

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petition No. D –5853 of 2020

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

National Engineering Services Pakistan (Pvt.) Ltd. and 03 others

Versus

Federation of Pakistan and 04 others

Date of hearing & order : 20.11.2020

Mr. Jamal Amir Qureshi, advocate for the petitioners.

ORDER

ADNAN-UL-KARIM MEMON, J. Through this petition, the petitioner- National Engineering Services Pakistan (Pvt.) Limited is seeking to set aside the order dated 08.10.2020 passed by the learned Single Member Bench of National Industrial Relations Commission, Karachi, (NIRC) in Case No.4B(450)/2014-K whereby private respondent No.2 was directed to be reinstated in service as a regular employee.

2. The relevant facts of the case are that respondent No.2, who is the employee of petitioner No.1, filed Grievance Petition before the learned Labour Court No.VI, Hyderabad, against his termination order dated 05.06.2013. The aforesaid Grievance Petition was transferred from the learned Sindh Labour Court No.VI, Hyderabad, to the NIRC Bench at Karachi vide order dated 23.08.2014, in compliance of the judgment passed by this Court on 04.08.2014 in C.P. No.D-3195/2010. The learned Single Member Bench of NIRC after hearing respondent No.2 passed ex-parte order by directing the petitioner-company to reinstate him in service as a regular employee vide impugned order dated 08.10.2020. Per learned counsel as and when they came into the knowledge of the aforesaid ex-parte order, filed the statutory appeal under Section 58(1) of the Industrial Relations Act, 2012, before the Full Bench of NIRC, which is pending adjudication.

3. It is contended, *inter-alia*, on behalf of the petitioners that the aforesaid decision passed by the learned Single Member Bench of NIRC is behind the back of petitioner-company, thus nullity in the eyes of law. Per learned counsel the matter is still subjudice before the Full Bench of NIRC, which is not available

at Karachi to adjudicate the matter of petitioners hence immediate indulgence of this Court is required otherwise the case of the petitioners filed before NIRC against respondent No.2 would become infructuous rendering the petitioners remediless for the time being. It is urged that the matter between the parties was transferred from Labour Court, Hyderabad to NIRC Karachi without their knowledge, thus they could not defend the case before the learned Single Bench of NIRC; that the petitioner-company has been condemned unheard. He prayed for allowing the instant petition.

4. We have heard learned counsel for the petitioner on the subject issue. In our tentative view, this Court can intervene in the matter in the light of observations of the Hon'ble Supreme Court rendered in the cases of Malik Nazar Hussain V/S National Bank of Pakistan, 2004 SCMR 28, and an unreported order dated 17.07.2017 passed by the Hon'ble Supreme Court in C. P. No.153-K/2017 (Safdar Yousuf and others V/S Federation of Pakistan and others).

5. Without touching the merits of the case, we may observe that the learned Single Bench of NIRC vide order dated 08.10.2020 allowed the Grievance Application of respondent No.2 and passed ex-parte order, which issue is still subjudice before the learned Full Bench of NIRC, which is presently not available at Karachi to adjudicate the matter of petitioners. This being the position of the case, we deem it appropriate to direct respondent No.5 to decide the case of the petitioners within sixty (60) days from the date of receipt of this order in accordance with the law. Meanwhile, operation of the impugned order dated 08.10.2020 shall remain suspended.

6. The instant petition stands disposed of in the above terms along with the pending application(s) with no order as to costs.

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