

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Abdul Mobeen Lakho

C.P. No.D-4902 of 2023

Date

Order with signature of Judge

FRESH CASE:

1. For order on CMA No.24138/2023 (Urgent).
2. For order on CMA No.22440/2023 (Exemption).
3. For hearing of main case.

Dated; 1st November 2023

Mr. Ehsanullah, Advocate for Petitioners.

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1. Urgency granted.
2. Exemption granted subject to all just exceptions.
3. Through instant Constitutional Petition, the petitioners have impugned the Order dated 24.07.2023 passed by the Full Bench of National Industrial Relations Commission at Karachi in Appeal No.12A(06)/2022-K, whereby, after hearing the learned counsel for the parties the aforesaid appeal has been allowed in the following terms: -

“7. We have given careful consideration to the arguments of the learned counsel and consulted with the order dated 18-02-2021 passed by the Full Bench of this Commission mentioned in the preceding para wherein in clear terms in para 8 it has been held that “As IRA, 2012 applies to the petitioner / appellant establishment, the provincially registered trade union and proceedings under Sindh Industrial Relations Act, 2012 are unlawful. That Section 87 of the IRA, 2012 has an overriding effect against any other legislation or enactment on the subject matter covered by IRA, 2012. Hence, the charter of demand notice of strike and proceedings initiated by respondent No.1 being locally registered Trade Union

before the respondent No.10 and 11 under Sindh Industrial Relations Act, 2012 appears illegal. In these circumstances the matter requires evidence as the question of law and facts involved in this matter. So also the learned Full Bench in clear terms has remanded the case to the learned Single Member for recording evidence and decide afresh after affording an opportunity to both the parties in respect of issues mentioned in the prayer clause of the petition.

8. In view of the above circumstances, the issue of jurisdiction and application of IRA, 2012 had already been decided by the learned Full Bench of this Commission in appeal bearing No.12(38)/2020 and for remaining part of observation given in para 8 and concluding para of the said order the matter is again remanded to learned Single Member for decision afresh. Moreover, according to para 4 of the impugned order the evidence of appellant has already been recorded and the respondent did not file affidavit therefore, the respondent may be afforded opportunity for adducing evidence, if he avails and then the matter may be decided in accordance with law in view of above observation. Accordingly, the appeal is accepted and impugned order is hereby set side.”

Learned counsel for the petitioner was confronted to point out any error or illegality in the impugned order passed by the learned Full Bench of NIRC after having recognized legal position with regard to applicability of IRA, 2012 keeping in view the definition of “Trans-provincial” which means any establishment groups of establishments, industry, having its branches in more than one province as defined in subsection (xxxii) of section 2 of IRA, 2012, and the matter has been remanded to the learned Single Member of NIRC to be decided afresh after providing an opportunity to the parties by adducing evidence. In response to such query, learned counsel for the petitioner submits that this issue was decided in earlier round by the learned Single Member of NIRC, whereas, in Paragraph No.7 of the impugned order, the learned Full Bench of NIRC has been pleased to hold that the decision

of the learned Single Member of NIRC to the extent that “*Hence, the charter of demand notice of strike and proceedings initiated by respondent No.1 being locally registered Trade Union before the respondent No.10 and 11 under Sindh Industrial Relations Act, 2012 appears illegal.*” will adversely affect the decision afresh after its remand, therefore, requests that the learned Single Member may be directed to decide the matter afresh without being influenced by the aforesaid observations.

With above clarification, the impugned order passed by the learned Full Bench of NIRC is upheld. The learned Single Member of NIRC may decide legal issue involved in the instant case, after recording of evidence adduced by the parties, in accordance with law.

Instant Constitutional Petition stands disposed of in above terms alongwith listed applications.

J U D G E

J U D G E

Farhan/PS
