

IN THE HIGH COURT OF SINDH AT KARACHI

CP No.D-7615 of 2019

PRESENT:

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Arshad Hussain Khan

Petitioner: Trading Corporation of Pakistan (Pvt.) Limited,
Through Mr. Fayyaz Ali Metlo Advocate

Respondents: Ghulam Anwar Soomro & others
Through Syed Shoa-un-Nabi, Advocate for
Respondent No.1

Date of Hearing: 17.11.2020

JUDGMENT

Arshad Hussain Khan-J: The petitioner through captioned petition has challenged the order dated 21.11.2017, passed by learned Member NIRC in case No.4B(425)/2015-K, and the order dated 28.08.2019, passed by learned Full Bench, NIRC, in Appeal No. 12A(83)/2017-K, with the following prayers:-

- a) Set-aside the order dated 28.08.2019 (Annex B/2) passed by respondent No.4 in Appeal No.12A (83)/2017-K re Trading Corporation of Pakistan (Private) Limited *versus* Ghulam Anwar Soomro and another being illegal, arbitrary and unlawful;
- b) Set-aside the order dated 21.11.2017 (Annex B/1) passed by respondent No.3 in case No.4B(425)/2015-K re Ghulam Anwar son of Ubaidullah Soomro *versus* M/s. Trading Corporation of Pakistan (Private) Limited and 2 others being illegal, arbitrary and unlawful;
- c) Permanently restrain the respondent No.1 to 4 from enforcing and/or implementing the order dated 21.11.2017 passed by respondent No.3 in case No. 4B(425)/2015-K re Ghulam Anwar son of Ubaidullah Soomro *versus* M/s. Trading Corporation of Pakistan (Private) Limited and 2 others and/or from taking any coercive action against the petitioner;
- d) Grant such other relief as may be deemed necessary in the circumstances; and
- e) Award costs.

2. Briefly the facts of the case as narrated in the memo of petition are that the petitioner-Trading Corporation of Pakistan (Private) Limited [TCPL] is a private limited company, engaged in the trading business, inter alia, deals in agricultural exports and consumer goods and import of essential commodities such as urea, sugar, wheat etc. Respondent No.1, a former employee of the petitioner, who was dismissed from the service on the charge of misconduct who challenged the said dismissal order before learned Single Member NIRC [respondent No.3] in case No. 4B(425)/2015-K re Ghulam Anwar son of Ubaidullah Soomro Vs. M/s. Trading Corporation of Pakistan (Private) Limited and 2 others. Learned Member after trial of the case passed the order dated 21.11.2017, whereby allowing the petition set aside the dismissal order and reinstated respondent No.1 in the service with all back benefits. The TCPL preferred the appeal against the said order before the learned Full Bench NIRC [respondent No.4] in Appeal No.12A (83)/2017-K re Trading Corporation of Pakistan (Private) Limited *versus* Ghulam Anwar Soomro. The said appeal was dismissed by learned Full Bench, vide its order dated 28.08.2019. The petitioner impugned both the above orders in this constitutional petition.

3. Record also reflects that pursuant to the orders of this Court dated 30.1.2020 in the instant petition, the petitioner for the purposes of interim relief deposited an amount of Rs.62,78,957.56 with the Nazir of this Court towards outstanding dues, salaries, and back benefits of respondent No.1.

4. Upon notice of this case, respondent No.1 put his appearance and contested the petition.

5. During the course of arguments, it is, *inter alia*, contended by learned counsel for the petitioner that the orders impugned in instant proceedings are the result of misreading and non-reading of the evidence besides being based on incorrect application of law as well as judicial precedents laid down by this Court as well Honourable Supreme Court of Pakistan as such the same are untenable in law and liable to be set aside. It is contended that respondent No.1 was a Rice Analyzer in the petitioner's organization who had been verifying the

deposit slips for more than five years. He charged with allegation of verifying more than 180 forged/tempered payment slips in connivance with representative of agent namely M/s. Shalimar Impax. It is further contended that on the charge against respondent No.1, a regular inquiry was conducted wherein he was also afforded the opportunity of personal hearing. In the said inquiry respondent No.1 was found guilty of misconduct, consequently he was dismissed from the service. It is further contended that the said dismissal was set aside by respondent No.3, vide order dated 21.11.2017, which order was subsequently upheld by respondent No.4 vide order 28.08.2019. It is also contended that learned respondent Nos.3 and 4 while passing the impugned orders have failed to consider evidence available on the record more particularly statement of respondent No.1 wherein he admitted his negligence. It is also contended that respondents No.3 and 4 have also failed to appreciate the letter of agent-M/s. Shalimar Impax, which clearly reflects that respondent No.1 acted in connivance with each other in the embezzlement. It is argued that respondents No.3 and 4 have also failed to consider that misconduct is a very broad term used in wide sense of improper conduct, which includes any act prejudicial to good order of discipline. Further standing order 15(3) expressly provides that fraud or dishonestly damaging employer's property or habitual negligence or neglect of work are example of misconduct. It is also argued that respondents No.3 and 4, while granting back benefit to respondent No.1 in the impugned orders, have also failed to take into account that respondent No.1 neither pleaded back benefits nor in his evidence he asserted anything in this regard. Further argued that back benefits are not automatic, the worker must show that he was not gainfully employed during his terminated period. Lastly, argued that the petitioner does not have any other alternate and/or efficacious remedy but to file the present constitutional petition and unless the petition is allowed the petitioner shall suffer irreparable loss. Learned counsel in support of his stance in the case has relied on the case of Barkurdar v. Muhammad Razaq [PLD 1989 SC 749], Ahmad Khan v. Rasul Shah and others [PLD SC 311], Ghulam Mustafa Channa v. Muslim Commercial Bank Ltd. and others [2007 PLC 493], Sultan Hussain v. National Bank of Pakistan and 2 others [2003 PLC (C.S.) 1247], Shamim Haider Kazmi v. Presiding Officer, IVth Sindh Labour

Court Karachi and 4 others [2001 SCMR 1270], Muhammad Attique Warsi v. The Managing Director, Kakakhail Industries and others [1987 PLC 787], Muhammad Riaz v. Sindh Labour Appellate Tribunal, Karachi and 2 others [1993 PLC 301] and Administrator Zila Council, Sahiwal v. Arif Hussain and others [2011 SCMR 1082].

6. Learned counsel for respondent No.1 argued the matter on the strength of material already available on the record. During the course of his arguments, while supporting the impugned orders has contended that the orders impugned are based on evidence and the law and as such the same cannot be questioned in the writ jurisdiction of this Court. Learned counsel while denying allegations leveled in the petition has contended that respondent No.1 during his long service having unblemished record and he always performed his duties to the utmost dedication, honesty and satisfaction of his superiors. It is also contended that respondent No.1 has not committed any misconduct as alleged. It is argued that the petition is not maintainable against the concurrent findings of the forums below. Furthermore, the petitioner has failed to point out any illegality and/or irregularity in the concurrent finding of facts and law by the forums below [respondents No. 3 and 4], which could warrant interference by this Court in the constitutional jurisdiction, hence the petition is liable to be dismissed. Lastly, contended that the amounts in respect of respondent No.1's salaries, dues and others benefits so deposited by the petitioner with Nazir of this Court may be ordered to be released to respondent No.1.

7. We have heard learned counsel for the parties and with their assistance also perused the material available on the record as well as case law cited at the bar.

8. The fact of the matter transpires from the record is that on 24.07.2015 respondent No.1 was issued a Charge Sheet in respect of following charges:-

- “i. You as a Rice Analyzer had been verifying the forged Payment Receipts as “Original Seen” which led your superiors to believe that the payment receipt had been issued for the prescribed amount.

- ii. You also indicated the forged amount of fee on the top of each Inspection Certificate although the amount deposited into TCP Accounts was on the lesser side which establishes your malafide intention/involvement in the Scam.
- iii. You in connivance with the representative of the agent have caused financial loss to TCP by verifying the forged receipts.”

Mr. Amir Afzal, DGM Incharge (Legal Division) of TCPL, was appointed Inquiry Officer who after conducting the Inquiry submitted his report dated 21.08.2015. In the said Inquiry, respondent No.1 was found guilty of misconduct, resultantly vide Office Order dated 12.10.2015, he was dismissed from the service. Respondent No.1 against the said dismissal order, on 27.10.2015 sent a grievance notice under Section 33 of IRA-2012 to the petitioner’s chairman and others which was replied to by the petitioner, vide letter dated 18.11.2015 wherein the request to review/set aside the dismissal order was declined. Thereafter, respondent No.1 challenged the dismissal order before the National Industrial Relations Commission, Karachi Bench [respondent No.3 herein] in case No.4B(425)/2015-K. Learned respondent No.3, after full-fledged trial, vide its order dated 21.11.2017 [impugned herein] set-aside the dismissal order. Relevant portions of the said order for the sake of ready reference are reproduced as under:

“7.It is noted from the cross examination wherein Applicant stated that respondent Corporation suffered financial losses amounting to Rs.1992800/-but same was refunded to the company by M/s. Shalimar Impex. During cross examination of the Applicant Manager Legal Mr. Rashid Ahmed Shaikh was present and it was confirmed from him whereupon he stated that Proprietor Shalimar Impex has given statement vide date 03.07.2015 that:

“our staff has been found involved in depositing short funding with TCP on account of Brown rice Shipment fees, while this action of our staff has spoiled our company’s credibility in the market. We further confirm that none of the TCP staff was evolved in connivance for these activities with our staff member and it was his own doing.”

8. Above statement has also been confirmed by Manager TCP (Respondent Corporation) in his cross examination he stated that:

It is correct to suggest that Representative of Shalimar Impex had given in written that no any employee of TCP was involved in this fraud with him. It is correct to suggest that Applicant was not found guilty in the enquiry and the representative of M/s. Shalimar Impex was found guilty.

9. As statement given by the Respondent witness it is clear that charges leveled against Applicant were not correct. Moreover, letter submitted by Proprietor M/s. Shalimar Impex to Chairman TCP is available on file wherein it is also mentioned that M/s. Shalimar Impex undertakes to fulfill/deposit all short funds detected during audit by TCP. When involvement of the applicant in any embezzlement has not been proved and Applicant has not committed any misconduct, therefore, it is against the principle of natural justice, law of land and more importantly in the matter, where Respondent Corporation has suffered no loss at all the major penalty of dismissal was wrongly imposed upon Applicant.”

[Emphasis supplied]

9. The petitioner challenged the above order before National Industrial Relations Commission Islamabad Full Bench at Karachi [respondent No.4 herein] in Appeal No.12A (83)/2017-K. Learned respondent No.4 after hearing counsel for the parties, vide its order dated 28.08.2019 while upholding the decision of respondent No.3, dismissed the appeal of the petitioner. The petitioner having been aggrieved by the above said orders filed the present constitutional petition.

10. It may be noted that the obligation of the high court, under Article 199, is to act in support of law and to save the rights within the frame work of the Constitution and if there is any flaw regarding point of law committed by the courts below or the tribunal or their decision takes no notice of the provisions of laws or if it is based on misreading or non-reading of evidence then certainly this Court may exercise in the purview of the constitutional jurisdiction subject to non-availability of any equivalently efficacious and alternate remedy under the law. Reliance, in this regard can be placed on the case of Muslim Commercial Bank Ltd. Through Attorney Vs. Abdul Waheed Abro and 2 others (2015 PLC 259) authored by one of the members of this Bench [Muhammad Ali Mazhar, J.] in which the Court held as follows :-

“5.....This extra ordinary jurisdiction may be invoked to encounter and collide with extraordinary situation. This constitutional jurisdiction is limited to the exercise of powers in the aid of curing or making correction and rectification in the order of the courts or tribunals below passed in violation of any provision of law or as a result of exceeding their authority and jurisdiction or due to exercising jurisdiction not vesting in them. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. So far as the exercise of the discretionary powers in upsetting the concurrent findings recorded by the courts below is concerned, this court has to comprehend what gross illegality or irregularity and/or violation of law committed by the courts below which caused miscarriage of justice. It is also well settled exposition and tenet of law that this Court in its constitutional jurisdiction keep away from interfering the findings of facts recorded by the courts below concurrently after right and proper appraisal of evidence and cannot substitute and supplement its own findings”.

11. In the present case from the perusal of Inquiry Report dated 21.08.2015, it appears that out of ten clearing agents, only one Mr. Shahbaz, a representative of M/s. Shalimar Impex, was found committing fraud with the connivance of respondent No.1. There is nothing available on the record, which could show that any criminal action was taken by the petitioner against the said fraud. Moreover, the said report is completely silent about the letters, which were addressed by the Proprietor of M/s. Shalimar Impex, prior to the initiation of the inquiry proceedings, wherein he made categorical statement that his designated staff was involved in depositing short funds and none of the TCP staff was involved and/or connived for the said activities. Further he also undertook to deposit all short funds detected during audit by TCP. The absence of material fact in the Inquiry Report, on the basis of which respondent No.1 was dismissed from the service, rendering the report doubtful and consequential order of punishment appears to be illegal and void. Furthermore, in view of the abovementioned letter of M/s. Shalimar Impex, there appears no loss caused to the petitioner and as such no fraud/misconduct can be attributed towards respondent No.1. Insofar as the question of back benefit is concerned, respondent No.1 in his application before respondent No.3 in his prayer clause (a) has categorically sought reinstatement in the service with all back

benefits as well as consequential benefits, as such respondent No.1 was rightly awarded the relief of back benefits by respondent No.3.

12. The case law cited by learned counsel for the petitioner have been perused and considered but are found distinguishable from the facts of the present case and hence the same are not applicable.

13. In the backdrop of the above, we have examined the orders rendered by the two forums below as well as the statement of petitioner's representative, who was also part of the Inquiry proceedings and find that the impugned orders are based on proper appreciation of evidence and as such the same are legal and unexceptionable, do not suffer from any jurisdictional defect and thus, do not call for any interference by this Court in exercise of its constitutional jurisdiction. Accordingly, the petition is dismissed. The amount so deposited by the petitioner with Nazir of this Court towards respondents No.1's dues, salaries and other benefits, together with profits, if any, accrued thereon, may be released to respondent No.1 upon proper identification and verification.

J U D G E

J U D G E

Karachi:

Dated: