

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

**Constitutional Petition No. D –6167 of 2020**

Al-Ghazi Tractors Limited

*Versus*

Government of Sindh and 03 others

Date of hearing &  
Order : 11.03.2021

Mr. Zeeshan Khan, advocate for petitioner.

Mr. Altaf Hussain Khoso, advocate for respondent No.2.

Sheikh Muhammad Ramzan Sethi assisted by Mr. Mahmood Ahmed, advocate for respondent No.3.

Syed Fazlur Rehman, advocate for respondent No.4.

Mr. Ali Safdar Depar, AAG.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** - Through the captioned petition, the petitioner-Al-Ghazi Tractors Limited has called in question the order dated 13.10.2020 issued by learned Chairperson, Sindh Human Rights Commission, Government of Sindh (SHCR), whereby private respondents were directed to be reinstated to their original cadres and compensated financially for the time they stayed away from their jobs due to unlawful acts of the petitioner.

2. The case of the petitioner-company is that they hired the services of private respondents 3 and 4 in the management cadre in the year 2005 and 2015; that during the tenure of their service the management of the petitioner-company decided to terminate their contractual service on certain allegations, however, upon their insistence they were allowed to resign from their respective posts vide their resignation letters dated 30.04.2020 (available at page 53 and 55). It is urged that subsequently to utter shock and dismay of the petitioner-company both the private respondents resorted litigation by filing case No.1952 and 1955 of 2020 before the learned SHRC; the learned Commission vide order dated 13.10.2020 directed the petitioner-company to reinstate their services to their original cadres with financial benefits in the meanwhile strict disciplinary action was directed to be taken against the officials of the petitioner-company. Learned counsel emphasized that respondent-Commission had no jurisdiction to entertain service issues of

private respondents on the premise that the Commission lacked the jurisdiction. He further argued that the Commission was/is not a Court of law to direct reinstatement of the private respondents; that the impugned order is misconceived, erroneous, and not maintainable under the law; and, once resignation of the private respondents was accepted and acted upon, they were precluded to approach the respondent-Commission for redressal of their alleged grievances.

3. The important question for our determination is whether the Sindh Human Rights Commission was/is empowered under Section 4 of the Sindh Protection of Human Rights Act, 2011, (Act, 2011) to entertain service-related issues and direct the reinstatement of the private respondents.

4. It is has been observed that the SHRC/respondent No.2 has passed an order, parallel to the rights and powers conferred upon the Labour Court/National Industrial Relations Commission (NIRC). Prima face, for the redressal of the grievances of the individual respondents, the Labour Court / NIRC is functioning and operating yet in terms of the order such recommendations were made.

5. Mr. Altaf Hussain Khoso, learned counsel for SHRC/respondent No.2, has referred to the preliminary objections filed on behalf of respondent No.2 and argued that the inquiry in question was on workplace harassment and dismissal, therefore, the Commission had jurisdiction to take cognizance against the impugned action taken against the private respondents by the petitioner-company. Learned counsel relied upon Rule 21 of the Sindh Human Rights Commission, Rules of Business 2013, and stressed that only recommendations were given in the matter as the Commission is only a recommending body and has no execution power under the Act, 2011. Learned counsel then referred to section 2(iv) of the Act, 2011 and emphasized that the Commission was/is fully empowered to take cognizance of the violation of Human Rights in any form of whatsoever nature that is enforceable under the law. Learned counsel further referred to section 4(i) (a) of the Act, 2011 and argued that the Commission is fully empowered to inquire, to take cognizance suo motu and/or on a petition presented to it by a victim or any person on his behalf, into the complaint of a violation of human rights and abatement thereof. Learned counsel averred that the impugned order which is elaborative has dealt with every aspect of the case, more particularly COVID-19 Relief Ordinance, 2020 and Sindh Terms of

Employment (Standing Orders) Act, 2015. He lastly prayed for dismissal of the instant petition.

6. Sheikh Muhammad Ramzan Sethi, learned counsel for respondent No.3 has referred to the objections filed on behalf of respondent No.3 on the premise that the instant petition is not maintainable as per section 13 of the Sindh Protection of Human Rights Act, 2011, which barred petitioner-company to file an appeal before any forum against the recommendation of Commission; that petitioner has come to this Court with unclean hands as the contents of the instant petition are devoid of any substance; that the petitioner has no ground to lawfully apply for a petition as the order dated 13.10.2020 passed by the Sindh Human Rights Commission are within the parameters of law and jurisdiction conferred upon the commission, fulfilling all requirements of law. He further argued that Section 4(i) (ii) of Sindh Protection of Human Rights Act, 2011 empowers the learned Chairperson to take cognizance of the matters enumerated under the aforesaid section; and, since the grievance of the private respondents fell within the ambit of the Act, 2011, therefore, the certain direction was issued accordingly. Per learned counsel, the same direction did not envisage as a parallel jurisdiction of the learned Courts constituted under the Labor law. Learned counsel further referred to Section 13 of the Act, 2011 and argued that this Court has no jurisdiction to entertain the proceedings arising out of the Act, 2011. He lastly prayed for dismissal of the present petition.

7. Syed Fazlur Rehman, learned counsel representing respondent No.4, has adopted the arguments of learned counsel for respondent No.3.

8. Learned AAG, at the very outset, contended that the learned chairperson of Sindh Human Rights Commission does not exercise judicial \ quasi-judicial powers when hearing the representations/grievance petition of individuals. He submitted that the office of the Sindh Human Rights Commission was created under the statute, with the objects as discussed supra and the SHRC is a statutory check upon the government/ companies/employers/individuals and that is all. He contended that it cannot be termed as a judicial function because there is no power of enforcement of its decision. He submitted that a judicial function has to be exercised by authorities other than those that are executive. He contended that when quasi-judicial authorities are created, the officers who preside over such authorities can only be appointed with the consultation of the Honourable Chief Justice of the High Court of a Province. Learned AAG

continued his arguments by identifying the functions and powers of the chairperson of Sindh Human Rights Commission under the Act, 2011. He lastly submitted that the petitioners have misconstrued the findings of the learned chairperson of Sindh Human Rights Commission.

9. We have heard learned counsel for the parties on the subject issue and perused the material available on record as well as case-law cited at the bar.

10. To appreciate the contentions of the parties, it would be necessary for us to examine the scheme of the Act, 2011. Section 4 provides powers and functions of the Commission, whereas Section 13 provides a bar of jurisdiction of other Courts. Prima facie, the Commission is empowered to take cognizance of violation of human rights or abatement thereof and negligence in the prevention of such violation by a public servant as provided in proviso (ii) to (v). Primarily, the private respondents approached the SHRC in June 2020 regarding resignations under duress by the petitioner-company, which was, later on, inquired and separate notices were issued to the petitioner-company, however, the Commission could not be satisfied from the reply submitted by the petitioner-company and a detailed order dated 13.10.2020 was passed with the following findings:

“13. In view of the above, the Commission US/4(i)(ii) Sindh Protection of Human Rights Act, 2011, hereby recommends that:

Both the petitioner's resignation was obtained illegally under duress and there is violation of laws as per para 12 herein above, shall be reinstated to their original cadres and compensated financially for the time they stayed away from their jobs due to lawful act of the respondent.

Strict disciplinary action may be taken against the officers responsible for duress and harassment against the employees of AGTL.”

11. Prima facie, it appears from the recommendations made by the learned Chairperson SHRC dated 13.10.2020, a service-related matter has been dealt with which ought to have been adjudicated by the learned Bench of NIRC under the Industrial Relations Act, 2012. Generally speaking, the statutes confer powers, functions, and duties on different statutory authorities. These are distinct concepts of administrative law, which have been developed by the Courts over a long period and have different jurisprudential connotations and consequences; and, in this scenario of the matter, the question would be

whether the powers conferred under Section 4 of the Act, 2011 are administrative powers and/or quasi-judicial powers to be exercised by the Chairperson of the Sindh Human Rights Commission. On the aforesaid proposition, we seek guidance from the decision of the Honorable Supreme Court in the case of Dr. ZAHID JAVED Versus Dr. TAHIR RIAZ CHAUDHARY and others (PLD 2016 Supreme Court 637). The Honorable Supreme Court interpreted the word Quasi, which is defined as if, as though, as it were, in a manner, in a certain sense or degree, seeming, seemingly, analogous to and it may mean resemblance. The quasi-judicial power is a duty conferred by words or by implication on an officer to look into facts and to act on them in the exercise of discretion, and it lies in the judgment and discretion of an officer other than a judicial officer. A quasi-judicial power is one imposed on an officer or an authority involving the exercise of discretion, judicial in its nature, in connection with, and as incidental to, the administration of matters assigned or entrusted to such officer or authority. A quasi-judicial act is usually not one of a judicial tribunal, but of a public authority or officer, which is presumably the product or result of the investigation, consideration, and human judgment, based on evidentiary facts of some sort in a matter within the discretionary power of such authority or officer. A quasi-judicial power is not necessarily judicial, but one in the discharge of which there is an element of judgment and discretion; more specifically, a power conferred or imposed on an officer or an authority involving the exercise of discretion, and as incidental to the administration of matters assigned or entrusted to such officer or authority.

12. On the statutory plane as discussed supra, the office of the Chairperson SHRC, essentially serves as a statutory check on the Government to curb instances of as discussed supra. Prima facie, the very functions of the Chairperson SHRC are not judicial, since the Chairperson SHRC simply makes recommendations as provided under Section 4(ii) of the Act 2011, which is very different from the orders passed by the judicial officer under the hierarchy of Courts of law. Besides, there is no power of enforcement of the Chairperson SHRC's recommendations.

13. Having discussed the aforesaid proposition, we have noticed that there is no denial of the fact that petitioner-company is a Trans-Provincial Establishment and the present matter needs to be looked into by the learned National Industrial Commission (NIRC) for the settlement of such industrial dispute; and, on the question of jurisdiction as to whether the grievance

petition of the private respondents, in that case, be taken cognizance by the Labour Court of the Province or by one single forum like NIRC, which has been established and constituted under the provision of section 53 of the Act X [the IRA 2012]. The phrase, "trans-provincial" has been defined in clause (xxxiv) of section 2 of Act X of 2012, which means, "any establishment, group of establishments, the industry having its branches in more than one Provinces." To elaborate further on the subject, we have seen that under the provision of section 53, the NIRC has been constituted by the Federal Government but its functions and jurisdiction have been explained and elaborated in the provision of section 54 of the IRA, 2012. According to clause (e), the NIRC has the powers and jurisdiction to deal with the cases of unfair labor practices specified in sections 31 and 32 of the Act on the part of employers, workers, trade unions, either of them or persons acting on behalf of any of them, whether committed individually or collectively, in the manner laid down under section 33 of subsection (9) of section 33 or in such other way as may be prescribed and to take, in such manner as may be prescribed by regulations under section 66, measures calculated to prevent an employer or workman from committing an unfair labor practice. In addition to the above powers and jurisdiction, the NIRC has been conferred upon additional powers under the provision of section 57 of the Act (ibid), which includes the powers to punish for contempt of court and may award simple imprisonment which may extend to six months or with fine, which may extend to Rs.50,000 or with both. In the same provision, vide clause (2)(b), the Commission has been empowered to withdraw from a Labor Court of a Province any applications, proceedings or appeals relating to unfair labor practice, which fall within its jurisdiction; and (c) grant such relief as it may deem fit including an interim injunction. A proviso has been added to the above provision, to the following effect:-- "Provided that no Court, including Labor Court, shall take any action or entertain any application or proceedings in respect of a case of unfair labor practice", which is being dealt with by the learned Commission.

14. After combined reading of the scheme of labor laws, two parallel forums have been created. In our view, NIRC has jurisdiction to deal with industrial disputes and unfair labor practice and other allied matters either attributable to the employer or the workers/workmen, It is not the nature of the dispute, particularly, unfair labor practice, which confers jurisdiction on one or the other forum but it is the status of the employer or the group of employers, which would determine the jurisdiction of the Provincial Labour

Court and that of the NIRC. To be more clear on the point we have no hesitation to hold that once it is established through any means that the employer or group of employers has an establishment, group of establishments, industry, having its branches in more than one Provinces, then the jurisdiction of the NIRC would be exclusive and of overriding and overlaying effects over the Provincial Labour Court for resolving industrial dispute including unfair labor practice, etc. related to the employer, having its establishment or branches or industrial units in more than one Province and re-course has to be made by the aggrieved party to the NIRC and not to the Sindh Human Rights Commission under the Act, 2011. Therefore, it is held that the provision of Act X of 2012 (the IRA 2012) has an overriding effect on the Act, 2011 and all Provincial Labour Laws.

15. In the light of the above facts and circumstances of the case, this petition to the extent of the impugned order dated 13.10.2020 passed by the Chairperson, Sindh Human Rights Commission, Government of Sindh, whereby it extended jurisdiction to Labour Court/NIRC is allowed in the following terms:

- i. Application filed in Sindh Human Rights Commission is adopted to be filed before the Single Bench of NIRC and no question of limitation would arise.
- ii. Insofar as Single Bench of NIRC may proceed with the application which may be filed under the law within a reasonable time.

16. This petition stands disposed of in the above terms along with the pending applications.

17. These are the reasons for our short order dated 11.3.2021 whereby we have allowed the instant petition.

Dated: 11.3.2021

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