

# IN THE HIGH COURT OF SINDH AT KARACHI

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

C P D 4469 of 2019 : Nestle Pakistan Ltd. vs.  
Full Bench of NIRC & Others

For the Petitioner : Mr. Faisal Mahmood Ghani, Advocate

For the Respondents : Mr. Ali Asadullah Bullo, Advocate

Date/s of hearing : 11.10.2022

Date of announcement : 11.10.2022

## JUDGMENT

**Agha Faisal, J.** Briefly stated, the respondent had been accused of submitting bogus documents and falsifying medical claims. After being subjected to an inquiry the respondent was removed from service by the petitioner. A grievance petition was filed by the respondent, however, the same was dismissed by the learned Single Bench of the NIRC vide Order dated 04.10.2018 (“SB Order”). The decision was reversed by the Full Bench of the NIRC vide Order dated 19.06.2019 (“Impugned Judgment”), hence, this petition. It is considered prudent to reproduce the operative constituent of the respective orders to illumine the *lis* before us.

### Single Bench NIRC

“7. Whole contention of the respondent has been admitted by the petitioner in his cross examination. After inquiry, petitioner was found guilty of charge of cheating the company by raising fake/bogus claim of medical cost leveled in the show cause notice is proved. Petitioner has not alleged in his petition that his termination was in connection with industrial dispute or the same has led to any industrial dispute. No violation or any award or settlement has been raised by petitioner during the inquiry proceedings. Petitioner has also not challenged the allegation of submitting bogus/fake medical claim, which was verified by the doctor. Burdon of prove was on the petitioner but petitioner neither got exhibited documents in support of his version before the Commission nor challenged the charge during inquiry proceedings through cross examining the witness and whatever has been alleged by the petitioner in his petition was not brought on record by petitioner during evidence except admitting the version of respondent during cross examination.

8. This case has been badly be conducted, there is nothing on record to support the petitioner case except contention in grievance petition and without supporting the same by the petitioner in evidence mere pleadings cannot be consider as evidence. Petitioner has failed to prove his case, hence; this petition is dismissed. No order as to costs. File be consigned to record room after its due completion.”

Underline added for emphasis.

## Impugned Order – Full Bench NIRC

“14. In the light of above case law as well as discussion, we are of the considered opinion that the dismissal of the petitioner, in consequences of an inquiry initiating on the basis of submission of forged medical bill which was not ever paid to the appellant and without examining the administrator/doctor from the hospital, was harsh decision and accordingly we also disagree with the findings of the Learned Single Member whereby he dismissed the grievance petition filed by the appellant / petitioner. We have also gone through the steamed case law relied upon the learned counsel for respondent but the facts and circumstances of the appeal in hand are distinguishable.

15. In view of the aforementioned discussion, while setting aside the impugned order dated 04.10.2018 the appeal of the appellant is hereby accepted and the appellant is reinstated with all back benefits. No order as to costs. File be consigned to record room after its due completion.”

2. Per learned counsel, the petitioner had duly conducted an inquiry into the allegations and determined the matter in the light to the uncontroverted evidence / record. It has been submitted that the learned Single Bench had appreciated all the evidence / record and rendered its findings in accordance with the law. However, it was articulated that the Impugned Judgment was rendered *prima facie* in erroneous appreciation of the facts and in manifest derogation of the law.

3. The respondent's counsel supported the Impugned Judgment and submitted that it merited no interference whatsoever. It was argued that the learned Single Bench NIRC ought to have conducted its own independent verification of the record and not relied solely upon the evidence adduced there before. It was insisted that there was no witness needed by the respondent, therefore, none was ever produced and that the initiation of the disciplinary proceedings by the petitioner were in any event time barred.

4. Heard and perused. We are cognizant that ambit of writ jurisdiction is not that of a subsequent forum of statutory appeal and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from a judgment impugned. It is also the duty of this Court to ensure that any discretion exercised by a subordinate forum was done judiciously pursuant to sound legal principles and not contrary to law or usage having the force of law.

5. The matter pertains to allegations of submitting bogus documents and falsifying medical claims. The SB Order categorically observes that *the petitioner* (respondent herein) *has not challenged the allegation of submitting bogus / fake medical claim*<sup>1</sup>. Even in the arguments before us no cavil was articulated in such regard by the respondent's counsel. The SB Order also observes that the respondent did not adduce any documents; did not produce

---

<sup>1</sup> Paragraph 7 of the SB Order.

any witnesses; did not challenge the charge through cross examination; and admitted the factual narration submitted by the petitioner. In such circumstances, it appears safe to observe that the respondent appears to have made no serious endeavor to dispute the facts relied upon by the petitioner. In view of the foregoing, no case stands made out before us to place any onus upon the learned Single Bench of the NIRC to have conducted an independent exercise for verification of documents<sup>2</sup>.

6. The learned Full Bench of the NIRC appears to have erred in disregarding the preponderance of uncontroverted evidence / record and rested its contrary findings upon the administrator / doctor not having been examined. There is no suggestion in the Impugned Judgment that the findings in the SB Order could not have been predicated upon the evidence / record relied upon. While an appellate forum has every right to revisit the evidence and exercise its discretion, however, such discretion has to be exercised in consonance with judicially recognized principles. With utmost respect, we cannot consider the disregard of uncontroverted evidence, in favor of a presumption, as judicious exercise of discretion.

7. The reliance of the learned Full Bench NIRC upon *Muhammad Usman Rajar*<sup>3</sup> appears wholly unmerited as the issue therein was that the person was not alleged to have made the application for payment or found manipulating / tampering the record; whereas, before us the contrary is the case as the respondent has been found culpable for submitting a false claim for payment and falsifying receipts. Under such circumstances it is observed that *Muhammad Usman Rajar* does not afford any sanctity to the Impugned Judgment and contrarily supports the case of the petitioner.

8. The petitioner initiated remedial proceedings and there is no suggestion that the same was besieged by any infirmity<sup>4</sup>. It was never the respondent's case before us either that the disciplinary proceedings suffered from any procedural impropriety. The respondent has been shown to have received letter/s<sup>5</sup> providing ample opportunity to produce documentary and oral evidence, cross examine management witnesses and nominate any co-worker to be present during enquiry. Additionally, the respondent has accorded his

---

<sup>2</sup> *China Petroleum Engineering Construction vs. Khattak Allied Construction Company* reported as 2004 SCMR 1777.

<sup>3</sup> *Muhammad Usman Rajar vs. SLAT & Others* reported as 2011 PLC 24.

<sup>4</sup> *Per Dorab Patel J in Raja Javed Akhtar vs. EVP UBL & Others* reported as 1978 SCMR 212.

<sup>5</sup> Enquiry letter received on 28.01.2016 available at page 153.

satisfaction in respect of the inquiry proceedings and appended his signature to the report without any manifest demur<sup>6</sup>.

9. The next issue to consider is that of the alleged delay. Per section 15(4)<sup>7</sup> of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, the respondent was required to be informed 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<sup>8</sup>. The record shows that the petitioner found out about the misconduct on 12.11.2015<sup>9</sup>, when informed by the insurance company, and informed the respondent on 01.12.2015<sup>10</sup>. It was never the respondent's case before us that the petitioner had knowledge of the misconduct at any time prior to the communication received from the insurance company; hence, no case is made out to consider the petitioner's issuance of the information / show cause notice as being barred by time.

10. The charge against the respondent was proven and it was for the petitioner to assess the quantum of punishment, permissible within the confines of the law<sup>11</sup>. The august Supreme Court has also recognized the deterrence factor while considering the award of punishment<sup>12</sup>. There was no dispute before us in so far as the facts were concerned. The record demonstrated that there was no suggestion of any procedural impropriety in the disciplinary proceedings, culminating in the dismissal of the respondent. No case has been substantiated to consider the petitioner's initiation of disciplinary proceedings as time barred. Therefore, we are of the deliberated view that the Impugned Judgment is *prima facie* predicated upon erroneous assumption of facts and misapplication of the law, hence, cannot be sustained.

---

<sup>6</sup> Reliance is placed upon *Muhammad Naeem Khan vs. NBP & Others* reported as 2021 SCMR 785 (authored by *Ijaz ul Ahsan J*) to observe that once due process is manifest from a person's signatures on documents of inquiry proceedings, the said person may not be permitted to resile there from.

<sup>7</sup> (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 shall be required in every case of dismissal and the employer shall institute independent inquiries before dealing with charges against a workman.

<sup>8</sup> *Muhammad Yousaf Khan vs. HBL & Others* reported as 2004 SCMR 149; *Muhammad Ali vs. SLAT* reported as NLR 2017 Labour 107; *Novartis vs. Muhammad Arif* reported as 2005 PLC 351.

<sup>9</sup> Letter available at page 169 of the file.

<sup>10</sup> Vide Show Cause Notice dated 01.12.2015.

<sup>11</sup> Per *Muhammad Haleem J* in *Pakistan Tobacco Company Limited vs. Channa Khan & Others* reported as 1980 PLC 981; *Ghulam Mustafa Channa vs. MCB & Others* reported as 2008 SCMR 909;

<sup>12</sup> Per *Tanveer Ahmed Khan J* in *Abdul Wahid vs. The General Manager & Others* reported as 2004 PLC (C.S.) 90.

11. In view hereof, this petition had been allowed and the Impugned Judgment dated 19.06.2019 rendered by the learned Full Bench of the NIRC had been set aside vide our short order, announced in Court upon conclusion of the hearing earlier today. These are the reasons for our short order. The amounts secured before the petitioner herein, in pursuance of order dated 05.07.2019, may be returned thereto along with any appurtenant profit.

JUDGE

JUDGE