IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Muhammad Ali Mazhar
Justice Syed Hasan Azhar Rizvi
Justice Aqeel Ahmed Abbasi

CPLA. No.1285-K OF 2022
On appeal from the Judgment dated 11.10.2022 passed by the High Court of Sindh, Karachi in C.P.No.D-4469/2019

Saeed Ahmed .....Petitioner

Versus

Nestle Pakistan Limited and others .....Respondent(s)

For the Petitioner : Mr. Imtiaz Ali Solangi, AHC
(with special permission of the Court)

For the Respondent : Mr. Faisal Mehmood Ghani, ASC
Mr. K.A.Wahab, AOR

Date of Hearing : 23.07.2025

Judgment

Muhammad Ali Mazhar, J: This Civil Petition for leave to appeal is directed against the Judgment dated 11.10.2022 passed by the High Court of Sindh, Karachi in C.P.No.D-4469/2019 whereby the constitution petition filed by the respondent No.1 was allowed and the judgment passed in appeal by the Full Bench of National Industrial Relations Commission (NIRC) was set aside.

2. The short and snappy verities of the case are that the petitioner is a permanent workman within the meaning of Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (**Ordinance**) and Industrial Relations Act,

2012 (**IRA**). Due to toothache, he visited dental surgeon (Dr. Muhammad Karim) on 01.09.2015 and he was advised Root Canal Treatment. After treatment, the petitioner had applied for the reimbursement of medical bill to the respondent No.1 as per approved company policy. However, he was issued a show cause notice on 01.12.2015 by the Manager HR with the allegations that he had submitted bogus medical bill of Rs.10,000/-. The petitioner submitted the reply and denied the allegations. The petitioner participated in the inquiry and also submitted the verified bill on 04.12.2015 with receipt of payment of Rs.10,000/- but on the adverse findings, the petitioner was dismissed from employment on 08.03.2016. The petitioner filed grievance petition in the NIRC which was dismissed. Thereafter, he filed an appeal before Full Bench of the NIRC, which was allowed; the order of the Single Bench NIRC was set aside and the petitioner was ordered to be reinstated with all back benefits. The respondent No. 1/Company filed Constitution Petition in the High Court of Sindh, which was allowed and the order of Full Bench NIRC was set-aside, and the order passed by Single Bench NIRC was maintained.

3. The learned counsel for the petitioner argued that the High Court failed to appreciate that during inquiry the administrator/doctor from the hospital was never called for evidence to prove the guilt of the petitioner and without any lawful justification, set aside the well-reasoned order of Full Bench NIRC. He further argued that the dental clinic confirmed the bill amounting to Rs.10,000/- dated 01.09.2015 through their letter dated 04.12.2015. He further argued that during 18 years of service record, he never committed any misconduct. It was further averred that the medical bill was verified by the said Insurance Company from Dental Clinic but without calling the relevant persons in the inquiry for adducing evidence, the petitioner was declared guilty with mala fide intention.

4. The learned counsel for the respondent No.1 argued that the petitioner submitted a fake document claiming that the Medical Bill for his treatment was of Rs.10,000/- whereas on verification by Allianz EFU Health Insurance Ltd ("Allianz") it was determined that the actual payment made by the petitioner for his dental treatment was Rs.7,000/-. It was further contended that in order to ensure the rules of natural justice and affording opportunity of hearing, the petitioner was called upon to appear before the Inquiry Officer, where he appeared and also cross-examined the prosecution witnesses. Finally he was found guilty by the Inquiry Officer and dismissed from service. It was further contended that the Full Bench of NIRC not only misread the evidence but also ignored the relevant documents. He further argued that the petitioner never submitted verified bill dated 04.12.2015, rather the verification was done by Insurance Company and the letter was produced by the witness of the prosecution [Ms. Shazia Parveen, Assistant Manager Compensation and Benefits] during enquiry proceedings. It was further contended that the Doctor had confirmed that original bill was for Rs.7000/-. (Petitioner had paid Rs.5000/- in advance and Rs.2000/- later on) which proved the guilt of the petitioner who was rightly dismissed from service. The learned counsel for the respondent No.1 cited the case of Sakhib Zar Vs Messrs K-Electric Limited and others **(2024 SCMR 1722)**, wherein it was held that as soon as the act of misconduct is established and the employee is found guilty after due process of law, it is the prerogative of the employer to decide the quantum of punishment out of the various penalties provided in law. Further, the Court or Tribunal/NIRC in exceptional or appropriate cases or circumstances may examine the quantum of punishment to figure out the proportionality and reasonableness and may also nullify or overturn such punishment if found out of proportion vis-à-vis the act of misconduct. In order to strengthen the need for not calling the

doctor in the evidence, the learned counsel relied on the case of State Bank of India Vs. Tarun Kumar Banerjee **(AIR 2000 SC 3028)**, wherein the Court held that a customer of the Bank need not be involved in a domestic enquiry conducted as such a course would not be conducive to proper banker-customer relationship and, therefore, would not be in the interest of the Bank. It was further held that when money was secured, a prudent banker would deposit the same in the account of the customer complaining of loss of money and, therefore, non-production of money also would not be of much materiality. *(The case of Tarun Kumar Banerjee (supra) is quite distinguishable. Neither has it provided us any assistance nor is it germane to the facts and circumstances of the case at hand).*

5. Heard the arguments. In the beginning, we would like to survey to fathom out the quintessence of the two Orders/judgments of NIRC as well as the judgment of the High Court. The gist of Order passed by Single Member NIRC in Case No. 4B(55)/2016-K, dated 04.10.2018, references that the petitioner during cross examination admitted that he was given full opportunity to participate in the inquiry; he did not produce documents or a co-worker, nor did he produce any other witness. After inquiry, petitioner was found guilty of the charge of cheating the company by raising fake/bogus claim; burden of proof was on the petitioner but he neither got exhibited documents in support of his version before the Commission nor challenged the charge during inquiry proceedings through cross examining the witness and whatever has been alleged by the petitioner in his petition was not brought on record by petitioner during evidence.

6. The Full Bench of NIRC in their judgment dated 19.06.2019 rendered in Appeal No.12A (58)/2018-K clearly held three documents were available which were issued by dental clinic i.e. receipt of payment of bill of Rs.10,000/- against the root

canal teeth treatment issued on 01.09.2015; confirmation of receipt dated 04.12.2015 amounting to Rs.10,000/- allegedly paid by the appellant/petitioner and the verification letter of insurance company issued to them by dental clinic. According to the Full Bench of NIRC, if a dental clinic issued two different medical bills and then subsequently verifies that the paid amount was Rs.10,000/-, which of its statements should be believed? Therefore, the proper course for the Inquiry Officer was to examine the administrator of the concerned clinic but the needful was not done. It was further observed that during 18 years' service record, the appellant/petitioner was not found involved in any case of misconduct. Ultimately, the appellate forum held that the dismissal of the appellant/petitioner without examining the administrator/doctor from the hospital was harsh and set aside the order of single member and reinstated the appellant/petitioner with all back benefits.

7. On the other hand, the High Court in its impugned judgment held that the matter pertains to allegations of submitting bogus documents and falsifying medical claims. The Single Bench Order categorically observes that the employee has not challenged the allegation of submitting bogus/fake medical claim. It was further observed that the respondent/petitioner did not produce any witnesses nor did he challenge the charge through cross examination. It appears safe to observe that the respondent/petitioner appears to have made no serious endeavour to dispute the facts relied upon by the employer. The Full Bench of the NIRC appears to have erred in disregarding the preponderance of uncontroverted evidence and rested its contrary findings upon the administrator/doctor not having been examined. It was further observed in the impugned judgment that there was no suggestion of any procedural impropriety in the disciplinary proceedings, culminating in the dismissal of the respondent and finally, the constitution petition filed by the employer was

allowed and the Judgment rendered by the Full Bench of the NIRC was set aside.

8. In the case of Sakhib Zar Vs Messrs K-Electric Limited and others **(2024 SCMR 1722)**, no doubt, one of us, while speaking for the bench held that as soon as the act of misconduct is established and the employee is found guilty after due process of law, it is the prerogative of the employer to decide the quantum of punishment, out of the various penalties provided in law. The casual or unpremeditated observation that the penalty imposed is not proportionate with the seriousness of the act of misconduct is not adequate but the order must show that the Court and Tribunal/NIRC has applied its mind and exercised its discretion in a structured and lawful manner. It was further held that the Court or Tribunal/NIRC in exceptional or appropriate cases or circumstances, may examine the quantum of punishment to figure out the proportionality and reasonableness and may also nullify or overturn such punishment if found out of proportion vis-à-vis the act of misconduct and in this scenario, the punishment awarded by the competent authority may be revisited and converted into some lesser or alternative punishment if provided under the law but in order to exercise such jurisdiction for mitigation, the set of circumstances of each and every case have to be considered minutely.

9. The record reflects which was also aptly noted by Full Bench of NIRC that Muhammad Karim Clinic (Clinic) issued first bill on 01.09.2015 in the sum of Rs.10,000/-; on same date (01.09.2015), Dr.Muhammad Karim, Chinese Dental Surgeon issued another receipt of the same amount; yet again on 23.09.2015, same doctor issued modified receipt to demonstrate that Rs.7000 was paid for treatment and Rs.3000 was added in the bill as transport expenses and 04.12.2015, same doctor again acknowledged that he received Rs.10,000/- from petitioner for dental treatment. So for all

intent and purposes, at least four bill for the same dental treatment were available on record which required clarification. In order to sift grain from chaff, it was the acute responsibility of Inquiry Officer either to call the doctor or the representative of dental clinic for evidence in the inquiry to prove which document issued by them is true and correct and which document was fake or forged. It has already been held in the case of Sakhib Zar (supra) that the turn of phrase "Misconduct" expounded under the Standing Order Ordinance 1968, in fact represents the perpetration or commission of certain acts which are defined as misconduct and in the larger sense includes the defiance of rules and standards established by the employer which are to be followed at the place of work for harmonious and smooth functioning and administration of any industrial or commercial establishment. One of the prime objectives of religiously enforcing the severities of misconduct and punishment provided under the Ordinance 1968 is to uphold the internal discipline and decorum and strict adherence to relationship of employer and employee which is indispensable for the systematized and closely controlled work mannerism and upholding ethical standards. It is the prerogative and inherent right of employer to trigger the disciplinary proceedings in accordance with the law to address the misconduct if committed by any employee but the course of action for encountering any act of misconduct should stick to the principle of natural justice and the set of guidelines provided to ensure due process of law. The wrong handling of misconduct cases results in bad impact on the industrial relations and also tyrannize the trust level between the management and the workers, therefore, it is also essential for the employer to maintain transparency, uniformity and egalitarianism which insinuates compliance of all legal requirements with equal treatment to the employees without any discrimination or favouritism.

10. In the impugned judgment, the learned High Court wholeheartedly relied on the Single Member NIRC judgment and observed that the respondent/petitioner did not challenge the allegation of submitting bogus/fake medical claim; he did not produce any documents; he did not produce any witnesses and he did not challenge the charge through cross examination; he made no serious endeavour to dispute the facts hence no onus could be placed on Single Bench of the NIRC to have conducted an independent exercise for verification of documents and appellate judgment was set aside on the notion that Full Bench of the NIRC appears to have erred in disregarding the preponderance of uncontroverted evidence and rested its contrary findings upon the administrator/doctor not having been examined.

11. It is a well settled exposition of law that the philosophy of burden of proof in fact demarcates the role and task of a party which has the eventual sense of duty to propound convincing and trustworthy evidence on the issue. In the disciplinary proceedings under the Industrial Relations Laws, the primary burden rests on the employer to prove the misconduct so that the matter be decided on preponderance of the evidence which is so clear, credible and gives support to the finale with little room for doubt. By and large, when any employee challenges his termination or dismissal from service, the burden often shifts upon the employer to establish that the action was based on independent, unbiased and logical reasons and while terminating the employee or dismissing the employee from service, the principle of natural justice and due process was religiously followed and the employer has to produce substantial evidence to persuade the court that the decision was not motivated by any revenge, bias and/or with any prejudiced aspiration. When contradictory receipts were available on record, it was obligatory for the inquiry office to call the witness from the hospital for evidence and verification

with the right of cross examination to the petitioner without which the truth could not be unearthed. The purpose of domestic inquiry under the labour laws, if taken so lightly, destroys the whole substratum. Regardless of the fact that Inquiry Officer in the domestic inquiry cannot be equated with well-trained judicial officer, the bare minimum requirements of natural justice and due process are commonsensical and essential elements for the conscience of Inquiry Officer before finding an employee guilty of misconduct and sending inquiry report/recommendations to the management.

12. To prove the guilt on the charges of misconduct is a serious matter and at least for the delinquent, the stakes are much higher than the employer. Therefore, before declaring guilty, due diligence should have been made. In the present case, the evidence of the representative of dental clinic/doctor was inevitable for proving the guilt whether the petitioner paid Rs.7000 or Rs.10,000/- and whether he really submitted a bill of excess amount or not? So in our view, the witness from the hospital could be the star witness in this case who was ignored and no efforts were made by the management representative to call him before the Inquiry Officer as management's witness and no burden should be shifted on the employee to call him if the management did not want to verify or confront those medical bills to their star/key witness which by their own mistake lost its evidentiary value and nothing proved on record which bill of hospital/clinic was genuine? Indeed the expression "star witness" or "key witness" refers to a witness whose evidence is contemplated utmost ascendant for the prosecution and the defence both. His testimony in fact proves vital for corroborating key facts. It is somewhat a common benchmark that the doctrine of presumption of innocence casts the burden on the prosecution to prove its case beyond reasonable doubt. The scale and extent of probability of guilt may be based on interdependence of evidence, therefore, even in the domestic

inquiries triggered under the Industrial Relations Laws and Civil Servant Laws and Rules, it is onerous duty of the inquiry officer/inquiry committee, that they should provide ample opportunity of fair trial and due process. The strict adherence to the rule of evidence and its appreciation always plays a constructive and indispensable role to prove the culpability and violation or lacunas or omissions in the substantial and procedural steps obliterates the entire exercise because the truth is the foundation of justice which was not proved in this case during domestic inquiry. The learned Single Member could not take stock of this illegality while the learned Full Bench of NIRC aptly noted this irregularity and illegality and allowed the appeal.

13. Before the learned High Court, a Writ of Certiorari was moved against conflicting findings and not the concurrent findings. In the conflicting findings judgments, the Court has to see which findings are more convincing in ratio and the evidence adduced by the parties. As an appellate forum, the Full Bench rightly reached the conclusion that for the purposes of discharging burden of proof, the witness/representative of the hospital/dental clinic was indispensable to prove which medical bill was correct and which was incorrect but this crucial aspect was not attended to.

14. If we gaze the etymology of “Writ of Certiorari”, it unveils that it is a Latin word, meaning "to be more fully informed." This writ can be issued when a lower court, tribunal, or quasi-judicial forum/authority surpasses or transcends its jurisdiction. The higher courts issued Writ of Certiorari to nullify and overturn ultra vires actions for impeding the misuse and abuse of judicial powers. Even the exercise of this writ jurisdiction unquestionably available in case of obvious contravention or infringement of natural justice or right to fair trial/due process because the inherent genre of this writ

jurisdiction is meant as a corrective measure where a pealing oversight of law is apparent without far-reaching exploration of evidence or the decision of lower fora is structured on misconception or misconstruction of any statutory provision but does not authorize the reassessment or second look of facts unless and until the factual determination is based on non-reading or misreading of evidence led in the lis by the parties and or any other fundamental legal error is surfaced on the record including jurisdictional and procedural irregularities or the errors which are so egregious that they transfigure into the errors of law because at times, the factual error turns out to be a legal error due to erroneous appraisal of evidence. Under this writ jurisdiction, as engrained in our Constitution of Islamic Republic of Pakistan 1973, under Article 199, the High Courts have wide-ranging powers within their territorial jurisdiction to issue writ of certiorari not only in the case of violation of any fundamental right but also against judicial or quasi-judicial decisions/orders if for any reason found them against the law. In the case of Syed Yagub v. Radhakrishnan (AIR 1964 SC 477), the Court held that certiorari would lie: (1) to correct jurisdictional errors when inferior courts/tribunals act without jurisdiction, in excess of jurisdiction, or fail to exercise jurisdiction; and (2) to remedy situations where courts/tribunals exercise jurisdiction illegally or improperly, such as by violating principles of natural justice. In nutshell, this remedy can be availed and Writ of Certiorari can be issued by the High Court when a lower body acts without or in excess of jurisdiction; when there is a violation of natural justice; when there is a clear error of law on the face of the record; when the decision is based on fraud, mala fide intent, or corruption and when the authority refuses to exercise its jurisdiction despite being legally bound to do so.

15. In the end, we wrap up this case with unequivocal conclusion that the appellate judgment of Full Bench NIRC

was quite rational and judicious and while setting aside the impugned judgment of High Court by means of our short order dated 23.07.2025, we restored the appellate judgment. Our aforesaid short order is reproduced as under:-

> "For the reasons to be recorded later, this civil petition is converted into appeal and allowed. As a consequence thereof, the impugned judgment dated 11.10.2022 passed by the High Court is set aside and the judgment dated 19.06.2019 passed by the Full Bench of NIRC is restored whereby, the petitioner was reinstated in service with all back benefits."

Above are the reasons assigned in support of our Short Order.

Judge

Judge

Judge

Karachi
23.07.2025
Khalid
Approved for reporting.