

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

Muhammad Wahab Uddin Vs M/s K-Electric

Present: Mr. Ghulam Sarwar Chandio, advocate for the Appellant.
Ms. Muhammad Azam Khan and Afnana Ahmed, Advocate for Respondent.

ORDER
11.09.2023

Shabbir Hussain Awan, Member

The appellant has filed instant appeal under Section 58 of the Industrial Relations Act, 2012 against the impugned orders dated 04.06.2022 passed by learned Single Member Karachi Bench.

2. Briefly stated facts giving rise to the instant appeal are that the Appellant / Petitioner filed the grievance petition under section 33 of the Industrial Relations Act, 2012 by challenging his termination letter dated 29.08.2018. He was served charge sheet dated 30.10.2012 with the allegation of misreporting the fact of noting the reading of the Consumer No. 310288. The charge was denied by him vide his reply dated 02.11.2012. The Appellant / Petitioner served the establishment for about 09 years with dedication and there was no complaint against him throughout his service. Notice of enquiry dated 02.11.2012 was served upon him. He was not provided opportunity of defending himself. The Inquiry Officer was found to be tool of the Management who pressurized him to verify and sign each and every page of the enquiry proceedings, the Appellant / Petitioner refused and ultimately he was terminated from

his service vide termination letter dated 29.08.2018. Since, then he is jobless without any fault on his part. The Appellant / Petitioner served grievance notice dated 24.09.2018 within the stipulated time. Since, his grievance was not redress, hence the petition.

3. In rebuttal the Respondent submitted reply by contesting the grievance petition on legal as well as factual grounds that the petition is not maintainable; the stay application of the Petitioner was dismissed and the petitioner did not challenge the order of the dismissal of stay application before learned Full Bench resultantly the order attained finality, therefore, the petition is not maintainable; that the Appellant / petitioner was terminated after a proper enquiry; that the Appellant / petitioner had failed to prove any act of unfair labour practice on the part of the employer; that the grievance notice is invalid and incompetent etc. on facts the petition has also been resisted.

4. The parties were directed to produce their evidence to prove their respective versions. In order to prove his case Appellant / Petitioner appeared as Pw by producing his duly sworn affidavit in evidence as Pw-1, grievance notice dated 24.09.2018 as P-2, TCS slip dated 27.09.2018 as P-3, TCS slip dated 27.09.2018 as P-4, alongwith other photocopies of documents produced alongwith the petition and affidavit in evidence.

5. In rebuttal the Mr. Imran Hussain appeared as Rw by producing his affidavit in evidence as R-1, Authority Letter dated 17.03.2022 as R-2, report of the Inquiry Officer as R-3, enquiry proceedings alongwith annexure as R-4, and other photocopies of the documents submitted with the written reply and affidavit in evidence.

6. After hearing the arguments of learned Counsel for the parties the learned Member dismissed the petition, feeling aggrieved the instant appeal.

7. It is argued by learned Counsel for the Appellant / Petitioner, Ghulam Sarwar Chandio that the enquiry whatsoever conducted by the Respondent against the Appellant / Petitioner is defective as the statement of the Rw was not recorded in his presence. The typed statement submitted by the Rw is worthless in the eye of law but the learned member did not attend this legal aspect of the matter. It is further added that the typed statement was never read over to the Appellant / Petitioner just to put the Appellant / Petitioner into picture as to what was deposed against the Appellant / Petitioner meaning thereby the Appellant / Petitioner was caught unaware regarding the evidence produced by the Respondent against him; that the Appellant / Petitioner worked for about 13 years without any complaint; that there is no evidence or proof on the file that the Appellant / Petitioner made any unlawful gain causing loss to the Respondent; that the Appellant / Petitioner was given harsh punishment without observing the legal procedure but the learned Member did not apply his judicial mind while rejecting the grievance petition, hence while allowing the appeal the impugned order be set aside by re-instating the Appellant / Petitioner with all back benefits.

8. The learned Counsel for Respondent, Muhammad Azam Khan, on the other hand contends that the impugned order does not suffer from any illegality or infirmity; that the Appellant / Petitioner did not made any complaint to the higher authorities regarding the action taken against him by the Respondent; that the Appellant / Petitioner was charge sheeted. Proper enquiry was conducted. He fully participated in the enquiry proceeding by cross examining the witnesses, he has read the

relevant portion of cross examination to make the point that fair enquiry was conducted against the Appellant / Petitioner as admitted by him. Lastly, it is maintained that the Appellant / Petitioner did not appear before the Inquiry Officer on the first date of the enquiry. Again, notice was issued to him resultantly he appeared before Inquiry Officer while admitting the allegations leveled against him, thus, the learned Member while considering the evidence on the file rightly dismissed the grievance petition , hence, the appeal merits dismissal.

9. Having given our decent consideration. The perusal of record transpires that as per charge sheet the Appellant / Petitioner committed misconduct and negligence, because he being Meter Reader reported that the meter of the consumer No. AL310288 has been locked inside the premises and the reading could not be taken. When he was sent again to take the meter reading for the month of September, he submitted the same reading as of August 2012 i.e. 43305, hence, "0" units of bill issued to the Consumer as is evident from charge sheet dated 30.10.2012.

10. The point which needs determination is whether the Appellant / Petitioner made a wrong and false report due to some malafide for unlawful gain with intention of causing loss to the company?

11. In order to reach the proper conclusion we want to quote 11th and 12th line of cross examination of Imran Hussain Rw:

".....it is fact that the meter was inside of the house, therefore, Petitioner could not check the meter....."

12. It is evident from what has been quoted above that respondent has supported the version of the Appellant / Petitioner to the effect that the meter of the electricity was inside some premises due to

which the reading could not be obtained, thus, charge sheet dated 30.10.2012 stands nullified by the admission of the Respondent Rw as quoted above, hence, after admission of the Respondent that the meter was inside the house that is why the reading could not be taken, there was no occasion to proceed against the Appellant / Petitioner in this regard as the charge had become baseless

13. It also merits mentioning that the Respondent did not bother to get check the meter from any other quarter to test the veracity of the report of the Appellant / Petitioner regarding the location of the meter of the electricity. Common sense prevails that the company / Respondent after the receipt of the report of the Appellant / Petitioner was required to send another meter reader to confirm as to whether the meter of the electricity was accessible or not? But the Respondent did not take pain to dig out the truth which is also indicative of some ill will and grudge in the heart of the Respondent against the Appellant / Petitioner.

14. It will be also not out of place to mention here that the very purpose of charge sheeting a person is to bring into his notice as to what type of allegations are leveled against him to which he is required to answer. In this aspect three ingredients are necessary to be mentioned. 1st date, 2nd time and 3rd place, the charge sheet as well as the entire proceedings of the enquiry are silent regarding the date of checking the meter by the Appellant / Petitioner. Similarly, the date of report is also missing; we want to quote the opening part of cross examination of Rw in verbatim:

".....it is a fact that there is no date mentioned on which the meter of said consumer was reported. It is a fact that there is no date mentioned in the charge sheet on which date the petitioner was instructed to check the meter and submit the report pertaining to the meter....."

15. It is clear from what has been quoted above that the charge against the Petitioner is defective as the date has not been mentioned when the Appellant / Petitioner was asked to take the reading which is sufficient to vitiate the entire proceeding because it has been consistent view of the superior courts that prior to the enquiry the person complaint against is required to be informed as to what type of allegation was against him, if the date of occurrence is missing then legally the charge sheet is unlawful and illegal. This is another circumstance finding favour of the Appellant / Petitioner and speaking against the Respondent.

16. It is also on the file that neither the consumer of the meter nor anybody else made any complaint against the Appellant / Petitioner. similarly, the Appellant / Petitioner is not proved to have made some unlawful gain amounting to unlawful loss to the company. Now, the question is that for what purpose the Appellant / Petitioner made false report? The answer is big NO. wisdom dictates that had the Appellant / Petitioner made false report for some unlawful gain causing unlawful loss to the respondent company then legal action was justified to be taken against him. In our opinion since the meter of the electricity was out of access as the premises were found locked, therefore, no reading could be taken, which does not amount to any misconduct or malafide on the part of Appellant / Petitioner as no financial loss is alleged to be occurred to the Respondent company.

17. Apart from what has been discussed above, it is on the file that the service career of the Appellant / Petitioner is unblemished because prior to the enquiry he was never given warning or show cause notice nor there were any complaint whatsoever against him, we want to quote the closing part of cross examination of Rw ~~in~~ verbatim:

"..... It is a fact that prior to the present charge sheet there was not any complaint, warning or show cause notice were issued to the Petitioner..... It is a fact that in enquiry report it has not been reported that due to act of the petitioner how much financial occurred to the company....."

18. So far as the enquiry proceedings and enquiry report dated 08.11.2012 is concerned, it cannot be set to be an enquiry. Apparently it appear to be a ~~confessional~~ statement recorded under Section 342, Cr.PC. which is function of a Magistrate and not of the Inquiry Officer. Similarly, the evidence led by the Respondent against the Appellant / Petitioner is also no evidence because the name of the Pw has not been mentioned while submitting the typed statement consisting of one page. Legally, the name of the witness with parentage including the age should have been mentioned while appearing as Pw against a person whosoever. Technically a typed statement cannot be equivalent to statement recorded by the Inquiry Officer because the Appellant / Petitioner is not supposed to be conversant with the language in which the statement is found to be typed. The Inquiry Officer was required to record the statement of Pw in his hand in the presence of the Appellant / Petitioner just to enable the Appellant / Petitioner to understand as to what is being deposed against him. Unless, the accused fully understand what is stated against him he cannot cross examine the Pw. Therefore, the so-called statement (typed statement) as well as cross examination of the Pw in the shape of question and answer is more than sufficient to vitiate the entire proceedings.

19. It is also very important to mention here that the Appellant / Petitioner was not asked to produce any defense, nor he was issued the final show cause notice by providing opportunity of personal hearing. There is no denying the facts that when enquiry is to be conducted then the requirement of section 15 sub Section 4 of Industrial and Commercial

Employment (Standing Order) Ordinance, 1968, should have been complied with, failing which the entire proceedings will be nothing but a futile exercise as being illegal and unlawful. Since, the mandatory provision of law has been violated as the proper procedure provided by law was not followed by the Inquiry Officer while conducting the enquiry against the Appellant / Petitioner. Moreover, no malafide is proved against the Appellant / Petitioner for unlawful gain and unlawful loss to the company, his service career of 13 year is found to be neat and clean prior to the enquiry, the Respondent partly had admitted the version of the Appellant / Petitioner regarding the controversial point, no independent evidence was collected against the Appellant / Petitioner regarding his false report. Thus, while allowing the appeal the impugned order is set aside, the grievance petition of Appellant / Petitioner is allowed with the direction to the Respondent to re-instate him with all the back benefits. No order as to cost. File be consigned to record room after due completion.

Announced in open Court

