

NATIONAL INDUSTRIAL RELATIONS COMMISSION, ISLAMABAD
(FULL BENCH AT ISLAMABAD)

Appeal No.12A(140)/2022

BEFORE: **Mr.Justice(R) Abdul Rasool Memon, Chairman**
Abdul Qayyum Khan, Member
Muhammad Zubair Khan, Member

M/s Oil and Gas Development Company Limited (OGDCL)
through Manager (HR), OGDCL Head Office, Jinnah
Avenue, Blue Area, Islamabad and two others.

.....Appellants.

Versus.

Mrs.Munaza Shah (Telephone Operator), OGDCL, Head
Office, Jinnah Avenue, Blue Area, Islamabad.

.....Respondent.

Present: Mr.Kashif Ali Malik, Advocate for appellants.
Rai Azhar Iqbal Kharal, Advocate for
respondent.

ORDER

24.08.2023

Abdul Qayyum Khan, Member

The instant appeal has been filed under
section 58 of the IRA, 2012 filed by the appellants against
the impugned order dated 29-08-2022 passed by learned
Single Member, NIRC Islamabad whereby he has disposed
of the grievance petition No.4B(96)/2022 of the
respondent.

2. The concise facts leading to this appeal are
that the respondent was appointed as Telephone

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Operator on 17-06-1085 on casual basis in the appellants establishment and later on her appointed was converted into contract basis vide order dated 30-08-1989 on existing terms and conditions; that the post of Junior Admin Assistant was advertised; that she ~~was~~ applied for appointment against the said post and ^{was} appointed as Junior Admin Assistant vide order dated 10-01-1996; that her services were confirmed by the appellants management vide order dated 28-01-1997; that her services were converted into Technical cadre as NBG-15 w.e.f.16-02-2005; that on 01-01-2016, she was served charge sheet with the allegations that her F.A certificate submitted by her at the time of appointment as Jr.Admin. Assistant was declared fake/bogus; that the inquiry proceedings were conducted and she was dismissed from service vide order dated 12-05-2022; that being aggrieved from the said dismissal order, she has served the grievance notice upon appellants management on 18-05-2022 for redressal of her grievance but in vain, hence she has filed grievance petition for her reinstatement into service with all back benefits.

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3. The appellants have contested the grievance petition through their written reply by controverting the averments of the grievance petition, raised many objections on point of law as well as facts and prayed for dismissal of the same.

4. After recording evidence and hearing arguments of learned counsel for the parties, the learned Single Member, NIRC Islamabad has disposed of the grievance petition vide impugned order dated 29-08-2022.

5. Feeling aggrieved from the above said order, the appellants have preferred the instant appeal with the prayer that the instant appeal may be accepted, set-aside the impugned order dated 29-08-2022 and dismissed the grievance petition.

6. The learned counsel for the appellants has reiterated the contents of the instant appeal and argued that the learned Single Member while disposing the grievance petition has come to the conclusion that the respondent was wrongly appointed as Jr.Admin. Assistant



but he instead of dismissing the petition has wrongly disposed of the same while reverting the respondent to the post of Telephone Operator w.e.f. the date of appointed as Jr.Admin Assistant. He has further argued that in this respect neither there was any prayer in the grievance petition nor the grievance petition depicts that she previously was working regularly on the post of Telephone Operator, hence the reversion of the respondent to the post of Telephone Operator is illegal and against the facts. He has prayed that the instant appeal ^amy be accepted, set-aside the impugned order and dismissed the grievance petition.

7. Conversely, the learned counsel for the respondent while controverting the arguments advanced by the learned counsel for the appellants has argued that the appellant management has dismissed the respondent from service without adopting proper procedure as envisage in the labour law because he falls within the definition of workman. He has further argued that the learned Single Member, NIRC has passed the impugned



order in accordance with law. He has supported the impugned order.

8. We have given anxious consideration to the arguments advanced by the learned counsel for the parties and have perused the record available on file with due care.

9. First of all, we would like to re-produce the operative part of the impugned order dated 29-08-2022 passed by the learned Single Member, NIRC as under:-

"It is admitted fact that the petitioner was initially appointed as Telephone Operator on the basis of Matric. However, later on she was appointed as Jr.Admin. Assistant on the basis of F.A certificate. Unfortunately, the petitioner got this job by submission of an application with wrong information. She has got F.A qualification in 2008, while appointed as Jr.Admin Assistant in 1995. In view of above facts, it transpires that appointment of petitioner as Telephone Operator is legal and lawful but as Junior Admin Assistant illegal, therefore, she may be reverted to the post of Telephone Operator w.e.f. date of appointment as Jr.Admin. Assistant and the benefits taken on basis of Jr.Admin Assistant may be recovered. The petition is disposed of in above terms".

 10. This is an admitted fact that the respondent was not regularly performing duties as Telephone Operator prior, ^{like} to her appointed as Jr.Admin. Assistant. As per grievance petition, she was appointed as Telephone

Operator on casual basis vide letter dated 17-06-1985 and thereafter, her services were converted into contract basis on 30-08-1989 and she was performing duty as Telephone Operator. This fact is evident from the grievance petition that her services were not regularized. Admittedly, the post of Jr.Admin. Assistant was independently advertised and required qualification for the said post was F.A. Admittedly the respondent has applied for the said post through application which is available on record wherein she has clearly mentioned her qualification as F.A. On the basis of the said application, she was directed to submit F.A certificate and after appointment she has submitted application for grant of time for three months for submission of F.A certificate which was declined and thereafter, she has submitted copy of F.A certificate which is available on record. The said F.A. certificate was found fake/bogus after verification. As per impugned order, she has passed F.A in the year, 2008 whereas she was appointed as Jr.Admin.Assistant in the year, 1995. This fact even is admitted in the impugned order passed by the learned Single Member, NIRC, so it is crystal clear that she



got appointed as Jr.Admin. Assistant on the basis of fake/bogus F.A certificate. After appointment as Jr.Admin Assistant she was having no lien with the previous post as Telephone Operator in which she was performing duty on contract basis, even in the prayer clause of grievance petition, she only has prayed for setting aside her dismissal order. In these circumstances, when she was not previously performed her duty regularly as Telephone Operator and she was having no lien, there was no justification to revert her on the said post.

11. For what has been discussed above, we accept the instant appeal, set aside the impugned order dated 29-08-2022 passed by the learned Single Member, NIRC and dismissed the grievance petition of the respondent with no order as to costs. File be consigned to record after due completion.

Announced in Open Court

Dated:24-08-2023

(Abdul Rasool Memon)
Chairman

(Muhammad Zubair Khan)
Member

(Abdul Qayyum Khan)
Member