

Form No: HCJD/C.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Writ Petition No. 1776 of 2015

State Bank of Pakistan

Vs.

**Learned Full Bench, National Industrial
Relations Commission (N.I.R.C.), Islamabad etc.**

Petitioners by: Mr. Rehan Nawaz, Advocate.
Respondents No.3&4 by: Mr. Saleem Khan & Ashraf Ali Awan,
Advocates.

Date of Decision: 30.11.2015.

AAMER FAROOQ, J.- Through this judgement I propose to decide the instant petition as well as Writ Petition No.1777 of 2015 as common question of law is involved.

2. The petitioners in the instant petition as well as in Writ Petition No.1777/2015 are aggrieved of orders dated 23.02.2015 and 14.01.2010 passed by respondents No.1 & 2 respectively.

3. In the instant petition the petitioner is State Bank of Pakistan and in Writ Petition No.1777/2015 it is State Bank of Pakistan, Banking Services Corporation created under State Bank of Pakistan, Banking Services Corporation Ordinance, 2001 and is a separate entity from State Bank of Pakistan. Respondent No.3 is an Industry-wise Trade Union registered at national level whereas respondent No.4 is a Trade Union of State Bank of Pakistan registered under the Provincial law of Sindh. On the application of respondents No.3 & 4 respondent No.2 issued a registration certificate under section 22 of the Industrial Relations Act, 2008 (the Act) whereby both the Unions were certified as Federation of Trade Unions at the national level. The petitioners being aggrieved filed appeal (s) before respondent No.1 which were dismissed vide order dated 23.02.2015.

4. Learned counsel for the petitioners *inter alia* submitted that Federation of Trade Unions between respondents No.3 & 4 could not

have been formed as respondent No.4 is not Nation-wise Trade Union which is a mandatory requirement under the law in light of section 25 (8)(d) of the Act read with explanation to section 25 *ibid*. It was further contended that both respondents No.1 & 2 failed to take into consideration the referred argument of the petitioners. Learned counsel for the petitioners in support of his contentions relied on case law titled *Dilawar Jan v. Gul Rehman and 5 others* (PLD 2001 Supreme Court 149), *Essa Cement Industries Workers' Union v. Registrar of the Trade Unions, Hyderabad Region, Hyderabad and 4 others* (1998 SCMR 1964).

5. Learned counsel for respondents No.3 & 4 *inter alia* submitted that the definition of registered Trade Union is provided in section 2 (xxii) of the Act and any Trade Union which is registered can be cancelled under section 12 of the Act, therefore, the petitioners had no *locus standi* to file appeal against order dated 14.10.2010 passed by respondent No.2. It was further contended that it is an established law that employer has no *locus standi* to object registration of a Trade Union or Federation of Trade Unions. In this behalf reliance was placed on the case titled *Essa Cement Industries Workers' Union v. Registrar of the Trade Unions, Hyderabad Region, Hyderabad and 4 others* (1998 PLC 500), *Messrs Hakim and Sons Chemicals v. Registrar of Trade Marks* (1998 PLC 122), *Wall's Employees Union (Lever Brothers now Uni-Lever Brothers) v. Registrar of Trade Unions, District Kasur and 2 others* (2007 PLC 521) and *Pakistan Services Limited v. Full Bench, National Industrial relations Commission and others* (2006 PLC 288). Insofar as the question of cancellation of Trade Union is concerned, learned counsel for respondents No.3 & 4 submitted that the same could be done under section 12 of the Act. In this behalf reliance was placed on the case titled *Messrs Naveena Exports Ltd. v. Directorate of Labour, Government of Sindh East Division and 3 others* (2010 PLC 148). Learned counsel also submitted that the change in law during the pendency of the matter does not have effect and the law applicable in the instant case shall continue to be the Act and not the Industrial Relations Act, 2012. In support of his contention learned counsel placed reliance on the case titled

Manzoor Ali and 39 others v. United Bank Limited through President (2005 SCMR 1785), *Sarfraz v. Muhammad Aslam Khan and another* (2001 SCMR 1062) and *Malik Gul Hasan & Co. and 5 others v. Allied Bank of Pakistan* (1996 SCMR 237).

6. Respondents No.3 & 4 made an application to respondent No.2 for formation of Federation of Trade Unions on the basis of resolution carried out in the general meeting of both the Unions. In pursuance of the referred application and the resolution their request was granted and their application was allowed vide order dated 14.01.2010. In this behalf under section 25 (8) (d) it is within the competence and power of National Industrial Relations Commission to register Industry-wise Trade Unions, Federation of such Trade Unions and Federation at the national level. Under explanation to section 25 and for the purposes of the Act the expression Industry-wise Trade Union, Federation of such Trade Union and Federation at national level to a Trade Union, means establishment membership of which extends to more than one Provinces and Federation of Trade Unions whose Membership extends to registered Trade Union in more than one Provinces. The process of registration of a Trade Union or Federation of Trade Unions is provided in section 22 of the Act. Under section 22(1) any two or more registered Trade Unions may, if their respective general bodies so resolve, constitute a Federation by executing an instrument of Federation and apply to the Registrar for registration of the Federation. The definition of Trade Union is provided in section 2 (xxii) of the Act and means a Trade Union registered under the Act. The bare reading of subsection (1) of Section 22 shows that a Federation can be formed when two Trade Unions resolve to do so in their respective general bodies meetings. There is no requirement for formation of a Federation of Trade Unions where both the registered Trade Unions should have their Memberships in more than one Province or all over Pakistan. Under subsection (2) to section 24 the provisions of the Act apply to a Federation of Trade Unions as they apply to a Trade Union subject to modification (s). Since under section 22 (1) a Federation of Trade Unions is to be registered with Registrar Trade Union, therefore, applying subsection (4) to section 22 the process for cancellation of

a Trade Union registered with Registrar shall be applicable to the Federation of Trade Unions as well. In this behalf under section 12 of the Act a Trade Union shall be cancelled if a Labour Court, so directs upon a complaint in writing made by the Registrar on the ground that a Trade Union has been registered in contravention of provisions of the Act or Rules. In this behalf in case titled *Messrs Naveena Exports Ltd. v. Directorate of Labour, Government of Sindh East Division and 3 others* (2010 PLC 148) the Hon'ble Sindh High Court held as follows:

"once Registrar has registered a Trade Union matter travels beyond the Registrar. He has no power to recall such certificate of registration. Therefore, if after having registered a trade union, Registrar comes to the conclusion that registration of the Trade Union has been effected in contravention of any of the provisions of the law. Registrar can do nothing but file complaint before the concerned Labour Court under section 12 of the Industrial Relations Act, 2008."

In the instant case as well the petitioners, if were aggrieved of the registration of the Federation of Trade Unions on the basis of explanation to section 25, could have agitated the matter before respondent No.2 who under the Act is only competent authority to file application before the Labour Court for cancellation of a Trade Union.

7. It is an established principle that in matters pertaining to registration of Trade Union and by analogy to Federation of Trade Unions the employer, i.e. the petitioners in the instant case, has no *locus standi* to challenge the process and therefore, are not aggrieved persons within the meaning of word as provided in Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. In this behalf the case law relied upon the learned counsel for respondents No.3 & 4 is instructive. In case titled *Essa Cement Industries workers Union v. Registrar of Trade Unions* (1998 PLC 500) the Hon'ble Supreme Court of Pakistan held as follows:

"However, the Registrar is not duty-bound to seek assistance either of the employer or such unions. Such question came up for determination before the High Court of Sindh in Bata Shoe Co. (Pakistan) Ltd. v. Registrar, Trade Unions of Sindh (PLD 1978 Kar. 567), where it was observed in this regard:

"In other words, there is no room for any challenge by an employer, who may consider itself affected by the decision of the Registrar in favour of a Trade Union. It follows, therefore, that the law does not contemplate any notice to the employer and no grievance can be made if the Registrar or the Appellate Court does not hear the employer. "

8-A. Although, the observations made in this case are applicable only to the employer who may object to the registration of a trade union of workmen without notice to him, but the observations equally apply to a trade union of workmen. In another case reported as Holiday Inn Workers' Union v. Registrar of Trade Unions (1992 PLC 23), similar view was expressed by another learned Judge of the same High Court. It was observed in this case that the matter of registration is one between a trade union applying for registration and the Registrar and others, including the pre-existing trade unions or the employer have no say in the matter. The same view had earlier found favour in yet another judgment of the same Court in National Beverage Employees' Union v. Registrar, Trade Unions, Government of Sindh (1986 PLC 533). This judgment was also relied upon by the learned Judge in Chambers in the present case.

9. It, therefore, follows that neither the employer nor a trade union already existing in the same establishment can claim locus standi to challenge the decision of the Registrar merely on the ground that no opportunity of hearing was provided to it or an objection raised by it before the Registrar was not considered before such decision.

10. It is pertinent to notice that although, registration of a trade union may be cancelled in case it has contravened or has been registered in contravention of any of the provisions of the I.R.O. it would be beyond the Registrar's competence to pass such order unless the Labour Court so directs. No doubt, the High Court in the exercise of its Constitutional jurisdiction may order the Registrar to seek such directions from the Labour Court, as required by section 10, but the same would depend upon the circumstances of each case. The circumstances of the present case did not warrant such interference by the High Court as the petitioners have failed to establish that the discretion vesting in the Registrar was not properly exercised.

Similar principle was laid down in case titled *Messrs Hakim and Sons Chemicals v. Registrar of Trade Marks* (1998 PLC 122) and *Wall's Employees Union v. Registrar of Trade Unions* (2007 PLC 521). The petitioners assailed the order dated 14.01.2010 by filing an appeal under section 28 of the Act which provides that an appeal can be filed by any person aggrieved of an award or decision. Since the

petitioners are not aggrieved persons inasmuch as they have no *locus standi* in the matter of registration of Federation of Trade Unions, therefore, they did not have the competence to file an appeal.

8. In view of above, the instant petition as well as W.P. No.1777 of 2015 are devoid of merit and are accordingly dismissed.

(AAMER FAROOQ)
JUDGE

M.Naveed

Blue slip added.

Approved For Reporting