

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petitions Nos.D-4973 of 2014,

**PRESENT:**

**Mr. Justice Muhammad Ali Mazhar**

**Mr. Justice Arshad Hussain Khan**

***Maersk Pakistan Limited Versus Pakistan & Others***

PETITIONER: Through Mr. Hayder Ali Khan,  
Advocate for the Petitioners.

RESPONDENT NO1: Through Mr. Shaikh Liaquat Hussain,  
Standing Counsel.

RESPONDENTS NO.3 and 12: Through Mr. M.A.K. Azmati,  
Advocate .

Date of Hg: 04.10.2016 and 05.10.2016

**JUDGMENT**

**ARSHAD HUSSAIN KHAN,J.** The petitioner through the instant petition has challenged the legality of the order dated 05.09.2014 passed by the single member bench National Industrial Relations Commission [NIRC] Karachi, with the following prayers:

- a) *Declare that the impugned Order dated 05.09.2014 is without lawful authority and is of no legal effect.*
- b) *Suspend the operation of the impugned Order dated 05.09.2014.*
- c) *Grant costs;*
- d) *Grant such other relief as this Honourable Court may deem appropriate in the facts and circumstances of this case."*

2. The brief facts leading to the filing of instant petition are that the petitioner (employer) is the shipping agent for its principal's shipping line business. The respondents No. 3 to 12 (employees/workers) along with other employees of the petitioner on 01.06.2012 filed a proceeding under Section 54 (e) of the Industrial Relations Act, 2012 against the petitioner on the ground of unfair labour practice. The NIRC though initially on 01.06.2012 granted an interim order in favour of the said employees (respondent No. 3 to 12 and other) yet later on 20.12.2012 after hearing the parties dismissed

the stay application filed in the said proceedings. During the pendency of the case, after dismissal of the stay application the petitioner terminated the services of some of its employees. The said dismissed employees challenged the termination through fresh application in the pending proceeding before NIRC, upon which the NIRC vide its orders dated 31.12.2012 and 07.01.2013 suspended the termination of the said employees. The petitioner challenged the said orders before this court in C.P. No.174 of 2013. In the said petitions the vires of Industrial Act was also challenged. A Full Bench of this court vide its order dated 07.02.2013, suspended the impugned orders dated 31.12.2012 and 07.01.2013. Thereafter, on 11.04.2014 the petitioner terminated the services of the respondents No.3 to 12 upon which the respondents filed application for suspension of the termination before the NIRC in the pending proceeding. The NIRC, after hearing of the parties, vide its order dated 05.09.2014 allowed the applications of respondents No. 3 to 12 and the operation of the impugned termination letters were suspended till disposal of the main case. The said order has been challenged in the instant petition.

3. Upon notice of the present petition, respondents No.3 to 12 filed their objections and reply comments to the petition wherein while taking the preliminary legal objections regarding maintainability of the petition on the ground that;(i) order impugned is an interlocutory order can not be challenged in the writ jurisdiction, (ii) the remedy against the said order is appeal before the Full Bench of NIRC, which has not been availed hence without availing mandatory remedy of appeal the petition is not maintainable and (iii) no question of vires of Industrial Relations Act 2012 is involved, has denied the allegations leveled in this petition. It is averred that the present petition has been filed with malafide intentions to deprive the workers from the employment. It is also averred that 24 workers having apprehension of their termination from the employment of the present petitioner filed a case collectively before the NIRC wherein initially an ad interim order was granted, however, later on, said order was vacated upon dismissal of the stay application. The workers did not file any appeal

against the said order as in the said order it was observed that balance of convenience was not in favour of the workers and they will not suffer any irreparable loss and injury if the stay application is dismissed as they are already in employment of the present petitioner. But, thereafter, the present petitioner, with malafide intentions terminated some of its workers, however, upon separate applications the operation of the termination letters was suspended by NIRC with the observation that the terminated workers will be treated on duty as they were before passing of termination letter till the disposal of the main case. The present petitioner challenged the said order before this court in C.P No. D-174 of 2013, wherein on 07.02.2013 this court suspended the impugned orders in the said petition subject to the strict compliance of the undertaking given by the counsel for the petitioner in the NIRC that the employees have been taken on duty in compliance with the orders passed by the bench of commission, however, they have been directed not to report for duty physically and their entire salary will be paid to them treating them on duty. It is further averred that the present petitioner with malafide intentions terminated the remaining set of workers (respondent No. 3 to 12 in the present petition) on 11.04.2014 upon which the respondents filed application for suspension of the termination before the NIRC in the pending proceeding. Whereafter, hearing of the parties the NIRC vide its order dated 05.09.2014 allowed the applications of respondents No. 3 to 12 and operation of the impugned termination letters were suspended till disposal of the main case. The said order is impugned in the present proceedings.

4. Learned counsel for the petitioner during the course his argument, has contended that the services of respondents No. 3 to 12 were terminated by the petitioner on 11.04.2014 owing to the fact that the principal of the petitioner had terminated the agreement in respect of equipment maintenance & repair work done by the petitioner. Therefore, the workers employed for maintenance & repair of the equipment had become redundant to the requirement of the petitioner. The said fact may be substantiated from the fact that the respondents No. 3 to 12, were being paid without having any

work and performance of physical duty since December 2012. Therefore, any malafide on the part of the petitioner for issuing the termination letter cannot be attributed towards the petitioner. It is also contended that the petition is maintainable as the order challenged in the petition though is an interlocutory order yet the same is without jurisdiction as through the said order the single member bench of NIRC has granted status quo ante which is not permissible under the law and as such committed illegality, hence, this court has jurisdiction to entertain the petition of the nature. It is also contended that in the present petition pure question of law pertaining to improper exercise of jurisdiction is involved which can be answered by this court under Article 199 of the Constitution. It is urged that the Industrial Relation Act 2012 and National Industrial Relations Commission (Procedure & Functions) Regulations, 1973, divest the NIRC of the power to reinstate an employee whose services has already been terminated other than as final relief. The NIRC can only pass a protective order when there is an apprehension that an act of unfair labour practice is likely to be committed. It is also urged that suspension of the termination letters through the impugned order amounts to reinstatement of the respondents No. 3 to 12. The learned counsel also argued that Superior Courts of Pakistan have repeatedly held that the power to direct reinstatement is not incidental or ancillary but consequential to the power to find an employer guilty under the Industrial Relation laws. Whereas in the present case the petitioner has not been found guilty of unfair labour practice yet, and as such order impugned is completely without jurisdiction. It also argued that pursuant to Regulation 32 of National Industrial Relations Commission (Procedure & Functions) Regulations, 1973, the Commission does not have the power to reinstate an employee once the unfair labour practice has already been committed. Further argued that the scheme of Regulation 32 has two parts; Regulation 32 (1) deals with cases where the unfair labour practice is already committed, And Regulation 32(2) deals with cases where unfair labour practice is likely take place in the future. The commission is empowered under Regulation 32 (2) to pass preventive/protective orders to avoid occurrence of an unfair

labour practice. However, the Commission is not vested with the power when an unfair practice has already been taken place. It is also argued that this court in its constitutional jurisdiction is vested with the power to undo any action, which is a result of an arbitrary exercise of authority, and/or passed without jurisdiction. The learned counsel in support of the stance in the case has relied upon the following case law:

**1997 SCMR 1508:** *Islamic Republic of Pakistan through Secretary Establishment Division v. Muhammad Zaman Khan and others*

In this case the Hon'ble Supreme Court held that the order of High Court suspending termination orders after respondents had already handed over charge of their offices several months back, was not warranted by law and, therefore, to do complete justice, Supreme Court would not allow technical objection (of non-interfering in interim orders) to deny relief to which petitioners were otherwise entitled. Further held that the object of passing interlocutory order or status quo was to maintain situation obtaining on that date when party concerned had approached Court and not to create new situation. The Court could not grant interlocutory relief of the nature, which would amount to allowing main case without trial/hearing of same. The Respondent having handed over charge of their offices pursuant to notification of termination of services, High Court could not have created new situation by suspending termination orders. The High Court, thus, could not have re-inducted respondents into service before disposal of their Constitutional petition. Consequently, the Impugned interlocutory orders were set aside being not sustainable in law.

**1984 PLC1342:** *Allied Bank of Pakistan Ltd. And 3 others v. Chairman National Industrial Relations Commission and 4 others.*

In this case the employees averred in their complaint before National Industrial Relations Commission that employer was guilty of an unfair labour practice already committed. The Commission suspended termination order. This court held that order of commission was not warranted either under Regn. 32(2) or S. 22A(8)(g), Industrial Relations Ordinance, 1969 as such order amounted to ordering of re-instatement through an interlocutory order which relief could have been granted by commission under Regn. 32 after recording conviction for an unfair labour practice after trial of complaint. Consequently, the Order of National Industrial Relations Commission was declared as without lawful authority and of no legal effect.

**1986 PLC 985:** *National Bank of Pakistan v. Muhammad Senior Member, N.I.R.C and another.*

In this case, the complaint against transfer and application under Regln. 32 were directed against same order of transfer in respect of same person manifested two inconsistent positions taken by employee. This court held that since the order of transfer was complete and final and there was no question of any threat or intended transfer, therefore, order of Industrial Relations Commission holding order of transfer in abeyance, was

declared to have been passed without lawful authority and of no legal effect.

**1990 PLC599:**

Khuda Bux Baluch v. *M. Atiqullah*

In this case it is held that power of reinstatement as embodied in Regulation 32, was not independent or ancillary or incidental to process of adjudication but was dependent on finding the person standing trial to be guilty under S.53, Industrial Relations Ordinance 1969. Such power of reinstatement could only be exercised in case of awarding punishment for unfair labour practices and not in case of acquittal of charges.

**Un-reported Judgment**

**C.P. No.D-3097 of 2010:**

National Bank of Pakistan v. *National Industrial Relations Commission.*

In this case, this court while setting aside the order passed by the learned single member of NIRC, held that where the impugned order is passed in absence of jurisdiction the writ petition challenging the said order would not be dismissed on the ground of maintainability merely because the alternate remedy was available to the petitioner.

5. On the other hand, the learned counsel for the respondents while defending the impugned orders have resisted the above petitions. It is contended by the learned counsel for the respondents No.3 to 12, that the petition is not maintainable as the order impugned in the instant proceedings is an interlocutory order and cannot be challenged in the writ jurisdiction. Furthermore, the remedy against the said order is appeal before the Full Bench of NIRC, which admittedly has not been availed, hence without availing mandatory remedy of appeal the petition is not maintainable. It is also contended that the order impugned can not be termed as the order passed without jurisdiction and further there is no illegality as alleged in the impugned order as the single member bench of NIRC maintained the position of the case till disposal of the case, hence the order does not warrant interference by this court in its constitutional jurisdiction. It is further contended that the learned single member bench is empowered to pass any order to prevent the occurrence or continuance of unfair labour practice of the employers from conducting their affairs and prejudicial to the proceedings in a case which is already pending before him. Since, the petitioner (employer) issued the termination letters to its workers during the pendency of the case having been filed by the said

workers against the petitioner in respect of unfair labour practice on the part of petitioner for apprehended threats of their dismissal from the service, therefore, the learned member NIRC rightly passed the order impugned in the present proceedings. It is also contended that the plea of the redundancy mentioned in the letter of termination is an afterthought and with malafide intentions to fabricate a ground to discriminate and terminate the unionized workers. It is also contended that from the act of the employers, the apprehension of the workers (Respondents no 3 to 12) of unfair labour practice on the part of the petitioner has become true when the petitioner employer terminated the services of the workers during the pendency of the proceedings. The learned counsel in support of the case has relied upon following cases:

**1987 C L C 393:** *Noor Muhammad v. Civil Aviation Authority and another.*

In this case the Defendant Authority was notified about pendency of an application seeking injunction against it and called upon to show cause why stay order should not be issued. Defendant forcibly dispossessed the plaintiff from shop in question. The possession of the shop was ordered to be restored to plaintiff. It is held, an injunction in mandatory form could be issued to restore status quo as on date of institution of suit

**PLD 1988 Karachi 401:** *Civil Aviation Authority v Noor Muhammad.*

In this case it is held that court could undo any act on part of defendant which he might have taken mala fide after service of notice of injunction application, if it was satisfied that dictates of justice so demanded the court in a fit case could pass an order of status quo ante. It is also held that defendant not to take any action after service of notice of stay application with intention to render same infructuous as it could create complications for him.

**2013 S C M R 1253:** *Fauji Fertilizer Company Ltd., through Factory Manager v. National Industrial Relations Commission through Chairman and others.*

In this case the Hon'ble Supreme Court discussed that whether status of employees supplied by contractor, would be that of employee of company. It was held that the employees of the contractor are involved in running the affairs of the company such as filling and loading of urea bag as well as cleaning of machines and floors, therefore, for all intents and purposes, they are employees of the company through the contractor.

**1993 P L C 581:** *PIASI UNION through Secretary General, P.I.A. vs. REGISTRAR, INDUSTRYWISE TRADE UNIONS and 4 others.*

In this case it is held that petitioner trade union having failed to avail remedy of appeal which was available to it under law, was not entitled to invoke Constitutional jurisdiction of High Court.

**2005 P L C 105:**            *PAKISTAN STEEL CORPORATION LIMITED  
through Incharge Law Department, Karachi v.  
SHAMSHAD AHMAD QURESHI.*

The fact of the case is that on filing petition against unfair labour practice of establishment under S.22 A(8)(g) of Industrial Relations Ordinance, 1969 along with an application under Regl. 32(2) of National Industrial Relations Commission (Procedure & Functions) Regulations, 1973, by employee praying for a direction to the effect that Establishment be restrained from passing any adverse order. The Single Member of National Industrial Relations Commission, ordered for maintenance of status quo. During pendency of proceedings, despite status quo order, employee having not been allowed to enter the premises, he filed application against said attitude of Establishment. The Single Member accepting such petition under S.22 A(8)(g) of Industrial Relations Ordinance, 1969 allowed employee to resume his duty with full back-benefits since date of status quo as employee was not allowed to resume duty, the plea of Establishment that status quo order was received in office after passing of relieving order/transfer order of employee, did not get support from evidence brought on record on the other hand the employee successfully brought on record that alleged transfer order was not in his knowledge when status quo order was obtained by him. The transfer order was rightly set aside and employee was rightly granted back benefits for the period he was not allowed to enter the premises of Establishment. It was held that in absence of any illegality, judgment passed by Single Member could not be interfered with.

6. We have heard learned counsel for the parties and with their assistance also perused the material available on record and the case law cited at the bar. It was agreed upon by the learned counsel for the parties that the present constitutional petition may be disposed of finally at the stage of Katcha Peshi.

7. Without going through the factual aspect or controversy, the fact of the matter transpires from the record is that in May 2012 the twenty-five (25) employees/workers (including the Respondents No.3 to 12 in the present petition) filed a case bearing No. 4A(147)/2012-K under Section 54(e)(g) of Industrial Relations Act 2012 read with NIRC (P & F) Regulations 1973 against the present petitioner-employer, before the National, Industrial, Relations Commission Bench at Karachi, with the following prayers:

*“It is therefore, prayed that this Hon’ble Commission may be pleased to allow the Petition and to declare the acts and steps of the Respondents as acts of Unfair Labour Practice and to restrain the Respondents from termination, dismissing, demoting, transferring or harassing or charging the title of the establishment and pressurizing in the employment or taking any adverse action against the petitioners. And*



*any other further relief this Hon'ble Commission may deem fit and proper in the circumstances of the case."*

8. The employees/workers along with the said petition had also filed application under Regulation 32(2) (c) of NIRC (P&F) Regulations, 1973, for interim prohibitory order. The said application was disposed of by the Commission on 20.12.2012, relevant portion whereof is reproduced as under:

*"For the aforesaid reasons I am of the considered opinion that the balance of convenience is not in favour of the petitioners and they will not suffer any irreparable loss and injury if the stay application is dismissed as they are already in employment of the respondents. Accordingly the application under Regulation 32(2)(c) of NIRC (P&F) Regulations, 1973, is dismissed and the interim stay order dated 01.06.2012 stands recalled. Put off to 07.01.2013 for filing affidavits-in-evidence by the petitioners."*

9. Thereafter, on 28.12.2012 the Petitioner-employer, out of 25 terminated the services of the 12 (twelve) employees, contents of the said termination letter is reproduced as under:

*"Our principal in Denmark has terminated the Agreement in respect of the work being done by our company in the EMR Department. Therefore the workers employed in the said Department have become redundant to the requirement of the company. You being one of the said workers employed in the said department. Till further orders issued to you in this respect you are being sent on special leave with full pay. You therefore need not report for duty. Your salary will be credited in your bank account.  
We shall revert to you further in the matter shortly."*

10. The said termination letters were challenged by the workers in the pending case No.4A(147)/2012-K through application under Section 151 CPC, upon which the learned single member of the Commission vide its order dated 31.12.2012 and 01.01.2013 suspended the operation of the termination letters dated 28.12.2012. For the sake of ready reference the order is reproduced as under:

*Order  
Dated: 31.12.2012*

*Learned counsel appearing on behalf of the petitioners has filed application for antedating the case along with application under Section 151 of CPC supported by affidavit for suspending the operation of termination letters. He has contended that after the order dated 2012.2012 passed by this Bench of Commission dismissing the stay application under Regulation 32(2) (c) of NIRC(P&F) Regulations, 1973 beside clear observation that the matter will be decided after adducing evidence of the parties, the respondents have terminated the services of the 8 petitioners namely Syed Mohammad Arif, petitioner No.1, Anil Shahzad, Petitioner No.6, M.Yousuf, Petitioner No.7, Sardar, Petitioner No.10, Shahid, Petitioner No.16, Adnan Ali, petitioner No.18, M.Imran,*

*Petitioner No.19 and Abdul Aleem, petitioner No.23. He has further contended that the termination of the petitioners is violation of contention /pleading of the respondents and an attempt to effect the petition as infructuous, which is entirely prejudicial, therefore, it will be just, fair and proper to suspend the operation of termination letters and keep the petitioners in on duty as usual till disposal of the main petition.*

*Contention raised carries weight. Let petition be ante dated from 07.01.2013 for today's hearing. Issue notice to the respondents for filing objection/reply, if any. Put off 07.01.2013, the date already fixed. Meanwhile operation of impugned termination letter dated 28.12.2012 issued to above mentioned to 8 petitioners, is suspended and the petitioners are treated on duty as they were before passing of termination letters till disposal of main case."*

*"Order*

*Dated: 07.01.2013*

*On 04.01.2013 when the under signed was on leave, learned counsel for the petitioner had filed applications under Section 151, CPC on behalf of Muhammad Arshad, Kamran, Farrukh Jamil and Amjad Pervez petitioners No.2, 3,12 and 14 respectively for suspending the operation of the termination letters issued to above mentioned 4 petitioners. Notice to other side along with its copy. Learned counsel for the respondents has filed reply to applications under section 151, CPC and submits that all the terminated petitioners have been taken on duty in compliance to the orders passed by this Bench of Commission. However they have been directed no to report physically and their entire salary will be paid to them treating them on duty. Put off to 28.01.2013 for filing objections, if any by the respondents against applications filed by the 4 petitioners. Meanwhile the operation of impugned termination letters dated 28.12.2012 issued to above mentioned 4 petitioners, is suspended and the petitioners are treated on duty as they were before passing of termination letters till disposal of the main case."*

11. The present petitioner-employer challenged the said orders of the Commission before this court in CP.No.D-174 of 2013, wherein on 07.02.2013 the Full Bench of this court passed the orders, relevant portion whereof is reproduced as under:

*"Since number of the petitions wherein the vires of the Industrial Relation Act, 2012 and the Industrial Relation (Revival and Amendment) Act, 2010 (Act XV of 2010) are under challenge and petitions have already been partly heard, office is directed to tag this petition with the aforesaid bench of the petitions. In the meanwhile, the impugned orders are suspended subject to strict compliance of undertaking given by the counsel for the petitioner in NIRC that the employees have been taken on duty in compliance with the orders passed by the Bench of Commission, however, they have been directed not to report for duty physically and their entire salary will be paid to them treating them on duty. It is further ordered that NIRC may proceed further but no final orders shall be passed."*

12. The present petitioner, thereafter, on 11.04.2014 issued termination letters to the respondents No. 3 to 12, the remaining employees/workers in pending petition before the Commission. The relevant portion of the said letter is reproduced as under:

“This is with reference to the letter dated December 28, 2012 which was sent to you informing that our principal in Denmark had terminated the Agreement in respect of equipment maintenance & repair work done by our company. Therefore, the workers employed for maintenance & repair of the equipment became redundant to the requirement of the company. You were one of the said workers were sent on special leave i.e. leave with full pay without reporting to the work till further notice. During the same period, your salary was directly credited to your account.

To date for a period of 15 months including March 2014, you have been paid full salary and benefits which sums to PKR..... which is the actual cost to the company. We were expecting for the contract reinstatement of the equipment maintenance & repair or initiation of similar contracts (if any) which could enable us to continue your services with the company, but regret that nothing materialized.

Therefore, we regret to inform you that we do not have any position for repair Associate, and are terminating your services effective April 11, 2014.

Your settlement details are enclosed.  
.....

Kindly contact Ms. Mehreen Ahmed Ansari, latest by April 16, 2014 to return the following company assets in your possession and to receive your final settlement by signing enclosed settlement sheets.”

**Underlining to add emphasis**

13. The said letters were challenged before the Commission in pending proceedings bearing Case No.4A(147)/2012-K through applications under Section 151 CPC filed on 21.04.2014. The said applications were subsequently, disposed of by the learned single member of NIRC on 05.09.2014, which order is impugned in the present petition.

14. The case of the petitioner precisely is that through the Impugned order the single member bench of NIRC by suspending the operation of the termination letters has granted status quo ante which in our tentative view amounts to reinstatement of the respondent No. 3 to 12. The power to direct reinstatement is not incidental or ancillary but consequential to the power to find an employer guilty under the Industrial Relation laws which in the present case is missing. Thus, this court has jurisdiction to entertain the petition and set aside the order of the nature.

15. It is now a well established that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the frame work of constitution and

if there is any error on the point of law committed by the courts below or the tribunal or their decision takes no notice of pertinent provision of laws or is based on misreading or non-reading of evidence then obviously this court may exercise constitutional jurisdiction subject to the non-availability of any equally efficacious and alternate remedy under the law. This extra ordinary jurisdiction may be invoked to encounter and collide with extraordinary situation. This constitutional jurisdiction is limited to the exercise of powers in the aid of curing or making correction and rectification in the order of the courts or tribunals below passed in violation of any provision of law or as a result of exceeding their authority and jurisdiction or due to exercising jurisdiction not vesting in them. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. So far as the exercise of the discretionary powers in upsetting the order passed by the court below is concerned, this court has to comprehend what gross illegality or irregularity and or violation of law committed by the courts below which caused miscarriage of justice. Reliance is placed on the case Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others (2015 PLC 259)

16. The questions which require determination in the present case are whether the law expressly empowers the Commission to pass such an interim order in proceedings of unfair labour practice. If not, whether such a power necessarily follows, or is implicit in the powers expressly conferred, being incidental or ancillary to it or consequential to the power to find an employer guilty under the Industrial Relation laws.

In this regard it would be advantageous to reproduce Regulation 32 of National Industrial Relation Commissions (Procedure & Functions) Regulations, 1973,

“32. *Manner of dealing with unfair labour practices.* (1)Where an

unfair labour practice has been committed, and the case falls under section 25 A, section 34 or section 53, as the case may be, the Commission may deal with the case under that section:

Provided that the Commission while awarding punishment under section 53, may also direct the re-instatement of a worker and allow consequential benefits to him.

(2) Where a case of unfair labour practice is likely to occur, the Commission may take the following measures, namely:

- (a) it may summon all or any of the persons connected with the case which is likely to occur, hereafter in this Chapter referred to as the connected persons, hear them and hold such inquiry as it deems fit;
  - (b) ascertain the factors which are likely to give rise to unfair labour practice;
  - (c) advise, direct or prohibit all or any of the connected persons to do or refrain from doing any act or to conduct themselves or their affairs in a manner calculated to avoid occurrence of unfair labour practice;
  - (d) reprimand or warn all or any of the connected persons that if they conduct themselves in an improper way it would be deemed to be in furtherance of the Commission of an offence punishable under section 53; and
  - (e) initiate security proceedings in order to prevent the occurrence of an unfair labour practice.
- (3) Where a person whom the Commission has reprimanded or warned under sub regulation (2) commits an unfair labour practice, the Commission may consider, for the purpose of awarding punishment under section 53, the reprimand or warning as a circumstance aggravating the offence."

17. The position of law, by virtue of judicial precedents laid down by the Hon'ble Supreme Court as well as this court, is now well settled that in Regulation 32, there is clear distinction between cases where alleged unfair labour practice has already been committed and where unfair labour practice is apprehended to be committed; in the cases where unfair labour practice has already been committed power of NIRC is governed by sub-regulation (1) of Regulation 32 and in the cases where unfair labour practice is apprehended to be committed power of NIRC is regulated by sub-regulation (2).

18. It appears that while passing the impugned order, the Learned Member NIRC failed to advert the grounds taken in the termination letter and other issues relating to the jurisdiction to pass ante status quo have also not dealt with in a proper manner. Since we are not deciding the appeal but deciding a constitutional petition in which the propriety of order in issue is involved therefore we feel this is a fit case for removal.

19. The upshot of the above discussion, we dispose of the present constitutional petition in the following manner:

- i) Impugned order dated 05.09.2014 passed by the learned member bench of NIRC in the case bearing No. 4A(147)/2012-K is set aside.
- ii) Since the case before the Commission is still pending adjudication wherein the evidence has to be recorded, therefore, the commission is directed to rehear the application of the respondents No.3 to 12, afresh after providing ample opportunity to the parties, within one month. Till such time the petitioner shall not take any adverse action in relation to the services of respondent Nos. 3 to 12

Accordingly, this constitutional petition is disposed of along with listed application.

JUDGE

Karachi;  
Dated:

JUDGE