

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-3670 of 2022
(Pakistan Services Limited versus National Industrial Relations Commission & 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: 02.4.2026

Mr. Ammar Suria advocate for the petitioner alongwith
Mr. Parshant Kumar, Law Officer of the petitioner
Ms. Wajiha Mehdi, Assistant Attorney General
Mr. Ghulam Sarwar Chandio advocate for respondents No.2 to 4

ORDER

Adnan-ul-Karim Memon, J. Petitioner has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking following relief: -

- I. Declare the Impugned Appeal Order dated 28.1.2022 and the Impugned Single Bench Order dated 14.9.2021 passed by the Respondent No.1 are illegal, without jurisdiction, void and of no legal effect;*
- II. Suspend the operation of the Impugned Order dated 28.01.2022 passed by the Full Bench of the Respondent No.1 and restrain the Respondent No.1 from taking any coercive action pursuant to the Single Bench Order of the Respondent No.1 dated 14.09.2021 and complaint Order dated 02.06.2022 Complaint/*
- III. Restrain the Respondents No.2 to 4 from attempting to enter into employment with the Petitioner and from interfering or causing any hindrance in the smooth running of the Petitioner's business;*
- IV. Set aside the Impugned Order dated 28.01.2022 passed by the Full Bench Respondent No.1 and the Single Bench Order of the Respondent No.1 dated 14.09.2021;*
- V. Grant any other / better / further relief that this Court may deem fit and appropriate in the circumstances of the instant Petition;*
- VI. Grant ad-interim injunction in the above terms during the pendency of the instant Petition;*
- VII. Grant costs of the instant Petition.*

2. Learned counsel for the petitioner impugned the order dated 14.09.2021 passed by the learned Single Bench of NIRC and the order dated 28.01.2022 passed by the Full Bench of NIRC, whereby the grievance petitions of the private respondents were allowed and the appeal filed by the petitioner was dismissed. It was contended that the forums below passed the impugned orders without recording evidence and without assigning proper reasons, and that the respondents were lawfully terminated after due inquiry. Learned counsel further submitted that

in similar matters this Court had remanded the cases to the NIRC for recording evidence and passing speaking orders, therefore, this case may also be remanded.

3. The learned counsel for the private respondents submits that the instant constitutional petition is not maintainable in law or on facts. The petitioner is, in fact, seeking re-appraisal of evidence and reversal of concurrent findings of two competent forums, which is not permissible in exercise of constitutional jurisdiction under Article 199 of the Constitution, as this Court does not sit as a court of appeal. It is further submitted that both the forums below have concurrently held that the dismissal of the private respondents was not in accordance with law, and such concurrent findings of fact cannot be interfered with unless the same are shown to be suffering from jurisdictional defect, patent illegality, or perversity, which the petitioner has failed to demonstrate. He emphasized that mere allegation that evidence was not recorded is not sufficient, particularly when the matter remained pending for years and the petitioner failed to produce any cogent evidence before the learned Single Bench despite opportunity. Learned counsel further submits that the charge-sheet itself was vague, non-specific and did not disclose any specific incident, date, time or particulars of alleged misconduct, therefore, any inquiry conducted on the basis of such vague charge-sheet is void in the eyes of law. He emphasized that it is a settled principle of labour law that dismissal from service on the basis of vague allegations and defective inquiry proceedings is illegal and the employee is entitled to relief. It is also contended that the plea of remand is merely an attempt to fill lacuna in the case, which is not permissible in law. The petitioner had full opportunity before the learned Single Bench to produce evidence but failed to do so; therefore, the case cannot be remanded to give the petitioner a fresh opportunity to improve its case. Lastly, learned counsel submits that no jurisdictional defect, illegality or perversity has been pointed out in the impugned orders passed by the learned Single Bench and the Full Bench of NIRC, therefore, this constitutional petition is liable to be dismissed.

4. Learned Assistant Attorney General supports the objection, submitting that there is no material on record to justify remand, as the charge-sheet is vague and the impugned order does not reflect the same cause of action to dispense with the services of the private respondents on the allegations of disorderly behavior, with regular inquiry.

5. We have heard learned counsel for the parties and perused the record with their assistance.

6. It appears that the private respondents were employed by the petitioner's hotel as Cooks since 1989. A charge-sheet dated 28.12.2001 was issued to them on allegations of disorderly behavior and acts subversive of discipline. The respondents submitted their replies, denied the allegations which were found unsatisfactory, where after an enquiry notice dated 02.01.2002 was issued. Upon conclusion of the enquiry, they were dismissed from service vide letter dated 07.06.2002. However, no regular inquiry was conducted only fact finding report was submitted on the allegations of disorderly behavior without proof without examining the witnesses. Against their dismissal, the respondents filed grievance petitions before Labour Court No. V, Karachi, which were subsequently transferred to the National Industrial Relations Commission (NIRC). The respondents contested the matter by filing written statements. After hearing the parties, the learned Single Bench of NIRC allowed the grievance petitions vide order dated 14.09.2021. Being aggrieved, the petitioner-M/s Pearl Continental Hotel, filed appeals before the Full Bench of NIRC, which were dismissed vide order dated 28.01.2022. Now Pakistan Services Limited filed the present proceedings and prayed for setting a side both the orders of NIRC.

7. The main contention of the petitioner is that the matter may be remanded to the learned Single Bench of NIRC for recording of evidence and for passing a speaking order. We are not persuaded by this contention for reasons that the record reflects that the grievance petitions remained pending before the learned Single Bench for a considerable period of time and the parties were afforded adequate opportunity to produce their respective evidence. The petitioner, despite such opportunity, failed to produce witnesses or documentary evidence to substantiate the allegations levelled in the charge-sheet. A party who fails to produce evidence despite opportunity cannot subsequently seek remand to fill in the lacunae of its case. It is a settled principle of law that remand cannot be allowed to enable a litigant to improve its case. Besides, the charge-sheet issued to the private respondents was admittedly vague and did not contain specific particulars of misconduct, dates, incidents or names of witnesses. Even otherwise, the so-called inquiry conducted by the petitioner was not a regular departmental inquiry in the eyes of law, as no witnesses were examined, no evidence was produced, and the respondents were not confronted with any material evidence. The so-called inquiry report was merely a fact-finding report, which has no evidentiary value unless supported by formal inquiry proceedings. Therefore, even if the matter is remanded, no useful purpose would be served as the very foundation of the case i.e., the charge-sheet and inquiry proceedings, is legally defective.

8. Both the learned Single Bench and the Full Bench of NIRC have concurrently held that the dismissal of the private respondents was not carried out in accordance with law. These are concurrent findings of fact recorded by competent forums after hearing the parties. It is a settled principle governing constitutional jurisdiction that concurrent findings of fact cannot be interfered with unless the same are shown to be suffering from jurisdictional defect, illegality or perversity. The petitioner has failed to point out any such jurisdictional defect or perversity in the impugned orders.

9. The constitutional jurisdiction of this Court under Article 199 of the Constitution is supervisory in nature and not appellate. This Court cannot reappraise the factual aspect of the case/evidence nor remand the matter merely because the petitioner seeks a fresh opportunity to produce evidence which it failed to produce before the competent forum.

10. In principle the remand is not to be ordered as a matter of course; rather, it is to be ordered only where the order is passed without jurisdiction, without hearing, or in violation of principles of natural justice.

11. In the present case, the petitioner was afforded full opportunity of hearing before both the forums below; therefore, the request for remand is misconceived. Resultantly, since the petitioner has failed to point out any jurisdictional defect, illegality, misreading or non-reading of evidence, or perversity in the impugned orders, and the request for remand is merely to fill the lacuna in the case, no case for remand is made out. Consequently, the constitutional petition is liable to be dismissed.

12. Accordingly, this petition is dismissed along with listed application(s).

JUDGE

JUDGE