

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3398 of 2019

Khushali Microfinance Bank Limited and others

Versus

Awais Mehmood Liaqat and others

Date of Hearing: 05.12.2019

Petitioners by: Syed Ishtiaq Haider, Advocate,

Respondents by: Mr. Fazli Mahmood, Advocate for
respondent No.1.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioners impugn the order dated 31.07.2019 passed by the learned Full Bench, National Industrial Relations Commission (“N.I.R.C.”), whereby the petitioners’ appeal against the order dated 20.08.2018 passed by the learned Member, N.I.R.C., was dismissed. Vide the said order dated 20.08.2018, the learned Member, N.I.R.C. had accepted respondent No.1’s grievance petition against his dismissal from service primarily on the ground that a regular inquiry had not been conducted against him.

2. Learned counsel for the petitioners submitted that the forum of the N.I.R.C. is available to a “*worker*” or a “*workman*” as defined in Section 2(xxxiii) of the Industrial Relations Act, 2012 (“I.R.A.”); that since respondent No.1’s designation was that of a “*Relationship Manager*”, he, by no stretch of imagination, could be termed as a “*workman*” so as to vest jurisdiction in the N.I.R.C. over the dispute pertaining to the terms and conditions of his service; and that since the dispute agitated by respondent No.1 before the N.I.R.C. was not an industrial dispute, his grievance petition was not maintainable. Learned counsel for the petitioners prayed for the writ petition to be allowed and for the concurrent orders dated 20.08.2018 and 31.07.2019 passed by the learned Member and the learned Full Bench, N.I.R.C., respectively, to be set-aside. In making his submissions, learned counsel for the petitioners placed reliance on the judgments reported as 2019 SCMR 946, 2015 SCMR 434, 2011 SCMR 1475, 2001 SCMR 1928 and 1993 SCMR 672.

3. On the other hand, learned counsel for respondent No.1 submitted in the proceedings before the learned Member, N.I.R.C., it was not the petitioners' case that respondent No.1 was not a workman; that in the reply to respondent No.1's grievance petition, it had not been specifically pleaded that respondent No.1 was not a workman; that in the said reply, it was vaguely pleaded that the N.I.R.C. did not have jurisdiction over the matter; that since respondent No.1's grievance petition had been decided by the N.I.R.C.'s Bench at Peshawar, this Court does not have the territorial jurisdiction to adjudicate upon the instant petition; that this Court, in the past, has dismissed similar writ petitions due to lack of territorial jurisdiction; that against the order dated 20.08.2018 passed by the learned Member, N.I.R.C., the petitioners as well as respondent No.1 had preferred appeals before the learned Full Bench, N.I.R.C.; that respondent No.1 had assailed the said order dated 20.08.2018 only to the extent of the direction to the petitioners to conduct an inquiry against respondent No.1 within a period of three months; that respondent No.1's said appeal was allowed by the learned Full Bench, N.I.R.C. vide order dated 31.07.2019 and the direction given by the learned Member, N.I.R.C. to conduct an inquiry against respondent No.1 was set-aside; that the petitioners have not assailed the said order dated 31.07.2019 which had been passed on respondent No.1's appeal; and that the petitioners are estopped from challenging the order dated 31.07.2019 which had been passed on their appeal. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed. In making his submissions, learned counsel for respondent No.1 placed reliance on the judgments reported as PLD 1975 Karachi 342, 2002 TD (Labour) 391, 1997 PLC 34, NLR 1988 Labour 77, 1988 SCMR 1664 and 1983 PLC 498.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The record shows that on 18.08.2005, respondent No.1 was appointed as a Customer Services Officer by petitioner No.1, and on 17.03.2006, his services were confirmed. Subsequently, the post of Customer Services Officer was re-designated as Credit Specialist.

On 01.02.2012, respondent No.1 was selected as Relationship Manager and on 11.09.2012, respondent No.1 was confirmed in the said position. On 14.11.2012, respondent No.1 joined his duties in Dera Ismail Khan.

6. On 10.09.2013, a preliminary inquiry was said to have been initiated against respondent No.1, and on 19.11.2013, a show cause notice was issued to him. On 22.11.2013, respondent No.1 submitted a detailed reply to the show cause notice. On 10.01.2014, respondent No.1 was dismissed from service. On 19.03.2014, respondent No.1 served a grievance notice on petitioner No.1. Having not received any plausible response from petitioner No.1, respondent No.1 filed a grievance petition before the N.I.R.C. on 19.05.2014. Vide order dated 20.08.2018, the said grievance petition was allowed by the learned Member, N.I.R.C., and it was directed that respondent No.1 be reinstated with all back benefits. However, the petitioners were directed to conduct an inquiry against respondent No.1 within a period of three months.

7. The said order dated 20.08.2018 was assailed by the petitioners as well as respondent No.1 in appeals before the learned Full Bench, N.I.R.C. Respondent No.1, in his appeal (appeal No.12A(17)/2018-P), had assailed the said order dated 20.08.2018 only to the extent of the direction for conducting an inquiry against him. Admittedly, respondent No.1's said appeal was allowed by the learned Full Bench, N.I.R.C. vide order dated 31.07.2019. The petitioners have not assailed the said order. Therefore, the said order dated 31.07.2019 on respondent No.1's appeal has attained finality for all intents and purposes.

8. The instant writ petition has been filed against the learned Full Bench, N.I.R.C.'s order dated 31.07.2019 whereby the petitioners' appeal (appeal No.12A(18)/2018-P) against the learned Member, N.I.R.C.'s order dated 20.08.2018 was dismissed. The thrust of the contentions of the learned counsel for the petitioners was that since respondent No.1 was a workman as defined in Section 2(xxxiii) of the I.R.A., he could not have challenged his dismissal from service before the N.I.R.C. I have gone through the petitioners' reply to respondent No.1's grievance petition and have noticed that the

petitioners did not take a specific plea therein that respondent No.1 was not a workman. It is well settled that a ground not agitated before the original forum, cannot be taken as a ground in the appeal or a writ petition. A vague pleading to the effect that the N.I.R.C. did not have the jurisdiction to adjudicate upon respondent No.1's grievance petition was not sufficient to hold that the petitioners had indeed taken the plea that respondent No.1 was not a workman. In the affidavit filed by the petitioners' witness (Abdul Jabbar), it had not been deposed that respondent No.1 was not a workman. Furthermore, in respondent No.1's grievance notice, it has specifically been mentioned that it was being sent under Section 33 of the I.R.A. read with Section 12(3) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968. The petitioners, in their reply dated 19.03.2014 to the said grievance notice, did not take a position that respondent No.1 was not a workman or that he could not sent a grievance notice under the provisions of the said statutes. Therefore, the contention of the learned counsel for the petitioners that respondent No.1 was not a workman is spurned as a belated after thought.

9. There is no provision in the I.R.A., which restricts an aggrieved party only to take a grievance arising from an industrial dispute to the N.I.R.C. Admittedly, respondent No.1 had been dismissed from service without conducting a proper inquiry or issuing a charge sheet.

10. Since I do not find the concurrent orders passed by the learned Member, and the learned Full Bench, N.I.R.C. to be suffering from any jurisdictional infirmity or illegality, the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

*Qamar Khan**