

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-2171 of 2022

[Irfan Khan V. NIRC and others]

Date	Order with signature of Judge(s)
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Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Muhammad Jaffer Raza

Date of hearing and Order: 10.08.2026

Mr. Abdul Rauf, Advocate for the Petitioner.

Ms. Wajiha Mehdi, Assistant Attorney General

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 the following relief:

“i) Set aside the impugned order dated 25.01.2021 as illegal, hence not sustainable.

ii) Call for the record and proceedings of the case No. 4B(277)/2014-K, appeal no 12A(185)2021-K from respondent no. 1, after providing the parties opportunity of being heard, may be pleased to set aside the impugned order 25.01.2021 and granting full back benefits and further allow the petition of the petitioner and direct the respondent 2 to pay the full back benefits to the petitioner after proper calculation for being jobless during unemployment period from 02.06.2014 till now.

iii) To direct the Respondent no 3 /Bank to file the Statement of Account of the petitioner before this Hon'ble Court from October 2013 to July 2014

2. The Petitioner, Irfan Khan, filed a Constitutional Petition under Article 199 of the Constitution challenging the order dated 25.01.2022 passed by the Full Bench of the National Industrial Relations Commission (NIRC), Karachi, whereby the appeal filed by M/s. Lucky Textile Mills was allowed and the order dated 16.09.2021 passed by the learned Single Member of NIRC, which had reinstated the petitioner, was set aside.

3. The petitioner claimed that he had been employed by Respondent No.2 as an Assistant Colourman since June 2011 and had completed his probation satisfactorily. He alleged that on 02.06.2014, he was stopped at the factory gate on oral instructions of the management and was thereby illegally terminated without any written order, show-cause notice, charge-sheet or proper opportunity of hearing. He further claimed that his wages for May 2014 were withheld and that similarly placed junior employees continued in service. He accordingly served a grievance notice on 19.08.2014 and filed a grievance petition before

NIRC seeking reinstatement with back benefits. During the proceedings, the petitioner produced his evidence and was cross-examined, while the management also produced its witness. The learned Single Member of NIRC, vide order dated 16.09.2021, concluded that no proper inquiry had been conducted and that the petitioner had not been afforded a proper opportunity of hearing. The grievance petition was consequently allowed and the petitioner was reinstated, with liberty to the management to conduct a fresh inquiry in accordance with law. The management challenged the said order before the Full Bench of NIRC under section 58 of the Industrial Relations Act, 2012. During the pendency of the appeal, and in compliance with the Single Member's order, the petitioner was reinstated on 22.10.2021. The management thereafter initiated a fresh inquiry. According to the management, the petitioner appeared on 28.10.2021, but refused to cross-examine the management representative, declined to record or sign his statement and subsequently stopped participating in the proceedings. He also failed to appear on 02.11.2021, whereafter the inquiry proceeded ex parte and the management dismissed him vide order dated 03.11.2021. The petitioner maintained that the Full Bench failed to properly appreciate the evidence, the question of limitation, the alleged withholding of his salary and the absence of a lawful inquiry. He also contended that his grievance notice dated 19.08.2014 was within time, as his last salary was allegedly drawn for May 2014 and the alleged termination occurred on 02.06.2014. He further sought production of his bank statement to establish payment of his May 2014 salary.

4. Conversely, Respondent No.2, M/s. Lucky Textile Mills, denied the allegation of oral termination. The management asserted that the petitioner had already been dismissed on 13.01.2014 after issuance of a charge-sheet dated 31.12.2013 and inquiry notice dated 07.01.2014. According to the management, the petitioner deliberately failed to participate in the inquiry despite notice, resulting in an ex parte inquiry in which the allegations of misconduct were proved. The dismissal order was dispatched to the petitioner's address through courier. The management further contended that the petitioner's grievance was hopelessly time-barred, as the grievance notice was served on 19.08.2014, more than four months after the dismissal dated 13.01.2014. It maintained that the petitioner deliberately created a false story of gate stoppage on 02.06.2014 to overcome the limitation objection. The management also stated that, after the Single Member's order dated 16.09.2021, the petitioner was reinstated on 25.10.2021 and a fresh inquiry was initiated. However, according to the management, the petitioner again failed to cooperate with the inquiry, resulting in an ex parte inquiry and his subsequent dismissal on 03.11.2021. The petitioner thereafter filed a complaint before NIRC alleging violation of the order dated

16.09.2021, but the complaint was disposed of. The management therefore maintained that the Full Bench of NIRC had lawfully allowed its appeal after considering the record and that the Constitutional Petition is not maintainable and liable to be dismissed.

5. We heard the learned counsel for the petitioner and learned AAG on the subject issue and perused the record with their assistance.

6. On the basis of the pleadings and material placed on record, the Constitutional Petition appears not to merit interference under Article 199 of the Constitution. The principal dispute concerns the factual controversy as to whether the petitioner was terminated orally on 02.06.2014, as alleged by him, or had already been dismissed through a disciplinary process on 13.01.2014, as asserted by the management and subsequent dismissal in 2021. Such controversy essentially relates to appreciation and reappraisal of evidence, which ordinarily falls within the domain of the competent labour forum and does not warrant interference in constitutional jurisdiction unless the impugned order is shown to be without jurisdiction, based on no evidence, perverse, arbitrary or in violation of a mandatory legal provision.

7. The record indicates that the management specifically relied upon a charge-sheet dated 31.12.2013, inquiry notice dated 07.01.2014, inquiry proceedings and dismissal order dated 13.01.2014, whereas the petitioner disputed the very factum of his earlier dismissal and asserted that he continued to receive salary up to May 2014 and was thereafter stopped at the factory gate on 02.06.2014. The Full Bench was therefore required to determine the competing versions on the basis of the evidence available before it. The petitioner's request for production of his bank statement further demonstrates that the controversy involves determination of disputed questions of fact rather than a straightforward question of law.

8. A significant circumstance is that the Single Member's order dated 16.09.2021 did not finally exonerate the petitioner from the allegations of misconduct; rather, it found deficiencies in the inquiry and permitted the management to conduct a fresh inquiry in accordance with law. The management complied with that direction by reinstating the petitioner and initiating fresh disciplinary proceedings. According to the management, the petitioner initially appeared but subsequently refused to participate and failed to attend the proceedings on the subsequent date, resulting in an ex parte inquiry and dismissal dated 03.11.2021. Thus, the subsequent disciplinary proceedings constitute an

additional factual development which cannot be ignored while determining the relief of reinstatement and back benefits.

9. Furthermore, the petitioner's claim for full back benefits from 02.06.2014 till the date of the petition cannot be granted merely on the basis of the allegation of illegal termination. The entitlement to back wages is consequential upon establishing the legality or otherwise of the termination and the period for which the petitioner remained involuntarily out of service. In the present case, the very date and mode of termination are disputed, while the management relies upon an earlier dismissal dated 13.01.2014. The petitioner therefore cannot obtain a constitutional direction for full back benefits without first establishing the factual foundation of his claim.

10. The issue of limitation also constitutes a material question. The petitioner asserts that limitation commenced from 02.06.2014, whereas the management maintains that the petitioner's service had already terminated on 13.01.2014 and that the grievance notice dated 19.08.2014 was consequently beyond the prescribed period. Since the determination of this question depends upon the underlying factual controversy regarding the date and manner of termination, the Full Bench's consideration of the objection cannot be characterized as without lawful authority merely because the petitioner disagrees with its conclusion.

11. It is also material that the petitioner participated in the proceedings before NIRC, produced his evidence and was subjected to cross-examination, while the management also produced its witness. Therefore, the allegation that the petitioner was wholly condemned unheard cannot, by itself, justify constitutional interference. The subsequent fresh inquiry was also initiated pursuant to the Single Member's order, and the management's case is that the petitioner himself failed to participate effectively in those proceedings.

12. Accordingly, no jurisdictional defect, patent illegality, misreading or non-reading of material evidence sufficient to attract the extraordinary constitutional jurisdiction of this Court has been demonstrated. The Full Bench of NIRC exercised jurisdiction vested in it under the Industrial Relations Act, 2012 and rendered its decision upon the competing claims of the parties. The Constitutional Court cannot ordinarily substitute its own assessment of disputed evidence for that of the competent labour forum merely because another view may be possible.

13. For the foregoing reasons, the petition is found to be without merit. The impugned order dated 25.01.2022 passed by the Full Bench of NIRC does not suffer from any jurisdictional infirmity or patent illegality warranting interference

under Article 199 of the Constitution. The petitioner has failed to establish that the Full Bench acted without jurisdiction, disregarded any mandatory provision of law, or recorded a finding based on no evidence. The questions relating to the date and mode of termination, validity of the disciplinary proceedings, limitation and entitlement to back benefits are predominantly factual matters which have already been considered by the competent labour forum. Consequently, the Constitutional Petition is dismissed, with no order as to costs.

JUDGE

JUDGE

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