

Form No: HCJD/C-121
JUDGEMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.2335 of 2019

Pakistan Stone Development Company (PASDEC), through its Chief
Executive, Islamabad.

VS

The Learned Full Bench of National Industrial Relations Commission (NIRC),
through its Registrar, Islamabad and 02 others.

Petitioners By : Chaudhary Sagheer Ahmad, Advocate.

Respondents By : Mr. Kamran Arshad, Advocate..

Date of Decision : 20.02.2020

AAMER FAROOQ, J. - For the reasons recorded in my detailed
judgment of even date passed in connected Writ Petition No.2338 of 2019,
the instant petition is **allowed**.

(AAMER FAROOQ)
JUDGE

M. Zaheer Janjua

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.2338-2019

Pakistan Stone Development Company

Vs.

**The Learned Full Bench of National Industrial Relations Commission (NIRC)
 through its Registrar etc.**

Petitioners by : Ch. Sagheer Ahmad, Advocate
Respondents by : Mr. Kamran Arshad, Advocate
Date of decision : 20.02.2020

AAMER FAROOQ J. This judgment shall decide instant petition as well as writ petitions, mentioned in the Schedule attached herewith, as common questions of law and facts are involved.

2. The private respondents, in the writ petitions in question, filed grievance petitions before National Industrial Relations Commission (NIRC) seeking their regularization in service, as after their employer namely Pakistan Stone Development Company (the petitioner) did not renew the contract. The referred applications were dismissed by Single Bench of NIRC vide order dated 21.03.2018 on the basis that relationship between the parties was in the nature of 'master and servant'; appeals were filed by the private respondents before Full Bench, NIRC, which have been allowed vide the impugned order dated 22.05.2019.

3. Learned counsel for the petitioners, *inter alia*, contended that relationship, between the petitioner and private respondents, was that of 'master and servant' inasmuch as they were appointed through letters of appointment on contract. It was submitted that in the referred facts and circumstances, since employment was on contract, NIRC has no jurisdiction in the matter, as section 33 of Industrial Relations Act, 2012 could only be

invoked by a 'workman' and a person, employed on contract, does not fall within the concept of 'workman'. In support of his contentions, learned counsel placed reliance on cases reported as 'Messrs Malik and Haq and Another Vs. Muhammad Shamsul Islam Chowdhury and two others' (PLD 1961 Supreme Court 531), 'Pakistan Airline Pilots Association and others Vs. Pakistan International Airline and another' (2019 SCMR 278), 'Muhammad Nawaz Bhatti Vs. President, Muslim Commercial Bank Limited, Karachi and others' (2008 SCMR 1377), 'Trustees of the Port of Karachi Vs. Muhammad Saleem' (1994 SCMR 2213), 'Messrs Coca Cola Beverage Pakistan Limited through Authorized Officer/Industrial Relations Manager Vs. Registrar Trade Unions Sindh and 3-others' (2010 PLC 48), 'Dr. Abid Ali Vs. Chief Secretary, Government of Punjab and 3-others' [2017 PLC (CS) 488], 'Granulars Pvt. Ltd. Vs. Muhammad Afzal and others' (2002 PLC 1), 'ABN Amro Bank through Vice President/Branch Manager Vs. Wasim Dar' (2004 PLC 69), 'Shakeel Ahmed Shaikh Vs. Aga Khan University through Board of Governors and another' [2017 PLC (CS) 1080] and 'Qazi Munir Ahmed Vs. Rawalpindi Medical College and Allied Hospital through Principal and others' (2019 SCMR 648).

4. Learned counsel for private respondents, *inter alia*, contended that respondents were 'workmen' on contract hence could have filed grievance applications under section 33 of Industrial Relations Act, 2012. In support of contentions, learned counsel placed reliance on cases reported as 'Obaidur Rehman Vs. Messrs Karachi Club, Karachi and another' (2016 PLC 177), 'M.D. Escorts Pakistan Limited Vs. Munawar Khaliq' (2009 PLC 50), 'Samiullah Sharif Vs. Fauji Oil Terminal & Distribution Company Limited' (NLR 2008 Labour 69), 'Fauji Sugar Mills through General Manager Vs.

‘Mehmood Ahmed’ (2006 PLC 630), ‘Ikram Bari and 524 others Vs. National Bank of Pakistan through President and another’ (2005 SCMR 100), ‘Director General, LDA and 2-others Vs. Amjad Ali’ (2004 PLC 224), ‘Messrs Holiday Inn, Crown Plaza, Main Shahra-e-Faisal, Karachi Vs. Aftab Ahmed Siddiqui and another’ (2000 PLC 325), ‘Executive Engineer, Central Civil Division Pak PWD, Quetta Vs. Abdul Aziz and others’ (PLD 1996 Supreme Court 610) and ‘Punjab Seed Corporation and 2-others Vs. Punjab Labour Appellate Tribunal and 2-others’ (1996 SCMR 1947).

5. Arguments advanced by learned counsels for the parties have been heard and the documents, placed on record, examined with their able assistance.

6. It is an admitted position that private respondents were contractual employees and the contracts were not renewed by the petitioner. The private respondents claimed regularization or status of permanent employee under Standing Order No.01 of 1968 under Schedule-II to the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968. The private respondents were employed for more than six months on the jobs they were doing, which was a permanent assignment hence they fell within the definition of ‘permanent workmen’. For ease of convenience, the definition of ‘permanent workman’, as provided in Standing Order 01 (b), is reproduced below:-

“(b) A ‘permanent workman’ is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment, and includes a badly who has been employed for a continuous period of three months or for one hundred and eight-three days during any period of twelve consecutive months, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lock-out or strike) or involuntary closure of the establishment and includes a badly who has been employed for a continuous period of three months or for one hundred and eighty-three days during any period of twelve consecutive months”

The bare reading of above definition shows that 'permanent workman' is a workman, who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed probationary period of three months in same or other occupation in the industrial or commercial establishment for a continuous period of three months or for 183-days during any period of twelve consecutive months. The definition of 'workman', as provided in Section 2(i) of Industrial and Commercial (Standing Orders) Ordinance, 1968, means any person employed in any industrial or commercial establishment to do any skilled or unskilled manual or clerical work for hire or reward. Keeping in view the above concept, the private respondents claiming a right under the law i.e. Standing Order 01 (e), filed grievance petitions under section 33 of Industrial Relations Act, 2012 and sought their regularization; in other words, 'appointment on permanent basis'. In this behalf, under section 33(1) of Industrial Relations Act, 2012, an individual grievance petition can be filed by a workman or workmen. The definition of 'workman' is provided in section 2(xxxiii), which reads as follows:-

'(xxxiii) 'worker' and 'workman' mean person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment are express or implied, and, for the purpose of any proceeding; under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal discharge, retrenchment lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity'.

The bare reading of above definition shows that 'workman' means a person who does not fall within the definition of employer and who is employed in an establishment or industry for hire or reward either directly or through a contact whether the terms of employment are express or implied, and, for the purpose of any proceeding; under this Act in relation to an industrial dispute includes a

person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in relation to an industrial dispute, can also agitate the matter. Under the above definition an employee, in employment, who performs the nature of job as mentioned in section 2(xxxiii), can file a petition for individual grievance, however, ex-employee, who has been dismissed, discharged, retrenched, laid-off or otherwise removed from service, can also file a grievance petition provided it is related to an industrial dispute. The dispute, in question, naturally is not an industrial dispute and it is also an admitted position that private respondents were appointed and worked for a considerable period on contract. During the course of their contract, they could have agitated the matter as individual grievance on the basis of right acquired by or through definition of 'permanent workman' under Standing Order 01 (e) provided in Schedule-II to the Ordinance of 1968, as they were and had performed their duties for more than three months in consecutive twelve months, however, since private respondents only upon expiry, filed their grievance petitions for individual redressal, which did not pertain to industrial dispute hence could not have done so under section 33(1) of Act of 2012. The said provision is as follows:-

'33. Redress of individual grievance._ (1) *A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force to the notice of his employer in writing either himself or through his shop steward or collective bargaining agent within ninety days of the day on which the cause of such grievance arises"*

The private respondents might be having a good case on merits in light of the fact that since they worked for more than three months, they fell within the definition of 'permanent workman' and acquired such status in light of judgments relied upon by learned counsel for the respondents reported as 'Obaidur Rehman Vs. Messrs Karachi Club, Karachi and another' (2016 PLC

177), 'Executive Engineer, Central Civil Division Pak PWD, Quetta Vs. Abdul Aziz and others' (PLD 1996 Supreme Court 610) and 'Punjab Seed Corporation and 2-others Vs. Punjab Labour Appellate Tribunal and 2-others' (1996 SCMR 1947).

7. The Full Bench of NIRC has remanded the matter to record evidence, as to whether or not, the private respondents are 'workman' inasmuch as the petitioner has also disputed that since they were performing duties of such nature on the basis thereof, they are not 'workman'. In my view, the need for such evaluation or examination does not arise, as application under section 33 ibid filed by private respondents, is not maintainable. Though the reasons, which prevailed with Single Bench, NIRC are quite different from the ones, on the basis of which instant petitions are being decided, as Single Member, NIRC held that since the relationship is of 'master and servant', the application is not maintainable, however, as noted above, the private respondents being ex-employees, could have only instituted the individual grievance petition, if it pertained to an industrial dispute; as noted above; had they been in service, they could have claimed their right.

8. In light of above position of law and facts, the decision of Full Bench, NIRC is not tenable, as it suffers from jurisdictional error inasmuch as it failed to take into account the fact that NIRC has no jurisdiction in the matter.

9. For what has been discussed above, instant petitions are allowed; consequently, impugned order passed by Full bench, NIRC dated 22.05.2019 is set aside and as a result thereof, applications/grievance petitions filed by private respondents, stand dismissed.

(AAMER FAROOQ)
JUDGE