

IN THE HIGH COURT OF SINDH KARACHI

CP No.D-6544 of 2022

(M/S Fishermen's Cooperative Society v. Sindh Labor Appellate Tribunal and 101 others)

Before:

Justice Muhammad Saleem Jessar

Justice Nisar Ahmed Bhanbhro

1. For orders on office objection
2. For orders on CMA No. 2827/2023
3. For orders on CMA No. 5818/2023
4. For orders on CMA No. 5463/2023
5. For orders on CMA No. 27704/2022
6. For hearing of main case

Date of hearing and order: 22.01.2026

Date of Reasons: 26.01.2026

M/s. Ahmed Ali Ghumro and Abdul Samee, Advocates for the Petitioner

Mr. Bacha Fazul Manan, Advocate for Respondents No.3 & 76

ORDER

Nisar Ahmed Bhanbhro, J. Through this petition, the petitioner has challenged judgment dated 04.08.2022 passed by Chairman, Sindh Labour Appellate Tribunal, Karachi, in Appeals No.KAR-02, 03, 04/2021, whereby the order issued by the petitioner - M/S Fishermen's Cooperative Society terminating services of the respondent employees as well as the order dated 18.12.2020 passed by the Labour Court in grievance applications No 2,3 & 4 of 2019 were set aside and the petitioner was directed to reinstate the respondent employees in service with back benefits.

2. Learned counsel for the petitioner contended that pursuant to a reference made by NAB, the Secretary, Co-operative Department, vide order dated 28.03.2018, appointed Mr. Sajid Abdul Karim Suriyo, Assistant Registrar, Co-operative Societies, as Enquiry Officer to examine the legality of appointments made in Fishermen's Co-operative Society Ltd. The Enquiry Officer, upon completion of proceedings, reported vide letter dated

05.12.2018 that the respondents' appointments were illegal, malafide and in violation of the prescribed procedure and FCS Service Rules. It was further submitted that the report was placed before the Board of Directors in its meeting held on 13.12.2018 and, upon legal opinion obtained, it was concluded that the mandatory requirements under the FCS Bye-Laws had not been followed in the appointment process, rendering the appointments void ab-initio. Consequently, the Board, in its meeting dated 31.12.2018, approved termination of services of 335 employees and an office order to that effect was issued, which is already on record. Learned counsel further contended that respondents No.3 to 102 were fully aware of the enquiry proceedings and findings, yet challenged the termination order dated 31.12.2018 by filing grievance petitions before Respondent No.2, seeking reinstatement with back benefits on the plea of alleged trade union victimization. It was argued that a specific objection regarding maintainability of the grievance petitions was raised on the ground that labour laws were inapplicable to the petitioner Society being a welfare organization and not an industrial or commercial establishment; however, the learned Appellate Tribunal, in the impugned judgment dated 04.08.2022, failed to return any finding on this jurisdictional issue. Learned counsel argued that after recording evidence and cross-examination of both sides, Sindh Labour Court No.3 dismissed Grievance Petitions Nos. 2, 3 & 4 of 2019 vide order dated 18.12.2020; however, the said findings were set aside by labour Appellate Tribunal through the impugned judgment 04.08.2022, without proper appreciation of the evidence and settled law. He lastly prayed to allow the petition.

3. Learned counsel for the respondents No. 3 to 76 has supported the impugned judgment passed by the learned Tribunal and contended that petitioner had terminated services of the respondents who were permanent workers employed as peons, plumbers, watchman, Daftaris, Generator Operators, Electricians, Clerks and Assistants, illegally vide a common termination order dated 31st December 2018 due to their trade union activities without assigning any reason and without giving them any show cause notice or holding an independent enquiry. He further argued that neither any statute nor any statutory rule prescribed any procedure for appointment of workers in the establishment of the respondents. According to him, the petitioner was involved in commercial and industrial activities and their establishment was a commercial and industrial establishment for

which trade union of workers existed from 1962. He lastly prayed to dismiss this petition.

4. Heard learned counsel for the parties and perused the material available on record.

5. To examine whether the Fishermen's Cooperative Society (FCS) fell within the definition of Establishment provided under Sindh Industrial Relations Act 2012, and Respondents were its workers. To search for an answer to this question, it would be appropriate to check the framework of FCS. Founded in 1945, FCS co-operates with the Government of Sindh through the Cooperative Societies Act 1925 for the welfare of fishermen. The FCS was established with a clear vision: to promote the welfare of fishermen, protect their rights, enhance their livelihoods, and strengthen their role in the sustainable development of Pakistan's fisheries sector. Pakistan has many marine and inland fishery resources. The potential was estimated at 1 million tones/year from the marine subsector alone. The effect of the Indus River Delta on the marine resources of the coastline of Sindh is substantial, as this river system has been transporting enormous quantities of nutrients and sediment to the continental shelf for centuries. Pakistan has an extensive inland water areas system, which is mainly dominated by the Indus River. These water bodies, depending on their type, possess varying potential for development of the inland and aquaculture sub-sectors. Inland water bodies, like dams, water locks, reservoirs, rivers, lakes and ponds cover an area of approximately 8 million hectares. FCS looks into the affairs of fishermen. To carry out its activities, FCS has appointed drivers, security men, loaders, peon, harbour cleaners etc. The workers in the FCS have formed Union named as Fishermen Cooperative Society Employees Union and Petitioner from time to time has engaged into contract with the Union. The Petitioner's nominee in its cross examination admitted that there existed three trade unions of workers and one trade union was established in year 1964. Moreover the Board of Directors of the FCS has framed FCS Karachi Efficiency Conduct Rules 1964, wherein the employee has been defined under Rule 1(c) as follows:

1(c) Employees of the Society means a paid officer or servant of the Society other than a Government Servant whose services have been lent or transferred to the society and workman as defined under the Industrial and Commercial Employment (standing orders) Ordinance 1960.

6. From the perusal of above rules, it can be safely held that employees of Petitioner society were workers defined under Sindh Industrial Relations Act 2012 and Sindh Terms of Employment (Standing Order) Act, 2015, thus the employees on termination had rightly filed grievance application before Labour Court which was rightly entertained.

7. The Sindh Terms of Employment (Standing Orders) Act, 2015, deals with the appointment and termination of the workers. Per Standing Order 1(b), a **permanent worker** is defined as a worker who has been engaged on work of a permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation. The respondents were working in the FCS (establishment) since last more than eleven years as such attained the status of permanent worker. Standing Order 16 provides for termination of a worker, laying down that a permanent worker can be terminated from service on issuance of one month's notice given either by the employer or the worker for any reason other than misconduct. For the sake of convenience, Standing Order 16 is reproduced below:

"16. Termination of employment. - (1) For terminating employment of a permanent worker, for any reason other than misconduct, one month's notice shall be given either by the employer or the worker. One month's wages calculated on the basis of average wages earned by the worker during the last three months shall be paid in lieu of notice.

(2) No temporary worker, whether monthly-rated, weekly-rated, daily-rated or piece-rated, and no probationer, badli or contract worker shall be entitled to any notice, if his services are terminated by the employer, nor shall any such worker be required to give any notice or pay any wages in lieu thereof to the employer if he leaves employment of his own accord.

(3) The services of a worker shall not be terminated, nor shall a worker be removed, retrenched, discharged or dismissed from service, except by an order in writing which, shall explicitly state the reason for the action taken. In case a worker is aggrieved by the termination of his services or removal, retrenchment, discharge or dismissal, he may take action in accordance with the provisions of section 37 of the Sindh Industrial Relations Act, 2013 (Sindh Act No.XVI of 2013)

and thereupon the provisions of the said section shall apply as they apply to the redress of an individual grievance.

(4) Where the services of any worker are terminated, the wages earned by him and other dues, including payment for un-availed leaves as defined in clause (1) of Standing Order 10 shall be paid before the expiry of the second working day from the day on which his services are terminated.

(5) The services of a permanent or temporary worker shall not be terminated on the ground of misconduct otherwise than in the manner prescribed in Standing Order 21.

(6) Where a worker resigns from service or his services are terminated by the employer, for any reason other than misconduct, he shall, in addition to any other benefits to which he may be entitled under this Act or in accordance with the terms of his employment or any custom, usage or any settlement or an award of a Labour Court under the Sindh Industrial Relations Act, 2013 (Sindh Act No.XVI of 2013) be paid gratuity equivalent to one month's wages, calculated on the basis of the wages admissible to him if he is a fixed rated worker or the highest pay drawn by him during the last twelve months if he is a piece-rated worker, for every completed year of service or any part thereof, in excess of six months: Provided that a seasonal worker shall also be entitled to gratuity equal to one month wages for each season. Provided further that where the employer has established a provident fund to which the worker is a contributor and the contribution of the employer to the provident fund, shall not be less than the contribution made by the worker, no such gratuity shall be payable for the period during which such provident fund has been in existence: Provided also that amount paid to the worker under provident fund shall not be less than the amount of gratuity admissible to such worker under this Act.

(7) A worker shall be entitled to receive the amount standing to his credit in the provident fund, including the contributions of the employer to such fund, even if he resigns or is dismissed from service.

(8) Where a worker dies while in service of the employer, his dependent shall be paid gratuity in accordance with the provision of clause (6):

Provided that no payment of gratuity in such case shall be made otherwise than by a deposit with the Commissioner, who shall proceed with the allocation of the deposit to the dependent of the deceased in accordance with the provisions of section 8 of the Workmen's Compensation Act, 1923 (Act No. VIII of 1923).

(9) If the employer fails to deposit the amount of the gratuity under clause (8) the dependent of the deceased may make an application to the Commissioner for the recovery of the amount thereof.

Explanation. "Commissioner" and "dependent" in this clause shall have the same meanings as are respectively assigned to them in Workmen Compensation Act, 1923 (Act No. VIII of 1923).

(10) If a worker is not allowed to work or mark his attendance by his employer in any manner, the worker may bring the same into the notice of the area Inspector in writing within ten days of the incidence and in such case the employer shall be precluded to initiate any action against the worker."

8. From perusal of the above provisions of law, it is crystal clear that the termination of the worker shall be in writing which shall explicitly state the reason as to withstand judicial scrutiny. The respondents in the present case were terminated from service on the ground of misconduct. The Standing Order 21(2) empowers the employer to dismiss the worker when found guilty of misconduct. Standing Order 21 (2) (3) & (4) defines the acts of misconduct in the following manner:

"21. (1) A worker may be reprimanded or fined in the manner prescribed under the Payment of Wages Act, 1936 (Act No. IV of 1936), up to five percent of the wages payable to him in a month, for any of the following acts or omissions, namely:-

(2) A worker found guilty of misconduct shall be liable to any of the following punishments:- (i) fine in the manner prescribed under the Payment of Wages Act, 1936 upto five percent of the wages payable to him in a month; (ii) withholding of increment or promotion for a specified period not exceeding one year; (iii) reduction to a lower post; or (iv) dismissal without payment of any compensation in lieu of notice.

(3) The following acts and omissions shall be treated as misconduct:-

- (i) *willful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;*
- (ii) *theft, fraud, or dishonesty in connection with the employer's business or property;*
- (iii) *willful damage to or loss of employer's goods or property;*
- (iv) *taking or giving bribes or any illegal gratification;*
- (v) *habitual absence without leave or absence without leave for more than ten days; provided that where a worker is barred by the employer to enter the factory (gate-band), the period of ten days shall not apply, subject to the condition that the worker reports the incidence to the concerned Labour Office within seven working days of the gate-band;*
- (vi) *habitual late attendance;*
- (vii) *habitual breach of any law applicable to the establishment;*
- (viii) *riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;*
- (ix) *habitual negligence or neglect of work;*
- (x) *frequent repetition of any act or omission referred to in clause (1);*
- (xi) *striking work or inciting others to illegal strike in contravention of the provisions of any law, or rule having the force of law;*
- (xii) *go-slow.*

(4) *No order of dismissal shall be made unless the worker concerned is informed in writing of the alleged misconduct within one month of the date of such misconduct or of the date on which the alleged misconduct comes to the notice of the employer and is given an opportunity to explain the circumstances alleged against him. The approval of the employer shall be required in every case of dismissal and the employer shall institute independent inquiry before dealing with charges against a worker:*

Provided that the worker proceeded against may, if he so desires for his assistance in the enquiry, nominate any worker employed in that establishment and the employer shall allow the worker so nominated to be present in the enquiry to assist the worker proceeded against and shall not deduct his wages if the enquiry is held during his duty hours."

9. From perusal of the above provisions of law, it is crystal clear that no order of dismissal can be made except the worker concerned is informed in writing of the alleged misconduct, and disciplinary proceedings are conducted as provided under the law.

10. Through the impugned order dated 31.12.2012, about 335 employees were removed from service, nowhere it is mentioned in the said order that any inquiry as to the misconduct of the employees was held, when confronted learned counsel for the petitioner has conceded to the fact that no inquiry at the departmental level was held. The termination took place relying upon the report of Enquiry Officer appointed by Government of Sindh and material unearthed by NAB in the inquiry conducted against Ex-Chairman FCS. The Registrar of Cooperative Societies in compliance to the orders of Government of Sindh held an inquiry to examine the legality of the appointments. Counsel further frankly conceded that even in the said inquiry no right of audience was accorded to the respondents / employees. The admission so made leads to an inference that the respondents were not dealt with in accordance with the law and were penalized without adopting a due process of law.

11. From scanning of record, it emerges that the private respondents were employed during the period from 2003 to 2014 and throughout their service no allegation regarding their work or conduct was ever raised. It was neither pleaded nor established by the petitioner that the private respondents were ineligible or that they were appointed by an incompetent authority. Their services were, however, terminated through a common order dated 31.12.2018, which neither disclosed any reason nor satisfied the mandatory requirement of Standing Order 16(3). No show-cause notice was issued, rendering the action *ex facie* unlawful. The justification advanced by the petitioner before the Labour Court that the appellants were appointed without advertisement, is of no legal consequence as such reason finds no mention in the termination order. Even, no statutory rule requiring advertisement was shown to exist. The record reflects a consistent past

practice of making appointments without advertisement, including the private respondents' own induction over a span of eleven years. In any case, any procedural lapse was attributable to the petitioners' own officers and not upon the private respondents.

12. Termination of Respondent was an subsequent to NAB report and based upon the findings in the Departmental Inquiry report which was placed before Board of Directors meeting which approved the report and termination letter dated 31.12.2018 was issued. It is quite strange to note that even to prove or defend the charge of misconduct no opportunity was provided to the Respondents during the inquiry proceedings to defend against them which is a sheer violation of the principles of natural justice and due process of law. The main object of affording a fair opportunity of the defense is to disprove the charge or allegations. During a regular inquiry, it is an unavoidable obligation of the inquiry officer to provide a fair opportunity of defence to the accused without which it was not possible to fix responsibility for the charges of misconduct. Such violation of an elementary principle of law sabotages the fabric and substratum of the entirety of the disciplinary proceedings and the worth and credibility of the inquiry. In this case, on the basis of a defective inquiry, the major punishment of termination was imposed upon the Respondents, which defeated the ends of justice and due process of law. This requirement is inseparably linked with the fundamental right to fair trial and due process guaranteed under Article 10-A of the Constitution, which cannot be waived in any circumstances. Since the appellants were removed from service without reason or notice and they had rendered services for more than 10 to 13 years as such their termination was patently illegal, being in violation of Standing Order 16 of the Sindh Terms of Employment (Standing Orders) Act, 2015, thus not sustainable.

13. The material on record further suggests that the mass termination was prompted by apprehension of proceedings by NAB, and not by any genuine intent to dispense with the private respondents' services. This inference is reinforced by the admission that a large number of employees were subsequently reappointed and that the private respondents too would have been accommodated but left out. The respondents were thus made scapegoats to temporarily shield the incumbent management to avoid any criminal proceedings under accountability laws. Even the Labour Court acknowledged that the action was taken under the influence of NAB, going

to the extent of directing termination of other employees who were not even party to the proceedings.

14. For the foregoing reasons, we find no illegality, perversity or interference in the impugned judgment dated 04.08.2022 passed by Chairman, Sindh Labour Appellate Tribunal, Karachi, in Appeals No.KAR-02, 03, 04/2021, the same is maintained.

15. These are the reasons of short order dated 22.01.2026, whereby instant petition was dismissed and interim order passed earlier was recalled.

JUDGE

JUDGE
HEAD OF CONST. BENHCES

Approved for reporting

Nadir*