

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

Before:- Mr. Justice(F) Abdul Rasool Memon, Chairman
Abdul Qayyum Khan, Member
Syed Noor-ul-Hasnain, Member

Appeal No.12A(83)/2022

PMDC	Naveed Shahzad etc
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Appeal No.12A(84)/2022

PMDC	Noman Ali etc
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Appeal No.12A(85)/2022

PMDC	Faisal Zaman etc
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Appeal No.12A(86)/2022

PMDC	Kashif Aziz etc
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Appeal No.12A(87)/2022

PMDC	Abdullah etc
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Appeal No.12A(88)/2022

PMDC	Riaz Hussain etc
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Present: Mr.Irfan Farooq, Advocate for appellant-PMDC.
Mr.M.Akhtar Anjum, Advocate for respondents.

ORDER

30-11-2023

Abdul Qayyum Khan, Member, NIRC

We intend to decide the above said six appeals by this single order as common question of law and facts are involved in these appeals filed under section 58 of the IRA, 2012 against the impugned order dated 11-03-2022 passed by learned Single Member, NIRC whereby he has accepted the grievance petitions directing the appellants (PMDC) establishment to treat the respondents as permanent employees of appellant establishment.

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2. The concise facts giving rise to these appeals are that the respondents have filed grievance petitions before the learned Single Member with the contention that they are employees of appellant establishment since 2015 and 2016 on daily wages basis; that their period of daily wage contract have been extended from time to time; that by virtue of their duties, they fell within the definition of workmen and attained the status of permanent/regular employees of appellant establishment as per labour laws; that the appellant management has issued adjustment order dated 07-05-2021 without issuing any charge sheet, show cause notice and any inquiry; that the appellant management has issued the same just to shift the contingent employees to the third party service providers. They have prayed that the impugned adjustment order be set-aside and they may be regularized into service from the date of their initial appointments with all back benefits.

3. The appellant has contested the grievance petitions through written replies by controverting the averments of the petitions and raised many objections on point of law as well as facts and prayed for dismissal of the same.

4. After hearing arguments of both parties, the learned Single Member, NIRC has accepted the grievance petitions vide impugned consolidated order dated 11-03-2022 directing to treat the respondents as permanent employees of the appellant management.



5. Feeling aggrieved from the above said order, the appellant has preferred the instant appeals with the prayer that by allowing the instant appeals, the impugned consolidated order dated 11-03-2022 passed by learned Single Member in grievance petitions of respondents be set-aside and the grievance petition filed by respondent be dismissed.

6. The learned counsel for the appellant has reiterated the contents of the instant appeals and argued that there is no provision in the Labour Laws for regularization of the workman; that the respondents/petitioners have no cause of action and locus standi to file grievance petitions; that the impugned order No.PMDC/EST-34/90 dated 07-05-2021 was departmental internal correspondence which has not attained finality but the learned Single Member has misinterpreted the said letter; that learned Single Member has got no jurisdiction to entertain the grievance petitions; that the impugned orders are wrong, illegal and against facts. He has further argued that the appellant establishment is not a Factory, industry and commercial establishment in accordance with labour laws but this fact has been ignored by the learned Single Member while passing the impugned order. He has further contended that the impugned order is against the law and facts. He has prayed that the impugned order be set-aside by accepting the instant appeals and the grievance petitions be dismissed.

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7. Conversely, the learned counsel for the respondents while controverting the arguments advanced by the learned counsel for the appellant has argued that the respondents fell within the definition of workmen as defined in the labour law and they have more than 05 years services at their credit and have attained the status of permanent employees by virtue of labour laws but the appellant management has issued order dated 07-05-2021 for getting adjusted the services of the respondents to the third party contractor just to deprive the respondents from regularization of their services which was against the provisions of Industrial & Commercial Employment (Standing Orders) Ordinance, 1968 as well as IRA, 2012. He has supported the impugned order and prayed for dismissal of the instant appeals.

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. The respondents have been appointed on their jobs which are permanent in nature like Security Guard, Model Marker, Shot Firer, Time Keeper, Sanitary Workers, Trolley Checker, Civil Worker, Fitter, Driver etc. The order dated 07-05-2021 reveals that the jobs are not discontinued by the appellant management but to avoid further service liabilities of respondents their services were being shifted to third party service provider. This act of the appellant management was violation of labour laws to deprive the respondents of their service

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benefits by putting them under third party service provider. The August Supreme Court of Pakistan in reported judgment titled State Oil Company Ltd Vs. Bakht Siddique and others (2018 SCMR 1181) has held as under:-

"As regards the question that the respondents were not the employees of the petitioner but the contractor, suffice it to say that it is a normal practice on behalf of such industries to create a pretence and on that pretence to outsource employment of the posts which are permanent in nature and it is on the record that the respondents have been in service starting from as far back as 1984. This all seems to be a sham or pretence and therefore, it being not a case of any disputed fact and no evidence was required to be recorded. Moreover, we have seen from the order under challenged that in such like cases where the orders have been passed by the Labour Tribunals, the employees, even those who were under the contractors' alleged employment, have been regularized by the petitioner. And thus keeping in view the rule of parity and equality, all the respondents even if considered to be the employees of the contractor, which is not correct, they have been performing duties of permanent nature should have been regularized. However, at this stage, we would like to observe that the employment of the respondents shall be regularized with effect from the date when they approached the learned High Court through the Constitution petition but for their pensionary benefit and other long terms benefits, if any, available under the law, they would be entitled from the date when they have joined the service of the petitioner. All the petitions are accordingly dismissed".

(Reliance is also placed upon 2014 PLC 10(S.C)

10. Admittedly, the respondents had been working in the appellant's Corporation as daily wager basis for more than five years without any break and they have successfully completed their services for more than 09 months and by virtue of provisions of Industrial & Commercial Employment (Standing Orders) Ordinance, 1968, they have attained the status of permanent workmen. In this regard in Izhar Ahmed Khan and another Versus. Punjab Labour Appellate Tribunal,



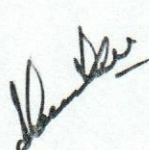
Lahore (1999 SCMR 2557), the August Supreme Court of Pakistan has held as under:-

(a) West Pakistan Commercial and Industrial (Standing Orders) Ordinance, (VI of 1968)---

---S.O.1(b)(c)--- Constitution of Pakistan (1973), Art.185--- Industrial dispute--- 'permanent workman' and 'temporary workman--- Determination--- Test--- Nature of work on which a workman was employed would determine whether workman was permanent or temporary--- If work was of a permanent nature likely to last for period of more than nine months, workman employed on such a work, who had successfully completed probationary period of three months would be deemed to be a "permanent workman"---If nature of work was temporary and was likely to be finished within a period of nine months, then workman employed on such work would be deemed to be "temporary workman"--- Mere fact that work of a temporary nature continued beyond nine months would not make a workman employed on such work a permanent workman as expression "likely to be finished within a period not exceeding nine months" used in definitive clause of S.O.1(b)(c) of West Pakistan Commercial and Industrial (Standing Orders) Ordinance, 1968, would admit within its scope that a work of temporary nature, could in certain circumstances, stretch beyond nine months---Evidence on record had shown that post against which appointment was made was of permanent nature though in appointment letter same was described as purely temporary and that period of employment continued beyond period of nine months--- Employees in circumstances would be deemed to be permanent workman within definition given in S.O.1(b) of West Pakistan Commercial and Industrial (Standing Orders) Ordinance, 1968".

(Reliance is placed upon 2013 SCMR 1547, 2015 SCMR 1257, 2018 SCMR 1405, 2018 SCMR 325, 2019 SCMR 233 and 2020 SCMR 1664).

11. In these circumstances, we hold that the learned Single Member, NIRC has rightly observed in the impugned order that respondents are permanent employees of the appellant establishment (PMDC) and the appellant in the instant matter has failed to proceed in accordance with the provisions of the Industrial & Commercial Employment (Standing Orders) Ordinance, 1968.



12. For what has been discussed above, we are of the considered opinion that the learned Single Member, NIRC Islamabad has not committed any illegality or irregularity while passing the impugned order dated 11-03-2022 which is hereby up-held. However, at this stage, we would like to observe that the employment of the respondents shall be treated as permanent with effect from the date when they approached this Commission through their grievance petitions but for their pensionary benefit and other long terms benefits, if any, available under the law, they would be entitled from the date when they have joined the service of the appellant Corporation (PMDC). In this regard reliance is placed upon 2018 SCMR 1181. Resultantly, the instant appeals are dismissed with no order as to costs. Files be consigned to record after due completion. The office is directed copy of this order be placed in other appeals.

Announced in Open Court

Dated:30-11-2023

(Abdul Rasool Memon)

Chairman

(Syed Noor-ul-Hasnain)

Member

(Abdul Qayyum Khan)

Member

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