

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI
ACTING CHIEF JUSTICE

MR. JUSTICE ABDUL MOBEEN LAKHO

C.P. No. D-5250 of 2023

Petitioner	State Life Insurance Corporation through Ghulam Murtaza Saryo, Advocate
Respondent	through Mr. Saulat Rizvi, Assistant Advocate General Sindh.
Date of hearing	07.11.2023.
Date of order	07.11.2023.

ORDER

Abdul Mobeen Lakho, J. The Petitioner-State Life Insurance Corporation Employees Ittehad Union of Pakistan [**“SLICEIUP”**] has called in-question Order dated 19.10.2023 passed by the learned Member, Full Bench of National Industrial Relations Commission [**“FB-NIRC”**] Islamabad in Appeal bearing No.12R(44)/2023, whereby, Order dated 21.08.2023 passed the learned Single Bench, NIRC, Islamabad [**“S-NIRC”**] was maintained and the Appeal was dismissed.

2. Brief facts leading to file the instant Petition are that the Petitioner is a trade union registered as Industry-wise Trade Union in the establishment of State Life Insurance Corporation of Pakistan. The State Life Insurance Employees Union of Pakistan filed an application No.2(21)/2023 before the learned Member, National Industrial Relations Commission, Islamabad for determination of CBA under Section 19(2) of the IRA, 2012. Per Petitioner, the tenure of the existing CBA has expired on 08.07.2023 and referendum for determination of CBA may be conducted for the next term. The learned [**“S-NIRC”**] vide Order

dated 21.08.2023 appointed authorized officer to conduct the referendum proceedings. The Petitioner being aggrieved by and dissatisfied with the Orders has filed this Petition.

3. The learned counsel for the appellant has contended that the Impugned Order dated 19.10.2023 passed by the learned [“FB-NIRC”] and the impugned order dated 21.08.2023 passed by the [“S-NIRC”] are illegal and unlawful and same are liable to be set aside; that the learned Members of FB-NIRC have failed to appreciate that State Life Insurance Corporation of Pakistan has filed an Appeal bearing No. 12R(26) of 2023 under section 58 of the Industrial Relations Act, 2012 before the learned Members of FB-NIRC, wherein, the issue of cancellation of registration of Respondent No.3 union was already pending, therefore, the impugned orders are illegal and unlawful; that as the Appeal No.12R(26) of 2023 was pending, therefore, the said union State Life Insurance Employees Union of Pakistan is not competent to file the Case/Application under section 19 (2) of the Industrial Relations Act, 2012 for determination of CBA in the establishment of State Life Insurance Corporation of Pakistan; that Mr. Roshan Ali Bughio the President and Mr. Rana Shahid Abbass Khan, the General Secretary of the Petitioners union have submitted and filed on 04.09.2023 their separate/individual affidavits on oath wherein they have specifically stated and pointed out in the said affidavits that they both (the President and the General Secretary of Petitioners union) during the course of hearing have never ever stated and consented on 21.8.2023 that they have no objections for holding of fresh referendum for determinations of CBA in the establishment of M/s. State Life Insurance Corporation of Pakistan, therefore, impugned orders dated 19.10.2023 and 21.08.2023 passed by the learned Members of [“FB-NIRC”] and by the [“S-NIRC”] are illegal and unlawful and same are liable to be set aside.

4. We have heard learned counsel for the Petitioner and perused the material available on record.

5. To comprehend the issue involved in this case, it is essential to reproduce Operative paras of the order dated 19.10.2023, as under:

...

“6. The respondent No. 3 union through application filed under Section 19(2) of the IRA, 2012 has prayed that the tenure of the term of CBA for the establishment of State Life Insurance Corporation of Pakistan has been expired and workers may be afforded opportunity to elect fresh collective bargaining agent of their own choice. Section 19(2) of the IRA, 2012 provides as follow:-

"(2) Where there are more registered trade unions than one in an establishment or a group of establishments, the Registrar shall upon an application made in this behalf by any registered trade union of an establishment or group of establishments, hold within fifteen days from the making of the application, a secret ballot to determine as to which one of such trade unions shall be the collective bargaining agent for the establishment or group;

Provided that the Registrar may, in the case of a large establishment having its branches in more than one town, hold the secret ballot with thirty days from the making of the application

The period for Collective Bargaining Agent has been enumerated in sub section 11 of Section 19 of the Act, *ibid*, which for convenience is reproduced as follow: -

"(11) Where a registered trade union has been certified under clause (e) of sub-section (9) and sub-section (10) to be the collective bargaining agent for an establishment or group of establishments, no application for the determination of the collective bargaining agent for such establishment or group shall be entertained within a period of two years from the date of such certification except where the registration of such a registered trade union is cancelled before the expiration of the period;

Provided that for the trade unions having membership of more than five thousand and presence in more than one province, the period of two years will be enhanced to three years."

The existing CBA union respondent No. 3 has completed its tenure of two years and it is the requirement of law that the fresh CBA by the members of the registered trade unions has to be

determined for collective bargaining with the employer/ management. The very requirement of law cannot be defeated by any pretext from the parties.

7. In view of what has been discussed above, we are of the opinion that the order passed by the learned Single Bench necessitates no interference which is hereby maintained and resultantly, the appeal in hand is dismissed with no order as to cost. The file be consigned to record room after due completions.

...

6. From bare perusal of the above order, infact combined study of the entire material available before us by way of reappraisal, we find no infirmity or illegality in the impugned orders (concurrent findings of the two Courts below) it shows that the existence CBA Union has completed its tenure and it is the requirement of law that the fresh CBA by the Members of the Registered Union has to be determined for Collective Bargaining with the employer / Management and the full Bench of NIRC has rightly ordered to fulfill the very requirement of law which cannot be defeated by any pretext from the parties, therefore, authorized officer under Section 19[12] of the IRA, 2012 was authorized to conduct proceedings and hold referendum for determination of CBA of Petitioner. We vide our short order dated 07.11.2023 had dismissed this petition in *limine* and these are the reasons thereof.

ACTING CHIEF JUSTICE

JUDGE