

# IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. S – 86 of 2021

[National Refinery Ltd. *versus* Muhammad Zakir and others]

and

C. P. No. S – 87 of 2021

[National Refinery Ltd. *versus* Shakir Mehmood Siddiqui and others]

Date of hearing : 01.02.2024.

Petitioner(s) : National Refinery Ltd., through Mr. Shaukat Ali Chaudhry, Advocate [in both petitions].

Private Respondents : Muhammad Zakir and others, through Mr. S. Shoa-un-Nabi, [in both petitions].

Officer Respondents : Mr. Muhammad Kamran Khan, Assistant Advocate General Sindh.

Mr. Ahmed Faraz, Advocate.

## JUDGMENT

**Muhammad Faisal Kamal Alam, J:** In both these Petitions, same Order has been challenged; the caption whereof reads as ‘ORDER EXTRACT FROM DIARY SHEET DATED 14.12.2020’.

2. Case in nutshell of the Petitioner is, that the private Respondents are not employees of the Petitioner, but they are working in the establishment of the Petitioner through Respondent No.21 – Empire Security Technology (Pvt.) Limited, which is responsible for their wages and other ancillary employment benefits.

3. Mr. Shaukat Ali Chaudhry, learned counsel for the Petitioners, has referred to the impugned Order, in which Application of Petitioner filed under Order I Rule 10 of CPC was not entertained and it was stated that it will be decided with the main Application in the final order and five Issues were framed; contended that Issue No.4 is illegal and Respondent No.22-Authority has no power under the Sindh Payment of Wages Act, 2015, to

decide the status of an employee, but only can decide their grievance, including, with regard to payment or short payment of wages and service dues. For the sake of convenience, Issue No.4 is reproduced herein below\_

“4. Whether the applicants are employees of Respondent No.1 or Respondent No.2?”

4. It is argued that earlier the private Respondents and other employees filed C. P. No. D – 818 of 2018 [and other Petitions] in this Court, which were dismissed; a Copy of the Order of the said Petition and Memo of Petition produced today in Court, which are taken on record; that the Issue with regard to the status of the private Respondents that whether they are in the employment of the Petitioner or not, is *sub judice* before the Honourable Supreme Court in C.P.L.A. No. 24-K of 2022. Learned Advocate has referred to the Reply of Respondent-Empire Security Technologies {in the Constitution Petition No. S-86 of 2021} and Continental Engineering Services (Pvt.) Limited [in Constitution Petition No. S-87 of 2021], to show that the said Respondent has supported the stance of present Petitioner [NRL] and clearly averred in their respective Replies that the private Respondents of both the Subject Petitions are the employees of the above named Respondent Company.

5. With regard to the question about the maintainability, Legal Team for the Petitioner [NRL] has replied, that since no appeal is provided to challenge the interim orders like the impugned Order [of these title Petitions], thus, the same can be questioned in a constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

6. To augment the above argument, cited the case law reported in **2011 P L C 208** [*Messrs INTERTRADE through Owner versus Faisal and 2 others*] and **P L D 2004 Supreme Court 416** [*Lawrencepur Woolen and Textile Mills Ltd. versus Government of the Punjab and others*]. In the INTERTRADE

Case, it is ruled that since the Legislature has not provided any appeal against an order passed by the Respondent Authority, accepting or rejecting an application for recalling of an order, hence, the same is challengeable in a writ jurisdiction. In the latter reported Case, the scope of the jurisdiction of the Respondent Authority, as per the Statute (*supra*), is explained.

7. On the other hand, Mr. Shoa-un-Nabi, learned Counsel for the private Respondents has opposed these petitions on number of grounds; *mainly*, that the impugned Order is not even an Order. He has relied upon the unreported Decisions filed through his Statement dated 16.01.2024 in the Constitution Petition No. D-87 of 2021. Relevant Decisions are of High Court Appeal No. D-372 of 2023 [handed down by the learned Division Bench of this Court in the Case of *National Oil Refinery Limited versus Syed Mansoor Ali and and others*] and in the Constitution Petitions No. S-149 and 150 of 2013 [*National Refinery Limited versus Mst. Farida Begum and others*]; crux of which is that an interlocutory order which has not snatched a substantial right of a petitioner can be assailed with the final order, if required; consequently, constitution petition was dismissed.

8. Arguments heard and record perused.

9. Impugned Order has been perused. Looking at the contents of the impugned Order in these two Petitions, the conclusion is that in fact the impugned Order is not even an interlocutory Order; rather, no order has been passed, because only the Issues were framed for the final adjudication and the above Application of the Petitioner for its deletion from the Proceeding has not been decided. Therefore, Decisions cited by the learned Counsel for the Petitioner are distinguishable.

10. Adverting to his second contention; that the question of status of employment of the private Respondents vis-à-vis Petitioner is *sub judice*

before the Honourable Supreme Court. This aspect should be considered by Respondent-Authority while deciding the matter / case.

11. Since, there is no interim order as such, as discussed in the preceding paragraphs, and the Application of Petitioner for deletion of name is still *sub judice* before the Respondent-Authority, therefore, I am afraid that these Petitions of the nature are not maintainable. If writ jurisdiction is invoked to interfere in such trivial matters, where main controversy is yet to be decided, then the special fora and tribunals established under special statutes will not be able to function effectively and in accordance with law. Petitioner is seeking issuance of writ of *certiorari*; when the sub-ordinate tribunal / forum, in the present case, the Commissioner has not even passed an interlocutory order, then, there is no plausible reason or justification to accept these Constitution Petitions.

12. The conclusion is that both these Petitions are dismissed along with all pending application(s), if any. The Respondent-Authority will decide the matter, considering the observations mentioned in the preceding paragraphs and after hearing the Parties or their Advocates.

**Judge**

Riaz / P.S.