

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Muhammad Ali Mazhar  
Mr. Justice Syed Hasan Azhar Rizvi  
Mr. Justice Irfan Saadat Khan

**Civil Petition No. 307-K of 2023**

Against the judgment dated 22.11.2022  
passed by High Court of Sindh at  
Karachi, in C.P.No.D-255/2022

Sakhil Zar

...Petitioner

**Versus**

M/s K-Electric Limited & others

...Respondents

For the Petitioner: Mr. Muhammad Iqbal Chaudhary,  
AOR/ASC

For the Respondents: N.R.

10.06.2024

Date of Hearing:

**JUDGMENT**

**Muhammad Ali Mazhar: J.-** This civil petition for leave to appeal is directed against the judgment dated 22.11.2022 passed by High Court of Sindh at Karachi, in C.P.No.D-255/2022, whereby the constitution petition filed by the petitioner was dismissed.

2. The short-lived facts of the case are that the petitioner was performing the duties as Semi Skilled Lineman at Karachi and he was also bona fide member of KESC Labour Union. The petitioner had applied the leave w.e.f. 22.06.2014 to 21.08.2014 but after reaching his village, he remained occupied in the settlement of family affairs. Since he failed to join the duties after sanctioned leave period, the disciplinary

proceedings were initiated against the petitioner. When he reported for duty, he came to know that his services have been terminated vide termination letter dated 15.9.2014 by means of an ex-parte proceedings. The petitioner served a grievance notice on 30.09.2014 to the respondents No.1 & 2 but they failed to response. Eventually, the petitioner challenged his termination of service by way of grievance petition before the National Industrial Relations Commission (**NIRC**). To end with, the learned single member NIRC set aside the termination order of the petitioner with the directions to reinstate the petitioner in service, however he was not allowed the benefits from the date of his absence and such period was directed to be treated as leave without pay. Being dissatisfied, the management preferred an appeal under Section 58 of the Industrial Relations Act, 2012 (**IRA 2012**) before the learned Full Bench of NIRC. The learned Full Bench of NIRC allowed the appeal vide its judgment dated 14.10.2021, thereafter, the petitioner challenged the appellate order in the High Court of Sindh by way of constitution petition which was dismissed vide impugned judgment.

3. The learned counsel for the petitioner argued that the respondents No.1 & 2 on the basis of *mala fide* enquiry proceedings held the petitioner guilty of the charge and terminated his services without considering the factual position. It was further contended that the learned full bench NIRC in appeal and the learned High Court both had failed to appreciate that no misconduct was committed by the petitioner in view of the provisions contained under the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968. It was further averred that the alleged unauthorized absence from duty was not premeditated but due to the circumstances beyond the control of the petitioner. He further contended that the management miserably failed to hold an impartial inquiry in order to unearth the veracity of allegations of misconduct leveled against the petitioner and the Single Member of NIRC passed a well-reasoned and speaking order which was wrongly upset by the full bench of NIRC and affirmed by the learned High Court.

4. Heard the arguments. According to Standing Order 3 of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("**Ordinance 1968**"), in every industrial or commercial

establishment, conditions of the employment of workmen and other incidental matters are to regulated in accordance with the Standing Orders Ordinance 1968. The list of acts, omissions and misconducts are provided under Standing Order 15 of Ordinance 1968, which is for the ease of reference, reproduced as under:-

#### **15. Punishments**

(1) A workman may be reprimanded or fined in the manner prescribed under the Payment of Wages Act, 1936 (IV of 1936), up to three paise in the rupee of the wages payable to him in a month, for any of the following acts or omissions, namely:—

(i) in cases where the Payment of Wages Act, 1936 (IV of 1936), is applicable, the list of acts and omissions for which fine may be levied shall be same as approved by the Chief Inspector of Factories or any other officer concerned.

(ii) in other cases, the following shall be the list of acts and omissions:

(a) disregard or disobedience of rules or orders;

(b) improper behaviour, such as drunkenness;

(c) making false or misleading statements;

(d) inefficient, dilatory, careless or wasteful working;

(e) malingering.

(2) A workman found guilty of misconduct shall be liable to any of the following punishments:—

(i) fine in the manner prescribed under the Payment of Wages Act, 1936 (IV of 1936), upto three paise in the rupee of the wages payable to him in a month;

(ii) withholding of increment or promotion for a specified period not exceeding one year;

(iii) reduction to a lower post; or

(iv) dismissal without payment of any compensation in lieu of notice.

(3) The following acts and omissions shall be treated as misconduct:

(a) willful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;

(b) theft, fraud, or dishonesty in connection with the employer's business or property;

(c) willful damage to or loss of employer's goods or property;

(d) taking or giving bribes or any illegal gratification;

(e) habitual absence without leave or absence without leave for more than ten days;

(f) habitual late attendance;

(g) habitual breach of any law applicable to the establishment;

(h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;

(i) habitual negligence or neglect of work;

(j) frequent repetition of any act or omission referred to in clause (1);

(k) striking work or inciting others to strike in contravention of the provisions of any law, or rule having the force of law;

(l) go-slow.

(4) 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. 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.

[Provided that the workman proceeded against may, if he so desires for his assistance in the enquiry, nominate any workmen employed in that establishment and the employer shall allow the workman so nominated to be present in the enquiry to assist the workman proceeded against and shall not deduct his wages if the enquiry is held during his duty hours.]

(5) Where, for the purpose of conducting an enquiry into the alleged misconduct of a workman, the employer considers it necessary, he may suspend the workman concerned for a period not exceeding four days at a time so however, that the total period of such suspension shall not exceed four weeks except where the matter is pending before an Arbitrator, a Labour Court, Tribunal or Conciliator for the grant of permission under section 47 of the Industrial Relations Ordinance, 1969 (XXIII of 1969). The order of suspension shall be in writing and may take effect immediately on delivery to the workman. During the period of suspension, the workman concerned shall be paid by the employer to the same wages as he would have received if he had not been suspended.

5. When we flicked through the order passed by learned single member of NIRC to grasp the whys and wherefores of undoing the punishment of misconduct and directing the reinstatement of the petitioner in service, it unveiled that the learned member himself observed that the petitioner left the office without grant of leave and admittedly, notice of enquiry was received by him on the address given in the office record relating to Karachi which prima facie shows that he was available in Karachi on the alleged date and while referring to the dictum of this Court reported as 2013 SCMR 887, further observed that guilt was proved, therefore, punishment awarded after enquiry was valid in accordance with law as the petitioner remained absent from duty without prior permission or authority and violated the service rules but despite forceful finding to the petitioner's proven guilt, it was held that the punishment awarded was harsh because, the petitioner remained absent from duty for only 15 days, therefore, the learned Member while preferring a lenient view, ordered the reinstatement of the petitioner. On the contrary, the learned Full Bench of NIRC on an appeal filed by the management, held that as per provisions of Ordinance, 1968 absence from duty for more than ten days is misconduct and the learned full bench after vetting all the facts and circumstances, correctly reached to the finale that the petitioner was found guilty of the charge of misconduct. It was further held that when the delinquent was found guilty, he was not entitled for any relief. In a nutshell, the appellate forum set aside the order of learned Single Bench and also dismissed the grievance petition. As a last resort, the petitioner challenged the appellate order by dint of constitution petition in the Sindh High Court. The learned High Court maintained the order of full bench of NIRC and dismissed the petition on the ground that no case for reduction of penalty was made out.

6. The allegation against the petitioner was absence without leave for more than ten days which is considered as misconduct under the tenor of Sub-clause (e) of Clause (3) of the Standing Order 15 of the Ordinance 1968. Concomitantly, the genera of different punishments are also provided under Sub-clause (2) of the same Standing Order that can be imposed by the employer upon the delinquent in the event of finding him guilty of misconduct which includes the dismissal from service without payment of any compensation in lieu of notice. At the

outset, we have to distillate, what error of law was committed by the learned single member of the NIRC in his order? On one hand, it was held that the guilt of petitioner was proved as he remained absent from duty without prior permission or authority and violated the service rules, therefore, punishment was valid but quite the reverse, the punishment awarded to the petitioner was considered harsh on the notion that the petitioner remained absent from duty only for 15 days which is in fact the bone of contention hanging around from beginning to the end in the proceedings set into motion by the parties vice versa. To be précised, the intention of the legislature in our sanguinity is predominantly gathered and judged from the language used in the statute which is to be comprehended in its natural and mundane wisdom. It is not within the province of the judiciary to legislate or question the wisdom of the legislature in making a particular law, nor can the judiciary refuse to enforce a law. Even in the case of challenge to the *vires* of a law, the burden always rests upon the person making such challenge to put on a view that the particular law is violative of any of the fundamental rights or the provisions of the Constitution and where more than one interpretation is possible, the Courts ought to elect the interpretation which gives preference to the validity of statute rather than attributing *mala fide* to the legislature.

7. According to law under discussion, 10 days' absence without leave is quantified as misconduct and on proving the guilt of employee after fulfilling the requisite formalities envisaged under the law, the management has a legitimate and unbridled right and authority to make a decision and mete out the punishment as provided under the law including the dismissal/termination of service of a delinquent. Neither the learned single member NIRC could stretch the period of 10 days' absence as defined as one of the acts of misconduct to some other period, nor could he curtail such period, but in all fairness, the law was to be followed and implemented in its letter and spirit. The learned member of NIRC gave the clean slate to the petitioner merely for the reason that the petitioner remained absent only for 15 days without sanction of leave despite holding him guilty. In our view, such findings were propounded without adverting to the provisions contained under Standing Order 15 of the Ordinance 1968 in which even 10 days absence without leave is an act of misconduct that could not be

modified and no premium or advantage could be given on this count for any compassionate or sympathetic view. We also need to draw simple distinction between the act of misconduct and the quantum of punishment provided under the law for such misconduct. Likewise, different acts of misconduct are defined in the labour laws and civil servant laws with different quantum or genre of punishments to be imposed according to the fine sense of judgment of the competent authority/management/employer in which the Courts, Tribunals or NIRC have no role to play in the decision making of management which is the sole arbiter. The absence for 10 days without leave is an act of misconduct without any shadow of doubt, hence the single member NIRC had no jurisdiction to grant relief on the notion that absence was only for 15 days and while construing so, it infers as if the act of misconduct for absence without leave for ten days has been extended or outstretched up to 15 days which for all practical purpose amounts to rewriting or reshaping the law so that the 15 days absence without leave would be virtually reckoned from now and onwards as an act of misconduct rather than 10 days, which approach does not reflect the correct exposition and interpretation of law.

8. 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 the discretion in a structured and lawful manner. No Court has any jurisdiction to grant arbitrary relief without the support of any power granted by the Constitution or the law. Without a doubt, 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. Considering the case in hand, the member NIRC in the original order overturned the law and the order of reinstatement was not rendered keeping in mind the doctrine of proportionality and reasonableness but modified the act of misconduct from 10 days' absence to 15 days' absence, hence the order was rightly set aside in appeal by the learned full bench of NIRC and affirmed by the learned High court by means of impugned judgment.

9. 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. The certitude of the expression "misconduct" hints at such deeds and or comportment of an employee which are found in violation of labor laws and set in motion the disciplinary proceedings and action if any acts and omissions are committed within the meaning of clause 3 of Standing Order 15 of the Ordinance 1968. It is in the sphere and realm of the management to religiously concentrate for better management and administration of its business enterprise both in industrial or commercial venture that applicable labour laws are adhered to strictly vis-à-vis the rights and obligations of employees and employer both to prevail congenial and peaceful working environment. 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. In fact, addressing of misconducts aids, keeps an eye and protect the wellbeing of the organization and its employees in order to make sure that the work place is in a trouble-free environment. 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 favoritism.

10. In view of the above discussion, we do not find any illegality or perversity in the impugned judgment passed by the High Court of Sindh, Karachi. This petition is dismissed and leave is refused.

Judge

Judge

Judge

Karachi  
10.06.2024  
Khalid  
Approved for reporting