

HCJD/C-121
JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No.101/2017

AIR LEAGUE OF PIAC EMPLOYEES
VERSUS
MEMBER NIRC, ETC.

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| Petitioners by | : | <u>M/s. Abdul Hafeez Amjad, Muhammad Shabbir Jamal, Syed Javaid Akbar Shah, Ch. Sagheer Ahmed, A. Ammar Sehri, Advocates in their respective petitions.</u> |
| Respondents by | : | <u>M/s Muhammad Munir Paracha, Nauman Munir Paracha, Abdul Hafeez Amjad, Muhammad Umair Paracha and Ch. Muhammad Khalid Farooq, Advocates in their respective petitions.</u> <u>Mr. Afnan Karim Kundi, A.A.G.</u> <u>Mr. Rashid Zaffar, G.M/I.R</u> |
| Date of Hearing | : | <u>08-02-2017.</u> |

ATHAR MINALLAH J: Through this consolidated order I shall decide the instant petition, along with the connected petitions i.e. W.P.No.4641/2016, W.P.No. 164/2017, W.P.No. 304/2017 & W.P.No. 411/2017, since common questions of law are involved in all these petitions.

2. The facts, in brief, are that the litigating parties are registered Trade Unions under the Industrial Relations Act 2012 (hereinafter referred to as the "***Act of 2012***"). Applications were filed by the respective Trade Unions for determination of the Collective Bargaining Agent. The office of the Registrar of the National Industrial Relations Commission (hereinafter referred to as the "***Commission***")

is vacant at the moment because no person has been appointed as yet. In all these petitions the respective applications have either been entertained by the Commission pursuant to powers vested in it under section 54(c), or proceedings have been initiated by the Joint Registrar for determining the Collective Bargaining Agent amongst the Trade Unions in various entities. The parties before this Court, who are resisting the process initiated for the determination, have argued that in the absence of a Registrar the Joint Registrar is not empowered to exercise powers or perform functions under section 19 of the Act of 2012. On the other hand, the Trade Unions which are seeking determination of a Collective Bargaining Agent have taken the stance that in the absence of a Registrar, a Joint Registrar of the Commission is vested with the power and jurisdiction to exercise the powers and functions provided under section 5, read with section 19 of the Act of 2012. The controversy in a nutshell, therefore, relates to the question as to whether or not the powers and jurisdiction can be exercised either by the Commission or a Joint Registrar for the purposes of the determination of a Collective Bargaining Agent amongst the Trade Unions in the absence of a Registrar. Two questions are, therefore, to be answered; firstly, whether the Commission is empowered to make a determination, and if so, then whether in this regard a Joint Registrar can be directed to proceed under section 19 of the Act of 2012, and secondly, whether the Joint Registrar in the absence of a Registrar is vested with the power and jurisdiction to make a determination in the manner provided *ibid*.

3. In order to answer the above questions, the learned counsels from both sides argued at length. The learned counsels opposing the proposition have argued that a Joint Registrar cannot step into the shoes of a Registrar for the purposes of making a determination, and thus cannot exercise powers under section 19 of the Act of 2012 when the latter office is vacant. They have argued that section 4 of the Act of 2012 clearly refers to a Joint Registrar as a person who is appointed to assist the Registrar and, therefore, the former is not vested with the jurisdiction independently. Moreover, it is their case that in the absence of the Registrar a Joint Registrar cannot exercise powers or functions under section 19. They have extensively referred to various provisions of the Act of 2012 in support of their contention that the legislature has expressly used the expression Registrar and, therefore, a Joint Registrar has been excluded.
4. On the other hand, the learned counsels supporting the proposition that a Joint Registrar is vested with powers and jurisdiction independently, have laid stress on the language of section 5 of the Act of 2012. They have strenuously argued that even when the post of the Registrar is vacant or the latter is absent, the Joint Registrar is competent to perform functions and exercise powers independently.
5. The learned counsels have been heard and the record perused with their able assistance.
6. In order to answer the questions which have emerged out of the arguments advanced by the learned counsels from both sides, it would be advantageous to examine the provisions of the Act of 2012.

The Act of 2012 was notified in the official gazette on 14th March 2012. The object of enacting the said legislation, as described in its preamble, was the consolidation and rationalization of the law relating to the formation of trade unions, and improvement of relations between employers and workmen in the Islamabad Capital Territory and in trans provincial establishments and industry. Section 2 (iv) defines a "collective bargaining agent" in relation to an establishment, group of establishments or industry as meaning such a trade union of the workmen, which under section 19 of the Act of 2012, is the agent of the workmen in the establishment or industry, as the case may be, in the matter of collective bargaining. The expression 'establishment', 'group of establishments', 'industry', 'industry-wise trade union' and 'trade union' are defined in clauses (x), (xiii), (xvii), (xviii) and (xxxi) respectively of section 2. The rights of workers have been described in section 3. Section 2 (xxvii) defines the expression 'Registrar' as meaning a Registrar of trade unions appointed under section 4. Section 4 of the Act of 2012 provides that for the purposes of the Act of 2012 the Government shall, by notification in the official Gazette, appoint the Registrar of Trade Unions who shall be assisted by one or more Joint Registrars. The expression Joint Registrar has not been defined in the Act of 2012, however, the appointment is made under section 4 *ibid*. Section 5, though, has been titled as 'Powers and functions of the Registrar' but expressly refers to a Joint Registrar independently. It describes the powers of the Registrar and the Joint Registrar and the language used in the said provision clearly shows that in exercising these powers the latter is not dependent on the former. Section 5, to the extent of the powers and jurisdiction, treats the two offices

independently, as is evident from the language i.e 'The Registrar and the Joint Registrar, as the case may be, shall have the following powers and functions ---'. The expression 'as the case may be' refers to alternatives. Both offices are, therefore, vested with powers, functions and jurisdiction described in section 5 and independent of each other. The provisions of section 5 can by no stretch of the imagination be construed as making the powers vested in a Joint Registrar subject or secondary to the powers vested in a Registrar. Clause (c) of section 5 of the Act of 2012 empowers both the Registrar and the Joint Registrar, independent of one another, to make a determination regarding which one of the trade unions in an establishment or an industry is entitled to be certified as the collective bargaining agent. Likewise, the Act of 2012 separately provides for functions vested in the Commission. Clause (c) of section 54 unambiguously provides that the determination of a collective bargaining agent amongst trade unions and industry-wise trade unions in the Islamabad Capital Territory and trans provincial and federations of such trade unions falls within the ambit of the powers and functions of the Commission. Section 19 of the Act of 2012 provides for the mechanism and procedure leading to certification regarding which of the trade unions is a collective bargaining agent pursuant to the determination made in this regard, either by the Commission, the Registrar or a Joint Registrar, as the case may be.

7. The Act of 2012 is a beneficial statute and, therefore, it ought to be construed liberally by giving the widest possible interpretation. The construction of beneficial legislation is required to be made in a manner which would advance the object of the statute. In

case of doubt, a construction which advances the object and purpose of the legislation is invariably adopted. It is settled law that the expressions and words used by the legislature are ordinarily understood in a sense which would be in harmony with the object of the statute and would effectuate the object of the legislation. Every word used by the legislature has to be given meaning, and futility or redundancy cannot be attributed to the legislature. The meaning of an expression cannot be taken in abstract, and it has to be construed in the light of the object and purpose of the relevant legislation which is being interpreted. There is no cavil to the proposition that while interpreting a statute a Court cannot add, substitute or alter any word or expression nor interfere with the legislative policy.

8. A combined reading of the provisions of the Act of 2012 and the application of the settled principles of interpretation of a statute makes the legislative intent obvious i.e. that the Joint Registrar is distinct from the Registrar and vested with powers and functions described under section 5 of the Act of 2012 independently. The definition of the expression 'Registrar' given in section 2(xxvii) means a Registrar of trade unions appointed under section 4. Section 4, however, titled as 'Registrar of trade unions' has reference to Joint Registrars as well. Section 5 describes the functions and powers of a Registrar and a Joint Registrar. The title of section 5 also refers only to the Registrar. The powers and jurisdiction vested in a Joint Registrar and the Registrar are the same and independent of each other. No other provision of the Act of 2012 has reference to a Joint Registrar. However, the definition of the expression 'Registrar', read with sections

4 and 5, unambiguously manifests the intent of the legislature. The legislature obviously has vested powers and jurisdiction in the Joint Registrar independently. It could have been argued that the titles of sections 4 and 5 have no reference to the expression 'Joint Registrar' and, therefore, the expression 'Registrar' used in other provisions of the Act of 2012 would not be construed as including 'Joint Registrar'. It is a settled law of interpretation of statutory provisions that a heading or title of a section is a key to the interpretation of the section under which it has been arranged, unless the language is inconsistent therewith. Likewise, if the wordings used in the section are ambiguous, resort to the heading can be made. Nevertheless, the unambiguous meanings of the section would prevail. Sections 4 and 5 explicitly refer to a Registrar and a Joint Registrar independent of each other. When sections 2 (xxix), 4 and 5 of the Act of 2012 are read together, it becomes obvious that the legislature, in its wisdom, has vested the same powers and jurisdiction in a Registrar and Joint Registrar, independent of each other and both are appointed under section 4 and thus, as a corollary, fall within the definition of the expression 'Registrar'. The various provisions which refer to the 'Registrar' would thus include 'Joint Registrar' unless expressly excluded. If this was not the case then section 5 of the Act of 2012 would become redundant to the extent of the powers vested in a Joint Registrar since no provision of the Act of 2012 refers to a Joint Registrar. Legislative futility or redundancy cannot be attributed to the legislature and is thus out rightly ruled out. Moreover, there is no provision in the Act of 2012 which by any stretch of the imagination makes the functions and powers vested in a Joint Registrar as being subject to the presence or

directions of a Registrar. It is, therefore, held that the expression Registrar used in the Act of 2012 inevitably includes a Joint Registrar, unless otherwise intended and excluded by using express language in this regard. A Joint Registrar is, therefore, competent to exercise the powers and jurisdiction, inter alia, under section 19 independently, even when a Registrar has not been appointed or the office is vacant.

9. The powers vested in the Commission under section 54 (c) in the context of determining a collective bargaining agent are expansive and independent of the jurisdiction vested in a Registrar or a Joint Registrar, as the case may be. The Commission, therefore, is empowered to initiate proceedings and pass such orders as it may deem fit, requiring either a Registrar or a Joint Registrar to perform functions provided under section 19 of the Act of 2012. In some of the cases the Commission, pursuant to powers vested under section 54 (c), has directed to proceed under section 19. The exercise of powers by the Commission under section 54 (c) are lawful and valid and do not suffer from any legal infirmity.

10. In all these cases the initiation of proceedings relating to the determination of a collective bargaining agent either by the Commission or the Joint Registrar do not suffer from lack of jurisdiction and are in consonance with the Act of 2012. The Commission or the Joint Registrar, as the case may be, are empowered to proceed and complete the process in the manner provided under the Act of 2012 for determining a collective bargaining agent from amongst the Trade Unions. It is noted that an order passed by the Joint Registrar is appealable under the Act of 2012.

11. The petitions are, therefore, accordingly disposed of. The Commission or the Joint Registrar, as the case may be, are expected to proceed in accordance with the law. It is noted that the determination of a collective bargaining agent is pivotal for achieving the object and purposes of the Act of 2012. Such a determination ought to be made expeditiously, in a transparent manner and pursuant to the provisions of the Act of 2012.

(ATHAR MINALLAH)
JUDGE

Announced in the open court on March 21, 2017.

JUDGE

Approved for reposting.

***Asif Mughal/**