

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3454 of 2016

Nazeer Hussain

Versus

Appellate Bench NIRC and another

Date of Hearing:	19.12.2017
Petitioner by:	Mr. Asad Mehmood Khokhar, Advocate.
Respondents by:	M/s Amna Warsi and Ayesha Warsi, Advocates for respondent No.2 (Civil Aviation Authority). Raja Ahsan Mehmood Satti, learned Assistant Attorney-General. Mr. Bilal Nadeem, Deputy Director, National Industrial Relations Commission.

MIANGUL HASSAN AURANGZEB, J:- Through this common judgment, I propose to decide writ petitions No.3454/2016, 2718/2017 and 2719/2017, as they entail common questions of law.

2. Through writ petition No.3454/2016, the petitioner, Nazeer Hussain, impugns the order dated 21.09.2016, passed by the learned Full Bench of the National Industrial Relations Commission ("N.I.R.C."), whereby the appeal filed by respondent No.2 (Civil Aviation Authority) against the order dated 19.11.2014, passed by the learned Member, N.I.R.C., was allowed, and consequently the petitioner's grievance petition filed under the provisions of the Industrial Relations Act, 2012 ("I.R.A., 2012") before the learned Member, N.I.R.C., was dismissed. Vide the said order dated 19.11.2014, the learned Member, N.I.R.C. dismissed respondent No.2's application seeking the dismissal of the petitioner's grievance petition on the ground that N.I.R.C. did not have jurisdiction to adjudicate upon the matter in view of Section 23 of the Civil Aviation Authority Ordinance, 1982 ("the C.A.A. Ordinance").

3. Through writ petition No.2718/2017, the petitioner, Ms. Sehar Khan, impugns the order dated 24.04.2017, passed by the learned Member, N.I.R.C., whereby the petitioner's grievance petition against respondent No.1 (Civil Aviation Authority) was returned on the ground that N.I.R.C. did not have the jurisdiction to entertain the said petition in view of the law laid down in the cases of National Telecommunication Corporation Vs. National Industrial Relations

Commission (2014 SCMR 1833), Civil Aviation Authority Vs. Union of Civil Aviation Employees (PLD 1997 S.C. 781) and unreported judgment dated 17.01.2014, passed by the Hon'ble Supreme Court in civil appeals No.2214 and 2215/2008.

4. Through writ petition No.2719/2017, the petitioner, Basharat Ali, impugns the order dated 24.04.2017, passed by the learned Member, N.I.R.C., which is exactly in the same nature as the one impugned in passed in writ petition No.2718/2017.

5. The petitioners in the abovementioned writ petitions shall be collectively referred to as "the petitioners", whereas Civil Aviation Authority shall be referred to as "respondent No.1". The petitioners were employees of respondent No.1.

6. The petitioner (Nazeer Hussain) was issued a show cause notice on 21.06.2014, wherein it was alleged that he had committed gross misconduct. After the Board of Inquiry investigated the matter, he was found guilty of the charges levelled against him, and strong disciplinary action was recommended to be taken against him. It appears that an F.I.R. was also registered against the petitioner. Aggrieved by the said show cause notice, the petitioner approached the N.I.R.C. and was able to obtain interim relief. Respondent No.1's preliminary objection to the maintainability of the petitioner's grievance petition before the N.I.R.C., was spurned, vide order dated 19.11.2014, passed by the learned Member, N.I.R.C. Respondent No.1's appeal against the said order dated 19.11.2014, was allowed, vide order dated 21.09.2016, passed by the learned Full Bench, N.I.R.C. The said order dated 21.09.2016 has been impugned by the petitioner in writ petition No.3454/2016.

7. The petitioners (Ms. Sehar Khan and Basharat Ali) were served with show-cause notices from respondent No.1 alleging therein that their educational testimonials were found bogus. The said petitioners filed grievance petitions before the N.I.R.C., but vide impugned orders dated 24.04.2017, the same were returned as not maintainable. The said orders dated 24.04.2017 have been impugned by the petitioners in writ petitions No.2718/2017 and 2719/2017.

8. Learned counsel for the petitioners submitted that although section 23 of the C.A.A. Ordinance excluded the application of the

Industrial Relations Ordinance, 1969 from any person in the service of respondent No.1, but the operation of the I.R.A., 2012 had not been excluded; that the learned Full Bench, N.I.R.C. had non-suited the petitioner on mere technicalities; that Section 23 of the C.A.A. Ordinance was not amended at any stage to replace “Industrial Relations Ordinance, 1969” with “Industrial Relations Act, 2012”; and that since section 87 of the I.R.A., 2012 is a non-obstante provision providing for the provisions of the I.R.A., 2012 to override anything to the contrary contained in any other law for the time being in force, the I.R.A., 2012 would override the C.A.A. Ordinance; that there is no judgment of the Hon'ble Supreme Court holding that the provisions of the I.R.A., 2012 were not applicable to respondent No.1 or any person in the service of respondent No.1; that the N.I.R.C. had the jurisdiction over the union matters in the establishment of respondent No.1; and that section 41(6) of the Pakistan Telecommunication (Re-Organization) Act, 1996, could not have been equated with section 23 of the C.A.A. Ordinance. Learned counsel for the petitioners prayed for the writ petitions to be allowed, and for the order dated 21.09.2016, passed by the learned Full Bench, N.I.R.C. (impugned in writ petition No.3454/2016), and orders dated 24.04.2017, passed by the learned Member, N.I.R.C. (impugned in writ petitions No.2718 and 2719/2017), to be set-aside.

9. On the other hand, learned counsel for respondent No.1 submitted that by virtue of section 23 of the C.A.A. Ordinance, the I.R.A., 2012 had no applicability over respondent No.1 or any of its employees; that the N.I.R.C. had no jurisdiction to entertain or adjudicate upon a grievance petition filed by respondent No.1's employees under the provisions of the I.R.A., 2012; that since the Industrial Relations Ordinance, 1969, was repealed and replaced with the I.R.A., 2012, section 23 of the C.A.A. Ordinance would operate to exclude the applicability of the I.R.A., 2012 on respondent No.1 or any person in the service of respondent No.1, by dint of section 8 of the General Clauses Act, 1897; that the orders impugned in the writ petitions are strictly in accordance with the law laid down in the cases of National Telecommunication Corporation Vs. National Industrial Relations Commission (2014 SCMR 1833), Civil Aviation

Authority Vs. Union of Civil Aviation Employees (PLD 1997 S.C. 781)

and the unreported judgment dated 17.01.2014, passed by the Hon'ble Supreme Court in civil appeals No.2214 and 2215/2008. Learned counsel for respondent No.1 prayed for the writ petitions to be dismissed.

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

11. The sole question that needs to be determined by this Court is whether in view of section 23 of the C.A.A. Ordinance, the provisions of the I.R.A., 2012 would not apply to respondent No.1 or any person in the service of respondent No.1. If the answer to the said question is in the positive, the instant petitions would merit dismissal.

12. It is an admitted position that the petitioners were in the service of respondent No.1. Section 23 of the C.A.A. Ordinance is reproduced herein below:-

“23. Ordinance XXIII of 1969 not to apply to Authority– The Industrial Relations Ordinance, 1969(XXIII of 1969), shall not apply to or in relation to the Authority or any person in the service of the Authority.”

13. The scope and import of Section 23 of the C.A.A. Ordinance was considered by the Hon'ble Supreme Court in the case of Civil Aviation Authority Vs. Union of Civil Aviation Employees (PLD 1997 S.C. 781), wherein it has been held *inter-alia* as follows:-

“...The effect of the enactment of section 23 in the Pakistan Civil Aviation Authority Ordinance, 1978 is that the provisions of the Industrial Relations Ordinance, 1969 are no longer applicable to the Authority and to its employees. The above exclusion of application of the provisions of Industrial Relations Ordinance, 1969 is not violative of Article 17(1) of the Constitution. However, it does not follow from it that the registration of the union stood cancelled upon the enforcement of the Ordinance in the absence of any express provision.”

14. The Industrial Relations Ordinance, 1969 (XXIII of 1969) was repealed by the Industrial Relations Ordinance, 2002 (XCI of 2002), which in turn was repealed by the Industrial Relations Act, 2008 (IV of 2008). Section 87(3) of the Industrial Relations Act, 2008, provided that the said Act would stand repealed on 30.04.2010. The I.R.A., 2012 was enacted on 14.03.2012, and applies to all persons employed in any establishment or industry in the Islamabad Capital

Territory or carrying on business in more than one Province. The organizations to which the said Act does not apply are listed in section 1(3) thereof. For all intents and purposes the I.R.A., 2012 is the law in the Islamabad Capital Territory and in trans-provincial level relating to formation of trade unions and federations, determining the collective bargaining agents, regulation and relations between employers and workers, the avoidance and settlement of any differences or disputes arising between them on matters connected therewith or ancillary thereto.

15. The argument of the learned counsel for the petitioners that since Section 23 of the C.A.A. Ordinance was not amended so as to exclude the application of the I.R.A., 2012, from respondent No.1 or any person in the service of respondent No.1, the petitioners' grievance petitions under the provisions of the I.R.A., 2012, before the N.I.R.C. were maintainable overlooks the principles underlying Section 8 of the General Clauses Act, 1897, which reads as follows:

“8. Construction of references to repealed enactments.-(1)] Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals and reenacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.”

16. The object of Section 8 of the General Clauses Act, 1897, is that where any statute is repealed and re-enacted, references in any other enactment to provisions of the repealed enactment must be read and construed as references to the re-enacted provisions, unless a different intention appears. Therefore, applying the rule of construction laid down in Section 8 of the General Clauses Act, 1897, we must read in Section 23 of the C.A.A. Ordinance, “Industrial Relations Act, 2012” in place of the expression of “Industrial Relations Ordinance, 1969”. When we so read it, it becomes clear that the application of the I.R.A., 2012, is excluded by Section 23 of the C.A.A. Ordinance from respondent No.1 or any person in the service of respondent No.1. Hence, the petitioners, who were admittedly in the service of respondent No.1, could not have filed petitions under the provisions of the IRA, 2012, before the N.I.R.C. against respondent No.1.

17. Learned counsel for the petitioners, has, in my opinion, approached the question from a wrong angle and has, therefore, made an ill-founded submission. In my opinion, the correct approach is to construe Section 23 of the C.A.A. Ordinance in light of the rule of construction as laid down in Section 8 of the General Clauses Act, 1897. Upon adoption of such construction, it is made clear that there is no infirmity in the orders impugned in these petitions.

18. Section 41(6) of Pakistan Telecommunication (Re-Organization) Act, 1996, had excluded the application of Industrial Relations Ordinance, 2002, to the officers and employees of National Telecommunication Corporation. As mentioned above, the Industrial Relations Ordinance, 2002, was repealed by the Industrial Relations Act, 2008, which was replaced by the Industrial Relations Act, 2012. Although the application of the "Industrial Relations Act, 2012" had not been excluded through an amendment in section 41(6) of the Pakistan Telecommunication (Re-Organization) Act, 1996, the Hon'ble Supreme Court in the case of National Telecommunication Corporation Vs. National Industrial Relations Commission (2014 SCMR 1833) held that the exclusion of the repealed law (i.e Industrial Relations Ordinance, 2002) would also include the law enacted subsequently (i.e. the Industrial Relations Act, 2012), in view of the provision contained in section 8 of the General Clauses Act, 1897. Therefore, it was held that the I.R.A., 2012, would not apply to the officers and employees of the National Telecommunication Corporation.

19. The effect of section 87 of the I.R.A., 2012, was also considered by the Hon'ble Supreme Court in the case of National Telecommunication Corporation Vs. National Industrial Relations Commission (2014 SCMR 1833). The argument that since section 87 of the I.R.A., 2012,, is a non-obstante provision providing for the provisions of the said Act to override anything to the contrary contained in any other law for the time being in force (including the provisions of the Pakistan Telecommunication (Re-Organization) Act, 1996, section 41(6) whereof excluded the applicability of the Industrial Relations Ordinance, 2002 on the officers and employees

of the National Telecommunication Corporation), was spurned by the Hon'ble Supreme Court in the following terms:-

“11. Yes section 87 of Act IX of 2012 overrides the provisions of any other law for the time being in force but not its own in general and the one contained in section 88 in particular, which unequivocally provides that any document referring to the repealed Act relating to the industrial relations shall be construed as referring to the corresponding provisions of this Act.

12. Section 8 of the General Clauses Act which, in its essence and substance, provides what section 88 of Act IX of 2012 does and thereby gives added strength to the aforesaid exclusion by adumbrating that "where this Act or any other Act after the commencement of this Act repeals and re-enacts, with or without modification of any provision of former enactment, then reference in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as reference to the provisions so re-enacted". Therefore, we have no hesitation to hold that Act IX of 2012 would not apply to the officers and employees of the National Telecommunication Corporation in the absence of any different intention appearing in any of its provisions. There is also nothing in Act XVII of 1996 and that of 2012 as could present a conflict between the two. A close and careful reading of the two would unmistakably show that they are in harmony with each other. Therefore, the argument of the learned Dy. Attorney General addressed on the assumption that there is a conflict between the provisions of Act XVII of 1996 and those of Act IX of 2012, is wholly misconceived...”

20. Accordingly, the principles of statutory interpretation as contained in Section 8 of the General Clauses Act, 1897, clearly warrant reference to the repealed enactments to be construed as reference to the provisions so re-enacted, which in the present case would be the provisions of the I.R.A., 2012. So construed, there remains no force in the petitioners' case that the provisions of the I.R.A., 2012, are applicable to respondent No.1 and the persons in the service of respondent No.1. In holding so, I am guided by the principles laid down in the following judgments:-

- i. In the case of Zarai Taraqiat Bank Limited Vs. Said Rehman (2013 SCMR 642), the Hon'ble Supreme Court of Pakistan quoted with approval the judgment of the Hon'ble Supreme Court of India in the case of Rajya Vs. Gopikabai (AIR 1979 SC 79), it has been held as follows:-

“Broadly speaking, legislation by referential incorporation falls into two categories: First where a statute by specific reference incorporates the provisions of another statute as of the time of adoption. Second, where a statute incorporates by general reference the law concerning a particular subject as a genus. In the case of the former, the subsequent amendment made in

the referred statute cannot automatically be read into the adoption statute. In the case of latter category, it may be presumed that the legislative intent was to include all the subsequent amendments also made from time to time in the general law on the subject adopted by general reference. This principle of construction of a reference statute has been aptly summed up by Sutherland thus:

A statute which refers to law of a subject generally adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference/statute was enacted.”

(Emphasis added)

- ii. In the case of State Bank of Pakistan Vs. Indus Bank Limited (2001 CLC 1833), the Hon'ble Peshawar High Court held that since the Companies Ordinance, 1984, was the successor statute of the Companies Act, 1913, by virtue of section 8 of the General Clauses Act, 1897, reference to the Companies Act, 2013 in the Banking Companies Ordinance, 1962, would be read as Companies Ordinance, 1984.
 - iii. In the case of Commissioner Inland Revenue, Multan Vs. Messrs Allah Wasaya Textile and Fishing Mills Ltd. (PLD 2013 Lahore 617 = 2013 PTD 1548), the Division Bench of the Hon'ble Lahore High Court, after making reference to Section 8 of the General Clauses Act, 1897, held that after the repeal of the Income Tax Ordinance, 1979 by Income Tax Ordinance, 2001 reference in any other enactment to the repealed Ordinance or its provisions will be read as the new Ordinance i.e., Income Tax Ordinance, 2001 along with the new provisions.
21. Law to the said effect has also be laid down in the cases of Ghulam Sarwar Vs. Muhammad Hussain (2000 YLR 869), Sardar Muhammad Tariq Vs. Special Judge of the Court for Suppression of Terrorist Activities (1996 P.Cr.L.J.58), University of Punjab Vs. Rehmatullah (PLD 1982 Lahore 729), State of Uttar Pradesh Vs. M.P. Singh etc., (AIR 1960 SC 569), Ram Rosad Ramnarain Vs. Bejoy Kumar Sadhukhan (AIR 1966 Calcutta 488), State of Bihar Vs. G.N. Ojha (AIR 1963 Patna 303), Raj Kishan Jain Vs. Tulsi Dass etc (AIR 1959 Punjab 291), Moradliwaj Vs. Bhudar Das (AIR 1955 Allahabad 353) and National Sewing Trading Co. Ltd. Vs. James Chadwick & Bros., Ltd. (AIR 1953 SC 357).
22. After the judgment was reserved in writ petition No.3454/2016,

the petitioner in the said petition brought on record judgment dated 16.01.2018, passed by the Court of Judicial Magistrate, Malir, Karachi in criminal case No.245/2016, titled "The State Vs. Ghulam Sarwar etc." to show that since the petitioner in the said writ petition had been exonerated from all criminal charges, respondent No.1 could not take any disciplinary action against the said respondent. I am of the view that this fact is not of any relevance in these proceedings. This Court has not delved into merits of the dispute between the petitioners and respondent No.1. All that this Court had to decide was whether the N.I.R.C. was correct in holding that in view of section 23 of the C.A.A. Ordinance, persons in the employment of respondent No.1 could not file petitions under the provisions of the I.R.A., 2012. The petitioner in W.P.No.3454/2016 is at liberty to take the defence as to his exoneration from criminal charges, before the appropriate forum.

23. By reasons of the aforementioned, I have no reason to fault N.I.R.C.'s decision to the effect that in view of section 23 of the C.A.A. Ordinance, grievance petitions filed by persons in the service of respondent No.1 before the N.I.R.C. under the provisions of the I.R.A., 2012, are not maintainable. Consequently, these petitions are dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON ____/2018.

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

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