

Form No: HCJD/C.

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Writ Petition No. 16 of 2015

All Pakistan SRBC Workers Union
Vs.
National Industrial Relations Commission etc.

Petitioner by: Mr. Mushtaq Hussain Bhatti, Advocate.
Respondent No.1 by: Kh. Muhammad Arif, Advocate.
Respondent No.3 by: Qazi Ahmed Saeed, Advocate.

Date of Decision: 16.02.2015.

AAMER FAROOQ, J.- The petitioner is the industry-wise Trade Union registered with National Industrial Relations Commission with respect to *Shalimar* Recording and Broadcasting Company Limited (SRBC). Respondent No.3 namely All Pakistan SRBC Allied Employees Union made an application, before respondent No.2, for registration as Trade Union under sections 6, 7 & 8 of the Industrial Relations Act, 2012 (IRA). The petitioner moved an application objecting the registration of respondent No.3 mainly on the ground that the applicant has T.V. Engineers as its members who do not qualify to be workmen/workers as provided in subsection (XXXIII) of section 2 of IRA and requested to be impleaded as respondent/objector in the proceedings. The petitioner's application was allowed and it was impleaded in the proceedings. After recording of evidence and hearing the parties respondent No.2 accepted the application for registration by respondent No.3 vide order dated 19.11.2014. The petitioner filed appeal under section 12 of the IRA against the referred order of respondent No.2. The appeal was dismissed by respondent No.1 vide order dated 01.01.2015, which has been assailed in the instant Constitutional petition.

2. The learned counsel for the petitioner *inter alia* submitted that respondent No.2 has not taken into consideration evidence led by the parties which is to the effect that the members of respondent No.3 are T.V. Engineers who do not fall in the definition of workman as provided in the law mentioned above. It was further contended that in order to determine whether a person falls in the definition of workman the description of his

designation is immaterial and the nature of the job conducted by him is the relevant consideration. T.V. Engineers have the administrative control and form part of the management which is reflected from the evidence tendered by respondent No.3 and hence, are excluded from the definition, as provided in subsection XXXIII to section 2 of IRA, 2012. Learned counsel placed reliance on the case titled *Naeem Wahid v. Sind Labour Appellate Tribunal and another* cited as 1984 PLC 352 to elucidate his contention that it is only persons performing manual labour who qualify to be termed as workman. It was further contended that respondent No.3 was initially registered by respondent No.2 on the basis of averments made by the management of SRBC that the T.V. Engineers were workmen and as such it has no objection to the registration of the Trade Union. The petitioner filed an appeal before respondent No.1 against the registration of respondent No.3 which was allowed and the matter was remanded back to respondent No.2. The learned counsel further submitted that Ali Sajjad who is General Secretary of respondent No.3 deposed that like all other T.V. Engineers he is entitled to reimbursement of entertainment expenses to the tune of Rs.500/- per month and salary of servant to the tune of Rs.1350/- per month which in itself disqualifies him to be a workman inasmuch as the manual workers are not paid the entertainment allowance or salary of servant. It is an establishment principle of law that an employee is not a workman merely because he is treated as a workman by employer, as the same was held in the case titled *Mumtaz Hassan Khan v. Sind Labour Appellate Tribunal And 2 Others* cited as 1984 PLC 1353. Learned counsel also submitted that respondent No.1 erred in law by holding that the appeal filed by the petitioner before it was not competent under section 12 of the IRA inasmuch as the plain reading of the section makes it clear that a Trade Union can prefer an appeal against the decision/order of the Registrar within 30 days before NIRC.

3. Learned counsel for respondent No.3 *inter alia* submitted that the impugned order is in accordance with law. It was further submitted that the appeal filed by the petitioner was not maintainable. It was submitted next that the petitioner had no *locus standi* to object to the registration of the respondent Union. In support of his contention the learned counsel placed reliance on *Essa Cement Industries workers Union v. Registrar of Trade Unions* (1998 PLC 500), *WAPDA Town Employees Union v. WAPDA Employees Cooperative Housing Society* (2011 PLC 18), *Wall's Employees Union v. Registrar of Trade Unions* (2007 PLC 521) and

Pakistan Services Limited v. Full Bench NIRC (2066 PLC 288). The evidence brought on record clearly showed that the T.V. Engineers are workmen as they do not perform any administrative or managerial duties. Learned counsel also pointed out that there are T.V. Engineers who are members in the petitioner and hence the petitioner is estopped from raising the said objection. Reliance was placed on the cases cited as 1992 PLC 2023, *Muslim Commercial Bank Limited. v. Fateh Muhammad Shah* cited as 2007 PLC 75, to support the contention that the T.V. Engineers are workmen.

4. During the course of proceedings an application was filed (C.M. No.642/2015) on behalf of another Union namely SRBC/ATV Employees Union. The referred application was allowed vide order dated 09.02.2015 and the applicant was impleaded as respondent No.4. Learned counsel for respondent No.4 also defended the impugned order and submitted that a T.V. Engineer does fall in the definition of workman.

5. The sole issue involved in the instant writ petition is that whether respondent No.2 while accepting the application of respondent No.3 committed any illegality or jurisdictional error on the ground that the members of referred Union were not workmen and hence the Trade Union could not have been registered. The scheme for registration of Trade Union in any industry is provided in sections 6, 7 & 8 of IRA. By virtue of section 6 an application can be made by a Trade Union, under the signatures of its President and Secretary, for the registration of Union to the Registrar. Section 7 lays down the requirements for the application and section 8 provides for the requirements for registration. The relevant provision in section 8 for the purposes of present controversy is subsection (2) of section 8 *ibid* which reads as follows:

“Without prejudice to the provisions of sub-section (1), a trade union of workmen shall not be entitled to registration under this Act –

(a) unless all its members are workmen actually engaged or employed in the industry with which the trade union is connected;

Explanation. __For the purpose of this clause, a dismissed, terminated or retrenched worker, whose dismissal, termination or retrenchment is pending adjudication before a court of competent jurisdiction, shall be deemed to be an employed worker of that establishment, and

(b) where there are two or more registered trade unions in the establishment, group of establishments or industry with which the trade union is connected, unless it has as its members not less than one-fifth of the total number of

workmen employed in such establishment or industry as the case may be”

6. Under the aforementioned provision of law a Trade Union is not entitled to be registered unless all its members are workmen and engaged or employed in the industry with which the Trade Union is connected. In case there are two or more registered Unions in the establishment then the applicant Union must have at least one-fifth of the total workmen employed in such establishment. The definition of workman is provided in subsection (XXXIII) of section 2 of IRA and is as follows:

“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 proceedings; 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.”

7. The plain reading of the definition indicates that any person who does not fall within the definition of employer and is not a person who is employed mainly in managerial or administrative capacity falls in the definition of a worker and workman. The test laid down by the Courts to see whether person is a workman or not is that it is not the job designation which is material but the nature of duty that is performed by the person concerned. In this regard reliance is placed on the case titled *Sadiq Ali Khan v. Punjab Labour Appellate Tribunal and 2 others* (PLD 1994 SC 273) in which it has been held as under:

“Case law covering contentions mentioned above, requires that onus is on the workman to show that he is so within the meaning of labour laws and that onus must be discharged by leading sufficient evidence. While evaluating the evidence pith and substance of duties should be considered and not the designation. Even salary is not of much relevance. To answer the contentions much depends on the evidence produced in that case and facts. of each case are different from another.”

In the case titled *Ganga R. Madhaani v. Standard Bank Limited and others* (1985 SCMR 1511) it has been held as follows:

“It would, thus, be noticed that in determining the status of an employee, i.e., deciding as to whether or not he is a 'workman', what is to be seen is the overall nature of the duties assigned to the person in question and the main or primary functions that he is required to perform and not the work that he might have to do incidentally in the course of performance of his normal duties, because even a person employed at the highest managerial or supervisory level has, some times, to perform functions or do some work which may be termed as 'manual' or 'clerical'.”

8. In the instant case parties led their evidence and members of respondent No.3 appeared to depose that they are not part of the administration or have managerial control. There is nothing on record to show that the T.V. Engineers perform their duties as employer or part of the administration and management. The employer namely SRBC has also certified that the T.V. Engineers are not part of the management of the Company.

9. In view of discussion of the law, I am of the opinion that respondents No.1 & 2 have rightly concluded that the members of respondent No.3 are workmen.

10. The issue of locus standi of the petitioner to become party in the registration proceedings was not agitated before respondents No.1 & 2 but has been argued before this Court by respondent No.3 and is of significance as under the scheme of registration provided in sections 6 to 8 of IRA there is no scope of filing objections to the registration of any Trade Union or becoming party in proceedings. In this regard reliance is placed on the case titled *WAPDA Town Employees Union through President/Secretary v. WADPA Employees' Cooperative Housing Society, Gujranwala through Secretary and 2 others* (2011 PLC 18) in which the Hon'ble Lahore High Court, Lahore observed as follows:

“A simple controversy between the parties is as to whether the consent of employer a trade union is necessary before its registration. The law laid down by honourable Supreme Court provides that the employer or even a trade union had no locus standi to maintain the grievance petition merely because objection raised by them had not been attended by the Registrar or the employer or the trade union had not been associated with the process of registration. One trade union could not be an aggrieved party by registration of another union because such action would not violate any of the right granted by the Industrial Relations Ordinance, 2002 to the former. The matter of registration of a trade union is only between the trade union which apply for registration and the Registrar of Trade Unions and the employer or others have not concern, whatsoever, in the matter. The employer could not claim any locus standi to

challenge the decision of the Registrar merely on the ground that no opportunity of hearing was provided to him or objection raised before the Registrar of Trade Unions was not considered before taking such decision. I am fortified by ratio decidendi laid down in the cases reported as 1998 PLC 500, 2006 PLC 288 and 2007 PLC 521."

In case titled *National Beverage Employees Union v. Registrar, Trade Union, Government of Sindh and 2 others* (1986 PLC 533) it has been held as under:

"It is very clear from the provisions mentioned above that the legislature has laid down positively that registration of a Trade Union is strictly a matter between Trade Union seeking registration and the Registrar and another Trade Union has legally speaking no say in the matter and has no locus standi to raise any objection at that stage. This becomes more clear when it is found that only the affected Trade Union whose application for registration is rejected is allowed to file appeal before the Labour Court to the exclusion of all others. It is, therefore, clear that no other Trade Union has any concern or say in the matter of registration of another Trade Union. It is the duty of Registrar under section 8 to see that if all the requirements of Industrial Relations Ordinance, 1969 have been completed then he must register the Union, which has applied for registration but if there is contravention of the relevant provisions then he may raise objections himself. There is no bar express or implied in section 8 in the way of any other Trade Union to bring it to the notice of the Registrar any contravention of relevant provisions of Industrial Relations Ordinance if committed by the Union, which has applied for registration. Registrar who is competent to raise objection sue motu is also competent to look into the objections raised by any other interested party which helps him in completing the task of registration strictly according to law."

In *Essa Cement Industries Workers' Union v. Registrar of Trade Union Hyderabad Region Hyderabad* (1998 PLC 500) the Hon'ble Supreme Court of Pakistan observed as follows:

"It, therefore, follows that neither the employer nor a trade union already existing in the same establishment can claim locus standi to challenge the decision of the Registrar merely on the ground that no opportunity of hearing was provided to it or an objection raised by it before the Registrar was not considered before such decision."

11. The Hon'ble Division Bench of Sindh High Court in 2006 PLC 288 *supra* as well as Hon'ble Lahore High Court in 2007 PLC 521 relied upon the referred judgment of the apex Court to hold that neither the employer nor an existing Trade Union had locus standi to maintain a

grievance petition merely because objection raised by it had not been attended to by the Registrar.

12. Therefore, the impleadment of the petitioner in the proceedings before respondent No.2 was illegal and without lawful authority. Moreover, in light of the case law discussed above, the petitioner has no locus standi to challenge the registration of respondent No.3 as a Trade Union. Respondent No.2 had to satisfy itself that the applicant namely respondent No.3 satisfied the requirements as provided in IRA, *ibid*.

13. The appeal filed by the petitioner was dismissed on the ground that it is not maintainable under section 12 of IRA. In this behalf the referred provision is reproduced below and is as follows:

"Appeal against the order/decision etc. of Registrar. — A trade union, its members or an officer may prefer an appeal against the order, decision and proceeding conducted by the registrar within thirty days before the commission."

14. The reference to the word a Trade Union is not any Trade Union of the Company or industry but only the applicant Trade Union. This conclusion is fortified from reading the scheme of registration as provided in sections aforementioned. As there is no scope under the relevant law for any person or Trade Union to file objections or intervene in the process of the registration of a Trade Union, which solely is a matter between an applicant Union and the Registrar of Trade Union namely respondent No.2, therefore, respondent No.1 had rightly concluded that the appeal filed by the petitioner was not competent.

15. In view of foregoing discussion of law, the writ petition is dismissed.

(AAMER FAROOQ)
JUDGE

Announced in open Court on 11 of March 2015.

JUDGE

M.Naveed

Approved For Reporting