

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

C P D 2274 of 2022 : Sui Southern Gas Company Ltd.
vs. Nabi Bux Domki & Another

For the Petitioner : Mr. Khalid Mehmood Siddiqui, Advocate

For the Respondents : Mr. Touqeer Ahmed Domki, Advocate

Mr. Muhammad Nishat Warsi
Deputy Attorney General

Date/s of hearing : 11.08.2022

Date of announcement : 11.08.2022

ORDER

Agha Faisal, J. The petitioner has assailed concurrent findings, being the order of the learned Full Bench of the NIRC dated 22.03.2022 upholding the order of the learned Member NIRC dated 08.12.2021("Impugned Orders"), whereby the dismissal of the respondent no. 1 was overturned and the said respondent was reinstated with all appurtenant back benefits.

2. Per petitioner's counsel, the respective fora had not appreciated the evidence in its proper perspective, hence, a *de novo* exercise in such regard was merited in writ jurisdiction. The essential allegation against the respondent was that he had simultaneously received salaries from two government jobs and the crucial corroboration in such regard was articulated to be a letter dated 02.04.2014, stipulating that the respondent had been in his *prior* employment till June 2008.

3. The respondent's counsel argued that the respondent had in fact been in *prior* service till June 2007, and not June 2008, and had assumed his responsibilities with the petitioner in September 2007. Hence, there was no question of concurrent employment. It was demonstrated from the record that the learned NIRC had sought a verification from the respondent's previous employer and it was expressly intimated thereto, vide letter dated 10.11.2021 issued directly to the NIRC, that there was an inadvertent clerical error in the letter dated 02.04.2014 and that in fact the respondent had remained

therewith till June 2007, as earlier expressed vide the corrigendum dated 23.05.2014.

4. Heard and perused.

5. It is imperative to consider that Article 199 of the Constitution contemplates the discretionary¹ writ jurisdiction of this Court and the said discretion may be exercised in the absence of an adequate remedy. In the present matter *admittedly* there existed an adequate remedy, however, the same was duly availed / exhausted and concurrent findings, based on the appreciation of record / evidence, had been rendered in favor of the respondent.

6. The original order, of the Member NIRC, observed the record under surveillance could not be controverted and found that that the respondent had not drawn salaries from two government departments at the same time. The order of the Full Bench NIRC upheld the earlier findings and said that there was no evidence / proof to substantiate that the respondent was ever performing duties elsewhere post his resumption of service with the petitioner in September 2007. It is gleaned from the Impugned Orders that the petitioner had remained unable to rebut the preponderance of record / evidence relied upon by the NIRC, before the respective fora, and furthermore the petitioner's counsel remained unable to articulate before us today as to why the impugned findings of the NIRC could not be rested on the record relied upon.

7. The ambit of constitutional petition is not that of yet another forum of appeal and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order/s impugned. It is trite law² that where the fora had exercised its discretion in one way and that the discretion had been judicially exercised on sound principles, interference in such discretion would not be merited unless the same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the orders impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the fora.

8. In view hereof, this court is constrained to observe that no case has been set forth for the invocation of the discretionary writ jurisdiction of this

¹ Per *Ijaz Ul Ahsan J.* in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.

² Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323.

Court, hence, this petition, along with pending application/s, was dismissed vide our short order announced in open Court earlier today. These are the reasons for the short order.

JUDGE

JUDGE