

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2487 of 2018
Iftikhar Ahmad Abbasi

Versus

National Industrial Relations Commission through its
Chairman and others

Date of Hearing: 12.07.2018.
Petitioner by: Mr. Mehr Shahid Mehmood, Advocate.
Respondents by: Mr. Ashraf Hussain Rizvi, Advocate for
respondents No.4 to 9.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Iftikhar Ahmed Abbasi, who is the ex-General Secretary of Phoenix Armour Workers Union (“P.A.W-Union”), impugns the judgment dated 10.05.2018, passed by the learned Member, National Industrial Relations Commission (“N.I.R.C.”) (respondent No.1) only to the extent whereby the petitioner’s appeal against the order dated 15.01.2018, passed by the Deputy Registrar, Trade Union/Authorized Officer (respondent No.3), was dismissed. Vide the said order dated 15.01.2018, respondent No.3 *inter-alia* turned down Muhammad Dilshad’s objections to the nomination forms of respondents No.4 to 8 for the internal elections of the P.A.W-Union, were dismissed. The said objections had been filed on the ground that since respondents No.4 to 8 were not members of the P.A.W-Union, they could not participate in the elections for the positions of officers of the said trade union.

2. The admitted position is that P.A.W-Union is an industry-wise trade union as defined in section 2(xvii) of the Industrial Relations Act, 2012 (“the IRA”). The said union was registered on 23.04.2013. The employer (i.e. Phoenix Armour Workers Union) impugned the order whereby P.A.W-Union was registered before the Hon’ble Lahore High Court in writ petition 18950/2013. The said writ petition was dismissed, vide judgment dated 17.02.2014. The civil petition for leave to appeal against the said judgment was dismissed as withdrawn.

3. P.A.W-Union was certified as the Collective Bargaining Agent ("C.B.A.") with effect from 21.05.2014. Prior to the registration of P.A.W-Union, internal election of the P.A.W-Union was held on 11.11.2012. Subsequently, the P.A.W-Union was polarized in two groups. One known as the "Abbasi Group" and the other known as the "Usman Ali Group". Dispute and differences developed between the said rival groups with respect to the applications filed before the Registrar Trade Union ("R.T.U.") for change in the office bearers of P.A.W-Union. The application filed by the Abbasi Group was numbered as case No.13(158)/2016, whereas the application filed by the Usman Ali Group was numbered as case No.13(137)/2016. Vide order dated 10.04.2017, the R.T.U. disposed of the said applications by authorizing respondent No.3 to hold the internal elections of P.A.W-Union in accordance with its constitution. In the said order, it was observed that the last election of the P.A.W-Union was held on 11.11.2012; and that since the term of office bearers was two years, the next election was to be held on 10.11.2014. Reference was also made to the judgment of the Hon'ble High Court of Sindh in the case of Rehmat ud Din Vs. Registrar Trade Union (2010 PLC 174), wherein it has been held that if a period of two years after holding internal elections passes and no further election is held, the office bearers would be treated as usurpers and their holding of such offices would be without lawful authority.

4. After the issuance of the provisional list of candidates by respondent No.3, one Muhammad Dilshad, the former Chairman of P.A.W-Union, filed before respondent No.3 objections to the nomination papers filed by respondent No.4 to 8 on the ground that they were not members of the P.A.W-Union and that their names were not mentioned in the voters' list. Vide order dated 15.01.2018, respondent No.3 disposed of the said objections and held that the said respondents had a right to contest from the 25% quota for the "outsiders". It may be mentioned that section 8(1)(d) of the IRA provides that a trade union shall not be entitled to registration unless its constitution provides that the number of persons forming the executive shall not exceed the prescribed

limit and shall include not less than 75% from amongst the workmen actually engaged or employed in the establishment or establishments or industry for which the trade union has been formed. The proviso to the said section 8(1)(d) provides that the condition of being employed in any establishment or an industry as aforesaid shall not apply to the remaining 25% of the members of the executive. The 25% of the members of the executive who are not required to be employed in any establishment or an industry are commonly known as “outsiders”, the term outsiders has not been defined in the IRA.

5. Against the said order dated 15.01.2018, the petitioner filed an appeal before the N.I.R.C. and his plea before the N.I.R.C. was that since respondents No.4 to 8's membership of the P.A.W-Union had been terminated, vide orders dated 21.09.2015; and that since the said termination orders had not been assailed, the same had attained finality and therefore, the said respondents, not being members of the said union, could not contest the elections for office bearers. Perusal of the said termination orders show that respondents No.4 to 8's membership of the P.A.W-Union was terminated on the allegation that they had not participated in a strike called by the office bearers of the said union.

6. Vide order dated 10.05.2018, the said appeal was dismissed. Although the N.I.R.C. disagreed with the finding of respondent No.3 that respondents No.4 to 8 could be treated as “outsiders” against the 25% quota for the executive, it was held that since the status of the executive/office bearers of the P.A.W-Union after 10.11.2014 (i.e. after a lapse of two years from the date when the last internal election of the said union was held), was that of usurpers, the orders dated 21.09.2015, whereby the membership of respondents No.4 to 8 from the P.A.W-Union was terminated, were illegal. The said orders dated 15.01.2018, passed by respondent No.3 and order dated 10.05.2018, passed by N.I.R.C./respondent No.1 have been impugned by the petitioner in the instant writ petition.

7. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that after a lapse of two years from the date of the internal elections of a union, the office bearers do not *ipso facto* cease to hold their offices but continued to hold the same until another election is held; that order dated 21.09.2015 whereby the petitioner had terminated respondents No.4 to 8's membership of the P.A.W-Union had been validly passed; that the said termination orders had attained finality since they had not been challenged before any forum; that although the first internal elections of the P.A.W-Union were held on 11.11.2012, the said union was not functional due to the injunctive order passed by the Hon'ble Lahore High Court in writ petition No.18950/2013; that even otherwise the two-year period during which the office bearers elected in the elections held on 11.11.2012 should be considered to have commenced on 21.05.2014 when the said union was certified as the C.B.A.; and that since respondents No.4 to 8 were not members of the P.A.W-Union, their nomination forms should have been rejected. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

8. On the other hand, learned counsel for respondents No.4 to 8 defended the appellate order dated 10.05.2018 and submitted that there is no legal basis for the learned counsel for the petitioner to say that the two-year period for holding the internal elections of the P.A.W-Union should commence from the date of certification of the C.B.A. and not from the date when the earlier elections were held; that section 8(1)(j) of IRA provides that a trade union shall not be entitled to registration under this Act unless its constitution provides for the manner of election of officers by the general body of the trade union and the term, not exceeding two years, for which an officer may hold office upon his election or re-election; that since the internal elections of P.A.W-Union were held on 11.11.2012, the two-year term of the office bearers expired on 10.11.2014, whereafter the status of the said office bearers was that of usurpers and any orders passed by them were without lawful authority; and that since the termination

orders dated 21.09.2015 were passed by the petitioner after the expiry of the two-year period for which he held the office of General Secretary of P.A.W-Union, the said orders were without lawful authority and of no legal effect. Learned counsel for respondents No.4 to 8 prayed for the writ petition to be dismissed.

9. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

10. The facts leading to the filing of the instant writ petition are set out in sufficient details in paragraphs 2 to 6 above and need not be recapitulated.

11. There is no denying the fact that the internal elections of P.A.W-Union were held on 11.11.2012. In the said elections, the petitioner was elected as the General Secretary of the said union. Section 8(1)(j) of IRA provides that a trade union shall not be entitled to registration under this Act unless its constitution provides for the manner of election of officers by the general body of the trade union and the term, not exceeding two years, for which an officer may hold office upon his election or re-election. It is not disputed that the said requirement has been incorporated in P.A.W-Union's constitution. There is no provision in the law or P.A.W-Union's Constitution excluding from the two-year tenure of the elected office bearers the period during which an injunctive order from a Court on the operation and functioning of the Union is in operation.

12. The two-year period for which the office bearers of the P.A.W-Union were elected expired on 10.11.2014. The orders whereby the petitioner terminated respondents No.4 to 8's membership of P.A.W-Union were passed on 21.09.2015 i.e. more than nine months after the expiry of the term for which the office bearers, including the petitioner, were elected. Therefore, the said termination orders were clearly without lawful authority and of no legal effect. In the case of MCB Staff Union of Pakistan Vs. Senior Member, NIRC Lahore (2001 PLC 131), the trade union had failed to hold elections and was continuing their tenure in violation of the terms of the union's constitution. It was observed by the

Hon'ble Lahore High Court that every day that lapses beyond the period of two years shall be deemed to be without lawful authority and usurpation by the union. Law to the said effect was also laid down in the case of Rehmatuddin Vs. Registrar of Trade Unions (2010 PLC 174).

13. Since the impugned order dated 10.05.2018 was passed in conformity with the law laid down in the case law referred to herein above, I have no reason to interfere with the said order dated 10.05.2018, passed by the N.I.R.C. Consequently, this petition, being devoid of merit, is dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON ____/2018.

(JUDGE)

*Qamar Khan** **APPROVED FOR REPORTING**

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