

HCJD/C-121
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

Writ Petition No.86 of 2021

Tops Foods and Beverages through its General
Manager and another
Vs.
Rizwan Ali and others

Petitioners by : Mr. Umer Abdullah, Advocate

Respondents by : Khawaja Mohammad Arif,
Advocate

Date of Decision : **31.10.2024.**

Babar Sattar, J:- The petitioner has impugned order dated 29.04.2019 passed by Single Bench of the National Industrial Relations Commission ("**NIRC**") setting aside the termination of respondent No.1, Rizwan Ali by the petitioner by order dated 13.11.2014, and the order of the Full Bench of NIRC dated 11.11.2020 upholding the order of the Single Bench of NIRC.

2. Learned counsel for the petitioner submitted that the petitioner was not a workman as defined under section 2(XXXIII) of the Industrial Relations Act, 2012 ("**Act**") and the NIRC had no jurisdiction in relation to his grievance. He further submitted that there was no industrial dispute in relation to respondent No.1 and NIRC was not vested with jurisdiction to hear individual grievances. He submitted that the NIRC disregarded the material and evidence produced before it which established that the petitioner company convened a proper inquiry after issuing respondent No.1 two charge sheets and it

was only after recording the testimonies of witnesses during the presence of respondent No.1 and after affording him an opportunity to cross-examine them that it concluded, that the charge of misconduct stood proved. And respondent No.1 was then dismissed from service with the approval of the General Manager of the petitioner company who was the relevant authority for such purpose. He submitted that the impugned orders were not reasoned and recorded no basis as to why the learned members of NIRC found that the charge had not been proven. He submitted that the dismissal order had been passed while upholding respondent No.1's right to natural justice and due process. He relied on various judgments for the propositions mentioned above the citation of which are recorded in the order of this Court dated 13.01.2021.

3. Learned counsel for respondent No.1 submitted that there were concurrent findings on behalf of the Single Bench and Full Bench of NIRC that ought not be interfered with. He submitted that respondent No.1 was a driver and the NIRC had correctly concluded that he was a workman who could bring this petition before NIRC in terms of section 33 of the Act. He further submitted that his termination order had been passed in a hasty manner at the time when the General Manager, who was the competent authority in the petitioner company, was not in town. He submitted that because of the biased exhibited by the investigation officer, respondent No.1 had disassociated himself from the inquiry proceedings. He argued that the termination order dated 13.11.2014 had been passed at the time when the matter was pending before NIRC and NIRC had also issued an

injunctive order on such date. He further submitted that the termination order dated 13.11.2014 was without jurisdiction and also suffered for having been passed in breach of requirements of natural justice. He relied on **Mustehkum Cement Ltd. Vs. Abdul Rashid (1998 SCMR 644)** to argue that respondent No.1 was a workman as defined under the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("**Standing Order Ordinance**"). He further relied on **Matloob Hassan Vs. Brooke Bond Pakistan Ltd., Lahore (1992 SCMR 227)** to support his arguments that respondent No.1 was a workman and could bring an individual grievance before NIRC even in the absence of any industrial dispute. He relied on **Abdul Razzaq Vs. M/s Ihsan Sons Ltd. and two others (1992 SCMR 505)** for the propositions that labour laws were beneficial enactments and were to be liberally construed in favour of workmen.

4. A perusal of the order of the Single Bench of NIRC reflects that it is based on the finding that the inquiry and the manner of recording of statements by the petitioner were against the principle of natural justice. The Single Bench of NIRC also found that the termination order dated 13.11.2014 was not duly authorized as it had been passed by the Human Resource Manager and not the General Manager. And finally it found that in view of the material produced before the NIRC the charge against respondent No.1 had not been proven. While upholding this order, the Full Bench of NIRC held that respondent No.1 was a workman and consequently NIRC was vested with jurisdiction to hear its individual grievance. It also confirmed the finding that

no proper inquiry had been conducted by the petitioner, no right to hearing had been granted to respondent No.1 and consequently the termination order dated 13.11.2014 was in breach of principle of natural justice. While finding so, it also awarded back benefits to respondent No.1 while holding that the said respondent was a permanent employee of the petitioner.

5. A perusal of the record reflects that two charge sheets dated 02.07.2014 and 03.07.2014 were served by the petitioner on respondent No.1. It is also noted on charge sheet dated 03.07.2014 that respondent No.1 refused to accept delivery when served with the said charge sheet. The charge sheet explained the charges against respondent No.1 and afforded him an opportunity to furnish a response. By notice dated 03.07.2014 respondent No.1 was informed that an inquiry had been initiated against respondent No.1 while inviting him to participate in the inquiry proceedings. There is detailed record of inquiry proceedings in which the petitioner produced witnesses in support of the charge in presence of the inquiry officer and respondent No.1 and on each date when respondent No.1 was present before the inquiry officer the record has been signed by the complainant, the company representative, respondent No.1 as well as the inquiry officer.

6. The charge against respondent No.1 was that he misbehaved with his officer in-charge when assigned the duty of being the driver of a lift and quarreled over the change of his shift, and used abusive language while expressing his grievance with the officer in-charge. While the testimonies recorded during the inquiry proceedings can be contested in terms of their details

the testimonies as recorded manifest that the management of the petitioner had changed the shift assigned to respondent No.1, who was unhappy with the change in the timing of the shift assigned to him as well as the nature of the work assigned to him. It was respondent No.1's case that his salary and emoluments were insufficient and in order to make ends meet, he was doing additional work outside his shift timing which would be adversely affected if his work shift was changed.

7. The record as produced before the NIRC establishes that respondent No.1 was served with the charge sheets, the petitioner appointed an inquiry officer who continued with the inquiry proceedings and afforded respondent No.1 appropriate opportunity to not only present his case before the inquiry officer and also be present while testimonies were being recorded and afforded respondent No.1 an opportunity to cross-examine the witnesses. Respondent No.1 did not cross-examine any witness but simply recorded his own statement saying that the statements of the witnesses were not true. During the proceedings at least one witness while confirming the overall incident stated that respondent No.1 had not physically quarreled with the in-charge as alleged by the complainant. This witness was subsequently terminated from service, purportedly for unconnected reasons as stated by the petitioner company. The respondent No.1, however, used this as a reason to disassociate himself from the inquiry proceedings despite having the opportunity to continue to participate. Subsequently, the inquiry officer while referring to the record of the inquiry proceedings and all testimonies as recorded by him rendered a

report dated 10.11.2014 finding that respondent No.1 was liable for misconduct. It was on the basis of this inquiry report that by order dated 13.11.2014 respondent No.1 was dismissed by the petitioner, which order was signed by Group Manager (HR). This dismissal order was received by respondent No.1 under protest by 08:35 am and such receipt was also witnessed by two employees confirming that the order had been so served at the stated time.

8. What emerges from the above record duly presented before the NIRC by the petitioner's witnesses who appeared before NIRC on behalf of the petitioner (and filed their affidavits-in-evidence) is that respondent No.1 was served with the charge sheet, afforded the opportunity to present his defense before the inquiry officer and the opportunity to participate in proceedings before the inquiry officer during which proceedings testimonies were recorded and respondent No.1 was afforded an opportunity to cross-examine the witnesses. The record therefore establishes that complete opportunity was provided to respondent No.1 to defend himself against the charge brought against him. The finding of the NIRC that no inquiry was conducted or that respondent No.1 was not provided the opportunity to cross-examine witnesses or that the principle of natural justice was otherwise violated is not supported by the material produced before NIRC. Neither the Single Bench nor the Full Bench of NIRC has recorded any reasons supporting its finding that principle of natural justice was breached in the instant case.

9. The disciplinary proceedings undertaken by a private employer against an employee cannot be confused with trial in a

criminal matter and the strict procedural requirements to be followed in a trial or adjudication undertaken by Court of law cannot be read into requirement of fairness that the law imposes on employers while undertaking disciplinary proceedings against employees. The requirement of natural justice in disciplinary proceedings undertaken by employers against employees is that the employee should be given notice of the allegation or charge against him, and a fair opportunity to present his stance and defend himself before the employer. In the instant case such opportunity was provided and nothing unfair can be inferred from the manner in which the charge sheet was served, the inquiry was conducted and the inquiry report issued followed by the dismissal order. It is held by the Supreme Court in **Fouzia Ahmed Vs. First Women Bank Ltd. (PLJ 1999 SC 1826)** that dismissal from service without granting personal hearing would be unexceptionable when no prejudice was caused to the dismissed employee and there was no requirement to issue a second show cause notice to the dismissed employee prior to issuing the dismissal order.

10. The requirements of issuing a show cause notice after inquiry proceedings undertaken by private employer, which is a requirement imposed by the Government Servants (Efficiency and Discipline) Rules, 1973, framed under the Civil Servants Act, 1973, cannot be read into the Standing Order Ordinance or the Act. There is no requirement in law that where it is proven through a fair inquiry that an employee is guilty of misconduct, such employee is to be issued an additional show cause notice to have such findings confirmed by higher authority of the

employer competent to issue a dismissal order, where an inquiry has been fairly conducted and proceedings in the inquiry are detailed enough to enable the employer to reach a conclusion. Neither Article 10A of the Constitution nor principles of natural justice impose an obligation on a private employer to issue such show cause notice and grant personal hearing before issuing a dismissal order.

11. The finding of the NIRC that the dismissal order was not duly authorized by the General Manager is neither supported by the evidence produced before NIRC nor is legally sustainable. The evidence as produced before NIRC establishes that the General Manager of the petitioner company authorized the Manager (HR) to issue the dismissal order. The petitioner company owns the dismissal order issued by the Manager (HR) that was impugned before NIRC. When it comes to the actions of a company, as an incorporated entity, the principle of indoor management applies. Where the company itself owned the dismissal order and confirmed that the dismissal order was duly authorized by the General Manager of the company, there was no occasion for NIRC to find otherwise.

12. The record further establishes that the dismissal order dated 13.11.2014 was served on respondent No.1 at 08:00 am in the morning. The grievance of respondent No.1 had been filed before NIRC and NIRC had not issued any injunctive order till 13.11.2014, which was served on the petitioner on 15.11.2014. Even though the impugned orders of NIRC do not state that issuance of the dismissal order on the date when an injunctive order was passed by NIRC was a ground for setting aside the

dismissal order, it appears from the record that may have been a factor that influenced the NIRC in reaching the conclusion that he did. Even though it may have been that the petitioner company was aware that respondent No.1 was seeking to have a grievance petition heard by NIRC and that may have been the reason why the dismissal order was passed on 13.11.2014, the record establishes that the dismissal order had been issued prior to the issuance of any injunctive order of NIRC on the basis of an inquiry report that had found on 10.11.2014 that respondent No.1 was guilty of misconduct. In these circumstances, it cannot be held that the dismissal order is liable to be set aside for having been passed while an injunctive order passed by the NIRC was in field.

13. For the aforementioned reasons the Court finds that the impugned orders passed by the NIRC are not sustainable in the eyes of law. The findings that respondent No.1 has been denied due process is not supported by the evidence adduced before NIRC. The record of NIRC as produced before the Court establishes that respondent No.1 was afforded due process by the petitioner company and it was concluded in a fair inquiry convened by the petitioner company that respondent No.1 was guilty of misconduct. The NIRC without recording any reasons came to the conclusion that respondent No.1 was not afforded natural justice or that the charge against him had not been proven during the inquiry proceedings. Consequently, the impugned orders are liable to be set aside.

13. The petition is ***allowed*** in the above terms and the impugned orders dated 29.04.2019 and 11.11.2020 are ***set aside.***

(BABAR SATTAR)
JUDGE

M.A. Raza