

NATIONAL INDUSTRIAL RELATIONS COMMISSION,
ISLAMABAD.

Before: - **Mr. Abdul Rasool Memon, Learned Chairman.**
Mr. Shabbir Hussain Awan, Learned Member.
Syed Noor-ul-Hassnain, Learned Member.

Appeal No. 12A(02)/2023-P
CMA No.24A(02)/2023-P

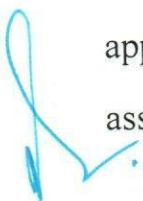
HBL Versus Alamgir Khan

Present: - Mr. Tariq Mahmood, Advocate for the appellant.
Mr. Inayatullah Khan, Advocate for the respondent.

ORDER
20.02.2024

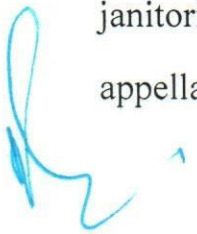
Abdul Rasool Memon, Chairman.

Through this appeal filed under Section 58 of the IRA, 2012 the appellant has assailed the impugned order dated 24.11.2022 passed by learned Single Bench at Peshawar in case No.4B(02)/2022-P, wherein the learned Member has set aside the verbal termination order and reinstated the petitioner (respondent) in service without back benefits. The appellant being aggrieved by the impugned order of reinstatement has filed instant appeal while the respondent through appeal No. 12A(40)/2023-P has assailed the order to the extent of declining of back benefits.



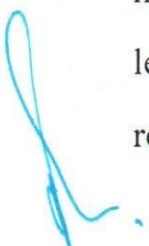
2. Brief facts leading to file instant appeal are that the respondent was inducted in service as Support Janitor in April 2009 and was terminated from service on 02.12.2015 and thereafter, he was taken back on duty vide letter dated 18.07.2017. The respondent was verbally terminated from service on 27.06.2018 and he in the first instance assailed his verbal termination through filing writ petition No.746/2018 which was subsequently dismissed as withdrawn vide order dated 13.11.2018. The respondent filed grievance petition before the Commission on 10.01.2019 with the prayer of setting aside the verbal termination order. The appellant on notice put appearance through counsel and contested the case by filing reply statement.

3. The learned counsel for the appellant has argued that the learned Single Bench without appreciating the material available on record and even without affording opportunity of the evidence to the appellant has passed the impugned order; that the case was at the stage of producing evidence and suddenly the same was fixed for final arguments without dispensing the evidence or mentioning any reason; that the grievance petition was hopelessly time barred but the learned Single Bench has wrongly held that the petition was within time; that the appellant bank outsourced the non-core banking activities to service provider companies therefore, no question of hiring the service of the respondent by the appellant after the year 2006 as janitorial staff arose; that the respondent was neither appointed by the appellant bank nor he was terminated as no relationship of employer and



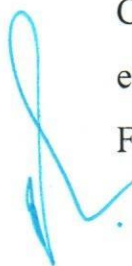
employee exists; that the learned Single Bench fixed the matter for evidence and without dispensing the evidence or recording any reasons has straight away fixed the case for arguments which resulted into issuance of impugned order; that important disputed issues existed but the proper evidence have not been recorded. The learned counsel for the appellant has prayed that the appeal may be allowed and the impugned order may be set aside.

4. The learned counsel for the respondent has contended that the respondent was verbally terminated without expressing any reasons; that the respondent having long span of service and thrown out from service through verbal order; that the respondent was engaged through an agreement executed between the appellant bank and the respondent and the appellant at this stage cannot deviate from that arrangement; that the learned Single Bench has rightly directed for reinstatement of the respondent in service; that the respondent was remained jobless during the period when he was out of service thus he was entitled for back benefits; that even otherwise when the order of verbal termination was declared without lawful authority, then the respondent was entitled for all benefits during the period; that the respondent through separate appeal for granting back benefits has also been filed; that the learned Single Bench has rightly cut short the evidence when no disputed question of fact involved then no need to record evidence. The learned counsel for the respondent has prayed for upholding the order of reinstatement in service and also prayed for granting back benefits.



5. The learned counsel for the parties have been heard and record perused.

6. The main thrust of the arguments of the appellant is that the respondent was not employee of the appellant bank rather the non-core banking activities were outsourced to the service provider in the year 2006. The appellant bank has refused with regard to the issuance of appointment letter of the respondent. The perusal of the lower court case file reveals that the learned Single Bench vide order dated 07.10.2019 has observed that the question of maintainability is a mix question of law and facts which can be determine after recording pro and contra evidence of the parties. The diary sheet reveals that the official PW-1 was cross examined on 27.08.2020 and the case was adjourned for evidence of PW-2 and on 10.09.2020 the examination in chief of PW-2 & 3 was recorded. On said date the petitioner (respondent) counsel filed an application for filing additional documents in evidence, copy of said application was handed over to the appellant for reply/arguments. The application for filing documents was accepted on 24.12.2020 and the case was adjourned for evidence. On 11.03.2021 the cross examination of PW-3 was partially concluded and the matter was adjourned for remaining cross of PW-3. The evidence of the respondent (petitioner) witnesses were being recorded and suddenly vide order dated 28.10.2021 the case was adjourned to 23.12.2021 for final arguments. The learned Single Bench neither dispensed with the recording of evidences nor mentioned reasons for cut shorting the evidences. Admittedly, the Commission having powers to curtail the process of examination or cross examination as provided in Regulation 16 of NIRC (Procedure and Functions) Regulations, 2016 but where the disputed facts/issues are



involved, the decision of the case on the basis of arguments without recording/considering the evidence would be against the spirit of natural justice. The disposal of the cases in short manners some time dragged the litigations because such like decisions may not sustain before the higher forums and remanded back, therefore, without expressed findings the turning from evidence to final arguments and passing of impugned order cannot be held in accordance with law.

7. In view of what has been discussed above, we are convince with the arguments of the learned counsel for the appellant, therefore, the impugned order passed by the learned Single Bench is hereby set aside and the case is remand back to the learned Single Bench for decision afresh in accordance with law after recording of the remaining evidence of the parties. As the matter is subjudice since 2018 therefore, it is expected that the learned Single Bench will decide the case within reasonable time. The office is directed to transmit copy of this order alongwith lower court case file to the NIRC Peshawar Bench forthwith for further action. File be consigned to record room after its due completions.

Announced in Open Court.

(Abdul Rasool Memon)
Chairman

(Syed Noor-ul-Hassnain)
Member

(Shabbir Hussain Awan)
Member