ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4073 of 2019
MOL Pakistan Oil and Gas Co. B.V.
Versus
National Industrial Relations Commission and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	13.02.2020	**Syed Hasnain Ibrahim Kazmi and Muhammad Akram Shaheen, Advocates for the petitioner** **Mr. Muhammad Umair Baloch, Advocate for respondent No.3.**

Through the instant writ petition, the petitioner, MOL Pakistan Oil and Gas Co. B.V., impugns the order dated 18.11.2019 passed by the learned Full Bench, National Industrial Relations Commission ("**N.I.R.C.**") whereby the petitioner's appeal against *ex-parte* order dated 04.09.2019 passed by the learned Member, N.I.R.C., was dismissed. Vide the said order dated 04.09.2019, the learned Member, N.I.R.C. allowed respondent No.3's grievance petition and directed the petitioner to reinstate him in service with all back benefits within a period of thirty days.

2. The facts essential for the disposal of the instant petition are that on 11.10.2012, an employment agreement was executed between the petitioner and respondent No.3. Under the said agreement, respondent No.3 was appointed as a Logistics Operator on permanent basis. Clause 11 of the said agreement provided *inter alia* that either party could terminate the said agreement by giving two months' advance written notice or two months' salary in lieu of the notice period.

3. Vide letter dated 10.04.2015, the petitioner terminated the said agreement pursuant to clause

11 thereof. In the said letter, it was clearly mentioned that two months' salary in *lieu* of notice would be paid to respondent No.3 along with final settlement. The said letter does not in any manner stigmatize respondent No.3.

4. Aggrieved by the termination of his employment agreement, respondent No.3 filed a grievance petition under Section 33(8) of the Industrial Relations Act, 2012 ("I.R.A.") before the N.I.R.C., Peshawar Bench. Vide order dated 26.06.2019, the petitioner was proceeded against *ex-parte*. The proceedings before the N.I.R.C. culminated in the order dated 04.09.2019, whereby the said grievance petition was allowed, and the letter dated 10.04.2015, whereby respondent No.3's employment agreement was terminated, was set-aside. Furthermore, the petitioner was directed to reinstate respondent No.3 in service with all back benefits within a period of thirty days. The said order dated 04.09.2019 was assailed by the petitioner in an appeal before the learned Full Bench, N.I.R.C. Vide order dated 18.11.2019, the said appeal was dismissed. The said concurrent orders passed by the learned Member and learned Full Bench, N.I.R.C. have been assailed by the petitioner in the instant writ petition.

5. Learned counsel for the petitioner drew the attention of the Court to the employment agreement dated 11.10.2012 executed between the petitioner and respondent No.3, clause 11 whereof entitled the petitioner to terminate respondent No.3's services by giving two months' written notice or two months' salary in *lieu* of such notice. Learned counsel for the petitioner submitted that in the termination letter dated

10.04.2015, there was no allegation of misconduct made against respondent No.3; that the said letter did not in any manner stigmatize respondent No.3; that Standing Order 12(1) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("the 1968 Ordinance") provides that for terminating employment of a permanent workman, for any reason other than misconduct, one month's notice shall be given either by the employer or the workman, and that one month's wages calculated on the basis of average wages earned by the workman during the last three months shall be paid in lieu of notice; that the termination of respondent No.3's employment agreement was strictly in accordance with Standing Order 12(1) *ibid* as well as clause 11 of the agreement; that since no allegation of misconduct was made against respondent No.3, there was no need for a regular inquiry or the issuance of a show cause notice; and that since respondent No.3 was given the responsibility of Logistics Operator, he did not come within the meaning of a *"workman"* as defined in Section 2(xxxiii) of the I.R.A. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

6. On the other hand, learned counsel for respondent No.3 submitted that the concurrent orders passed by the learned Member and the learned Full Bench, N.I.R.C. do not suffer from any jurisdictional or legal infirmity; that since the petitioner had been proceeded against *ex-parte*, the evidence adduced by respondent No.3 remained un-rebutted; that the petitioner had violated the requirements of Standing Order 12(3)

of the 1968 Ordinance by not conducting an inquiry against respondent No.3 or issuing a show cause notice or charge sheet before terminating his employment agreement; that respondent No.3 was not even afforded an opportunity of a hearing before the termination of his services; that respondent No.3 was the petitioner's permanent employee and had served for more than two years before his services were terminated; that since respondent No.3's status was that of a permanent workman, his services could not have been terminated without assigning any reason; and that it had been correctly held that the termination of respondent No.3's services were in violation of the principles of natural justice as well as the requirements of the 1968 Ordinance. Learned counsel for respondent No.3 prayed for the writ petition to be dismissed.

7. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 4 above and need not be recapitulated.

8. The sole question that needs to be determined is whether it was incumbent upon the petitioner to have issued a show cause notice or conducted an inquiry against respondent No.3 before terminating his employment agreement. It is an admitted position that respondent No.3's status was that of a permanent employee. It is explicitly mentioned in the employment agreement dated 11.10.2012 that the petitioner was desirous of appointing respondent No.3 on permanent basis. It is also not disputed that after

his appointment, respondent No.3 had worked as a Logistics Operator for more than two years.

9. I have gone through the contents of the letter dated 10.04.2015 whereby the employment agreement dated 11.10.2012 executed between the petitioner and respondent No.3 was terminated. The said letter does not in any manner stigmatize respondent No.3. The said letter refers to a clause in the agreement pursuant to which respondent No.3's employment agreement was terminated.

10. It is apt to reproduce herein below clause 11 of the said employment agreement pursuant to which respondent No.3's employment was terminated:-

> *"11. Either party hereto may terminate this Agreement by giving 2 (two) months advance written notice to the other party or two months salary in lieu of the notice period. It is expressly understood and agreed by the Employee that the employee shall not be entitled to take leave during the period of notice. The Company will not accept the resignation if it is submitted by the Employee while on leave or absent from duties without any intimation. The Company shall not liable for any termination damages or indemnities."*
> **(Emphasis added)**

11. Standing Order 12(1) of the 1968 Ordinance provides that for terminating the employment of a permanent workman, for any reason other than misconduct, one month's notice shall be given either by the employer or the workman, and that one month's wages calculated on the basis of average wages earned by the workman during the last three months shall be paid in lieu of notice. The first glance at the termination letter dated 10.04.2015 shows that it is in conformity with the requirements of Standing Order 12(1) of the 1968 Ordinance. However, the termination of a permanent workman has also to satisfy the

requirements of Standing Order 12(3) of the 1968 Ordinance, which is reproduced herein below:-

> *"The services of a workman shall not be terminated, nor shall a workman be removed, retrenched, discharged or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken. In case a workman is aggrieved by the termination of his services or removal, retrenchment, discharge or dismissal, he may take action in accordance with the provisions of section 25-A of the Industrial Relations Ordinance, (XXIII of 1969), and thereupon the provisions of said section shall apply as they apply to the redress of an individual grievance."*

12. The learned Member and learned Full Bench, N.I.R.C. allowed respondent No.3's grievance petition primarily on the ground that the requirements of Standing Order 12(3) of the 1968 Ordinance had not been fulfilled by the petitioner while terminating his employment agreement. Indeed, the petitioner's letter dated 10.04.2015, whereby the said employment agreement was terminated, can be termed as an order in writing, but the petitioner does not appear to have given any reason for such termination. It has consistently been held that a clause in the employment agreement authorizing either party to terminate the agreement is not considered as a valid reason for such termination. In the case of Pakistan Mobile Communications Ltd. Vs. Full Bench N.I.R.C. (2019 PLC 86), this Court had the occasion to hold as follows:-

> *"22. Although the terms and conditions of respondent No.3's appointment letter had authorized the petitioner to terminate respondent No.3's services after giving one month's notice in writing or salary in lieu thereof but this cannot override the requirements of Standing Order 12(3) of the 1968 Ordinance. It is well settled that parties cannot contract out of the beneficial provisions in a statute. Reference in this regard may be*

made to the law laid down in the case of "E. A. Evans Vs. Muhammad Ashraf (PLD 1964 SC 536)."

13. The mere fact that respondent No.3's services were no longer required by the petitioner is not a valid reason for terminating his employment agreement. Law to this effect has been laid down in the cases of Ghulam Ahmed Vs. Sindh Labour Appellate Tribunal (1990 PLC (C.S.) 385), General Tyre & Rubber Company of Pakistan Limited, Karachi Vs. Sindh Labour Appellate Tribunal (1992 PLC 1028), Muslim Commercial Bank Ltd. Vs. Ghulam Haider (2005 PLC 320), Farooq Ahmad Vs. Delta Shipping (Pvt.) Ltd. (2006 PLC 102), and Servier Research and Pharmaceuticals Pakistan (Pvt.) Limited Vs. Aamir Sultan (2007 PLC 388).

14. Since the letter dated 10.04.2015 whereby respondent No.3's employment agreement was terminated is devoid of reasons, the requirement in Standing Order 12(3) of the 1968 Ordinance to state the reasons for termination has not been satisfied. This deficiency in the said termination letter is sufficient for the same being set-aside.

15. It may however be observed that since there is nothing on the record to show that any allegation of misconduct had been made against respondent No.3, there was no need for the petitioner to proceed against respondent No.3 in accordance with the procedure prescribed in Standing Order 15 read with Standing Order 12(5) of the 1968 Ordinance.

16. As regards the contention of the learned counsel for the petitioner that since respondent No.3 was not a *"workman"* within the meaning of Section 2(xxxiii) of the I.R.A., the N.I.R.C. did not have the jurisdiction to adjudicate upon

respondent No.3's grievance petition, suffice it to say that the petitioner, in its written reply to the said grievance notice, had not taken a specific objection to the said effect. The petitioner did however raise the said objection specifically in its grounds of appeal against the order dated 04.09.2019 passed by the learned Member, N.I.R.C. It is well settled that a ground or an objection not taken by a party in the original proceedings cannot be taken before the appellate forum. An objection in the written reply that *"this honourable Court lacks jurisdiction to entertain the petition"* does not read what is being agitated by the learned counsel for the petitioner. Reference in this regard may be made to the order dated 09.04.2019 passed by the Hon'ble Supreme Court in civil petition No.356/2019 titled "Chairman, Pakistan Railways Vs. Asifullah".

17. Learned counsel for the petitioner had also contended that the order dated 26.06.2019 whereby the petitioner was proceeded against *ex-parte* and the *ex-parte* order dated 04.09.2019 passed by the learned Member, N.I.R.C. ought to be set-aside. The petitioner was well aware of the proceedings pursuant to the grievance petition filed by respondent No.3 before the N.I.R.C. The petitioner, after filing a written reply to the said grievance petition, had absented itself. This had caused the learned Member, N.I.R.C. to proceed *ex-parte* against the petitioner. After the petitioner had appeared in the proceedings and had filed a written reply, there was no need for the learned Member, N.I.R.C. to have reissued notice to the petitioner before proceeding *ex-parte* against it. In the instant petition, no reason or sufficient ground has been given for the

petitioner's absence which led to the order to proceed *ex-parte.* A party who does not come up with any plausible reason or sufficient ground for not appearing before a Tribunal which proceeds *ex-parte* against it due to such non-appearance cannot complain about the requirements of natural justice having not been satisfied before the passing of an order deciding the grievance petition.

18. In view of the above, I do not find the impugned concurrent orders passed by the learned Member and learned Full Bench, N.I.R.C. to be suffering from any legal or jurisdictional infirmity. Consequently, the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*