

# IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

## **Constitutional Petition No.D-515 of 2023**

(M/s Omar Jibran Engineering Industries Ltd v. The National Industrial Relations Commission Bench at Sukkur and 02 others)

Mr. Ch. Azhar Ellahi, advocate for the petitioner.

Mr. Yasir Ahmed Shah, Assistant Attorney General.

Date of hearing : 07.03.2023.

Date of Order : 07.03.2023.

## **ORDER**

**ADNAN-UL-KARIM MEMON, J:-** The petitioner through the instant petition has challenged the legality of the order dated 4.8.2022 passed by the single-member bench National Industrial Relations Commission [NIRC] Karachi, inter-alia on the ground that the appeal filed under Section 54(e)(g) of Industrial Relations Act 2012 read with NIRC (P & F) Regulations 1973 against the aforesaid decision is pending adjudication before the Full Bench of National, Industrial, Relations Commission Bench at Karachi, and the bench in these days are not available to adjudicate the matter.

2. At the outset, learned counsel for the petitioner has submitted that this matter could be disposed of in terms of the ratio of the order dated 03.10.2022 passed by this Court in C.P No.D-5128 of 2022 along with connected petitions whereby direction was issued to the Full Bench of NIRC to decide the pending appeals or stay applications filed by the petitioners within 60 days from the date of constitution of such full bench. He further submitted that till such time this exercise is carried out by the full bench at Karachi no coercive action shall be taken against the petitioner for enforcement of the order dated 04.08.2022 passed by the learned Single Bench of NIRC in Case No.4-B (104) / 2018-K (Re-Farhan Saleem v. M/s Omar Jibran Engineering Industries Ltd).

3. The controversy involved is whether the Single Member Bench of the National Industrial Relations Commission (“NIRC”), can proceed to execute its order on the complaint of a private respondent, even though the Full Bench of NIRC at Karachi, before whom the Appeal of the petitioner-company against such order is pending is presently non-functional.

4. We have heard the learned Counsel for the petitioner company on the aforesaid proposal put forward by him. Admittedly, under section 58 of the Industrial Relations Act, 2012, a statutory appeal is provided against the orders of the Single Member Bench of NIRC, whereas, the petitioner’s Appeal No.12-A(264) / 2022-K is pending before a

Full Bench of NIRC, at Karachi, which presently is non-functional, whereas, some coercive measures are likely to be adopted against the Petitioner for implementation of the order(s) in question.

5. In principle, the learned Single Member Bench of NIRC could seek implementation of its order, if there is no restraining order passed by the Full Bench of NIRC, at Karachi, and the petitioner-company is under a legal obligation to make conditional compliance with the order of the learned Single Bench of NIRC so far as the reinstatement of the petitioner in service with back benefit is concerned and that would be subject to the outcome of the decision of the Full Bench of NIRC at Karachi in the aforesaid appeal, for the reason that right of appeal cannot be denied to an aggrieved person. However, such right is to be adjudicated by the appellate forum and if the order passed by the lower forum is within the parameters of law the same could be maintained and if the order is perverse and against the principle of law the same could be set at naught whereas in the present case, the learned Single Bench of NIRC has dealt with the subject issue and ordered for reinstatement of the private respondents in service with back benefits. The petitioner has taken various grounds including the ground of jurisdiction of the learned Single Member of the NIRC. Let the Full Bench of the NIRC take up the matter of the petitioner and decide the subject issue within a reasonable time including the application for interim relief.

6. Petition stands disposed of in the above terms.

**JUDGE**

**JUDGE**

Nadir\*