

## THE HIGH COURT OF SINDH, KARACHI

Mr. Justice Adnan-ul-Karim Memon  
Mr. Justice Mohammad Abdur Rahman  
**Referee:** Mr. Justice Adnan Iqbal Chaudhry.

C.P. No. D – 288 of 2024: Engro Fertilizers Limited versus Full Bench NIRC & others

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Petitioners : Mr. Faisal Mehmood Ghani, Advocate.

Respondents : Syed Jaffer Ali Shah, Jamshed Ahmed Faiz and Sadaqat Ali, Advocates.

Date of hearings : 09-07-2025, 30-07-2025 & 06-08-2025

### JUDGMENT

**Adnan Iqbal Chaudhry J.-** The Division Bench of Justice Adnan-ul-Karim Memon and Justice Mohammad Abdur Rahman have differed over the fate of these petitions, hence this opinion as Referee Judge.

#### **Facts:**

2. On the premise of reorganizing its workforce, the Petitioner, a trans-provincial establishment, abolished the highest cadre of its workmen called 'Group-F' and promoted all sixty (60) workers in that cadre to the management cadre called 'P-6' by way of letters dated 05.10.2021. Some of those workmen, including the contesting Respondents who are eight (08) in number, filed a petition before the NIRC under section 54(e) of the Industrial Relations Act, 2012 [IRA], contending that the move was prejudicial to their employment and an 'unfair labor practice' within the meaning of section 31 of the IRA. The NIRC dismissed that petition on 01.11.2021, holding that the

Petitioner's action did not amount to unfair labor practice, and that for individual grievances the workers may avail remedy under section 33 of the IRA.

3. The Respondents/workmen then wrote to the Petitioner that they do not accept the promotion, which letters were relied upon by them as the grievance notice required by section 33(1) of the IRA. Thereafter, said Respondents filed grievance petitions (three in number) before the NIRC under section 33 of the IRA. After recording evidence, the single Bench of the NIRC allowed those petitions by orders dated 20.09.2023 and directed the Petitioner to revert said Respondents from management to workmen in Group-F. The single Bench held that the Memorandum of Settlement between the Petitioner and the CBA of said Respondents did not provide any promotion after Group-F; that even the salary of Respondents had decreased after promotion; and that such promotion was in fact punishment to Respondents for trade union activity. The Petitioner appealed to the Full Bench of the NIRC, however, those appeals were dismissed by a common order dated 25.01.2024. The Full Bench upheld the order of the single Bench and further observed that workmen had the right to decline promotion; hence these petitions under Article 199 of the Constitution of Pakistan. Justice Memon is of the view that the petitions should be dismissed, whereas Justice Rahman is inclined to allow these petitions and dismiss the grievance petitions of the Respondents/workmen.

### **Scope of Referee Judge in constitution petitions**

4. The scope of a Referee Judge in constitution petitions, as distinct from the scope in criminal appeals, has been discussed by this Court in the cases of *Muzammil Niazi v. The State* (PLD 2003 Karachi 526), *Aijaz Hussain Jakhrani v. National Accountability Bureau* (PLD 2023 Sindh 1), *Major ® Raja Muhammad Basharat Ahmed Kayani v. Province of Sindh* (judgment dated 04.12.2023 in C.P. No. D-1233/2017), and *Sanaullah v. Deputy Commissioner, Larkana* (judgment dated 24.11.2025

in C.P. No. D-99/2025). It is settled that in constitution petitions the scope of a Referee Judge is restricted to points on which the members of the Division Bench have differed; that such points can be both of law and facts; that where the Division Bench does not formulate points of difference for the opinion of Referee Judge, the latter may formulate those himself; and that upon the opinion of the Referee Judge, the judgment is of the majority *i.e.* of the members of the Division Bench and the Referee Judge.

*The difference of opinion*

5. While expressing his opinion, Justice Memon observed:

“The questions involved in the present proceeding, for determination, are whether the petitioner company can convert the status of the respondents/workman to officer category by promoting them to P-6 groups and whether a grievance petition can be filed under section 33 of the Industrial Relations Act 2012, based on unfair labor practice.”

Adverting to the first question, Justice Memon held that it was an issue of fact that had been decided concurrently by the NIRC against the Petitioner, which finding cannot be interfered with in writ jurisdiction when it did not suffer from misreading or non-reading of evidence or from a jurisdictional defect. The second question emanated from the Petitioner’s objection that the NIRC could not have entertained grounds of unfair labor practice while seized of grievance petitions under section 33 of the IRA. Justice Memon rejected that objection.

6. On the other hand, Justice Rahman held that the grievance of the Respondents/workmen was not in respect of any right protected by section 33(1) of the IRA, and therefore, concurrent orders passed by the NIRC against the Petitioner were without jurisdiction, hence those can be remedied in writ jurisdiction. He observed that clause 3 of the Memorandum of Settlement allowed the Petitioner to promote an employee, and to create, discontinue or reclassify jobs; therefore, abolition of Group-F and promotion of those workmen/Respondents to management did not circumvent section 33(1) of the IRA.

7. As regards the Petitioner's objection that letters by Respondents/workmen declining to accept promotion were not the grievance notice mandated by section 33(1) of the IRA, Justice Memon held that the objection loses force once the parties led evidence on the merits of the case. Justice Rahman proceeded by treating those letters as the requisite grievance notice. In other words, both members of the Division Bench did not give weight to said objection raised by the Petitioner, therefore, that point does not fall for determination by the Referee Judge.

### Points for determination

8. Learned members of the Division Bench have not formulated points for determination by the Referee Judge. Therefore, relying on the case-law *supra*, and after examining the opinion of the learned Judges, I arrive at the following points over which there is a difference of opinion:

- Point I: Whether grounds of 'unfair labor practice' provided in section 31 of the IRA could have been agitated by Respondents/workers in grievance petitions brought pursuant to section 33(1) of the IRA ?
- Point II: Whether impugned orders passed by the NIRC suffer from mis-reading or non-reading of evidence ?
- Point III: Whether grievance of the Respondents came within the ambit of section 33(1) of the IRA ?

### Opinion of Referee Judge

#### Point I:

9. A worker's grievance of "*unfair labor practice*" by the employer in terms of section 31 of the IRA, and his individual grievance under section 33(1) "*in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force*", appear to be distinct matters. This distinction is also brought out in Regulation 58 of the NIRC (Procedure and Functions) Regulations,

2016. Matters of ‘unfair labor practice’ are dealt with separately in the IRA, such as sections 31, 32, 57(2)(b) & (3), 66(2)(f) and 67. Though section 54(e) provides that the NIRC may deal with a matter of unfair labor practice “in the manner laid down under section 33”, that is a provision to adopt procedure, and not to do away with the distinction between sections 31(1) and 33(1) of the IRA. This scheme of the IRA must be kept in mind while examining the case.

10. The Respondents/workmen had first filed a petition under section 54(e) of the IRA, contending that their promotion from workman in Group-F to the management cadre P-6, was in fact a conversion of their cadre without their consent, which was done by the Petitioner to keep the Respondents/workmen from trade union activity, hence an ‘unfair labor practice’ within the meaning of section 31 of the IRA. The NIRC disagreed and dismissed that petition. The Respondents did not appeal that finding and opted instead to file grievance petitions pursuant to section 33(1) of the IRA. Therefore, said Respondents had abandoned the plea that the impugned promotion amounted to an unfair labor practice. This aspect was overlooked by the NIRC.

11. Nevertheless, as pointed out above, it is section 31(1) of the IRA, not section 33(1), that prohibits an employer from transferring a workman to prevent him from trade union activity. Consequently, under section 33(1), the Respondents could not take the plea that the impugned promotion was made to keep them from trade union activity. In fact, that was not even the case set-up in the grievance petitions. The finding of the NIRC to hold otherwise, was a conflation of the distinct provisions of section 31(1) and section 33(1) of the IRA, and therefore, an error in law. A similar view appears in *I.E. Saleh v. International Laboratories Ltd.* (PLD 1975 Karachi 279) under the erstwhile Industrial Relations Ordinance, 1969. With that, Point I is answered in the negative.

**Point II:**

12. If letters by Respondents declining to accept promotion are treated as their grievance notices under section 33(1) of the IRA, then the grievance expressed therein was that once they become part of management, they are exposed to a transfer/posting out of station, or to a termination on grounds which otherwise are not available against a workman. It was not their case that they were victimised for partaking in trade union activity. The NIRC, therefore, mis-read the grievance of the Respondents.

13. Neither said grievance notices nor the grievance petitions by Respondents had pleaded that their salary had decreased despite promotion. This plea was taken later during the stage of evidence. But even then, the comparison made by Respondents of their salary as workmen in Group-F and then in the management cadre P-6, shows that they factor-in payments received as workmen for overtime, which of course they would not receive as part of management. In rebuttal evidence, it was submitted by the Petitioner that the management is entitled to other perks, and if those are monetized, the Respondents' emoluments are far more than of a workman in Group-F. These aspects were not noticed by the NIRC in observing that the Respondents' salary had decreased upon promotion, thus mis-reading the evidence. Point II stands answered in the affirmative.

**Point III:**

14. The case of *PESCO, WAPDA House v. Ishfaq Khan* (2021 PLC 148) cited by Justice Rahman settles that a worker's grievance under section 33(1) of the IRA can only be "in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force"; and that, the words 'any law' in section 33(1) are used to denote statutory law.

15. The NIRC did not classify the grievance of the Respondents as emanating from any right guaranteed by any 'statute' or 'award', rather as a right emanating from a 'settlement'. The finding of the NIRC is essentially that clause 6 of the Memorandum of Settlement did not expressly provide for promotion of a workman to management after he reaches Group-F; therefore, the Respondents/workmen had the right to refuse such promotion and remain workmen. I agree with Justice Rahman, that the NIRC misconstrued the Memorandum of Settlement. Clause 3 thereof was not only the prerogative of the Petitioner to promote a workman, it also allowed the Petitioner *"to create, discontinue or reclassify jobs"*. Therefore, abolishing Group-F and promoting those workers to the management cadre was within the Petitioner's powers agreed under the Memorandum of Settlement. In any case, section 31(2) of the IRA also provides that: "Nothing in sub-section (1) shall be deemed to preclude an employer from requiring that a person upon his appointment or promotion to managerial position shall cease to be, and shall be disqualified from being, a member or officer of a trade union of workmen." Therefore, the NIRC failed to appreciate that grievance of the Respondents did not fall within the ambit of section 33(1) of the IRA. Point III is answered in the negative.

16. For the foregoing reasons, I concur with Justice Mohammad Abdur Rahman that these petitions are to be allowed by setting-aside the impugned orders passed by the NIRC and by dismissing the grievance petitions filed by the Respondents/workmen under section 33 of the IRA.

**REFEREE JUDGE**

Signed at Karachi  
On 14-02-2026