

NATIONAL INDUSTRIAL RELATIONS COMMISSION
FULL BENCH AT ISLAMABAD

Before: **Abdul Rasool Memon, Chairman**
Muhammad Zubair Khan, Member
Shabbir Hussain Awan, Member

Appeal No. 12A(116)/2022

M/s Kuwait Airways Company through its Authorized Representative Mr. Mirza Babar R Baig, Sales Manager, KAC, Office No.4 Duty Free Shopping Plaza, Jinnah Avenue, Blue Area Islamabad.....Appellant

Versus

Fouzia Sultana wife of Abdul Rashid, R/O House No. 163, Street No.12, Jhang Syedan, Islamabad.....Respondent

Present: Mr. Barrister Hassan Alam, counsel for the appellant
 Mr. Tufail Shahzad, counsel for the respondent

ORDER

06.09.2023 Muhammad Zubair Khan, Member

Appellant aggrieved by the order dated 21.10.2022 passed by the learned Single Bench NIRC Islamabad brought this appeal u/s 58 of the Industrial Relations Act, 2012, through which the learned Single Bench allowed the grievance petition u/s 33 of the ibid Act and set aside the retrenchment order and reinstated the respondent in service with all back benefits.

2. The facts gleans out from the record are that the respondent aggrieved by order dated 19.09.2021 brought a petition before the learned Single Bench Islamabad,

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contending that she was appointed as Ticket / Reservation Officer vide letter dated 24.12.2008. After satisfactory performance and completion of probation period the services of the respondent were confirmed. The respondent served the appellant organization devotedly, faithfully and with zeal and zest and to the best of her ability. Further contending that she was promoted as Senior Ticketing / Reservation Officer vide letter dated 18.03.2014 and further promoted to Grade-V vide letter dated 20.03.2019 and then awarded Grade-VI step-VII on 17.02.2020 as Senior Ticketing / Reservation Officer. Further averred that on 26.08.2021 she was given a notice of termination of employment on pretext of internal restructuring which was not only violation of rules, regulations and law of the land but the respondent was discriminated. Further averred that the respondent served grievance notice dated 13.09.2021 through TCS and again submitted grievance petition. Further contending that the impugned notice dated 13.09.2021 is illegal, unlawful, void ab-initio and ineffective upon the rights of the respondent. The services of the respondent have been terminated without assigning any cogent reason. The appellant did not consider long standing services of the respondent and issued impugned termination notice on the pretext of internal restructuring of organization which is violation of service rules and regulations and law, applicable and prayed that the impugned notice dated 13.09.2021 is illegal, unlawful, void ab-initio and ineffective upon the rights of the respondent and the respondent may be reinstated in service with all back benefits.

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3. The petition was contested by the appellant by submitting written reply on factual as well as on legal grounds. The appellant admitted that the respondent was appointed as Ticketing Reservation Officer Grade-IV step-I vide order dated 24.12.2008 and as per terms and condition of her employment contract she was confirmed and was granted due promotion and increments for time to time. Before her termination she was performing her duty as Ticketing / Reservation Supervisor. Further contended that in the Covid Pandemic the business was badly affected due to which the appellant adopted several measures to reduce cost including downsizing of employees through internal restructuring of the organization which was done across global and various posts of the appellant establishment were abolished in various station around the world including Pakistan. As per internal restructuring the role of the respondent had also become redundant and the post of the respondent was abolished and the appellant exercise their contractual right by invoking Article-9 of terms and conditions of the Employment Contract, terminated the contract of the respondent. The appellant also prayed that on acceptance of the reply the petition may kindly be dismissed.

4. The respondent submitted affidavit in evidence and appeared as PW-1. On behalf of appellant Mirza Babar Razaq Baig submitted affidavit in evidence and appeared as RW-1 and the learned counsel for both the parties have closed their evidence.

5. The learned Single Bench after hearing arguments of the parties passed the impugned order.

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6. Arguments heard and record perused.

7. The learned counsel for the appellant while arguing his case drawn our attention towards organ-gram EX R/3 where the post of Supervisor Ticketing and Reservation has been abolished. Further submitted that due to Covid global recession they were forced to downsizing, therefore, they while restructuring the organization, the post of the Ticket / Reservation officer was abolished, therefore, by exercising the right under the contract the service of the respondent was terminated as no more required. He questioned findings of the learned Single Bench.

8. On the other hand, the learned counsel for the respondent submitted that as per Standing Order-1(b), of Industrial & Commercial Employment (Standing Orders) Ordinance 1968, she attained the status of permanent worker and thus her service were governed by Industrial & Commercial Employment (Standing Orders) Ordinance 1968 and shall be considered permanent employee as she was performing her duty continuously for more than 09 months since 2008. He further submitted that under the Standing Order-11 (a) of the Industrial & Commercial Employment (Standing Orders) Ordinance 1968, the appellant was required that they shall not terminate the employment of more than 50% of the workman or close down the whole of establishment without prior permission of the Labour Court in this behalf and submitted that the appellant had not complied the golden principle of retrenchment i.e. **"first come last go"** instead of terminating the services of the respondent simplicitor, the junior one should have been retrenched. He further submitted

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that the respondent in her affidavit in evidence claimed that the job was her sole earning and after her termination she was facing financial hardships. She was the only bread earner of her family and her husband is teaching Holy Quran to the children to meet her house hold expenditure. This assertion of the respondent in the affidavit was not cross examined by the appellant during cross examination and the fact not subjected to cross examine in other word it is admitted and she is entitled to back benefits.

9. It is not disputed that the respondent was working as Ticket / Reservation Supervisor performing her duties in the capacity of worker or workman defined u/s 2(xxxiii) of the Industrial Relations Act, 2012 and the appellant organization is running business throughout country, falls with the definition of trans-provincial establishment.

10. The respondent was appointed against the post of permanent nature and since 2008 she served on the post, thus by operation of law, she had attained the status of permanent worker and cannot be dismissed or retrenched without resorting to the Standing Orders, Ordinance 1968.

11. The appellant failed to adhere the golden principle of retrenchment i.e. **first come last to go** and it is admitted by the appellant in their evidence that junior to the respondent was not terminated / retrenched.

12. As far as the back benefit is concerned this has to be looked into in the light of law laid down by the Hon'ble Apex Court in cases reported as Sohail Ahmed Usmai v. Director-General Civil Aviation Authority and another (2014 SCMR 1843), inspector General of Police, Punjab v. Tariq

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Mahmood (2015 SCMR 77) and Muhammad Sharif and others v. Inspector General of Police, Punjab, Lahore and others (2021 SCMR 962).

10. In case titled Muhammad Sharif and others v. I.G.P Punjab & others reported in 2021 SCMR 962 it is held that.-

(c) Punjab Civil Servants Act (VIII of 1974)---S, 16, second proviso-Constitution of Pakistan, Arts. 4, 10A, 14 & 35---Fundamental Rules, R.51---Civil Service Rules (Punjab), R. 7.3---Civil servant---Reinstatement in service after order for removal or dismissal from service set-aside---Back benefits, entitlement to---Scope and principle---Civil servant on unconditional reinstatement in service was to be given all back benefits and the only exception justifying part withholding of back benefits could be that he accepted gainful employment/engaged in profitable business during the intervening period---In case, the dismissal/removal of a civil servant was declared illegal for a defect in disciplinary proceedings without attending to the merits of the case, the entitlement to back benefits may be put off till the inquiry was conducted in the matter finally determining the fault of the civil servant---In case, where there was some fault of the civil servant, including a situation where concession of reinstatement was extended to the civil servant while applying leniency or compassion or proportionality as standard and where penalty was modified but not wiped off in a way that the civil servant was restored to his position, he may be denied a portion of back benefits/back pay, while maintaining a proportion between the gravity of the fault of the civil servant and special/extenuating circumstances of the case."

Whereas in case titled Sohail Ahmed Usmani v. D.G Civil Aviation Authority and others, reported in 2014 SCMR 1843 it is held that.-

Civil Service---Reinstatement ---Back benefits, entitlement to---Delay in completing and submitting

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most immediate and priority work---Appellant, who was an employee of the Civil Aviation Authority (Authority" was awarded major penalty of dismissal from service since he failed to complete and submit priority work that was marked to him; that he was a habitual late comer and remained missing from office during working hours without intimation, and had availed frequent leaves---Appellate authority converted appellant's dismissal from service to compulsory retirement---Appellant filed constitutional petition before the High Court, which was allowed and appellant was reinstated in service on the ground that all charges against him, except that of late submission of priority work, remained unproved---High Court, however, directed that competent Authority, and that since appellant was not free from blemish and partly responsible, thus, he was not entitled to back benefits--
-Validity---High Court had not given any reason for the delay in submitting priority work by stating that the nature of priority work was such that he did not have the time to accomplish the priority work assigned to him---Once the High Court had reinstated the appellant in service, it should have allowed the back benefits unless it was proved that the appellant had obtained a gainful employment during the period of dismissal or was making some earnings---Appeal was allowed accordingly and authority was directed to pay back benefits to the appellant from the date of his dismissal to the date of his retirement.

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11. As there is no fault on the part of the respondent to keep her away from service, therefore, she is entitled to the back benefit which she also claimed in her evidence.

For what has been discussed above, we find no illegality or irregularity in the impugned order passed by the learned Single Bench, hence the same is maintained and the instant appeal having no force is hereby dismissed. No orders as to costs. File be consigned to record room.

Announced in the open court

(Abdul Rasool Memon)

Chairman

(Muhammad Zubair Khan)

Member

(Shabbir Hussain Awan)

Member

Iftikhar