

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

W.P.No.815 of 2016
Pakistan International Airlines Corporation
VERSUS
Full Bench, National Industrial Relations Commission, Islamabad
& another

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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09.03.2016	Mr. Ajmal Ghaffar Toor, Advocate for the petitioner
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As common questions of law and fact are involved in Writ Petitions bearing Nos.815, 816, 817, 818 & 819 of 2016, I intend to dispose them of through this common order.

2. Through the afore-stated writ petitions, the petitioner, Pakistan International Airlines Corporation, has called into question the interlocutory Order dated 29.01.2016, passed by the learned Full Bench of the National Industrial Relations Commission in exercise of its appellate jurisdiction.

3. The facts of the case are that on 27.06.2014, a show cause notice was issued to respondent No.2 by the petitioner under Section-II, Clause 75 (aj) of the PIAC Employees (Service & Discipline) Regulations, 1985, alleging that a fake/bogus matriculation certificate had been submitted by respondent No.2 to the petitioner corporation at the time of his induction. As respondent No.2 did not submit a reply to the said show cause notice, the petitioner dispensed with inquiry proceedings in this case under Rule 79 of the PIAC Employees (Service & Discipline) Regulations, 1985. A notice for personal hearing was issued on 06.08.2014 to respondent No.2

requiring him to appear on 07.08.2014 before the Senior General Manager (Human Resource), PIA Head Office Building, Karachi, and explain as to why action in accordance with the applicable rules should not be taken against him for the aforesaid act of misconduct. Furthermore, respondent No.2 was warned that in case he failed to turn-up for the personal hearing, it would be assumed that he was not interested in defending his position and that the case would be finalized on the basis of the available record.

4. Aggrieved by the said show cause notice, respondent No.2 filed a petition under Section 54 (e) of the Industrial Relations Act, 2012, before the National Industrial Relations Commission ("N.I.R.C."). The petitioner contested this petition by filing its reply. After an *inter parte* hearing, the learned member, N.I.R.C., vide order dated 23.06.2015, dismissed respondent No.2's petition. Respondent No.2 impugned the said Order dated 23.06.2015 before the learned Full Bench of the N.I.R.C., Islamabad, in an appeal under Section 58 of the Industrial Relations Act, 2012. On 29.01.2016, the following interlocutory order was passed in the said appeal:-

"The learned counsel for appellant has contended that learned Single Member, NIRC Islamabad has passed the impugned order regarding question of false certificate and respondents were directed to follow the procedure given S.O.15(4) of Industrial & Commercial Employment (Standing Orders) Ordinance, 1968. Despite of above, the respondent's management issued dismissal order. He further contended that appeal against the said order was filed before Full Bench and the Hon'ble Full Bench has suspended the impugned order passed by respondent's management. He also contended that this appeal is an identical of said appeal. Arguments heard advanced by the learned

counsel for the appellant at some quite length. The points raised by him needs consideration. Admit. Notice be issued to the respondents for 25.02.2016 for hearing. Lower court record be summoned.

CMA No.24(109)/2015

2. Notice to the respondents for the said date on the stay application. In the meanwhile, operation of impugned order dated 23.06.2015 is suspended till next date. However, the respondents management is at liberty to conduct inquiry, if any."

5. The petitioner, in the writ petition, has impugned the above mentioned interlocutory order that the learned Full Bench of the N.I.R.C. has passed in its appellate jurisdiction. Perusal of the said order reveals that it has not finally disposed of respondent No.2's appeal against the original order dated 23.06.2015, passed by the learned Member N.I.R.C.

6. Learned counsel for the petitioner submitted that respondent No.2 had challenged the show cause notice dated 27.06.2014 before the N.I.R.C. in his petition under Section 54 (e) of the Industrial Relations Act, 2012; that after the dismissal of respondent No.2's petition, the petitioner, vide letter dated 26.06.2015, dismissed respondent No.2 from service on the ground that he had submitted a bogus matriculation certificate at the time of his induction in the petitioner corporation; that on 30.06.2015, respondent No.2 applied to the petitioner to withdraw the said dismissal order and reinstate him in service; that as the petitioner did not reinstate respondent No.2 in service, he filed a petition under Section 33 of the Industrial Relations Act, 2012, before the N.I.R.C. challenging his dismissal from service.

7. Learned counsel for the petitioner further submitted that as respondent No.2 had already been dismissed from service, his appeal before

the learned Full Bench of the N.I.R.C. against the order dated 23.06.2015, passed by the learned Member N.I.R.C., has been rendered infructuous. He was of the view that the learned Full Bench of the N.I.R.C. ought not to have entertained the appeal and should have dismissed it as infructuous. In support of his submissions, the learned counsel for the petitioner placed reliance on Order dated 16.06.2015, passed by a learned Single Bench of this Court in W.P.No.1275/2015, titled "Pakistan International Airlines Corporation Vs. the Member-III, National Industrial Relations Commission etc". Vide this order, this Court had required the learned Full Bench of the N.I.R.C. to adjudicate upon the appeal at the earliest. Furthermore, the original order passed by the learned Member N.I.R.C. was suspended until the learned Full Bench of the N.I.R.C decided the appeal.

8. I have heard the learned counsel for the petitioner and perused the record with his able assistance.

9. The petitioner's plea that respondent No.2's appeal before the learned Full Bench of the N.I.R.C. had been rendered infructuous because respondent No.2 had already been dismissed from service and that he had filed a petition challenging his dismissal before the N.I.R.C., are matters of fact that are open for the petitioner to agitate before the learned Full Bench of the N.I.R.C., which is adjudicating upon respondent No.2's appeal. Before the learned Full Bench of the N.I.R.C, the petitioner has, till date, not raised any objection to maintainability of the appeal filed by respondent No.2. The petitioner, instead of objecting to the

maintainability of the appeal before the learned Full Bench of N.I.R.C., has jumped the gun and invoked the jurisdiction of this Court under Article 199 of the Constitution, against an interlocutory order passed by the learned Full Bench of the N.I.R.C., praying for the setting aside of the said interlocutory order.

10. I can not find myself to agree with the order dated 16.06.2015, passed by this Hon'ble Court in W.P.No.1275/2005 as the facts of the said case are distinguishable from the instant one and because I am firmly of the view that unless the proceedings before a Court or a Tribunal are wholly without jurisdiction, *coram non judice* or malafide, the same can not be challenged directly in the constitutional jurisdiction of this Court under Article 199 of the Constitution, without objecting to the maintainability of such proceedings before the forum where such proceedings are pending. In the instant case, the learned counsel for the petitioner does not dispute that under Section 58 of the Industrial Relations Act, 2012, an appeal from an order passed by a Member of the N.I.R.C. lay to the Full Bench of the N.I.R.C. The law does not place any restriction on the Full Bench of N.I.R.C. to pass an interim order.

11. It is settled law that the High Court in writ jurisdiction cannot interfere in an interim order passed by a Special Court or a Tribunal constituted under the law unless the same is wholly without jurisdiction, *coram non judice* or malafide. In the case of Mohtarma Benazir Bhutto Vs. The State reported as 1999 SCMR 1447, it has been held that *"it is well settled that orders at the interlocutory stages should not be brought to the higher Courts to obtain*

fragmentary decisions, as it tends to harm the advancement of fair play and justice, curtailing remedies available under the law, even reducing the right of appeal." Law to the same effect has been laid down by the Superior Courts in the cases of Muhammad Raza Hayat Hiraj Vs. Election Commission of Pakistan reported as 2015 SCMR 233, Dur Muhammad Khan Nasir Vs. Muhammad Shafiq Tareen reported as PLD 2014 Balochistan 152 and Habib Bank Ltd. Vs. Judge Banking Court reported as 2015 CLD 1875.

12. As the petitioner is at liberty to take oppose the appeal filed by respondent No.2 before the learned Full Bench of the N.I.R.C., and take the grounds agitated in this writ petition before the said appellate forum, I feel that interference in the proceedings before the said appellate forum is not warranted. Consequently, I find this writ petition not maintainable and the same is, therefore, dismissed in limine.

(MIANGUL HASSAN AURANGZEB)
JUDGE

APPROVED FOR REPORTING

(JUDGE)

Qamar Khan*

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