

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

Constitutional Petition No. D-6802 of 2025
(Phoenix Armour (Pvt.) Ltd. versus Muhammad Usman & others)

Constitutional Petition No. D-6803 of 2025
(Phoenix Armour (Pvt.) Ltd. versus Muhammad Ishaq Khan & others)

Constitutional Petition No. D-6804 of 2025
(Phoenix Armour (Pvt.) Ltd. versus Gul Faraz & others)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order: 11.2.2026

Mr. Mujtaba Ahmed Bajwa advocate for the petitioner in all petitions
Mr. Abdul Rauf advocate for respondent No.1 in all petitions
Ms. Wajiha Mehdi, Assistant Attorney General

ORDER

Adnan-ul-Karim Memon, J. – Petitioners have filed the captioned Constitutional Petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

- (a) Set aside the impugned order dated 09.10.2015, passed by Respondent No.3, and the order dated 03.9.2013, passed by Respondent No.2.*
- (b) Dismiss the application under Section 33 of the Industrial Relations Act, filed by the Respondent No.1 before the Single Member, Respondent No.2.*
- (c) That there is no authoritative judgment of any Superior Court to the effect that in the matter of individual grievances arising under Standing order 12(3), the N.I.R.C. has jurisdiction.*

2. These petitions, involving common questions of law and fact, are heard together on the merits.

3. Learned counsel for the petitioner company submitted that the petitioner is a trans-provincial establishment engaged in Cash-In-Transit (CIT) services across Pakistan. He submitted that Respondent No.1, who was employed as a Guard, was issued a charge sheet on 15.11.2012 during an illegal strike initiated by certain workers. Despite a prohibitory order passed by the learned Member of NIRC on 19.11.2012 restraining the strike, the respondent failed to comply. Consequently, his services were terminated on 21.11.2012. It was contended that Respondent No.1 thereafter filed a grievance petition under Section 33 of the Industrial Relations Act, 2012, which was challenged by the petitioner through an application for rejection. The said application was dismissed by the learned Single Member, and the appeal filed before the Full Bench of NIRC was also dismissed vide order dated 09.10.2015. Learned counsel argued that the impugned orders are

contrary to law, as Respondent No.1, after dismissal, did not fall within the definition of “workman” under Section 2(XXXIII) of the IRA, 2012, and therefore could not maintain a grievance petition under Section 33. It was further contended that the NIRC lacked jurisdiction to entertain the grievance of a person who was not a workman at the time of filing the petition. Since no further remedy is provided under the IRA, 2012, against the impugned order, the present petition under Article 199 of the Constitution has been filed seeking the setting aside of the orders dated 03.09.2013 and 09.10.2015 and dismissal of the grievance application filed by the private respondents. In support of his contention he relied upon the cases of Mustehkum Cement Limited v Abdul Rashid and others **1998 PLC 172**, Multiline Associates v Ardeshir Cowasjee and others **1995 SCMR 362**, The Commissioner Inland Revenue and others v Mekotex (pvt) Limited and others **PLD 2024 SC 1168** He prayed to allow all petitions.

4. Conversely, learned counsel for Respondent No.1 submitted that the respondent was a permanent workman within the meaning of the Standing Orders Ordinance, 1968, and the Industrial Relations Act, 2012, and had been working with the petitioner establishment for several years. It was argued that after the formation and registration of a trade union by the workers, including Respondent No.1, the management started harassing and victimizing union office bearers. According to the counsel for the respondent, the management declared an illegal lockout on 14.11.2012 and subsequently dismissed Respondent No.1 without conducting a lawful inquiry. The respondent served a grievance notice and, upon failure of the management to respond, filed a grievance petition under Section 33 of the IRA, 2012, before the NIRC after fulfilling all mandatory requirements. Learned counsel contended that since the petitioner is a trans-provincial establishment, exclusive jurisdiction vests in the National Industrial Relations Commission under Sections 53 and 54 of the IRA, 2012. Reliance was placed on reported judgments, including *2015 PLC 207 (MCB Bank Ltd.)*, *2018 SCMR 802*, and *2024 SCMR 719*, wherein it has been held that individual grievances of workers of trans-provincial establishments are to be adjudicated by the NIRC. It was further argued that Standing Order 12(3) expressly permits an aggrieved workman to seek redress under Section 33 of the IRA, 2012, in cases of dismissal, and therefore the grievance petition was fully maintainable. Learned counsel submitted that the petitioner, instead of contesting the matter on merits before the competent forum, unnecessarily invoked the constitutional jurisdiction of this Court. In support of his contention he relied upon the cases of Sui Southern Gas Company v Federation of Pakistan and others **2018 SCMR 802** Trustees of the Port of Karachi v Muhammad Saleem **1994 SCMR 2213**, MCB Bank Ltd v Tariq Zameer Siddiqui and others **2015 PLC 207**, Trustees of the Port of Karachi v Muhammad Saleem **1994 SCMR 2213**. Hence, the petitions are liable to be dismissed with costs.

5. The learned Assistant Attorney General supported the stance of the private respondent and contended that the petitioner, having voluntarily invoked the appellate jurisdiction of the NIRC as a trans-provincial establishment, cannot now turn around and challenge its jurisdiction. She further submitted that the plea raised at this stage that the matter does not constitute an industrial dispute but is merely a case of termination on account of misconduct is an afterthought and is not maintainable in law.

6. We have heard learned counsel for the parties at length and perused the record and case law cited at the bar.

7. The core controversy revolves around the jurisdiction of the National Industrial Relations Commission (NIRC) to entertain and adjudicate the grievance petition filed by Respondent No.1 under Section 33 of the Industrial Relations Act, 2012 (IRA, 2012), and whether a dismissed employee can invoke such jurisdiction.

8. Admittedly, the petitioner is a trans-provincial establishment operating in more than one Province. In terms of Sections 53 and 54 of the IRA, 2012, the NIRC is constituted and vested with exclusive jurisdiction, inter alia, to deal with cases of individual grievances in the manner prescribed under Section 33. The legislative intent is explicit that industrial disputes and individual grievances concerning trans-provincial establishments fall within the exclusive domain of the NIRC.

9. The objection raised by the petitioner that Respondent No.1 ceased to be a “workman” after dismissal and, therefore, could not maintain a grievance petition, is misconceived. Standing Order 12(3) of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 specifically provides that where a workman is aggrieved by termination, dismissal, retrenchment or discharge, he may seek redress in accordance with the law relating to individual grievances. The very nature of a grievance under Section 33 of the IRA, 2012 presupposes termination of employment. If the contention of the petitioner were accepted, Section 33 would be rendered redundant in cases of dismissal, which is legally untenable.

10. So far as the arguments that disputes relating to dismissal on account of misconduct are misconceived as it is connected with strike activities, constitute industrial disputes and fall within the exclusive competence of the Labour Court/NIRC. It is well settled that matters concerning termination, misconduct, and enforcement of service rights between employer and workman are industrial disputes to be adjudicated by the specialized forum created under applicable laws. Since the petitioner’s application for rejection under Section 33 was dismissed by

the learned Single Member and the appeal there against was also dismissed by the Full Bench of the NIRC vide order dated 09.10.2015, the controversy, prima facie, remains purely an industrial dispute regarding termination arising from strike participation. Therefore, the arguments advanced by learned counsel for the petitioner are misconceived and are rejected. For convenience sake, impugned order dated 19.10.2015 is reproduced as under:-

“ Now contents of other aspect of the matter as agitated by the appellant regarding jurisdiction of the Commission (NIRC) to hear the grievance petitions of the respondents. Much stress has been laid by the learned counsel for the appellant that since the services of the respondents have neither been terminated in consequence of an industrial dispute nor the same led to an industrial dispute as such they being not workmen as defined in Section 2 (XXXII) of IRA, 2012, their grievance petitions under Section 33 of IRA, 2012 are not maintainable and NIRC has no jurisdiction to entertain the same as it is the labour court only competent to deal with such cases understanding order 12(3) of Standing Orders Ordinance, being illegal is liable to be set-aside. We are sorry. We cannot agree with the learned counsel in ramification of his reasoning. As per the pre-amble of IRA, 2012 to consolidate and rationalize the law in Islamabad Capital Territory and at trans-provincial level relating to formation of trade unions and federations of trade union, determining the collective bargaining agents, regulation/relations between employers, and workers, the avoidance and settlement of any differences or disputes arising between them or matters connected therewith and ancillary thereto, the same (IRA, 2012) has been enacted. Sub-section 3 of Section 1 of the Act ibid further says that it shall apply to all persons employed in any establishment or industry, in the Islamabad Capital Territory or carrying on business in more than one province but shall not apply to any person employed as given in clauses (a) to of IRA, 2012 defines worker and workmen as under:-

XXXiii) “ 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.”

Interestingly, almost the same definition of “workman” has been provided in the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, namely “workman” means any person employed in any industrial and commercial employment to do any skilled or unskilled, manual or clerical work for hire or reward. As the same definition of workmen has been provided in the Industrial Relations Law as well as Standing Orders Ordinance, therefore both the law are applicable to the persons falling within the definition of “workman”. Standing order 12(3) of the said ordinance provides that in case a workman is aggrieved by may take action in accordance with the provisions of Section 25-A of IRO, 1969, It is clear that the Standing Orders, Ordinance 1968 provides rights to the workman/labourers whereas the Provincial Industrial Relations Laws as well as IRA, 2012 in case of trans provincial establishments provide mechanism for enforcement of such rights. In the instant case, the respondents/petitioners admittedly employed in the appellant a trans-provincial establishment, could take action under Section 33 of IRA, 2012 giving jurisdiction only to the National Industrial Relations Commission constituted under the Act ibid. We are fortified in this view by the dictum laid down in 2011 SCMR 1254. Further Section 87 of the said Act provides that the provisions of this Act shall have overriding effect notwithstanding anything to the contrary contained in any other law for the time being in force. The case law cited at bar by the learned counsel for the appellant in our humble view

pertaining to the cases decided before the enactment of IRA, 2012 having distinguishable facts in not of any help to the appellant.

For the foregoing reasons, we find no illegality I the impugned order, hence all the appeals are dismissed. Files to record.”

11. The Supreme Court and this Court have consistently held that the NIRC has exclusive jurisdiction over labour disputes relating to trans-provincial establishments. In *MCB Bank Ltd. v. Tariq Zameer Siddiqui (2015 PLC 207)*, it was categorically held that Sections 53 and 54(h) of the IRA, 2012, empower the NIRC to adjudicate individual grievances of workmen. The said view was affirmed by the Supreme Court in subsequent proceedings, including *2018 SCMR 802*, wherein the validity of the IRA, 2012 and the jurisdiction of the NIRC were upheld. More recently, in *2024 SCMR 719*, it has been reiterated that industrial disputes involving workers of trans-provincial establishments are to be exclusively adjudicated by the NIRC.

12. In view of the settled legal position, the impugned orders passed by the learned Single Member and the learned Full Bench of the NIRC do not suffer from any jurisdictional defect or patent illegality warranting interference in constitutional jurisdiction under Article 199 of the Constitution.

13. It is well settled that this Court does not sit as a court of appeal over findings of a statutory forum unless there is a lack of jurisdiction, coram non judice proceedings, or a violation of law apparent on the face of the record, none of which has been demonstrated in the present case.

14. The plea of the petitioner that there exists no authoritative judgment recognizing NIRC’s jurisdiction in matters arising under Standing Order 12(3) is contrary to the law laid down in the above-referred precedents. The statutory scheme of the IRA, 2012, read with Standing Order 12(3), clearly provides a complete mechanism for redress of individual grievances before the NIRC in cases of trans-provincial establishments.

15. For the foregoing reasons, the captioned petitions are devoid of merit and are accordingly dismissed with no order as to costs.

JUDGE

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