

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Writ Petition No. 73/2019.

Bank of Khyber

Versus

Member, NIRC, Islamabad, etc.

Petitioner by: Syed Ishtiaq Haider, Advocate.

Respondent No.3 by: Mr. Zubair Shah, Advocate.

Date of Hearing: 16.12.2019.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has called in question the order dated 05.09.2018, rendered by learned Single Bench NIRC, Islamabad, whereby appeal filed by respondent No.3 U/S 12 of IRA, 2012 read with NIRC (P&F) Regulations, 2016 was allowed and application filed by respondent No.3 for registration of Association of Bank of Khyber Officers Association was allowed to be registered.

2. Learned counsel for the petitioner *inter-alia* contends that petitioner is a banking company incorporated under the Companies Ordinance, 1984 and is juristic person under the law whereas officers of petitioner bank applied before the Registrar Trade Union (RTU) for registration of officers association which was turned down by the RTU, however, learned Single Bench NIRC allowed the appeal by considering the provision of Section 2(ix) of IRA, 2012 and wrongly observed that by virtue of said provision, all the officers, managers, directors, proprietors falls within the concept of management and shall be deemed to call as employer in the establishment; that Section 3(b), (c) & (d) of IRA, 2012 are not applicable in this case as officers might exercise certain powers of employer but it does not mean they fall within the definition of employers of association and could be considered for such purpose. It has lastly been contended that learned

RTU has no jurisdiction to register such kind of association which is beyond its mandate in terms of IRA, 2012.

3. Conversely, learned counsel for respondent No.3 contends that Section 3(c) of IRA, 2012 recognizes the concept of "Employers Association" and if it has to be read in conjunction with Section 3(d) of IRA, 2012, association of officers could have been registered before the RTU; that in terms of Article 17 of the Constitution of Islamic Republic of Pakistan, 1973 it is the fundamental right of every individual (officers of respondent No.3), for freedom of association and as such the decision rendered by RTU is in direct conflict with Article 17 of the Constitution of Islamic Republic of Pakistan, 1973.

4. Arguments heard, record perused.

5. Perusal of record reveals that the primary question argued before this Court is regarding registration of Bank of Khyber Officers Association by the RTU, duly recognized under IRA, 2012 or otherwise? Respondent No.3 has applied for the registration of Bank of Khyber Officers Association which was rejected by RTU, however, learned Single Bench NIRC allowed the same through the impugned order.

6. I have gone through the application "Form A" appended with this writ petition submitted by respondent No.3 on 22.08.2017, which reflects that the Bank of Khyber Officers Association Pakistan (BOKOA) came into existence on 21.04.2017 and claims that it holds membership in all over Pakistan. In order to reach just conclusion, it is necessary to consider the definition of "Employer" provided in Section 2(ix) of IRA, 2012, which refers as under:-

2(ix) "employer" in relation to an establishment, means any person or body of persons, whether incorporated or not, who or which employs workmen in the establishment under a contract of employment and includes---

(a) an heir, successor or assign, as the case may be, of such person or body as aforesaid;

- (b) *any person responsible for the management and control of the establishment;*
- (c) *in relation to an establishment run by or under the authority of any department of the Federal Government, the authority appointed in this behalf or, where no authority is so appointed, the Head of the department;*
- (d) *in relation to an establishment run by or on behalf of a local authority, the officer appointed in this behalf, or where no officer is so appointed, the chief executive officer of that authority;*

Explanation.-- *For the purpose of distinction from the category of "workers" or "workmen", officers and employees of a department of the Federal Government who belong to the superior, managerial, secretarial, directorial, supervisory or agency staff and who have been notified for this purpose in the official Gazette shall be deemed to fall within the category of "employers", and*

- (e) *in relation to any other establishment, the proprietor of such establishment and every director, manager, secretary, agent or officer or person concerned with the management of the affairs thereof;*

7. The above referred definition of term "employers" covers all those individuals who are working on managerial, supervisory or administrative duties as they were not fulfill the requirement of workman as provided in Section 2(xxxiii).

8. The above referred position placed before this Court persuaded to believe that instant matter has to be considered in the light of Section 3 of IRA, 2012, which provides the concept of registration of trade union, which read as under:-

3. Trade unions and freedom of association.—*Subject to the provisions of this Act and notwithstanding any other law for the time being in force,—*

- (a) *workers, without distinction whatsoever, shall have the right to establish and, subject to the rules of the*

organization concerned, to join international associations of their own choice without previous authorization:

Provided that in the establishment where women are also employed the Trade Union shall include the women in the executive of the said trade union with the same proportion in which they are employed in the establishment:

Provided further that no worker shall be entitled to be a member of more than one trade union at any one time and on joining another union the earlier membership shall automatically stand cancelled;

- (b) employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join international associations of their own choice without previous authorization;*
- (c) every trade union and employers association shall frame its own constitution and rules to elect its representatives in full freedom to organize its administration and activities and to formulate its programmes; and*
- (d) workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations and confederations of workers' and employers' organizations.*

9. Respondent No.3 contends that he fulfills the requirement of Section 3(b) & (c) of IRA, 2012 in letter & spirit and the Appellate Court has rightly appreciated and further contends that learned Single Bench NIRC has declared all those directors, managers, officers to be employers in an establishment.

10. The above referred stance of learned counsel for respondent No.3 has to be seen in the light of preamble of IRA, 2012, which deals with three kinds of stakeholders i.e. trade unions, employers and workman whereas the basic idea behind legislation of IRA, 2012 is to rationalize the law relating to formation of trade unions, and improvement of relations between employers and workmen in

the Islamabad Capital Territory and in trans-provincial establishments and industry, hence, the entire issue could be seen through the prism of employer definition provided in Section 2(ix) of IRA, 2012, which provides yardstick to be applied for any person or body of persons to be called as an employer if he is dealing with the affairs of management and control of establishment in supervisory or managerial capacity having control of organization, department, establishment or local authority.

11. This clearly establishes that a person who is dealing with the affairs of management, control and supervision is called as employer, although it is qualified to be with the authority which he exercise while performing his duties in an establishment or industry.

12. The question of exercise of authority by any individual i.e. Secretary, officer who might be assigned with such duty of juristic person or the owner of establishment as the case may be, although in such situation, director, officer or the manager is exercising the authority on behalf of juridical person and as such powers which have been extended to him is due to the engagement of owner of establishment or industry or juridical person who might be a company or firm and in this regard director, officer claims to be an employer but this does not mean that he is independently called an employer.

13. Similarly the definition of worker and workman provided in Section 2(xxxiii) of IRA, 2012 started with negative notion "person not falling within the definition of employer" means an exclusion of all those directors, managers, officers, persons of authority in the establishment or industry.

14. The above background, if seen in the light of Section 3 of the IRA, 2012, which provides the concept of registration of trade unions as well as freedom of association which also covers the employers and employers association referred in Section 3(b) & (c) of the IRA, 2012. The employers association is a new

phenomenon which has not been provided in Section 2 of the IRA, 2012 dealing with definition clause, therefore, its concept could have been seen in the light of ordinary dictionary meaning.

15. The “*Employer Association*” is based on two words where “*employer*” has already been explained with reference to Section 2(ix) of IRA, 2012, however, word “*association*” means “*alliance, consortium, coalition, union, league, guild, syndicate, corporation, federation, confederation, amalgamation, society, fraternity*” as referred in Oxford Thesauruses in English. The basic character of all these terminologies shows that every person within the association is related, connected, linked, analogues, similar, alike and incidentally to the main cause of the group which was established. The concept of association is otherwise drawn from Article 17 of the Constitution of Islamic Republic of Pakistan, 1973, which guarantees the freedom of association to every citizen subject to any reasonable restriction imposed by law.

16. While considering the above details, Sections 3, 5, 6, 7 & 8 of the IRA, 2012 revolves around the registration of trade union, which is entirely different from the concept of association. The heading of Section 3 refers as trade union and freedom of association expresses two different notions, whereas trade union has been explained in Section 2(xxxi) means “*any combination of workmen or employers formed primarily for the purpose of regulating the relations between workmen and employers, or workmen and workmen or employers and employers*”, whereas the concept of freedom of association was borrowed from the Article 17 of the Constitution of Islamic Republic of Pakistan, 1973.

17. Section 3(c) of IRA, 2012, in facts, refers the concept of employer association which has not been discussed anywhere in other sub clauses of Section 3, therefore, it is necessary to reproduce the same:

3. ***Trade unions and freedom of association.***
 - (a)

(b)

(c) *every trade union and employers association shall frame its own constitution and rules to elect its representatives in full freedom to organize its administration and activities and to formulate its programmes.*

The above referred provision places a duty upon the association to frame its own constitution/rules to elect its representatives in full freedom to organize its administration/activities and to formulate its programmes, but surprisingly the powers and functions of Registrar provided in Section 5 only provides the authority to RTU regarding registration of trade union, collective bargaining agent and no authority was extended to RTU to deal with the issues relating to employers association and as such, this aspect creates a difficult position, therefore, I have gone through the *NIRC (Procedure and Functions) Regulations, 2016*, which provides the concept of registration in Chapter 3, Regulation No.8, whereby the Officers Association can apply for its registration in the format as set out in Form "A". Similarly, in the procedure for registration provided in Regulation 10 of the said Regulations of 2016 further clarifies the situation. In addition to above, different duties have been assigned to the Officer Association in terms of Regulation 11(2) of the Regulations of 2016 to maintain a register of its members, monthly subscription, accounts, minute book, details of meeting of general body, resolutions and names and signatures of offices who attended the meeting, hence it is clear from the said regulations that the concept of Officers Association is a recognized concept, although the details were not provided by the legislature in the IRA, 2012, except the reference of Employers Association only in Section 3(c), however the objectives of the Officers Association should be in the concept of Section 3(a) & (b) and not beyond.

18. Keeping in view the above mandate and discussion, I have no hesitation to hold that law relating to trade union is liberally and beneficially construed as held in 2010 PLC 125 (Messrs International Textile Limited through Factory

Manager Vs. Registrar of Trade Unions, Government of Sindh and 3 others). It

has also been settled in the said judgment that matter of registration is always between the union applying for registration and the Registrar, neither the employer, nor a trade union already existing in the same establishment can claim *locus standi* to challenge the decision of the Registrar, however, this Court is confined to settle the question raised by the petitioner's side as to whether Bank of Khyber Officers Association could be registered with RTU? The answer is affirmative in terms of Section 3 of the IRA, 2012 read with Regulations 8, 9, 10 and 11 of the NIRC (*Procedure and Functions*) Regulations, 2016.

19. Keeping in view the above background, I have attended the order impugned dated 05.09.2018, whereby learned Single Bench, NIRC has decided the issue on the following grounds:-

- (a) Explanation to Section 2 (ix) of IRA, 2012 itself provides that the proprietor or director, manager, secretarial, agent or officer or person concerned with the management of officers thereof shall be deemed to fall within the category of employers in an establishment.
- (b) Employees who belong to supervisory, managerial and secretarial, directorial notified in the same one establishment while dealing with the different sections/duties etc are not allowed to form a trade union/association than that would be against the dictum and spirit of provision of Section 3 of IRA, 2012.
- (c) The registration certificate of Pakistan Television corporation Executive Association, was issued by RTU NIRC, Islamabad vide order dated 13.02.2009.
- (d) Registration order dated 21.12.2016, was issued by Joint RTU, NIRC Islamabad pertaining to the All Pakistan National Bank Officers Association.

20. The above referred reasons have rightly been appreciated by the learned Single Bench NIRC in appeal as the RTU has not considered the concept of

registration of Officers Association in terms of NIRC (Procedure and Functions) Regulations, 2016 in a proper manner, therefore, the order passed by the RTU is contrary to the mandate of law.

21. In view of above discussion, this Court comes to an irresistible conclusion that registration of Bank of Khyber Officers Association is within the competence and jurisdiction of the Registrar Trade Union in terms of Section 3 of the IRA, 2012 read with Regulations 8, 9, 10 and 11 of the NIRC (Procedure and Functions) Regulations, 2016, therefore, the instant writ petition is misconceived and the same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 09.01.2020.

JUDGE

Zahid