## ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI CP No.D-2328 of 2021

## Date Order with signature of Judge

- 1. For order on Misc. N.9989/2021 (Urgent)
- 2. For order on office objection no.18 & 27.
- 3. For order on Misc. No.9990/2021 (Exemption)
- 4. For hearing of main case.

## <u>14.04.2021</u>

Mr. Nadir Khan Burdi, advocate for the petitioner.

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1. Urgency granted.

2. Deferred for the time being.

3. Granted subject to all just exceptions.

4. Petitioner is Ex-Driver of Pakistan Steel. He was served with the allegations about transporting / stealing (05 numbers of pig iron blocks from Pig Costing Yard through Toyota Pickup). As per record, the aforesaid allegations were construed as misconduct on his part, compelling the Respondent-department to hold an inquiry into the matter. Consequently, an Enquiry Officer was appointed to scrutinize the conduct of the Petitioner to the aforesaid charges. The inquiry officer found him guilty of the allegations as discussed supra; thereafter he was served with a Show Cause Notice dated 1.10.2009 for inflicting major penalty, per petitioner he denied the charges by refuting the findings of the inquiry officer. As per record, he was also granted a personal hearing by the Competent Authority to explain his conduct, but he kept on saying the same story and pleaded innocence. Finally, he was dismissed from service on 02.10.2009. The petitioner being aggrieved by and dissatisfied with the aforesaid major penalty assailed the same by filing Service Appeal No.1 (K)(CS)/2010 before the learned Federal Service Tribunal (FST), Islamabad (Karachi Bench). The learned FST vide order dated 24.06.2010 did not find fit to interfere with the major penalty imposed upon him by the Respondent-Pakistan Steel and disposed of his appeal as abated because of the judgment dated 13.04.2010 passed by the Hon'ble Supreme Court in Civil petition No.1863/2009 and others Executive Council Allama Iqbal Open University Islamabad through its chairman and others v. Dr. M Tufai Hashmi and others and directed him to approach the proper forum. Petitioner approached the learned Labour Court No.6 by filing Grievance Petition, which was then transferred to the learned Single Bench of NIRC and the same was dismissed vide order dated 26.1.2021 on the premise that the NIRC has no jurisdiction to entertain the matters of employees who were Sacked under Removal from Service (Special Powers) Ordinance, 2000. It is inter alia contended by Mr. Nadir Khan Burdi, learned Counsel for the Petitioner that

Petitioner was a regular employee of Pakistan Steel Mills and was erroneously dismissed from service on the purported allegations, though his colleagues were reinstated in service and he was the only person left out; that the allegations were denied by the Petitioner with certain defense pleas, thus, the purported action taken by the respondent-department was illegal, however, the same could not be adjudicated due to changing of the legal forum available to the petitioner as discussed supra, for which the Petitioner could not be held responsible.

We queried from the learned Counsel about the inordinate delay to approach this Court against the impugned action on the part of respondent-Pakistan Steel. We also confronted him with the inquiry report dated 25.8.2009, whereby he was finally found guilty of the charges. However, he emphasized the learned FST abated his appeal on the grounds as discussed supra and he was nonsuited by the learned Labour Court as well as by the learned NIRC. We again confronted him with the legal position that as to why he did not assail the order dated 26.1.2021 before the Full Bench of NIRC; he replied that since the petitioner was dismissed from service under Special Powers Ordinance, 2000 as such the learned benches of NIRC were/are not competent to adjudicate the matter against the statutory dispensation i.e. RSO, 2000. He prayed for notice to the respondents.

To appreciate the aforesaid legal position of the case, let at the first instance the notice be issued to the respondents as well as to learned DAG for a date to be fixed by the office in the  $3^{rd}$  week of this month, with direction to file comments on or before the next date of hearing.

JUDGE

JUDGE

Nadir/P.A