

NATIONAL INDUSTRIAL RELATIONS COMMISSION, ISLAMABAD
FULL BENCH AT KARACHI

Before: Mr. Justice (F) Abdul Rasool Memon, Chairman
Mr. Shabbir Hussain Awan, Member
Mr. Abdul Ghani Mengal, Member

12A(211)2022-K
CMA 24A(04)/2022-K

M/s K-Electric Vs Najm Noman Ali

Present: Mr. Faisal Mehmood Ghani, advocate for the Appellant.
Mr. Ghulam Sarwar Chandio, Advocate for Respondent.

ORDER
12.08.2023

Shabbir Hussain Awan, Member

The appellant has filed instant appeal under Section 58 of the Industrial Relations Act, 2012 against the impugned orders dated 24.05.2022 passed by learned Single Member Karachi Bench.

2. Briefly stated facts giving rise to the instant appeal are that Respondent / Petitioner filed a grievance petition under Section 33, of the Industrial Relations Act, 2012 by challenging termination / dismissal letter dated 30.04.2019 by stating therein that he had been performing his duty as a meter reader at IBC Korangi Cluster South Region K-Electric for the last 10 years. During his service no adverse action was taken against him. Since, the Respondent / Petitioner is affiliated with the trade union activities in the establishment being an ardent supporter and also Joint Secretary of KESC Labour Union. He was issued charge sheet dated 29.04.2019 followed by the suspension order dated 29.04.2019 with the allegation that on 14.04.2019 he misbehaved by physically assaulting and severely injuring Mr. Muhammad Fayaz, Shahid Mehmood and Nasir Mehmood in an ongoing labour Union General Body session at Karachi Press Club resulting in reputational loss to the company in violation of

company Code of Conduct. The Respondent / Petitioner was asked to submit his reply to the charge sheet within three days, and notice of personal hearing dated 29.04.2019 was delivered to the Petitioner asking him to appear on 30.04.2019 at 10.30 am before the Inquiry Officer. The period for the reply was not over in the meantime a letter of personal hearing was served upon him to probe into the allegation leveled in the charge sheet. No regular enquiry was conducted and he was never afforded opportunity of defending himself. He was simultaneously issued charge sheet, suspension order, personal hearing and letter of termination dated 30.04.2019 in grave violation of Sindh Employment Standing Order Act, 2015 R/w Standing Orders, Ordinance, 1968, feeling aggrieved he served grievance notice to the appellant/ Respondent dated 24.07.2019 hence, this petition etc.

3. In rebuttal the Appellant Respondent submitted reply / Para-wise comments by contending that the termination letter was issued by the Management according to law; that the Respondent / Petitioner misbehaved by physically assaulting and severely injuring his colleagues i.e Muhammad Fayaz, Shahid Mehmood and Nasir Mehmood in ongoing General Body session at Karachi Press Club; that the reply of the charge sheet was considered and found not satisfactory; that the Respondent / Petitioner was to submit his reply of the charge sheet within three days but it is not violation of any law, if the Petitioner was provided personal hearing during that period etc.

4. Parties were directed to produce their evidence to prove their respective version.

5. In order to prove his case, Respondent / Petitioner appeared as Pw-1 by producing his duly sworn affidavit in evidence as P-1.

grievance notice as P-2, alongwith photocopies of documents annexed with the petition and affidavit in evidence.

6. In rebuttal Shah Hussain appeared as Rw-1 by producing his duly sworn affidavit in evidence as P-1 (inadvertently it is shown as P-1, in fact it was to be marked as Rw-1 by the learned Member) Authority Letter dated 18.01.2022 R-2, alongwith photocopies of the documents annexed with written reply and affidavit in evidence.

7. After hearing the arguments of the counsel for the parties, the Learned Member allowed the petition of the Respondent / Petitioner, feeling aggrieved the Appellant / Respondent filed instant appeal.

8. It is argued by learned Counsel for Appellant, Ghulam Nabi Deeshak, that the impugned order is outcome of misreading and non-reading of evidence, therefore, the same is no more sustainable; that the Respondent / Petitioner misbehaved by severely injuring his colleagues bringing bad name to the company; that he was charge sheet^{-ed} and after considering his reply he was subsequently terminated from the service. No violation of law has taken place but the learned Member failed to appreciate this aspect of the matter: that the grievance notice was not served by the Respondent / Petitioner, therefore, the grievance petition was liable to be dismissed as the mandatory provision of law has been violated but the learned Member did not attained this legal point while allowing the petition filed by the Respondent / Petitioner, therefore, the impugned order suffering from gross illegality and irregularity be set aside while allowing the appeal.

9. In rebuttal the learned Counsel for the Respondent / Petitioner, Ghulam Sarwar Chandio, has contended that neither any enquiry was conducted as required under the law nor the Respondent

Petitioner was provided an opportunity of defending himself; that as per charge sheet dated 24.04.2019 the Respondent / Petitioner was to submit his reply within three days but all of the sudden he was terminated on the very next day vide termination letter dated 30.04.2019; that the Appellant / Respondent have miserably failed to prove any misconduct / misbehavior of the Respondent / Petitioner as there is nothing on the file that any such incident took place. Lastly, it is added that the Respondent / Petitioner has been victimized by the Appellant / Respondent due to ulterior motive; that the grievance notice served by the Respondent / Petitioner is admitted, therefore, the learned Member rightly allowed the grievance petition, hence, the appeal is liable to be dismissed.

10. Having weighed the arguments, and perused the record. The record transpires that the points which need determination are twofold:

1st whether the Respondent / Petitioner misbehaved by physically assaulting and severely injuring his colleagues namely Muhammad Fayaz, Shahid Mehmood and Nasir Mehmood; and,

2nd whether the Respondent / Petitioner was charge sheeted and proper enquiry was conducted during which he was found guilty.

11. In order to resolve the above referred controversial points we discuss the same one by one.

1st whether the Respondent / Petitioner misbehaved by physically assaulting and severely injuring his colleagues namely Muhammad Fayaz, Shahid Mehmood and Nasir Mehmood;

12. It is the version of the Appellant / Respondent that during a meeting the Respondent / Petitioner misbehaved and injured Muhammad Fayaz, Shahid Mehmood and Naisr Mehmood resulting in injury to the reputation of the company. But Respondent / Petitioner vehemently denied this fact. It was bounden duty of the Appellant / Respondent to prove that such incident had taken place. In order to prove this fact the Appellant Respondent was required to produce the alleged injured Muhammad Fayaz, Sahhid Mehmood and Nasir Mehmood alongwith the medical certificate as well as the copy of the FIR regarding the alleged occurrence. But neither the alleged injured were produced before the Court nor the medical certificate to substantiate their version which makes a prudent mind believe that no such occurrence had ever taken place. Because had such occurrence taken place then the Appellant / Respondent would have produced the injured before the learned Member. If, for the sake of arguments, while taking lenient view with regard to the nonproducing of the injured is skipped over even then what prevented the Appellant / Respondent to place the medical certificate of the alleged injured on the file. Nonproduction of the alleged injured and medical certificate leads to the conclusion that the Respondent / Petitioner was issued charge sheet without any legal justification and reasonable cause. The Appellant/ Respondent due to some hidden reasons just to cut the Respondent / Petitioner to size initiated false, frivolous and baseless proceeding and ultimately terminated the Respondent / Petitioner from service unlawfully and illegally.

13. It is also worth mentioning that the Appellant / Respondent even did not produce any eye witness of the occurrence as alleged in the written reply. Because Shah Hussain Rw admitted that he was not present in the meeting in which the alleged occurrence took place. He being

hearsay witness cannot be given any weight. Because legally hearsay evidence is no evidence. Thus, it can be safely held that neither such occurrence took place nor the Respondent / Petitioner misbehaved.

14. 2nd whether the Respondent / Petitioner was charge sheeted and proper enquiry was conducted during which he was found guilty.

Admittedly, the Respondent / Petitioner was charge sheeted vide charge sheet dated 24.04.2019 by requiring him to submit his reply within three days. But to ~~day~~^{own} astonishment he was terminated vide termination letter dated 30.04.2019, which indicates that the Appellant / Respondent had decided to show the door to the Respondent / Petitioner at all cost because instead of waiting for his reply within three days he was terminated on the very next day i.e. 30.04.2019 which indicates the malafide on the part of the Appellant / Respondent.

15. It also merit mentioning that no enquiry was conducted against Respondent / Petitioner. Legally speaking whenever any misconduct is alleged to be committed by an employee, the Employer is under obligation to initiate the legal proceeding in the shape of the enquiry as required under section 15 Sub Section 04 of Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 which runs as under:

No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct [within one month of the date of such misconduct or of the date on which the alleged misconduct comes to the notice of the employer] and is given an opportunity to explain the circumstances alleged against him. The approval of the employer shall be required in every case of dismissal and, [the employer shall] institute independent inquiries before dealing with charges against a workman.

[Provided that the workman proceeded against may, if he so desires for his assistance in the enquiry, nominate any workman employed in that establishment and the employer shall allow the workman so nominated to be present in the enquiry to assist the workman proceeded against and shall not deduct his wages if the enquiry is held during his duty hours.]

16. It is evident from what is quoted above that without proper enquiry an employee cannot be sacked, therefore, the entire proceedings regarding suspension letter, charge sheet and termination letter are against the law, therefore, the same being illegal are no more sustainable.

17. In order to further fortify our opinion discussed above, we want to quote the cross examination of the Rw Shah Hussain in verbatim:

".....It is a fact that I have read the contents of charge sheet dated 19.04.2019. It is a fact that the allegation contained in the charge sheet i.e. the Petitioner has injured Shahid Mehmood, Muhammad Fayaz and Nasir Mehmood during general body meeting of Labour Union. It is fact that I was not in the meeting of General Body on 14.09.2019. I do not remember the exact day of the meeting of general body meeting. It is a fact that I have not produced any witness regarding the injuring the 03 persons by Petitioner during general body meeting of Labour Union. It is not in my knowledge whether the Press Club is in the premises of K-Electric Ltd. or otherwise. It is not in my knowledge that the FIR registered on 08.05.2019 whether the name of the Petitioner in the FIR is included or not. I do not know whether during the General Body meeting the Petitioner was elected as Joint Secretary of K-Electric Ltd. Labour Union. It is a fact that Petitioner had to submit reply of the charge sheet dated 24.09.2019 within 3 days. It is a fact that without waiting for reply of the charge sheet the Petitioner was terminated on 30.04.2019. Voluntarily says that Petitioner was terminated after giving opportunity of personal hearing on 30.04.2019. It is a fact that no enquiry on the allegation contained in charge sheet was conducted. I do not know whether the other 07 co-accused were taken on the job except two person including Petitioner were to taken on job, although same allegation was leveled against all the 09 workers. It is a fact that I was not present at the place of incident. I do not know whether service record of Petitioner is neat and clean. It is a fact that the person who has signed the charge sheet of the Petitioner has not been produced before the Commission. It is a fact that the person who allegedly injured by the Petitioner has also not been produced before the Commission. I do not know whether

the signatory of reply statement on behalf of Respondent has been produced before the Commission or otherwise. I do not know whether Petitioner has served the grievance notice to K-Electric Ltd. or otherwise. It is incorrect to suggest that whatever has been written in the reply statement is not correct. It is a fact that I have read the annexure annexed with the petition. It is a fact that I have read the affidavit in evidence as well as cross examination of the Petitioner. It is incorrect to suggest that my evidence and my statement are not correct. It is incorrect to suggest that my statement / evidence prove the innocence of the Petitioner. It is incorrect to suggest that I have deposed falsely".

18. It is manifest from what have been quoted / discussed above that the Respondent / petitioner was neither charge sheeted properly, nor any enquiry was conducted against him by the Appellant / Respondent as they hopelessly failed in observing the procedure laid down under Section 15 sub Section 04 of Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, therefore, the learned Member rightly allowed the petition hence, the instant appeal being without force and substance is dismissed. File be consigned to record room after due completion. No order as to costs.

Announced in open Court