

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Mahmood Ahmed Khan

## J U D G M E N T

Date of hearing: 17.04.2017.

Petitioner: Muhammad Ali through Muhammad Nishat Warsi, Advocate.

Res. Nos.1&2: Sindh Labour Appellate Tribunal and Sindh Labour Court No.2.

Res. No.3: M/s. Plasticrafters (Pvt.) Limited through Mr.S. M. Iqbal, Advocate.

IRFAN SAADAT KHAN, J. The instant petition has been filed

with the following prayers:-

*"In view of the above submissions, it is respectfully prayed, on behalf of the petitioner, that this Hon'ble Court may kindly be pleased to call the R&P and pass the following orders:-*

- a) *up-hold the decision 26.2.1992 of Full Bench of N.I.R.C. and declare the charge sheet illegal, unwarranted and malafide acts;*
- b) *hold that the proceedings, initiated on the basis malafide charge sheets, are illegal, unwarranted and not sustainable in law;*
- c) *hold that the impugned orders at annexures 'F', 'I' and 'J/1' are malafide, illegal, unwarranted and not sustainable in law;*

- d) *set-aside the same;*
- e) *award cost.*
- f) *any other relief under the circumstances of the case."*

2. Briefly stated the facts of the case are that the petitioner, who is now deceased, was appointed as Turner with the Respondent No.3 on 15.7.1985 but subsequently was dismissed from service on 4.8.1992. Since the conduct of the petitioner, as per the Respondent No.3, was not found satisfactory thereafter he was served with the charge-sheet dated 8.5.1990 with directions to explain within two days as to why disciplinary action should not be taken against him. The petitioner then vide letter dated 10.5.1990 furnished his reply refuting all the charges leveled upon him. After finding the reply of the petitioner unsatisfactory the management of Respondent No.3 then, with reference to the charge-sheet dated 8.5.1990, served an enquiry letter dated 12.5.1990 informing the petitioner to appear before the Enquiry Officer on 16.5.1990. The petitioner then moved an application under Section 22-A(8)(g) of the Industrial Relations Ordinance, 1969 (IRO 1969) before the National Industrial Relations Commission (NIRC) bearing Case No.4A(65)/90 and the learned Single Member of the NIRC vide order dated 31.8.1991 dismissed the said application. The petitioner then filed an appeal under Section 22-D of IRO 1969 before the Full Bench of NIRC bearing No.12(112)/91 and the Full Bench vide judgment dated 26.7.1992 allowed the appeal and set aside the order dated 31.8.1991 passed by the learned Single Member of the NIRC. The Respondent No.3 against the order of the Full Bench of NIRC filed a petition before this Court bearing

C.P. No.D-2014 of 1992 and obtained stay but subsequently due to non-appearance the said petition was dismissed for non-prosecution. In the meantime, the petitioner was served with a letter dated August 4, 1992, mentioning therein that in view of the charges leveled against him, which according to the Respondent No.3 have been proved in the enquiry, hence he was dismissed from the service and was directed to collect his full and final dues from the Accounts Department. The petitioner then served a grievance notice dated 30.9.1992 under Section 25-A of IRO, 1969, on the Managing Director of the Respondent No.3-company which was regretted vide reply dated 22<sup>nd</sup> October 1992. The petitioner then filed an application under Section 25-A(4) of the IRO, 1969, before the Sindh Labour Court, Karachi, bearing Application No.299 of 1992, which the learned Court dismissed vide order dated 5<sup>th</sup> May 1998. The petitioner thereafter filed an appeal under Section 37(3) of the IRO, 1969, before the Sindh Labour Appellate Tribunal at Karachi bearing Appeal No.KAR-175 of 1998 and the said Tribunal also vide judgment dated 16.12.1999 dismissed the same, thereafter the instant petition has been filed.

3. Mr. Muhammad Nishat Warsi Advocate has appeared on behalf of the petitioner and submitted that since the petitioner was General Secretary of the registered trade union, which was certified collective bargaining agent, a dispute arose between the management and the said trade union hence in a revengeful manner charge-sheet was given to the petitioner. While elaborating his view point the learned counsel submitted that as per Standing Order 15(4) of 1968 charge-sheet is always to be given within a

period of one month of the date of misconduct/charge whereas a perusal of the charge-sheet would reveal that the same pertains to the allegations/misconduct for the period 25.2.1990 whereas the charge-sheet was that of 8.5.1990. The learned counsel then read out the charge-sheet and submitted that all the charges mentioned in it were not available since no statement about the loss sustained by the company has been mentioned since it was alleged that the petitioner was instrumental in "go slow" policy. He further stated that the Full Bench of the NIRC has given a decision in favour of the petitioner which was challenged by the Respondent No.3 before this Court which thereafter was not pursued by the Respondent No.3 and eventually the same was dismissed on account of non-prosecution. He also stated that the proceedings initiated against the petitioner were malafide and even the enquiry proceedings were exparte. He further stated that it was mandatory on the management of Respondent No.3-company to have issued another show-cause-notice to the petitioner which was not done and since the petitioner has been condemned unheard, therefore, this petition may be allowed. Learned counsel further submitted that no misconduct has been made by the petitioner since the charges levelled in the charge-sheet are vague and scanty and the Respondent No.3 by ignoring the decision of the Full Bench of NIRC has dismissed the services of the petitioner without any rhyme and reason. He also stated that the Labour Court as well as Labour Appellate Tribunal have since not considered these facts hence their orders are liable to be set aside and the decision given by the Full Bench of the NIRC may be restored accordingly.

4. In support of his above contentions the learned counsel for the petitioner has relied upon the following decisions:-

- 1) PAKISTAN POST OFFICE VS. SETTLEMENT COMMISSIONER AND OTHERS (1987 SCMR 1119)
- 2) JAMEEL AHMED VS. LATE SAIFUDDIN (1997 SCMR 260)
- 3) PUNJAB ROAD TRANSPORT CORPORATION VS. PUNJAB LABOUR APPELLATE TRIBUNAL LAHORE AND OTHERS (1973 SCMR 455)
- 4) DAWOOD COTTON MILLS LIMITED VS. GUFTAR SHAH AND ANOTHER (PLD 1981 SC 225)
- 5) THE VICE-PRESIDENT (ADMN.), NATIONAL BANK OF PAKISTAN AND OTHERS VS. BASHARAT ALI AND OTHERS (1996 SCMR 201)
- 6) ISLAMABAD CLUB VS. PUNJAB LABOUR COURT NO.2 ETC. (PLD 1980 SC 307)
- 7) MUJAHID HUSSAIN SHAH VS. K.S.B. PUNPS COMPANY LIMITED AND OTHERS (1997 PLC 132)

5. Mr. S. M. Iqbal Advocate has appeared on behalf of Respondent No.3 and has vehemently refuted the arguments of learned counsel for the petitioner and stated that the impugned order was passed on 16<sup>th</sup> December 1999 whereas the instant petition has been filed on 5.9.2000 hence on the very face of it the instant petition suffers with laches and is liable to be dismissed. He further stated that a perusal of the charge-sheet dated 8.5.1990 would reveal that in the said charge-sheet a continuous default on the part of petitioner, continuing from 25.2.1990, was mentioned hence the question of time barred charge-sheet does not arise. He further stated that except the decision of the Full Bench of NIRC all the other decisions are in favour of Respondent No.3. He also

stated that from the reply dated 10.5.1990 furnished by the petitioner it is evident that the petitioner had accepted that he was following the policy of "go slow". He further stated that the petitioner himself boycotted the enquiry proceedings and thereafter *exparte* proceedings were initiated against him. He further stated that concurrent findings of the Labour Court and Labour Appellate Court are against the petitioner and that the petitioner has approached the Court with unclean hands, hence this petition is liable to be dismissed with cost. While inviting the attention of the Court on the two applications filed by the legal-heirs of the petitioner for bringing them on record since the petitioner has expired, he stated that CMA No.3114 of 2016 is miserably time barred as the legal-heirs under Article 176 can file an application under Order 22 read with Section 151 CPC within ninety (90) days of the expiry of the deceased whereas the instant application has been filed after a period of three years of the death of the petitioner hence this application alongwith the application for condonation of delay are liable to be dismissed. In support of his above contentions the learned counsel for Respondent No.3 has placed reliance on the following decisions:-

- 1) MUJAHID HUSSAIN SHAH VS. K.S.B. PUMPS COMPANY LIMITED AND OTHERS (PLD 1996 SC 787)
- 2) MALIK AZIZUR REHMAN VS. I.C.I. PAKISTAN LIMITED SODA ASH WORKS KHEWRA, DISTRICT JEHLUM AND ANOTHER (PLJ 1998 SC 585)
- 3) PAKISTAN MACHINE TOOL FATORY (PVT.) LTD. KARACHI VS. MUHAMMAD SIDDIQUE (2001 PLC 149)
- 4) HAIDER ZAMAN VS. INDUSTRIAL CLOTHINGS (PVT.) LTD. ETC. (NLR 2002 Labour 157)

- 5) OBAIDULLAH KHAN VS. LABOUR COURT NO.V, KARACHI, ETC. (NLR 1981 Labour 245)
- 6) MUHAMMAD AKHTAR VS. COMMISSIONER COMPENSATION (MINES) KHUSHAB AND OTHERS (2005 PLC 47).

6. Mr. Muhammad Nishat Warsi, learned counsel for the petitioner, in his rebuttal has stated that no laches are involved in the instant petition as the order of Labour Appellate Tribunal was received by the petitioner on 10.2.2000 and the petition was filed on 5.9.2000 hence according to him the same is not hit by laches. He further stated that, though, there has been a delay in filing the application for bringing the legal-heirs on record but since an application under Section 5 of the Limitation Act has been moved the same may be considered sympathetically. He stated that since the petitioner has expired hence he does not press the issue of reinstatement but so far as the claim of back benefits is concerned the legal-heirs of the petitioner are entitled to be given the said benefit in accordance with law.

7. We have heard the learned counsel for the parties at length and have perused the record so also the case law cited by them.

8. The first issue raised by the learned counsel for the petitioner is with regard to non-fulfillment of provisions of Standing Order 15(4) of the Industrial & Commercial Employment (Standing Order) Ordinance 1968. For the sake of brevity the said Order is reproduced hereinbelow:-

*"(4) No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct within one month of the date of such misconduct*

*or of the date on which the alleged misconduct comes to the notice of the employer and is given an opportunity to explain the circumstances alleged against him. The approval of the employer is required in every case of dismissal and, the employer shall institute independent inquiries before dealing with charges against a workman.*

*Provided that the workman proceeded against may, if he so desires for his assistance in the enquiry, nominate any workman employed in that establishment and the employer shall allow the workman so nominated to be present in the enquiry to assist the workman proceeded against and shall not deduct his wages if the enquiry is held during his duty hours."*

9. It appears that the learned counsel for the petitioner has only read the portion which stipulates that "***within one month of the date of such misconduct***" and has not read the other portion which states "***or of the date on which the alleged misconduct comes to the notice of employer***". It is seen that the first portion "within one months of the date of such misconduct" is followed by the conjunctive word "or of the date on which the alleged misconduct comes to the notice of the employer" which clearly means that in the event of alleged misconduct no order of dismissal could be passed until and unless the above two dis-conjunctive conditions are fulfilled and an opportunity to explain the circumstances has been provided to the employer.

10. If the facts of the above case are examined in the light of the enquiry report and the depositions of three witnesses, namely, S. Mohiuddin Qadri, S. M. Yousuf and Matloob Hussain it has categorically been mentioned in the depositions of abovenamed three persons/witnesses that the petitioner was habitual of instigating the other co-employees/workers to adopt the policy of



"go slow" in order to pressurize the management to fulfill the demands thereof. From the facts it is evident that in the Respondent No.3-company there were three departments, namely, (1) Cistern Assembly, (2) General Assembly and (3) Water Cooler & Hot Pot Assembly and the petitioner was instrumental, as seen from the record, enquiry report and the depositions of three witnesses named above, to instigate the workers to "go slow" which later on was substantiated from the production record which were duly taken into consideration by not only the Sindh Labour Court but also the Sindh Labour Appellate Tribunal.

11. It was held in the decision given in the case of MST. NADIA MALIK VS. M/S. MAKI CHEMICAL (PVT.) LIMITED (2011 SCMR 1675) that word "or" used in the statute has to be read dis-junctively classifying different modes. In the case of ABDUL AZIZ MEMON VS. THE STATE (PLD 2013 SC 594) the Hon'ble Supreme Court has categorically mentioned that dis-conjunctive words referred to different classes of person. In the above referred case also the counsel for the petitioner has only referred to the words used in Standing Order 15(4) with regard to time limitation but perhaps has not gone through the other portion after dis-conjunctive word "or" used in the said statute.

12. Perusal of the charge sheet clearly reveals that the petitioner alongwith other office bearers were charged for instigating workers of the Cistern Assembly and General Assembly not to give normal production since "**25.2.1990**" which has been endorsed in the deposition of the witnesses, enquiry report and the two orders

passed by the authorities below wherein it has categorically been observed that on various dates the petitioner was found to be instigating the employees to "go slow" so that the management should fulfill their demands. It is further noted that the instigation of the petitioner to the co-workers to "go slow", which amounts to misconduct, has come into the notice of the employer since the petitioner on various occasions was found to have involved in the said misconduct on the various dates as noted in the enquiry report and in the deposition of the witnesses and from the correspondence available on the record duly noted in the orders passed by the two authorities below. We, therefore, find no merit in the contention raised by the learned counsel for the petitioner on this issue and reject the same, accordingly.

13. We will now take-up the second point raised by the learned counsel for the petitioner that the petitioner was not provided ample opportunity of hearing in the enquiry proceedings as the said proceedings were *ex parte*. On this issue also we tend to disagree with the contention raised by the learned counsel for the petitioner. Perusal of the record reveals that the enquiry proceedings started on 8.5.1990 after giving charge-sheet to the petitioner which proceedings finally culminated on 12.10.1991. It is evident from the record that when the three persons, namely, S. Mohiuddin Qadri, S. M. Yousuf and Matloob Hussain were examined ample opportunity was provided to the petitioner to cross-examine these witnesses which deliberately was not done.

14. It is also evident that due to the non-cooperative attitude of the petitioner it almost took one and half years for the enquiry officer to complete his enquiry. Though, the petitioner took part in the enquiry proceedings for a number of days but it is evident from the record that after March 1991 he did not appear before the enquiry officer leaving no option with the enquiry officer but to proceed *ex parte* against him. It is also evident from the record that the petitioner boycotted the enquiry proceedings fully knowing the fact that in case of his non-appearance before the said enquiry officer adverse inference could be drawn against him. The two Courts below in this respect have threshed out the matter in detail and from the record it is evident that the petitioner after receiving intimations with regard to the fixation of the dates of the enquiry had deliberately failed to appear before the said enquiry officer. Hence, on this aspect also we do not find any merit in the contention raised by the learned counsel for the petitioner and reject the same accordingly.

15. The next issue agitated by the learned counsel for the petitioner was with regard to the non-providing of second show-cause-notice. Here also the learned counsel for the petitioner has failed to point out any provision of the law which provides that a second show-cause-notice is mandatory.

16. From the facts recorded above, it is, thus, evident that the petitioner has miserably failed to make out any case of interference by this Court with regard to the charges leveled on the petitioner in the charge sheet which were rightly found to be misconduct on the

part of the petitioner by the two authorities below through their well reasoned and detailed judgments. Even before us also the learned counsel for the petitioner has failed to point out any misreading or non-reading of evidence by the two Courts below and has also failed to demonstrate that the orders passed by the Labour Court and the Labour Appellate Tribunal suffer from any defect either with regard to the facts or the law.

17. We, therefore, keeping in view the above discussion do not find any merit in the instant petition and dismiss the same alongwith the listed applications.

18. Needless to state that the decisions relied upon by the learned counsel are found to be either distinguishable or not on all fours with the facts obtaining in the instant petition. Since we have decided the petition on merits, we do not deem it appropriate to dilate upon the other legal objection raised by the learned counsel for Respondent No.3-company with regard to the laches.

JUDGE

JUDGE

Karachi:  
Dated:

S.Akhtar