

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

Appeal No.12A(91)/2022

Before:- Mr. Justice (F) Abdul Rasool Memon, Chairman
Abdul Qayyum Khan, Member
Shabbir Hussain Awan, Member

General Manager and Deputy General Manager Administration M/s
Shaheen Airport Services, New Islamabad International Airport,
Islamabad.

.....Appellants.

Versus.

Muhammad Shabbir S/o Khan Muhammad, Loader/W.C, SAPS
No.3043, R/o House No.894, Street No.20, Muhaila Wazir Town,
Chaklala, Rawalpindi.

.....Respondent.

Present: Syed Ishtiaq Haider, Advocate for appellants.
Khawaja M.Arif, Advocate for respondent.

ORDER

02-10-2023

Abdul Qayyum Khan, Member, NIRC

The appellant has filed the instant appeal under section
58 of the Industrial Relations Act, 2012 against the impugned order
dated 14-03-2022 passed by the learned Member, NIRC Islamabad
Bench whereby he has allowed the grievance petition
No.4B(188)/2019 of the respondent.

2. The concise facts giving rise to this appeal are that the
respondent was appointed as Cabin Cleaner/Loader on 30-12-1990 in
the appellants establishment against the permanent nature of job;
that he performed his duties continuously without any break since his
appointment; that by nature of his duty, he falls within the definition of
workman as defined in the labour laws; that having 29 years service at
his credit, he attained the status of permanent workman as defined in

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the Industrial & Commercial Employment (Standing Orders) Ordinance, 1968; that the appellant management has issued an advance notice to the respondent for release from service on 07-11-2019; that being aggrieved from the said notice, the respondent has served grievance notice upon his employer on 05-12-2019 for redressal of his grievances but in vain, hence he has filed grievance petition with the following prayers:-

"It is, therefore, respectfully prayed that instant petition may be accepted and impugned notice dated 07-11-2019 may be set aside with all consequential effects".

3. The appellants have contested the grievance petition through their written reply by controverting the averments of the grievance petition and raising many objections on the 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 Bench has allowed the grievance petition vide impugned order dated 14-03-2022.

5. Feeling aggrieved from the above said order, the appellant has preferred the instant appeal with the following prayers:-

"In view of the above, it is, therefore prayed that the appeal may be accepted by setting aside the impugned order dated 14-03-2022 passed by the learned Single Member, NIRC Islamabad and as a consequence whereof the grievance petition of the respondent be also dismissed with costs throughout.

Any other relief which this Honourable Tribunal may deem fit in the circumstances of the case be also granted".



6. The learned counsel for the appellants after reiterating the contents of instant appeal has argued that the learned Single Member, NIRC has erred-in-law while passing the impugned order and did not consider the real facts and circumstances of the proposition in hand in its true perspective. He has further argued that the instant appeal may be accepted and grievance petition of respondent may be dismissed by setting aside the impugned order.

7. Conversely, the learned counsel for the respondent has controverted the arguments advance by the learned counsel for the appellants and supported the impugned order passed by the learned Single Member, NIRC.

8. We have heard the arguments advance by the learned counsel for the parties at considerable length and perused the record available on file with due care.

9. Contention of appellants is that for the purpose of release of a permanent/regular workman only one month's notice is sufficient and Standing order 12(1) should be read with Standing Order 12(3), which requires that reason shall be given for retrenchment, dismissal, removal etc. This contention of appellants is not sustainable because Standing Order 15 of Industrial & Commercial Employment (Standing Orders) Ordinance, 1968 is very much clear that the respondent had been working in the appellants establishment as Cabin Cleaner/Loader on 30-12-1990 for more than 29 years without any break and successfully completed his service for more than 09 months

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and by virtue of provisions of Industrial & Commercial Employment (Standing Orders) Ordinance, 1968, he has attained the status of permanent workman. In this regard reliance is place upon 1999 SCMR 2557, 2013 SCMR 1547, 2015 SCMR 1257, 2018 SCMR 1405, 2018 SCMR 325, 2019 SCMR 233 and 2020 SCMR 1664. The appellants were required to serve the show cause notice and charge sheet upon the respondent and then to hold regular inquiry against him. Without holding of regular inquiry and not giving an opportunity to the respondent to defend himself, he being permanent workman cannot be released from service. In this regard, the August Supreme Court of Pakistan in case Hafeez Shah & 03 others Versus. United Bank Limited reported in 2001 SCMR-P-931 has held as under:-

"provisions of Section 15(4) of West Pakistan Industrial & Commercial Employment (Standing Orders) Ordinance, 1968 were mandatory and their non-observance would vitiate the proceedings. Neither charge sheet, show cause was duly served upon the employee nor was any opportunity of hearing after completion of alleged inquiry given to them. The proceedings with regard to dismissal of employees having been conducted in violation of natural justice and law, same could not be sustained".

10. So far as the other contention of the appellants that the respondent did not fall within the definition of workman is concerned, admittedly, the respondent was appointed as Cabin Cleaner/Loader on 30-12-1990 in the appellants establishment and the appellants have failed to bring the Job Description of the respondent during course of evidence before the learned Single Member, NIRC to substantiate the said version. Even burden of proof lies upon

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appellants to establish during evidence that the respondent was not a workman but they did not do so.

11. The appellants have also failed to bring on record any document to show that they have introduced any retrenchment policy. For the sake of arguments, if the appellants have introduced retrenchment policy, then they should have released the worker first come last go but in this regard the appellants did not do so.

12. For what has been discussed above, we are of the considered opinion that the learned Single Member, NIRC has not committed any illegality or irregularity while passing the impugned order dated 14-03-2022 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: 02-10-2023


(Abdul Rasool Memon)
Chairman

(Shabbir Hussain Awan)
Member

(Abdul Qayyum Khan)
Member

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