

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.913 of 2017.

Gun & Country Club Islamabad through its Secretary.

Vs.

***National Industrial Relations Commission
through its Registrar & another.***

Petitioner's by. Mohammad Ali Raza, Advocate.

Respondent's by. Syed Naeem Bukhari, Advocate.

Date of Decision. 13.04.2017.

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AAMER FAROOQ, J.- Through the instant petition, the petitioner has assailed orders dated 27.02.2017 and 03.03.2017 passed by respondent No.1 whereby the termination letter dated 15.02.2017 and suspension notice dated 03.03.2017 issued by the petitioner to its employees were suspended.

02. The facts, in brief, are that the petitioner is a Private Members Club established under the Gun Club Resolution, 2002 and provides various facilities to its members including sports-shooting, amusement and recreation. Respondent No.2 is a registered Trade Union of the employees of the petitioner and was registered as such on 24.10.2013 and also claims to be Collective Bargaining Agent (CBA) as defined in law. Respondent No.2 on 10.05.2016 filed an application before respondent No.1 alleging unfair labour practice on part of its employer and also moved an application seeking an injunctive order. In this behalf respondent No.1 while issuing notice to the petitioner granted an injunctive order restraining the petitioner from taking any adverse action

against the employees of the petitioner. The said order was passed on 03.06.2016. Meanwhile the petitioner also moved an application for cancellation the registration of respondent No.2. During the course of proceedings respondent No.2 served upon the petitioner a charter of demand dated 27.07.2016 and thereafter issued a strike notice under Section 35(3) of the Industrial Relations Act, 2012 (*the Act*) dated 18.08.2016; pursuant to the said action by respondent No.2 conciliation proceedings were initiated and the Registrar of respondent No.1 was appointed as Conciliator. On 03.02.2015, respondent No.2 filed a petition under Sections 64 and 65 of the Act. In the referred application vide order dated 03.02.2017 the petitioner was again restrained to take any adverse action against the members of respondent No.2. The referred injunctive order was extended vide order dated 27.02.2017. On 08.02.2017 the conciliation proceedings failed, therefore, failure certificate was issued by the Registrar of respondent No.1. On 16.02.2017 a petition under Section 42(2) of the Act was filed by respondent No.2 for adjudication of the industrial dispute and grant of award within thirty (30) days. In the said proceedings vide order dated 16.02.2017 respondent No.1 restrained the petitioner not to take final adverse action qua services of the Office Bearers/Members of respondent No.2. On 18.02.2017 services of a number of employees of the petitioner and members of respondent No.2 were terminated and as a result thereof three (3) contempt petitions were filed alongwith applications for interim relief, in which notices were issued to the petitioner and the termination order dated 15.02.2017 was suspended.

03. Learned counsel for the petitioner, inter alia, contended that respondent No.1 does not have the jurisdiction to suspend the termination order dated 15.02.2017 in the contempt petitions; that respondent No.2 is a non-entity inasmuch as the CBA certificate was granted to it for a period of two years which has

lapsed; learned counsel further contended that interim orders passed by Single Bench of respondent No.1 are neither appealable nor revisable. In this behalf it was contended that orders dated 27.02.2017 and 03.03.2017 are interim orders and not decisions. In this behalf reliance was placed on cases titled "AXS Pakistan (Pvt.) Limited vs. Javed Iqbal & 5 others" (**2007 PLC 45**) and "Fasihud-Din Khan & others vs. GOP & others" (**2010 SCMR 1778**). It was further contended that the petitioner is aggrieved of orders passed by respondent No.1 as the proceedings are without lawful authority. Reliance was placed on case titled "Malik Nazar Hussain vs. National Bank of Pakistan & another" (**2004 SCMR 28**). It was further contended that no interim order could have been passed in contempt proceedings. Reliance was placed on cases titled "Dr. Nazeer saeed vs. Mohammad Javed & 16 others" (**PLD 2014 Lahore 660**), "Mrs. Razia Yaqub vs. Malik Mohammad Ashiq & 2 others" (**PLD 2003 Lahore 486**). It was further contended that respondent No.1 has no jurisdiction to reinstate the terminated employees by way of status quo ante. Reliance was placed on cases titled "Islamic Republic of Pakistan through Secretary Establishment Division vs. Mohammad Zaman & others" (**1997 SCMR 1508**) & "Dr. Aijaz Hussain Qureshi vs. National Industrial Relations Commission & 2 others" (**PLD 1976 Lahore 611**). It was further submitted that the employees were terminated on 15.02.2017 in pursuance of the detailed decision of the Inquiry Committee dated 11.02.2017 and were terminated solely on the ground of misconduct; as elaborated in the Gun Club Human Resources Policy and the Terms & Conditions contained in the employment contracts. It was further contended that there was no injunctive order on the date when the employees were terminated. It was also contended that respondent No.2 does not hold the valid CBA Certificate and has no locus standi to initiate such proceedings and it is right of employer to conduct disciplinary proceedings against its delinquent employees.

04. The learned counsel for respondent No.2, inter alia, contended that the contempt petition was filed against the individuals hence the petitioner has no locus standi to file the instant petition. It was further contended that the orders impugned in the instant petition are appealable under Section 58(2)(b) and are revisable under Section 58(2)(d) of the Act. It was further contended that the orders in question are in accordance with law and the management has a bias against the Trade Union. It was further contended that it is established law that writ petition cannot be issued in aid of injustice.

05. Arguments on behalf of learned counsel for the parties have been heard and documents placed on record have been perused with their able assistance.

06. The petitioner, in the instant petition, is aggrieved of orders dated 27.02.2017 and 03.03.2017, passed by respondent No.1 suspending termination letter dated 15.02.2017 and suspension notice dated 03.03.2017. The referred orders have been passed by respondent No.1 in contempt proceedings filed by respondent No.2 for violation of orders dated 03.02.2017 and 11.05.2016. The provisions relevant for the purposes of adjudication of present controversy are sections 57 and 58 of IRA which are reproduced below:

“Additional powers of the Commission.—(1) In addition to powers which the Commission has under this Act-

(a) the Commission shall have power to punish any person who obstructs or abuses its process or disobeys any of its orders or directions, or does anything which tends to prejudice the case of a party before it, or tends to bring it or any of its members in relation to proceedings of the Commission into hatred or contempt, or does anything which, by law, constitutes contempt of Court, with simple imprisonment which may extend to six months or

with fine which may extend to fifty thousand rupees, or with both; and

(b) for the purposes of any investigation, enquiry or adjudication to be made by the Commission under this Act, the Chairman or any member of the Commission may at any time between the hours of sunrise and sunset, and any other person authorized in writing by the Chairman or any member of the Commission in this behalf may, after he has given reasonable notice, enter any building, factory, establishment, workshop or other place or premises whatsoever and inspect the same or any work, machinery, appliance or Article therein or interrogate any person therein in respect of anything situated therein or any matter relevant to matters before the Commission; and

(2) The Commission may, on the application of a party, or of its own motion,

(a) initiate prosecution, trial or proceedings, or take action, with regard to any matter relating to its functions;

(b) withdraw from a Labour Court of Province any application, proceedings or appeal relating to unfair labour practice, which fall within jurisdiction of the Commission.

(c) grant such relief as it may deem fit including interim injunction.

(3) For the purpose of dealing with a case of unfair labour practice which the Commission is seized, the Commission may-

(a) proceed directly with the case;

(b) ask the Provincial Registrar within whose jurisdiction the case has occurred or is likely to occur to enquire into it and submit a report; or

(c) refer the case to a Provincial Labour Court within whose jurisdiction the case has occurred or is likely to occur, either for report or for disposal.

(4) The Labour Court to whom the case is so referred shall enquire into it and, if the case was referred to it for report, forward its report thereon to the Commission or, if the case was referred to it for disposal, continue the proceedings and dispose of the case as if the proceedings had originally commenced before it and grant such relief as the Commission has the power to grant.

(5) Save as provided in sub-section (4) no Registrar, Labour Court or Labour Appellant Tribunal shall take any action, or entertain any application or proceedings, in respect of any matter which falls within the jurisdiction of the Commission.

Provided that no Court, including Labour Court, shall take any action or entertain any application or proceedings in respect of a case of unfair labour practice which is being dealt with by the Commission.

Explanation.—The expressions “industry-wise trade union” and “federation of such trade unions” refer to a trade union membership of which extends to establishments in more than one Province and a federation of trade unions whose membership extends to registered trade unions in more than one Province.

58. Appeals.—(1) Notwithstanding anything contained in this Act, or in any other law for the time being in force, any person aggrieved by an award or decision given or a sentence or order determining and certifying a collective bargaining unit passed by any Bench of the Commission, may, within thirty days of such award, decision, sentence or order prefer an appeal to the Commission.

(2) An appeal preferred to the Commission under sub-section (1) shall be disposed of by the Full Bench of the Commission which shall —

(a) if the appeal is from an order determining and certifying a collective bargaining unit, have the power to confirm, set aside, vary or modify such an order.

(b) if the appeal relates to any other matter, the Full Bench may, confirm, set aside, vary or modify the decision or sentence passed and shall exercise all the powers required for the disposal of an appeal.

(c) the decision of the Full Bench shall be delivered as expeditiously as possible, within a period of sixty days following the filing of the appeal, provided that such decision shall not be rendered invalid by reasons of any delay in its delivery.

(d) the Full Bench may, on its own motion at any time, call for the record of any case or proceedings under this Act in which a Bench within its jurisdiction has passed an order for the purpose of satisfying itself as to the correctness, legality, propriety of such order, and may pass such order in relation thereto as it thinks fit.

Provided that no order under this sub-section shall be passed revising or modifying any order adversely affecting any person without giving such person a reasonable opportunity of being heard.

(3) If in an appeal referred to it against the order of the Bench directing the re-instatement of a workman, the Full Bench may make an order staying the operation of the order of the Bench.

(4) The Full Bench shall decide such appeal within twenty days of its being preferred:

Provided that, if such appeal is not decided within the period aforesaid, the stay order of the Full Bench shall stand vacated on the expiration of that period."

Respondent No.1 under Section 57(1) of the Act has the powers to punish any person who abstracts or abuses its process or disobeys any of its orders or directions or abuses anything which prejudices

the case of a party before it. In this behalf respondent No.1 can pass the sentence for embezzlement which extends to six months or with fine extending to Rs.50,000/- or both. Under Subsection 2 of Section 57 of the Act, respondent No.1 on application of a party or its own motion can initiate prosecution, trial or proceed and in this behalf can grant such relief as it may deem fit including interim injunction. Similarly, the orders passed/decision rendered under the Act by respondent No.1 are appealable and revisable under Section 58 *ibid*. In this behalf under Section 58(1) of the Act any person aggrieved by an award or decision given or a sentence or order determining and certifying CBA may within thirty (30) days of such award prefer an appeal to the Commission. The said appeal under Sub-section 2 of Section 58 of the Act is to be heard and decided by the Full Bench of respondent No.1. Under Section 58(2)(d) the Full Bench of National Industrial Relations Commission may on its own motion at any time call for the record of any case under this Act in which the Bench within its jurisdiction had passed an order for the purposes of satisfying itself as to the correctness of the same or any illegality therein and may pass such orders in relation thereto as it deems appropriate. Under the proviso to the referred Subsection no order is to be passed revising or modifying an order adversely affecting any person without giving such person a reasonable opportunity of being heard. In the instant case, the petitioner has assailed order passed by the Bench of National Industrial Relations Commission (Respondent No.1) in contempt proceedings which is interim/ interlocutory in nature and cannot be recorded as an award or decision given for the purposes of Section 58 *ibid*. Hence the petitioner has no right of appeal against the same, however, under Section 58 (2)(d) of the Act the Full Bench of National Industrial Relations Commission has the jurisdiction to call for record of any case with respect to any proceedings in which a Bench has passed any order; meaning thereby that the Full Bench of the National Industrial Relations

Commission has the jurisdiction to revise any order passed by a Bench of National Industrial Relations Commission. Learned counsel for the petitioner has placed reliance on various judgments to substantiate arguments that since the orders impugned in the instant petition are neither a decision given nor case decided, therefore, the Full Bench has no jurisdiction to revise the same. In fact the power/ jurisdiction of revision granted under C.P.C. is in the circumstance where there is a case decided, however, in the instant case the plain reading of Section 58(2) (d) shows that Full Bench of National Industrial Relations Commission has the jurisdiction to revise any order and since it is not restricted to the final order or final decision, therefore, it includes the interim/interlocutory orders. The petitioner, therefore, has the remedy of filing revision petition under Section 58(2-D) before the Full Bench of National Industrial Relations Commission.

07. The learned counsel for respondent No.2 has opposed the instant petition on the basis of locus standi of the petitioner to assail the orders passed by respondent No.1. In this behalf it was contended that since the contempt proceedings were initiated against M/s Daniyal Aziz, Ather Rauf Bhatti, Dr. Aamir Matin, Syed Nauman Shah, Ali Raza & Eisab Khan, therefore, the instant petition by the petitioner's Club is not maintainable. The petitioner has assailed, in the instant petition, orders passed by respondent No.1 whereby the termination notice dated 15.03.2017 has been suspended. Since the termination notices were issued by the petitioner which has been suspended by respondent No.1, therefore, it is an aggrieved person for the purposes of Article 199 of the Constitution and does have locus standi even though it is not a party in the contempt proceedings. Moreover, the petitioner is a party before respondent No.1 in other petitions including the one for industrial dispute. The petitioner has assailed orders passed by respondent No.1 in contempt petitions basically on the ground of jurisdiction; in this behalf it was contended that

respondent No.2 does not have the jurisdiction to suspend the termination notice or grant interim relief in the contempt proceedings. As observed respondent No.1 has the powers of punishing someone for contempt under Section 57(1)(a) of the Act and under Section 57(2)(c) of the Act can grant such relief as it may deem fit including interim injunction. Under Section 57 of the Act the Commission has additional powers including the one to grant interim relief and to punish someone for contempt. Learned counsel for the petitioner has placed reliance on cases titled "Dr. Nazeer Saeed vs. Mohammad Javed" (**PLD 2014 Lahore 660**) and "Mrs. Razia Yaqub vs. Malik Mohammad Ashiq & 2 others" (**PLD 2002 Lahore 486**) to argue that in the contempt proceedings no direction can be issued or interim relief can be granted. In case titled Dr. Nazeer Saeed vs. Mohammad Javed supra it was observed as follows:

"Another learned Division Bench of this Court in a judgment reported as Mrs. Razia Yaqoob v. Malik Muhammad Ashiq and 2 others [PLD 2003 Lahore 486] has decided as follows:

The provisions of section 4 of the Contempt of Court Act, 1976 as well as the provisions of Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973 provide that a contemner can be convicted by the Court and can be sentenced with imprisonment and fine to the extent provided in the said provisions. No further jurisdiction has been conferred by the said provisions upon a Court seized of such a matter.

15. Upon going through the above cited law and the judgments on the subject, it becomes crystal clear that while exercising jurisdiction under Article 204 of the Constitution or under the provisions of Contempt of Courts Ordinance 2003, the Court can only "PUNISH" the contemnor and no more. Even if, for a while, this is presumed that the Court could look into the vires of an order passed in pursuance to its direction, it can only do

the same with the perspective of punishing the contemnor.”

08. There is no cavil that the principle laid down in the above mentioned judgment of the Hon'ble Lahore High Court and judgment relied upon the Division Bench, however, the referred judgments were passed under Article 204 of the Constitution and the Contempt of Court Ordinance, 2003. In the instant case the additional powers are conferred on National Industrial Relations Commission under Section 57 of the Act. The bare perusal of Section 57(2)(c) shows that the power to grant interim relief by way of injunction or otherwise is not restricted to any particular kind of proceedings and it extends to all kinds of proceedings before the National Industrial Relations Commission. In light of said facts respondent No.1 did have the jurisdiction to grant interim relief while issuing notice in the contempt proceedings under Section 57(2)(c) of the Act. It is an established principle that no petition under Article 199 of the Constitution is maintainable against interim order unless the same is without jurisdiction or patently illegal. As mentioned hereinabove National Industrial Relations Commission did have the jurisdiction to grant interim relief while issuing notice in contempt proceedings, therefore, the order passed by it and assailed in the instant petition are not without jurisdiction or otherwise illegal.

09. For the reasons set out above, the instant petition is without merit and is accordingly dismissed.

(AAMER FAROOQ)
JUDGE

Ataf Malik

Approved for Reporting