

NATIONAL INDUSTRIAL RELATIONS COMMISSION
FULL BENCH AT ISLAMABAD

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

Appeal No. 12R (42)/2023

M/s ZTBL v. All Pakistan ZTBL Employees Union through its
 General Secretary & Others

Appeal No. 12R (43)/2023

Kissan Support Services v. All Pakistan ZTBL Employees Union
 through its General Secretary &
 others

Present: Mr. Abdul Hafeez Amjad & Usman Ahmed Ranjha,
 counsel for appellants

Mr. Rana Abid Nazir Khan, counsel for respondent
 No.1, All Pakistan ZTBL Employees Union
 General Secretary, All Pakistan ZTBL Mazdoor Ittehad
 Union
 Vice President, All Pakistan ZTBL Workers Union.

ORDER

08.09.2023 Muhammad Zubair Khan, Member

Appellants aggrieved by the order dated 28.08.2023
 passed by the Deputy Registrar/Authorized Officer in case No.
 2(15)/2023, 2(16)/2023 and 2(17)/2023, brought this appeal u/s 58
 of the Industrial Relations Act, 2012.

2. The facts necessary for disposal of these appeals are
 that the Deputy Registrar/Authorized Officer was holding secret

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ballot for determination of CBA in the establishment of the appellants, as respondent No.1 to 3 submitted application bearing No. 2(15)/2023, 2(16)/2023 and 2(17)/2023 to the learned Member NIRC/RTU Islamabad on 06.07.2023. On receiving the applications notices were issued to the concerned parties for 19.07.2023. The learned Member NIRC/RTU vide order dated 26.07.2023 authorized Saleha Bashir, Deputy Registrar to conduct and perform all or any of his functions as required under section 19 sub section 12 of Industrial Relations Act, 2012. The appellant bank is duly incorporated as Public Limited under the Companies Ordinance, 1984. Similarly, the KSSL is also a Public Limited Company under the ibid Ordinance and having separate legal entities. Further submitted that the appellants and respondent No.4 are two different establishments having separate legal entity; that in process of proceeding of holding of secret ballot, the appellants were required to provide the list of workmen actually engaged in the establishment and accordingly the appellants provided list of workmen consisting of 506 workmen. Likewise, the union also provided the list of workmen but respondent No.1 appended the list of 1638 workmen employees of respondent No.4. Joint meeting was held on 17.08.2023 and the minutes were documented which reveals that the respondent No.1 to 3 asked Authorized Officer that there are 3331 employees of Respondent No.4 who are working with appellants they be extended¹ right of vote in secret ballot. The meeting was adjourned to 28.08.2023 and on 28.08.2023 the

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Authorized Officer passed the impugned order. Requested for setting aside the same.

3. Arguments heard and record perused. Vice President of Respondent No.2 and General Secretary of respondent No.3 adopted the arguments advanced by learned counsel for respondent No.1.

4. The main objection of the appellants is that KSSL is a separate entity, therefore, workmen/employees of KSSL have no right to cast vote in referendum. While on the other hand, respondent No.1 to 3 submitted that KSSL is a subsidiary of the appellant and they are service providers to the appellant, therefore, all the employees / workmen of KSSL are actually working in the appellant establishment and, therefore, they are entitled to be registered and to provide list of voters to participate in the referendum to be held for determination of CBA in the said establishment.

5. In terms of section 19(4)(a) of the Industrial Relations Act, 2012 every employer required by Registrar to submit the list of all workmen employed in his establishment except those whose period of employment is less than three months. Whereas section 15(5) of the ibid Act requires the Registrar to include in the voter list the name of every workman whose period of employment is not less than three months and is also a member of any of the contested trade union. In this context, the term worker or workman has been defined in section 2(xxxiii) of the Industrial Relations Act, 2012 that "person not falling within the definition of employer who is employed in establishment or

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industry for hire or reward, either directly or through contractor. The words "directly" or through "contractor" are important and relevant for disposal of these appeals. Any worker or workman who is employed directly or through a contractor will be considered as workman of the establishment in which he is actually working. In this respect the dictum of Hon'ble Supreme Court in reported case law 2020 SMCR Page-638 and 2013 SCMR Page 1253 are relevant where following has been held. –

- "(a) the word employed by the factory are wide enough to include workmen employed by the contractors of the company;
- (b) the employees of the contractor shall be the employees of the company if the contractor engaged the workers for running of the affairs of the company and not for some other independent work which has no concern with the production of the company.
- (c) if the employees are working in a department of the company which constitute one of the principle organs of the company, the machines belong to the company, the raw material is supplied to the company and the said department is controlled by the supervisors of the company, the employees of the contractors shall be the employees of the company;
- (d) the employees, engaged directly or through a contractor would be deemed to be the employees of the company for whose benefit they perform functions;
- (e) even though "control" test is an important test. It is not the sole test; a multiple pragmatic approach weighting up all the factors for and against the employment has to be adopted, including an "integration"; and
- (f) if the contract is found to be not genuine and a device to deprive the employees from their legitimate rights/benefits, the so called contract

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employees will have to be treated as employee of the company".

6. The documents submitted by the appellant establishment shows that the first and the foremost object of the KSSL is to render services to the ZTBL. Some of the objects are reproduced as under:

"The objects for which the company is established are:

- 1) To carry on business of providing consultancy, advisory and other agency services and other support services on contractual basis or otherwise to Zarai Taraqati Bank Limited (The Bank),
- 2) To provide to the Bank all kinds of support staff and ancillary services including client advisory and consultancy services, marketing of bank products and services and debt collection services.

Moreover, object of Memorandum page 38 states as follows:

- 21) To do all such things as are permitted to a subsidiary of a bank under clause 7 of the Banking Companies Ordinance, 1962.

It is declared that notwithstanding anything contained in the foregoing object clause of this Memorandum of Association, nothing shall be construed empowering the company to undertake or indulge in business of a banking within the existing laws or banking Companies Ordinance, 1962, investment, insurance or managing agency business directly or indirectly as restricted under the law or any unlawful business or operation".

7. It is clear from the objectives of KSSL memorandum that it is subsidiary of ZTBL and its workmen are to be given right to cast vote in referendum held through secret ballot.

8. Moreover, both the unions provided list of their voters showing that workmen employees of KSSL were members of both the unions which evident from, Form "B" submitted by them. We, after considered the arguments of the learned counsel for the

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appellants as well as advanced by the learned counsel for the respondents, find no reason for intervention in order to set aside the impugned order. The learned counsel for the appellants has failed to point out any illegality or irregularity, misreading and non-reading of documentary evidence produced by the parties which do not warrant interference of this bench, consequently, the impugned order is maintained and the instant appeals are dismissed. File be consigned to record room.

Announced in the open court

(Abdul Rasool Memon)

Chairman

(Muhammad Zubair Khan)

Member

(Shabbir Hussain Awan)

Member

Iftikhar