108/23

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sardar Tariq Masod
Mr. Justice Amin-ud-Din Khan
Mr. Justice Syed Hasan Azhar Rizvi

(AFR)

Civil Appeal No.377 of 2014
(Against the judgment dated 19.12.2013 of the High Court of Balochistan, Quetta passed in C.P. No.139 of 2012)

Muslim Commercial Bank Limited
...Appellant(s)

Versus

Muhammad Anwar Mandokhel etc.
...Respondent(s)

For the Appellant(s)	:	Mr. Shahid Anwar Bajwa, ASC Mr. M. Sharif Janjua, AOR
For Respondent No.1	:	Mr. Abdul Hafeez Amjad, ASC Sheikh Mehmood Ahmed, AOR
Date of Hearing	:	12.09.2023

JUDGMENT

Syed Hasan Azhar Rizvi, J.— This appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"), with the leave of the Court, is directed against the judgment dated 19.12.2013 ("**impugned judgment**") passed by the learned High Court of Balochistan, Quetta whereby a constitution petition filed by the appellant under Article 199 of Constitution was dismissed and the orders of the Balochistan Labour Appellate Tribunal and the Balochistan Labour Court were upheld. Leave granting order

dated 05.03.2014 describes the relevant facts and the issues involved, with brevity, and for convenience, the same is reproduced below: -

> *"Learned ASC for the petitioner, inter alia, contends that in respect of disputes, which are trans-provincial in nature, the Labour Courts have no jurisdiction, as held in a recent pronouncement of this Court in Civil Appeal No.407/2013, dated 17.02.2014, and this is precisely one of the moot point involved in the present petition, which has been erroneously decided by the High Court against the petition.*
>
> *2. Leave to appeal is granted to examine, inter alia, above raised contention."*

2. Before we dive into the complex specifics of the case, let's start by offering a summary of the essential facts and events that laid the underpinning for these legal proceedings. The Muslim Commercial Bank, Limited ("**the appellant**") is a company, duly incorporated under the Companies Ordinance, 1984, and operates as a Banking Company within the ambit of the Banking Companies Ordinance, 1962. Muhammad Anwar Mandokhail ("**the respondent**") was appointed as a Business Development Officer (Grade-I) by the appellant vide its letter dated 16.04.2007 for the development of business and securing deposit for the appellant. However, the respondent was terminated by the appellant vide its termination letter dated 28.04.2010.

3. Being aggrieved, the respondent challenged the legality of his termination by filing a civil suit; however, the plaint was returned by civil court. An appeal filed against it was also dismissed as being withdrawn. Later, a grievance petition filed by the respondent in August 2010 before the Balochistan Labour Court was allowed vide judgment dated 18.06.2011. Thus, the appellant approached the Balochistan Labour Appellate Tribunal and filed an appeal but the same was dismissed vide judgment dated 06.12.2012. A constitution petition filed by the appellant

against the order of the Balochistan Labour Appellate Tribunal also met the same fate; hence, this appeal.

4. Mr. Shahid Anwar Bajwa, ASC representing the appellant, has argued that the respondent was employed as a Business Development Officer and held the position of Officer Grade-I. He emphasizes that the respondent was not engaged in any manual or clerical tasks. However, the lower courts, in their wisdom, determined that since the respondent lacked the authority to hire and fire employees, he should be classified as a workman. It is noteworthy that the lower Court failed to recognize that in his grievance petition, the respondent never alleged that he was employed as a workman or engaged in manual or clerical duties. His sole contention was that he lacked the power to hire or fire employees. Furthermore, he pointed out that during his tenure, the respondent generated substantial business worth billions of rupees for the Bank. It is imperative to note that the lower courts failed to properly evaluate the respondent's testimony, wherein he explicitly stated that his primary responsibility was to solicit deposits from various institutions and parties. This fact was corroborated by his witness. This significant aspect of his testimony appears to have been overlooked by the lower courts constituting a clear case of misreading of evidence. The determination of an employee's status as a workman is a jurisdictional matter that strikes at the core of the Labor Court's authority. Even if we have to entertain the argument that the respondent was initially employed as a workman, it is contended that he no longer met the definition of a workman as outlined in the Industrial Relations Act, 2008, or the Balochistan Industrial Relations Act, 2010. Consequently, he would have no *locus standi* to file a grievance petition before a Labor Court. Furthermore, it is asserted that, in any scenario, the appellant's establishment, which is undeniably trans-provincial, falls outside the

jurisdiction of the Balochistan Labor Court in relation to the appellant's employees. Finally, learned counsel for the appellant prayed for the setting aside of the impugned order and dismissal of the grievance petition of the respondent.

5. Mr. Abdul Hafeez Amjad, ASC, appearing on behalf of the respondent, has argued that neither the designation nor the salary of a person is a criterion to determine his status; it is only nature of duty that a person performs is the sole determining factor regarding the status of that person whether he is a workman or not, and this is pure question of fact and cannot be resolved without recording of evidence, which (exercise) has already been carried out by the Labour Court and appreciated by the Labour Appellate Tribunal as well as the High Court concerned. As such, the question raised in this appeal is beyond the scope of Article 185(3) of the Constitution.

Further argued that the Industrial Relation Act, 2008 expired on 30.04.2010, and the Industrial Relations Ordinance, 2011 was promulgated on 18.07.2011; this Court in its judgment reported as **Air League of PIAC Employees through President** versus **Federation of Pakistan M/O Labour and Manpower Division Islamabad and others (2011 SCMR 1254)** has held that with effect from 30.04.2010 till fresh legislation within the scope of 18th amendment of Constitution there was a vacuum; however, during interregnum period, when no Industrial Relations Law was holding field, the workers could seek their remedy under the ordinary law as in absence of special law the general law would come forward to fill in the vacuum. For this reason, the respondent opted to file a civil suit for Declaration and Permanent Injunction before the civil court at Quetta. The said suit was returned under Order VII Rule 10, C.P.C. for filing of the same before appropriate

forum. An appeal had been filed against this order but was subsequently withdrawn on account of the promulgation of the Balochistan Industrial Relation Act, 2010 on 22.07.2010 and consequent whereupon the respondent approached the Labour court well within the scope of law.

Added that the Industrial Relations Act, 2008 expired on 30.04.2010, the Industrial Relations Ordinance, 2011 was promulgated on 18.07.2011 and the Industrial Relations Act, 2012 was made applicable on 14.03.2012; both these legislations were made in contravention to the dicta laid down by this Court in the case *Air League of PIAC Employees through President* (*supra*) wherein it was held that after the promulgation of 18th amendment of Constitution and after the abolition of the concurrent legislative list, no federal legislation could be made on labour matters except a recourse to provisions of Article 144(1) of the Constitution. Moreover, this Court while deciding the Civil Petition Nos.1150/ 2011, 127/2013, 1754, and 1755 of 2012 has held that in the light of the law laid down in the case of *Air League of PIAC Employees through President* (*supra*), the judgments, proceedings, decisions from the date of 30.04.2010 till 28.07.2011 are *coram non judice,* without lawful authority and nullity in the eyes of law, it was, therefore, the civil suit was filed by the appellant. On promulgation of the Balochistan Industrial Relations Act, 2010 the respondent approached the proper forum having full competency and it is worth noting that the Judgment of Labour Court dated 18.06.2011 is well before the promulgation of IRO, 2011 that is 18.07.2011. Thus, the competency and jurisdiction of the Trial Court/Labour Court cannot be called in question. Moreover, the concept of Trans-Provincial Establishment was introduced on 14.03.2012 when the IRA, 2012 was promulgated by the time not only the judgment of the Labour Court was announced but the judgment of the Labour Appellate Tribunal was also pronounced, therefore the plea of Trans-Provincial

Establishment cannot be allowed to be made applicable in the circumstances of the case.

6. We have heard the learned counsel for the parties and perused the material available on the record with their able assistance.

7. The question of jurisdiction of the court or a judicial forum assumes paramount importance as the foremost and pivotal consideration. It defines which court is competent to handle a case, where it should be heard, and what types of cases it can address. This determination is the cornerstone of a fair legal process, ensuring that cases proceed efficiently, prevent delays, and maintain clarity.

Thus, we would proceed first to determine the question of jurisdiction of the Provincial Labour Court, Quetta to adjudicate upon the grievance petition of the respondent. In this case, the respondent was, admittedly, employed by the appellant on 16.04.2007 as a Business Development Officer in the position of Officer Grade-I and was terminated on 28.04.2010. At the time of his termination, the Industrial Relation Act, 2008 ("**IRA 2008**"), a Federal Law, was in force, however, stood auto-repealed on 30.04.2010 (exactly two days after his termination) by operation of a sunset clause as already available in section 87(3) thereof. Moreover, the Parliament passed the 18th Constitutional Amendment on 20.04.2010 (ten days before the auto repeal of IRA 2008), whereby the concurrent legislative list was abolished and all the matters mentioned therein (including labour practices and trade unions) came within the jurisdiction of the provinces to make legislation and deal with the said subjects. No doubt, just after the termination of the respondent, there was no labour law (federal or provincial) holding the field. Even, the Labour Courts, Labour Appellate Tribunal as well and National Industrial Relations Commission ("**NIRC**")

working under IRA 2008 stopped functioning due to the absence of any legal backing i.e. federal law, etc. However, in view of the above constitutional amendment, the Balochistan Industrial Relations Ordinance, 2010 ("**BIRO 2010**") was promulgated on 22.07.2010; which was repealed and succeeded by the Balochistan Industrial Relations Act, 2010 ("**BIRA 2010**") passed on 15.10.2010.

8. Being aggrieved of the termination order dated 28.04.2010, the respondent made his first effort by filing a civil suit on 12.05.2010 seeking a declaration to the effect that he was entitled to the promotion along with permanent injunction in the terms that the appellant would not dismiss or terminate the respondent without any reason.

The plaint in the said suit was returned by the Civil Court under Order VII Rule 10, C.P.C. with the advice to file the same before the appropriate forum i.e. the Labour Court. The respondent filed an appeal against this order but subsequently withdrew the same on 16.08.2010 on the grounds of promulgation of the Balochistan Industrial Relation Ordinance, 2010. Thus, the respondent filed a grievance petition before the Labour Court constituted under the said Provincial labour law. The grievance petition was accepted on 18.06.2011 by the Labour Court, Balochistan and the respondent was reinstated in his service with all back benefits.

9. Undisputedly, the appellant is a trans-provincial establishment having its branches in all the provinces and Islamabad Capital Territory. Keeping in view the status of the appellant as a trans-provincial establishment, an important legal question, as also set out in the leave granting order *supra*, arises for determination by this Court is whether a Provincial Labour Court has the competence and jurisdiction to adjudicate upon such trans-provincial issues. We are mindful of the

fact that it is not the nature of the dispute, particularly, unfair labour practice, which confers jurisdiction on one or the other forum but it is the status of the employer or the group of employers, which would determine the jurisdiction of the Provincial Labour Court and that of the NIRC. Once it is established through any means that the employer or group of employers has an establishment, group of establishments, industry, having its branches in more than one Provinces, then the jurisdiction of the NIRC would be exclusive in nature and of overriding and superimposing effects over the Provincial Labour Court for resolving industrial disputes, including unfair labor practices, etc., related to such employers with establishments, branches, or industrial units in multiple provinces. Therefore, in such like cases recourse has to be made by the aggrieved party to the NIRC and not to the Provincial Labour Court. Reference in this regard may be made to the case of **Pakistan Telecommunication Company versus Member NIRC (2014 SCMR 535)** passed in Civil Appeal No.407/2013 dated 17.02.2014 as also mentioned in the leave granting order *supra*.

10. Considering from another angle, whether a provincial legislature can legislate with regard to the establishments and industries functioning at the trans-provincial level? In this regard, Article 141 of the Constitution sets out the territorial jurisdiction of the Parliament as well as the Provincial Assembly in the words that "*subject to the Constitution, Majlis-e-Shoora (Parliament) may make laws (including laws having extraterritorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof*". From the above provision of the Constitution, it is abundantly clear that the Parliament has extra-territorial authority to legislate, but the Provincial Legislature has no legislative competence to legislate a law regulating the establishments and industries functioning at the trans-

provincial level. Keeping in mind the afore-noted legal position, we have carefully examined the BIRO 2010 and the BIRA 2010 and have found that they do invest the Provincial Labour Court with the authority to adjudicate upon the matters relating to the trans-provincial establishments even if they provide so, it could not sustain under the law. Moreover, Clause (2) of Article 175 of the Constitution provides that "*no Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law*".

11. We have no hesitation in holding that the Balochistan Labour Court had exercised jurisdiction not vested in it. The judgment dated 18.06.2011 given by the Balochistan Labour Court is patently without jurisdiction and *coram non judice*. We are mindful of the fact that though no Federal Labour Law was in filed at that time to deal with the disputes of the trans-provincial establishment the respondent could have sought his remedy under the ordinary laws prevailing at that time, because in the absence of a special law, the ordinary/general laws come forward to fill in the vacuum as held by this Court in the case of *Air League of PIAC Employees through President (supra)*. The contention of the respondent that he filed the above suit in view of judgment of this Court in the above case has no force as the suit was filed on 12.05.2010 whereas the judgment in the said case was pronounced on 10.05.2011, almost one year thereafter.

12. Ultimately, the Federal government, more than one year after the auto repeal of IRA 2008, introduced the Industrial Relation Ordinance 2011 ("**IRO 2011**"), (published in the official Gazette of Pakistan on 18.07.2011) to consolidate and rationalize the law in Islamabad Capital Territory and at trans-provincial level, relating to the formation of trade unions and federations of trade unions, determining

the collective bargaining agents, regulation of relations between employers and workers, the avoidance and settlement of any differences or disputes arising between them or matters connected therewith and ancillary thereto. Later, the Parliament, by a resolution, extended this Ordinance for a further period of one hundred and twenty days w.e.f. 15th November, 2011 under Article 89(2)(a) of the Constitution. However, this Ordinance was succeeded by the permanent legislation i.e. the Industrial Relations Act, 2012 ("**IRA 2012**") which was published in the Gazette of Pakistan on 14.03.2012. The IRA, 2012 was promulgated to consolidate and rationalize the law relating to the formation of trade unions, and the improvement of relations between employers and workmen in the Islamabad Capital Territory and trans-provincial establishments and industry (see preamble). Under section 53 of the IRA, 2012, NIRC has been constituted by the Federal Government and its functions and jurisdiction have been provided in section 54 thereof. The main function of the NIRC, *inter alia*, is to adjudicate and determine an industrial dispute in the Islamabad Capital Territory and trans-provincial to which a trade union or a federation of such trade union is a party and which is not confined to matters of purely local nature and any other industrial dispute which is, in the opinion of the Government, of national importance and is referred to it by that Government. Similarly, the NIRC is also empowered, on the application of a party or of its own motion, to withdraw from a Labour Court of Province any application, proceedings, or appeal relating to unfair labour practice, which falls within its jurisdiction {S.57(2)(b)}.

13. It would not be out of context to mention here that the constitutionality of the IRA, 2012 was directly challenged before this Court in **Sui Southern Gas Company Limited versus Federation of Pakistan and others** (**2018 SCMR 802**) on the ground that the

Parliament has no authority to pass the said Act i.e. IRA 2012 after the abolition of the Concurrent Legislative List ("**CLL**") of the Constitution which contained the subjects of labour practices and trade unions (Entries No. 26 and 27 of the CLL) vide the 18th constitutional amendment dated 20.04.2010. The precise question before this Court was whether the IRA 2012 is a valid piece of legislation or not, and whether by promulgating the said Act, the Federal Legislature has gone beyond its legislative competence and encroached upon the authority of the Provincial Legislature. A three-member bench of this Court unanimously held that the IRA 2012 is a valid piece of legislation. While arriving at this conclusion, the learned bench made the following important observation:

> I) *that the Parliament through the Eighteenth constitutional amendment, abolished the CLL which contained the subjects of labour practices and trade unions (Entries No. 26 and 27 of the CLL), but with the conscious application of mind, through the insertion of the new Entry No. 32 ibid in the FLL, brought within the legislative competence of the Federal Legislature the matters relating to the international treaties, conventions, etc.;*
>
> *Thus, the Federal Legislature has legislative competence to legislate in this regard to discharge the obligations created under the International Treaties and Conventions. Therefore, the IRA 2012 has been validly enacted by the Parliament. (para 16);*
>
> *II) that, in addition to the matters specifically enumerated in any of the Entries in Part-I of the FLL, the matters which in some way relate to the Federation would also fall within the legislative competence of the Parliament. This interpretation also finds support from the fact that in terms of Article 141 of the Constitution, a Provincial Legislature does not possess extra-territorial legislative competence and therefore, cannot legislate with regard to a subject which in its application has to transcend the provincial boundaries.*
>
> *Thus, it is held that the federal legislature has the competence to legislate relating to the stablishments/Trade*

Unions functioning at the Federal as well as trans-provincial level. (para 17);

III) *that in a Federal system, provincial autonomy means the capacity of a province to govern itself without interference from the Federal Government or the Federal legislature, but as the Provincial legislature does not possess extra-territorial legislative authority i.e. it cannot legislate regarding the establishments operating beyond the territorial boundaries of that province.*

Thus, neither does the IRA 2012 in any manner, defeat the object of the Eighteenth Amendment nor does it destroy or usurp the provincial autonomy or the principle on which the Federation was formed under the Constitution; rather it facilitates to regulate the right to form unions at trans-provincial level, which could not be attained through a provincial law (para 20).

14. While referring to the observation made by the earlier three-member bench of this Court in the case of *Air League of PIAC Employees through President* (*supra*) that during the interregnum period with effect from 01.05.2010, when no Industrial Relations Law was holding the field, the workers had a remedy under the ordinary laws prevailing at that time, because, in the absence of a special law, the ordinary/general laws came forward to fill in the vacuum, the learned bench in the case of *Sui Southern Gas Company* (*supra*) observed that the IRO 2012 does not destroy any existing right, rather by means of Section 33 thereof, all the existing rights stood preserved and protected, as such, it cannot be said that it affects any right or obligation created by other laws, including any provincial law. Also observed that the Labour Laws provide the procedure and mechanism for the resolution of disputes, registration of Trade Unions, and establishment of Forum for the redressal of grievances of the labourers as well as employers, therefore, it is mainly a procedural law and in the light of the well-settled principles of interpretation of Statutes, the procedural law has retrospective effect unless the contrary is provided expressly or impliedly.

Finally, held that the IRA 2012 would be applicable retrospectively w.e.f. 01.05.2010, when the IRO 2008 ceased to exist and the workers of the establishments/industries functioning in the Islamabad Capital Territory or carrying on business in more than one province shall be governed by the Federal legislation i.e. IRO 2012; whereas, the workers of establishments/industries functioning or carrying on business only within the territorial limits of a province shall be governed by the concerned provincial legislations.

15. Recently, this Court in the case of **Muhammad Shabbir versus Quaid-e-Azam University** (**2022 SCMR 487**) while answering a specific question, whether all the decisions rendered by the Labour Court, during the interregnum period, are *null* and *void* in the eyes of law. If so, whether, and to what extent, such decisions can be extended protection by applying the de facto doctrine has held that "the Labour Court, being a creature of the Act of 2008, remained functional until the Act of 2008 remained in force and when the Act of 2008 repealed itself on 30.04.2010, the Labour Court also ceased to exist from such date. The grievance petitions filed by the appellants were pending in the Labour Court on 30.04.2010 and their status remained that of a pending proceeding. From 01.05.2010, NIRC was deemed to be constituted to hear grievance petitions and thus, the only forum provided in the law to hear and decide the grievance petitions from 01.05.2010 was NIRC." Moreover, after a comprehensive analysis of the new labour laws, both Provincial and Federal, it may be confidently concluded that two parallel forums have been created, one operates at the provincial level, while the other is a federal-level entity known as the National Industrial Relations Commission (NIRC). Both these forums have jurisdiction to deal with industrial disputes, unfair labour practices and other allied matters, either attributable to the employer or the workers/workmen, however,

the Federal Law has drawn a clear demarcation line of the jurisdiction of these two different forums i.e. Labour Courts in the Provinces and the other NIRC, at the Federal Level.

16. It is a matter of record that the IRO 2011 (published in the official gazette on 18.07.2011) was in force when the appeal of the present appellant against the order of the Labour Court was pending before the Balochistan Labour Appellate Tribunal. The respondent or the appellant, as the case may be, could have approached the NIRC under S.57(2)(b) of the IRO 2011 (same provision in IRA 2012) for withdrawal of the appeal pending before the Balochistan Labour Appellate Tribunal but neither of them opted such a course. The Tribunal also did not take note of the above legal position despite framing the specific issue "*whether the application is maintainable under section 41 of BIRA 2010*?" and decided the said appeal on 06.02.2012, upholding the order of the Labour Court. Similarly, the High Court of Balochistan also decided the Constitution petition vide the impugned judgment on wrong premises and only remained focused on the aspect that whether the respondent fell within the definition of the worker and workman as defined in BIRA 2010.

17. We are of the firm view that in the present case, the High Court while drawing the impugned judgment could not properly comprehend the intents and objects of the above laws, rather misconstrued and misinterpreted the same, resulting in miscarriage of justice. The impugned judgment, being not sustainable in the eye of the law, is liable to be set at naught.

18. Foregoing in view, the appeal is accepted and the impugned judgment dated 19.12.2013 of the High Court of Balochistan, Quetta is set aside, being not sustainable in the eyes of the law. *(Resultantly, Constitution Petition No. 139/2012 filed by the appellant under Article 199 of the Constitution is*

accepted and both the judgments dated 06.02.2012 and dated 18.06.2011 passed by the Balochistan Labour Appellate Tribunal and Balochistan Labour Court, are set aside, accordingly.)

The respondent is, however, at liberty to approach the NIRC for redressal of his grievance under section 33 of the IRA 2012, if he so desires. We expect that the NIRC, in the peculiar facts and circumstances of the case, would generously consider the application of the respondent, if any, under section 85 of the IRA 2012 read with section 5 of the Limitation Act, 1908 for condonation of delay keeping in view the spirit of section 14 of the Limitation Act, as the respondent has been running from pillar to post seeking redressal of his grievance though before wrong forum yet in good faith and with due diligence. We also exercise restraint from making any observation regarding the status of the respondent being a worker and workman or otherwise as it would adversely affect the proceeding before the NIRC because it is the NIRC which is a competent forum to decide the status of the respondent first through mechanisms provided for in the IRA 2012. No order as to costs.

Judge

Judge

Judge

Announced in open Court
On 17 October, 2023 at Islamabad
~~Not~~ Approved for reporting
*Ghulam Raza/**

Judge