

**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**W.P No. 1550 of 2020**

**Pakistan Telecommunication Company Limited.**

*Vs*

**The Learned Full Bench of National Industrial Relations Commission  
(NIRC), etc.**

**Petitioner's : Ch. Sagheer Ahmed, Advocate.  
Mr. Raheel Zafar, Deputy Manager (Legal)  
PTCL.**

**Respondent No.3: Mirza Muhammad Afzal, Advocate.**

**Date of hearing : 24.08.2020.**

**LUBNA SALEEM PERVEZ J.** Through the present petition, the petitioner (*hereinafter referred to as "PTCL"*) has assailed the judgment passed by the Full Bench of NIRC dated 18.11.2019, whereby, the petitioner's appeal was dismissed.

2. Brief facts of the case are that Respondent No. 3 filed a grievance petition before the Punjab Labour Court, Rawalpindi, under section 41 of Industrial Relations Act (IRA), 2008, read with S.O. 1(b) of the Standing Orders Ordinance, 1968, on 15.06.2010, mainly for the purposes of correction of his date of birth as well as regularization of his services. The petition was allowed by the Punjab Labour Court, Rawalpindi, vide judgment dated 25.03.2011, directing the PTCL to correct the date of birth as per latest ID card and also to regularize the services of Respondent No. 3 according to law. Being aggrieved with the judgment dated 25.03.2011, the PTCL filed appeal under section 41 of Punjab Industrial Relations Act, 2010, before the Punjab Labour Appellate Tribunal, Lahore, on 30.04.2011. After establishment of NIRC, vide Industrial Relations Act, 2012, the case was transferred/transmitted to Full Bench of NIRC, which vide judgment dated 18.11.2019, dismissed the appeal of Petitioner/PTCL on merits while observing that the appellant Petitioner/PTCL has failed to point out any illegality or infirmity in the impugned order. Hence, present petition.

3. Learned counsel for the PTCL submitted that learned Full Bench of NIRC while passing the impugned judgment has not considered the issue of jurisdiction of the Labour Court in the light of unreported (consolidated) judgment of the

Hon'ble Supreme Court of Pakistan passed in Civil Appeal No. 1150/2012, dated 13.02.2012, wherein it has been held that Industrial Relations Act, 2008, was a sunset legislation u/s 84(3) and stand repealed on 30.04.2010, therefore, Labour Appellate Court established under the said act could not render judgment after its repeal and that judgments of the Labour Court dated 26.06.2010, 11.01.2011 and 24.03.2011 (impugned judgment of Labour Court before the Hon'ble Supreme Court) were declared as *coram non judice* and remanded the case back to the NIRC by reviving the grievance petition of the individual respondents. He further referred to the judgments of Full Bench of NIRC Islamabad, dated 28.10.2019, in case of PTCL v. Muslim Shah and PTCL v. Qazi Ibrar Ahmed, etc, whereby, the learned Full Bench has also remanded the cases to the learned Single Bench, Peshawar for decision afresh, after hearing the arguments of the parties. Further on merits of the case he submitted that the grievance petition filed before the Labour Court was time barred as it was filed in 2010, after 15 years of his service in PTCL and placed reliance on 2007 TD Labour 27; that the date of birth of the employee cannot be changed after two years in view of the judgment of Hon'ble Supreme Court passed in case re: *Syed Iqbal Haider Vs. Federation of Pakistan and another* (1998 SCMR 1494); that Labour Court has no powers to issue directions for change of date of birth of any employee and in this regard he relied on *Islamabad Electric Supply Company (IESCO) Vs. Mukhtar Ahmed Qureshi* (2015 PLC 255); that NIRC has no powers to regularize the service of any employee placing reliance on *M/s Pakistan State Oil Company Ltd. Vs. Ghulam Ali & others* (SBLR 2015 SC 233). He lastly relied on the unreported judgment of this Court in *Writ Petition No. 2070/2016 (Pakistan Telecommunication Company Limited Vs. Umar Farooq & two others)*, announced on 28.04.2017, and submitted that as the decision of the writ petition has not been challenged hence, attained finality.

4. Learned counsel for respondent No. 3, submitted that the Labour Court has decided the grievance petition of Respondent No. 3, vide judgment dated 25.03.2011; that the Labour Court was competently seized with the matter and has validly decided the grievance petition filed on 15.06.2010 vide judgment dated 25.03.2011; that initially the Labour Court was created, vide Industrial Relations Act, 2008, which stood repealed on 30.04.2010, however, Punjab Industrial Relations Ordinance, 2010, promulgated on 13.06.2010, protected the provisions

of Industrial Relations Act, 2008. Thereafter, Punjab Industrial Relations Act, 2010, was enforced on 09.11.2010, which Act, vide section 79 also saved the acts done under Industrial Relations Act, 2008; that the Industrial Relations Ordinance, 2011, was promulgated on 18.07.2011, also vide section 88 saved the acts done under Industrial Relations Ordinance, 2008. The Ordinance, 2011, was also repealed by Industrial Relations Act, 2012, promulgated on 14.03.2012, which further protected the acts done under Industrial Relations Ordinance, 2008. He, therefore, submitted that though the Industrial Relations Ordinance, 2008, stood repealed, vide its section 87 (3), however, have been saved during the intervening period upto the enforcement of Industrial Relations Act, 2012. Therefore, the judgment of the learned Labour Court dated 25.03.2011, suffers from no jurisdictional defect. On the merits of the case, he submitted that the date of birth of Respondent No. 3 was wrongly recorded as 01.06.1954, in the record of PTCL instead of 01.04.1956, and in support all the documents from school leaving certificate, army discharge book and birth register of District Officer, Jehlum was furnished. He further submitted that Respondent No. 3 was appointed on daily wages despite the facts that the post and job in PTCL is of permanent nature and he, without any break in the service, is serving the PTCL since, 01.02.1995, therefore, he is entitled to be regularized against the post as a permanent employee. He lastly submitted that there is no illegality and infirmity in the judgments of the learned Full Bench of NIRC dated 18.11.2019, and of Labour Court dated 25.03.2011, and prayed for dismissal of the instant petition of the petitioner.

5. Arguments heard. Record perused.

6. Controversy on the merits of the case relates to the correction of date of birth in the record of the PTCL and regularization of services of Respondent No. 3, its employment. Learned company counsel for the PTCL heavily relied on the unreported judgment of the Hon'ble Supreme Court whereby, the Hon'ble Apex Court after taking into consideration the provisions of IRA, 2008, has remanded the matter to the appropriate forum i.e.NIRC, created under IRA, 2012, after reviving the grievance petition of the individual respondents for fresh determination and redressal of the individual grievance of the workman. I have carefully gone through the judgment dated 13.02.2013 of the Hon'ble Supreme Court delivered in Civil Appeal No. 1150/2012 along with other connected

appeals. The Hon'ble Apex Court has held the judgment of the learned Labour Court passed during the interregnum period from 30.04.2010 to 18.07.2011, as *corum non-judice*. The IRA, 2008, has been held to be a sunset legislation as it has been specifically provided that the Act 2008, unless repealed earlier shall stand repealed on 30.04.2010, and thereafter, the Industrial Relations Ordinance, 2011, was promulgated on 18.07.2011. It would be advantageous to reproduce certain extract from the judgment of the apex Court relevant for the case in hand:-

*"5. The learned counsel for the appellant/petitioners have raised a common argument that as the Industrial Relations Act, 2008 was a sunset legislation as Section 87(3) of it provided that this Act shall unless repealed earlier stand repealed on 30.04.2010 and that such repeal of the Act having taken place on 30.04.2010 from the said date Labour Court which was the creature of the repealed Act ceased to exist and there was no forum in the field to adjudicate, determine and decide the grievance petitions. But despite such legal position, the Labour Court continued to function and passed judgments which are corum non-judice and void.-----"*

*7. In the case of Air League of PIAC Employees (supra) this Court has held that the Industrial Relations Act, 2012 stood repealed on the expiry of period mentioned in Section 87(3) of the Act and the consequence of such repeal will render the judgment of the Court corum non-judice. The Act stood repealed on 30.04.2010 and after that there was no legislation in the field of labour dispensation until 18.07.2011, when the Industrial Relations Ordinance, 2011 was promulgated. The judgments of the Labour Court dated 26.06.2010, 11.01.2011 and 24.03.2011 were passed during the period when the Act of 2008 stood repealed and there was no legislation in the field. In the light of the law laid down in the case of Air League of PIAC Employees by this Court, the judgments of the Labour Court will be corum non-judice. The result of it would be that the order of the Labour Court dated 27.05.2011, on the application for Contempt filed by the respondents in Civil Appeal No. 1150 of 2012 will also be without jurisdiction and that the judgment of the Labour Court being corum non-judice was not capable of being implemented. Thus Writ Petition No. 1961/11 filed by the appellant in C.A. No.1150/12 will stand allowed and the impugned judgment dated 25.07.2012 is set aside. The judgment of the Labour Court dated 26.06.2010 in C.A. No. 127/13 was maintained upto the High Court, where Writ Petition No. 2186/11 of the appellant was dismissed. In the face of the findings that the said judgment of the Labour Court was corum non-judice. The said Writ Petition No.2186/11 is allowed and the impugned judgment dated 28.09.2012 is set aside. The two judgments dated 24.03.2011 of the Labour Court in Civil Petition No. 1754 and 1755 being corum non-judice, the filing of Contempt proceedings for its implementation is also without jurisdiction as the judgments of the Labour Court are not capable of being implemented, thus Writ Petitions No. 2517 & 2518/12 stands allowed. The result of it would be that the grievance petitions, which the private respondents have filed now stand revived and will be decided in accordance with law by the forum, which is available now for their determination. The Industrial Relations Commission has been established by the Industrial Relations Act, 2012 for redressal of grievance of the workman. Consequently, all these grievance petitions are remanded accordingly for deciding the same in accordance with law."*

7. Respectfully taking guidance and following the above judgment of the Hon'ble Supreme Court, the present writ petition is allowed. The impugned judgment i.e. 18.11.2019, passed by the learned Full Bench of NIRC and

judgment dated 25.03.2011, passed by learned Labour Court are set-aside and the grievance petition of Respondent No. 3, is revived and remanded back to the NIRC for decision afresh, after providing opportunity of hearing to the parties, in accordance with law.

Instant petition stands disposed of in the manner indicated above along with all listed applications.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

Announced in open Court on this 25<sup>th</sup> day of August, 2020.

**JUDGE**