

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.3345/2019

M/s Pak Telecom Mobile Limited

Versus

Full Bench of NIRC, etc

Petitioner by : M/s Bilal Ahmed, Usman Riaz, Shahid Riaz and Summair Jabbar, Advocates.
Respondents by : Mr Sikandar Zaman Khan, Advocate.
Date of Hearing : 11-06-2021.

ATHAR MINALLAH, C.J.- Through this constitutional petition M/s Pak Telecom Mobile Limited (hereinafter referred to as the "***petitioner company***") has assailed orders, dated 29.05.2019 and 23.09.2019, passed by the learned Single Bench and the learned Full Bench of the National Industrial Relations Commission, Islamabad (hereinafter referred to as the "***Commission***").

2. The facts, in brief, are that the respondent at the relevant time was posted as Senior Executive (NSS Planning) Department. His employment was terminated vide order 01.11.2017. On the same date a grievance notice was sent to the petitioner company. The learned Single Bench vide order, dated 29.05.2019 allowed the grievance petition and directed the petitioner company to restore the employment of the respondent. A plain reading of the order passed

by the learned Single Bench shows that the latter was of the opinion that the respondent's status as a 'workman' had not been controverted by the petitioner company and that the witness who had appeared on behalf of the petitioner company had not produced any evidence to the effect that the respondent was not a workman. An appeal was filed by the petitioner company, which was dismissed by the learned Full Bench of the Commission vide the impugned judgment, dated 23.09.2019.

3. The learned counsel for the petitioner company has placed reliance on the judgment of the august Supreme Court titled as "Managing Director, Shahi Bottlers (Pvt) Limited vs. The Punjab Labour Appellate Tribunal, Lahore and 2 others", **1993 SCMR 488**, "National Bank of Pakistan and another vs. Anwar Shah and others", **2015 SCMR 434** and "National Bank of Pakistan vs. Punjab Labour Court No.5, Faisalabad and 2 others", **1993 SCMR 672** in support of his contention that if a person approaches a competent forum for redressal of his grievance claiming himself to be a workman and such status of workman is denied by the employer then it becomes a bounden duty of such person to demonstrate through evidence that his nature of duties and functions were that of a workman and not of a managerial or administrative capacity and that he was not an employer. Unless such categorical evidence was led by such person, he would not be considered to be a workman and his grievance petition would not be maintainable before the labour forum.

4. With the assistance of the learned counsels both the impugned orders have been carefully perused.

5. It is apparent from a plain reading of the impugned order that the learned Full Bench while deciding the appeal did not take into consideration the law laid down by the august Supreme Court in the aforementioned judgments. When confronted with the above, the learned counsel who has appeared alongwith the respondent has stated that the latter has no objection if the matter is remanded for deciding the appeal afresh. The petition is, therefore, allowed and the impugned judgment passed by the learned Full Bench, dated 23.09.2019 is hereby set-aside. The learned Full Bench is expected to afford an opportunity of hearing to the parties and, thereafter, decide the appeal, inter alia, taking into consideration the law enunciated by the august Supreme Court in the aforementioned judgments. This Court expects that the appeal would be decided at the earliest preferably within four months from the date of receiving a certified copy of this Order.

(CHIEF JUSTICE)

Asif mughal/*