 2017 and 2018 without affording an opportunity of hearing and defence as they were performing their duties for the last many years being permanent workers.

2. The case of the petitioner company is that private respondents No. 1 to 13 having separate dates of verbal appointment and termination orders, cannot file a joint grievance application before the **S-NIRC** under section 33 (8) of the Industrial Relations Act 2012 (**IRA 2012**). Additionally, no grievance notices were served upon the petitioner-company, hence their case was not maintainable, nor could become part of a joint grievance application, whereas the Authority letter/Attorney of the respondents No.1 to 13 was also objected. It is the case of the petitioner company that if according to the private respondents, their services were terminated verbally based on the formation of a trade union, in such a case they ought to have filed their case of unfair labour practice under the law. The petitioner company had denied the factum that the private respondents were permanent workmen of the petitioner company. The allegations of the formation of the said union were also denied. It is further averred that respondents No.1 to 13 filed their joint Affidavit-in-Evidence, whereas respondent No.1 (Muhammad Afzal) did not serve upon the petitioner

company his grievance notice, however he appeared in the witness box and was cross-examined and admitted that the private respondents were casual workers of the petitioner company. It is further submitted that the learned Single Bench of NIRC after hearing both the parties reinstated respondents No.1 to 13 in service with all back benefits, whereas in the contempt petition, imposed Rs.50, 000/- each as a fine upon the petitioner company for violating orders dated 24.11.2017 and 04.01.2018. It is further averred that the learned Single Bench of NIRC failed to consider any of the grounds raised through preliminary legal objections as well as according to the factual status of the case gave a decision in favour of the private respondents, therefore, the petitioner company filed its Appeal bearing No.12(262)/2022 before the Full Bench of NIRC with various grounds but the learned Full Bench of NIRC did not go through all such grounds except the grounds raised in contempt cases and in result whereof the impugned order dated 14.09.2022 was passed by the learned Single Bench of NIRC in contempt case which was set aside, hence after disposing of the above matters, case No 4B(40)/2018-K is left, in which the order of the learned Single Bench of NIRC had been maintained and the Appeal of the petitioner company was dismissed vide order dated 15.08.2023, which has been impugned through this petition.

3. The case of the private respondents is that they filed their joint petition bearing No.4B (40)/2018-K before NIRC with the narration that they were the permanent workmen, employed in the petitioner establishment (**Aquafina**) Plant and they were terminated from the Plant verbally on the premise that they applied for the registration of their trade union in the name of Pakistan Beverage (Aquafina) Mehnatkash Union before the Registrar of Trade Unions NIRC. They also stated that they filed Cases No.4A(346)/2017-K and Case No. 4A(374)/2017-K before the Single Bench of the NIRC and were granted interim relief on stay application No.24(345)/2017-K and 24(373)/2017- K. in which it was directed not to take any adverse action towards the employment of private respondents. They submitted that the petitioner after knowing about the union orally terminated the services of the private respondents No 1 to 13 on 30.11.2017 and 04.01.2018. It was stated that they sent their grievance notices to the petitioner company through TCS, which were not replied to. It was submitted that their termination during the pendency of the registration process of Trade Union and as per ad-interim order were/are violations of the Industrial Relations Act 2012 finally the NIRC allowed their Petition and the order of S-NIRC was maintained by the F-NIRC vide impugned order.

4. The main thrust of the arguments of M/s Muhammad Ali and Ovais Ali Shah advocates is that both the forums have failed to appreciate that the private respondents were Casual workers and not permanent workers and their services were hired on a daily wage basis and they being temporary workers their services were no longer required and were dispensed with due to closer of plant for maintenance, which is termination simpliciter without stigma as such the question of reinstatement of daily wages worker does not arise under the labour law. Learned counsel further argued that no Trade Union of temporary/ daily wages workers can be formed/registered as such their stance that due to Trade Union activity, their services were terminated and such notice was pasted on gate of the plant where they were working. Learned counsel further submitted that the learned Single Bench, as well as the Full bench of NIRC, totally ignored the factum that the Attorney had admitted in cross-examination that the private respondents were casual workers; that the findings of the learned courts below are arbitrary and perverse; therefore both the orders are a nullity in the eyes of law; that the private Respondents had only completed 2 to 3 months of the tenure of their respective services, therefore they were not required to be reinstated in service with back benefits and prayed for setting aside both the order rendered by the learned Courts below.

5. Mr. Bacha Fazal Manan advocate for the respondents has supported the impugned orders passed by the learned Courts below and contended that the private Respondents had been serving the petitioner company more than five years thus they were rightly held to be permanent workers in the Petitioner company, thus their grievance applications were maintainable before S-NIRC under the law and the captioned petition is liable to be dismissed; that there are concurrent findings recorded by the competent forum under the special law and the grounds raised in the instant petition are untenable; that Petitioner company terminated the services of the private-Respondents verbally without any notice and inquiry and did not pay dues to the private Respondents; that both the aforesaid orders are passed within the parameters of law and the instant petition is frivolous, misleading as there are concurrent findings by the courts below and this Court has limited jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to dilate upon the evidences led by the parties; that private Respondents had performed their duties with full devotion however their terms and conditions of the employment in the shape of letters of appointment were not issued to the private Respondents and were kicked out from service verbally based on purported Trade Union activities; that the private Respondents were terminated from service without any fault; that aforesaid

action of the Petitioner company was absolutely illegal therefore private Respondents raised their grievance notice which were served upon the Petitioner company, but were not redressed at the initial stage, they had no alternative except to approach the learned NIRC for the aforesaid remedy and relief; that the learned NIRC after recording the evidences passed just, proper and fair orders holding their termination as illegal and reinstated them in service with all back benefits and the Petitioner company did not reinstate them on duty and filed statutory appeals before the learned F-NIRC; that the learned F-NIRC after hearing the learned counsel for the parties passed the order, however the Petitioner company has now approached this Court. Learned counsel referred to the West Pakistan Industrial and Commercial Employment (Standing order) Ordinance 1968 and argued that this beneficial legislation protects the interest of workmen and further submitted that there is much difference between permanent workmen and temporary workmen and letter category is engaged for work which is temporary likely to be finished within a period not exceeding nine months whereas the petitioner was a permanent worker who had been engaged on work of permanent nature and they continued to work to last than five years in the petitioner establishment thus their case explicitly fall within the standing order 1968. At this stage, we asked the learned counsel to show from the record when they were appointed as they have produced their attendance card along with their grievance application (Page 71) which shows that they were hired in the petitioner company in the year 2017 as casual worker and they also claimed to have been terminated from service in the year 2017 and 2018 which is a short period that they have not completed the nine months to claim permanency of the post under the Standing Order 1968. Learned counsel stated that the petitioner company did not provide the appointment letter to the private respondents thus they cannot substantiate this claim through documentary evidence if this is the position of the case at this stage we cannot infer that the private respondents were appointed as they claim five year back, however, they insist that they are permanent employees. in support of his contention, he relied upon the cases of *General Tyre and Rubber Co v SLAT* **1992 PLC 1028**, *Messrs Fauji Sugar Mills v Ali Nawaz* **1997 PLC CS 451** *United Bank Ltd v Sindh Labour Appellate Tribunal* **1997 PLC CS 446** and *Muhammad Aslam v Abdul Majeed* **1991 CLC 481**. He lastly prayed for the dismissal of the instant petition.

6. We have heard the learned counsel for the parties and with their assistance carefully gone through the material placed by them and case law cited at the bar.

7. There is no cavil to the proposition that under the Labour Laws, there is no provision permitting the employer to terminate the services of the worker verbally without a written order. The Supreme Court in the recent judgment has held that the termination of service by a verbal order is alien to the labour law.

8. The entire case of the petitioner company was raised upon the proposition that the services of the private respondent were hired for the company on a daily wage basis as such they did not acquire the status of the permanent worker and it was the prerogative of the petitioner company to dispensed with the services of the casual workers at any stage before they could acquire the permanency. The learned Single Member of NIRC has observed that it has always been trained the employer not to issue any appointment letter to the workers to deprive them of their legal right of permanent employees. It is surprising to note that the private respondents only produced the I.D Card / Attendance Card issued by the petitioner company where they were shown to be casual workers to how the NIRC concluded that the private respondents had produced sufficient material to show that they were permanent workers and reinstated the services of the private respondents based on the analogy that their services were terminated on 30.11.2017 and 04.01.2018 without any material substance and erroneously relied upon the judgment reported in 2018 SCMR 1181, which is altogether on different footing wherein the workers were not employees of the company were of third party contractor which is not the case in hand thus the reliance is misplaced. So far as the findings of the learned Full Bench of NIRC are concerned it has been observed that the respondents Nos. 1 to 13 had been working in petitioner establishment as workers for the last several years without any break and completed their services for more than nine months so they attend the status permanent workman this observation is entirely misplaced from the record and erroneously affirmed the viewpoint of the Single Bench of NIRC.

9. The definition 2 (g) of the West Pakistan Industrial & Commercial Employment (Standing Order) Ordinance 1968 provides the classification of the workman, which is sub-divided into six categories i.e. (i) permanent, (ii) probationers, (iii) Badlis, (iv) temporary, (v) apprentice and (vi) contract workers. A temporary workman is defined in the schedule as a workman who has been engaged for work of a temporary nature, which is likely to be finished within a period not exceeding nine months. The protection of the daily wagers

who have been performing their duties against permanent posts for a long period is Para 1(b) of the Schedule attached to the Ordinance of 1968.

10. To appreciate the controversy from a proper perspective, we deem it appropriate to have a glance at the evidence brought on record by the parties. We have scanned the evidence available on record and found the admission of the private respondents namely Muhammad Afzal who admitted that he did not attach the copy of the I.D card of other petitioners he also admitted that the petitioner Bilal did not sign the grievance petition, he also admitted that no authority letter, the signature of the Petitioner Bilal is available on record. He also admitted that casual workers were written on the duty card about September and October 2017 and their services were terminated he also requested the General Manager of the company to treat them as permanent employees. He also admitted that they were not aware whether grievance notices were sent to the petitioner company or otherwise. He also admitted that despite the stay order they were terminated by the respondents. He also admitted that he did not sign power of attorney. He also admitted that they were orally terminated from the service and a notice was pasted on the main gate of the plant on 04.01.2018.

11. The evidence of the petitioner company namely Sultan Mughal shows the status of the private respondents as casual employees, the same evidence has not been rebutted by the private respondents.

12. From the above material evidence brought on record, it appears that in January 2018 the plant of the petitioner company was closed for repair and maintenance due to which most of the daily wages and temporary workers terminated with effect from 30.11.2017 to 04.01.2008 and the private respondents worked less than three months which shows that they were temporarily appointed as the service for confirmation is nine months required under the Ordinance 1968, both the aforesaid factum were ignored by both the forums below. Section 12 of the Ordinance 1968 provides that no temporary workmen whether monthly rated, weekly rated daily rated or piece rated and no probational or badali shall be entitled to any notice if his services were terminated by the employer, nor shall any such workman be required to give any notice or pay wages in lieu thereof to the employer if he leaves the employment of his own accord. However, the situation is quite different than the permanent workman under Section 12(3) of the Ordinance 1968.

13. The entire burden ought not to have been shifted upon the petitioner all alone by the NIRC, whereas the private respondents were set free as they failed to prove through cogent material that they rendered their services for the petitioner company for more than nine months as required under the law. In the absence of such material, this court cannot help them out and direct the petitioner company to reinstate their services which were of a temporary nature.

14. In our view, the learned NIRC has erroneously granted the benefit of reinstatement of service to the private respondents. The findings of both the fora below are not in consonance with law; the Single Bench of NIRC in its finding has erroneously held that the private respondents fall within the definition of permanent 'workmen' and the said findings were wrongly affirmed by the learned Full Bench of NIRC through the impugned order. Both the orders are not sustainable in law and are liable to be set at naught. The case law cited by the learned counsel for the private respondents is of no help to him due to aforesaid reasons. In our view, the concurrent findings, by the both the NIRC is based on guesswork, conjectures and perverse, suffered from acute misreading of evidence and exclusion of material available on the record, resulting in gross miscarriage of justice.

15. For the above reasons we allow this petition, the impugned orders dated 14.09.2022 & 15.08.2023 passed by the NIRC are set aside.

16. These are the reasons for our short order on 25.03.2024 whereby we allow the captioned petition.

JUDGE

JUDGE

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