

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P.No.682 of 2017

Zafar Iqbal

Versus

The President, United Bank Limited and others

Date of Hearing: 17.05.2017.
Petitioners by: Qazi Ahmed Naeem Qureshi, Advocate.
Respondents by: Mr. Faisal Mehmood Ghani, Advocate for respondents No.1 to 3.

MIANGUL HASSAN AURANGZEB, J:-Through the instant writ petition, the petitioner, Zafar Iqbal, seeks the issuance of a writ of *certiorari* to set aside the order dated 23.01.2017, passed by respondent No.4 (Registrar/Joint Registrar Trade Unions, Islamabad) and order dated 13.01.2017 (mistakenly written as 16.01.2017), passed by respondent No.5 (learned Member, National Industrial Relations Commission, Islamabad). Vide the said order dated 23.01.2017, respondent No.4 declined to entertain the petitioner's application under Section 19(13) of the Industrial Relations Act, 2012 ("I.R.A.") for the suspension of the order dated 16.01.2017 passed by the Management of United Bank Limited ("U.B.L."), whereby major penalty of "dismissal from service" was imposed on the petitioner. Vide order dated 13.01.2017 (which is an interim order) respondent No.5 stayed the proceedings of the referendum which were to be held in Islamabad and the Provinces of Punjab and Khyber Pakhtunkhwa.

2. Learned counsel for the petitioner submitted that the orders dated 23.01.2017 and 13.01.2017 were passed by respondents No.4 and 5, respectively, without taking into consideration the import of Section 19(13) of the I.R.A.; that the said provision had been enacted to combat unfair labour practices committed or intended to be committed by the management in the course of determination of collective bargaining agent/referendum; and that the petitioner's application under Section 19(13) of the I.R.A. is pending adjudication before respondent No.4.

3. Learned counsel for the petitioner submitted that the petitioner has been a permanent employee of U.B.L. (respondent

No.1) since 1983; that the petitioner had not been promoted since the last twenty two years, whereas his colleagues were promoted as grade-I officers; that the petitioner has been meted out discriminatory treatment, because of his trade union activities; that the petitioner was elected as Vice Chairman of the U.B.L. Labour Union on 13.12.1983, and was elected as the President of the said Union from 1989 to 1995; that in year 2003, the petitioner formed another union called “U.B.L. Employees Union Faisalabad” and got it registered from the Registrar Trade Union at Faisalabad; that thereafter, the petitioner was served with explanations letter by the Management; that the petitioner had successfully contested cases against the Management before the National Industrial Relations Commission (“N.I.R.C.”); that the petitioner filed an application under Section 19 of the I.R.A. for holding a referendum in the CBU, which was allowed, and an authorized officer was appointed for holding the referendum; that the rival union filed an application under Section 62 of the I.R.A. for the suspension of the referendum proceedings before respondent No.4; that respondent No.5 has passed an interim order which is against the interest of the petitioner; that finally vide order dated 25.01.2017, the application under Section 62 of the I.R.A. was allowed; that consequently the referendum proceedings were suspended; that on 16.01.2017, the petitioner’s dismissal order was issued by the Management; that the petitioner filed the application before respondent No.4 seeking a restraint against the Management from implementing the dismissal order; the said application was dismissed by respondent No.4, vide order dated 23.01.2017; that against the said order, the petitioner preferred an appeal under Section 12 of the I.R.A., which was dismissed in limine, vide order dated 27.01.2017; and that aggrieved by the said orders, the petitioner has instituted the instant writ petition.

4. Learned counsel further submitted that the orders dated 23.01.2017 and 27.01.2017, passed by respondents No.4 and 5, respectively, are not sustainable in the eyes of law and have been passed in disregard of the requirements under Section 19(13) of the I.R.A.; that under Section 19(13) of the I.R.A., after an

application for referendum is filed, the Management cannot transfer, remove, retrench or terminate any worker, who is an officer of any contestant trade union, save with the permission of the Registrar; that even if the proceedings under Section 19(13) of the I.R.A. are suspended, even then the petitioner could not have been dismissed by the Management; that the purpose of Section 19(13) of the I.R.A. is to protect the workers from unfair labour practices and intrigues of the Management; that since an application under Section 19(2) of the I.R.A. was pending before the Registrar Trade Unions, the petitioner could not have been dismissed. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned orders to be set aside.

5. On the other hand, learned counsel for respondents No.1 to 3 submitted that essentially the petitioner through the instant writ petition challenged his dismissal order dated 16.01.2017; that perusal of the prayer clause of the instant writ petition shows that the order dated 16.01.2017, has been challenged; that against the said dismissal order, the petitioner has filed grievance petition No.4B(63)/2007-L under Section 33 of the I.R.A. before the N.I.R.C., Lahore Bench; that the said petition is still pending, and the same is being contested by the respondents therein; that the said petition was filed on 29.03.2017, whereas, the petitioner's application before the Registrar/Joint Registrar Trade Unions, Islamabad to suspend the said order dated 16.01.2017, was dismissed on 23.01.2017; that the petitioner's appeal against the said order dated 23.01.2017, was dismissed by the learned Member, N.I.R.C. vide order dated 27.01.2017; that before dismissing the petitioner from service, an inquiry was conducted by the Management; that the petitioner in the instant writ petition has challenged his dismissal order as well as the order dated 23.01.2017, passed by the Registrar/Joint Registrar Trade Unions; that since the petitioner's appeal against the said order dated 23.01.2017, was dismissed by the learned Member, N.I.R.C. on 27.01.2017, the said order dated 23.01.2017, merged in the appellate order dated 27.01.2017; that this Court cannot restore status quo ante by suspending the petitioner's dismissal order dated 16.01.2017; and that the petitioner has concealed from this

Court the fact that he has filed a grievance petition against his dismissal order dated 16.01.2017 before the N.I.R.C, Lahore Bench. Learned counsel for respondents No.1 to 3 prayed for the writ petition to be dismissed.

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

7. The record shows that the petitioner was employed in the U.B.L. in 1983. On 30.09.2010, an explanation letter was issued by the Management of the U.B.L. to the petitioner. Against the said explanation letter, the petitioner filed a grievance petition before the N.I.R.C., Lahore Bench. The petitioner's plea in his grievance petition was that he had been victimized by the Management of the U.B.L. due to his trade union activities. The stance of U.B.L. was that the petitioner had not been performing his duties according to the applicable rules and that he does not report for duty on time. The Management of the U.B.L. had also conducted an inquiry and the inquiry report have been filed before the N.I.R.C. in another case involving the petitioner. Vide order dated 20.11.2014, the learned Member N.I.R.C., Lahore Bench, granted an injunction against the Management of the U.B.L. The petitioner's said grievance petition (i.e. case No.4A(12)11-L) remained pending until 09.12.2016, when the same was dismissed. In the order dated 09.12.2016, the learned Member, N.I.R.C., Lahore Bench, held that the petitioner had failed to prove that the explanation letter dated 30.09.2010, was issued to him as a result of an unfair labour practice. Furthermore, it was observed that the Management of the U.B.L. shall proceed against the petitioner in accordance with the law. Since there was no injunctive order in the field, the Management of the U.B.L. dismissed the petitioner on 16.01.2017. The petitioner challenged the said dismissal order dated 16.01.2017, before the N.I.R.C., Lahore Bench in a grievance petition under Section 33 of the I.R.A. A copy of the said grievance petition was brought on record by respondents No.1 to 3. Perusal of the said grievance petition shows that it was filed on 29.03.2017. Although the said grievance petition was filed after the institution of this writ petition, the

petitioner did not amend the petition so as to bring the factum of the filing of the said grievance petition before the N.I.R.C., Lahore Bench on the record. The petitioner's grievance petition attached his dismissal order dated 16.01.2017, is still pending before the N.I.R.C., Lahore Bench. Therefore, I refrain from making any observation as regards the legality of the said dismissal order.

8. Now, the petitioner filed an application under Section 19(2) of the I.R.A. for the holding of a referendum in the U.B.L. Establishment CBU (Punjab, Khyber Pakhtunkhwa and Islamabad). The date on which the said application was filed cannot be discerned from the record. It appears that the Registrar Trade Unions, Islamabad passed orders on the said application appointing an authorized officer. Subsequently, vide order dated 13.01.2017, passed by the learned Member N.I.R.C., Islamabad, the referendum proceedings were stayed. After the issuance of the said stay order, the petitioner was dismissed by the Management of the U.B.L. Thereafter, the petitioner filed an application under Section 19(13) of the I.R.A. before the Registrar Trade Unions, Islamabad, seeking the suspension of the dismissal order dated 16.01.2017, passed by the Management of the U.B.L. Vide order dated 23.01.2017, the learned Registrar Trade Unions, Islamabad, did not entertain the said application on the ground that the learned Member, N.I.R.C., Islamabad had stayed the referendum proceedings vide order dated 13.01.2017. The said order dated 23.01.2017 has been impugned by the petitioner in the instant writ petition. The petitioner had filed an appeal under Section 12 of the I.R.A. before the learned Member N.I.R.C., Islamabad, against the said order dated 23.01.2017. Vide order dated 27.01.2017, the petitioner's said appeal was dismissed by the learned Member N.I.R.C. In the said order dated 27.01.2017, it was *inter-alia* held that since the referendum proceedings had been stayed on 13.01.2017, the referendum proceedings were not in progress when the petitioner was dismissed by the Management of the U.B.L. on 16.01.2017.

9. Now, the petitioner is primarily seeking the protection given to a worker under Section 19(13) of the I.R.A which is reproduced herein below:-

“(13) After an application under sub-section (2) is made to the Registrar, no employer shall transfer, remove, retrench or terminate any worker who is officer of any contestant trade union save with the permission of the Registrar”.

10. Since, the disciplinary/departmental proceedings had commenced against the petitioner way back in the year 2010, but since they were suspended due to an injunctive order, which was confirmed by the N.I.R.C. Lahore Bench on 20.11.2014, the said disciplinary/ departmental proceedings against the petitioner could not culminate in an order. As mentioned above, the petitioner's grievance petition before the N.I.R.C Lahore Bench was dismissed on 09.12.2016. In the said order dated 09.12.2016, it was observed that the Management of the U.B.L could proceed against the petitioner in accordance with the law. Therefore, on 16.01.2017, the Management of the U.B.L dismissed the petitioner from service. On the said date, the referendum proceedings could not be said to have been pending, because the same were suspended by the learned Member N.I.R.C, Islamabad on 13.01.2017. Therefore, I do not find any infirmity in the order dated 23.01.2017, passed by the Registrar Trade Unions, Islamabad, and the order dated 27.01.2017, passed by the learned Member N.I.R.C., Islamabad.

11. The dismissal of the petitioner by the Management of the U.B.L. on 16.01.2017, was a culmination of a departmental/inquiry process that started with the issuance of an explanation letter to the petitioner on 30.09.2010. On an application under Section 19(2) of the I.R.A., for holding a referendum, the Registrar Trade Unions is supposed to hold a secret ballot to determine as to which of the Trade Unions is to be the collective bargaining agent for an establishment, within a period of fifteen days. Now, the embargo on transfers, removals, retrenchment or termination of workers in the said fifteen days period is the mandate of Section 19(13) of the I.R.A. But if the referendum proceedings are suspended, it cannot be said that for all the while that the referendum proceedings are suspended, no transfers, removals, retrenchment or termination of a worker, who is an officer of any contestant trade union, cannot be removed. Since the petitioner has already challenged his dismissal order dated 16.01.2017, in a

grievance petition before the N.I.R.C. Lahore Bench, it would not be appropriate for me to make observations regarding the validity of the said order.

12. In view of the above, this petition is dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

(JUDGE)

Ahtesham Majid*

Uploaded By: Zulqarnain Shah