

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No. 3911 of 2019

Order with signature of Judge

Fresh Case

1. For order on CMA. No.6872/21 (urgent)
2. For orders on CMA No.17362/19 (exp)
3. For orders on CMA No.17363/19 (stay)
4. For hearing of main case.

Dated : 08.03.2021

Mr. Sanaullah Noor Ghouri, advocate for the petitioner.

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1. Urgency granted.
2. Granted subject to all just exceptions.
- 3-4. Through this petition, the Petitioner-Pakistan Steel Mills (PSM) is asking for setting aside of the judgment dated 22.03.2013 passed by the learned Sindh Labour Court No.IV Karachi ('SLC'); whereby Grievance Petition No.87/2008 of the private respondent in the petition was accepted; and, he was reinstated in service with half back benefits of wages, however, the reasoning of the learned SLC was concurred by the learned Full Bench of National Industrial Relations Commission ('NIRC') vide order dated 29.04.2019 in Appeal with certain modification in back benefits only; and, allowed full-back benefits to the private respondent and dismissed the appeal of the petitioner-PSM.

It is inter alia contended by Mr. Sanaullah Noor Ghouri, learned counsel for the petitioner-PSM, that both the learned Courts below failed to appreciate the dicta laid down by the Hon'ble Supreme Court in the case of Messrs Sui Southern Gas Company Ltd. and others v. Federation of Pakistan and others, 2018 SCMR 802, and argued that both the decisions dated 22.3.2013 and 29.04.2019 are a nullity in the eyes of law. Per learned counsel, the Grievance Application filed by the private respondent before the learned SLC was improper and appeal filed by him at the belated stage and was hopelessly time bared which aspect has been ignored by the learned trial Court in the light of section 12 of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968. Per learned counsel, the private respondent was not a regular employee and so also had not been serving against the permanent post in petitioner-PSM as such he had no vested right to file a grievance petition before SLC for redressal of his grievance. Per learned counsel, the casual labour could

not approach the learned SLC being daily wages and relief claimed by him and allowed by the learned Courts below did not cover under the law. Learned counsel emphasized that both the orders passed by the learned SLC as well as learned NIRC were in Coram non-judice; and, made in violation of the case of *M/S Sui Southern Gas Company* as discussed supra wherein the Hon'ble Supreme Court held that the Industrial Relations Ordinance, 2011, and the Industrial Relations Act, 2012, came into existence in the year 2011 and 2012, however, the Industrial Relations Act 2008 (IRA) was repealed on 30.04.2010, as such the IRA 2012 is deemed to have been in field retrospectively with effect from 01.05.2010, hence both the decisions dated 22.3.2013 and 29.4.2019 passed by them are liable to be set aside; that retrospective effect has been given in the decisions which are against the law on the premise that learned SLC had no jurisdiction at the relevant point in time to adjudicate the matter between the parties because of the dicta laid down by the Hon'ble Supreme Court in the aforesaid case. He lastly submitted that both the orders passed by the learned Courts below are without jurisdiction and prayed for setting aside the said orders.

To appreciate whether the decision dated 22.3.2013 passed by the learned SLC and concurred by the learned Full Bench of NIRC vide order 29.4.2019 were without jurisdiction, in the light of dicta laid down by the Hon'ble Supreme Court of Pakistan in the case of *Messrs Sui Southern Gas Company Ltd. and others v. Federation of Pakistan and others*, 2018 SCMR 802, let at the first instance notice be issued to the respondents as well as to learned DAG for a date to be fixed by the office in the second week of this month.

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