

FORM NO.HCJD/C
JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

W.P.No.1337/2012


Ajmal Farooq Zia
vs.
Registrar Trade Unions, Islamabad.

Date of hearing : 12.11.2012

Petitioner by : Mushtaq Hussain Bhatti, Advocate.

Respondents by : Barrister Afzal Hussain.

NOOR-UL-HAQ N. QURESHI J.- The respondent No.1 applied for registration to the Registrar Trade Union under the Industrial Relations Ordinance 2011 on 15.2.2012. The All Pakistan ZTBL Officers Association (Patriots) was registered by respondent No.1 vide letter dated 06.5.2012 said to have registered the Trade Union under IRO 2011. The petitioner was shown as one of its members in the application moved for registration which was vehemently controverted as the name of petitioner was included in the list of members surreptitiously without his knowledge and consent. The said letter of registration dated 06.5.2012 was assailed mainly on the ground mentioned below:

IRO 2011 was promulgated by the President of Pakistan on 18.7.2011 for 120 days. Subsequently, it was extended afflux of statutory period  the National Assembly had extended its operation for further 120 days up to 17.3.2012. The Bill for IRA was successfully passed by Senate and National Assembly and President accorded assent on 14.3.2012 when the said Act of 2012 was promulgated. It is further contended that IRO 2011 since was not

repealed by the Act of 2012, therefore, proceedings commenced under IRA 2012 after 14.3.2012 were rendered illegal, void ab initio in the eye of law. It is also one of the point urged in terms of section 88 of IRA 2012, the IRA 2008 having been repealed by virtue of section 87(3), therefore, proceedings commenced or other actions taken under the repealed Act shall be deemed to have been done, made, issued, appointed, constituted, given, or taken under the corresponding provision of the Act. In the absence of any saving clause in section 88 of IRA 2012, the IRO 2011 be treaded as sunset legislation which came to end by its own force when IRA 2012 was promulgated. Similar observation made by Hon'ble Supreme Court in CP No.24/2011 that IRA 2008 came to end by its on force on 30.4.2012 and all the proceedings held were nullity in the eye of law. Further it is argued that IRO 2011 has not been repealed by an Act of Parliament it come to an end by the operation of constitutional constraint, therefore, provisions of section 6 of General Clauses Act can not be pressed into service to indemnify proceedings initiated under IRO, 2011. Therefore, the application for registration was made by respondent No.2 to respondent No.1 on 15.2.2012 when IRO 2011 was operative. The applications remained under process till 06.4.2012 when the verification of registration was issued w.e.f 05.4.2012 same since came to an end on 14.3.2012 when the IRA 2012 was promulgated. Therefore, subsequent action on that application initiated by respondent No.1 is without lawful authority.

2. Learned counsel for the respondents has argued that the petitioner has deliberately suppressed the material facts thereby misguiding this Court. Hence, approached by the petitioner is un clean hands. Therefore, petitioner is disentitled for relief claim under Article 199 of Constitution. It is alleged that Mr.Ajmal Farooq Zia OG-I, ZTBL, is

acting on the behest of the Association of ZTBL Officers who in league with the management intends to hinder the lawful functioning of the respondent namely All Pakistan ZTBL Officers Association (PATRIOTS). Therefore, on clear question mark on the bona-fide of petitioner, petition is liable to be dismissed. It is further alleged that Ajmal Farooq Zia fraudulently shown himself to be a member of the answering respondent, whereas he never paid registration fee or membership fee or even formal/informal attended nor he has been declared member by the respondent association at any forum including NIRC. In this regard, it is contended that petitioner failed to place any documentary evidence in support of his membership, therefore, being self proclaimed member of the respondent association has no locus-standi to invoke constitutional jurisdiction of this Court. The respondent No.2 after completing due process applied for registration to respondent No.1, same was duly registered under Industrial Relation Act, 2012 as evident from the certificate itself. Therefore, petition lacks such merits. It is also contended that the remedy of appeal was available under section 12 of Industrial Relations Act, 2012 to the petitioner, therefore, availing writ jurisdiction under these circumstances is a misguidance. Likewise, the petitioner has failed to identify any infringement of his legal rights yet he has not furnished any proof with regard to his membership, as such he can not claim any relief, as cause of action even lacking. The petition is therefore, liable to be dismissed. It is alleged that the questions raised in petition requires leading of "Pro & Contrary" evidence. Therefore, factual controversy can not be resolved in the constitutional jurisdiction.

3. Learned counsel for the petitioner in rebuttal admitted such fact that though the right of appeal is available but yet the Commission has not been constituted, therefore, there is no way remained with the

petitioner except to seek such relief by invoking constitutional jurisdiction.

4. Arguments heard, record pursued.

5. Without considering other factual or legal grounds raised, I would like to concentrate upon such aspect as admitted by learned counsel for the petitioner that right of appeal is provided by section 12 of IRA 2012.

6. So far the concern of constitution of commission as provided by section 53 which consists of 10 members including Chairman, does not take away the right of petitioner to prefer appeal. Preferring appeal only for the reason of non-constitution of commission for the period which to is concealment of the fact is not permissible. Such concealment of fact on the part of petitioner besides the fact elaborated that, petitioner could not establish any proof with regard to membership as such no locus-standi to prefer writ petition.

7. In view of above enumerated position, the petitioner has failed to make out any case seeking relief in the instant petition, therefore, I am persuaded to decide the instant writ petition on two legal grounds raised by learned counsel for the respondents. For both the grounds raised/discussed above, learned counsel for the petitioner could not plausibly explain his position, hence, I am of the considered view that instant writ petition lacks merits, same is hereby dismissed.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Imran