

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4015 of 2019
Muhammad Farooq
Versus
The Full Bench, NIRC Islamabad and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	12.02.2020	M/s Muhammad Umair Baloch, Mirza Muhammad Afzal and Shaista Ch. Advocates for the petitioner. Barrister Qadir Bukhsh, for respondents No.3 to 5.

Through the instant writ petition, the petitioner, Muhammad Farooq, impugns the order dated 23.09.2019 passed by the learned Full Bench, National Industrial Relations Commission ("N.I.R.C."), whereby his appeal filed under Section 58 of the Industrial Relations Act, 2012 ("I.R.A.") against the order dated 24.07.2019 passed by the learned Member, N.I.R.C., was dismissed. Vide the said order dated 24.07.2019, the learned Member, N.I.R.C. dismissed the petitioner's complaint filed under Section 65(1) of the Industrial Relations Ordinance, 2002 ("I.R.O").

2. The record shows that on 21.04.2005, the petitioner, who was the General Secretary of the Bank of Punjab Employees Union of Pakistan, had filed an application before the N.I.R.C., Islamabad for the registration of the industry-wise trade union. On 29.04.2005, notices were issued by N.I.R.C. to the Bank of Punjab with the direction to submit the list of workmen employed in the said Bank. Vide order dated 04.05.2005, the Chairman, N.I.R.C. directed the management of the Bank of Punjab to maintain status quo. Perusal of the said order shows that the petitioner had shown an apprehension that his services may

be terminated by the management of the Bank of Punjab in order to frustrate his application for the registration of the industry-wise trade union.

3. Section 10 of the I.R.O. provided *inter alia* that no officer or member of a trade union of workmen shall be transferred, discharged, dismissed or otherwise punished during the pendency of an application for registration of the trade union with the Registrar.

4. Vide order dated 02.05.2005, the Bank of Punjab transferred nine workmen in violation of the requirements of Section 10 of the I.R.O. Similar transfer orders of five different workmen were issued on 09.05.2005. Vide orders dated 02.05.2005 and 03.05.2005, workmen namely, Chaudhry Muhammad Farooq (Driver), Muhammad Ashraf Khan (Messenger), Ghulam Asghar (Messenger), Muhammad Amin Qamar (Messenger), and Bashir Ahmad (Administrative Assistant), were dismissed from service.

5. On 12.05.2005, the petitioner filed a complaint under Section 10 read with Section 65(1) of the I.R.O. before the N.I.R.C. seeking for the respondents in the said petition to be proceeded against and punished for violating the requirements of Section 10 of the I.R.O. as well as the status quo order.

6. Vide order dated 24.07.2019, the learned Member, N.I.R.C. dismissed the said complaint primarily on the ground that the complaint had been filed against the respondents through their official designation and not against individuals. The petitioner's appeal against the said order dated 24.07.2019 was dismissed by the learned Full Bench, N.I.R.C. vide order dated 23.09.2019. The said concurrent orders have been assailed by the petitioner in the instant writ petition.

7. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the concurrent orders impugned in the instant petition were unlawful; that the learned Member, N.I.R.C. should have permitted the petitioner to have filed an amended complaint by impleading individuals as respondents; that this Court ought to remand the matter back to the N.I.R.C. so that the petitioner could amend his complaint; and that the officers of the Bank of Punjab had violated the requirements of Section 10 of the I.R.O. as well as the status quo order by transferring some workmen, and dismissing others from service. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

8. On the other hand, learned counsel for the private respondents submitted that proceedings under Section 65(1) of the I.R.O. were akin to contempt proceedings; that proceedings under Section 65(1) of the I.R.O. could not be taken against official designations but only against individuals who are alleged to have acted in violation of the law; and that the concurrent orders passed by the learned Member and learned Full Bench, N.I.R.C. do not suffer from any jurisdictional infirmity. Learned counsel for the private respondents prayed for the writ petition to be dismissed.

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

10. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 6 above and need not be recapitulated.

11. In the petition at hand, the petitioner is seeking the issuance of a writ of *certiorari*. *Certiorari* is not a writ of right but one of discretion. Its object is to curb excess of jurisdiction, and to keep inferior Courts and Tribunals within their bounds. The High Court, while judicially reviewing the proceedings and judgments of the inferior Courts and Tribunals, cannot substitute its own decision with that of such inferior Courts or Tribunals. The grounds on which *certiorari* may be invoked is where there is an error of law apparent on the face of the record, and not every error either of law or fact which can be corrected by the appellate authority. It lies where the inferior Court or Tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of law which they was meant to administer. It is also issued when the inferior Court or Tribunal acts illegally in exercise of its jurisdiction. For instance, when it decides without giving any opportunity to the parties to be heard or violates the principles of natural justice. The High Court while issuing a writ of *certiorari* acts in exercise of a supervisory and not appellate jurisdiction. The High Court will not judicially review findings of fact reached by an inferior Court or a Tribunal unless there is manifest error apparent on the face of the proceedings, or where such findings are based on disregard of the provisions of law. The Superior Courts have also interfered with the findings of the inferior Courts and Tribunals where such findings have been found to be perverse or patently erroneous, i.e. contrary to the evidence on the record. The essential prerequisites for issuing a writ of *certiorari* do not appear to be satisfied in this case.

12. I would tend to agree with the learned counsel for the private respondents that the complaint under Section 65(1) of the I.R.O. is akin to contempt proceedings since the individuals who are alleged to have acted in violation of Section 10 of the I.R.O. or a status quo order, are sought to be punished. Such proceedings cannot be taken against official designated positions but only against individuals. It is an admitted position that in the complaint before the N.I.R.C., the petitioner did not implead any individual, who was alleged to have acted unlawfully. Therefore, I do not find any jurisdictional infirmity in the concurrent orders passed by the N.I.R.C. in dismissing the petitioner's complaint. This Court cannot remand the matter to N.I.R.C. just to facilitate the petitioner so that he could rectify a fatal mistake that he had made in his complaint.

13. In view of the above, I do not find any merit in this petition, which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*