

Order Sheet

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

CP No. D- 1642 of 2022

[M/s. Utility Store Corporation of Pakistan
Vs.
National Industrial Relations Commission and others]

Before:-

Mr. Justice Arshad Hussain Khan

Mr. Justice Syed Fiaz ul Hassan Shah

Petitioner : through Mr. Ali Asghar Mangi, Advocate

Respondents : Nemo

Date of Hearing
& Decision : 16.04.2025

ORDER

ARSHAD HUSSAIN KHAN, J. Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan the Petitioner M/s. Utility Store Corporation of Pakistan has challenged the Order dated 03.02.2022 passed by the Full Bench of National Industrial Relations Commission Islamabad at Karachi (NIRC) whereby the learned Members of NIRC after hearing the parties dismissed the Appeal filed by the petitioners and maintained the Order dated 12.01.2021 passed by the Member NIRC Karachi Bench-I.

2. Brief facts of the case are that respondent No.3 was working in Petitioners' establishment on daily wages without any break of single day. Per respondent No.3 the period of his employment was extended from time to time as such he attained the status of permanent worker in accordance with S.O.1(b) of the Industrial & Commercial Employment (Standing Orders) Ordinance, 1968 but the petitioners neither regularized his services nor given him the benefits / facilities of permanent workman and on the contrary extended threats of dismissal / termination from job; as such respondent No.3 along with others initiated legal proceedings before the Commission wherein stay order was granted in favour of petitioner. However the said case was withdrawn on 26.3.2015 on the undertaking of counsel appearing on behalf of petitioners-corporation. Subsequently, after withdrawal of above case respondent No.3 along with others were terminated from job vide order dated 6.5.2015 without any reasons and without adopting the legal procedure. The

respondent No.3 being aggrieved by the termination order served grievance notice upon the Petitioners but his grievance was not redressed, hence he filed Grievance Petition bearing No. 4B(257)/2015-K before the NIRC Karachi Bench-I. The said Grievance Petition was allowed vide order dated 12.01.2021 while directing the petitioners to reinstate respondent No.3 in service with back benefits within thirty days. The said order was challenged before Full Bench of NIRC in Appeal No. 12A(53)/2021-K. The said Appeal was also dismissed maintaining the order of NIRC Karachi Bench-I; hence the instant Constitutional Petition.

3. Learned counsel for the petitioners argued that both the impugned orders are wrong, illegal and against the facts; that respondent No.3 was employed in petitioner's establishment on daily wages in order to meet the stop-gap arrangement for immediate need of work at the stores / offices owned and controlled by the petitioner-corporation; that respondent No.3 misappropriated/ embezzled the funds of petitioner-corporation, therefore, disciplinary proceedings were initiated against him and on proven guilty he was terminated from his service. Learned counsel argued that the impugned orders were passed in slipshod manner without recording evidence as such are not sustainable in law. He lastly prayed for setting aside the impugned orders.

4. Precisely, the stance of the petitioners is that respondent No.3 was engaged on daily wages to meet the stop-gap arrangement on specific terms as mentioned in its letter of appointment, as such, he is not entitled for any relief and further the termination order is a lawful order which was passed after adopting legal procedure.

5. From the perusal of the record, it transpires that respondent No.3 was terminated on the alleged ground of misconduct and embezzlement of funds/ stock, however, record does not show that prior to issuance of termination order dated 06.05.2015 he had been issued any show cause notice or held any enquiry against him. Per Standing Order-15(4) of Industrial & Commercial Employment (Standing Orders) Ordinance, 1968 no order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct within one month of the date of such misconduct or of the date on which the alleged misconduct comes to the notice of employer and is given opportunity to explain the circumstances alleged against him and the employer shall conduct independent enquiry before dealing with charges against a workman.

6. It is well settled that for disciplinary proceedings on account of misconduct, a separate procedure is laid down which emphasizes the issuance of show cause notice, holding inquiry unless dispensed with by the competent authority considering all attending circumstances of the case and after personal hearing, appropriate action may be taken in accordance with law. Moreover, it is a basic rule that before taking any adverse action, the affected party must be given a fair opportunity to respond and defend the action. This principle does not lay down any differentiation or inequality between a quasi-judicial function and an administrative function/action. It applies evenly and uniformly to secure justice and, in turn, prevent the miscarriage of justice. Before taking any punitive or adverse action, putting an end to the services of any employee/workman or civil servant, the precept of fairness and reasonableness commands that an even handed opportunity to put forth the defence should be afforded.¹

7. In the instant case, the petitioners while terminating the services of respondent No.3 under the alleged charge of misconduct has not adopted the prescribed procedure as provided in the Standing Orders [Industrial & Commercial Employment (Standing Orders) Ordinance, 1968], as such the termination order dated 06.05.2015 is untenable in law.

8. The concurrent decisions passed by learned fora below are based upon correct appreciation of facts, law and material available on record. In order to invoke the constitutional jurisdiction of this Court, which is discretionary and equitable in nature, the petitioners were obliged to show any jurisdictional defect, legal infirmity or irregularity in both the decisions but learned counsel for petitioners remained unable to pinpoint any of above defects in the impugned decisions.

9. In view of the above, the petition, being devoid of any merit, is dismissed with no order as to costs.

JUDGE

JUDGE

karar_hussain/PS*

¹ *Chairman Agriculture Policy Institute, Ministry of National Food Security and Research, Government of Pakistan v. Zulqarnain Ali* [2022 SCMR 636] and *Town Administration and another v. Mohammad Khalid and other* [2024 SCMR 1852]