

IN THE HIGH COURT OF SINDH, KARACHI

PRESENT:

Mr. Justice Salahuddin Panhwar
Mr. Justice Amjad Ali Sahito

Constitution Petition No.D-2451 of 2021

Petitioners: National Engineering Services Pakistan (Pvt.)
Ltd. & others
through Mr. Jamal Ahmed Qureshi

Respondents: Federation of Pakistan & others
through Mr. Muhammad Qasim, Deputy
Attorney General for Pakistan

through M/s. Muhammad Daud Narejo,
Muhammad Yousif Narejo & Anjli Talreja,
Advocates for Respondent No.2

Date of hearing: 24.09.2024

Date of short order: 24.09.2024

J U D G M E N T

AMJAD ALI SAHITO, J. Through this Constitution Petition, the Petitioner/National Engineering Services Pakistan (pvt) Limited (**NESPAK**) has impugned the concurrent decision of the Single Member and Full Bench of the National Industrial Relations Commission, Karachi (**"NIRC"**) made under the Industrial Relations Act,2012 (**"IRA of 2012"**) whereby the Appeal filed by the Petitioner's (**NESPAK**) was dismissed and the Order dated 08.10.2020 passed by Single Bench was maintained, the termination order dated 05.06.2013 was set aside and the petitioners were directed to reinstate the Respondent No.2 as a regular employee. Hence, the petitioners have approached this Court to set aside the impugned orders passed by (**"NIRC"**).

2. The brief facts of the case are that Respondent No.2 has been working as an Office Assistant in the Project Office for more than six years since he was initially appointed as an Office Assistant in the Project Office. The said post of Office Assistant pertains to NESPAK quota for Joint Venture vide appointment letter dated 24-05-2007. That the said contract dated 24-05-2007

expired on 31-01-2008 as per its clause-1 but the petitioners retained him and 5 other co-employees for running the Project Office and subsequently renewed his appointment vide appointment letter dated 08-02-2008 for a period of 6 months with fresh terms and conditions as contained therein, which was extended from time to time and last renewal of employment of the Respondent No.2 was made vide appointment letter dated 15-02-2013 from 12-02-2013 to 11-02-2014. Finally, the petitioners with malafide intention terminated his service vide letter of termination dated 05-06-2013. Thereafter Respondent No.2 served his grievance notice upon the petitioners on 19-07-2013 but his grievance was not redressed. Hence, he approached the Single Bench of NIRC and subsequently the learned Member passed the order in favour of Respondent No.2 while setting aside the termination order thereafter the petitioners approached the Full Bench NIRC which too upheld the decision of the Single Bench. Hence, the instant petition.

3. Learned counsel for the petitioners mainly contended that the impugned orders are based on misreading and non-reading of the facts; that Respondent No.2 was purely a temporary employee and does not fall within the definition of regular employee; that his appointment was renewed from time to time only to complete the project, otherwise the employer had no intention to retain him as a regular employee; that his termination letter was issued in accordance with the terms and conditions of the employment; that the service of Respondent No.2 was temporary in nature; that services of the staff appointed on temporary basis for a project cannot be treated as permanent. He lastly prays for setting aside the impugned orders and termination of Respondent No.2 from the service. In support of his contentions, learned counsel has relied upon the cases reported as (1) 2004 SCMR 28 (Malik Nazar Hussain vs. National Bank of Pakistan and another), (2) 2005 SCMR 642 (Government of Balochistan, Department of Health through Secretary, Civil Secretariat, Quetta vs. Dr. Zahida Kakar and 43 others) and 2000 SCMR 879 (WAPDA and others vs. Khanimullah and others).

4. On the other hand, learned counsel for Respondent No.2 while supporting concurrent findings of the Courts below submits that Respondent No.2 was appointed as Office Assistant on 24.05.2007 for a period of 08 months with effect from 01.06.2007 to 31.01.2008, thereafter, his services were renewed from time to time and finally he was confirmed on his job, as such, he requests for dismissal of the instant petition.

5. Learned Assistant Attorney General while supporting the impugned orders adopted the arguments made by learned counsel for Respondent No.2.

6. Heard the learned counsel for the respective parties and perused the material available on record.

7. A specific question was put to the learned counsel for the petitioners as to whether any remedy is available with the petitioners after filing an Appeal against orders of **NIRC** and as to whether the writ jurisdiction of this Court can be exercised as a substitute of appeal or revision despite the fact that an Appeal against the orders passed by **NIRC** is final under the (**“IRA of 2012”**), learned counsel could not reply satisfactory. However, he submits that Respondent No.2 was working purely temporarily and terms and conditions of the appointment were mentioned in the appointment letter dated 24.05.2007.

8. So far, learned counsel for the petitioners questioned the impugned orders of **NIRC**, we are not influenced with his arguments as this Court has to look into the matters under constitutional jurisdiction which are passed without lawful authority and jurisdiction. Object of Article 199 of the Constitution of Pakistan is to foster justice, protect rights and correct any wrongs, for which, it empowers the high court to rectify or excessive exercise of jurisdiction of lower courts and address procedural illegality or irregularity that may have prejudiced a case. Nevertheless, the impugned orders have been passed by the **NIRC** within the lawful authority and jurisdiction; therefore, the same is not open to Constitutional jurisdiction. More so, the petitioner is possessed with a remedy of appeal and

he cannot invoke the Constitutional jurisdiction after exhausting the remedy of appeal, which is final. If the Constitutional jurisdiction is exercised without any jurisdictional defect or infringement of fundamental rights then the intent and purpose of the Legislature would be frustrated. So far question regarding the appreciation of evidence is concerned, it needs no reiteration that appraisal of evidence is the function of the Single Bench firstly and then the Full Bench. Nothing is pointed out that there is mala fide, arbitrary, and perverse or the **NIRC** has acted in excess of its jurisdiction, which may be considered exercising of writ jurisdiction. The Industrial Relations Act, 2012 does not provide the right of second appeal to any party of the proceedings. In this regard, we are also fortified with the observations of the Hon'ble Supreme Court of Pakistan made in **ARIF FAREED v. BIBI SARA and others [2023 SCMR 413]** and **M. HAMAD HASSAN v. Mst. ISMA BUKHARI and 2 others [2023 SCMR 1434]**.

9. So for the plea raised by learned counsel for the petitioner that Respondent No.2 was working as an Office Assistant purely on a temporary basis when we confronted with the learned counsel for the petitioners as to whether any documentary evidence is available on record which confirms that after his appointment in the year 2007, he was continuously working on contract basis, to which he replied that the Respondent No.2 was verbally informed that he was a temporary employee. Again we have inquired from learned counsel for the petitioners that today are you in a position to show any documents which reflect that respondent No.2 was contract employed he replied that verbally he can inform that he was contract employed, however, he admits that the National Engineering Services Pakistan (Pvt.) Ltd. is still functional. Further, the petitioners have failed to produce any evidence in rebuttal of respondent No-2's affidavit in evidence before the learned Single bench.

10. On further perusal of the record, it appears that the petitioners'/employer has challenged the concurrent findings of fact recorded by the two lower forums which have

respectively allowed the grievance petition and appeal of Respondent No.2. It is appropriate to reproduce the relevant Para-5 of the order passed by Single Bench and para-5 of Full Bench which reads as under:

Para-6 of Single Bench:-

“From the perusal of record it appears that the petitioner was working as Office Assistant in the Project Office respondent No.3 for more than six years. He was initially appointed by respondent No.2 for the period of 8 months with effect from 01-06-2007 to 31-01-2008. The record further reveals that the employment of the petitioner was renewed vide letter dated 09-09-2008, 09-07-2008, 06-01-2009, 24-08-2009, 21-06-2010, 28-06-2011 and 24-04-2012 with increment of Rs.8000/- The last renewal was made vide appointment letter dated 15-02-2013 from 12-02-2013 to 11- 2-2014 with further increment of Rs.2000/- I have perused the written reply filed by the respondents wherein nothing has been alleged against the petitioner regarding his work and conduct except that the employment of the petitioner was Contractual. The respondents have failed to produce any evidence in rebuttal of the petitioner's affidavit. In these circumstances, I have no other option but to allow the petition of the petitioner.”

Para-5 of Full Bench:-

“It is agreed between the parties that the respondent was employed with the appellant on 24-05-2007. It is also an admitted fact that the contract period of the respondent was extended from time to time up to the date of his termination i.e. 05-06-2013. Under order 1 of the Standing Order Ordinance, 1968 an employee who has worked for more than 09 months and has satisfactorily completed his probation period of three months and becomes a permanent employee. In the case in hand the respondent has worked with the appellant for near about 06 years which means that he has successfully completed his probation period of three months. The respondent has worked for near about 06 years. It means that he was working on the post of permanent nature. There is nothing on file to suggest that the project on which the respondent was working has been completed and the services of the respondent were no more required. As the respondent has worked for a long period, so he has attained the status of permanent employee. Under Standing Order Ordinance 12(3) before passing the termination order of an employee the employer is to issue him a show cause notice and to give him an opportunity to submit his explanation, and without observing these formalities termination of an employee is regarded as illegal one. In the case in hand, admittedly the appellant has not served any show cause notice or charge sheet to the respondent and no inquiry has been held against him. A perusal of the termination order dated 05-06-2013 shows that the service of the respondent has been terminated saying that his services are no more required which is not a valid order under the law. And through the impugned order the learned Single Bench has also held as such.”

11. It is relevant to note that it is a well-established principle of law that findings of fact, concurrently decided by two subordinate courts/forums, cannot be interfered with in writ jurisdiction, provided such findings are based on a proper appreciation of evidence. However, this principle does not extend to cases involving misreading or non-reading of evidence, which is not the issue in the present case. The matter at hand pertains to the applicability of the law as

determined by the Full Bench and the single Bench. Therefore, we are of the considered view that the writ of certiorari may only be invoked to address a jurisdictional error or a violation of law. Since no such error or violation has been demonstrated in the present case, the petition is liable to be dismissed. Reliance is placed in the case of **United Bank Limited (UBL) through its President and others v. Jamil Ahmed and others (2024 SCMR 164)**, where Supreme Court of Pakistan has held that:

9....."However, if the concurrent findings recorded by the lower fora are found to be in violation of law or based on flagrant and obvious defect floating on the surface of record, then it cannot be treated as being so sacrosanct or sanctified that it cannot be reversed by the High Court in the Constitutional jurisdiction vested in it by Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as a corrective measure in order to satisfy and reassure whether the impugned decision is within the law or not and if it suffers any jurisdictional defect, in such set of circumstances, the High Court without being impressed or influenced by the fact that the matter reached the High Court under Constitutional jurisdiction in pursuit of the concurrent findings recorded below, can cure and rectify the defect".

12. The case laws relied on by learned counsel for the petitioners are distinguishable from the facts and circumstances of the present case, hence same are not applicable in the present case.

13. In the light of the above facts and circumstances of the case, we do not see any illegality, infirmity or material irregularity in the orders passed by the learned Single Member and Full Bench of the National Industrial Relations Commission, Karachi ("**NIRC**"). Resultantly, the instant petition was meritless and was dismissed vide short order dated **24.09.2024** along with the listed application(s).

14. These are the reasons of our short order dated **24.09.2024** whereby we dismissed the captioned Petition.

JUDGE

JUDGE