

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3878 of 2019

Muhammad Farooq

Versus

Full Bench, N.I.R.C. and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	17.08.2020	Khawaja Muhammad Arif, Advocate for the petitioner, Sardar Tariq Hussain, Advocate for respondents No.3 and 4

Through the instant writ petition, the petitioner, Muhammad Farooq, impugns the order dated 28.06.2019 passed by the learned Full Bench, National Industrial Relations Commission, Islamabad (“N.I.R.C.”) whereby respondent No.3’s appeal against the order dated 13.01.2012 passed by the learned Labour Court, Rawalpindi was allowed, and it was held that the learned Labour Court did not have the jurisdiction to adjudicate upon the grievance petition primarily on the ground that Canteen Store Department (“C.S.D.”) was not a “*establishment*” or “*industry*” as defined in the Industrial Relations Act, 2012 (“I.R.A.”) and therefore the petitioner’s grievance petition could not have been entertained by the Labour Court, Rawalpindi.

2. Learned counsel for the petitioner submitted that the petitioner had filed a petition before the Labour Court under Section 12(3) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (“the 1968 Ordinance”) challenging respondent No.3’s order dated 17.01.2011 whereby the petitioner was dismissed from service; that prior to the petitioner’s dismissal from service, a regular inquiry was not conducted against the petitioner; that no charge sheet was issued to the petitioner and no Inquiry Officer was appointed; that simply a show

cause notice was issued to the petitioner on 24.12.2010 to which he had submitted a detailed reply; and that the penalty awarded to the petitioner was too harsh given the fact that he had served for 21 years.

3. Learned counsel for the petitioner further submitted that C.S.D. is a commercial entity and a trans-provincial establishment; that the Hon'ble Lahore High Court, Rawalpindi Bench vide the order dated 02.11.2017 allowed writ petition No.3092/2015 filed by a workman employed in C.S.D. against an order of Punjab Labour Appellate Tribunal; that respondent No.3's witness, during his cross-examination, had admitted that C.S.D. was a commercial establishment, and that any citizen could purchase articles from C.S.D.; that the learned Full Bench, N.I.R.C. erred by allowing respondents No.3 and 4's appeal against the judgment dated 13.01.2012 passed by the learned Labour Court only on the ground that C.S.D. is not a commercial establishment or an industry; that reliance placed by the learned Full Bench, N.I.R.C. on the judgment reported as 1983 SCMR 1101 was also erroneous inasmuch as the said judgment related to the provisions of the Industrial Relations Ordinance, 1969 ("the 1969 Ordinance") and not the I.R.A.; and that the judgment dated 13.01.2012 passed by the learned Labour Court was strictly in accordance with the law and suffered from no jurisdictional infirmity. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the order dated 28.06.2019 passed by the learned Full Bench, N.I.R.C. to be set-aside. In making his submissions, learned counsel for the petitioner placed reliance on the judgments reported as 2009 PLC 132, 2006 PLC 630, 2002 PLC 25, and 1999 SCMR 373.

4. On the other hand, learned counsel for respondents No.3 and 4 submitted that Section 1(3) of the 1969 Ordinance was in *pari materia* to Section 1(3) of the I.R.A.; that in the judgment reported as 1983 SCMR 1101, it has been clearly held that C.S.D. was an organization connected with the Armed Forces and therefore covered by the exemptions prescribed in Section 1(3) of the 1969 Ordinance; and that the impugned order dated 28.06.2019 is strictly in accordance with the law laid down by the Hon'ble Supreme Court in the above-referred judgment. Learned counsel for respondents No.3 and 4 prayed for the writ petition to be dismissed.

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

6. The record shows that the petitioner was employed as a Junior Store Man in C.S.D. On 17.01.2011, the petitioner was dismissed from service. The said dismissal order was assailed by the petitioner before the Punjab Labour Court. Vide the judgment dated 13.01.2012, the said petition was allowed and the order dated 17.01.2011 whereby the petitioner was dismissed from service was set-aside. Furthermore, it was directed that the petitioner be reinstated in service with all back benefits. Respondents No.3 and 4 assailed the said judgment dated 13.01.2012 before the learned Full Bench, N.I.R.C. Vide the order dated 28.06.2019, the said appeal was allowed primarily on the ground that since C.S.D. did not come within the meaning of a commercial establishment or an industry, the Labour Court did not have the jurisdiction to adjudicate upon the petitioner's grievance petition.

7. The sole question that needs to be determined is whether the Labour Court did have the jurisdiction

to adjudicate upon the petitioner's grievance petition. Section 1(3)(a) to (e) of the I.R.A. lists the establishments / organizations to which the provisions of the I.R.A. do not apply. For the purposes of clarity, Section 1(3)(a) of the I.R.A. is reproduced herein below:-

*“(3) it shall apply to all persons employed in any establishment or industry, in the Islamabad Capital Territory or carrying on business in more than one Province, **but shall not apply to any person employed –***

(a) in the Police, or any of the Defence Services of Pakistan or any services or installations exclusively connected with the Armed Forces of Pakistan including an Ordnance Factory maintained by the Federal Government;”

8. Now, Section 1(3)(a) of the 1969 Ordinance is not in *pari materia* to Section 1(3)(a) of the I.R.A. For the purposes of clarity, Section 1(3)(a) of the 1969 Ordinance is reproduced herein below:-

“It shall not apply to any person employed -

(a) in the Police or any of the Defence Services of Pakistan or any services or installations connected with or incidental to the Armed Forces of Pakistan including an Ordnance Factory maintained by the Federal Government;”

9. The comparative analysis of Section 1(3)(a) of the I.R.A. and Section 1(3)(a) of the 1969 Ordinance shows that the provisions of the I.R.A. have not been made applicable to any person employed in *“any of the Defence Services of Pakistan or any services or installations **exclusively connected with the Armed Forces of Pakistan**”* whereas the provisions of the 1969 Ordinance had not been made applicable to any person employed in *“any of the Defence Services of Pakistan or any services or installations **connected with or incidental to the Armed Forces of Pakistan.**”*

10. The Hon'ble Supreme Court in its judgment titled as Canteen Stores Department Employees Welfare Union Karachi Vs. Canteen Stores Department (1983 SCMR 1101) while interpreting

Section 1(3) of the 1969 Ordinance held that C.S.D. was an organization *“connected with Armed Forces, and hence covered by exemptions prescribed in subsection 3 of section 1 of the Industrial Relations Ordinance.”* For the purposes of clarity, the penultimate paragraph of the said judgment is reproduced herein below:-

“After the decisions given by the Sindh High Court (Writ Petition No. 332/1973) and the Peshawar High Court there remains no conflict in views on the subject. Besides the object of C. S. D. when it was a government undertaking and even after it ceased to be so was and has been not only to supply the entitled personnel with articles of standard quality of daily use, but what is more important to “form the basis of an efficient Canteen Organization is peace and war for troops located anywhere in the country and operational areas during the war.” This aspect of the purposes of C. S. D. clearly makes it out to be an Organization connected with Armed Forces, and hence covered by exemptions prescribed in subsection (3) of section 1 of the Industrial Relations Ordinance. It is in the context irrelevant whether it is a government department or a private commercial organization, because certain categories of the employees of the government are in fact governed by Industrial Relations Ordinance while certain other private commercial organization stand excluded from its operation as was the case of United Builders and Associates.”

11. C.S.D. may well be an organization connected with the Armed Forces of Pakistan but in order to make the provisions of the I.R.A. inapplicable to the petitioner, it had to be shown that C.S.D. was *“exclusively connected”* with the Armed Forces.

12. In the proceedings before the Labour Court, Lt. Col.(R) Muhammad Mansha Zahid, Officer Incharge Zonal Depot, C.S.D. appeared as RW.1 and deposed that C.S.D. is a commercial establishment, and that any citizen can purchase articles from C.S.D. This deposition makes its abundantly clear that C.S.D. is not an organization *“exclusively connected”* with the Armed Forces, and therefore the provisions of the

I.R.A. could not have been held to be inapplicable to the petitioner.

13. Where this Court quashes a decision of a Court or a Tribunal, in exercise of its jurisdiction under Article 199 of the Constitution, it ought to exercise its power to remand the matter back to the Court or Tribunal concerned with a direction to reconsider it and to reach a decision in accordance with the judgment given by this Court. I am of the view that the learned Full Bench, N.I.R.C. ought to have appreciated the fact that in order to make the provisions of the I.R.A. inapplicable to the petitioner, it had to be shown that he was employed in an organization “*exclusively connected*” with the Armed Forces. In paragraph 8 of the impugned judgment, it has simply been held that C.S.D. is connected with the Armed Forces. Since the word “*exclusively*” did not find mention in Section 1(3)(a) of the 1969 Ordinance, and was introduced in Section 1(3)(a) of the I.R.A., redundancy cannot be attributed to the said term. Respondents No.3 and 4’s pleadings also do not show that C.S.D. is “*exclusively connected*” with the Armed Forces. Additionally, the evidence of RW.1 was also not taken into consideration while allowing respondents No.3 and 4’s appeal.

14. In view of the above, the instant writ petition is allowed; the impugned order dated 28.06.2019 is set-aside; and the matter is remanded to the learned Full Bench, N.I.R.C. for a decision afresh after taking into consideration the aforementioned observations.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*