

NATIONAL INDUSTRIAL RELATIONS COMMISSION
FULL BENCH AT ISLAMABAD

Before: Abdul Rasool Memon, Chairman
Abdul Qayyum Khan, Member
Muhammad Zubair Khan, Member

Appeal No. 12A(155)/2022
CMA No. 24A(102)/2022

Oil & Gas Development Company Ltd through its Managing Director & C.E.O, Head Office, OGDCL, House, Jinnah Avenue, Blue Area.....Appellant

Versus

Sajid S/o Ashiq Muhammad, R/o Dera Gangewala Loothar P.O Raz Abad, Tehsil & District Multan, Well Chowkidar and 29 others.....Respondents

Present: Mr. Barrister Umer Aslam, counsel for the appellant
Mr. Hafiz Bukhtiar Ahmed, counsel for the respondents

ORDER

24.08.2023 Muhammad Zubair Khan, Member

Appellant aggrieved by the order dated 29.08.2022 passed by the learned Single Bench NIRC Islamabad in case bearing No.4B(58)/2022, brought this appeal u/s 58 of the Industrial Relations Act, 2012.

2. The respondents aggrieved by their termination order dated 06.04.2022 questioned the same before the learned Single Bench after serving grievance notice upon the appellant/respondent. The learned Single Bench allowed the petition of the respondents by setting aside the impugned termination order dated 06.04.2022 and reinstated the respondents as permanent workmen of the appellant establishment with back benefits.

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3. The learned counsel for the appellant while arguing his case submitted that the man power required to the appellant company was time and operation specific and as such on the completion of said task, the Nandpur Field having been decommissioned and discontinued since 11.01.2022 on account of all the wells having been plugged and abandoned, therefore, the man power was not required anymore and as per terms and conditions, the respondents were relieved from duties in pursuance of company policy dated 05.03.2019. Further submitted that the respondents served the grievance notice to the appellant challenging their termination orders and reply was submitted. After hearing both the parties the petition was allowed, consequently, the respondents were reinstated in service with all back benefits and stated that on acceptance of this appeal, the petition of the respondents may be dismissed by setting aside the impugned order dated 29.08.2022.

4. On the other hand, the learned counsel for the respondents submitted that the services of the respondents were hired as contingent work charge in the year 2013 which were converted into contract employment on 01.01.2018 and till their termination they were working on the above mentioned post. Further submitted that by operation of law, the respondents become permanent workmen as per Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 read with Industrial Relations Act, 2012 and their services could not be terminated summarily without resorting to the provision of Standing Orders, Ordinance, 1968.

5. Arguments heard and record perused.

6. Admittedly, the respondents were engaged as Chowkidar in the year 2004 and later on their services were converted into contractual employment w.e.f 01.01.2018 which is evident from their initial appointment order and conversion of

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their services to contractual employment. Standing Order-12 provides that:

Standing Order 1. Classification of Workman

(a) Workmen shall be classified as—

1. permanent,
2. probationers,
3. badlis,
4. temporary,
5. apprentices,
6. 1[Contract worker]

(b) 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.

7. It has been held in 2018 SCMR 335 and 2018 SCMR 1405 that daily wager employees can be regularized who are performing duty with artificial break after every 89 days and that criteria, period of payment of wages would not determine nature of job or classification of worker because temporary worker could be given monthly wages while permanent worker could be given daily wages, only nature of job was the deciding factor regarding the classification of worker. The nature of job and duty performed by the respondents for years continuously on the same post shows that the post on which the respondents were performing duty is of permanent nature.

8. Standing Order-12(1) & sub clause-5 of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 provides that:

Standing Order-12. Termination of employment. (1) For terminating employment of a permanent workman, for any reason other than misconduct one month's notice shall be given either by the employer or the workman. One month's wages calculated on the basis of average wages earned

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by the workman during the last three months shall be paid in lieu of notice.

2.....

3.....

4.....

5. The services of permanent or temporary workman shall not be terminated on the ground of misconduct otherwise than in the manner prescribed in Standing Order 15.

9. As the respondents become permanent workers as per Standing Orders, Ordinance 1968 and they cannot be retrenched or terminated summarily as per Standing Order-12.

10. Record reveals that the appellant after decommissioning the Nandpur Field summarily passed the impugned termination order which is in violation of Standing Order-12 (3). After considering the arguments of the learned counsel for both the parties as well as going through the record with their assistance, we came to the conclusion that the appellant failed to point out any misreading, non-reading of the documentary evidence lying on the file as well as pointed out illegality and irregularity committed by the learned Single Bench, hence the appeal found meritless, stands dismissed. File be consigned to record room.

Announced in the open court



(Abdul Rasool Memon)
Chairman



(Abdul Qayyum Khan)
Member

 24.8.2023

(Muhammad Zubair Khan)
Member