

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No. D-2361 of 2022
[Ms. Nazia Tariq v. M/s Karachi Electric & others]

Date	Order with signature of Judge(s)
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Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Hassan Akbar

Date of hearing and Judgment: 25.03.2026

Petitioner present in person
Mr. Ayan Mustafa Memon advocate for the respondent
Ms. Wajiha Mehdi, Assistant Attorney General

J U D G M E N T

Adnan-ul-Karim Memon, J. – Petitioner has filed this Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, seeking the following relief:-

- i) *To declare that the act of respondents/Company, terminating services of petitioner without showing any reason or allowing her chance of hearing, utterly illegal, violation of legal decisions, besides being against natural justice;*
- ii) *To declare further the decisions of NIRC and Appellate court illegal, perverse and contrary to law, hence set aside;*
- iii) *To direct the respondents/Company to reinstate the petitioner in service with all back benefits or the case may be remand back to the Full Bench of NIRC to decide a fresh in accordance with law.*
- iv) *Grant any other relief which is deemed fit and proper in the interest of justice.*

2. Petitioner who is present in person submitted that she was a permanent workman, in K-Electric Company, within the meaning of the Standing Orders Ordinance, 1968, the Sindh Terms of Employment (Standing Orders) Act, 2015 and the Industrial Relations Act, 2012. She submitted that she had been performing skilled, technical and clerical duties since July 2003 till her abruptly termination on 15.03.2018.

3. It is the case of the petitioner that she was initially appointed as Computer Programmer in K-Electric on contract basis on 22.11.2004, which was extended from time to time, and she was eventually promoted and re-designated as Assistant Network and later Manager Data Analysis and Reporting. According to the petitioner, her duties remained technical and clerical in nature and she had no subordinates, therefore she fell within the definition of a workman rather than a managerial employee. She served the company for about 15 years without interruption but was abruptly terminated on 15.03.2018 without show cause notice, charge sheet, inquiry, or opportunity of hearing, in violation of law and principles of natural justice. She submitted a grievance notice dated 20.03.2018, which was received by the management, and thereafter filed a Grievance Petition before NIRC, which was dismissed by the learned Single Member vide order

dated 08.03.2021. Her appeal under Section 58 of IRA, 2012 was also dismissed by the Full Bench on 01.01.2022 on the ground that she was a managerial employee and had not served a proper grievance notice as required under Section 33 of IRA, 2012. An excerpt of the order is reproduced as under:-

“We have heard the arguments of the learned counsel for both the parties and perused the record, which transpires that the appellant is B.E IT Engineer, MBA Executive, MS IT, she is Manager Meter Reading in the management cadre, her services had been terminated as per clause 5.1 of the K-Electric Officer's Service Policy, 2010. The appellant was being paid Rs 2000/- per month as mobile phone charges, the appellant vide letter dated 07.02.2010 was re-designated as Manager Data Analysis and Reporting (IBC), her total salary was Rs. 211,288/- she was being paid fuel charges amounting Rs 10,634/- per month, she was paid car allowance Rs 27,500/- per month which is not paid to any worker or workman, as per organogram of K-Electric she was in the management cadre, there are Deputy Managers and Assistant Managers Analysis and Reporting along with other supporting employees in her subordination, the appellant instead of serving the grievance notice has sent a request for knowing the reason for her termination which can be treated as grievance notice and that in her request she has nowhere prayed that she be reinstated in his service with back benefits means thereby that the appellant has not served grievance notice to her employer which is mandatory requirements for filing of grievance petition under section 33 of the IRA 2012 therefore, we have no alternative but to dismiss the instant appeal and uphold the impugned order dated 08.03.2021 passed by the Learned Single Member NIRC Bench, Karachi There is no order as to cost.”

3. The petitioner, appearing in person, contended that the learned NIRC erred in law by declaring her a managerial employee merely on the basis of designation, salary and allowances, while ignoring the settled principle that the nature of duties actually performed is the decisive factor. She submitted that her duties were purely technical and clerical, without any administrative, financial or disciplinary powers, thus falling within the definition of “workman” under Section 2 of the IRA, 2012. She argued that the reliance on allowances and organogram was misplaced, as no evidence established that she exercised supervisory or disciplinary control over any employee. She further submitted that her communication dated 20.03.2018 constituted a valid grievance notice under Section 33 of the IRA, 2012, as no specific format is required, and procedural requirements cannot defeat substantive rights. It was argued that her termination, admittedly without show cause notice, inquiry or opportunity of hearing, was in clear violation of principles of natural justice, which the NIRC failed to address. She also emphasized her continuous service of 15 years and submitted that the impugned orders suffer from misreading and non-reading of evidence, non-application of mind, and reliance on irrelevant considerations, rendering them illegal and without lawful authority. She concluded by praying that the impugned orders dated 08.03.2021 and 01.01.2022 be set aside and she be reinstated with full back benefits and continuity of service.

4. Conversely, learned counsel for the respondent company submitted that the petitioner was working in a managerial and administrative capacity as Assistant Manager IT Audit and later as Manager Data Analysis and Reporting, and was part of the management cadre drawing substantial salary and officer-level benefits including car, fuel and mobile allowances, which are not admissible to workmen. He contended that the petitioner performed supervisory and administrative functions, including supervision of staff, coordination with

departments, monitoring operations and administrative control, therefore she did not fall within the definition of “workman”. He further submitted that her services were terminated in accordance with the K-Electric Officers’ Service Policy, 2010, and since her employment was governed by the principle of master and servant, the only remedy, if any, was damages and not reinstatement. He also argued that the petitioner failed to serve a proper grievance notice under Section 33 of the IRA, 2012, therefore the grievance petition was not maintainable. He submitted that both the learned Single Member and the Full Bench of NIRC had rightly dismissed the matter after proper appraisal of evidence and case law, and prayed that the instant petition be dismissed.

5. We have heard the petitioner, who appeared in person, and learned counsel for the respondent company and have perused the record and case law cited at the bar.

6. The core controversy in the present matter is whether the petitioner fell within the definition of “workman” or was a managerial employee, and whether her grievance petition was maintainable.

7. It is now a settled principle of law that designation, salary and allowances are not decisive factors to determine whether an employee is a workman; rather, the nature of duties actually performed and the extent of supervisory, administrative or financial powers exercised by the employee are the determining factors.

8. In the present case, the record shows that the petitioner was a technical employee performing IT, data analysis and reporting functions, and there is no cogent evidence on record to establish that she had the authority to hire, fire, initiate disciplinary proceedings, sanction leave, write performance evaluation reports, or exercise financial or administrative control over employees. Mere placement in an organogram or drawing higher salary and allowances does not convert a technical employee into a managerial employee. Therefore, the findings of the learned NIRC declaring the petitioner a managerial employee appear to be based on misreading and non-reading of evidence and on irrelevant considerations such as salary and fringe benefits.

9. The reliance of the respondent-company on the principle of master and servant is also misconceived at this stage, because that principle applies only when the employee is not a workman and is governed purely by contractual employment. However, where the dispute relates to determination of status as a workman and termination from service, the Labour Forum/NIRC has jurisdiction to first determine the status of the employee. If the employee falls within the

definition of workman, then labour laws and Standing Orders apply and reinstatement is a recognized remedy in cases of illegal termination.

10. As regards the issue of grievance notice, the record reflects that the petitioner had submitted a written communication dated 20.03.2018 immediately after her termination, which was admittedly received by the respondent-company. The law does not prescribe any specific format for a grievance notice; any written communication showing grievance against termination is sufficient compliance of Section 33 of the Industrial Relations Act, 2012. The Supreme Court in **2024 SCMR 71** clarified this principle and emphasized the correct legal test: Designation alone does *not* determine workman status. What matters is the nature and substance of the duties actually performed, not merely the title of the post. The supreme Court expressly held that where there is a dispute between managerial and non-managerial status, the burden is on the claimant to prove that he/she was performing work of a “manual or clerical” nature the characteristics of a workman *not* managerial or supervisory functions.

11. Labour laws are welfare legislation and are to be interpreted liberally in favour of the employee, and procedural technicalities should not defeat substantive rights. Therefore, the finding of the learned NIRC that no proper grievance notice was served is based on a hyper-technical interpretation of law and is not sustainable.

12. It is also an admitted position that the petitioner was terminated without show cause notice, charge sheet, inquiry or opportunity of hearing. Even in cases of master and servant, termination cannot be upheld where it is malafide, stigmatic, or in violation of natural justice, particularly where the employee has rendered long continuous service after receiving promotion as such her contractual service ended therefore the purported contractual clause ought not to have been invoked which was erroneous decision on the part of respondent company. The petitioner had served the respondent company for about 15 years, and such long service created a legitimate expectation of fair treatment and due process before termination.

13. Furthermore, the superior courts have repeatedly held that technical employees performing skilled and technical work, even if highly qualified, may still fall within the definition of workman if they do not exercise managerial or supervisory control. The burden to prove that an employee is not a workman lies on the employer once the employee asserts and produces evidence regarding nature of duties.

14. In the present case, the respondent-company, primarily relied on designation, salary and allowances but failed to produce any documentary

evidence showing that the petitioner exercised managerial powers such as disciplinary authority, hiring/firing authority, financial powers or administrative control. Accordingly, it can be safely concluded that the petitioner had made out a case for interference by this Court in its constitutional jurisdiction, as the impugned orders are without lawful authority and of no legal effect.

15. In view of the above submissions, it is held that the Respondent has wrongly relied upon the designation, salary, and benefits of the Petitioner, whereas settled law mandates that the actual nature of duties is the decisive factor. The material on record clearly establishes that the Petitioner was performing technical, clerical, and operational functions without any managerial or administrative authority, thus falling within the definition of “workman” under the Industrial Relations Act, 2012. The Respondent has failed to produce any evidence demonstrating that the Petitioner exercised powers such as hiring, firing, disciplinary control, policy-making, or financial authority. Accordingly, the burden of proof stands duly discharged by the Petitioner. Arguments relating to high salary, allowances, or non-membership of a union are legally irrelevant and misconceived. The reliance on the principle of Master and Servant is misplaced, as the same is inapplicable where an employee qualifies as a workman and is protected under labour laws. The case law cited by the Respondent is distinguishable on facts and does not apply to the present case. Furthermore, the findings of the NIRC suffer from misreading and non-reading of evidence, particularly regarding the actual nature of duties and absence of managerial powers, and are therefore liable to be set aside in constitutional jurisdiction. The Respondent’s stance regarding non-payment of end-of-service benefits is also untenable, as such benefits are a legal obligation and cannot be withheld on procedural pretexts. Therefore, it is held that the Petitioner is a “workman” within the meaning of law. The termination is illegal and violative of due process and natural justice. The principle of Master and Servant does not apply. The Petitioner is entitled to reinstatement with full back benefits. Hence, the instant petition merits acceptance, consequently, the impugned orders passed by the learned Single Member and the Full Bench of NIRC appear to suffer from misreading and non-reading of evidence, non-application of mind, and failure to consider material questions of law, particularly the determining test of nature of duties and supervisory control. Therefore, the impugned orders cannot be sustained in the eye of law and are hereby set aside and consequences shall follow.

16. The petition along with pending application(s) stands disposed of in the above terms.

JUDGE

JUDGE