

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**C. P No. D – 225 of 2017**

**(M/s Fauji Fertilizer Company Ltd. Vs. Syed Jawed Ali Shah & others)**

**Date of hearing: 09-11-2021**

**Date of order: 09-11-2021**

Mr. Muhammad Ali Khan, Advocate for the Petitioner  
Mr. Jamshed Ahmed Faiz, Advocate for Respondents 1 to 77  
Mr. Muhammad Hamzo Buriro, Deputy Attorney General

**ORDER**

**Muhammad Junaid Ghaffar, J.** – Through this Petition, the Petitioner has impugned Order dated 20-01-2017 passed by Full Bench of NIRC, and Order dated 22-09-2016 passed by Member NIRC, Sukkur Bench.

2. At the very outset, Respondents Counsel has objected to the very maintainability of this Petition on the ground that the impugned orders were ad-interim and interlocutory in nature, whereas, the matter now stands finally dismissed against the petitioner, therefore, this Petition has become infructuous.

3. While confronted Petitioner's Counsel submits that he has filed an application under Order 1 Rule 10 CPC and also under Order 6 Rule 17 CPC for amending the Petition, whereas, the final order passed by NIRC was impugned in various Petitions including C.P No. D- 521/2021 and other connected matters before the Principal Seat and vide order dated 15-03-2021 though the Petition stands dismissed as not pressed; but the Petitioner has been permitted to seek adjudication of instant petition; hence the objection is not maintainable. He has further argued that all along the Petitioner has been condemned unheard and without appreciating the material on record; therefore, Petitioner is left with no other option but to pursue this Petition.

4. We have heard both the learned counsel and perused the record.

5. It is not in dispute that insofar as the present Petition is concerned, same was filed against two interim and interlocutory orders dated 20.01.2017 and 22.9.2016 passed by Full Bench of NIRC and Member

NIRC, respectively. During pendency of this Petition, the Full Bench of NIRC, at Karachi has decided the Appeal against the Petitioner vide order dated 12-01-2021 and such final order was impugned by way of C.P No.D- 521/2021 and other connected Petitions before the Principal Seat, at Karachi, which stands dismissed as not pressed vide order dated 15-03-2021. The said order reads as under;

“The concurrent findings of two forums below, petitioner-company being an employer/ex-employer of the private respondents have challenged the findings of learned Sindh Bench / Full Bench of National Industrial Relation Commission, on the strength that there was no such observations as to reinstatement, as relied upon by the two forums below, and hence since there was no observation as to reinstatement there is no question of back benefits. Learned counsel also submits that without practically analyzing the evidence, which is yet to be ascertained through cogent evidence, summarily two forums below reached such conclusion which does not align with the evidence/material available on record. When confronted with the legal position of the case on the premise that lies between the parties have already been set at naught by the decision of the Hon’ble Supreme Court; and, the issue of back benefits has already been taken care of by the learned Single Bench of NIRC, concurred by the Full Bench of NIRC vide order dated 12-01-2021 had no satisfactory reply.

Because of the above legal position of the case, and after detailed deliberations on the subject matter, both learned counsels concluded that the Petition bearing C.P No.D- 225/2017, which is pending before learned Division Bench at Sukkur be heard, and till the decision, thereof the amount of back benefits, which was/is not calculated properly under the law may not be disbursed to the private respondent. Learned counsel for the petitioner further submits that the Grievance Petition filed by the beneficiaries through their attorneys was also not maintainable.

Be that as it may, through this petition, we are not probing the aforesaid question at this stage, as the C.P No.D-225/2017 is pending and yet to be decided. However, we make it clear that till the decision of the aforesaid petition respondent No.1 shall not attempt for encashment of bank guarantee deposited by the petitioner-company with the Nazir of this Court vide order dated 08-02-2021 and the same shall remain lying with the Nazir, till the final decision of C.P No.D- 225/2017.

In terms of the above undertaking, learned counsel for the petitioners does not press these petitions, which are accordingly dismissed as not pressed, leaving the petitioners to avail their remedy before a proper forum as provided under the law. This order shall apply mutatis mutandis in all connected petitions. The office is directed to place a copy of this order in all connected petitions. These petitions stand disposed in the above terms with no order as to costs.”

6. As to the argument of Petitioner's Counsel that while dismissing the Petitions, the learned Division Bench at Principal Seat has permitted the Petitioner to seek adjudication of this Petition on merits is concerned, the same is not only misconceived but appears to be an outcome of some false pleadings and statement before the learned Division Bench at the Principal Seat. It is a matter of record that this Petition was dismissed for non-prosecution on 22-10-2020 against which restoration application was though filed; but remained pending for prosecution on the part of the petitioner. It is only on **13-10-2021** that the Petition was restored by recalling the order dated 22.10.2020; however, it may be noted that when the order dated 15-03-2021 was obtained from learned Division Bench at the Principal Seat, such facts were never disclosed to the Court and instead it was argued that this Petition is still pending, whereas, the matter of fact is that no such petition was pending; rather it stood dismissed for non-prosecution; and only a restoration application was pending. This appears to be a conscious attempt on the part of the Petitioner and its Counsel not to disclose correct facts before the learned Division Bench at the Principal Seat. In fact, the bench was misled and was made to believe that instant petition is not only pending, but so also it involved the main issue, whereas, this is an incorrect statement. Rather, even if this petition had been pending and not dismissed in Non-prosecution, it had already become infructuous on 12-01-2021 when the final order had been passed by the Full Bench of NIRC. For the petitioner, the proper remedy was by way of impugning the final judgment of the full Bench of NIRC which had been done; but after failing to satisfy the learned Division Bench at the Principal Seat as to the merits of the case, an alternate argument was raised that the present Petition is pending before the Sukkur Bench, therefore, petitioner may be permitted to argue the Petition on merits. Such conduct on the part of the petitioner and its Counsel was unwarranted and if we may say, was an attempt, knowingly and intentionally, to mislead the Court and obtain favorable orders.

7. Para 1 of the aforesaid order dated 15.3.2021 clearly reflects that the learned Division Bench was not convinced with the arguments so raised on behalf of the Petitioner and when he was confronted, he took a plea that instant Petition is pending at Sukkur Bench, therefore, he may be allowed to agitate the controversy in this Petition. In our considered view, such fact was not properly disclosed as firstly this Petition was only in respect of some interim orders; secondly it stood dismissed when the

aforesaid order was obtained and lastly even otherwise by way of an application under Order 6 Rule 17 CPC, this Petition could not be entertained as according to the Petitioner's own case the jurisdiction vested in the Principal Seat as the final order was passed at Karachi. Considering all these facts and after hearing the Petitioner's Counsel, we had given him an option to withdraw this Petition to which he has not conceded, therefore, by way of a short order in the earlier part of the day this Petition was dismissed with costs of Rs.50,000.00 (Fifty thousand) to be deposited in the accounts of High Court Clinic, Sukkur, and High Court Bar Library, Sukkur equally, and these are the reasons thereof.

**Judge**

**Judge**

ARBROHI