IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Yahya Afridi
Mrs. Justice Ayesha A. Malik

Civil Petition No. 34 of 2022
(Against the judgment dated 17.12.2021 of the Islamabad High Court, Islamabad passed in Writ Petition No. 4481 of 2021)

M/s Pak Telecom Mobile Limited
...Petitioner

Versus

1. Muhammad Atif Bilal

2. Full Bench, National Industrial Relations Commission

3. Single Member, National Industrial Relations Commission
...Respondent(s)

For the Petitioner:	Mr. Shahid Anwar Bajwa, ASC Raheel Zafar, S.M.(L)
For Respondent No. 1:	Barrister Ahsan Hameed Dogar, ASC
Date of Hearing:	30 January 2024

ORDER

Yahya Afridi, J.- M/s Pak Telecom Mobile Limited **("petitioner-company")** has, through this petition, challenged the concurrent decisions of the Single Member and Full Bench of the National Industrial Relations Commission **("NIRC")** made under the Industrial Relations Act, 2012 **("IRA of 2012")**, that were maintained by the Islamabad High Court **("High Court")** *vide* the impugned order dated 17.12.21.

2. The brief facts leading to the present petition are that Muhammad Atif Bilal **("respondent")** was appointed as Senior Executive (Core Network Planning) in Technical (NSS Planning) Department of the petitioner-

company. After serving for five years in the petitioner-company, the respondent was terminated *vide* order dated 01.11.2017, and that too, without stating any reason therein. Aggrieved thereof, the respondent filed his grievance petition before the Single Member, NIRC, asserting to be a "worker" within the contemplation of IRA of 2012 and sought his reinstatement. The grievance petition of the respondent was positively considered by the Single Member, NIRC, and the dismissal order was set aside, which was maintained by the Full Bench of the NIRC, and later by the High Court. Hence, the present petition.

3. The learned counsel for the petitioner-company, at the very outset, raised an objection to the maintainability of the grievance petition filed by the respondent before NIRC, on the ground that the respondent could only seek his reinstatement by pleading to be a "workman" under the Industrial and Commercial Employment (Standing Orders), 1968 **("Standing Orders of 1968")**, and not under the provisions of IRA of 2012 as was done by the respondent. This crucial aspect of the matter, according to the learned counsel, has escaped the attention of NIRC and the High Court, while deciding the grievance of the respondent. Hence, the present petition reserves positive consideration.

4. In rebuttal, the learned counsel for the respondent controverted the above contention of the learned counsel for the petitioner-company, and in addition, drew our attention to the grievance petition, where in para (iii) of the grounds the respondent had asserted that he was a "workman" within the contemplation of IRA of 2012, and in support thereof, relied on the examination-in-chief of the respondent, wherein he

had categorically contended that he was a “workman” within the contemplation of IRA of 2012. The learned counsel, thus, argued that the onus had shifted upon the petitioner-company to rebut the status of the respondent as a “workman” to resist his reinstatement under the applicable law, by producing cogent and reliable evidence in support of the same. As this onus was not discharged by the petitioner-company, he argued, the claim of the respondent was rightly maintained by all the forums below.

Issues for determination

5. The issues that have emerged from the submission of the learned counsel for the parties, and require determination of this Court in the present case are:

i. Firstly, which is the competent forum for redressal of individual grievance of a worker, who has been terminated, removed, retrenched, discharged, or dismissed from employment in a trans-provincial establishment, and which law would apply in such cases;

ii. Secondly, whether in seeking a remedy under Section 33 of IRA of 2012, the term ‘worker’ referred therein should be understood as defined in Section 2(xxxiii) of the IRA of 2012, or as outlined in or provided in the law (Standing Orders of 1968 in the present case) under which the right or remedy is being claimed or under both laws; and

iii. Thirdly, whether the onus of proof would lie on the aggrieved worker filing the grievance petition under Section 33 of IRA of 2012, to prove that he fulfils the conditions precedent of a ‘workman’ / ‘worker’ provided under the applicable law or otherwise.

Legislative history

6. To better appreciate the legal provisions governing the above issues, it would be appropriate to first trace the legislative developments leading to the present legal disposition relating to any order of termination, removal, retrenchment, discharge, or dismissal from service

of a trans-provincial establishment, and the competent forum to seek redressal thereof. In this regard, there are essentially two important pieces of legislation warranting attention - **Standing Orders of 1968** and **Industrial Relations Ordinance 1969 ("IRO 1969")**.

7. For better understanding and contextualizing the legislative progression of the law, we may commence from the year 1968, when Standing Orders of 1968 was introduced:

Stage I – Standing Orders of 1968 and IRO 1969

8.1. **Standing Orders of 1968**: Standing Order 18, vested a 'workman' the right to seek redressal against the termination of his services, or dismissal or discharge. The 'workman' was required to first bring his grievance to the notice of the employer and on failure to obtain redress, could file a grievance petition in the Labour Court.

8.2. **IRO 1969**: This law was aimed, essentially, to consolidate and to achieve uniformity in the laws relating to the formation of trade unions, regulations governing relations between employers and workmen, and to settle any differences or disputes arising between them or matters connected therewith or ancillary thereto. It provided an entire structure and mechanism for maintaining harmony in the workplace, by providing provisions for governing the rights and obligations of a workman and an employer and for the determination and resolution of any 'industrial dispute' between the two.

Stage II - Labour Laws (Amendment) Ordinance IX of 1972

9.1. **Amendment in Standing Orders of 1968**: Standing Order 18 vesting an aggrieved workman a right for seeking redressal of his personal grievance

against removal, dismissal, retrenchment, or discharge from service was omitted *vide* the Labour Laws (Amendment) Ordinance IX of 1972.

9.2. **Amendment in IRO 1969**: Section 22-A was inserted in IRO 1969 *vide* Labour Laws (Amendment) Ordinance, 1972, whereby the National Industrial Relations Commission was established for settlement of disputes between employers and workers. In order to provide the mechanism for the functioning of NIRC, in terms of section 22-A of IRO 1969, the National Industrial Relations Commission (Procedure and Functions) Regulations, 1973 were also framed.

Stage III - Ordinance No. XXXIII of 1973

10. **Amendment in Standing Orders of 1968:** Ordinance No. XXXIII of 1973 amended clause-3 of the Standing Order XII of the Standing Orders of 1968. The amended clause reads as under:

> (3) The services of a workman shall not be terminated, nor shall a workan be removed, retrenched, discharged or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken. In case a workman is aggrieved by the termination of his service or removal, retrenchment, discharge or dismissal, he may take action in accordance with the provisions or section 25-A of the Industrial Relations Ordinance, 1969 (XXIII of 1969) and thereupon the provisions of the said section shall apply as they apply to the redress of an individual grievance.

Thus, in view of the above stated amendment introduced in clause 3 of the Standing Order XII of the Standing Orders of 1968, a workman could avail his remedy of redressal against any order of removal, retrenchment, discharge, or dismissal from service under section 25-A of IRO 1969. Simply put, the jurisdictional contour of the forum under section 25-A of IRO 1969 was expanded, whereby it could, in addition to entertaining the grievance of a ‘workman’ relating to an ‘industrial dispute’ under IRO

1969, also provided a forum for redressal of a personal grievance of a 'workman' under the Standing Orders of 1968.

Stage IV – IRO 2002 and IRA 2008

11. **Repeal of IRO 1969**: IRO 1969 was repealed by Industrial Relations Ordinance, 2002, which was further repealed by Industrial Relations Act, 2008. Section 87(3) of the Industrial Relations Act, 2008 provided that the said enactment shall unless repealed earlier stand repealed on 30th April, 2010.

Stage V – Constitutional (Eighteenth Amendment) Act, 2010

12.1. **Transfer of legislative power to Provinces:** In the 18th Constitutional Amendment Act, 2010, the concurrent legislative list which included items No. 26 and 27 relating to welfare of labour and trade unions was omitted, as such power to legislate thereon was devolved upon Provincial Governments.

12.2. However, clause 6 of Article 270-AA of the Constitution[1] provided that, notwithstanding omission of concurrent list by the 18th Constitutional Amendment Act, 2010 any of the matter enumerated in the said list enforce immediately before the commencement of the said amendment shall continue to remain in force, until altered, repealed, or amended by the competent authority.

Stage VI – Sunset legislation leading to legal vacuum.

13. Faced with the imminent repeal of Industrial Relations Act, 2008 on 30th April 2010, all the four Provinces enacted separate laws relating

[1] (6)Notwithstanding omission of the Concurrent Legislative List by the Constitution (Eighteenth Amendment) Act, 2010, all laws with respect to any of the matters enumerated in the said List (including Ordinances, Orders, rules, bye-laws, regulations and notifications and other legal instruments having the force of law) in force in Pakistan or any part thereof, or having extra-territorial operaiton, immediately before the commencement of the Constitution (Eighteenth Amendment) Act, 2010, shall continue to remain in force until altered, repealed or amended be the competent authority.

to welfare of labour and regulating trade unions. While at the federal level, after 30th April 2010, Labour Courts, Labour Appellate Tribunal, as well as NIRC seized to function, and with no federal law to fill the space created by the repeal of Industrial Relations Ordinance, 2008, legal vacuum was created to identify the forum for redressal of industrial disputes relating to matters concerning establishments beyond the scope of the provincial labour law. The matter was finally brought before this Court in **AIR League of PIAC Employees v. Federation of Pakistan (2011 SCMR 1254).** This Court after reviewing the matter in detail, held:

> "Thus it is held that the IRO, 1969 would not be revived after the repeal of IRA, 2008.....
>
> The Trade Unions, which are operating within one province, can be dealt with under the Labour Laws enacted in that province and the workman can also avail the appropriate remedy provided under the said legislation.....
>
> Now, in the Province of Punjab, by means of section 47 of the PIRA, 2010 remedy has been provided before the Labour Appellate Tribunal. Similarly, in the Province of Balochistan, under section 25 of the BIRA, 2010 remedy before the Industrial Relations Commission and in the Province of Khyber Pakhtunkhwa, in terms of sections 48 and 51 of KIRO, 2010 the remedy of appeal has been provided before the Labour Court and Labour Appellate Tribunal. In the Province of Sindh, as the IRA, 2008 has been revived, therefore, in terms section 25 of the same, the provision of NIRC has been continued. In the present circumstances, after the promulgation of provincial laws dealing with the Industrial disputes, the persons having any grievance can approach the appropriate forum provided under the respective provincial laws....
>
> In the light of above case-law, it is clear that during the interregnum period w.e.f. 30-4-2010, when no Industrial Relations Law was holding the field, the workers had remedy under the ordinary laws prevailing at that time, because in absence of a special law, the ordinary/general laws come forward to fill in the vacuum."

Stage VII - IRA of 2012

14.1. Finally, the Federal Government introduced legislation relating to welfare of labour and trade unions in trans-provincial establishments *vide* IRA of 2012. Three marked changes, relevant to the present discussion, which we have noticed in this piece of legislature, are that:

firstly, the expansion of the scope of the term “industrial dispute”; secondly, varied definition of the term “worker/workman”; and finally, the re-establishment of NIRC, but this time, having varied functions including one, as a forum for resolution of disputes between the ‘worker’ and the ‘employers’ of trans-provincial establishments.

14.2. As for the first distinctive feature of IRA of 2012, highlighted hereinabove, we note that the simple reading of the very definition of the term ‘industrial dispute’ in IRA of 2012, and that provided earlier in IRO 1969, clearly underscores the intent of the legislature. The definition of the said term in the two statutes read as under: -

> **IRO 1969**
>
> **Section 2 (xvi)** "industrial dispute" means any dispute or difference between employers and workmen or between workmen and workmen which is concerned with the employment or non-employment or the terms of employment or the conditions of work; and is not in respect of the enforcement of any right guaranteed or accrued to workers by or under any law, other than this Ordinance, or any award or settlement for the time being in force.
>
> (emphasis provided)
>
> **IRA of 2012**
>
> **Section 2(xvi)** “industrial dispute” means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person.
>
> (emphasis provided)

Even a simple reading of the above definitions noticeably shows that the enforcement of a right guaranteed to a ‘workman’ by or under any other law expressly excluded from the definition of the term ‘industrial dispute’ under IRO 1969 was conspicuously not so provided for in the definition of the said term under IRA of 2012. Thus, under the new legal dispensation, a ‘worker’ could seek the enforcement of his rights under any other law, including rights provided under Standing Orders of 1968,

as an 'industrial dispute', provided it fulfills the other conditions of industrial dispute stipulated in IRA of 2012, specifically Section 2(xvi) and Section 34. The mode and manner of enforcing such rights was also provided for under Sections 33 and 34 of IRA of 2012.

14.3. To complement and support the expanded scope of the term 'industrial dispute', we note that the legislature in its wisdom also varied the term 'worker/workman'. As per Section 2(xxxiii) of IRA of 2012, a 'workman' is defined as,

> "person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment are express or implied, and, for the purpose of any proceedings under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity."
>
> (emphasis provided)

From a simple reading of the above definition, it is clear that the IRA of 2012 has created two distinct categories of workmen: the first category includes a person, who is employed in an establishment or industry for hire or reward, either directly or through a contractor and whether the terms of employment are express or implied; while the latter category restricts the workman in relation to his termination, removal, or dismissal from service in connection with 'industrial dispute' or whose termination, removal, or dismissal was either a consequence of 'industrial dispute' or has led to an 'industrial dispute'.

14.4. When we compare the above definition of the term 'worker/workman' under IRA of 2012 with what is provided in Standing Orders of 1968, it is noted that the legislature in its wisdom has kept the

two as distinct categories of employees, who fall within the definition of a workman/worker under the Standing Orders of 1968 and IRA of 2012. The definition provided in the two statutes reads as under:

> **Standing Orders of 1968**
>
> **Section 2(i) "workman"** means any person employed in any industrial or commercial establishment **to do any skilled or unskilled, manual or clerical work** for hire or reward.
>
> **IRA of 2012**
>
> **Section 2 (xxxiii) "worker" and "workman"** mean person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment are express or implied, and, for the purpose of any proceedings under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute **but does not include any person who is employed mainly in managerial or administrative capacity.**

Hence, the labour statute may provide for a different definition of a 'worker', depending on the nature, aim and scope of such statute. In order for a person to claim a right under any of these labour laws, such person will have to prove that he falls within the definition of a 'workman' under such law.

14.5. Moving on to the third distinguishing feature introduced in IRA of 2012, we note the re-emergence of NIRC,[2] but this time having varied functions,[3] including one of an arbiter for resolving the individual grievances of the 'worker' against the 'employer' of a trans-provincial establishments. This is provided under Section 33 of IRA of 2012, which reads as under: -

> **Section 33. Redressal of individual grievances** (1) A worker may bring his grievance in respect of any right guaranteed or secured to him by or

[2] After repeal of IRA of 2008
[3] Section 54 of IRA of 2012

> under any law or any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent within ninety days of the day on which the cause of such grievance arises.
> (2) Where a worker himself brings his grievance to the notice of the employer, the employer shall, within fifteen days of the grievance, being brought to his notice, communicate his decision in writing to the worker.
> (3) Where a worker brings his grievance to the notice of his employer through his shop steward or collective bargaining agent, the employer shall, within seven days of the grievance being brought to his notice, communicate his decision in writing to the shop steward or as the case may be the collective bargaining agent.
> (4) If the employer fails to communicate a decision within the period specified in sub-section(2) or, as the case may be sub-section (3), or if the worker is dissatisfied with such decision, the worker or the shop steward may take the matter to his collective bargaining agent or to the Commission or, as the case may be, the collective bargaining agent may take the matter to the Commission, and where the matter is taken to the Commission, it shall give a decision within seven days from the date of the matter being brought before it as if such matter were an industrial dispute.
> Provided that a worker who desires to so take the matter to the Commission shall do so within a period of sixty days from the date of the communication of the employer or, as the case may be, from the expiry of the period mentioned in sub-section (2), or sub-section (3), as the case may be.
> (5) In adjudicating and determining a grievance under sub-section (4), the Commission shall go into all the facts of the case and pass such orders as may be just and proper in the circumstances of the case.
> (6) If a decision under sub-section (4) or an order under sub-section (5) given by the Commission or a decision in an appeal against such a decision or order is not given effect to or complied with within seven days or within the period specified in such order or decision, the defaulter shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to seventy-five thousand rupees, or with both.
> (7) No person shall be prosecuted under sub-section (6) except on a complaint in writing—
> (a) by the workman if the order or decision in his favour is not implemented within the period specified therein; or
> (b) by the Commission if an order or decision thereof is not complied with.
> (8) For the purposes of this section, workers having common grievance arising out of a common cause of action may make a joint application to the Commission.
> (9) Any collective bargaining agent or any employer may apply to the Commission for the enforcement of any right guaranteed or secured to it or him by or under any law or any award or settlement.
> (10) There shall be a Tripartite Council for review of grievances of workers in the Islamabad Capital Territory comprising not less than three members each of the workers, employers and the Government:
> Provided that the representatives of the workers and the employers shall be nominated by the Government after consultation with registered trade unions and employers' organizations to be notified in the Official Gazette.

A careful reading of the above provision of IRA of 2012 makes it evident that the 'worker' under the new legal dispensation had been provided under the said provision, two options to seek redressal of his individual

grievances regarding enforcement of his rights guaranteed or secured to him by or under any law or any award or settlement. Firstly, he can directly approach the employer in writing within 90 days of the day on which the cause of such grievance arises, and the employer on receipt of such notice by the aggrieved 'worker' has to communicate within 15 days, the decision on the said notice. Secondly, a 'worker' may also bring his grievance to the notice of the employer through his shop steward or collective bargaining agent. In such case, the employer shall, within seven days of receipt of the grievance notice, communicate its decision in writing to the shop steward or, as the case may be, the collective bargaining agent. In both cases, where the employer fails to communicate its decision in the prescribed stipulated time or if the worker is dissatisfied with such decision, the 'worker' or the shop steward or the collective bargaining agent, as applicable, may approach NIRC for the redressal of his grievance.

14.6. Viewed generally, we note that the 'worker' under IRA of 2012 has in total three options to enforce his individual grievances; two of the options are provided under section 33. However, in seeking the third option of resolution, the 'worker' would be legally handicapped, as per section 34[4] of IRA of 2012, to enforce such right through the collective bargaining agent.

Issue No. 1

which is the competent forum for redressal of individual grievance of a worker, who has been terminated, removed, retrenched, discharged, or dismissed from employment in a trans-provincial establishment, and which law would apply in such cases;

[4] "No industrial dispute shall be deemed to exist unless it has been raised in the prescribed manner by a collective bargaining agent or an employer."

15. In view of the above discussion, to address the first issue, it is clear that the appropriate forum of redressal for a workman who is terminated, removed, retrenched, discharged, or dismissed from service in a trans-provincial establishment is NIRC, as provided under Section 33 of the IRA of 2012. The said provision states that a 'worker' may bring his grievance in respect of any right guaranteed or secured to him by or *under any law*. In the case at hand, the relevant law for the purpose of right of reinstatement is Standing Orders of 1968, specifically Order 12(3). Therefore, the contention of the learned counsel for the petitioner-company, as to the maintainability of grievance petition of the respondent No.1 does not hold legal ground, as the remedy of reinstatement being sought by respondent No.1 can be brought before NIRC, as an individual grievance under Section 33 of IRA of 2012. This is further established by Section 54(h) of IRA of 2012 which includes one of the functions of NIRC to "*deal with cases of individual grievance in the manners prescribed in Section 33*".

16. Thus, it would be safe to state that the competent forum for the redressal of personal grievance of a 'worker/workman' of a tans-provincial establishment is NIRC, and the mode and manner of enforcing any right guaranteed or secured to him by or under any law has been provided under section 33 of the IRA of 2012, as has been explained hereinabove.

Issue No. II

whether in seeking a remedy under Section 33 of IRA of 2012, the term 'worker' referred therein should be understood as defined in Section 2(xxxiii) of the IRA of 2012, or as outlined in or provided in the law (Standing Orders of 1968 in the present case) under which the right or remedy is being claimed or under both laws; and

17. As discussed above, in case a 'workman' is terminated, removed, retrenched, discharged, or dismissed from service in a trans-provincial establishment, he would be required to first prove that he fulfills the conditions precedent of a 'workman' provided under IRA of 2012, to render his individual grievance maintainable under Section 33 of the IRA of 2012. Once, the grievance petition is held to be filed by the legally competent person, then in order to enforce his rights under Standing Order 12(3) of the Standing Orders of 1968, the aggrieved petitioner would have to prove that he is a 'workman' envisaged under Standing Order 2(i) of Standing Orders of 1968.

18. The respondent asserting himself to be a 'worker' under IRA of 2012 agitated before NIRC, his grievance within the contemplation of section 33 of IRA of 2012. He pleaded in his grievance petition and in support thereof also filed an affidavit before NIRC, that his duties did not include the authority to hire and fire or for that matter that he did not hold *a managerial or administrative* position in the petitioner-company. Distinct in his pleading and testimony was the lack of any claim of his being the 'workman' or having the essentials thereof under the Standing Orders of 1968, that is, he was employed in the petitioner company to do any skilled or unskilled, manual or clerical work. As the respondent was seeking his rights protected under Standing Order 12(3) of the Standing Order of 1968, he was mandated under the law to prove that he was a 'workman' within the contemplation of the said enactment, which he failed to do so.

Issue No. III

whether the onus of proof would lie on the aggrieved worker filing the grievance petition under Section 33 of IRA of 2012, to prove that he fulfils the conditions precedent of a 'workman' / 'worker' provided under the applicable law or otherwise.

19. Regarding the onus of proof, it is trite law[5] that the initial onus is on the person asserting a fact for seeking a relief. In the instant case, the initial onus was upon the aggrieved 'worker' – the respondent, to prove that he was a 'workman' under both statutes - Standing Orders of 1968 and IRA of 2012.

20. We have thoroughly examined the grievance petition and the evidence produced by the respondent before the NIRC and note that there was no assertion made by the respondent that he was a 'workman' carrying on manual and clerical work. In fact, it was asserted that his service in the petitioner-company did not include supervisory or managerial role nor did he have the authority to hire or fire an employee. These are requirements for an employee being a 'worker' under IRA of 2012, and not under the Standing Orders of 1968. It may be observed that merely not quoting the correct provision of law or quoting it incorrectly would not have had any effect upon the relief claimed by him, if otherwise, under the law, he had asserted such facts and led evidence to prove them that made him a 'workman' as defined in the Standing Orders of 1968. However, in the present case, the respondent, having failed to even assert the essential requirements of being a 'workman' under the Standing Orders of 1968, left no reason for the petitioner-company to rebut that which was not proved by him or to fill the legal lacuna in his case to prove otherwise. This Court has, in **MCB v. Rizwan Ali**

[5] Shahi Bottles (Pvt.) Limited v. Punjab Labour Appellate Tribunal (1993 PLC 587); National Bank of Pakistan v. Punjab Labour Court (1993 PLC 595); Sadiq Ali Khan v. Punjab Labour Appellate Tribunal (1994 PLC 211); Granulars (Pvt.) Limited v. Muhammad Afzal (2002 PLC 1) and Muslim Commercial Bank v. Ehtasham ul Hassan (1997 PLC 24)

(C.P. No.4980 of 2021 decided on 10.11.2023), in an exhaustive manner, explained the mode and manner of proof required of a 'worker' to enforce his rights under the labour law. It was opined that:

> "6. To determine whether a person is a workman is a finding of fact, routed in evidence and the person who approaches the court on the basis of an averment that he is a workman carries the initial burden of proof to establish that he is a workman.[6] To emphasize, when dealing with the question of burden of proof in establishing the status of the workman, this Court has consistently held that such burden lies on the person claiming to be a workman.[7] It is the bounden duty of a person who approaches the Labour Court to demonstrate through evidence the nature of duties and functions, and to show that he is not working in any managerial or administrative capacity and that he is not an employer. In the absence of such evidence, a grievance petition would not be maintainable before the Labour Court for lack of jurisdiction.[8] Moreover, it has been established that this burden of proof is to be discharged by the claimant through documentary and oral evidence supporting his claim that the nature of his work is, in fact, manual or clerical.[9] This requires the production of evidence, documentary or oral, which shows the nature of duties and the functions of the claimant pursuant to his claim that he is a workman. It has been clarified that even if there does not exist the power to hire or fire any person, the nature of the job as performed by the person must be evident from the holistic view of the record produced and that it has to be determined through overall record whether he was employed as a workman doing manual and clerical work and whether he was discharging his functions in a managerial and supervisory role.[10] Accordingly, it's vital for the court to consider all the evidence and to ascertain the duties and functions of the person claiming to be a workman and to ensure that the workman has discharged his burden with the required evidence. When it involves bank employees, duties and functions are documented as is daily work, which should be brought before the court in evidence."

Given the above provisions of the applicable law and the settled principles enunciated by this Court regarding conditions precedent for seeking rights against wrongful termination of service, and the mode and manner of proof required thereof, we have no manner of doubt that the respondent failed to fulfill such required standards under the law.

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[6] National Bank of Pakistan v. Punjab Labour Court (1993 SCMR 672)
[7] National Bank of Pakistan v. Anwar Shah (2015 SCMR 434)
[8] Ibid. (2015 SCMR 434)
[9] Shahi Bottlers (Pvt) Ltd. v. Punjab Labour Appellate Tribunal (1993 SCMR 1370)
[10] Dilshad Khan Lodhi v. Allied Bank of Pakistan (2008 SCMR 1530)

21. Accordingly, for the reasons stated herein above, the forums below have failed to correctly appreciate all three crucial issues discussed hereinabove, hence warrants correction. Thus, all decisions impugned herein are set aside, and the grievance petition of the respondent filed before NIRC, being not maintainable under the law, is dismissed. The present petition is converted into an appeal, and the same is allowed in the said terms.

Judge

Judge

Announced in Open Court on _____*.2024* at Islamabad.

Judge

Approved for reporting.
Arif