ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Constitutional Petition No. D – 1257 of 2024
(M/s. Sui Southern Gas Company Limited Versus Nauroze Khan)

DATE	**ORDER WITH SIGNATURE OF JUDGES**

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Muhammad Jaffer Raza

Date of hearing & orders: 20.8.2026

M/s. Abdul Razzak, Ghazi Khan Khalil, Aftab Ali and Rana Abu Baqar, Advocates for the Petitioner.
Mr. Ghulam Ali Deeshak, Advocate for the Respondent.

O R D E R

Adnan-ul-Karim Memon, J. Petitioner has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

> *A. Set aside the impugned ordersdated24.01.2024 and 20.09.2022 passed by the learned F.B. and S.B. of the NIRC Karachi in Appeal No.12A(276)/2022-K and Grievance Petition No.4B(197)/2020-K, respectively.*
>
> *B. Declare that the impugned orders dated 24.01.2024 and 20.09.2022 are illegal, unlawful, null and void; hence, the same may be set aside;*
>
> *C. Declare that the Dismissal Order dated 19.10.2020 issued by the Petitioner against the Respondent is in accordance with law and was passed in accordance with the principles of natural justice;*
>
> *D. Suspend the operation of the impugned orders dated 24.01.2024 and 20.09.2022 passed by the learned NIRC Karachi during pendency of this present petition.*

2. Learned counsel for the Petitioner submitted that the Petitioner, a public listed company engaged in the transmission and distribution of natural gas, has challenged the orders dated 20.09.2022 and 24.01.2024 passed by the Single Bench and Full Bench of the National Industrial Relations Commission, whereby the Respondent's dismissal from service was set aside. Counsel contended that the Respondent was initially appointed as a Helper in 1990 and, while seeking promotion as Clerk, represented himself as an Intermediate-qualified employee. In 2017, during verification of employees' educational credentials, the Respondent submitted his Intermediate Certificate, which, upon verification by the Board of Intermediate Education, Karachi, was found to be forged. The Petitioner-company, therefore, initiated disciplinary proceedings against him and issued a Show Cause Notice, and conducted a regular enquiry in which the private Respondent was afforded full opportunity of hearing. The Enquiry Officer found him guilty of submitting a forged certificate, whereafter he was dismissed from service on 19.10.2020. Learned counsel argued that the NIRC fell into serious error in setting aside the dismissal order on the ground that the Respondent had

not obtained any benefit from the forged certificate and that Intermediate qualification was not required for his initial appointment as Helper. According to counsel, the real issue was not the qualification required for the post of Helper, but the Respondent’s deliberate submission of a forged certificate and misrepresentation of his educational qualification. It is added that the Respondent had also stated in his employment application that he was “awaiting BA results,” thereby representing that he had already passed Intermediate. Counsel further submitted that the NIRC wrongly observed that the enquiry report and proceedings had not been produced. The said record had already been filed in the earlier proceedings before the same Bench, and this fact was specifically disclosed in the Petitioner’s affidavit-in-evidence. The NIRC could have called for the previous record instead of discarding the entire disciplinary proceedings on a technical ground. It was further argued that the Impugned Orders suffer from misreading and non-appreciation of material evidence, contain findings based on assumptions unsupported by the record, and fail to address the central allegation of fraud and misconduct. The NIRC also erroneously presumed that the disciplinary action was motivated by the Respondent’s trade union affiliation, despite there being no evidence to support such conclusion. Counsel maintained that submission of a forged educational certificate constitutes serious misconduct and fraud, warranting dismissal, and that the Respondent could not claim the benefit of his own wrongdoing. Learned counsel therefore submitted that the Impugned Orders are arbitrary, unlawful, non-speaking and based on misreading and non-reading of evidence, resulting in grave prejudice to the Petitioner. He prayed that the orders dated 20.09.2022 and 24.01.2024 be set aside, the dismissal order dated 19.10.2020 be declared lawful.

3. Learned counsel for the respondent supported the impugned orders and submitted that the respondent was appointed as a Helper in 1990, for which no educational qualification was required, and was subsequently promoted as Clerk in 1991 on the basis of an application wherein he merely stated that he was a literate person and did not claim to be an Intermediate. He maintained that the respondent had consistently denied submitting any Intermediate certificate and that the alleged forged certificate had not been proved to have been submitted by him or used for obtaining promotion or any financial benefit. Counsel further contended that the show-cause notice was issued after an unexplained delay of about 27 years, although the respondent had subsequently been promoted to the post of Superintendent. He alleged that the disciplinary proceedings were initiated to harass and victimize the respondent because of his active participation in trade union activities. It was also argued that the Petitioner-company failed to produce the inquiry proceedings, inquiry report, or the Inquiry Officer before the Commission, thereby depriving the respondent of a fair opportunity of defence and rendering the dismissal proceedings unlawful. On these grounds, learned

counsel prayed for dismissal of the petition and upholding of the orders directing reinstatement of the respondent with back benefits.

4. We have given anxious consideration to the submissions advanced by learned counsel for the parties, the impugned orders passed by the learned Single Bench and Full Bench of the NIRC, and the material available on record.

5. The principal question requiring our determination is whether the petitioner company succeeded in establishing, through legally admissible and reliable evidence, that the respondent had deliberately submitted a forged Intermediate certificate for the purpose of securing his promotion or any other service benefit, and whether the disciplinary proceedings culminating in his dismissal were conducted in accordance with the principles of natural justice.

6. It is an admitted position that the respondent was initially appointed as a Helper in the year 1990 and was subsequently promoted as Clerk in 1991. The petitioner company has not been able to demonstrate from the contemporaneous record that any Intermediate qualification was prescribed for his initial appointment as Helper or that his promotion as Clerk was conditional upon possession of an Intermediate certificate. On the contrary, the evidence relied upon by the petitioner itself shows that the application through which the respondent sought promotion merely described him as a literate person and did not disclose Matriculation, Intermediate or B.A. qualification. Thus, the very foundation of the allegation that the respondent obtained his promotion by producing a forged Intermediate certificate remains unsupported by the contemporaneous record.

7. The contention of learned counsel for the petitioner that the real misconduct was not the acquisition of any benefit but the mere submission of a forged certificate cannot, in principle, be disputed. A deliberate act of producing a forged educational document, if established through reliable evidence, may undoubtedly constitute serious misconduct warranting appropriate disciplinary action, irrespective of whether such document ultimately resulted in monetary or promotional benefit. However, the legal difficulty faced is that before a severe penalty such as dismissal can be sustained, the employer must first establish the foundational fact that the employee actually submitted, possessed, relied upon or used the alleged forged document. A finding of fraud or dishonesty cannot rest merely upon suspicion, assumption or the fact that a document was subsequently found to be forged.

8. In the present case, the petitioner failed to bridge this essential evidentiary gap. Its witness, Mr. Fatter Chanzeb, admittedly joined the establishment only in 2009, whereas the respondent had been promoted as Clerk as far back as 1991. The witness, therefore, had no personal knowledge of the circumstances in which

the respondent was promoted or of the documents allegedly submitted by him at that time. More importantly, during cross-examination he admitted that the promotion application did not contain any declaration of Intermediate qualification. His testimony, therefore, did not establish the crucial link between the respondent and the alleged forged certificate.

9. Equally significant is the respondent's categorical denial that he had ever submitted or relied upon the alleged Intermediate certificate. Once such denial was made, the burden lay upon the employer, which was asserting misconduct, to place before the competent forum sufficient material demonstrating that the certificate was in fact submitted by the respondent and was used by him. Merely proving that a certificate was forged does not, by itself, prove that the particular employee against whom disciplinary action is taken submitted or used it. The identity of the person who submitted the document and the circumstances in which it was submitted were therefore material facts requiring proof. No convincing evidence has been produced to establish those facts.

10. The unexplained delay of approximately 27 years in initiating disciplinary proceedings also assumes considerable significance. The alleged certificate relates to the period surrounding the respondent's promotion in 1991, whereas the disciplinary proceedings were initiated only in 2017 and ultimately culminated in his dismissal in 2020. It appears that during this long intervening period, the respondent continued in service and was even promoted to the post of Superintendent. Such extraordinary delay does not by itself render disciplinary proceedings legally void in every circumstance; however, where the allegation relates to an event almost three decades old, the employer is required to furnish a satisfactory explanation for the delay and to produce convincing contemporaneous material establishing the alleged misconduct. In the present case, no satisfactory explanation for such delay, coupled with reliable contemporaneous evidence of the alleged submission, has been demonstrated.

11. The contention that the respondent had represented himself in his employment application as being “awaiting BA results” also does not, in the circumstances of the present case, cure the fundamental evidentiary deficiency. Such statement may raise a question regarding the respondent's educational status, but it cannot substitute proof that he submitted the particular forged Intermediate certificate which became the basis of the disciplinary charge. The material question before the Commission was not merely whether the respondent had represented himself to be academically qualified, but whether he committed the specific misconduct alleged against him and whether that charge was established through a lawful disciplinary process.

12. The most serious deficiency, however, concerns the disciplinary inquiry itself. The petitioner asserted that a regular inquiry had been conducted and that

the respondent had been afforded full opportunity of defence. Yet, when the matter came before the Commission, neither the inquiry proceedings nor the inquiry report was produced, nor was the Inquiry Officer examined to establish the manner in which the inquiry had been conducted and the findings reached therein. In the absence of the primary record of the inquiry, the Commission could not reasonably ascertain whether the respondent had actually been supplied the material relied upon against him, whether he had been afforded an opportunity to cross-examine the relevant witnesses, whether his defence was considered, and whether the findings of guilt were supported by evidence.

13. The argument that the inquiry record had been produced in an earlier proceeding and that the Commission could have summoned the previous record does not relieve the petitioner of its obligation to establish its case in the proceedings in which the impugned dismissal was being defended. Where an employer seeks to justify dismissal on the basis of a departmental inquiry, the inquiry record constitutes the essential material upon which the legality of the punishment is to be examined. The employer cannot expect the Court or Commission to presume the contents, fairness or legality of an inquiry whose primary record has not been properly placed before it. The failure to produce the inquiry record was, therefore, not a mere technical omission when the entire dismissal rested upon the findings allegedly recorded in that inquiry.

14. Likewise, non-examination of the Inquiry Officer assumes importance because the respondent had disputed the fairness and legality of the proceedings. The Inquiry Officer was the person competent to explain the procedure adopted, the evidence considered, the opportunities afforded to the respondent and the basis upon which the charge was held proved. In such circumstances, the absence of the Inquiry Officer's evidence, coupled with the non-production of the inquiry proceedings and report, materially weakened the employer's case and justified the Commission's conclusion that the alleged misconduct had not been satisfactorily established.

15. The principle of natural justice is not an empty formality. An employee facing a charge carrying the extreme consequence of dismissal from service must be informed of the allegations and the material relied upon against him and must be afforded a meaningful opportunity to defend himself. A disciplinary finding must be founded upon evidence and a fair procedure. The expression “condemned unheard”, therefore, was used by the Commission in the context of the employer's failure to establish from the inquiry record that the respondent had in fact been afforded the procedural safeguards required by law. Once the foundational disciplinary record itself was withheld, the Commission was justified in scrutinizing the dismissal with particular caution.

16. The petitioner's allegation that the NIRC wrongly presumed victimization on account of the respondent's trade union activities also does not materially alter the result. Even if the finding regarding victimization were disregarded, the dismissal could not be sustained unless the employer independently established the alleged misconduct and the legality of the disciplinary proceedings. The validity of the dismissal must stand or fall on the evidence supporting the charge, not upon the existence or absence of a finding regarding anti-union discrimination. Thus, the absence of conclusive evidence regarding victimization does not cure the fundamental defects in the employer's case.

17. It is equally well settled that in constitutional jurisdiction this Court does not ordinarily substitute its own assessment of evidence for that of a competent statutory forum merely because another view may be possible. Interference is warranted where the impugned order is shown to suffer from jurisdictional defect, violation of law, perversity, misreading or non-reading of material evidence, or denial of due process. In the present case, however, the findings recorded by the NIRC are based upon the material deficiencies appearing in the employer's own evidence, particularly the admission of its witness, the absence of the promotion record showing the alleged qualification, the unexplained delay, and the non-production of the inquiry proceedings and report. The impugned orders, therefore, cannot be characterized as arbitrary or perverse merely because the petitioner company seeks a different appreciation of the same material.

18. The argument that the respondent should not be permitted to take advantage of his own wrong would have considerable force if the alleged wrong itself had been established. But the maxim that no person can benefit from his own wrongdoing cannot be invoked to dispense with proof of the wrongdoing. Before applying such principle, the employer was required to establish that the respondent had actually committed the alleged fraud by submitting or using the forged certificate. That essential fact remained unproved. Consequently, the principle relied upon by the petitioner cannot be used as a substitute for evidence.

19. We are also mindful that dismissal from service is the severest civil consequence that may be imposed upon an employee. Where the charge involves fraud, forgery or dishonesty, the seriousness of the allegation certainly justifies strict disciplinary action if proved. Nevertheless, the seriousness of the charge cannot lower the standard of procedural fairness or permit an employee to be punished on the basis of conjecture. The more serious the allegation and punishment, the greater is the necessity that the charge be established through a fair and transparent process and supported by credible material.

20. In the present case, the petitioner company has failed to establish the necessary nexus between the respondent and the alleged forged Intermediate certificate; has failed to explain the extraordinary delay in initiating proceedings

in respect of an alleged act dating back to 1991; has failed to produce the inquiry proceedings and inquiry report before the Commission; and has failed to examine the Inquiry Officer so as to establish the fairness and authenticity of the inquiry. The testimony of its own witness further undermines the allegation that the respondent's promotion was obtained on the basis of Intermediate qualification. These deficiencies go to the root of the matter and cannot be treated as mere procedural irregularities.

21. The learned Single Bench of the NIRC, after examining these aspects, concluded that the charge against the respondent had not been established and that the dismissal could not legally be sustained. The Full Bench, while exercising appellate jurisdiction, independently considered the matter and found no material error in the reasoning of the Single Bench. We find no jurisdictional defect, illegality, perversity or misreading of material evidence in the concurrent findings of the learned Benches warranting interference under Article 199 of the Constitution.

22. Consequently, the impugned orders dated 20.09.2022 passed by the learned Single Bench and 24.01.2024 passed by the learned Full Bench of the NIRC do not call for interference. The petitioner has failed to demonstrate that the respondent's dismissal dated 19.10.2020 was founded upon a charge duly established through reliable evidence and a disciplinary process demonstrably compliant with the principles of natural justice. The relief sought by the petitioner for declaration that the dismissal order was lawful, therefore, cannot be granted.

23. Accordingly, the Constitutional Petition is dismissed. The impugned orders dated 20.09.2022 and 24.01.2024 passed by the learned Single Bench and Full Bench of the NIRC, respectively, are maintained, including the direction for reinstatement of the respondent with consequential back benefits. The interim relief, if any, stands vacated. There shall be no order as to costs.

JUDGE

JUDGE

Nadeem Qureshi PA