JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1997/2018
Pakistan Mobile Communication Limited
Versus
Full Bench NIRC and others

Date of Hearing:	30.01.2019
Petitioner by:	Hafiz Arfat Ahmad Chaudhry and Ms. Kashifa Niaz Awan, Advocates
Respondents by:	Mr. Abdul Hafeez Amjad, Advocate for respondent No.3

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Pakistan Mobile Communication Limited, impugns the order dated 26.04.2018, passed by the learned Full Bench of the National Industrial Relations Commission (respondent No.1) ("N.I.R.C."), whereby the petitioner's appeal against the order dated 05.07.2017, passed by the learned Member, N.I.R.C. (respondent No.2), was dismissed. Vide the said order dated 05.07.2017, respondent No.2 accepted the grievance petition filed by Tariq Mehmood (respondent No.3) and set-aside his termination order dated 17.03.2008. Furthermore, the petitioner was directed to reinstate respondent No.3 in service with all back benefits within a period of one month.

2. The record shows that on 31.12.1997, the petitioner appointed respondent No.3 as a Transport Assistant to be based at Lahore with effect from 01.01.1998. On the satisfactory completion of respondent No.3's three-month probation period, his services were confirmed entitling him to all the benefits available to the permanent staff of his cadre in the petitioner/Company. Respondent No.3's employment contract contains a termination clause which is reproduced herein below:-

> *"Termination of Service:*
> *During the probationary period either the company or you may terminate this service agreement at any time by giving 24 hours notice in writing, same in the case of dismissal due to misconduct, in which case the company may terminate this service agreement without any notice or payment in lieu thereof. After confirmation either party can terminate the services after giving one month's notice in writing or salary in lieu thereof."*
> **(Emphasis added)**

3. Vide letter dated 17.03.2008, the petitioner terminated respondent No.3's services. The said termination letter is reproduced in **"Schedule-A"** hereto. Respondent No.3's claim before the N.I.R.C. was that his termination was unlawful.

4. On 25.03.2008, respondent No.3 submitted a grievance notice to the petitioner. In the said grievance notice, respondent No.3 asserted that he was a workman and that the termination of his services was in violation of the provisions of the West Pakistan Industrial and Commercial (Standing Orders) Ordinance, 1968 ("the 1968 Ordinance"). In the petitioner's reply dated 10.04.2008 to the said grievance notice, the petitioner took the position that respondent No.3's employment was governed by the terms and conditions of his appointment letter dated 31.12.1997. Furthermore, in the said reply, respondent No.3 had been accused of unjustly favouring some drivers; misuse of authority; violation of the departmental procedures; and having a *"rude and ill-treating attitude towards other drivers generally"*. It was also asserted that the allegations against respondent No.3 had been established in an inquiry against him.

5. On 06.05.2008, respondent No.3 filed a petition under Section 46 of the Industrial Relations Ordinance, 2002 ("the 2002 Ordinance") against the petitioner before the Labour Court, Islamabad, praying for the termination letter dated 17.03.2008 to be set-aside and for respondent No.3 to be reinstated with all back benefits.

6. While the proceedings were pending before the Labour Court, the Industrial Relations Act, 2008, ceased to be in force with effect from 30.04.2010 by virtue of a sunset clause contained therein. This caused the petitioner to file an application before the Labour Court for the dismissal of respondent No.3's petition. Vide order dated 04.09.2010, the said application was dismissed. The said order dated 04.09.2010 was assailed by the petitioner in writ petition No.4114/2010 before this Court. Vide order dated 10.04.2012, this Court set-aside the said order dated 04.09.2010 after recording the statement of the learned counsel for

respondent No.3 that after 30.04.2010, orders passed under the provisions of the Industrial Relations Act, 2008, would be *ultra vires, void-ab initio* and without jurisdiction.

7. After the enactment of the Industrial Relations Act, 2012 ("I.R.A."), respondent No.3 filed an application before the N.I.R.C. for the transfer of his case from the Labour Court to the N.I.R.C. Vide order dated 03.05.2012, passed by the learned Member, N.I.R.C., the said application was allowed and respondent No.3's case was transferred to the N.I.R.C. The petitioner assailed the said order dated 03.05.2012 in writ petition No.3458/2018 before this Court. Vide order dated 02.11.2015, this Court dismissed the said writ petition and upheld the said order dated 03.05.2012. Subsequently, the petitioner filed an application for the dismissal of the grievance petition on the ground that the N.I.R.C. had no power to withdraw the petition from the Labour Court after the enactment of the I.R.A. since the said petition did not pertain to an unfair labour practice. Vide order dated 28.08.2015, the learned Member, N.I.R.C., dismissed the said application.

8. After the recording of evidence, the learned Member, N.I.R.C., vide order dated 05.07.2017, allowed respondent No.3's grievance petition and set-aside the termination letter dated 17.03.2008. Furthermore, the petitioner was directed to reinstate respondent No.3 in service with all back benefits within a period of one month. The petitioner's appeal against the said order dated 05.07.2017 was also dismissed by the learned Full Bench, N.I.R.C., vide order dated 26.04.2018. The said concurrent orders have been impugned by the petitioner in the instant writ petition.

9. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that under the terms of respondent No.3's employment contract, the petitioner had the right to terminate his services by giving him one month's notice or salary in *lieu* thereof; that the termination of respondent No.3's employment vide letter dated 17.03.2008 was strictly in accordance with the provisions of respondent No.3's employment contract; that the said letter dated 17.03.2008 does not in any manner stigmatize the petitioner or adversely affect his

future employment prospects; that Standing Order 12(1) of the 1968 Ordinance provides *inter-alia* that for terminating the employment of a permanent workman, for any reason other than misconduct, one month's notice is to be given either by the employer or the workman; that in the termination letter dated 17.03.2008, no allegation of misconduct had been made against respondent No.3; that the allegations of misconduct made by the petitioner against respondent No.3 in its replies to the grievance notice and the grievance petition are of no consequence since no such allegations were made against respondent No.3 in the termination letter dated 17.03.2008; that since respondent No.3 had not been punished or reprimanded for any misconduct, Standing Order 15 of the 1968 Ordinance was not attracted in the instant case; and that since respondent No.3 was not a workman, he could not have invoked the jurisdiction of the Labour Court and/or N.I.R.C.

10. Learned counsel for the petitioner further submitted that respondent No.3 had challenged the termination order dated 17.03.2008 before the Labour Court, Islamabad, under Section 46 of the 2002 Ordinance; that the said Ordinance was repealed and replaced by the Industrial Relations Act, 2008, which ceased to have any force with effect from 30.04.2010 due to a sunset provision contained therein; that after the enactment of the I.R.A., respondent No.3's application could not have been transferred from the Labour Court to the N.I.R.C. since under section 57(2)(b) of the I.R.A. only those petitions could be transferred to the N.I.R.C. which entailed an unfair labour practice; that since respondent No.3's case has nothing to do with an unfair labour practice, the same could not have been transferred to the N.I.R.C. under section 57(2)(b) of the I.R.A.; and that the proceedings before the N.I.R.C., after the transfer of the case from the Labour Court, were *coram-non-judice*. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on several cases including *"Muhammad Siddiq Javaid Chaudhry Vs. Government of West Pakistan" (PLD*

1974 SC 394), "Muhammad Hussain Naqshbandi Vs. Government of the Punjab" (2004 SCMR 44), "Mushtaq Ahmad Vs. Pakistan Cricket Board" (1997 PLC (C.S.) 921), "Riaz Ali Khan Vs. Pakistan" (PLD 1967 Lahore 491), "Sikandar Hayat Vs. Sindh Labour Appellate Tribunal" (1991 PLC 508), "Abdul Hameed Kiranvi Vs. Sindh Labour Appellate Tribunal" (1990 PLC 213) **and the judgment in the case of "*Air League of PIAC Employees Vs. Federation of Pakistan" (2011 SCMR 1254).***

11. On the other hand, learned counsel for respondent No.3 submitted that the petitioner is a private limited company; that respondent No.3 was the petitioner's permanent employee; that the terms and conditions of respondent No.3's employment with the petitioner were to be governed by the provisions of the 1968 Ordinance; that respondent No.3's termination from service was not a termination simpliciter; that Standing Order 12(3) of the 1968 Ordinance provides *inter-alia* that the services of a workman shall not be terminated except by an order in writing which shall explicitly state the reasons for the action; that no plausible reasons were given by the petitioner for respondent No.3's termination; that in the termination letter dated 17.03.2008, respondent No.3 was informed that his *"services are no longer required"*; that the said reason given in the termination letter is not a valid reason under the law; that the real reason for respondent No.3's termination was clearly set out by the petitioner in its replies to respondent No.3's grievance notice and grievance petition; that in the said replies, respondent No.3 was alleged to have committed misconduct; that the petitioner cannot wriggle out of the position taken by its pleadings; that even though respondent No.3 was alleged to have committed misconduct, no inquiry as required under Standing Order 15 of the 1968 Ordinance was conducted by the petitioner against respondent No.3; and that Standing Order 12(5) of the 1968 Ordinance provides that the services of a permanent or a temporary workman shall not be terminated on the ground of misconduct otherwise than in the manner prescribed in Standing Order 15.

12. Furthermore, learned counsel for respondent No.3 submitted that the concurrent orders passed by the learned Member and the learned Full Bench of N.I.R.C. do not suffer from any jurisdictional infirmity so as to warrant interference in the Constitutional jurisdiction of this Court; that no procedural irregularity or illegality had been committed in the proceedings before the N.I.R.C.; and that the order for the requisition of respondent No.3's case against the petitioner from the Labour Court to the N.I.R.C. also did not suffer from any jurisdictional infirmity. Learned counsel for respondent No.3 prayed for the writ petition to be dismissed. No case law was relied upon by the learned counsel for respondent No.3 in support of his contentions.

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

14. The facts leading to the filing of the instant petition have been set out in sufficient details in paragraphs 2 to 8 above and need not be recapitulated.

15. Perusal of the letter dated 17.03.2008, whereby the petitioner terminated respondent No.3's employment, shows that the same does not in any manner stigmatize respondent No.3. The said letter appears to be in consonance with the terms and conditions of respondent No.3's appointment letter dated 31.12.1997. The sole reason advanced in the said letter by the petitioner for respondent No.3's termination is that his *"services are no longer required".*

16. Now Standing Order 12(1) of the 1968 Ordinance provides that for terminating employment of a permanent workman, for any reason other than misconduct, one month's notice shall be given either by the employer or the workman. Furthermore, it provides that one month's wages calculated on the basis of average wages earned by the workman during the last three months shall be paid in *lieu* of notice. The manner in which the services of a workman are to be terminated is set out in Standing Order 12(3) of the 1968 Ordinance which provides *inter-alia* that the services of a workman shall not be terminated, nor shall a workman be

removed, retrenched, discharged or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken. Standing Order 12(3) of the 1968 Ordinance makes it obligatory for the employer to explicitly state the reasons for the termination of a workman's services in an order in writing.

17. Standing Order 12(5) of the 1968 Ordinance prohibits an employer from terminating the services of a permanent or a temporary workman on the ground of misconduct in a manner otherwise than the one prescribed in Standing Order 15 of the 1968 Ordinance. Standing Order 15(4) of the 1968 Ordinance provides that no order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct within one month of the date of such misconduct or of the date on which the alleged misconduct comes to the notice of the employer and is given an opportunity to explain the circumstances alleged against him. Furthermore, it is provided that the approval of the employer shall be required in every case of dismissal and the employer shall institute independent inquiries before dealing with charges against a workman.

18. The vital question that needs to be answered is whether the termination of respondent No.3's services was for any reason other than misconduct. The termination letter dated 17.03.2008, when read in isolation, does not show that respondent No.3's services were terminated due to misconduct. However, the petitioner, in reply to respondent No.3's grievance notice, has hurled many allegations of misconduct against respondent No.3. In the said reply, the petitioner has also given a justification for not mentioning such allegations against respondent No.3 in the termination letter. Learned counsel for the petitioner had submitted that had the petitioner mentioned the incidents of respondent No.3's misconduct in the said termination letter, it would have stigmatized him and adversely affected his future employment prospects. It would also have deprived respondent No.3 of his dues payable by the petitioner. For the purposes of clarity, the relevant portion of the petitioner's reply to the

grievance notice dated 10.04.2008 setting out the actual reasons for respondent No.3's termination are reproduced herein below:-

> ***"3. … The performance of your duties as 'Supervisor Transport' particularly during recent months, was not in accordance with PMCL policies.***
> ***4. … The reasons of termination of your employment with PMCL were duly communicated to you (which include rude and ill-treating attitude towards drivers generally; unjustly favouring some drivers; misuse of authority; and violation of departmental procedures; etc. which was duly established in the inquiry conducted by PMCL – though it was not required under the law). These were not set out in the termination letter for your own benefit. Without prejudice, your employment was terminated as per terms and conditions of your employment as governed under the Appointment Letter, and Rules and Regulations of PMCL, whereby either party was entitled to terminate your employment with PMCL without assigning any reason."***

19. Additionally, the petitioner's stance in its reply to respondent No.3's petition filed before the Labour Court under section 46 of the 2002 Ordinance was consistent with its above-mentioned reply to the grievance petition. In this regard, paragraph 6 of the petitioner's reply filed before the Labour Court is reproduced herein below:-

> ***"6. The Petitioner alleged in the petition that without any reason or justification the Petitioner was terminated from employment, the Petitioner was serving in Respondent company as 'Supervisor Transport' and he did his job at his own but not according to the policy of the Respondent. During his services, the Petitioner was informed his ill-treating attitude towards driver, generally, unjustly favouring some drivers, misuse of authority and violation of departmental procedure, etc. and an inquiry was conducted by the PMCL even this inquiry was not required according to the policy of the Respondent. These reasons were not mentioned in the termination letter for the future benefit of the Petitioner. This fact is also provided in the policy of Respondent that the PMCL is entitled to terminate the employment without assigning any reason."***

20. The petitioner's said reply filed before the Labour Court as well as the reply to respondent No.3's grievance notice sets out the true and actual reason for respondent No.3's termination. The petitioner cannot be permitted to take a position inconsistent with the one taken by it in the said replies *qua* the actual reason for respondent No.3's termination. Since several allegations of misconduct had been made against respondent No.3, it was obligatory for the petitioner to have conducted an inquiry against respondent No.3 as required by Standing Orders 12(5) and 15(4)

of the 1968 Ordinance. There is nothing on the record to suggest that any inquiry as contemplated by the said provisions of the 1968 Ordinance had been conducted by the petitioner against respondent No.3. There was nothing preventing the petitioner to have conducted an inquiry against respondent No.3, giving him an opportunity to defend himself against the allegations of misconduct levelled against him. This, the petitioner admittedly did not do. Therefore, the learned Member and the learned Full Bench of the N.I.R.C. did not commit any illegality by concurrently allowing respondent No.3's petition and setting-aside the termination letter dated 17.03.2008.

21. The termination letter dated 17.03.2008 is not even in conformity with the requirements of Standing Order 12(3) of the 1968 Ordinance. As mentioned above, an employer is required to give reasons in writing for terminating the services of a permanent employee. Such reasons being justiciable have to be reasons sustainable in law. It is well settled that simply to inform an employee that his services are no longer required is not a reason good enough for the termination of a permanent employee's services and does not satisfy the requirement of Standing Order 12(3) of the 1968 Ordinance. Consequently, I am of the view that the termination letter dated 17.03.2008, being devoid of valid reasons, and therefore, in contravention of Standing Order 12(3) of the 1968 Ordinance was correctly set-aside by the learned Member and the learned Full Bench of the N.I.R.C. In holding so, I derive guidance from the law laid down in the following cases:-

(i) In the case of *"Ghulam Ahmed Vs. Sindh Labour Appellate Tribunal" (1990 PLC (C.S.) 385),* the termination letter, whereby the employer terminated the services of a permanent workman contained a statement to the effect that his services were no longer required. This was held by the Hon'ble High Court of Sindh not to be in accordance with the provisions of Standing Order 12(3) of the 1968

Ordinance. In the said report, Mr. Saleem Akhtar, J. (as he then was) had the occasion to hold as follows:-

> ***"According to Mr. Syed Ali Madad Shah, the learned counsel for respondent No.3 the statement that 'the service is no longer required' is a sufficient reason as required by Standing Order No.12(3). A perusal of this Standing Order will show that it prohibits the termination of services of a workman or his removal, retrenchment and discharge except by an order in writing. It also provides that this order in writing should contain expressly and clearly the reasons for the action taken against the workman. Therefore, when the order of termination or retrenchment is issued it is the duty of the employer to expressly and clearly give the reasons due to which service has been terminated. Any vague statement in this regard will not amount to compliance with Standing Order 12. The Standing Orders Ordinance is a beneficial legislation intended to protect the interest of the workmen and also to create harmony in the industry. This being the nature of legislation it should be liberally construed to give the, maximum benefit within the meaning and framework of law. The wisdom behind this provision seems to be that the workman whose services are terminated must be made aware of the facts leading to termination, or else it will not be possible for him to challenge it in a proper manner."***

(ii) In the case of *"General Tyre & Rubber Company of Pakistan Limited, Karachi Vs. Sindh Labour Appellate Tribunal" (1992 PLC 1028),* the employee's letter of appointment clearly provided that his services were liable to be terminated without any notice or pay in *lieu* thereof during the employment period. The letter whereby the employer terminated the employee's services provided that "*as per terms and conditions of your appointment letter your services are no longer required by the company*". It was held by the Hon'ble High Court of Sindh that the termination of the employee simply on the ground that his services are no longer required failed to meet the requirement of Standing Order 12(3) of the 1968 Ordinance. Furthermore, it was held as follows:-

> ***"No doubt, the letter refers to the terms and conditions set out in the appointment letter which clearly indicates, as pointed out earlier, that the***

> ***services of each of the respondents were of temporary nature not likely to last for more than nine months and that their services were liable to be terminated at any time without any notice or pay in lieu thereof within such period but in our opinion, the said letter does not meet the requirements of Standing Order 12(3). No doubt, it was held in the case of Lever Brothers Pakistan Limited that the employer is not obliged to state reasons for the decision taken by him, but the same does not absolve the employer from his obligation to explicitly state the reasons for the action taken by him. Although the case of the petitioner in each of these petitions is that the respondents had been engaged to share extra work load which was likely to finish at any time within nine months from the date of the appointment of each of the respondents but as is evident from the said letters of termination such reasons have not been communicated to the respondents. As has been observed by a Division Bench of this Court in the case of Ghulam Ahmed, reference to which has been earlier made in this judgment, Standing Orders Ordinance is a beneficial legislation intended to protect the interests of the workmen and to produce harmonious relationship between the employer and the workmen, therefore, it should be liberally construed to give maximum benefit within the framework of law. Not only that the workman whose services have been terminated has a right to know the reasons on account of which such action has been taken by the employer, but the reasons must be such as can be sustained by the Court of law. For such reasons, we are inclined to hold that the said letters terminating the services of the respondents fail to meet the requirements of Standing Order 12(3).”***

The Hon'ble Judge who authored the said judgment rose to grace the Hon'ble Supreme Court. Therefore, the said judgment deserves reverence and respect.

(iii) **In the case of *“Muslim Commercial Bank Ltd. Vs. Ghulam Haider” (2005 PLC 320),* it was held by the Hon'ble High Court of Sindh that the termination of employees’ services on the ground th**at they were no longer required **was in violation of the law. Such employees were ordered to be reinstated with all consequential back benefits.**

(iv) **In the case of *“Farooq Ahmad Vs. Delta Shipping (Pvt.) Ltd." (2006 PLC 102),* the services of a permanent employee were terminated by the employer on the**

ground that his services were *"no longer required".* It was held by the Hon'ble High Court of Sindh that the termination of a permanent employee in such a manner was not in conformity of the requirement of Standing Order 12(3) of the 1968 Ordinance. The services of the employee were held to have been terminated illegally and it was ordered that he be reinstated in service with all back benefits. The relevant portion of paragraph 9 of the said report is reproduced herein below:-

> ***"9. It will be noticed that in the above letter no reason whatsoever has been mentioned for terminating the services of the appellant except that his services were no longer required. It is pertinent to point out that paragraph 12(3) of the Standing Order clearly stipulates that "the services of a workman shall not be terminated, nor shall a workman be removed, retrenched, or dismissed from service, except by an order in, writing which shall explicitly state the reason for the action taken..." Thus the requirement of law is that there should be an order in writing under which the services of a workman are terminated and secondly that the order must clearly and fully show the reason for termination of his services. It will be noticed that the no explicit reason has been mentioned in the order. According to the Chambers 21st Century Dictionary the word "explicit" means, "stated or shown fully or clearly". Thus the requirement of law is that the reason for the termination of services be fully shown in the order. The phrase "no longer required" or "no more required" simply indicates the final decision of the employer in removing the workman from service on undisclosed reason to the workman. The reasons may be known to the employer on which he formed the opinion that the services of the workman were no more required but those reasons must be in writing in the form of an order. The said reasons should be clear, unambiguous and understandable which should be specifically mentioned in the order."***

(v) In the case of *"Servier Research and Pharmaceuticals Pakistan (Pvt.) Limited Vs. Aamir Sultan" (2007 PLC 388),* an employee's services had been dispensed with simply on the ground that they were "*no more required*". Neither was any show cause notice issued to the employee nor had any inquiry been conducted against him. The employee's grievance petition under

section 46 of the 2002 Ordinance was concurrently allowed by the Labour Court and the Hon'ble Peshawar High Court with the direction to the employer to reinstate the employee with full back benefits and arrears. Furthermore, it was held that the employer had acted in a mechanical manner and had terminated the services of a permanent employee without giving him a right of hearing.

22. Although the terms and conditions of respondent No.3's appointment letter had authorized the petitioner to terminate respondent No.3's services after giving one month's notice in writing or salary in *lieu* thereof but this cannot override the requirements of Standing Order 12(3) of the 1968 Ordinance. It is well settled that parties cannot contract out of the beneficial provisions in a statute. Reference in this regard may be made to the law laid down in the case of *"E. A. Evans Vs. Muhammad Ashraf (PLD 1964 SC 536).*

23. As regards the contention of the learned counsel for the petitioner that respondent No.3 was not a *"workman"* and was therefore, not entitled to invoke the jurisdiction of the Labour Court and/or the N.I.R.C., although respondent No.3's designation as per his appointment letter dated 31.12.1997 was *"Transport Assistant",* but it is not disputed that at all material times of his employment with the petitioner, he was performing duties of a driver. "Workman" has been defined in Standing Order 2(i) of the 1968 Ordinance as "*any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or electrical work for hire or reward."* Since respondent No.3's duty as a driver predominantly involved manual work, he came within the meaning of a *"workman"* as defined in Standing Order 2(i) of the 1968 Ordinance. It is well settled that designation or the quantum of salary were not the factors for determining whether a person was a *"workman"* or not. It is the nature of duties that a person performs that determines whether a person is a workman or not. Reference in this regard may be made to the law laid down in the cases of *"Muslim Commercial Bank Ltd. Vs. Muhammad*

Shahid Mumtaz" (2011 SCMR 1475),"Habib Bank Ltd. Vs. Punjab Labour Appellate Tribunal, Lahore" (2016 PLC 439), "Muhammad Younis Vs. Punjab Labour Appellate Tribunal, Lahore" (2014 PLC 260), "Ghulam Abbas Vs. Premier Insurance Company Ltd." (2008 PLC 290) **and** ***"Ittehad Chemicals Vs. Punjab Labour Appellate Tribunal" (1990 PLC 227).***

24. Under section 33(4) of the I.R.A., if the employer fails to communicate a decision to a worker within a period of fifteen days of the grievance being brought to his notice by the worker, or if the worker is dissatisfied with the employer's decision, the worker can take the matter to the N.I.R.C. In the case at hand, respondent No.3 was dissatisfied with the petitioner's decision contained in the reply to respondent No.3's grievance notice. This prompted respondent No.3 to invoke the jurisdiction of the Labour Court. The petitioner does not question the jurisdiction of the N.I.R.C. to adjudicate upon respondent No.3's application but asserts that the case could not have been requisitioned since it did not entail any unfair labour practice. Since respondent No.3's termination from service was not just unlawful but also unfair, the learned Member N.I.R.C., did not commit any illegality by requisitioning/calling for respondent No.3's case from the Labour Court after the enactment of the I.R.A. This was done in lawful exercise of the powers under section 57(2)(b) of the I.R.A. which provides that the N.I.R.C. may, on the application of a party, or of its own motion, withdraw from a Labour Court of a Province any application, proceedings or appeal relating to unfair labour practice which fall within the jurisdiction of the N.I.R.C. The petitioner's contention that after the Industrial Relations Act, 2008, ceased to be in force due to a sunset clause (i.e. section 87(3)) therein, respondent No.3's petition before the Labour Court was not proceedable and consequently the N.I.R.C. could not have requisitioned the said case, does not appeal to me. Section 88(b) of the I.R.A. provides *inter-alia* that notwithstanding the repeal of the Industrial Relations Act, 2008, anything done, rules made, notification or order issued, officer appointed, Court constituted, notice given, proceedings commenced or other

actions taken under the Industrial Relations Act, 2008, shall be deemed to have been done, made, issued, appointed, constituted, given, commenced, or taken as the case may be, under the corresponding provisions of the I.R.A. By virtue of this deeming clause in the I.R.A., the petition filed by respondent No.3 before the Labour Court would be considered as *"proceedings commenced"* under the corresponding provision of the I.R.A. (i.e. section 33(4)).

25. Since I have been given no reason to interfere with the concurrent orders passed by the learned Member and the learned Full Bench, N.I.R.C., the instant petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019.

(JUDGE)

APPROVED FOR REPORTING

*Qamar Khan**

Schedule –A

"March 17, 2008

Tariq Mahmood (Emp. No.478),
Supervisor Transport
Administration
PMCL – Mobilink
North – Islamabad

Termination of Employment

Dear Tariq,

We regret to inform you that your services are no longer required and your employment with PMCL – Mobilink has been terminated with immediate effect i.e. March 17, 2008.

Including but not limited to your terms of employment (reference your appointment letter, Termination of Service clause), you will be paid on month salary in *lieu* of the notice period. You may collect your Full & Final settlement dues within 20 working days, subject to your clearance from respective departments.

We would like to thank you for your past efforts and wish all the best for your future endeavors.

Sincerely,

For & On Behalf of PMCL – Mobilink

Syed Adeel Afraz
Manager,
Human Resource Operations"