

NATIONAL INDUSTRIAL RELATIONS COMMISSION ISLAMABAD
FULL BENCH AT ISLAMABAD

Before: **Mr. Justice (F) Abdul Rasool Memon, Chairman**
Mr. Shabbir Hussain Awan, Member
Syed Noor ul Hassnain, Member

Appeal No.12A(153)/2022

M/s Albayrak Platform Limited and others Vs Asif Mehmood

Appeal No.12A(154)/2022

M/s Albayrak Platform Limited and others Vs M. Khalid Yaqoob

Present: Raja M. Akbar Advocate for appellants
Kh. Manzoor Ahed, advocate for respondent.

ORDER

02.01.2024 **Shabbir Hussain Awan, Member.**

Note:

Since, one and the same order dated 29-08-2022 has been assailed through the above titled two appeals thus the same are being decided by this Single Order.

2. Facts giving rise to the above titled appeals are that the respondent/petitioner served the appellant establishment as Metro Bus Driver since 06-06-2015. But they were dismissed from service vide termination order dated 26-02-2019. They served grievance notices to the appellant but to no avail, resultantly grievance petition No.4B(101)/2019 titled Muhammad Khalid Yaqoob M/s Albayarak Platform and Asif Mehmood vs Albayarak Platform case No.4B(104)/2019 with the following prayers:-


21/1/24

"It is respectfully prayed that this Hon'ble Bench of Commission may be please to set aside the impugned alleged unlawful termination order dated 26-02-2019 and restore the service of the applicant from the day of alleged unlawful termination with full back benefits in the interest of the justice".

2. The appellant respondents were put to notice. They submitted reply on 18-11-2019 and 17-11-2019 respectively by resisting the grievance petition on legal as well as factual grounds.

3. Parties produced oral as well as documentary evidence in support of their respective versions. After hearing the arguments of the learned counsel for the parties the grievance petitions filed by the respondents were allowed by the learned Member. Feeling aggrieved the instant appeals.

4. It is argued by the learned counsel for the appellant that the respondents being contractual employees are no more worker but the learned Member has failed to attend this legal aspect of the matter; that admittedly, the respondents were the employees of M/s Skills Hub (Pvt) Ltd and not that of M/s Albarayak ^{ing} Plateform Ltd. but the learned Single Member has failed in concentrate on this legal point; that the learned Single Member decided the matter without affording of hearing to the appellant in violation of natural rules of justice, therefore, the impugned order is no more sustainable; that the services of the respondents could be terminated at any time without any notice as per agreement of employment dated 06-06-2018; that the respondents created law and order situation many time causing heavy loss to the appellant; that the respondents are no more permanent employees therefore, they could be dismissed from service without any reason in view of the various terms and

[Signature]
2/11/24

condition of the employment contract dated 06-06-2018, but the learned Member has erred in law by not addressing the objections/written comments of the appellants, thus, while allowing the appeal the impugned order be set aside.

5. Kh. Manzoor Ahmed, learned counsel for the respondent on the other hand, contends that the impugned order being well reasoned and quite in accordance with the evidence available on the case file merits no interference, thus, appeal being without merits be dismissed.

6. Arguments heard, record perused.

7. Perusal of the record transpires that, admittedly, the respondents joined the appellant in the year 2015 as Driver as there is no controversy in this respect. The question regarding the status of the respondent is required to be decided first in point of time because according to the learned counsel for the appellant the respondents being contractual employee could be terminated any time without affording any reason or conducting the inquiry as they were not permanent employee. In order to resolve this controversy recourse is made to schedule Standing Order Section 1 which runs as under:-

"A permanent workman" is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lockout or strike) or involuntary closure of the establishment; 2 [and includes a badli who has been employed for a

[Signature]

2/1/24

It is clear from what is referred above that a person who works for more than 09 months stands qualified as workman. Admittedly, the respondents joined establishment on 15-05-2015 and went on performing their duties up to 26-02-2019 i.e three years and 09 months therefore, in view of the length of service they have attained the status of permanent workman by operation of law.

8. So for the second question whether the respondents are employees of respondent No.1 is concerned, it is manifest from the available record that though the services of the respondents were hired through the appellant/respondent No.2 but the fact remains that from the day first they joined respondent No.1 as a Driver. The personal code and other documents were also issued by the appellant/respondent No.1. Thus, it can be concluded safely that they are employees of appellant No.1 and not appellant No.2.

9. Moreover, apart from as it has been discussed above, the termination of the respondent took place on two fold reasons:-

1. Misconduct; and,
2. illegal strike

As is evident from the termination letter dated 26-02-2019. We want to quote para No.2 of the same in verbatim:-

"Furthermore you have agitated and were involved in 1st Feb, 20019 due to which metro bus operation got disturbed and was stopped for almost 6 hours and our client platform was also penalized for millions of rupees due to your misconduct an illegal strike. You have slowed down the Metro bus operation intentionally on 20th , 21st and 22nd of Feb, 2019"

[Signature]

2/1/24

Y
that

It is clear from what is referred above that the respondents were dismissed from service on the allegation of misconduct. Legally, when an employee is to be prosecuted on the charge of misconduct than section 15 sub section (4) of the Standing Order Ordinance, 1968, comes, into play. The noncompliance of the same will render the entire proceeding illegal and unlawful which is reproduced here-in-under:-

"15(4) No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct 1 [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".

10. The perusal of the above quoted law makes mandatory for the authority to conduct an inquiry within stipulated period. But admittedly, no inquiry was conducted with regard to the allegation of misconduct. Therefore, the termination of the respondents on the allegation of misconduct without proper, fair and impartial inquiry is no more sustainable. Thus, the learned Member rightly allowed the petitions, thus, while maintaining the same, both the appeals being without merits are hereby dismissed. There is no order as to costs. File be consigned to record room.

Announced in open Court

Dated:02-01-2024

(Abdul Rasool Memon)

Chairman

(Syed Noor ul Hassnain)

Member

(Shabbir Hussain Awan) 211124

Member