

IN THE HIGH COURT OF SINDH AT KARACHI

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

C P D 530 of 2022 : Sui Southern Gas Company Limited vs. Syed Hissamuddin & Others

C P D 531 of 2022 : Sui Southern Gas Company Limited vs. Muhammad Naseem & Others

For the Petitioners : Mr. M. Mazzan, Advocate

For the Respondents : Mr. Ali Asadullah Bullo, Advocate

Date/s of hearing : 17.10.2022

Date of announcement : 17.10.2022

ORDER

Agha Faisal, J. The facts common to both petitions are that the respondents, being a meter reader and an assistant respectively, had been reinstated in service per Sacked Employees Reinstatement Ordinance 2009; however, their employment was subsequently terminated by the petitioner on the premise that the respondents' resignations, from their employers in the interregnum, had not been accepted till beyond the date of their resumption of service with the petitioner. The terminations were set aside by the learned Member NIRC and respective orders were maintained by the learned Full Bench NIRC ("Impugned Orders"); hence, these petitions. These matters were listed / heard conjointly and shall be determined vide this common order.

2. Per petitioner's counsel, while the petitioners undertook their duties judiciously and did not remain absent from duty, however, their earlier interim employment subsisted during the tenancy of their service with the petitioner. Respondents' counsel demonstrated that the respondents had submitted their resignations upon being reinstated, however, could not be held culpable for any delay on the part of the earlier employers to give effect to the relevant resignations.

3. Heard and perused. 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.

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.

In the present matter *admittedly* there existed an adequate remedy, however, the same was duly availed / exhausted and the findings, based on the appreciation of record / evidence, had been rendered in favor of the respondents.

4. The original order, of the Member NIRC, observed the record under surveillance could not be controverted and found that that the respondents could not be held culpable for the delay in acceptance of resignations. The plea for back benefits was denied in view of the interim employment and the relief awarded was reinstatement *simpliciter*. In addition thereto, orders were also rendered for the return of any monies inadvertently credited to the respondents. The orders of the Full Bench NIRC upheld the earlier findings and noted that there was no evidence / proof to suggest that the respondents were ever performing duties elsewhere post resumption of service with the petitioner. 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.

5. 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.

6. In view hereof, we are constrained to observe that no case has been set forth to entertain this matter in the writ jurisdiction of this Court, hence, these petitions, along with pending applications, were dismissed vide our short order announced in Court earlier today upon conclusion of the hearing. These are the reasons for our short order.

JUDGE

JUDGE

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*.