

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

Appeal No.12A(176)/2022

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

Oil and Gas Development Company Limited (OGDCL)
through Authorized Officer, OGDCL Head Office, Blue
Area, Islamabad.

.....Appellant.

Versus.

Shahriyar S/o Abdul Qayyum, EX-Dispenser, Railway
Station, Mohallah Masauood Khel, Tehsil & District,
Charsadda.

.....Respondent.

Present: Mr.Adnan Bashir, Advocate for appellant.
Hafiz Bakhtiar Ahmed, 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 appellant against
the impugned order dated 02-12-2022 passed by learned
Single Member, NIRC Islamabad whereby he has allowed
the grievance petition No.4B)40)/2023 of the respondent.

2. The concise facts giving rise to this appeal are
that the respondent was appointed as Dispenser Class-IV



(BPS-08) vide order dated 07-09-1993; that he was served with a charge sheet dated 06-11-2018 with the allegation that his diploma of Dispenser issued by Punjab Medical Faculty on verification has been found bogus which was replied by him by denying the said allegation; that thereafter, he was served show cause notice dated 15-01-2019 and he replied the same by submitting that he had completed one year Dispenser course from NWFP Medical Faculty; that he was dismissed from service vide dismissal order dated 28-02-2022 and according to the respondent, no regular inquiry was conducted against him; that being aggrieved from the said dismissal order, he has filed grievance petition for his reinstatement into service with all back benefits.

3. The appellant has contested the grievance petition through 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 allowed the grievance petition vide impugned order dated 02-12-2022.

5. Feeling aggrieved from the above said order, the appellant has preferred the instant appeal with the prayer that the instant appeal may be accepted and grievance petition may be dismissed by setting aside the impugned order dated 02-12-2022.

6. The learned counsel for the appellant has reiterated the contents of the instant appeal and argued that the respondent was dismissed from service by the appellant management on the allegation of submission of fake/bogus Dispenser Diploma after adopting of legal procedure. He has further argued that the learned Single Member has erred-in-law while passing the impugned order and the same may be set-aside and the grievance petition of the respondent may be dismissed.

7. Conversely, the learned counsel for the respondent while controverting the arguments advanced by the learned counsel for the appellant 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. Contention of appellant is that the post of the Dispenser was advertised in the Newspaper with the required qualification of Diploma holder as well as experience in the relevant field of 03 to 05 years; that the respondent has submitted application for appointment against the said post on the basis of two Diplomas one issued by Punjab Medical Faculty and other issued by NWFP Medical Faculty; that as per Diploma submitted by the respondent pertaining to NWFP Medical Faculty, he was not having the required experience of 03 years, however, according to Diploma issued by Punjab Medical

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Faculty, he was considered having required experience and later on both the diplomas were got verified. The diploma of Punjab Medical Faculty was found fake and bogus whereas diploma issued by the NWFP Medical Faculty was genuine; that thereafter, the respondent was issued show cause notice, charge sheet and the departmental inquiry was held against the respondent for getting his employment on the basis of fake document showing his experience for a period of three years and he was dismissed from service after adopting proper procedure as mentioned in the labour laws.

10. On the other hand, the version of the respondent is that at the time of his appointment, he has submitted only one diploma issued by NWFP Medical Faculty and he was having the practical experience of more than 03 years in the relevant field regarding which he has also submitted experience certificate (Ex.P/5); that while considering the said document, he was appointed as Dispenser; that later on his case was considered for grant of increment and his all testimonials/documents were sent for verification in the year, 2016 which were found



genuine; that the alleged diploma issued by the Punjab Medical Faculty was not sent for verification as well as not included in the list of documents for verification; that while considering his case fit on the basis of genuine document, he was granted annual increments.

11. Admittedly, the respondent was appointed as Dispenser on the basis of Diploma in the relevant field. The respondent has produced the Diploma issued by the NWFP Medical Faculty and certificate regarding practical experience. He has produced copy of the same which is available on record as Ex.P/5. At the time of producing Ex.P/5 no objection was raised by the appellant. The respondent has been dismissed from service on the ground that at the time of his appointment, he was not having experience of 03 years in the relevant field. Admittedly, the diploma issued by the NWFP Medical Faculty was genuine according to which, he was having experience of more than 02 years and as per certificate, he was having practical experience for the relevant field for more than 03 years. In case, he was appointed on the



basis of diploma issued by the Punjab Medical Faculty, the said document should have been got verified from the very beginning but the said document has not been got verified by the appellant till 2018 for the reason best known to the appellant department. Admittedly, at the time when the case of respondent was considered for grant of increment his all documents submitted by him at the time of his appointment as well as later on including other educational certificates were sent for verification in the year, 2016 to the concerned authority which were found genuine. No justification has been submitted as to why in the year, 2016, the alleged diploma issued by the Punjab Medical Faculty was not sent alongwith other documents for verification. Now admittedly, the respondent is at the stage of retirement and at this stage, it is not proper that he may be dismissed from service on the basis of allegation that he was having less experience at the time of his appointment. No inquiry proceedings as well as inquiry report has been produced by the appellant before the learned trial court. There is nothing on record to reveal that whether the respondent has been provided proper



opportunity to defense and hearing before the inquiry officer. In such eventuality, we are of the considered opinion that the learned Single Member, NIRC did not commit any illegality or irregularity while passing the impugned order dated 02-12-2022 which is up-held. Resultantly, the instant appeal is hereby dismissed 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

Madad