

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(70)/2022

OGDCL

Vs Qamar Zaman

Present: Barrister Umer Aslam, advocate for appellant.
Mr. Affan Ehsan, Advocate for respondent.

ORDER

02.01.2024 **Shabbir Hussain Awan, Member.**

Facts giving rise to the instant appeal are that the respondent filed a grievance petition No.4B(115)/2015 by stating therein that he was appointed as Helper in the appellant establishment on 25-10-2012. But ^{he} ~~he~~ was dismissed from service on 15-07-2015. He served grievance notice dated 27-07-2015 on 23-08-2015 but to no avail. Resultantly he filed grievance petition, which was dismissed on 30-11-2016. The learned Full Bench of the NIRC also maintained the order of learned Single Member in appeal vide order dated 07-02-2018. Ultimately matter came up before Hon' ble Islamabad High Court, Islamabad and case was remanded with the direction to record the evidence by proceeding according to law for decision on merits.

2. In compliance with the order of Hon' ble Islamabad High Court the parties appeared before the learned Single Member, got

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recorded their evidence in support of their respective versions. After hearing the arguments of the parties the grievance petition was allowed by learned Member by setting aside the termination order dated 16-07-2015 with the direction to reinstate him in service with all back benefits. Feeling aggrieved the instant appeal.

3. It is argued by the learned counsel for the appellant that the impugned order being contrary to law as well as facts is no more sustainable; that the respondent was not a regular employee as his services were hired through third party. Actually, he was on work charge, thus, he cannot claim to be a regular employee because the employment on work charge basis is not equivalent to the status of regular employee; that the appellant were competent to terminate the services of the respondent without any reason as per clause (d) of the employment agreement; that the learned Member has hopelessly failed to comply with the order of Islamabad High court; that the learned Member has relied upon documents not produced in evidence; that the grievance notice has not been produced before the Bench even then the same has been considered and relied upon that the grievance notice whatsoever, is time barred as the same was not served within 90 days, and if for the sake of arguments, the grievance notice is admitted, even then the grievance petition is barred by time. Hence, while allowing the appeal the impugned order be set aside.

4. The learned counsel for the respondent, on the other hand, contends that the impugned order being well reasoned and quite according to the material available on the file calls for no interference.

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5. Having given our decent consideration. The cross examination of the respondent witness as RW is very much important as well as helpful to resolve the controversial points. The relevant portion of the same is reproduced here-in-under:-

" Qamar Zaman was hired by OGDCL in 25-10-2012. He was dismissed from service on 15-07-2015..... it is correct that the medical book has been issued by OGDCL. The date of joining of the petitioner mentioned in the medical book is 26-12-2012. I do not want to comment the petitioner is our employee since date of joining as mentioned in medical book duly issued by OGDCL. It is correct that the employee code has been issued by the OGDCL to the petitioner. it is correct that petitioner joined in 2012 and removed from service in 2015. It is correct that the removal from service letter dated 15-07-2015 by Mr. Tariq Qureshi an officer of OGDCL. It is correct that the removal from service on the grounds of misconduct."

It is clear from what is quoted above that the respondent joined OGDCL in 2012 ^{by} ~~he~~ performing ~~his~~ duty till his dismissal in 2015. OGDCL issued medical book as well as employee code, moreover, the dismissal order under fire was also issued by OGDCL as admitted by the respondent, thus, it can safely be concluded that he was the employee of the OGDCL.

6. It also merits mentioning that the respondent was dismissed from service on the allegation of misconduct. But admittedly, no inquiry has been conducted as required under Section 15(4) of Standing Order Ordinance, 1968. Since, the mandatory provision of law has been violated therefore, the

Dr. I. M. Surry

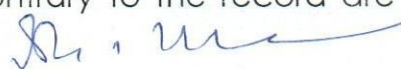
termination under fire being in conflict with the Section 15(4) of Standing Order Ordinance, 1968 is liable to be set aside as being illegal and unlawful.

7. So far as the objection of the learned counsel regarding the status of the respondent is concerned. Admittedly, he joined the establishment on 25-10-2012 and performed his duty as Helper upto 15-07-2016 for about two year and 09 months, thus he has attained status of a permanent workman by operation of law as envisaged by schedule Standing Order Ordinance, 1968 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 continues period of three months or for one hundred and eighty three days during any period of twelve consecutive months".

8. In view of length of service of more than two years and nine months he is entitled to all the legal rights available to a permanent workman.

9. So far as the objection of learned counsel for the appellant regarding the grievance notice and grievance petition is concerned. Both being contrary to the record are hereby repelled

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because the grievance notice was issued on 28-08-2015, whereas the termination was made on 15-07-2015, which is indicative of the fact that the notice was served within the stipulated period as envisaged under Section 33(1) of IRA, 2012. Same is true regarding the filing of the grievance petition.

10. In view of what has been discussed above, the instant appeal is hereby dismissed with 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) 21/1/24

Member