

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No. D-785 of 2016

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Petitioner Pakistan Telecom Mobile Ltd. (U-Fone)
Through Mr. Kashif Hanif Advocate.

Respondent No.1 Muhammad Idress Hadi through
Mr. Ghulam Nauman Shaikh, Advocate.

Respondents No.2 & 3 through Shaikh Liaquat Hussain, Assistant
Attorney General.

Date of hearing 11.09.2018.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - Through this Constitutional Petition, the Petitioner-Company has impugned Order dated 08th October 2015 passed by the Learned Full Bench of National Industrial Relations Commission Islamabad (NIRC) in Appeal No. 12(06)/15-K, filed by the Petitioner-Company, which was dismissed and Order dated 26th December, 2014 passed by the learned Single Bench of National Industrial Relation Commission in Petition No.4B (54)/2012-K, was maintained.

2. Brief facts of the case are that on 22nd March, 2010 the Respondent No.1 was appointed in Grade A as Customer Care Executive. Petitioner-Company has averred that on 04.06.2011 Respondent No.1 assaulted upon a customer within the premises of Customer Care Centre. Thereafter, a Show- Cause notice was

served upon the Respondent No.1. Petitioner-Company added that the Respondent No.1 admitted his guilt and before passing the final order on the aforesaid allegations, he voluntarily tendered his resignation vide application dated 7.12.2011, which was accepted and communicated to the Petitioner on telephone. The case of the Respondent No.1 is that he did not tender his resignation voluntarily but he was compelled to tender his resignation. Respondent No.1 being aggrieved by and dissatisfied with the purported acceptance of resignation by the Petitioner-Company, filed Grievance Petition before the learned Single Bench of NIRC, which was examined and after recording the evidence of the parties passed the impugned order dated 26th December, 2014, whereby Grievance petition filed by the Respondent No.1 was allowed and Petitioner-Company was directed to reinstate the Respondent No.1 with back-benefits. Petitioner-Company being aggrieved by and dissatisfied with the aforesaid decision, assailed the same before the Full Bench of NIRC which too was dismissed vide Order dated 08th October 2015. Petitioner-Company being aggrieved by and dissatisfied with both the decisions has filed the instant petition on 9.2.2016.

3. Mr. Kashif Hanif, learned counsel for the Petitioner-Company has contended that learned Single Member and the Full Bench of NIRC passed the impugned Judgments without considering the facts and circumstances available on record, hence the same are illegal unlawful and bad in law; that both the learned courts below have failed to appreciate that the Respondent No.1 had tendered his resignation voluntarily which was accepted and communicated to him and thereafter the Petitioner-Company had asked the

Respondent No.1 to collect his back benefits through cheque, therefore the impugned Judgments are illegal, unlawful and against the law and are liable to be set aside; that both the learned courts below have also committed grave error in misreading and non-reading the evidences available on record in favor of the Petitioner-Company; that the nature of duty of the Respondent No.1 describes the overwhelming supervisory and administrative nature of different types of duties performed by him, which clearly oust him from the definition of 'workman' under Section 2(xxx) of IRO, 2002 as well as under Section 2(i) of Industrial & Commercial Employment (Standing Orders) Ordinance 1968; that both the learned courts below have erred in law by holding that the Respondent No.1 falls under the definition of workman under section 2(i) of the Industrial & Commercial Employment (Standing Orders) Ordinance 1968, whereas it has been established that the Respondent No.1 was performing supervisory and administrative nature of duties and was not covered by the definition of 'workman'; that the Impugned Orders are sketchy and contrary to law as laid down by this Court and as well as the Hon'ble Supreme Court of Pakistan, hence the same are liable to be set aside; that both the learned courts below have failed to appreciate that the Respondent No.1 assaulted upon a customer within the premises of Customer Care Centre, thereafter, he was served with a Show-Cause notice and before passing of the final order by the Petitioner-Company, the Respondent No.1 voluntarily tendered his resignation on 7.12.2011, which was accepted by the Petitioner-Company; that the learned courts below erred while arriving at the conclusion that the resignation tendered by the Respondent No.1

on 07.12.2011 was obtained under duress, coercion and pressure; that no specific acts of duress had been pleaded in the Petition or were proved through evidence, therefore the same factum cannot be accepted under the law; that the learned courts below have failed to take into consideration that the Respondent No.1 had not specifically pleaded that he was not employed elsewhere; that both the learned courts below have also failed to frame the point of determination with respect to the back benefits and have given finding thereof. He lastly prayed for allowing the instant petition.

4. Mr. Ghulam Nauman Shaikh, learned counsel for Respondent No.1 has supported the Judgments passed by the learned Single Member as well as Full Bench of NIRC and contended that concurrent findings of both the court below are reasonable and in accordance with law.; that the learned Single Member of NIRC after recording of evidence passed a just and proper judgment holding the resignation of the Respondent No.1 as illegal and reinstated him in service with back benefits vide impugned Judgment dated 26th December, 2014 and the same was maintained by the Full Bench of NIRC vide order dated 08th October 2015; that the Petitioner-Company did not reinstate him on duty. He lastly contended that the instant Petition is not maintainable under the law and is liable to be dismissed.

5. We have heard the learned counsel for the parties at length and have perused the entire material available on record.

6. The primordial question in the subject Petition is:-

i) Whether the resignation tendered by the Respondent No.1 on 7.12.2011 was voluntarily, accepted by the petitioner-company and communicated to the Respondent No.1?

7. Let us take the legal issue of resignation tendered by the Respondent No.1 from his service first.

8. It has been agitated by the learned Counsel for the Petitioner-Company that resignation was voluntarily and the same was accepted and communicated to the Respondent No.1 and can be termed as a proper acceptance of the resignation under the law, therefore no relief could be granted to the Respondent No.1 by both the learned courts below.

9. To appreciate the controversy in proper perspective, we deem it appropriate to have a glance on the evidence brought on record by the parties. The impugned Judgments explicitly show that the matter was decided on merits, the relevant portion of the judgment of the learned Sindh Bench of the NIRC, is as under:-

“In view of above discussed facts, circumstances and evidence on point that the respondents obtained resignation from the applicant on 07.12.2011 i.e. the date of his personal hearing before compliance committee under duress, coercion, pressure and threat of his termination from service which has never been accepted by the respondents and communicated the same to the applicant through any mode prescribed by respondents, supported by case law cited by counsel for applicant I have come to the conclusion that the respondents had obtained resignation from the applicant under duress and coercion and threat of his termination. Therefore the resignation dated 07.12.2011 obtained from the applicant is declared as null, void ab-initio and of no legal effect as such the respondents are directed to treat the applicant in employment without any interruption of the applicant is entitled to his all back benefits so far not paid.”

10. The learned full Bench of the NIRC maintained the findings of learned Sindh Bench of the NIRC with the following observations:-

“After carefully scanning the evidence of both the parties. From the perusal of the show cause notice dated 15.06.2011 it is evidence that the name of the customer has not been mentioned nor there is any

written complaint by the said customer nor the customer appeared before the compliance committee. In his reply the respondent admitted the quarrel and according to the respondent it was the customer who abused him and manhandled him. The respondents had served in Karachi from January 2008 to May 2010 and there was no complaint against him. As far as the question of worker/ workman is concerned, R W Tanvir Ahmed appeared on behalf of the appellant admitted that M. Idrees (respondent) while posted at Quetta performed his duty manually. He has also admitted that there was nobody under his administrative control and respondent was not competent to grant leave to any of his colleagues and could not issue any show cause notice or take any disciplinary action. As the witness of the appellant company has himself admitted that respondent was performing his duty manually therefore, the respondent falls under the definition of worker/ workman. It has consistently been held by the superior courts that mere designation or quantum of the emoluments for which a person is employed by an Industrial Establishment, Commercial-Establishment will not per se determine the status of a person employed in such establishment to be that of 'workman' rather the sole criteria for determination of the status of the employee will be the nature of duties or function for which he is mainly employed and the nature of duties as having been performed or being performed by an employee. As far as the resignation obtained through pressure and coercion is concerned. According to the evidence on record the respondent tendered his resignation on 07.12.2011, which admittedly has not yet been accepted in writing, which means that the same is still pending. Informing about acceptance of resignation on cell phone is against the law. The respondent served a grievance notice on 23.02.2012 without further delay, which proved that the resignation was obtained by the appellant company through threat and coercion, that if the respondent does not tender his resignation, his services will be terminated, which would ruin his future, which proves that the resignation was obtained by the appellant company through threat and coercion.

The learned Single Judge Member after considering the evidence rightly accepted the grievance petition of the respondent. There is no illegality in the impugned order.

In view of the aforesaid reasons, this appeal is dismissed."

11. The affidavit in evidence/deposition of the Respondent No.1 in the grievance application clearly depicts the following factual position:-

“ It is incorrect to suggest that on 07.12.2012 I appeared before the management and submitted my voluntary resignation. It is incorrect to suggest that I have submitted my resignation with my own free will. During personal hearing I was hold by one of management official that if I am terminated or dismissed it will give bad effect to my future career rather I should submit my resignation. Though I had requested to allow me sometime to collect some copies of the documents but I was compelled to submit my resignation. Whatever the text of resignation was written, it was dictated by the management official.

It is incorrect to suggest that my resignation was accepted and I was asked to collect my back benefits but I myself have not gone for collecting the cheque.”

12. The deposition of Mr. Tanveer Ahmed attorney of Petitioner-Company reveals as under:-

“It is incorrect to suggest that on 07.12.2011 when the applicant had appeared before the Authority he was coerced, pressurized and compelled to submit resignation otherwise they will terminate his services and the applicant was not afforded any opportunity of regular inquiry. The acceptance of resignation was communicated to the applicant. The applicant was informed on cell phone about acceptance of his resignation. Perhaps in the month of January the applicant had appeared for collection of dues. I have no knowledge about acceptance or non-acceptance of resignation in writing. The applicant had appeared before the company in the month of January and had taken his all dues and he had taken lunch at our office. It is incorrect to suggest that neither the applicant has been paid his dues nor he has been issued nay clearance certificate. It is incorrect to suggest that in my affidavit in evidence I have falsely written that applicant had voluntarily submitted his resignation”

13. From perusal of the pleadings of the parties and evidence recorded by the learned Single Bench of NIRC, Karachi it is crystal clear that all these proceedings and actions were taken against Respondent No1 by the Petitioner-Company on the basis of tendering of his resignation on 07.12.2011 and not on the basis of evidence recorded in the year 2013, hence no conclusive findings

on the guilt of the Respondent No1 has been established in the evidence. In this regard, we are of the considered view that it was incumbent upon Petitioner-Company to prove the allegations against Respondent No1 as per Qanun-e-Shahadat Order, 1984. It is a well settled proposition of law that every person has to establish its own case on merits and cannot rely upon the weakness of other side. Since, the Petitioner-Company has failed to do so and shift its burden of proof; therefore no inference can be drawn against the Respondent No.1 at this stage.

14. We are of the considered view that there were certain allegations against the Respondent No.1 but his services were not supposed to have been discontinued on the basis of his resignation, as per record, the same resignation was found to be not voluntarily as per evidence brought on record.

15. Reverting to the plea taken by the learned counsel for the Petitioner Company that Respondent No.1 is not a 'work man' under IRA, 2012 as well as under Ordinance 1968. This contention of the learned counsel is also not based on correct application of law for the simple reason that mere designation of an employee is not a conclusive proof to the effect that an employee does not fall within the ambit of 'work man' therefore this plea of the learned counsel for Petitioner Company is not accepted. Reference in this regard is made to the case of Engineer Majeed Ahmed Memon Vs. Liaquat University of Medical and Health Sciences, Jamshoro and others (2014 SCMR 1263).

16. After perusal of the aforementioned factual as well as legal position of the case, we concur with the view taken by the learned Single Member as well as Full Bench of NIRC.

17. In the light of foregoing, we are of the considered view that the learned courts below have dilated upon the issues in an elaborative manner and have given their findings in affirmative by appreciating the material available on record and thereafter passed exhaustive Judgments, therefore no ground existed for re-evaluation of the evidence, thus, we maintain the Judgments passed by the learned Single and the Full bench of NIRC. We are also guided by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Dilshad Khan Lodhi Vs. Allied Bank of Pakistan and other (2008 SCMR 1530) and General Manager National Radio Telecommunication Corporation Haripur District Abotabad Vs. Muhammad Aslam and others (1992 SCMR 2169)

18. In the light of the above facts and circumstances of the case, we are of the considered view that this Court in its Constitutional jurisdiction cannot interfere in the concurrent findings of facts arrived by the two competent fora, as we do not find any illegality, infirmity or material irregularity in the Judgments passed by the learned Single and the Full bench of NIRC Warranting interference by this Court, hence, the instant Petition being meritless is dismissed along with the listed application (s).

19. Above are the reasons of our short order dated 11.9.2018, whereby we have dismissed the instant petition.

JUDGE
JUDGE