

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

**Writ Petition No. 641 of 2020**

**OGDCL**

**VS**

**Mr. Khizar Hayat, etc**

<b>S. No. of order/ proceedings</b>	<b>Date of order/ proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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**16.03.2020. Mr. Saad M. Hashmi, Advocate for the  
petitioner.  
Mr. M. Umair Baloch, Advocate for  
Respondent No.1.**

Through instant petition, Petitioner has assailed order dated 10.02.2020, passed by the learned Member, National Industrial Relations Commission, in case No. 4B (156)/2017, whereby Respondent No.1, who was terminated by the petitioner Company on the basis of fake degree, has been reinstated in service with back benefits.

2. Brief facts as stated by the learned counsel for the petitioner are that:-

The petitioner is a public limited company engaged in the business of Oil & Gas Exploration and Production. The petitioner hired the respondent on 10.10.2006 as a helper on daily wages basis till 28.02.2015. Subsequently, the petitioner converted his services to contractual employment from 01.03.2015 through an offer letter dated 25.04.2016 which was accepted by the respondent on 05.05.2016 and through an office memo dated 20.12.2016 respondent was notified as a contractual employee. For the said conversion the respondent was interviewed by a three Member Committee constituted by the

petitioner company, where, the respondent submitted photocopies of matriculation and secondary school certificates along with other required documents. As per petitioner's policy respondent's educational certificates were sent for verification, vide letter dated 05.12.2016 and same were verified as fake, bogus and forged by the Board of the Intermediate and Secondary Education Rawalpindi, vide their letter dated 14.02.2017. Resultantly, disciplinary proceedings were initiated against the respondent under OGDCL Employees Service Rules, 2002 and thereafter he was charged with allegations on 10.04.2017. After an independent and impartial inquiry conducted by an inquiry officer and also providing opportunity of hearing to the respondent, he was found guilty of submitting forged documents and issued show cause notice, accordingly. Respondent's submitted reply of the show cause notice on 04.07.2017 which was found unsatisfactory by the petitioner as he committed and confessed of submitting fake and forged educational certificates at the time of interview. The respondent was thus dismissed from service vide OM dated 16.08.2017, against which respondent filed petition under section 33 of Industrial Relations Act, 2012 (IRA 2012) before National Industrial Relations Commission (NIRC) whereby the learned Single Member of NIRC accepted the respondent's petition and reinstated him in service, vide order dated 10.02.2020. Being aggrieved with the said order of learned single Member of NIRC petitioner has filed an appeal before the learned Full Bench of the NIRC under section 58 of IRA. Whereas, petitioner has filed instant petition contending

therein that the Full Bench of NIRC/Appellate Authority is non-functional and it apprehends the implementation of impugned order passed by the learned Single Member, NIRC, therefore, there is no other alternate/efficacious remedy available to the petitioner but to file instant petition before this Court.

3. Learned counsel for the petitioner submitted that this Hon'ble Court in similar cases where the Full Bench of the NIRC was not available has disposed of the petitions by allowing interim stay till the constitution of Full Bench of the NIRC. Learned counsel relied upon the judgment of the Hon'ble High Court of Sindh, passed in case reported as "Nawman Ahmed vs. Adjudicating Officer" (2012 CLD 1893) whereby it has been observed as under:-

*"Indeed the remedy of appeal is provided and the writ jurisdiction cannot be used as substitute of the Appeal or to circumvent limitation provided for the Appeal. Indeed in case where either the Tribunal or Court or Forum are not established as provided under the Act and/or Courts are lying vacant it cannot be said that the parties are remediless and would be non-suited on account of action for not nominating Presiding Officer or Member of the adjudicating forum. However, where such tribunal exists and is functional though member is not nominated the proper course is to file appeal before the forum so provided under the law and in case it is non-functional on account of non-availability of the Member then such party may always approach and invoke the writ jurisdiction to seek any interlocutory relief."*

4. Learned counsel for respondent requested for time so as to file comments, however, he did not object disposing of the petition in the same terms as in other similar cases by this Court.

5. The ground of maintainability of writ petition in case of non-availability of Full Bench of NIRC/Appellate Forum is well taken by the

learned counsel for the petitioner as in number o cases this Court has already entertained the wri petitions on similar grounds and has issued restraining orders till availability of Appellate Forum. Reference in this regard may be made to the cases of Razia Paras Vs. Full Bench of NIRC and others (W.P.No. 261/2019) and Kashif Ali Vs. Full Bench of NIRC and others (W.P.No. 3549/2017). Thus in all fairness, I am of the view that since, the learned Full Bench of the NIRC is not available, therefore, the petition in hand is allowed and the implementation of the impugned order dated 10.02.2020 is stayed. However, this restraint shall come to an end on the date on which the petitioner's appeal is fixed for hearing before the learned Full Bench of the NIRC.

Instant writ petition stands **disposed of** in the above terms.

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