

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Zulfiqar Ahmad Khan

(1) C.P. No. D-4573 of 2018

M/s Pakistan State Oil Company Ltd.
Versus
Abdul Baseer & others

A N D

(2) C.P. No. D-4574 of 2018

M/s Pakistan State Oil Company Ltd.
Versus
Said Rasool & others

Date of Hearing: 11.11.2019

Petitioner: Through Mr. Jawed Asghar Advocate

Respondents No.1: Through Mr. Rafiullah Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- These two petitions are arising out of concurrent findings of two Courts below and are being disposed of through this common judgment as being based on same set of facts and law. The National Industrial Relations Commission Bench (NIRC) Karachi reinstated respondent No.1 in both the petitions with back benefits which orders were maintained by Full Bench of NIRC vide orders dated 23.03.2018.

2. Brief facts of the case are that the respondents No.1 were removed from service under RSO 2000 and after filing the representation to the petitioner company, which were rejected vide order dated 02.01.2003, respondents No.1 preferred appeals before Federal Service Tribunal at Karachi. The appeals were abated in view of judgment in the Muhammad Mubeen-us-Salam's case reported in 2006 SCMR 602. The respondents No.1 approached Labour Court No.5 by filing Grievance

Petitions bearing No.120 and 119 of 2006 respectively under section 46 of IRO 2002. During pendency of the said Grievance Petitions Hon'ble Supreme Court was pleased to decide another matter titled as Raja Riaz v. Chairman Pak. Space & Upper Atmosphere Research Commission reported in SBLR 2008 SC 40. On the strength of the observations, the respondents No.1 did not press the Grievance Petitions being premature and same were withdrawn on 09.08.2008.

3. The respondents No.1 then approached Service Tribunal for an appropriate judicial order in view of the decision in the case of Raja Riaz (Supra). The appeals were then, in view of judicial order of FST abated on 26.04.2010, copies of which were forwarded to respondents No.1 on 04.05.2010 in terms of Annexures M & Q respectively available at page 275 in both the petitions. The respondents No.1 again approached the Labour Court for redressal of their grievances by filing Grievance Applications on 24.08.2010 bearing Grievance Applications No.178 and 179 of 2010.

4. On the above facts, it is the case of petitioner that the subsequent grievance petitions of respondents No.1 were time barred; that since the respondents No.1 were removed under RSO, therefore, the NIRC had no jurisdiction and that the case of workmen in terms of Section 12(3) of Standing Order 1968 ought to have been decided by the Labour Court alone and lastly that it is the case of misreading and non-reading of evidence as far as merits of the case is concerned.

5. We have heard the learned counsel and perused the material available on record.

6. Insofar as point of limitation is concerned, the first Grievance Petitions after Mubin-us-Salam's case were filed as Grievance Petition No.119 and 120 of 2006 somewhere in August, 2006 and that the same were withdrawn on account of a decision rendered in the case of Raja

Riaz *ibid*. It was maintained by Hon'ble Supreme Court that a separate order is required to be passed in every case by Services Tribunal after providing opportunity to the parties keeping in view the observations made by the Court in the judgment relied upon. This observation was made on the count that the Chairman of the Tribunal passed a general order directing the Registrar to inform the appellants in different appeals pending before it that the appeals have been abated. Hence, a specific order was obtained by respondents No.1 which orders were communicated to them on 04.05.2010 forwarding an order of 26.04.2010 which date is not denied/disputed by the petitioner.

7. Petitioner's counsel has not objected to filing of Grievance Petitions within 90 days of the order of FST communicated to them (respondents No.1) on 04.05.2010 but submitted that since the earlier petitions were withdrawn therefore the date is to be reckoned from the date of the order communicated by the Registrar in the first round. We are conscious of the fact that in order to avail the jurisdiction of Labour Court at the relevant time, an order of the Chairman FST for abatement of the appeal was inevitable and since the subject order of the Chairman was not available, the first Grievance Petitions were withdrawn as being premature. After the order of the Chairman whereby the appeals were abated, second Grievance Petitions was filed and time is to be reckoned from that date it was communicated to respondent excluding vacation and time spent to communicate the order of Chairman FST. Computation will not be made from date of the Registrar's first communication in the year 2006.

8. As far as the next question that relates to jurisdiction of NIRC is concerned, it appears that the counsel for Petitioner has heavily relied upon the case of *Pakistan Defence Officers Housing Authority v. Lt. Col. Syed Jawaid Ahmed* reported in 2013 SCMR 1707 since petitioner has

independently moved an application on 05.09.2013 mentioning ibid case law, that the grievance of the respondents No.1 ought to have been agitated in a petition under Article 199 of the Constitution of Pakistan, as observed therein.

9. The aforesaid case is distinguishable on the strength that the officers or employees who were the subject matter of that petition were neither civil servants nor workmen but were employees of the Corporation or statutory bodies and hence their removal under RSO was considered by the Bench of this Court under Article 199 of the Constitution of Pakistan in the cited case as they had no forum. These observations were made in paragraph 50(v) of the judgment. The respondents No.1 herein had a forum which was the Labour Court initially. However, since the petitioner was a trans-provincial subject therefore the cases were lawfully transferred from Labour Court to Single Member of NIRC. Thus the jurisdiction was lawfully exercised by NIRC.

10. The last submission of learned counsel for petitioner that the two forums below have not applied their minds while going through the evidence, the counsel was asked to read the relevant part of the evidence that was not read or misinterpreted. We have been informed by petitioner's counsel that no evidence of any witness of petitioner/ employer was recorded as its side to record evidence was closed by the trial Court/NIRC Single Bench vide order dated 27.04.2015. The applications for recalling order dated 27.04.2015 were also dismissed on 28.07.2015. Even subsequent applications for recalling orders dated 27.04.2015 and 28.07.2015 were also dismissed vide order dated 26.08.2015. Thus, there is neither any evidence that they (respondents No.1) were not workmen nor is there any piece of evidence which is being claimed to have not been considered and/or misread. They

(petitioner) have not proved any fact that lead to the issuance of statement of allegations or charge sheet. The attachments of the inquiries along with reply to the grievance petitions do not form a shape of evidence unless produced/exhibited in evidence through witnesses as required under Qanoon-e-Shahadat Order, 1984.

11. In the affidavit of one of respondents i.e. Abdul Baseer the respondent maintained that he was a permanent workman since last 25 years which fact is not denied either through independent evidence on the part of the petitioner, or shattered in cross-examination. Thus, mere objection that respondents No.1 were not workmen or that the evidence was not taken into consideration will not take case of the petitioner anywhere, unless supported by cogent evidence, which it failed.

12. In view of the above, we do not see any reason to interfere with the orders of the two Courts below and hence petitions were dismissed vide order dated 11.11.2019 of which these are the reasons.

Dated:

Judge

Judge