

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.301 of 2019
Muhammad Nawaz and another
Versus

Full Bench of National Industrial Relations Commission and others

Date of Hearing: 22.07.2020
Petitioners by: Khawaja Muhammad Arif, Advocate.
Respondents by: Mr. Momin Ali Khan, Advocate for respondents
No.3 to 5/P.I.A.C.

MIANGUL HASSAN AURANGZEB J.- Through this judgment, I propose to decide the instant writ petition only to the extent of petitioner No.1. The cases of the petitioners are dissimilar and need to be decided through separate judgments.

2. Through the instant writ petition, the petitioners, Muhammad Nawaz ("petitioner No.1"), impugns the order dated 02.01.2019 passed by the learned Full Bench of the National Industrial Relations Commission ("N.I.R.C."), whereby his appeal against the order dated 12.02.2018 passed by the learned Member, N.I.R.C., was dismissed. Vide the said order dated 12.02.2018, the learned Member, N.I.R.C. had dismissed petitioner No.1's grievance petition under Section 33 of the Industrial Relations Act, 2012 ("the I.R.A.") challenging the order dated 21.10.2016, whereby petitioner No.1 was dismissed from service by the Pakistan International Airlines Corporation ("P.I.A.C.") for having committed misconduct by submitting a bogus educational certificate.

3. The record shows that on 18.08.1994 the management of P.I.A.C. decided to absorb contractual employees who had continuously worked for five years. In his application dated 31.08.1994 for appointment as Baggage Attendant, petitioner No.1 had written that he had passed his Matriculation in second division in the year 1988. Vide P.I.A.C.'s letter dated 14.09.1994, petitioner No.1 was appointed as a Baggage Attendant.

4. Vide letter No.OSR-884-D/14, dated 27.05.2014, the Board of Intermediate and Secondary Education, Rawalpindi ("B.I.S.E."), informed P.I.A.C. that petitioner No.1's Matriculation certificate (Roll No.34097) was bogus. Consequently, on 03.07.2014 P.I.A.C. issued a notice to petitioner No.1 to show cause as to why disciplinary action

should not be taken against him for having committed misconduct. There is nothing on the record to show that petitioner No.1 submitted a reply to the said show cause notice denying the allegation of having submitted a bogus Matriculation certificate. Petitioner No.1 assailed the said show cause notice before the N.I.R.C. On 16.04.2015, P.I.A.C. issued a notice of personal hearing to petitioner No.1. The contents of the said notice show that the competent authority had decided to dispense with holding an inquiry against petitioner No.1.

5. Vide order dated 13.10.2015, the learned Member, N.I.R.C. dismissed the petition filed by petitioner No.1. Subsequently, petitioner No.1 filed another petition before N.I.R.C. praying for a direction to P.I.A.C. not to take any adverse action against him without holding an inquiry. Vide order dated 20.10.2016, this petition was also dismissed by the learned Member, N.I.R.C.

6. On 21.10.2016, the petitioner was dismissed from service. On 02.11.2016 petitioner No.1 issued a grievance notice to P.I.A.C., and on 12.11.2016 he filed a grievance petition under Section 33 of the I.R.A before N.I.R.C. assailing the order whereby he was dismissed from service. This petition was dismissed by the learned Member, N.I.R.C. vide order dated 12.02.2018, against which petitioner No.1 preferred an appeal before the learned Full Bench, N.I.R.C. Vide interim order dated 27.07.2018 the learned Full Bench, N.I.R.C. suspended the operation of the order dated 21.10.2016 whereby petitioner No.1 was dismissed from service. In compliance with the said interim order, P.I.A.C. permitted petitioner No.1 to rejoin his duties on 31.08.2018. Vide order dated 02.01.2019, petitioner No.1's appeal was dismissed by the learned Full Bench, N.I.R.C.

7. The concurrent orders dated 12.02.2018 and 02.01.2019 passed by the learned Member and the learned Full Bench, N.I.R.C. respectively, were assailed by petitioner No.1 in the instant writ petition, which was filed on 21.01.2019. Vide interim order dated 25.01.2019, this Court restrained P.I.A.C. from passing a final order against petitioner No.1 without conducting an inquiry.

8. Presently, petitioner No.1 is working. On 15.03.2019, P.I.A.C. issued a notice of inquiry to petitioner No.1. Petitioner No.1 was required to appear before the inquiry officer on 21.03.2019 along with his original Matriculation certificate. In the inquiry proceedings

petitioner No.1 opted not to cross-examine the prosecution witness. Petitioner No.1 denied having submitted a Matriculation certificate and admitted that he was Middle pass. The Inquiry Officer, in his inquiry report, found that the allegations levelled against petitioner No.1 in the show cause notice had been proved, and that he had been found guilty of the charge against him.

CONTENTIONS OF THE LEARNED COUNSEL FOR PETITIONER No.1:-

9. Learned counsel for petitioner No.1, after narrating the facts leading to the filing of the instant petition, submitted that at no material stage did petitioner No.1 submit any bogus educational certificate either to gain employment in P.I.A.C. or to gain any service benefit; that since P.I.A.C. did not have any statutory rules, petitioner No.1 could not have filed a writ petition before the High Court against his dismissal from service; that the only remedy available to petitioner No.1 was to have invoked the jurisdiction of N.I.R.C.; that since petitioner No.1 was alleged to have secured appointment in P.I.A.C. on the basis of bogus Matriculation certificate, it was essential for P.I.A.C. to have conducted a regular inquiry against petitioner No.1 in accordance with the provisions of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("the 1968 Ordinance"); that petitioner No.1 could not have been proceeded against under the non-statutory 1985 Regulations; that in the order dated 21.08.2015 passed in the case titled *"Tanveer Riaz Abbasi etc. Vs. Pakistan International Airlines Corporation, etc.,"* the learned Member, N.I.R.C. had held that a regular inquiry under the provisions of the 1968 Ordinance cannot be dispensed with where the allegation against an employee is that he had submitted a bogus degree in order to secure employment; and that the learned Member, N.I.R.C. did not take the import of the said order dated 21.08.2015 into account while dismissing petitioner No.1's petition under Section 33 of the I.R.A.

10. Furthermore, it was submitted that Matriculation was not a requirement for appointment as Baggage Attendant; that it is not disputed that the qualifications required for appointment as Baggage Attendant was middle pass; that petitioner No.1 has the necessary qualification to be appointed as Baggage Attendant; the learned Member and the learned Full Bench of N.I.R.C. erred by not

appreciating that petitioner No.1's services were regularized after the verification of his educational testimonials; that petitioner No.1 was victimized by the management of P.I.A.C. on account of being an active member of a trade union; that in the order dated 04.12.2015 passed by this Court in writ petition No.3258/2015, it was observed that P.I.A.C. could re-employ the employees who had submitted bogus educational certificates if their services were beneficial to P.I.A.C.; and that petitioner No.1 had not submitted any bogus educational certificate in order to gain employment in P.I.A.C. Learned counsel for petitioner No.1 prayed for the writ petition to be allowed and for the concurrent orders passed by the learned Member and the learned Full Bench, N.I.R.C. to be set-aside.

CONTENTIONS OF THE LEARNED COUNSEL FOR P.I.A.C.:-

11. On the other hand, learned counsel for P.I.A.C. submitted that since petitioner No.1 had represented himself to be a Matriculate in his application for appointment as a Baggage Attendant; that petitioner No.1 committed misconduct by making the said representation, since the Matriculation certificate submitted by him was found by the B.I.S.E. Rawalpindi to be bogus; that for having committed fraud in order to gain employment in P.I.A.C., petitioner No.1 does not deserve any indulgence in the Constitutional jurisdiction of this Court; that P.I.A.C. has not violated any law by conducting an inquiry against petitioner No.1; and that the concurrent orders passed by the learned Member and the learned Full Bench of N.I.R.C. do not suffer from any illegality or jurisdictional error.

12. Furthermore, he submitted that the B.I.S.E. Rawalpindi had confirmed vide letter dated 27.05.2014 that petitioner No.1's Matriculation certificate was bogus; that the said letter has neither been challenged by petitioner No.1 nor has the same been recalled at any stage; that petitioner No.1 has abused the process of the Court in an attempt to perpetuate an illegality; that a notice of inquiry under the provisions of the 1968 Ordinance was issued to petitioner No.1 on 15.03.2019; that petitioner No.1 participated in the inquiry proceedings and had his statement recorded; that petitioner No.1 chose not to cross-examine the witness against him; and that the inquiry officer, in his report, had found petitioner No.1 guilty of committing misconduct but

due the injunctive order passed by this Court a final order has not been passed by P.I.A.C. Learned counsel for P.I.A.C. prayed for the writ petition to be dismissed.

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

14. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 3 to 8 above, and need not be recapitulated.

15. There is no denying the fact that in his application dated 31.08.1994 for appointment as Baggage Attendant, petitioner No.1 had written that he had passed his Matriculation in second division in the year 1988. Vide letter dated 27.05.2014, the Matriculation certificate of petitioner No.1 was found to be bogus by the B.I.S.E. Rawalpindi. Petitioner No.1 has neither challenged the said letter nor has the said letter been withdrawn at any stage. Petitioner No.1 have had knowledge of the said letter since 2014 when the show cause notice was issued to him informing him that the said Board had found his Matriculation certificate to be bogus. Petitioner No.1 did not submit a reply to the said show cause notice. Instead to submitting a reply to the said notices, the petitioners embroiled P.I.A.C. in lengthy litigation.

16. Even though petitioner No.1 was dismissed from service on 21.10.2016, he continued serving P.I.A.C. due to the injunctive orders passed by the learned Member and the learned Full Bench, N.I.R.C. as well as this Court. Learned counsel for P.I.A.C. confirmed that petitioner No.1 is still in service.

17. Petitioner No.1's primary grievance was that he could not have been dismissed from service without a regular inquiry having been conducted against him. As mentioned above, after petitioner No.1 was dismissed from service, and after he had rejoined his duties due to the injunctive orders passed in his favour, a notice of inquiry had been issued to petitioner No.1 on 15.03.2019. Petitioner No.1 participated in the said inquiry and had his statement recorded. He opted not to cross examine the witness that had appeared against him. Petitioner No.1's stance was that he had never submitted a bogus educational certificate in order to gain employment in P.I.A.C.

18. I find petitioner No.1's complaints with respect to the inquiry proceedings conducted against him to be premature at this stage. Till date, the inquiry proceedings against petitioner No.1 have not culminated in a final order. Once the final order is passed, the petitioner would be at liberty to assail the same in accordance with the law before the appropriate forum. In the case of Saeed Ahmad Vs. Chairman O.G.D.C.L. (2020 PLC 27), this Court has held as follows:-

"19. Framing of charges, conducting enquiry, issuing show-cause notice and taking action after enquiry are the various stages of continuous process of disciplinary proceedings. Disciplinary proceedings once initiated must reach the finality, culminating in imposing punishment or exonerating the delinquent. Testing each stage of the proceeding as to whether they are in conformity with the norms as laid down would be an unwarranted judicial interference in the domain of disciplinary authority by the N.I.R.C. Compliance of the norms laid down under the disciplinary rules can be examined when the process culminates in a penal action causing injury to the delinquent. Non-observance of norms at various stages may vitiate the ultimate action of imposition of a penalty or exoneration, as the case may be."

19. Additionally, in the case of Muhammad Aslam Khan Vs. International Industries Limited (2007 PLC 350), it was held by the Hon'ble High Court of Sindh that it could be said with certainty that initiating disciplinary proceedings against a worker on account of misconduct is a legal right of the employer and that the employer cannot be restrained from exercising his right unless extraordinary exceptional circumstances are placed before the Court. Furthermore, it was held that the labour laws provide an adequately efficacious remedy to a worker against wrongful, illegal and arbitrary dismissal, and after adjudication he can be reinstated and/or compensated.

20. As for the contention of the learned counsel for the petitioner that in the order dated 04.12.2015 passed by this Court in writ petition No.3258/2015, it was observed that P.I.A.C. could re-employ the employees who had submitted bogus educational certificates if their services were beneficial to P.I.A.C., suffice it to say that said contention is based on a selective reading of the said order. In the said order, this Court had held in no uncertain terms that the services of the employees whose educational certificates had been found to be fake could neither be continued nor could their services be regularized. Furthermore, it was held that such employees could not have been given an opportunity to rectify the illegality of submitting fake educational certificates in order to gain employment in P.I.A.C. It was also directed that the

salaries of the employees who were appointed on the basis of fake educational certificates should be recovered from them. For the purposes of clarity, paragraphs 10 to 12 of the said order are reproduced herein below:-

“10. However, the authority may by exercising its discretionary powers, if vested in it, under the rules or any other law may re-employ those persons whose certificates were found fake on scrutiny and verification but neither services of those employees can be regularized or continued nor the authority has power to provide them opportunity to rectify such illegality existing in the field. Providing such opportunity to any of the employees is beyond the powers of such authority, hence, not exercisable and cannot be covered as legal under the garb of any stretch of imagination.

11. In view of above discussion, this petition is disposed of with the directions to the authorities to review all those cases and same be treated in accordance with law. The authorities may re-employ them if their services are beneficial to the department but such practice of regularizing services based upon illegal foundation cannot be continued.

12. On the contrary, the authorities or members of the Board who initiated such decision, have committed serious criminal misconduct which should be dealt in accordance with law. The salaries drawn by the employees, appointed on the basis of fake certificates should be recovered from them. The officers who are involved in granting such relaxation by taking a lenient view are clearly liable for such act which is deemed to be an offence provided under the law.”

21. For what has been said above, I find no substance in this petition to the extent of petitioner No.1, which is hereby dismissed. Should petitioner No.1 be aggrieved by the final order that may be passed in the inquiry proceedings, he may avail the remedies provided by law against such an order. There shall be no order as to costs.

22. As regards the instant petition to the extent of petitioner No.2, office shall fix a date of hearing in the second week of September, 2020 after issuing notices to the contesting parties.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 27-8-2020

(JUDGE)