IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-2294 of 2012.

Before:-
Mr. Justice Riazat Ali Sahar,
Mr. Justice Ali Haider 'Ada'

Petitioner:
Muhammad Tahir Awan s/o Abdul Hameed *through* Mr. Chaudhry Atif Rafiq, Advocate

VERSUS

Respondents:
Federation of Pakistan and others.

Mr. Faisal Mahmood Ghani, Advocate for KESC.
Mr.-Irshad Ali Deputy Attorney General.

Date of Hearing: 13.10.2026.
Date of Decision: 13.10.2026.

ORDER

Ali Haider 'Ada' J.- The petitioner claims to be a workman employed by Karachi Electric Supply Company Limited (KESC). He challenged the show-cause notice, charge-sheet, and order of suspension on the ground that the actions taken against him constituted unfair labour practices. According to him, although the National Industrial Relations Commission (NIRC) was the competent forum to entertain his grievance, his case was not proceeded with owing to the pendency of a challenge to the vires of the Industrial Relations Act, 2012, instituted by KESC. The petitioner also filed a contempt application, asserting that, during the pendency of the constitutional petition and despite the order passed by this Court directing that no coercive action be taken against him, he was subsequently dismissed from service. He, therefore, challenged the dismissal order through the contempt application.

2. Learned counsel for the petitioner mainly contends that an unfair labour practice is amenable to the writ jurisdiction of this

Court, particularly where the NIRC has declined to entertain or proceed with the petitioner's grievance despite its institution before the Commission. He further submits that, on 21.06.2012, this Court ordered that no coercive action be taken against the petitioner; nevertheless, on the very same date, KESC issued an order dismissing him from service with retrospective effect. According to learned counsel, the impugned dismissal was in violation of the order passed by this Court, warranting the initiation of contempt proceedings. He, therefore, seeks appropriate relief against the alleged unfair labour practices and the impugned dismissal.

3. Conversely, KESC has filed its comments along with objections to the contempt application. Learned counsel appearing for KESC submits that, following the issuance of the charge-sheet, the petitioner submitted his reply, whereafter a notice of inquiry was issued to him. However, the petitioner allegedly failed to participate in the inquiry proceedings and instead instituted the constitutional petition on the very day he became aware of his dismissal from service. It is further contended that the dismissal order was issued after completion of the prescribed procedural formalities and that there was neither any wilful default nor any deliberate disobedience of the order passed by this Court. Learned counsel maintains that the interim order was not communicated to KESC on the same day and that the petitioner's allegations are misconceived. He further submits that, following the judgment reported as 2015 PLC 1, the petitioner has an appropriate remedy before the NIRC and that the constitutional petition is not maintainable. Accordingly, he seeks dismissal of the petition and the contempt application.

4. Learned Deputy Attorney General, while supporting the submissions advanced by learned counsel for KESC, contends that KESC is a company operating within its own domain and that the petitioner himself asserts his status as a workman. Therefore, any grievance arising from his subsequent dismissal from service ought

to be agitated before the competent forum in accordance with the applicable law, rather than through contempt proceedings.

5. Heard. Perused the material available on record.

6. The petitioner's grievance initially stemmed from the alleged unfair labour practices adopted by his employer, which he challenged through the constitutional jurisdiction of this Court on the ground that his case had not been entertained by the NIRC. The matter, however, pertains to the year 2012, whereas this Court, vide judgment dated 04.08.2014 passed in C.P. No. D-3195 of 2010, along with other connected petitions, decided the relevant issue, which was subsequently reported as **2015 PLC (Labour) 1**. Despite the said judgment, the petitioner did not pursue his pending proceedings before the NIRC, nor did he take appropriate steps to institute fresh proceedings, if permissible under the law. Instead, he continued to rely upon the interim order restraining coercive action and pursued the contempt application in connection with his subsequent dismissal from service. Likewise, where an adequate and efficacious remedy is available under the relevant law, the Constitutional jurisdiction of this Court ordinarily cannot be invoked as a substitute for such remedy, particularly where the controversy involves disputed questions of fact requiring examination by the competent forum. Reliance in this regard is placed upon **Indus Trading and Contracting Company v. Collector of Customs (Preventive), Karachi and others (2016 SCMR 842); President, All Pakistan Women Association, Peshawar Cantt. v. Muhammad Akbar Awan and others (2020 SCMR 260); Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others (2022 SCMR 92); and Executive Director (P&GS), State Life, Principal Office Karachi and others v. Muhammad Nisar, Area Manager, State Life Corporation of Pakistan, Peshawar Zone (2025 SCMR 249).**

7. Moreover, in **KESC and others v. NIRC and others (2015 PLC 1),** it was held that, where two laws, namely the Industrial Relations Act, 2012, at the federal level and the Sindh Industrial Relations Act, 2013, at the provincial level, operate in the same field, Section 87 of the Industrial Relations Act 2012, gives overriding effect to its provisions. Accordingly, the NIRC is the competent forum for employees of trans-provincial establishments to seek remedies in matters covered by the Industrial Relations Act, 2012, to the exclusion of Labour Courts established under the Provincial law.

8. As regards the allegation of wilful default or deliberate disobedience of the order passed by this Court, the same is hard to establish in the circumstances of the case. The dismissal order is stated to have been issued on 21.06.2012, the very date on which the petitioner obtained an order restraining coercive action. The petitioner has failed to demonstrate that the interim order was promptly communicated to KESC so as to establish its knowledge of the order at the relevant time. Conversely, KESC maintains that the petitioner approached this Court after his dismissal and concealed this material fact to secure the interim relief. These rival assertions raise disputed questions of fact which cannot appropriately be resolved in contempt proceedings or through the constitutional jurisdiction of this Court.

9. Any subsequent action taken by the employer, if aggrieved thereby, was required to be challenged before the competent forum in accordance with law, rather than through contempt proceedings, particularly when the alleged disobedience itself has not been established. Furthermore, the petitioner remained inactive in pursuing his grievance before the appropriate forum, even after the judgment of this Court in 2014. His failure to pursue the remedy in the proper forum does not, by itself, confer any additional entitlement upon him. He may, if so permissible under the law, approach the competent forum along with an application for exclusion of time under Section 14 of the Limitation Act, 1908,

subject to fulfilment of its statutory requirements and the determination of limitation by that forum.

10. The Supreme Court of Pakistan in **Ch. Zahur Ilahi, M.N.A. v. Zulfikar Ali Bhutto and 2 others (PLD 1975 SC 383)** held that contempt jurisdiction is an extraordinary power to be exercised cautiously and only where necessary in the public interest. In **Saadat Khialy, Staff Reporter ("Kohistan" Daily) and others v. The State and another (PLD 1962 SC 457)**, it was held that contempt proceedings are *sui generis*, possessing both civil and criminal elements, while ensuring a fair opportunity of defence. These principles were reaffirmed in **Syed Masroor Ahsan and others v. Ardeshir Cowasjee and others (PLD 1998 SC 823), Shahid Orakzai v. Pakistan Muslim League (Nawaz Group) and 8 others (2000 SCMR 1969), The State v. Khalid Masood (PLD 1996 SC 42), and Syed Ahmad Shah and Feroze Din v. The State and another (PLD 1967 SC 42)**, wherein the Court emphasized that contempt proceedings are summary in nature and require clear proof of the alleged disobedience. Thus, the decisive question is whether the act complained of falls beyond the scope of the Court's order and constitutes wilful disobedience thereof.

11. It is a settled principle that proceedings to enforce a mandamus are permissible only where the mandate is absolute and unequivocal. Matters relating to the service fall within the domain of the competent authorities and often require examination of factual controversies and the exercise of discretion. Such matters cannot ordinarily be enforced through contempt proceedings, particularly where the alleged disobedience is not clearly established. Reliance in this regard is placed upon **The State of Pakistan and another v. Mehrajuddin (PLD 1959 SC 147).**

12. Additionally, the primary object of contempt proceedings is to uphold the dignity of the Court and preserve the integrity of the judicial process, rather than to serve the personal interests of a

litigant. In **Mst. Farhat Agha v. Government of Sindh through Secretary and others (2017 CLC Note 232, DB-Sindh),** it was observed that contempt proceedings cannot be initiated merely at the desire or whim of a litigating party; the Court must first be satisfied that the alleged act falls within the mischief of the law of contempt. Reliance is also placed upon **Muhammad Zahid and another v. Director of Schools and Literacy, N.-W.F.P., Peshawar and others (2006 CLC 1576),** wherein the Peshawar High Court emphasized the necessity of establishing contemptuous conduct.

13. In view of the foregoing discussion, the petitioner has failed to establish any wilful or deliberate disobedience of the order passed by this Court. The record does not establish any contumacious conduct on the part of the respondents warranting the exercise of contempt jurisdiction. Accordingly, the contempt application is not maintainable and is dismissed. Consequently, the instant Constitutional petition, along with the pending applications, is also dismissed, leaving the petitioner at liberty to avail himself of any remedy available under the law before the competent forum.

JUDGE

JUDGE