

**NATIONAL INDUSTRIAL RELATIONS COMMISSION, ISLAMABAD**

Before:- **Mr. Justice (F) Abdul Rasool Memon, Chairman.**  
**Mr. Abdul Qayyum Khan, Member.**  
**Mr. Muhammad Sirajul Islam Khan, Member.**

| S# | Appeal #    | Appellant      | Respondent                 |
|----|-------------|----------------|----------------------------|
| 1  | 12(25)/22-P | Mumtaz Ahmed   | Associated Industries Ltd. |
| 2  | 12(26)/22-P | Nisar Khan     | Associated Industries Ltd. |
| 3  | 12(27)/22-P | Jehan Badshah  | Associated Industries Ltd. |
| 4  | 12(28)/22-P | Muhammad Haris | Associated Industries Ltd. |
| 5  | 12(29)/22-P | Muhammad Islam | Associated Industries Ltd. |

Present:- Mr. Jalal-ud-Din, Advocate for Appellants.  
Hafiz Bakhtiar Ahmed, Advocate for respondents.

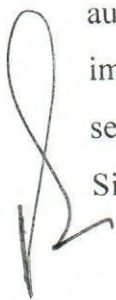
**ORDER**  
**20.09.2023**

The above titled five appeals have been preferred by the appellants against the orders dated 01.12.2022 passed by the learned Single Bench, NIRC, at Peshawar, whereby the learned Single Bench while deciding the grievance petitions directed the petitioners (appellants) to report to the contractor for further directions in terms of permission of Labour Department to the respondent for outsourcing the jobs to the contractor. As common question of law involved in all the above mentioned appeals, thus it has been deemed appropriate to decide these appeals through this single order.

2. Brief facts of the matter are that the appellants were discharged from service of the respondent establishment from 01.01.2021. The appellants challenged the impugned discharge letters by filing grievance petitions and the then learned Single Bench through order dated 16.09.2021 allowed the petitions and set aside the discharge/termination letters and directed for

reinstatement of the appellants in service. The respondents in compliance with the order of the learned Single Bench issued the letter of reinstatement dated 24.09.2021 with all back benefits. The appellants submitted arrival reports on same date. On the very next date i.e. 25.09.2021 the appellants have been served with letters of termination and it has been mentioned in the letters that jobs have been outsourced and contractors have been appointed. The appellants have been paid one-month salary in lieu of one month notice alongwith other dues. The appellant being aggrieved with the impugned termination letters filed grievance petitions under Section 33 of the IRA, 2012 and the learned Single Bench disposed of the grievance petitions with the direction to the appellants to report to the contractor for further directions in terms of permission of Labour Department to the respondent for outsourcing his jobs to contractor. The appellants feeling aggrieved with the order passed by the learned Member of the Commission has filed above mentioned five (05) appeals.

3. The learned counsel for the appellant has contended that the learned Single Bench has failed to appreciate the facts of the case and draw a wrong conclusion; that the impugned order suffers from mis-reading and non-reading of the facts and thus not sustainable in the eye of law; that the learned Single Bench has failed to properly appreciate the pleadings and material/record in its true prospective; that the respondent is trans-provincial establishment and according to law should have been dealt with the law and rules applicable in respect of trans-provincial establishments and neither the Provincial Labour Department nor any other provincial department having authority to issue NOC or any notification which resulted into the issuance of impugned termination letters; that earlier the respondent terminated the service of the appellants and on approaching the NIRC the then learned Single Bench allowed the grievance petition and set aside the termination



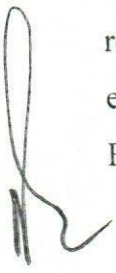
letters; that the respondents in order to avoid any contempt proceedings reinstated the appellant in service and on the very next day again terminated the services which act of the respondents clearly demonstrates malafide termination of the services of the appellants; that the appellants having a long service carrier and with a single stroke of pen their services have been terminated without following the procedure as provided under Industrial and Commercial Employment (Standing Orders) Ordinance, 1968; that after termination of the services of the appellants the respondents have recruited new staff on permanent basis, thus, it cannot be believed that the employment has been reduced; that prior to issuance of termination letters neither any enquiry have been conducted against the appellants nor any Show Cause Notice/Charge Sheets were served; that the appellants were active trade unionist and they have been victimized on account of legitimate trade union activities. The learned Counsel for the appellant has prayed that the appeals may be allowed and the impugned orders passed by the learned single bench may be set aside.

4. The learned counsel for the respondents in rebuttal has contended that the learned member has rightly allowed the grievance petitions; that the impugned order is a well-reasoned order warrants no interference; that in the earlier round of litigation the then learned Single Bench vide order dated 16.09.2021 has observed that the respondent had failed to comply with the provision of Standing Orders by not serving one month's statutory notice; that the then learned Bench did not point out any violation or placed any bar upon the respondents in the said orders, thus gaining wisdom from that order the statutory notices and one month's wages in lieu were paid to the appellants; that the respondent company had contracted out some positions of non-permanent nature and due to that reason the services of the appellants

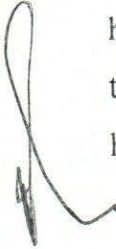
were terminated; that necessary No Objection Certificate from the Director Labour Khyber Pakhtoonkhawa under the Kyber Pakhtoonkhwa Industrial and Commercial Employment (Standing Orders) Act, 2013 was obtained thereafter, the services of the appellants were terminated; that the terminations of the appellants were not on account of misconduct, rather due to the reason of contracted out the jobs position; that these termination can be termed as '*termination simplicitor*' as defined in Standing Order 12(1) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 therefore, there was no need of any kind of enquiry prior to issuance of termination letters. The learned counsel for the respondents has prayed that the appeals may be dismissed and the impugned order passed by the learned Single Bench may be maintained. The learned counsel for the respondents in support of his contentions has relied on case law i.e. 1983 PLC 981 and 1989 PLC 506.

5. We have heard the arguments put forth by the learned counsel for the parties and with their able assistance, perused the record and proceedings of the case files.

6. The status of the appellants as workman remained undisputed and the petitions under Section 33 have been filed before the Commission within stipulated period of time after serving of grievance notices, thus the appellants have rightly invoked the jurisdiction of the Commission for redressal of their grievances and being workman, the appellants were entitled to be proceeded under the provision of the Industrial & Commercial Employment (Standing Orders) Ordinance, 1968.



7. The appellants earlier terminated from service and were reinstated in service in compliance with the order of the Bench of the Commission on 24.09.2021 and interestingly, on very next day i.e. 25.09.2021 they were again terminated from service. The respondent establishment is admittedly, having trans-provincial status and the provisions of the IRA, 2012 as well as the Industrial & Commercial Employment (Standing Orders) Ordinance, 1968 will have to be applicable in respect of the grievances of workmen. The services of the appellants were terminated on account of being contracted out the jobs in the respondent establishment and it has been claimed that No Objection Certificate from Director Labour Khyber Pakhtoonkhwa was obtained under Khayber Pakhtoonkhawa Industrial & Commercial Employment (Standing Orders) Act, 2013. The respondent establishment is trans-provincial and the provisions of the provincial labour laws will not be applicable in respect of the establishments having trans-provincial status, further it has been stated by the learned counsel for the appellant that a number of employees have been recruited in the year 2021-22 and it cannot be said that the services of the appellants have been terminated due to any financial crunch or closing of any work. The conduct of the respondents while reinstating the appellants on 24.09.2021 and terminating them on very next day i.e. on 25.09.2021 on the face of it, clearly demonstrates that the action have been taken malafidely and the learned single Bench without considering this important aspect of the matters on his own has directed the appellants to report to the contractor, who infact was neither party in the proceedings nor in the impugned termination letters the appellants have been advised to do so. The appellants having considerable period of service and they were permanent employees, thus cannot be terminated without due process of law, which in these cases have not been done.



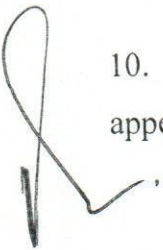
8. As the impugned termination orders have not been passed in accordance with law and the appellants have claimed in the grievance petitions that they have remained jobless since their terminations. As far as the arguments of the learned counsel for the petitioner regarding the back benefits are concerned, the Honorable Supreme Court of Pakistan in a case reported as 2018 SCMR 376 titled Khalid Mehmood Versus State Life Insurance Corporation of Pakistan and others has observed as follow: -

*"4. Admittedly the appointment of the appellant was confirmed on 21.06.1990. His services were terminated without assigning any reason whatsoever, which termination was found illegal by the Labour Court as well as by the concerned Labour Appellate Tribunal, Regulation 22 (1) (a) of the State Life Employees (Service) Regulations, 1973, relied upon by the respondent-Corporation for appellant's termination without assigning any reasons, has been rightly held by the appellate Tribunal to be against the provisions of Standing Order 1 of Standing Ordinance, 1968. In terms of Standing Ordinance 1968, a person who has satisfactorily completed the probation period of 90 days, and is employed against a permanent post likely to last for more than nine months, becomes a permanent employee, and in terms of Standing Order 12(3) of the Standing Ordinance, 1968, the services of a permanent employee can be terminated only by giving explicit reasons." .....*

*"6. In view of the foregoing, we allow this appeal, uphold the judgments of the Labour Court as well as of the Labour Appellate Tribunal and order payment of the back benefits to the appellant within 15 days under intimation to this Court."*

9. The case law referred by the learned counsel for the respondent have been taken into consideration and found not applicable in the matters in hand.

10. In view of what has been discussed above, all the above mentioned appeals are hereby allowed, the impugned order dated 01.12.2021 passed by



learned Single Bench is hereby set aside consequently, the grievance petitions are also accepted and the appellants are directed to be reinstated in service with all consequential benefits including back benefits. The termination letters dated 25.09.2021 issued in respect of the appellants in violation of law and rules are set aside. The files after due completion and compilation be consigned to record.

(Abdul Rasool Memon)  
Chairman

(Abdul Qayyum Khan)  
Member

(Muhammad Siraj-ul-Islam Khan)  
Member