

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.3226 of 2019
Pakistan Telecommunication Company Ltd.
Versus
Mst. Fatima and others

Dates of Hearing: 27.10.2020, 02.02.2023, 30.03.2023,
03.05.2023 and 21.06.2023

Petitioner by: M/s Shahid Anwar Bajwa and Abdur
Rehman Bajwa, Advocates.
M/s Raheel Zafar, Senior Manager (Legal),
Nauman Ahmad, Executive Legal, Ubaid
Abbasi, Manager (Legal), P.T.C.L.

Respondents by: Mr. Munawar Iqbal Duggal, learned
Additional Attorney-General.
Mr. Arshad Mehmood Kiani, learned
Deputy Attorney-General.
Mirza Muhammad Afzal, Advocate for
respondent No.1.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, Pakistan Telecommunication Company Ltd., impugns the undated order passed by the learned Full Bench, National Industrial Relations Commission (“NIRC”) whereby its appeal against the order dated 18.06.2019 passed by the learned Member, NIRC, was dismissed. Vide the said order dated 18.06.2019, the learned Member, NIRC allowed respondent No.1’s complaint / petition filed under Sections 33(6), 54, 57(2), 68 and 69 of the Industrial Relations Act, 2012 (“IRA 2012”) praying (i) for the respondents in the said complaint to be punished for not showing compliance with the order dated 20.08.2013, and (ii) for a direction to the respondents in the said complaint to pay all pensionary benefits to respondent No.1.

2. The record shows that on 07.08.1996, respondent No.1 was appointed as Naib Qasid on daily wage basis by Pakistan Telecommunication Company Limited (“PTCL”). She served in the said position for a period of sixteen years until her superannuation in the year 2011. Her application for the regularization of services had been turned down by PTCL.

3. She had filed a grievance petition (not on the record) before the Labour Court, Islamabad. Vide order dated 10.09.2011, the Labour Court, Islamabad sent the grievance petition to the NIRC in terms of Section 53 of the Industrial Relations Ordinance, 2011 (“IRO 2011”). Vide order dated 20.08.2013, the learned Member, N.I.R.C. had allowed the grievance petition in the following terms:-

“It is a recorded fact that the petitioner has served the establishment for 16 years or more. There is no dispute similarly that she is a workman and after serving for 16 years her right to get superannuation and its benefits cannot be snatched per Standing Order Ordinance, 1968. Therefore, feel that there is little justification to prolong the case any further and hence, direct that the petitioner should be paid superannuation benefits up to the year 2011, because respondents have conceded that she had reached the age of superannuation in the year 2011.”

4. The petitioner’s appeal against the said order dated 20.08.2013 was dismissed by the learned Full Bench, NIRC vide order dated 26.08.2015. Vide judgment dated 20.01.2017, writ petition No.3132/2015 filed by the petitioner against the said orders dated 20.08.2013 and 26.08.2015, was dismissed by this Court. Civil petition No.849/2017 filed by PTCL against this Court’s judgment dated 20.01.2017 was dismissed by the Hon’ble Supreme Court vide order dated 06.02.2018. With the dismissal of the said petition, the said orders passed by the NIRC attained finality.

5. Respondent No.1 had filed a complaint / petition under Sections 33(6), 54, 57(2), 68 and 69 of the IRA before the NIRC. The relief sought by respondent No.1 in the said complaint has been mentioned in paragraph 1 herein above. During the pendency of the said petition, respondent No.1 submitted a claim of Rs.1,58,865/- on the basis of the order dated 20.08.2013 passed by the learned Member, NIRC.

6. Vide order dated 18.06.2019, the learned Member, NIRC allowed respondent No.1’s said complaint. In the said order, the following directions were given to the petitioner:-

“Pay of the applicant be fixed as a regular Naib Qasid as on 07.08.1996, her pay be fixed step by step on 31.12.1997, and so

on 31.12.1998 to 31.12.2010 after adding every pay increase and annual increments. On the basis of pay so fixed on 31.12.2010, her superannuation benefits be worked out. All arrears may be paid with interest w.e.f. the date of accrue of superannuation benefits.”

7. The petitioner’s appeal against the said order dated 18.06.2019 was dismissed by the learned Full Bench, NIRC vide undated order annexed at page 7 of the instant petition. The said concurrent orders have been assailed by the petitioner in the instant writ petition.

8. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the N.I.R.C. does not have the power or jurisdiction to punish a party for contempt of Court; that unlike the Industrial Relations Ordinance, 2002 (“IRO 2002”) and the Industrial Relations Act, 2008 (“IRA 2008”), the IRA, 2012 has no provision which gives the N.I.R.C. powers as could be exercised by the Labour Court under Section 36 read with Section 22B of the Industrial Relations Ordinance, 1969 (“IRO 1969”) to punish a party for contempt of Court; that Section 33(7) of the IRA, 2012 provides *inter alia* that no person shall be prosecuted for not giving effect to an order passed by the NIRC except on a complaint in writing by a workman if the order in his favour is not implemented within the period specified therein; that the NIRC’s order dated 20.08.2013 does not specify the period within which the said order was required to be implemented by PTCL; that Section 78 of the IRA, 2012 provides that no Court other than a Labour Court or that of a Magistrate of the First Class shall try an offence punishable under the IRA, 2012; and that accordingly only a Court of a Magistrate could punish the petitioner for contempt of Court provided a complaint had been filed by the NIRC against the petitioner.

9. Furthermore, it was submitted that the earlier order dated 20.08.2013 passed by the learned Member, NIRC could not have been varied or modified by the NIRC while hearing respondent No.1’s complaint; that during the pendency of the proceedings before the learned Member, NIRC, the petitioner deposited

cheque No.00004232 dated 10.04.2018 for an amount of Rs.1,22,640/- as gratuity payable to respondent No.1; and that the petitioner is ready to pay Rs.36,225/- being the differential between respondent No.1's claim and the amount already deposited by the petitioner. Learned counsel for the petitioner prayed for a declaration to the effect that the proceedings conducted by the learned Member, NIRC pursuant to respondent No.1's petition filed under Sections 33(6), 54, 57(2), 68 and 69 of the IRA, 2012 to be declared without lawful authority and of no legal effect.

10. On the other hand, learned counsel for respondent No.1 submitted that gratuity is always to be paid on the basis of the last drawn salary of a workman; that the claim for gratuity submitted by respondent No.1 was on the basis of such salary; that since the petitioner has contumaciously violated the order dated 20.08.2013 passed by the learned Member, NIRC, it is liable to be punished for such violation in accordance with the law; that although Section 78 of the IRA, 2012 provides that no Court other than a Labour Court or that of a Magistrate of the First Class, as the case may be, shall try an offence punishable under the said Act but the said provision does not override Section 33(6) or Section 57(1)(a) of the IRA, 2012; that Section 57(1)(a) of the IRA, 2012 empowers the NIRC to punish any person who disobeys any of its orders or directions with simple imprisonment which may extend to six months or with a fine which may extend to Rs.50,000/- or both; that similarly under Section 57(2)(a), the NIRC can, on the application of a party, or on its own motion, initiate prosecution, trial or proceedings, or take action, with regard to any matter relating to its functions; that even if the NIRC does not specify a date within which its order is to be implemented, by operation of Section 33(6) of the IRA, 2012, an order has to be complied with within seven days; that Labour laws have to be construed in favour of the workman; that the provisions of Code of Criminal Procedure, 1898 have been made applicable to proceedings in relation to trials of offences before

the NIRC by virtue of Regulation 57 of the National Industrial Relations Commission (Procedure and Functions) Regulations, 2016 (“the 2016 Regulations”); that Regulation 48 of the said Regulations empowers the NIRC to issue warrants of arrest, whereas Regulation 50 empowers the NIRC to frame a charge against an accused; and that PTCL has embroiled respondent No.1 in unnecessary litigation since more than a decade. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

11. In rejoinder, learned counsel for the petitioner submitted that since the 2016 Regulations are not statutory in nature, they cannot be enforced by this Court in exercise of its Constitutional jurisdiction; that even otherwise, the said Regulations cannot confer a power on the NIRC which has not been conferred on it by the IRA, 2012; that there is no provision in the IRA, 2012 that constitutes the NIRC as a Labour Court or as a Court of a Magistrate; that since the NIRC has not been conferred with the powers of a Court or magisterial powers, it cannot punish a party for non-compliance with its orders; and that since no time had been fixed by the NIRC for the implementation of its orders, the proceedings on respondent No.1’s complaint were *coram non-judice*.

12. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 7 above and need not be recapitulated.

13. The primary question that needs to be answered is whether the NIRC could punish PTCL or any of its officers for giving effect to or complying with its orders dated 20.08.2013 and 26.08.2015, which were upheld up to the Hon'ble Supreme Court. Section 33(6) of the IRA, 2012 empowers the NIRC to punish a person with imprisonment for a term which may extend for a period of one year or with a fine which may extend to Rs.75,000/- or both where such person defaults in giving effect to or complying with

an order or a decision of the NIRC within seven days or within the period specified in such order or decision. Section 33(7) provides that no person shall be prosecuted under Section 33(6) except on a complaint in writing (a) by the workman if the order or decision in his favour is not implemented within the period specified therein; or (b) by the NIRC if an order or a decision thereof is not complied with.

14. Much emphasis was laid by the learned counsel for the petitioner on Section 33(7) of the IRA, 2012 which, according to him, does not permit the prosecution of a person under Section 33(6) if the order or decision of the NIRC does not specify a date within which such order or decision is to be implemented. He submitted that since the NIRC's orders dated 20.08.2013 and 26.08.2015 do not specify a date within which they were required to be implemented, no prosecution could have been initiated against the petitioner for non-compliance with such orders. I propose to first deal with this ground agitated on behalf of the petitioner.

15. Indeed the said orders dated 20.08.2013 and 26.08.2015 passed by the NIRC do not fix a time frame within which the directions issued to PTCL were required to be implemented. Since Section 33(6) makes a defaulter punishable with imprisonment for not giving effect to or complying with an order or a decision of the NIRC within seven days of such order or decision, it is my view that omission on the part of the NIRC to fix a time frame within which the said orders were to be implemented does not insulate PTCL or its officers from prosecution under Section 33(6) if such order or decision is not implemented within seven days. It is only in cases where the NIRC specifies a period of more than seven days within which its order or decision is to be given effect to or complied with that prosecution against the defaulter under Section 33(6) cannot be initiated on the lapse of seven days of the order or a decision. In order to avoid prosecution under Section 33(6) for non-compliance with orders or decisions of the NIRC which do not specify a date by which

they are required to be given effect to or complied with, such orders or decisions ought to be implemented within a period of seven days. Therefore, I do not find any substance in the contention made on behalf of the petitioner that prosecution under Section 33(6) could not have been initiated against PTCL simply because the NIRC had not specified a time frame within which its orders were to be implemented.

16. Learned counsel for the petitioner is correct in his submission that unlike the IRO, 1969, there is no provision in the IRA, 2012 which gives the NIRC the powers of a Court of a Magistrate for the purpose of trying an offence under the said Act. Section 36(3) of the IRO, 1969 provided that a Labour Court shall, for the purpose of trying an offence under the IRO, 1969 or the West-Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 have the same powers as are vested in the Court of a Magistrate of the First Class especially empowered under Section 30 of the Code of Criminal Procedure, 1898. Section 36(1) of the IRO, 1969 required the Labour Court, while trying an offence, to follow as nearly as possible summary procedure as prescribed under the Code of Criminal Procedure, 1898, whereas under Section 36(2) of the IRO, 1969, a Labour Court was deemed to be a Civil Court for the purpose of adjudicating and determining an industrial dispute having the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908. Section 45 of the IRO, 2002 and Section 53 of the IRA, 2008 corresponded with Section 36 of the IRO, 1969. Section 22B(3)(a) of the IRO, 1969 provided that the Benches of the NIRC shall, in relation to cases based on allegations of unfair labour practices brought before the NIRC for trial of offences, or enforcement of, or for redress of individual grievances in respect of any right guaranteed or secured to any employer or worker by or under any law or any award or settlement, perform such functions and exercise such powers as are performed and exercised by a Labour Court. There are indeed no provisions in

the IRA, 2012 which correspond to Section 22B(3)(a) or Section 36 of the IRO, 1969.

17. However, Regulation 57 of the 2016 Regulations, which have been made by the NIRC with the prior approval of the Federal Government in exercise of the powers conferred by Section 66(1) of the IRA, 2012, makes the provisions of the Code of Criminal Procedure, 1898 applicable to the proceedings in relation to trial of offences before the NIRC, whereas Regulation 45 provides that the procedure prescribed under the Code of Civil Procedure, 1908 in regard to suits may be followed, as far as it can be made applicable, in the proceedings for adjudication and determination of industrial disputes, including adjudicating applications brought under Sections 33 and 54(e) of the IRA, 2012. The *vires* of these Regulations have not been challenged by the petitioner. Even though Section 66(1) of the IRA, 2012 does not require the approval of the Federal Government to be given to Regulations made by the NIRC, these Regulations are to be applied and enforced by the NIRC as long as they remain in the field. Therefore, the NIRC, while proceeding with the petitioner's prosecution under Section 33(6) of the IRA, 2012, is to exercise powers and follow the procedure prescribed in the said Regulations.

18. Chapter-IX of the IRA, 2012, titled "*Penalties and Procedures*," containing Sections 67 to 79, provides for different penalties for contravention of various provisions of the said Act. For instance, Section 67(1) provides for the penalty of imprisonment which may extend to fifteen days or a fine which may extend to Rs.30,000/- or both for contravention of the provisions of Section 17 of the said Act, whereas Section 67(6) provides for the penalty of imprisonment which may extend to thirty days or a fine which may extend to Rs.75,000/- or both for contravention of the provisions of Section 47 of the said Act. Section 67(7) provides that nothing contained in the IRA, 2012 shall be deemed to exclude the jurisdiction of the Labour Court of a Province or the Court of a Magistrate to try a case under the

said Section if it is authorized to do so by general or special order of the NIRC. Therefore, for any of the contraventions referred to in Section 67, a Labour Court of a Province or the Court of a Magistrate will have the jurisdiction to conduct a trial only if it is authorized to do so by general or special order of the NIRC.

19. Sections 68 to 75 also provide for penalties for different offences/contraventions under the IRA, 2012. As regards the trial of offences, Section 78 provides as follows:-

“Save as provided in this Act, no Court other than a Labour Court or that of a Magistrate of the first class, as the case may be, shall try an offence punishable under this Act.”

20. But for the words “save as provided in this Act” appearing in Section 78, all offences under the IRA, 2012 would have been triable by a Labour Court or that of a Magistrate of the First Class. However, it is only those offences which the provisions of the IRA, 2012 have specifically made triable by the NIRC that are to be tried by the NIRC and none other. If a mechanism was provided in the IRA, 2012 for trying offences punishable under the said Act by the NIRC, there would be no occasion for a Labour Court or a Court of a Magistrate of the First Class to assume jurisdiction in the matter. Section 54(d) of the IRA, 2012 makes it one of the functions of the NIRC to try offences punishable under (i) Section 67 other than sub-sections (1) and (6) thereof and (ii) any other Section, in so far as they relate to employers or workers in relation to a trade union or an industry-wise trade union in the Islamabad Capital Territory and trans-provincial, and a federation of such trade unions, or officers of such union or federation. Section 55(3)(c) also empowers the Benches of the NIRC to try offences under the IRA, 2012, but this provision when read with Section 54(d) would lead to the conclusion that the Benches of the NIRC can only try those offences which have been brought within the functions of the NIRC to try.

21. Section 57 of the IRA, 2012 confers certain additional powers on the NIRC. Under Section 57(1)(a), the NIRC has the power to punish any person who obstructs or abuses its process

or disobeys any of its orders or directions, or does anything which tends to prejudice the case of a party before it, or tends to bring it or any of its members in relation to proceedings of the NIRC into hatred or contempt, or does anything which, by law, constitutes contempt of Court, with simple imprisonment which may extend to six months or a fine which may extend to Rs.50,000/- or with both. The powers of the NIRC under Section 57(1)(a) are akin to the powers to punish for contempt of Court. For the exercise of its powers under Section 57(1)(a), the NIRC need not refer or send the case to a Labour Court or a Court of a Magistrate. Power under the said Section has been conferred on the NIRC to exercise. It is perhaps for this very reason that Section 57(2)(a) empowers the Commission to initiate prosecution, trial or proceedings, or take action, with regard to any matter relating to its functions.

22. Section 54(h) makes it one of the NIRC's functions to deal with cases of individual grievance in the manners prescribed in Section 33. The manner in which the NIRC is to deal with the case where its decision or order is not given effect to or complied with within seven days or within the period prescribed in such decision or order is specifically provided for in Section 33(6) and (7). Under Section 33(6), the defaulter is liable to be punished with imprisonment for a term which may extend to one year or with a fine which may extend to Rs.75,000/- or with both, whereas under Section 33(7), the defaulter is to be prosecuted only when a complaint is submitted by a workman against him. The conspectus of the provisions of the IRA, 2012 referred to herein above would cause me to hold that the NIRC is not denuded of the jurisdiction to prosecute and punish a person in terms of Section 33(6) in cases where such person does not give effect to or comply with a decision or order of the NIRC within seven days or within the period specified in such decision or order.

23. It is not disputed that the order dated 18.06.2019 passed by the learned Member, NIRC is to be considered as an order passed under Section 33(5) of the IRA, 2012. If an order passed

under Section 33(5) is not given effect to or complied with within seven days or the time specified in the order, Section 33(6) makes the defaulter liable to punishment with imprisonment for a term which may extend to one year or with a fine which may extend to Rs.75,000/-, or with both. Although the learned Member, NIRC's order dated 20.08.2013 did not prescribe a time limit within which the said order was to be implemented, since it was admittedly not given effect to or complied with within seven days, respondent No.1 was well within her rights to have filed a complaint against the petitioner under Section 33(6).

24. The statutory intendment behind Section 33(6) is to ensure that the decisions or orders of the NIRC are implemented and the individual grievances of workmen are redressed expeditiously. It is for this purpose that a party that defaults in implementing the decisions or orders of the NIRC is to be met with the severe penalty of imprisonment or a fine or both. The power to incarcerate a judgment debtor or defaulter for not implementing an order of a Court or a Tribunal is not unknown. As one of the modes of execution of a decree, Section 51 of the Code of Civil Procedure, 1908 empowers the Court to execute a decree by arrest and detention in prison of a judgment debtor.

25. Non-compliance with directions issued by the NIRC in its decisions or orders would also amount to disobedience of such directions entailing the penalty prescribed in Section 57(1)(a) of the IRA, 2012. In the case of Pakistan Telecommunication Company Ltd. Vs. Member NIRC (2014 SCMR 535), the Hon'ble Supreme Court held in unequivocal terms that the powers of the NIRC include the power to punish for contempt of Court. In this regard, paragraph 10 of the said report is reproduced herein below:-

"Under the provision of section 53, the NIRC has been constituted by the Federal Government but its functions and jurisdiction has been explained and elaborated in the provision of section 54 of the IRA, 2012. According to clause (e), the NIRC has the powers and jurisdiction to deal with the cases of unfair labour practices specified in sections 31 and 32 of the Act on the part of employers, workers, trade unions, either of them or

persons acting on behalf of any of them, whether committed individually or collectively, in the manner laid down under section 33 or subsection (9) of section 33 or in such other way as may be prescribed, and to take, in such manner as may be prescribed by regulations under section 66, measures calculated to prevent an employer or workman from committing an unfair labour practice. In addition to above powers and jurisdiction, the NIRC has been conferred upon additional powers under the provision of section 57 of the Act (ibid), which includes the powers to punish for contempt of court and may award simple imprisonment which may extend to six months or with fine, which may extend to Rs.50,000 or with both.”

26. If this Court were to accept the contention of the learned counsel for the petitioner that only a Labour Court or a Court of a Magistrate could conduct proceedings to punish a defaulter for not giving effect to or not complying with or violating a decision or order of the NIRC, it would not just amount to attributing complete redundancy to Section 33(6) and (7), Section 57(1)(a) and (2)(a) and Section 67(8) of the IRA, 2012, but would encourage such defaulters to flout decisions or orders of the NIRC with impunity and leave the downtrodden workman to languish before different Courts in order to harvest the benefits of labour laws or to implement decisions or orders of the NIRC. For instance, in the case at hand, the petitioner's reluctance to give respondent No.1 her dues in accordance with the orders of the NIRC which have been upheld by the Hon'ble Supreme Court has caused her to be embroiled in litigation over a period of a decade.

27. In view of the above, the instant petition is dismissed with costs throughout.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

ANNOUNCED IN AN OPEN COURT ON 18/08/2023

(JUDGE)