

IN THE HIGH COURT OF SINDH, KARACHI

C. P No. 5593 of 2020

Date Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Petitioner: **Shahbaz Ali,**
Through M/s. Haider Imam Rizvi &
Sanaullah, Advocates.

Respondents **Chairman Sindh Labour Appellate**
Nos. 2 to 4: **Tribunal & Others,**
Through Mr. Altamash Faisal Arab,
Advocate.

Date of hearing: **29.08.2022**

Date of Order: **29.08.2022.**

ORDER

Muhammad Junaid Ghaffar, J: Through this Petition, the Petitioner has impugned Judgment dated 30.09.2020 passed in Revision Application No. KAR-09/2020 by Chairman, Sindh Labour Appellate Tribunal (“Appellate Tribunal”) at Karachi, and order of dismissal dated 30.9.2020, passed by Respondent No.2 to 4 (“Employer”) pursuant to passing of the order by Appellate Tribunal, whereby, while allowing the Revision Application the interim order dated 11.02.2020 passed by the Presiding Officer of Sindh Labour Court No.V, Karachi had been recalled;

Learned Counsel for the Petitioner has argued that the impugned order has been passed by the Appellate Tribunal without jurisdiction inasmuch as the matter was initially taken up by Single Bench of NIRC in grievance petition filed by the petitioner in terms of Section 31 of the Industrial Relations Act, 2012, (“IRA 2012”) and an ad-interim order was passed restraining the Employer from passing any final orders, and thereafter, in terms of Section 57(3(c) of the IRA 2012, matter was referred to the Labour Court No.5 for disposal, whereas, the said Labour Court had confirmed the injunction vide order dated 11.02.2020, and therefore, the Appellate Tribunal lacked jurisdiction in the matter and only a Full Bench of NIRC could have dealt with the issue in hand. He has also referred to sub-sections (4) & (5) of Section 57 of IRA 2012 and contends

that the impugned order is Coram-non iudice; hence, liable to be set-aside and the interim order be restored. In support he has relied upon the cases *Iftikhar Ahmed Hammad Vs. Punjab Labour Appellate Tribunal, Lahore and 3 Others* (2014 P L C 331), *KESC & Others Vs. N.I.R.C. & Others* (P L D 2014 Sindh 553), *Pakistan Telecommunication Company Ltd. Vs. Member, NIRC & Others* (2014 S C M R 535), *Messrs Sui Southern Gas Company Ltd. & Others Vs. Federation of Pakistan & Others* (2018 S C M R 802) and *Allied Bank of Pakistan Vs. Mst. Nazima Bibi, Etc.* (2009 TD (Labour) 110).

On the other hand, learned Counsel for Private Respondents has supported the impugned Judgment, and submits that the petitioner now stands dismissed and cannot seek any relief in this petition.

We have heard both the learned Counsel and perused the record. It appears that the Petitioner pursuant to issuance of a charge sheet dated 20.12.2016 alleging theft of copper scrap weighing 1.5 kg filed a Petition before NIRC for quashing the charge sheet and the plea raised was that he has been discriminated due to his involvement in Trade Union activities; hence, the charge sheet amounted to unfair labour practice on the part of the private Respondents in terms of Section 31 of IRA 2012. Admittedly, initially a restraining order was passed by NIRC and thereafter, matter was referred to the Labour Court under Section 57(3(c) ibid and the Labour Court then passed order dated 11.02.2020 by disposing of the application and confirming the stay order. The Respondents being aggrieved approached the Appellate Tribunal by way of a Revision Application on which the impugned order has been passed, whereby, the stay has been vacated.

Insofar as the contention raised by the Petitioner's Counsel is concerned, we do not deem it appropriate to adjudicate the same on merits, as apparently, after passing of the impugned order, the Petitioner has been dismissed from service vide letter / order dated 30.9.2020 after an inquiry, whereas, pursuant to the said dismissal, the grievance petition of the petitioner also stands dismissed by the Labour Court vide order dated 07.10.2020; hence, to the extent of any interim order or otherwise a stay order, there are no pending proceedings before the Labour Court, and therefore, even if the petition is allowed, it would not serve any purpose insofar as the grievance so agitated in this petition is concerned. In fact it has been stated in Para 6 of the memo of petition that the

Petitioner intends to impugn the order of the Labour Court dated 07.10.2020, whereby, the petition stands dismissed by way of an appeal in accordance with law. In our view in that case this petition has become infructuous, and the Petitioner is at liberty to agitate his grievance as stated including seeking remedy against the final order of dismissal, as may be available in accordance with law.

Moreover, this Petition has been filed against an order passed on an injunction application, whereas, under the constitutional Jurisdiction which otherwise is discretionary in nature, such orders cannot be impugned as a matter of right. Per settled law where the statute does not provide any right of appeal against an interim order, then it could not be bypassed by impugning it in Constitutional jurisdiction as it would defeat the intent of the legislature and the affected party must wait till it matures into a final order and then approach the appellate forum created by the statute for examining the validity of the said order¹. It is further settled that interlocutory orders should not be brought to the higher Courts to obtain fragmentary decisions, as it tends to harm the advancement of fair play and justice, curtailing remedies available under the law; even reducing the right to Appeal². We are of the considered view, that the appropriate course for the Petitioner is to approach the concerned Court by impugning the final orders already passed against him, and therefore, this Petition is misconceived; hence, accordingly dismissed with pending applications.

J U D G E

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¹ Saghir Ahmad Naqvi v Province of Sindh (1996 SCMR 1165)

² Benazir Bhutto v The State (1999 SCMR 1447)