

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-5822 of 2024
(Sukkur Electric Power Company (SEPCO)
versus
Federation of Pakistan & others)

Date	Order with signature of Judge
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Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Hasan Akber

Date of hearing and order: 26.3.2026

Mr. Faizan Hussain Memon, advocate for the petitioner
Ms. Wajiha Mehdi, Assistant Attorney General
Mr. Jamshed Ahmed Faiz advocate for the private respondents

Adnan-ul-Karim Memon, J. Petitioner Sukkur Electric Power Company (SEPCO) has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer(s):-

- i. *Declare that the Impugned Order dated 28.10.2024 and Order dated 13.04.2022 are arbitrary, capricious, illegal, misconceived, unconstitutional, without lawful authority, without jurisdiction, and of no legal effect;*
- ii. *Set aside Impugned Order dated 28.10.2024 and Order dated 13.04.2022;*
- iii. *Suspend the Operation of Order dated 28.10.2024 and Order dated 13.04.2022 and/or direct the parties to maintain the status quo;*

2. Briefly, the facts of the case are that the respondents claimed to be regular employees of the petitioner company, stating that they were initially appointed in the year 2013 on daily wages as Assistant Lineman, Chowkidar, Bill Distributor, and Naib Qasid, and were subsequently regularized against vacant posts. According to the respondents, their services were suddenly terminated by the petitioner company vide order dated 26-12-2016. Being aggrieved by their termination, the respondents served a grievance notice upon the petitioner company and thereafter filed a grievance petition before the Single Member of NIRC, which was allowed vide order dated 13-04-2022. The petitioner company filed the appeal under Section 58 of the IRA, 2012, before the Full Bench of NIRC to assail the impugned order dated 13-04-2022 passed by the learned Single Member, NIRC Sukkur Bench, which was also dismissed vide order dated 28.10.2024. Feeling aggrieved by the said order, the petitioner company has preferred the instant petition under Article 199 of the Constitution against the concurrent findings.

3. Learned counsel for the petitioner (SEPCO) contended that the respondents were never employees of the petitioner company and their purported appointment letters were fake and managed documents. He argued that the signatures on the appointment and termination letters did not match, and the private respondents failed to produce original salary slips; their claim of employment was based on forged documents. He further submitted that the learned NIRC passed the impugned orders without properly appreciating the written reply and evidence on record, and the findings were based on surmises and conjectures. He also raised the jurisdiction issue of the NIRC on the premise that the petitioner company is a non-Trans provincial Establishment. In support of his contentions, he relied upon the cases of *Sui Southern Gas Co. Ltd. V. Federation of Pakistan* (2018 SCMR 802), *M/s SS Engineering Services v. Federation of Pakistan* (PLD 2014 Sindh 378), *KESC V. NIRC* (2015 PLC 1), order dated 01.07.2025 passed by NIRC Islamabad in Appeal No.12(49)/2025L and order dated 20.06.2025 passed by NIRC Sukkur in case No.4B(23)/2020-S. He prayed that the impugned orders be set aside.

4. On the other hand, learned counsel for the Respondents-employees submitted that the respondents were appointed in 2013 on daily wages as Assistant Lineman, Chowkidar, Bill Distributor, and Naib Qasid, and were subsequently regularized against vacant posts. He argued that the respondents were terminated on 26-12-2016 without issuing a show cause notice, charge sheet, or conducting any inquiry, which was in clear violation of the Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968. He further submitted that the petitioner company, through bank accounts, regularly paid the respondents' salaries, and this fact was admitted by the petitioner's own witness, who also stated that there was no audit objection regarding payment of salaries. He contended that no action was taken against the officers who issued purported fake appointment letters, if any, and the respondents were unlawfully terminated. In support of his contentions he relied upon the order dated 02.04.2021 passed by learned NIRC Islamabad in Appeal No.12(18)/2020, CMA No.24(104)/2020, CMA No.7-A (72)/2020, order dated 23.06.2021 passed by learned High Court of Baluchistan Quetta in C.P No.965/2021 and other connected petitions, order dated 02.07.2025 passed by learned NIRC Islamabad in Appeal No.12(49)/2025-L and order dated 28.07.2025 passed by learned High Court of Balochistan Quetta in C.P No.1069 of 2025. He prayed for dismissal of the petition.

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

6. The primary objection raised by the petitioner is that the National Industrial Relations Commission has no jurisdiction as the petitioner is not a

Trans-Provincial Establishment. This contention is misconceived, contrary to law, and based on a narrow and incorrect interpretation of the Industrial Relations Act, 2012.

7. It is settled law that jurisdiction is determined by the status of the employer, trans-provincial or not, not merely by the place where workers are posted. The Supreme Court of Pakistan in *Pakistan Telecommunication Company Ltd. vs Member NIRC (2014 SCMR 535)* held that once it is established that an employer has establishments or industrial activities in more than one province, then the jurisdiction of NIRC becomes exclusive and overriding. Thus, the determining factor is the nature and operational structure of the company, not merely the posting location of certain employees.

8. Section 2(xxxii) of the Industrial Relations Act, 2012 defines Trans-Provincial Establishment as “Any establishment, group of establishments or industry having its branches in more than one province.” Therefore, if an organization operates in more than one province, or provides services across Pakistan, or is part of a federal structure/company operating beyond one province, it falls within the definition of trans-provincial establishment. Even if SEPCO claims that its workforce is in Sindh, the legal aspects establish that it is Trans-Provincial for the reason that SEPCO is a public utility company operating under PEPCO / WAPDA federal structure, which is a national power distribution system interconnected across Pakistan. Electricity distribution companies are part of an integrated national grid and federal regulatory regime, NEPRA, hence they are not purely provincial entities. Besides, the test is not only of physical branches but also of functional and administrative control. If the company is incorporated at the federal level, Policy, HR, finance, audit, and control are exercised federally, and the organization is part of a group of establishments functioning in more than one province, then it qualifies as a “group of establishments” under IRA. The Courts have held that even providing services across Pakistan qualifies as trans-provincial. This Court also held that a company providing services to clients across Pakistan falls within the definition of trans-provincial establishment and thus falls under the IRA 2012 and NIRC jurisdiction. Thus, even if the head office is in Sindh, if operations, control, or services extend beyond Sindh, the establishment is trans-provincial. Prima facie, SEPCO is a trans-provincial establishment as it is owned and controlled by the Federal Government and operates under the administrative and policy control of PEPCO. Its officers are transferable across various distribution companies throughout Pakistan, and its service structure and rules are governed at the federal level. Therefore, in service and constitutional matters, SEPCO is treated as a trans-provincial or federal organization.

9. Under Sections 53 and 54 of the IRA 2012, NIRC has exclusive jurisdiction over trans-provincial establishments, and the jurisdiction of provincial labour courts is barred. It has been held that once an employer is found to be trans-provincial, jurisdiction of NIRC is exclusive and overriding over provincial forums. Therefore, the plea that NIRC had no jurisdiction is incorrect.

10. The petitioner itself raised jurisdiction before NIRC, and the same was decided after recording evidence. The issue of whether an establishment is trans-provincial is a question of fact, which must be determined on evidence, not merely on assertion. Therefore, once evidence was recorded and the matter was decided, the petitioner cannot re-agitate the same issue in a Constitutional Petition as if it were never decided.

11. The petitioner filed a reply before NIRC, led evidence, and filed an appeal before the Full Bench NIRC; thus, the petitioner submitted to jurisdiction and cannot later challenge jurisdiction after an adverse finding. This principle is well recognized that a party cannot approbate and reprobate simultaneously.

12. Since NIRC is a legally competent forum for trans-provincial establishments, a jurisdiction issue was raised and decided, appeal was also decided; therefore, the proceedings are not coram non iudice, and orders are not void ab initio.

13. The grievance petition was filed against the employer through its functionaries, and the employer contested the matter fully. No prejudice was caused. The law is settled that misjoinder or non-joinder is not fatal unless it causes failure of justice.

14. In view of the above submissions, SEPCO falls within the definition of Trans-Provincial establishment. Jurisdiction of NIRC is exclusive under the IRA 2012. Jurisdiction depends on the status of the employer, not the location of workers. The jurisdiction issue was already decided after the evidence. Petitioner submitted to jurisdiction and cannot challenge now. Proceedings are not coram non iudice. Impugned orders are lawful and within jurisdiction.

15. The judgments relied upon by the petitioner are distinguishable on facts and law. In *Sui Southern Gas Co. Ltd. v. Federation of Pakistan*, the Supreme Court was dealing with a company which, although federally controlled, was performing functions across provincial boundaries and its employees were governed under a distinct statutory service structure and the question of law was decided. The facts of the present case are different, as the petitioner company operates under the administrative control of the Federal Government and its employees are transferable throughout Pakistan under a unified service structure,

which brings it within the ambit of a trans-provincial establishment. Similarly, in *M/s SS Engineering Services v. Federation of Pakistan*, the Court dealt with a case relating to contractual and corporate matters, not the determination of the status of a distribution company functioning under PEPCO as a trans-provincial entity; hence, the ratio of the said judgment does not apply to the facts of the present case. In *KESC v. NIRC*, the issue revolved around the jurisdiction of NIRC in respect of KESC employees after privatization, where KESC was operating as a private entity; therefore, the principles laid down in the said case are distinguishable, as the petitioner company in the present matter is a government-owned entity working under the Federal Government and PEPCO, and has not been privatized. Therefore, the cases relied upon by the petitioner are distinguishable and do not apply to the facts and circumstances of the present case.

16. So far as the contention of the learned counsel for the petitioner that the private respondents were never employees and their appointment letters were fake is concerned, the record shows that salaries were paid by the petitioner and credited into the bank accounts of the respondents, which fact was admitted by the petitioner's own witness before the learned NIRC. It is settled law that payment of salary and allowing a person to work establishes an employer-employee relationship, regardless of any alleged irregularity in the appointment process. The burden to prove misconduct or fake appointment was upon the employer, which it failed to discharge, as no forensic report, original record, departmental action against the issuing authority, or criminal proceedings were produced on record. Moreover, even if the appointments were irregular, the respondents could not be terminated without due process of law. Admittedly, no show cause notice, charge sheet, or proper inquiry was conducted before termination; therefore, the termination was illegal and in violation of the principles of natural justice and the Standing Orders law. The findings recorded by the learned NIRC are based on evidence, including salary slips, bank statements, and witness admissions. The petitioner is seeking re-appraisal of evidence, which is not permissible in constitutional jurisdiction, as this Court does not act as an appellate court. Since the findings are neither perverse nor unsupported by evidence, no interference is warranted.

17. For the foregoing reasons, we are of the considered view that the petitioner has failed to point out any illegality, jurisdictional defect, misreading or non-reading of evidence in the impugned orders passed by the learned National Industrial Relations Commission. The record reflects that the respondents remained in the employment of the petitioner for a considerable period, their salaries were paid by the petitioner and credited into their bank accounts, and this fact was admitted by the petitioner's own witness before the learned NIRC. The

petitioner failed to produce any cogent evidence to establish that the appointment letters were fake or forged, nor was any proper inquiry conducted before terminating the services of the respondents. The termination was therefore made in violation of the principles of natural justice and the provisions of the relevant labour laws.

18. We further hold that the objection regarding the lack of jurisdiction of the National Industrial Relations Commission is misconceived. The question of jurisdiction was raised before the learned NIRC, evidence was recorded, and the same was decided. The petitioner also availed the remedy of appeal before the Full Bench of the NIRC, which was dismissed. Having submitted to the jurisdiction of the forum and fully participated in the proceedings, the petitioner cannot now challenge the jurisdiction after an adverse decision. In any case, the petitioner falls within the ambit of a trans-provincial establishment; therefore, the National Industrial Relations Commission had the lawful authority and exclusive jurisdiction to entertain and decide the grievance petition.

19. It is well settled that the constitutional jurisdiction of this Court is supervisory in nature and does not extend to re-appraisal or re-evaluation of evidence. The findings recorded by the learned NIRC are findings of fact based on evidence available on record and do not suffer from any perversity or illegality warranting interference by this Court in exercise of its constitutional jurisdiction.

20. In view of the above, the impugned Order dated 13-04-2022 passed by the learned Single Member, NIRC, and the Order dated 28-10-2024 passed by the learned Full Bench, NIRC, do not suffer from any illegality or jurisdictional defect, and the same are maintained.

21. Accordingly, this petition, being devoid of merit, is dismissed, along with pending applications, if any.

JUDGE

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