

NATIONAL INDUSTRIAL RELATIONS COMMISSION, ISLAMABAD.

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

APPEAL NO.12A(41) 2023	PSO Versus	Ghulam Ali
APPEAL NO.12A(42) 2023	PSO Versus	Syed Junaid Hussain
APPEAL NO.12A(43) 2023	PSO Versus	Syed Ishaq
APPEAL NO.12A(44) 2023	PSO Versus	Iqbal Ahmed
APPEAL NO.12A(45) 2023	PSO Versus	Muhammad Ghayas
APPEAL NO.12A(46) 2023	PSO Versus	Ahad Nabeel

Present: - Mr. Abdul Rehman Qadir Advocate for Appellant.
 Mr. M. Umair Baloch, Advocate for respondents.

ORDER:-
19.09.2023

Abdul Rasool Memon, Chairman: - The above titled six (06) appeals have been preferred by M/S Pakistan State Oil Company Limited (PSO) against Ghulam Ali and five others, challenging the orders dated 23.05.2023 passed by the learned Single Bench, of the Commission whereby the learned Member allowed the grievance petitions by holding the respondents entitled for pensionary and other admissible benefits from the date of their initial appointments. As the question involved in all the appeals are common, therefore, it has been found appropriate to decide all the above mentioned six (06) appeals through this single order.

2. Brief facts leading to file these appeals are that the respondents were performing their duties in the appellant establishment on daily wage basis and they approached the Hon'ble High Court of Sind for regularization of their services. The High Court ordered for regularization of their service. The appellant (PSO) assailed the order of High Court before the Supreme


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Court of Pakistan by filing CPLA which was dismissed. The appellant in pursuance of the orders of the Hon'ble Supreme Court and High Court regularized the services of the respondents from 01.08.2008 along with payment of admissible back benefits. The respondents approached the appellant establishment by serving grievance notices with the prayer that their previous daily wage service from induction in service till 30.06.2008 may be considered for the purpose of pay and pension. The appellant replied the grievance notices on 20.06.2022 and rejected the submissions of the respondents. The respondents aggrieved from said replies preferred the grievance petitions and the learned Single Bench allowed these petitions through the orders impugned herein. The appellant being aggrieved from the impugned orders has filed instant appeals.

3. The Learned Counsel for appellant has contended that the respondents were inducted in the service on daily wage basis and they along with other co-employees approached the Hon'ble High Court of Sind by filing C.P. No. D-3882/2011 seeking regularization; that the High Court in pursuance of office memorandum dated 29.08.2008 issued by the Cabinet Secretariat, Establishment Division, Islamabad regularized their services; that the appellant company assailed the order of High Court before the Supreme Court of Pakistan through CPLA No.95-K of 2013 which CPLA was dismissed vide order dated 17-05-2013; that the appellant in compliance with the order of the Hon'ble Courts regularized the services of the respondents w.e.f 01-07-2008 with back benefits; that the services of the respondents were regularized in compliance with the orders of High Court and Supreme Court and the respondents after availing benefits were estopped by their conduct, not to agitate the matter further; that the respondents accepted regularization with back benefits without any objection/protest, thus the matter had become as past and closed transaction, could not be reopened; that the respondents after lapse of 09 years again claimed regularization by filing grievance petitions which were hopelessly time barred but the Learned Single

Member without taken into consideration this important aspect of the matter has allowed the grievance petitions, therefore, the impugned orders are not sustainable in the eye of law; that the learned single bench has not recorded pro and contra evidence on the disputed question of facts and without following the due process of law has allowed the grievance petitions; that the appellant complied with the orders of Hight court and Supreme Court passed particularly in the cases of respondents. in its true letter and spirit, and now they after getting benefits of those orders wanted to get benefit of a judgment which has not been passed in their cases; that the earlier order passed by the Supreme Court is binding on all the executives and judicial authorities and any deviation therefrom tantamount to abuse, interference, disobedience of the order; that the respondents availed benefits in compliance with the judgments of the High Court and Supreme Court and at this billeted stage cannot claim any kind of relief. The Learned Counsel for the appellant has prayed that the appeals may be allowed and the Impugned Orders may be set aside. The learned counsel in support of his stance has relied on case law i.e. 2000 CLC 66 and 2023 SCMR 992.

4. The Learned Counsel for the respondents has concluded that it is admitted position that the services of the respondents have been regularized from 01-07-2008 with back benefits; that the respondents approached the appellant company through grievance notices for counting of service from the dates of their initial appointments for the purpose of pensionary benefits; that the appellants rejected the request of respondents and upon rejection of the grievance notices the respondents within stipulated period of time approached the NIRC through filing grievance petitions, therefore, the Grievance Petitions are within time; that even otherwise the claim of pensionary benefits is continuous cause of action and no limitation run against the matters where financial implications involved; that the Learned single bench has rightly allowed the grievance petitions and the Impugned Order warrants no interference; that the respondents by dent of nature of duties are workman;

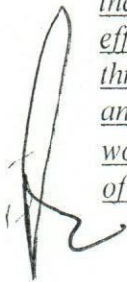
that no disputed fact involved in the matter which require evidence; that it is well exposition of law that benefit of law should be exclude to other persons/employees who may not be party to that litigation; that the Hon'ble Supreme Court in a case reported 2018 SCMR 1181 titled M/S State Oil Company Limited Versus Bakht Siddique and others by keeping in view the rule of parity and equality, regularized the services of the employees and also observed that for their pensionary benefits and other long terms benefits, if any, available under the law they would be entitled from the date when they have joined the services of the petitioner; that the Learned single bench keeping in view of the analogy of that judgment has passed the impugned order. The Learned counsel for the respondents has prayed that the appeals may be dismissed and the impugned order may be maintained. The learned counsel referred case law i.e. 2018 SCMR 1181 and 1997 SCMR 1477.

5. Heard arguments. We have given our anxious consideration to the arguments put forth by the Learned counsel on behalf of the parties and gone through the record and case law.

6. The services of the respondents have been regularized in compliance with the orders of the Hon'ble High Court of Sind and Supreme Court of Pakistan from 01-07-2008 and admittedly they have been paid back benefits for the intervening period. The respondents approached the appellant Company regarding counting of their earlier service towards pensionary benefits and the appellant rejected said requests vide letter dated 20.06.2022, therefore, the respondents feeling aggrieved from that rejection order have preferred grievance petitions before the Commission on 07.07.2022 within stipulated period of time, thus the objection of the appellant regarding that the grievance petitions are being time barred found without substance. Further the status of the respondents being workman remained unrebutted. The learned single bench decided the grievance petitions mainly on the strength of the judgment dated 08-12-2017 passed by the Hon'ble Supreme court in case

reported as 2018 SCMR 1181. It is settled law that a party who had not litigated ought to be given the same relief as of a similar party who had litigated. Equality before law means that all persons similarly placed should be treated alike, thus, the respondents should not have been made to go through the acrimony of litigation. The hon'ble Supreme Court of Pakistan has held the employees/workmen in the appellant company entitled for pensionary benefits from the date of initial appointment, thus the respondents who are working in that establishment cannot be treated discriminately and entitled for availing the benefits extended to their colleagues. The dictates of Justice demand that the benefit of the judgment should be extended to other employees who may not be the parties to the litigation. The learned single Bench keeping in view of same analogy has allowed the grievance petitions. The operative part of the judgment reported as 2018 SCMR 1181 titled as Messers State Oil Company Limited Versus Bakht Siddique and others is reproduced herein below: -

"As regard 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 pretense and on that pretense to outsource the 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 pretense 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 having 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." Emphasis added.



7. Another ground which has been agitated during course of arguments that the grievance petitions have been decided without recording of evidence. As no disputed fact/issue has been brought on record which requires recalling of evidence and in absence of any material disputed fact the recording of evidence in every case is not a requirement. The recording of evidence required on disputed facts and if a matter can be decided in the light of pleadings, the material available on record and submissions, the recording of evidence is not required. The Honorable Supreme Court of Pakistan in a case reported as 2018 SCMR 1181 titled State Oil Company Limited versus Bakht Siddique referred herein above has held that where the case having no disputed fact no evidence required to be recorded.

Further Section 33(5) of the IRA 2012 which does not visualize the recording of evidence, the matter can be decided on the basis of available material and arguments and there is no need to record evidence in the matter. The sub Section 5 of Section 33 of the IRA for convenience is reproduced herein below: -

“ 33. Redress of individual grievance. -----

(5) In adjudicating and determining a grievance under sub-section (4), the Commission shall go into all the facts of the case and pass such orders as may be just and proper in the circumstances of the case.”

The Regulation No. 60 of NIRC (Procedure & Functions) regulations 2016 also provides that in the interest of expeditious disposal of the business the Commission can direct any examination or cross-examination or re-examination to be cut short or dispensed with. In the light of the above position and particularly in absence of any crucial disputed fact the recording of evidence in every case was not necessary and arguments of the appellants in this context having no force.

8. The case law referred by the learned counsel for the appellant has taken due consideration but in our humble opinion, the same is distinguishable and not applied in the instant controversy.

9. In the wake of the above discussion, we do not find any justification to upset the findings recorded by the learned Single Bench of the Commission, which is hereby maintained and resultantly all the six (06) appeals are hereby dismissed with no order as to cost. The files be consigned to record room after due completions.

(Abdul Rasool Memon)
Chairman

(Abdul Qayyum Khan)
Member

(Muhammad Sirajul Islam Khan)
Member

Approved for Reporting