

**JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P.No.D-608 of 2013**

Date

Order .with signature of Judge

Present:-**Mr. Justice Muhammad Iqbal Kalhoro**  
**Mr. Justice Adnan-ul-Karim Memon**

M/S. IFFCO PAKISTAN (PVT.) LTD

.....

PETITIONER

**VERSUS**

SINDH LABOR APPELLATE TRIBUNAL

OTHERS

.....

RESPONDENTS

Date of hearing:-

13.04.2017 & 04.05.2017

Date of Judgment:-

16.05.2017

\*\*\*\*\*

Mr. Muhammad Humayoon Advocate for the petitioner

Mr. Muhammad Nishat Warsi, Advocate for the respondent NO.2

\*\*\*\*\*

**J U D G M E N T**

**MUHAMMAD IQBAL KALHORO, J.** This petition has been filed against the order dated **04.10.2012** passed by learned Sindh Labour Appellate Tribunal at Karachi in Appeal No.KAR-1638/2010 maintaining the judgment dated **05.10.2009** passed by learned Labour Court Karachi, whereby application under Section 46 of Industrial Relations Ordinance 2002 filed by respondent No.2 namely Ghulam Muhammad Farooqui against his dismissal from service was allowed with the result he was reinstated in service with full back benefits.

2. Brief facts of the case are that respondent No.2 was employed in the petitioner's Company /M/s. IFFCO Pakistan (Pvt.) Ltd. as a permanent workman. He was issued a show-cause notice on **16.08.2006**, which he replied on **21.08.2006** but his reply was found unsatisfactory, hence Mr. Tariq Abbas, Manager HR and Admin was appointed an Inquiry Officer to hold inquiry against him, which he conducted and submitted its report on **06.09.2006** holding respondent No.2 guilty of the charges mentioned in the show-cause notice. The said inquiry report along-with inquiry proceedings were placed before the competent authority, which in the light thereof dismissed respondent No.2 from service vide letter dated **08.09.2006**. In due course, respondent No.2, after serving a grievance notice dated **11.09.2006**,

filed the above stated grievance petition against the petitioner. The petitioner contested the same and filed his written reply. In the proceedings, respondent No.2 examined himself and one Riasat Ali as his witness by filing affidavit-in-evidence and they both were cross examined. While, from petitioner's side Mr. Tariq Abbas/the Inquiry Officer submitted his affidavit-in-evidence and was cross examined. At the end, the grievance petition of respondent No.2 was decided in his favour and the appeal preferred by the petitioner against which was dismissed vide impugned judgment as stated above.

3. Learned counsel for the petitioner has argued that the impugned judgments of the Labour Court and Sindh Labour Appellate Tribunal are illegal, void and of no lawful effect; that both the impugned Judgments have been passed in haste without application of mind; that impugned judgments are opposed to law and facts; that learned Sindh Labour Appellate Tribunal committed serious error of law and facts while maintaining the judgment of Labour Court which is based on no evidence; that no cogent reasons have been given in favour of the findings arrived at by both the Courts below, and they have ignored the evidence available on record; that both the forums below have misinterpreted applicable law and have wrongly concluded that the burden was on the employer to prove charges against the employee firstly in inquiry and secondly before the court also; that under the law once charges are proved in an independent and fair inquiry and then matter is taken to Labour Court, the Labour Court would only confine itself to determining whether or not the inquiry was conducted in accordance with law; that the Labour Court was not competent to substitute its findings with the findings of the inquiry; that the learned Sindh Labour Appellate Tribunal failed to appreciate that respondent No.2 was dismissed after observance of all necessary formalities; that the inquiry against respondent No.2 was conducted in accordance with law and full opportunity was afforded to him to defend himself; that during the inquiry all the relevant witnesses were examined including statement of respondent No.2; that learned Sindh Labour Appellate Tribunal misconstrued word "Manager" as an employer although he was not the employer but a man who was managing the internal affairs of the factory, therefore, such findings are not sustainable; that on the basis of

such interpretation and misconstruction of word “Manager”, the appeal filed by the petitioner was dismissed which is contrary to the well settled principles of law. Learned counsel lastly prayed for setting aside both the impugned judgments. He has relied upon case laws reported in 1995 SCMR 1758, 1992 PLC (Labour) 1109, 1995 PLC (Labour) 436, and 1984 (Labour) 253 in support of his arguments.

4. On the other hand, learned counsel for respondent No.2 supported the impugned judgments and stated that as respondent No.2 was General Secretary of CBA and was raising the worker’s issues and problems before the management, therefore he was victimized and dismissed although in the inquiry no allegation was proved against him.

5. We have considered the submissions of the parties and have gone through the relevant record including the case law cited at bar. The main contention of the learned counsel for the petitioner is that in the inquiry proceedings all the allegations leveled against the petitioner were proved but both the forums below did not appreciate the said fact and set-aside the dismissal order, which is against the material available on record, and therefore, such findings are erroneous and not sustainable in law. The record reflects that against the petitioner in all seven accusations were leveled in the show-cause notice, and all the allegations appear to relate to his alleged rowdy behavior i.e. inciting workers, shouting slogans against the management, demanding leave encashment, going on strike, taking van of the factory for personal use, etc. All these allegations were denied by the respondent No.2 in his reply, which was, however, not found satisfactory and hence the inquiry was conducted against him, which resulted in his dismissal from service on **08.09.2006**. It must be mentioned that the Labour Court under the law has the power to get into all the facts of the case and pass order as may be proper and just, it can competently examine the material to determine whether the punishment awarded to the workman is sustainable or not. Reference in this regard can be made to the case of Abdul Rashid Malik and others v. General Manager, Pakistan Railways and others (1992 PLC 1116). In the present case, the inquiry proceedings and the facts, which were brought on record as a result of evidence, have been exhaustively attended to by the two forums below.

Initially, learned Sindh Labour Court while thrashing out the entire evidence produced by the parties and after looking at the inquiry report and proceedings has concluded that none of the allegations against respondent No.2 was proved in the inquiry and conduct of respondent No.2 was not riotous or disorderly and he did not misconduct himself, but he being General Secretary CBA had presented the demands and problems of the workers before the management. Learned Labour Court has also observed that respondent No.2 had produced reliable evidence in his defence in the enquiry but the Inquiry Officer had utterly failed to discuss the same, which has resulted into miscarriage of justice. These findings on facts have been further confirmed by the learned Sindh Labour Appellate Tribunal in the appeal filed by the petitioner, it has further held that in the domestic inquiry nothing was proved against respondent No.2 and more so the Factory Manager and the Inquiry Officer was the same. After perusal of record, we see no reason to disagree with the concurrent findings of the said two forums. We are of the view that in the constitutional petition the concurrent findings on facts recorded by the two Courts below would not be distributed, unless the same are shown to be based on no evidence or outcome of some consideration extraneous to the pleadings of the parties. In the present case, however, nothing has been shown that findings of the two forums below are against the available material. We, in view of such facts and circumstances would not proceed to reappraise the entire material including the evidence on the assumption that such reappraisal could lead us to a different view than the one taken by the two Courts below. This Court's interference in the concurrent findings would be justifiable only when some illegality apparent on the record having nexus with the relevant material is established. Learned Labour Court and Sindh Labour Appellate Tribunal have discussed the entire evidence adduced by the parties, and there appears no illegality in their findings recorded on the facts.

6. Learned counsel for the petitioner during his arguments also assailed the findings of Sindh Labour Appellate Tribunal to the effect that *"the Factory Manager and Inquiry Officer is the same. According to Standing Orders Ordinance, 1968, Factory Manager is the "employer" who can issue charge sheet and dismissal order, but the show cause*

*notice was issued by General Manager, who is not the “employer” under the Standing Orders Ordinance, 1968 and so also the dismissal order was issued by the same person.* He stated while referring to above that Manager is in this matter is not employer in *stricto sensu* but a person who was supervising the affairs of the factory in routine manner. Be that as it may, we would not proceed to determine validity of the show-cause notice and dismissal order on the touchstone of whether or not these two documents were issued by the person who was employer as defined under the Factory Act, 1934, because when both the forums below after attending to the entire evidence have concluded that allegations against respondent No.2 have not been proved, and we have seen that there is no illegality in such findings, the issue whether the show-cause notice and dismissal order were issued by the employer or not has become irrelevant for the present opinion.

7. As a result of above discussion, we are of the view that there is no merit in the instant petition, which is accordingly dismissed along with pending application(s).

JUDGE

JUDGE

**Rafiq**P.A.