

FORM NO.HCJD/C
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.1067 OF 2013

Ehsan Ahmed Chaudhry

Vt.

Member, National Industrial Relations Commission, Islamabad etc.

Petitioner by : Mr. Khalid Ismail, Advocate
Respondents by : Mr. Abdur Rasheed Awan, Advocate
Date of hearing : 09.04.2013.

NOOR-UL-HAQ N. QURESHI J.

Through the present writ

petition, the petitioner has invoked constitutional jurisdiction with the prayer that the impugned order dated 05.03.2013 passed by respondent No.1 may be set aside being without jurisdiction and without lawful authority.

2. Brief facts giving rise to the disposal of instant writ petition are that the petitioner is a Secretary General of 'Pakistan WAPDA Employees Pegham Union', which is a industry wise trade union for the establishment of WAPDA and its all corporatized companies and at present enjoying the status of Collective Bargaining Agent (CBA). The petitioner as Secretary General of the said Union submitted proceedings for the approval of newly elected office bearers, which was duly approved by the Commission. Another person namely Muhammad Ikhtlaq Khan also filed another proceedings before the Registrar, NIRC for approval of newly elected office bearer, in which, name of respondent No.3 was also included, but the same proceedings were declared fake and bogus by the Commission. Against that order, respondent No.3 filed appeal before Full Bench of NIRC on which objection of non-functioning of Full Bench of NIRC was raised. There-after, respondent No.3 filed W.P. No.3471/2011 before this Court, which was dismissed vide order dated 23.04.2012 with the observation to avail appropriate remedy before NIRC. Consequently, respondent No.3 filed appeal before NIRC and direction was issued to the

petitioner Union to conduct an internal elections in the month of March, 2013 strictly in accordance with the Constitution and provisions of IRA, 2012 vide order dated 07.02.2013 and did not set aside the approval given by the learned Registrar, Trade Unions. In compliance with that order, the Election Committee completed election process as per decision of Central Executive (Markazi Majlis-e-Amla) and issued final list of newly elected officer bearers. There-after, respondent No.3 filed application u/s 9(6) of IRA, 2012 before respondent No.2 for conducting election under his supervision in which notices were issued to the respondents and the case was adjourned to 12.03.2013. Respondent No.3 again filed an appeal u/s 9(6) of IRA, 2012 before Member, NIRC for conducting of internal elections of the Union under its supervision, who allowed respondent No.3 to participate in the internal elections and form group, if he so desires vide impugned order dated 05.03.2013. Feeling aggrieved, the petitioner has filed the instant writ petition.

3. Learned counsel for the petitioner has argued that impugned order passed by NIRC is patently illegal, as the Commission could not entertain any appeal/application despite the fact that the matter is already subjudice before another Bench of NIRC at Lahore. He further argued that on one hand respondent No.1 issued direction for conducting internal elections of the Union strictly in accordance with the Constitution and the provisions of IRA, 2012 and on the other hand, allowed respondent No.3 to form a group and participate in the election process, whereas he is neither the officer bearer nor member of the Union, rather his membership was cancelled/rescinded by the Markazi Majlis-e-Amla after observing all legal formalities. This point was also highlighted in writ petition before this Court as well as in appeal before NIRC and respondent No.3 never challenged his cancellation of membership. The Deputy Registrar, NIRC also confirmed this fact vide order dated 24.08.2011. As

per Article 7 (5) of the Constitution of the Union, a member who does not pay union funds for 3-months consecutively without any cogent reason, shall cease to be the member of the Union, whereas respondent No.3 is neither the member of the Union nor his union fund is being paid under check off system therefore he is not eligible to participate in the election process. He has requested that impugned order dated 05.03.2013 may be set aside.

4. At the very outset, learned counsel for respondent No.3 has raised objection on the maintainability of instant writ petition. He has argued that as order dated 05.03.2013, which has been impugned through the instant writ petition is interim in nature hence writ petition is not competent. The petitioner should have approached proper forum for redressal of his grievance, if any, by filing appeal u/s 58 of the IRA, 2012. The writ petition could be filed by an approved office bearer, while the petitioner is a stranger for this purpose. Vide order dated 18.11.2011, the respondent No.2 accepted the application of the petitioner and approved election proceedings and list of office bearers. Against that order, respondent No.3 filed appeal and order dated 07.02.2013 was passed with the consent of parties that fresh internal election of the Union shall be conducted in the month of March, 2013 in accordance with the Constitution of the Union and provisions of the said Act, hence in view of above order, the petitioner cannot claim himself to be the Secretary General of the Union. He has further argued that instant writ petition has been filed carelessly without going through the contents, as in almost paragraphs of the petition, the Commission has been referred, whereas writ petition has been filed before this Court. He argued that since there was a dispute between two groups, hence respondent No.3 approached respondent No.2 u/s 9(6) of IRA, 2012, who adjourned the matter for 12.03.2013, but due to urgency, respondent No.3 filed a miscellaneous application on which, said order dated 05.03.2013 has been

passed, which is interim in nature. In view of above arguments, he has requested for dismissal of the instant writ petition.

5. Arguments have been heard, record as well as relevant provisions of law perused.

6. The petitioner himself has admitted in para (d) of instant writ petition that he had not participated in the election process therefore he is a stranger for the purpose of filing instant writ petition, as the same could be filed by an approved office bearer.

7. Moreover, order dated 07.02.2013 was passed by Member, NIRC with the consent of parties through which fresh internal election of the Union were to be conducted in the month of March, 2013 in accordance with the Constitution of the Union and provisions of IRA, 2012, hence the petitioner cannot take divergent plea before this Court by impugning order dated 05.03.2013.

8. It is also pertinent to mention here that the order impugned is interim in nature, hence the petitioner should have approached proper forum i.e. NIRC for redressal of his grievance by filing appeal u/s 58 of the IRA, 2012, as such, instant writ petition is not maintainable in its present form. Said section 58 of the IRA, 2012 is reproduced hereunder: -

"58. Appeals (1) Notwithstanding anything contained in, this Act, or in any other law for the time being in force, any person aggrieved by an award or decision given or a sentence or order determining and certifying a collective bargaining unit passed by any Bench of the Commission, may, within thirty days of such award, decision, sentence or order prefer an appeal to the Commission".

9. In view of above discussed legal as well as factual position, instant writ petition, having no merits, is hereby dismissed with no order as to costs.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Zawar

Approved for reporting

Blue Slip added.