

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

**Before: Justice Muhammad Shafi Siddiqui
Justice Mrs. Rashida Asad.**

C.P. No.D-3853 of 2022

P.T.C.L.

versus

Federation of Pakistan & others

| Date | Order with signature of Judge |
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1. For orders on office objection No.12 and 18.
2. For hearing of CMA 16813/22
3. For hearing of main case

Dated: 23.06.2022

Mr. Zia-ul-Haq Makhdoom for petitioner.
Mr. Kafeel Ahmed Abbasi, Deputy Attorney General.
Mr. Shujauddin for respondent No.5.

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Mr. Shujauddin Advocate files his Vakalatnama on behalf of respondent No.5 along with a statement, which are taken on record.

Learned counsel for petitioner has challenged an order dated 15.06.2022 of NIRC Single Bench, which is followed by a notice of contempt, issued to president/CEO of the petitioner being a foreigner, in pursuance of a long awaited compliance of NIRC's order of Full Bench. It is contended that NIRC Full Bench is not functional and hence petitioner has invoked the jurisdiction of this Court, which fact is not opposed by Mr. Shujauddin. Order of 15.06.2022 for convenience is reproduced as under:-

“Case called. Today, Zia Ahmed Abdul Ali was summoned to appear in person before the Commission on account of non-compliance of order passed by the Commission. The Complainant is not being re-instated inspite of order of Commission which has attained the finality. Learned Counsel for the Respondent states that post of G.M HR has been abolished Mr. Zia Ahmed Abdul Ali has been transferred to Islamabad. Learned Counsel for the Complainant submitted name of new President/CEO of PTCL. I order to issue notice to Hatem Bamatraf, President, to appear before the Commission in person on 22.06.2022.”

Main grievance of the petitioner's counsel is that learned Member NIRC does not enjoy the jurisdiction to issue contempt notices and has relied upon judgment in the case of Muslim Commercial Bank v. Federation of Pakistan reported as PLD 2019 Sindh 624. Mr. Zia Makhdoom has argued the matter on this point at some length, however, it appears that by virtue of the said judgment Article 204 of the Constitution of Islamic Republic of Pakistan and its subordinate legislation was taken into consideration and expounded by the learned Division Bench of this Court. Mr. Zia Makhdom however has not been able to satisfy as to whether powers conferred under Industrial Relations Act, 2012 and/or under order XXXIX Rule 2(2) CPC were also curtailed by virtue of the said judgment for subordinate judiciary or special courts and tribunals. Industrial Relations Act, 2012 is not subordinate legislation of Article 204 of the Constitution of Islamic Republic of Pakistan.

Act 2012 and any other statute having independent recourse to implement and execute orders/judgments is not hit by the referred judgment as relied upon. Relevant offshoots of section 57 of the Industrial Relations Act, 2012 are reproduced as under:-

57. Additional powers of the Commission.--(1) In addition to powers which the Commission has under this Act—

(a) the Commission shall have power to punish any person who obstructs or abuses its process or disobeys any of its orders or directions, or does anything which tends to prejudice the case of a party before it, or tends to bring it or any of its members in relation to proceedings of the Commission into hatred or contempt, or does anything which, by law, constitutes contempt of Court, with simple imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees, or with both; and

(b) for the purposes of any investigation, enquiry or adjudication to be made by the Commission under this Act, the Chairman or any member of the Commission may at any time between the hours of sunrise and sunset, and

any other person authorized in writing by the Chairman or any member of the Commission in this behalf may, after he has given reasonable notice, enter any building, factory, establishment, workshop or other place or premises whatsoever and inspect the same or any work, machinery, appliance or article therein or interrogate any person therein in respect of anything situated therein or any matter relevant to matters before the Commission; and

(2) The Commission may, on the application of a party, or of its own motion,

(a) initiate prosecution, trial or proceedings, or take action, with regard to any matter relating to its functions;

(b) withdraw from a Labour Court of Province any application, proceedings or appeal relating to unfair labour practice, which fall within jurisdiction of the Commission; and

(c) ...”

Case of Muslim Commercial Bank (Supra) as relied upon considered the vires of Section 12 of the Federal Ombudsman Constitutional Reforms Act, 2013 (Act 2013), which in fact, in the light of Division Bench’s judgment, particularly Section 12, was a subordinate legislation since by virtue of such provision an ombudsman is being empowered via Contempt of Court Ordinance, 2003, which itself is a subordinate legislation of Article 204 of the Constitution of Islamic Republic of Pakistan, 1973. First recital of Ordinance 2003, along with Section 12 of Act 2013, are reproduced as under:-

First recital of Ordinance 2003

“Whereas clause (3) of Article 204 of the Constitution of the Islamic Republic of Pakistan provides that the exercise of the power conferred on courts to punish for contempt may be regulated by law.”

Section 12 of Act 2013 ibid

“12. Power to punish for contempt.- An Ombudsman shall have power to punish for contempt as provided in the Contempt of Court Ordinance, 2003 (V of 2003)”

The ratio in reaching the said provision of Act 2013 was that Section 12 was a subordinate legislation of a contempt of Court

proceeding which itself is an offshoot of Article 204 of the Constitution hence powers could not be enjoyed by a Court except Hon'ble Supreme Court and the High Court and that alone is a distinguishing factor as far as the present provision of Section 57 of Industrial Relations Act, 2012 is concerned as admittedly it is neither challenged nor is a subordinate legislation of Article 204 of the Constitution.

While Mr. Zia Makhdoom addressed the Court as to the jurisdiction exercised by learned NIRC, Mr. Shujauddin, learned counsel appearing for respondent No.5 has opposed maintainability of the petition itself on other counts, since earlier also petition was preferred and the same was disposed of on an undertaking that the benefits, as derived/ entitled by individuals including respondent No.5, shall be deposited however, per learned counsel, neither such amount was deposited nor any proceedings were conducted thereunder and petition was dismissed as withdrawn. Hence per learned counsel approach of the petitioner is with tainted hands. Counsel for respondent however has not satisfactorily responded to a fresh cause where a CEO of PTCL was summoned directly. He however then submits that he/respondent No.5 would be satisfied, as ensured by Mr. Zia Makhdoom, that as per petitioner's calculation an amount of Rs.2,083,400/- shall be paid to the respondent No.5 on the next date of hearing i.e. 04.07.2022 before the Member NIRC through a pay order in favour of respondent No.5, who shall acknowledge the same before the NIRC and rest of the payment shall be deposited, if found outstanding by NIRC, within 31st of July, 2022. Order accordingly. This payment however would be without prejudice to the rights of the petitioner that it may assert in any pending matter, including petition bearing No.D-1871 of 2021, which alleged rights of petitioner shall be contested by respondent No.5, if he so desires.

Mr. Zia's grievance is that Mr. Hatem Bamatraf a foreigner being CEO of PTCL has nothing to do with the issue in hand, which issue can be addressed by any other higher official. This again is not disputed by Mr. Shujauddin provided an authorized representative appears for redressal of grievance at the earliest.

As far as reinstatement of respondent No.5 is concerned it is expected that the authorized person, be it G.M. (Legal) or G.M. (HR), as suggested by Mr. Zia, shall appear and assist and satisfy Member NIRC as to why reinstatement of respondent No.5 has not be done as yet despite lapse six years. In case of failure to satisfy the learned Member NIRC, the NIRC is competent to take action including contempt proceedings as we have noticed that on a number of occasions officers of PTCL/ petitioner have appeared but on the crucial day perhaps the officer's post has been abolished. Although it was delayed materially on their (PTCL) part as compliance is long awaited, it is now high time that compliance be made in letter and spirit in accordance with law by next date of hearing (partly as agreed) and partly by 30.07.2022, however the presence of CEO of PTCL at this point of time is not essential. We, however, direct the PTCL to depute an authorized officer to file reinstatement letter and differential amount after recalculation of back benefits to the satisfaction of NIRC. Failure to make compliance of any of the terms hereinabove shall be considered as contempt of Court, apart from any additional defiance that may take place before NIRC Bench. We may however clarify that incase even if these officers, as identified by Mr. Zia Makhdoom, do not cooperate and comply with the orders of NIRC, recourse of calling CEO of PTCL can then be exercised.

With the above observations by consent petition stands disposed of along with listed application.

Judge

Judge