

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.23 of 2020
Pakistan Railways through CEO
Versus
Member, 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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13.02.2020	M/s Barrister Sajeel Sheryar Sawati & Mohammad Asif Gujjar, Advocate with Khurram Shahzad {Legal Adviser} and Sajid Hashmi, Law Officer, for petitioner-Pakistan Railways. Ch. Sagheer Ahmad Advocate for respondents 2 to 4.
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FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant writ petition, petitioner assails order dated 31.12.2019, passed by respondent No. 1/learned Single Bench of the National Industrial Relations Commission-NIRC, whereby in C.M.A. No.24 {322/2019}, transfer/posting orders dated 26.12.2019 and 28.12.2019 of private respondents have been suspended.

2. During pendency of the present petition, petitioners filed two separate applications {C.M.As. No.300 and 464 of 2020}, through which subsequent orders of respondent No.1/ learned Member NIRC dated 20.01.2020 and 29.01.2020 have been brought under question. Vide order dated 20.01.2020, Chief Personal Officer and Divisional Superintendent of petitioner-Pakistan Railways have been summoned to appear in person while through the second order dated

29.01.2020, contempt proceedings have been initiated. The main petition and the C.M.As. {*supra*} are being decided through this single order.

3. Learned counsel for the petitioner contends that Full Bench of the NIRC is not available hence, instant writ petition has been filed against the orders passed by learned Member, NIRC/respondent No.1. Impugned orders are patently illegal, quorum non-judice as final relief has been granted under the garb of injunctive order; that private respondents are holding the executive positions and are not covered within the definition of workman; that they are holding the same post for the last fourteen years and now transferred; said transfer orders have been assailed before learned respondent No.1. Learned counsel in support of his submissions placed reliance upon case law reported as *PLD 1997 SC 351, PLD 1983 Karachi 303, 2002 CLC 601, 2017 PLC 176, 1984 PLC 1480, 2014 PLC CS 275, and 2017 PLC 130.*

4. Learned counsel for private respondents contends that interlocutory orders are not appealable, forum is available, no final adjudication had been made and therefore, petition is not maintainable. Learned counsel refers case law reported as *1996 SCMR 1165, 1998 SCMR 328, 2019 YLR 618, 2014 CLD 415, and 1986 PLC 105* and seeks dismissal of instant writ petition.

5. Heard the learned counsel for the parties and examined the record with their able assistance.

6. First objection by the contesting respondents is that proceedings are pending before respondent No.1 and petitioner is at liberty to advance any ground before him, because no appeal before learned Full Bench of NIRC against interlocutory orders is provided and writ jurisdiction cannot be exercised in respect of said interlocutory orders.

7. When record examined, it transpires that petitioner had filed appeal against the impugned order before the learned Full Bench of NIRC and it was numbered as Appeal No.12(03)/2020 with C.M.A. No.24 (06)/2020 which was not heard/adjudicated by the learned Full Bench for want of quorum, therefore, instant writ petition was filed. The provision of law which provides remedy of appeal to the petitioner is Section 58 of I.R.A., 2012 which reads as under:-

58. Appeals.—(1) Notwithstanding anything contained in this Act, or in any other law for the time being in force, any person aggrieved by an award or decision given or a sentence or order determining and certifying a collective bargaining unit passed by any Bench of the Commission, may, within thirty days of such award, decision, sentence or order prefer an appeal to the Commission.

(2) An appeal preferred to the Commission under sub-section (1) shall be disposed of by the Full Bench of the Commission which shall—

(a) if the appeal is from an order determining and certifying a collective bargaining unit, have the power to confirm, set aside, vary or modify such an order.

(b) if the appeal relates to any other matter, the Full Bench may, confirm, set aside, vary or modify the decision or sentence passed and shall exercise all the powers required for the disposal of an appeal.

(c) The decision of the Full Bench shall be delivered as expeditiously as possible, within a period of sixty days following the filing of the appeal, provided that such decision shall not be rendered invalid by reasons of any delay in its delivery.

(d) The Full Bench may, on its own motion at any time, call for the record of any case or proceedings under this Act in which a Bench within its jurisdiction has passed an order for the purpose of satisfying itself as to the correctness, legality, or propriety of such order, and may pass such order in relation thereto as it thinks fit:

Provided that no order under this sub-section shall be passed revising or modifying any order adversely affecting any person without giving such person a reasonable opportunity of being heard.

(3) In an appeal preferred to it against the order of a Bench directing the re-instatement of a workman, the Full Bench may make an order staying the operation of the order of the Bench.

(4) The Full Bench shall decide such appeal within twenty days of its being preferred:

Provided that, if such appeal is not decided within the period aforesaid, the stay order of the Full Bench shall stand vacated on the expiration of that period.

8. Needless to mention that appeal relating to determination and certifying a collective bargaining unit is provided under Section 58(2)(a) of the I.R.A., 2012 while in any other matter appeal is provided through Section 58(2)(b) of the I.R.A., 2012. The intention of the legislature when is considered, interpreted, construed on the relevant principles, it provides that legislature had provided appeal in respect of any proceedings, other matters and not specifically excluded interlocutory orders from Appellate Jurisdiction vested in the learned Full Bench of NIRC under the I.R.A., 2012.

9. There are number of special laws/ enactments which are helpful to consider intent of legislature to clear this point, but I restrict myself only to the extent of three edicts of legislature which are as under:-

- i- Financial Institutions (Recovery of Finances) Ordinance, 2001, {FIO 2001}*
- ii- The Family Courts Act, 1964 {Act of 1964}*
- iii- The Islamabad Rent Restriction, Ordinance, 2001 {IRRO, 2001}*

10. On examination of the provisions of **(i) 'FIO 2001'** it reveals that remedy of appeal is provided under Section 22, wherein expressly words have been used that appeal against a judgment, decree, sentence or final order is provided and through the provision 22(6) interlocutory order has been excluded.

The same course is adopted in **(ii) 'Act of 1964'** wherein appeal has been

provided under Section 14 of Act of 1964 and specific exclusion regarding interlocutory orders has been provided through sub clause 3 of the said provision of law i.e. Section 14 of the Act of 1964.

This sequence can also be witnessed from (iii) the 'IRRO, 2001' wherein Section 21 (1) provides right of appeal to an aggrieved party by a final order of a Controller, while clause 2 of Section 21 specifically bars filing of appeal against an interlocutory order passed by the Controller.

11. Same is the position in many other statutory provisions but to elucidate the concept for construction, this Court limits to the above three examples and holds that when legislature had not provided any exclusion regarding interlocutory orders through Section 58 of the I.R.A. 2012, rather through sub clause (b) of Section 58(2) provided appeal relating to any other matter, decision or sentence passed, it can be safely construed that interlocutory orders are also amenable to the appellate jurisdiction of learned Full Bench of the NIRC under section 58(2)(b).

12. Now when learned Full Bench is not available for want of quorum, in that eventuality this Court has constitutional jurisdiction to rescue an aggrieved party for redressal of his grievances during this interregnum that no one is being rendered remediless, particularly when a remedy is

provided by the legislature. In the light of above discussion, the objections regarding incompetency of learned Full Bench of the NIRC to adjudicate upon interlocutory orders in Appellate Jurisdiction and maintainability of the instant petition when the learned Full Bench is not functional, are repelled.

13. It is observed that private respondents are holding the positions which, *prima-facie*, does not fall within the definition of “workman” and, therefore, impugned order dated 31.12.2019, is not legally sustainable. Since the first impugned order retains no legal backing, the subsequent two orders dated 20.01.2020 and 29.01.2020 being offshoot would also be treated alike.

14. In the light of above, operation of impugned orders dated 31.12.2019, 20.01.2020 & 29.01.2020 shall remain suspended till the availability of learned Full Bench of NIRC. It is made clear that whenever learned Full Bench is available this order shall cease to exist.

15. The instant writ petition is disposed of in above terms. The observations recorded hereinabove shall have no impact upon merits of the case, to be decided by the learned Full Bench of NIRC.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

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(Approved for Reporting)