

Judgment Sheet

**LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

W.P. No. 22538 of 2022.

Coca Cola Beverages Pakistan Ltd. v. Ghulam Abbas etc.

JUDGMENT

Date of hearing: 06.09.2023.

Petitioner by: Mr. Umer Abdullah, Advocate.

Respondents by: Mr. Muhammad Irfan Wyne, Advocate for respondent No.1.

Shuaat Ali Khan, J: - Briefly put, while serving as Driver with the petitioner-company, disciplinary proceedings were initiated against respondent No.1 *vide* Show Cause Notice, dated 08.08.2012 and upon conclusion of the proceedings major penalty of dismissal from service was imposed against him *vide* order, dated 12.04.2013, which was assailed by him by filing Grievance Petition before the National Industrial Relations Commission (NIRC), Multan (respondent No.2), but without any success as the same was dismissed by the learned Single Member, NIRC, *vide* order dated. 05.12.2019. Aggrieved of dismissal of the Grievance Petition filed by him, respondent

No.1 filed an appeal before the learned Full Bench NIRC, Lahore which accepted the same through order, 13.01.2022; hence this petition.

2. Learned counsel for the petitioner-company submits that inconsistent attitude of the petitioner is evident from the fact that while filing reply to the Show Cause Notice he averred that he was accompanied by his friends on the fateful day but while making statement before the learned member NIRC he, while taking topsy-turvy, stated that when he came to the factory for the second time he was alone. Adds that the entire case of the petitioner-company is based on CCTV Footage and respondent No.1 having not cross-examined the witnesses of the company with specific reference to said CCTV Footage, the same was rightly accepted as primary piece of evidence in view of Article 73 of Qanun-e-Shahadat Order, 1984 but the learned Full Bench NIRC reversed the findings of the learned Member NIRC on holly untenable grounds. Further adds that learned Full Bench NIRC could not sit as a forum of appeal against findings of the Inquiry Officer. Relies on Hassan Raza v. Federal Board of Revenue through Chairman and others (2020 SCMR 994), Muhammad Shamim v. Messrs Pakistan Tobacco Co. Ltd. Karachi and another (1975 SCMR 46), Mst. Rehana Anjum v.

Additional Sessions Judge and 6 others (PLD 2016 LHR 570),
(Alamgir Khalid Chughtai v. The State (PLD 2009 LHR 254),
Akhtar Muneer v. General Tyre and Rubber Co. of Pakistan Ltd. through Senior Manager Industrial Relations and Notified Manager (2007 PLC 360), Arif Hashwani and 3 others v. Sadruddin Hashwani and 3 others (PLD 2007 Karachi 448)
and United Distributors Ltd. v. Zahid Hussain Khan and 2 others (PLD 1976 Karachi 376).

3. Conversely, learned counsel representing respondent No.1, while defending the impugned decision rendered by learned Full Bench NIRC states that without proper authorization by way of Resolution of the Board of Directors (BoDs) of the petitioner-company, the persons appearing on behalf of the petitioner-company made their statements unauthorizedly, thus, their testimony could not be considered while deciding the matter against respondent No.1. Adds that since two independent charge sheets, dated 08.08.2012 & 28.08.2012 were issued against respondent No.1 and after dismissal of respondent No.1 as a result of proceedings conducted on Show Cause Notice, dated 08.08.2012, the inquiry proceedings in Show Cause Notice, issued on 28.08.2012 were dropped but while finalizing its conclusion,

the Inquiry Officer referred to the documents produced in both the inquiries which fact alone is sufficient to discard the authenticity of the inquiry report which was made basis for dismissal of respondent No.1 from service. Further adds that when the learned Single Member NIRC declared respondent No.1 guilty, while amalgamating the material produced in both distinct inquiries, his findings were rightly reversed by learned Full Bench NIRC. Contends that *bona-fide* of respondent No.1 is evinced from the fact that instead of approaching Police, being an employee of the petitioner-company, he filed application before high-ups of the petitioner-company but instead of taking any action on the said application the same was straight-away brushed aside while respondent No.1 was made scapegoat by initiating disciplinary proceedings against him. Further contends that since neither any Security Guard, who was present on duty on the fateful day nor any other relevant person was produced rather one Muhammad Saad Javed Khan appeared before the Inquiry Officer without any authorization, the allegation against respondent No.1 was not proved. Argues that Muhammad Saad Javed Khan, who appeared on behalf of the petitioner-company, admitted that he did not witness the occurrence directly rather his testimony was

based on hearsay, thus, his testimony was not worth reliance. Submits that when it was established on record that instead of producing CCTV Footage in evidence the same was mailed by some unknown person to the Inquiry Officer, the criteria laid down to treat any CCTV Footage as primary piece of evidence remained unfulfilled, hence, no reliance could be placed on CCTV Footage. Further submits that when Muhammad Saad Javed Khan was not in service when the alleged occurrence took place, as to how he could appear on behalf of the petitioner-company to vouch a fact with which he was not acquainted. Pleads that during cross-examination Muhammad Saad Javed Khan admitted that he was not confirmed as to whether CCTV Footage was for the entire incident rather he stated it could be confirmed from the computer but when the computer wherefrom CCTV Footage was retrieved was not produced in evidence it was not safe to rely upon CCTV Footage alone. Submits that inconsistent attitude on the part of the petitioner-company is established from the fact that initially they denied the status of respondent No.1 as active member of the Workers' Union but later on during evidence admitted that on the day of occurrence he entered the factory in relation to a union matter. To conclude submits that since Inquiry Officer

was not produced in evidence, his findings could not be considered as sacrosanct to justify imposition of major penalty of dismissal from service against respondent No.1.

4. While exercising his right of rebuttal, learned counsel for the petitioner-company submits that since the person (Inquiry Officer) who conducted the inquiry against respondent No.1 left the job of the petitioner-company which fact was clarified before the learned Single Member, NIRC, his non-production was inconsequential. Adds that as the CCTV Footage was played before respondent No.1 and he failed to discard its credibility, it does not lie in his mouth to impugn the authenticity of the same at this stage as no objection was raised against Exh.R/10 at the relevant time.

5. I have heard learned counsel for the parties at considerable length and have also gone through the documents, appended with this petition, as well as the case-law cited at the bar.

6. Firstly taking up the question as to whether the CCTV footage sole can be used to hold a person guilty, I am of the view that in the light of the provisions of the Electronic Transactions Ordinance, 2002, necessary amendment has been

made in Article 73 of the Qanun-e-Shahadat Order, 1984 by declaring the CCTV footage as primary piece of evidence. It is also equally true that mere rendering a piece of evidence, as primary in nature, does not stand proof of the fact that guilt of a person has been proved rather for the purpose the prosecution-complainant is bound to prove the allegation(s). Insofar as the case in hand is concerned, there is no denying the fact that reference has been made to a CCTV footage right from the proceedings conducted by the Inquiry Officer upto the proceedings before the learned Full Bench, NIRC, but it is not discernable from the record as to how the CCTV footage was brought before the Inquiry Officer. A cursory glance over the statement of Muhammad Saad Javed Khan, who appeared before the Inquiry Officer as representative of the petitioner-company, shows that during his examination-in-chief he stated as under: -

"میں نے آپ کو جھگڑے کی سی ٹی وی فوچ میل کر دی ہے۔"

The above statement is suggestive of the fact that instead of producing CCTV footage, he mailed the same to the Inquiry Officer, which does not fulfill the criteria laid down to prove the contents of a CCTV footage, prepared through electronic device.

7. It is very strange to note that though Muhammad Saad Javed Khan claimed to have produced CCTV footage but during cross-examination he showed his inability to clarify as to whether the CCTV footage pertains to the incident took place inside the factory or outside the reception. He further stated that he was unable to state as to whether the CCTV footage contained the entire incident. He further stated that the said fact could be confirmed by the computer but the said computer having not been produced in evidence, it was not safe to solely rely upon the CCTV footage. The Hon'ble Supreme Court of Pakistan in the case reported as Member (Administration), Federal Board of Revenue and others v. Mian Khan (2022 PLC (C.S.) 474), while dealing with the authenticity of CCTV footage without proving its contents through proper mechanism, has *inter-alia* held as under:-

*“5. *****Even otherwise, mere producing of CCTV footage as a piece of evidence without any forensic test is not sufficient to be relied upon unless and until corroborated and proved to be genuine.....”*

Similar view was also taken by the Apex Court of the country in the case of Asfandyar and another v. Kamran and another (2016 SCMR 2084) by *inter-alia* observing as under: -

*“*****Mere producing any footage of C.C.T.V. as a piece of evidence in the Court is not sufficient to be relied*

upon unless and until the same is proved to be genuine. In order to prove the genuiness of such footage it is incumbent upon the defence or prosecution to examine the person who prepared such footage from the C.C.T.V. system.....”

If the authenticity of the CCTV footage, being relied upon by the petitioner-company, is considered in the light of the afore-referred judgments of the Hon'ble Supreme Court of Pakistan, there leaves no ambiguity that without fulfillment of the required criteria, the same could not be relied upon to hold respondent No.1 guilty.

8. Now reverting to the merits of the case, I have observed that Muhammad Saad Javed Khan, while appearing before the Inquiry Officer, in reply to a question as to whether respondent No.1 was guilty or innocent, instead of making any statement in unequivocal words stated as under:-

”یہ درست بھی ہو سکتے ہیں غلط بھی ہو سکتے ہیں۔“

The above statement of the representative of the petitioner-company makes it abundantly clear that he was not sure as to whether respondent No.1 was guilty or not. In this backdrop, reliance of the Inquiry Officer on his statement was totally unsafe.

9. It is relevant to note that according to entire case of the petitioner-company respondent No.1 was found involved in a scuffle with the security guards of the petitioner-company at the relevant time but non-production of any of the security guards to unveil the truth goes against the petitioner-company especially when respondent No.1 himself filed an application before the Human Resource Department of the petitioner-company complaining maltreatment at the hands of the security guards. Moreover, the person who prepared or retrieved the CCTV footage from the computer has also not been produced in evidence, thus, it cannot be said that the petitioner-company proved the allegation against respondent No.1.

10. It is very ironical to note that though the proceedings initiated against respondent No.1 on account of absence from duty through Show Cause Notice, dated 28.08.2012, were dropped but submission of two independent reports (Exh.P-17 and Exh.R-18) by the Inquiry Officer *qua* the proceedings started against respondent No.1 pursuant to Show Cause Notices, dated 08.08.2012 and 28.08.2012, stands proof of the fact that the inquiry proceedings against respondent No.1 were not conducted in a fair, transparent and impartial manner. If proceedings initiated against respondent No.1, pursuant to

Show Cause Notice, dated 28.08.2012, were subsequently dropped by the petitioner-company as to how the Inquiry Officer could submit any report in that regard.

11. Admittedly, one Muhammad Humair Khan appeared in evidence before the learned Single Member, NIRC but his relevancy in the matter is shrouded in mystery for the reasons that neither he was produced as a witness before the Inquiry Officer nor his relevance was shown in any proceedings. Moreover, non-production of the Resolution of Board of Directors of the petitioner-company, authorizing the person to appear on behalf of the petitioner-company before the learned Single Bench, NIRC, also dilutes the case of the petitioner-company.

12. This Court has least sympathy with a person who is involved in any incident *qua* disturbing law and order situation in a concern but at the same time nobody can be allowed to be lynched on the whims of the employer without proving the guilt. Though learned counsel for the petitioner-company addressed the Court at considerable length but has not been able to point out any material illegality or infirmity justifying interference by this Court in exercise of its constitutional

jurisdiction vested under Article 199 of Constitution of the Islamic Republic of Pakistan, 1973.

13. For what has been discussed above, I see no force in this petition which is hereby **dismissed** with no order as to costs.

Judge

Jamil *

Approved for reporting.

Judge