

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No. 10/2020

ZTBL
Vs
NIRC, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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02. 28-01-2020. Mr. Jawaid Khursheed, Advocate for petitioner.
Mr. Muhammad Umair Baloch, Advocate for respondents.

Through this petition, the petitioner has assailed order dated 16.09.2019, passed by the learned Single Member of the National Industrial Relations Commission (**hereinafter referred to as the "Commission"**) in CMA No. 24B(47)/2019 in case No. 4B(112)/2019.

2. Learned counsel for Petitioner Bank has, inter-alia, contended that the Respondent was appointed as Officer Grade-I, vide appointment letter dated 15.03.2018. Later on, after conducting inquiry, she was dismissed from service on 26.03.2019, on account of misconduct and for furnishing fake experience certificate. Respondent, against said dismissal filed petition under section 33 of the Industrial Relations Act, 2012 (**hereinafter referred to as the "Act of 2012"**) before the Commission. The petition was contested by the Petitioner Bank through filing of written reply and they raised preliminary objections regarding jurisdiction of the Commission. Learned counsel has argued that during hearing on 16.09.2019, he specifically raised objection that the

Respondents' services were governed by non-statutory service rules & regulations and thus they should have sought redressal of their grievance under the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (**hereinafter referred to as the "Ordinance of 1968"**) instead of the Act of 2012. Learned Counsel contended that no grievance notice was served upon the Petitioner by the Respondents before filing grievance petition under section 33 of the Act of 2012. Learned Counsel has vehemently argued that Petition filed by Respondent u/s 33 of NIRC is not maintainable, therefore, against the impugned order dated 16.09.2019 Petitioner Bank has filed appeal before the Full Bench of the Commission and at present Full Bench is not operational therefore, no other alternate remedy is available except to file instant petition. With regard to the jurisdiction, learned counsel has submitted that being significant in nature, it is to be decided by the Commission before proceeding to hear the case on merits. Learned counsel has further argued that, even otherwise, petition under section 33 of the Act of 2012 can be filed on the grievance in respect of any right guaranteed and secured to him by or under any law; or any award; or settlement for the time being in force, whereas, both these factors are non-existent in the grievance petition u/s 33 of the Act of 2012 filed by the Respondents. Learned Counsel reiterated that service structure of the employees of Petitioner Bank is governed by non-statutory rules and thus the principle of "master" and "servant" is applicable to them. In this regard, he has relied on unreported judgment of this

Hon'ble Court passed in W.P No. 461/2011, decided on 17.06.2019, and emphasized on the following findings of the order:-

"It is an admitted position that the principle of "Master and Servant" governed the terms and conditions of service of the petitioner with the respondent Bank. The petitioner has impugned his termination order and he is, therefore, seeking his reinstatement in service. It is settled law that when the terms and conditions of the service are governed under the principle of "master and servant" than reinstatement in service cannot be claimed nor granted by Court. in such an eventuality the only remedy, which as aggrieved employee can seek is by way of claiming damages for wrongful removal/termination. In this regard, reliance is placed on the cases of "Muhammad Umar Malik Vs. the Muslim Commercial Bank Ltd. Through its President, Karachi and 2 others" [1995 SCMR 453], "Pakistan Red Crescent Society and another Vs. Syed nazir Gillani" [PLD 2005SC 806], Chairman, WAPDA and 2 others Vs Syed Jamil Ahmed" [1993 SCMR 346], Messrs Malik and Haq and another Vs. ,Muhammad Shamsul Islam Choudhary and two others" [PLD 1961 SC 531]".

Learned counsel argued that none of the ingredients necessary and prescribed under section 33 of the Act of 2012 covers the grievance of the respondent as she was dismissed/terminated on account of misconduct and for providing false and forged experience certificate. Learned Counsel lastly contended that the learned Single Member has not determined or discussed the issue of maintainability of the petition filed under section 33 of the Act of 2012 in his order. Learned counsel in support of his contentions placed reliance on the case law reported as **[2018 PLC 30]**.

3. On the other hand, learned Counsel for Respondent No.4 vehemently contested the submissions of the learned Counsel for the Petitioner Bank and submitted that learned Single Member has observed that the determination, whether Respondent No.4 is a workman or not, is a mix question of law and fact which is to be determined by recording evidence as well as to resolve question proper inquiry has to be conducted. Learned Counsel argued that main case i.e. grievance petition u/s 33 is pending for determination of the Petitioner's status with regard to the definition of workman and submitted that Petitioner Bank is delaying the proceedings of the main case pending before the Commission. Thus instant petition is liable to be dismissed as min-conceived.

4. I have heard the learned Counsel for the parties and have also perused the relevant record with their able assistance.

5. Perusal of impugned order dated 16.09.2019, transpired that Single Bench while passing the impugned order has not given any finding on the Preliminary objections raised by the Petitioner Bank with regard to the maintainability of the grievance petition filed under section 33 of the Act of 2012, by Respondent No.4. I am of the view that the jurisdiction of any forum, if agitated by any of the parties, has to be addressed at the initial stage before the proceedings to decide the case on merits. Since, the main case before the Commission is in process of hearing, therefore, the learned Single Bench of the Commission is directed to decide the

issue of jurisdiction of the Commission and maintainability of the grievance petition filed under section 33 of Industrial Relations Ordinance, 2012, before the case on its merits, by giving reasonable opportunity of hearing to the parties and keeping in view the observation of the Hon'ble High Court relating to the preliminary objections raised and the case law relied upon by the learned counsel for the Petitioner Bank.

6. Instant petition stands disposed of in the above terms.

(LUBNA SALEEM PERVEZ)
Judge

Sherazi.