

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.

Before :
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

C.P. No.D-2846 of 2019

Munawar Khurhsid

Vs.

General Manager (PHS) & others

Priority

1. For order on Misc. No.12739/2019
2. For hearing of Misc. No.12740/2019
3. For hearing of main case

Date of hearing: - 07.03.2023.

Date of order: - 17.03.2023.

Moulvi Iqbal Haider, Advocate for the Petitioner.
Mr. Umair Nabi, Advocate for the Respondents No.1 to 3.
Syed Masroor Ahmed Alvi, Advocate for Respondent No.4.
Mr. Abdul Jalil Zubedi, A.A.G. Sindh.

ORDER

Muhammad Iqbal Kalhoro, J:- Petitioner was working as Pax Services Supervisor in Pakistan International Airlines Corporation (PIAC) and was a workman. The Management, allegedly annoyed by his trade union activities, issued him a show-cause notice under the Pakistan International Airlines Employees (Service & Discipline) Regulations, 1985 (PIA Regulation 1985) against allegation of submitting forged Matric certificate purportedly issued by the Board of Secondary Education, Karachi in connection with his employment. Petitioner, getting apprehensive of his eviction filed petition under section 54 (e) of Industrial Relations Act, 2012 against the show cause notice before the learned Single Bench of National Industrial Relations Commission, Karachi seeking restraining order against taking any adverse action by the Management under the same.

2. After the notice, the Management filed a reply stating that Matric certificate submitted by the petitioner, which was sent to relevant Board for verification, was found bogus. Learned Single Bench of NIRC after hearing the parties dismissed the petition of petitioner vide order dated 10.01.2019 observing that **“petitioner has failed to point out any specific trade union activity due to which the respondents got annoyed and started**

victimization under IRA, 2012 and Labour Law. Employer has prerogative to maintain discipline and good atmosphere in the Establishment and in absence of any specific allegation act of committing unfair labour practice mere bald and wild allegations cannot be termed as unfair labour practice, therefore the employer cannot be restrained from taking disciplinary action against the concerned. The instant petition is not maintainable, therefore, the interim order is recalled and the application along with main petition is hereby dismissed.” Being aggrieved by the said order, petitioner filed Appeal No.12(79)/2019-K before the Full Bench of NIRC at Islamabad, which too has been dismissed vide impugned judgment dated 26.03.2019.

3. Learned counsel for the petitioner has argued that petitioner has been victimized by the Management without any rhyme and reason; that Matric certificate submitted by the petitioner was genuine and not bogus and that Matric certificate got verified by the Management did not belong to him. He has next contended that Matric certificate submitted by the petitioner in this petition may be sent to the Board for re-verification.

4. Learned counsel for the respondents have, however, rebutted his arguments and submitted that Matric certificate, which petitioner submitted with the Management at the time of seeking employment was sent for verification and was found bogus. He was given grace period of two years to submit genuine Certificate but he failed; that Matric certificate filed by the petitioner in this petition has been obtained by him subsequently and it is not the certificate, which was submitted by him with the department at the time of employment.

5. We have considered submissions of the parties and perused the material available on record. It appear that before any proceedings could be initiated by the Management of PIAC pursuant to show cause notice, petitioner challenged the same before learned single bench of NIRC which has rightly concluded that petitioner has failed to point out any specific trade union activity causing annoyance to the respondents so much so that they started victimizing him. Further the employer has a right to maintain discipline and good atmosphere in the Establishment and in absence of any specific allegation, mere bald allegations will not form unfair labour practice. Therefore the employer cannot be restrained from taking disciplinary action against the concerned.

6. When the matter came up before the full bench of NIRC, it examined the relevant provision of law viz. section 31 of IRA, 2012 – Unfair

labour practices on the part of employers -- to determine authority of the employer to give show cause notice to the petitioner. It has been observed that for an act to constitute unfair labour practice, it must fall within four corners of aforesaid provision of law. Nothing in the petition has been stated which may form an unfair labour practice amenable to section 31 of IRA, 2012. Further, taking disciplinary proceedings against a worker for misconduct is legal right of the employer from the exercise of which he cannot be desisted under any law. The issuance of show cause does not mean that invariably an adverse action will be taken against the worker. And in cases it could be decided in favour of the delinquent. It is also clear that petitioner has challenged showcase notice only without considering that showcase does not amount to adverse action and against it the proceedings do not lie before the Commission. Merely because petitioner is a member of trade union and against him disciplinary proceedings have been initiated in the shape of a showcase notice would not mean that he can invoke jurisdiction u/s section 31 of IRA, 2012 before the Commission.

7. Before us learned counsel for the petitioner claimed that the Matric certificate got verified by the Management was not submitted by him, and it does not belong to him, and that he has a Matric certificate, available at page 77 as annex. C-1, which may be got verified. Suffice it to say that while hearing a petition against concurrent findings we cannot proceed to undertake a factual enquiry and determine as to whether the Matric certificate submitted by the petitioner at the time of appointment is bogus or not and whether the Matric certificate provided by the petitioner, as referred above, is the original certificate and shall be considered by the Management. It is for the Management to satisfy itself about the genuineness or otherwise of the Matric certificate produced by the petitioner in a manner befitting or as is provided under the law. This being the position, we do not find any merit in this petition and dismiss it accordingly. The petitioner may however join the disciplinary proceedings against him, and if so, the management shall act in accordance with law under the provisions of the Industrial and commercial Employment (Standing Order) Ordinance, 1968, which is the relevant law, as is held in the impugned judgment by the full Bench of NIRC.

With above observations the petition is disposed of along with pending applications if any.

Judge

Judge

Rafiq P.A.