

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 4137 of 2026
(Hashmani Hotels Litimited v. Federation of Pakistan and others)

DATE	ORDER WITH SIGNATURE OF JUDGES
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Before:-
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing and order:- 08.09.2026

Mr. Ahmed Imran Diwan, Advocate for the Petitioner.
Mr. Waseem Ahmed Memon, Advocate for the Respondent No.4.
Ms. Wajeeha Mehdi, Assistant Attorney General.

ORDER

Adnan-ul-Karim Memon, J. The Petitioner, Hashwani Hotels Limited (HHL), has filed this Constitutional Petition under Article 199 of the Constitution seeking suspension of the impugned order dated 30.03.2026 passed by the learned Single Member, NIRC, in Case No. 4B(216)/2022-K, whereby the Petitioner was directed to reinstate Respondent No.3, Zubair Khan, with effect from 05.08.2022 along with back benefits.

2. The Petitioner’s counsel contends that Respondent No.3 was never its employee but was employed by Respondent No.4, Abacus ELS (Private) Limited, an independent manpower service provider. He was appointed, paid, registered with EOBI and insured by Abacus, which also exercised disciplinary authority over him. The employment documents expressly provided that his deployment at the Hotel would not create an employer-employee relationship with the Petitioner. Respondent No.3 himself admitted in cross-examination that he was an employee of Abacus, while Abacus also unequivocally admitted the same before the NIRC. He added that despite this uncontroverted evidence, the learned Single Member held the Petitioner to be the employer of Respondent No.3, principally on the basis of his presence in the Hotel's attendance register and concluded that the outsourcing arrangement was a sham. The Petitioner submits that the finding is contrary to the evidence and the applicable law, particularly the principles laid down in Fauji Fertilizer Company Ltd. v. NIRC (2013 SCMR 1253), under which deemed employment of a contractor's worker requires strict proof of direct supervision, control and involvement in the principal establishment's affairs.

3. Aggrieved by the order, the Petitioner filed Appeal No. 12A(05) of 2026 before the Full Bench of NIRC on 29.04.2026 along with a stay application.

However, despite the appeal being fixed for hearing on 17.06.2026, the Full Bench was unavailable and the matter was re-fixed for 16.07.2026. Thus, the Petitioner was unable to obtain appellate relief through no fault of its own. Meanwhile, Respondent No.3 initiated Contempt Complaint No.7(30) of 2026 against the Petitioner's Director HR for alleged non-compliance with the impugned order. The learned Single Member directed compliance or production of a stay order, although the Petitioner's appeal and stay application remained unheard before the Full Bench. The Petitioner therefore apprehends coercive proceedings despite having diligently pursued the statutory remedy. The Petitioner submits that the alternate remedy has, in the circumstances, become practically ineffective and unavailable, thereby justifying the invocation of constitutional jurisdiction. It further contends that the impugned order suffers from errors of law and fact, ignores the admitted employer-employee relationship between Respondent Nos.3 and 4, misapplies the law relating to outsourced workers, and imposes an arbitrary and unquantified liability for reinstatement and back benefits upon a party which was never the employer. The Petitioner therefore seeks suspension of the impugned order, suspension of the contempt and enforcement proceedings, restraint against coercive action against the Petitioner and its Director HR, and a direction to the NIRC Full Bench to hear the pending appeal and stay application at the earliest opportunity.

4. We have been informed that the appeal was filed on 16.07.2026 but could not be taken up due to non-availability of the Full Bench, which is now fixed for 01.10.2026.

5. In view of the foregoing, we have noticed that the Petitioner has already availed the statutory remedy of appeal before the Full Bench of the NIRC, but the same could not be taken up due to non-availability of the Bench and is now fixed for 01.10.2026. Since the controversy is presently pending before the competent appellate forum, this Court, without expressing any opinion on the merits of the impugned order, considers it appropriate to facilitate adjudication of the appeal rather than examine the matter on merits in constitutional jurisdiction.

6. Accordingly, with the consent of the parties, the Full Bench of the NIRC is directed to decide the Petitioner's appeal within three weeks from the date of its hearing. In the meantime, no coercive action shall be taken against the Petitioner pursuant to the impugned order, subject to the final decision of the Full Bench. The Constitutional Petition and the listed application are, accordingly, disposed of.

JUDGE

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