

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(42)2022-K

Salman Khan

Vs K-Electric

Present: Mr. Ghulam Sarwar Chandio, advocate for the Appellant.
Mr. Muhammad Rizwan, Advocate for Respondent.

ORDER

12.09.2023

Shabbir Hussain Awan, Member

The appellant has filed instant appeal under Section 58 of the Industrial Relations Act, 2012 against the impugned orders dated 17.02.2022 passed by learned Single Member Karachi Bench.

2. Briefly stated facts giving rise to the instant appeal are that Appellant / Petitioner filed a grievance petition under Section 33, of the Industrial Relations Act, 2012 by challenging dismissal letter dated 14.05.2018 by stating that he being lineman in the Respondent company served for about 13 years with full dedication and conviction, he belongs to unionized staff as bonafide member of KESC Labour Union against the wishes and liking of the Management resultantly a charge sheet was issued to him on 05.03.2014. The Appellant / Petitioner refuted / denied the allegations being false fabricated and baseless. He did not commit any misconduct as alleged in the so called charge sheet, he was issued notice of enquiry dated 11.03.2014. The Inquiry Officer did not provide a fair and legal opportunity to defend him. Despite of the fact that no evidence was ^{led} ~~lead~~ against the Appellant / Petitioner during the enquiry proceedings even then the Inquiry Officer concluded him guilty while proceeding in slip shot manners. He was dismissed from service vide letter dated

14.05.2018 rendering him jobless without any fault on his part. The Appellant / Petitioner served grievance notice dated 28.05.2018, his grievance was not redressed, hence, the petition.

3. The Respondent filed reply / Para-wise comments by contesting the petition on legal as well as factual grounds that the grievance petition is not maintainable; that the Appellant / Petitioner has come to the court with unclean hands; that the Appellant / Petitioner was proceeded in accordance with law as required under Section 15 of sub Section 4 of Industrial and Commercial Employment (Standing Orders) Ordinance, 1968; that the Appellant / Petitioner failed to establish any act of unfair labour practice on the part of employer etc. On facts the petition has also been resistant.

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

5. In order to prove his case, Appellant / Petitioner appeared as Pw-1 by producing his duly sworn affidavit in evidence as P-1, charge sheet dated 05.03.2014 as Mark P-2, reply of charge sheet dated 07/08 03.2014 as Mark P-3, copy of Notice of enquiry dated 11.03.2014 as Mark P-4, copy of dismissal letter dated 14.05.2018 as Mark P-5, copy of Grievance Notice dated 28.05.2018 as Mark P-6, copy of TCS Slip dated 28.05.2018 as Mark P-7 and P-8.

6. In rebuttal Khalid Mustafa appeared as Rw-1 by producing his affidavit in evidence as Ex-R-1, Authority Letter dated 01.12.2020 Ex-R-2, Enquiry Report dated 13.03.2014 Ex-R-3, Enquiry Proceedings Ex-R-4, and other photocopies of the documents submitted along with written reply and affidavit in evidence.

7. After hearing the learned counsel for parties and perusal of record the learned member dismissed the Petition of the Appellant / Petitioner, feeling aggrieved, the instant appeal.

8. Mr. Ghulm Sawar Chandion, the learned Counsel for the Appellant / Petitioner argued that the Appellant / Petitioner submitted detailed reply to the charge sheet by denying the allegations as the baseless; that after submission of reply to the charge sheet. Inquiry Officer was nominated; that the Inquiry Officer did not consider the reply of the Appellant / Petitioner properly; that the enquiry was not conducted in fair and proper manner; that no complaint necessitating the charge sheet was produced against the Appellant / Petitioner; that Muhammad Azmat Hussain Pw has not supported the version of complainant because according to him there was some type of beating and abusing without any specification; that the other witnesses i.e. Security Personnel were not produced before the Inquiry Officer; that the application submitted by Khalid Mustafa does not mention the time of receiving the same by the SHO; that the date and time as well as entry number is also not available in the letter of the Police to the MLO Medical Officer; that the injured reported to JPMC at 04:15 PM. The injured complainant Khalid Mustafa was meted out simple treatment; that the FIR and medical certificate were subsequently managed; that there is no complaint regarding the performance of the Appellant / Petitioner; that the Appellant / Petitioner had been victimized for his lawful activities as lawful member of KESC Labour Union; it is, lastly, added that the Appellant / Petitioner was dismissed illegally and unlawfully by rendering him jobless in this era of price hike but the learned trial court failed to appreciate contention of the Appellant / Petitioner, hence, while setting aside the impugned order the Appellant / Petitioner be re-instated into service with all back benefits.

9. The learned Counsel for Respondent Muhammad Rizwan on the other hand contended that the Appellant / Petitioner has not come to the court with clean hands; that the petition is un-proceedable; that the Appellant / Petitioner physically assaulted Khalid Mustafa publically which amounts to gross misconduct; that the Appellant / Petitioner was charge sheeted and proper enquiry was conducted; that the Appellant / Petitioner participated the proceedings of enquiry and during enquiry he was found guilty. As such, he was dismissed / terminated by the competent authority. The learned Member, thus, rightly dismissed the petition.

10. Having given our decent consideration. According to the Appellant / Petitioner he was terminated / dismissed from service simply because he was active member of KESC Labour Union, since his active participation in the trade union activities annoyed the Respondents as such he was victimized by issuing unlawful, illegal and baseless charge sheet followed by so called enquiry. Since, the Inquiry Officer being a tool, while acting according the whims and wishes of the Respondent, concluded him guilty without affording him proper opportunity of defending himself; consequently he was terminated from the service.

11. On the other hand, the version of the Respondent is that the Appellant / Petitioner on 05.03.2014 at 09:05 stopped Khalid Mustafa DGM by preventing him to enter in the office by inflicting fist and kick blows followed by threats of dire consequences, the security guard came to rescue him. The Appellant / Petitioner was captured by the people present over there etc.

12. In order to resolve this controversy the statement of the Appellant / Petitioner while appearing as Pw is of paramount importance the relevant portion of the same is reproduced in verbatim:

"..... It is a fact that Khalid Mustafa had given adverse remarks against me in the annual report before incident. It is a fact that Malik Azmat Hussain has also deposed against me and in favour of Khalid Mustafa during enquiry proceeding. It is a fact that I have not produced any witness or documents during enquiry proceedings which can favour me..... It is a fact that I have never remained office bearer of any union..... I see photocopies of medical certificates produced alongwith written reply and say that same are issued in the name of Khalid Mustafa on 05.03.2014 showing injuries already marked as MW-2 and 3. It is a fact that I have not challenged the above medical certificate....."

13. When the above quoted portion of the cross examination of the Pw (Appellant / Petitioner) is read in between the line then the real situation stands surfaced as clear as the midday sun. The fact of the matter is that Khalid Mustafa DGM while recording the annual confidential report rated the Appellant / Petitioner to be below expectation which went against the nervous system of the Appellant / Petitioner. He went to the entrance of the office of Khalid Mustafa early in the morning. He did try to block the way of the Khalid Mustafa so that he could not enter the office, he also showered fist and kicks blows blindly as is evident from MLC No.1716 dated 13.03.2014 as the medical Officer while examining Khalid Musafa noted four injuries sustained by Khalid Mustafa on vital part of his body, there is nothing that either the occurrence did not take place or otherwise the medical certificate was maneuvered. The Appellant / Petitioner right from 13.03.2014 up till now has kept mum regarding the said medical certificate as he has not challenged the same at any forum, which is indicative of the fact that

occurrence did took place as alleged by the Respondent, there is no fabrication / falsification in this regard.

14. The very argument of the counsel for the Appellant that the occurrence had taken place at 09:00 am; whereas the injured was examined at 04:15 pm, therefore, there is every chance of fabrication but we repel this argument because the delay in medical examination will be of no avail to the Appellant / Petitioner in this case. It may be advantageous to the Appellant / Petitioner in the trial conducted against him before the Magistrate, if any. If, the Appellant / Petitioner was dissatisfied with the medical certificate then what prevented him to challenge the same before the competent authority i.e. medical board.

15. Since, the Appellant / Petitioner physically assaulted an officer of the Respondent Company. The Appellant / Petitioner was caught red handed at the spot, there was no occasion of misidentification or falsification because the security guards and all peoples present over there were known to one another in view of the length of the service of the Appellant / Petitioner. The matter was reported to the Police and after medical examination of the injured / victim ultimately a criminal case was registered against him (Appellant / Petitioner).

16. The Respondent initiated enquiry against the Appellant / Petitioner, he participated into the proceedings by cross examining the witnesses of the Respondent including the injured Khalid Mustafa but nothing favourable to the Appellant / Petitioner was got elicited from their mouth. The Respondent was given reasonable opportunity of defending himself but he could not produce even a single witness during the enquiry nor before this Court that either the occurrence had not taken

place or the otherwise he had been bracketed with the occurrence falsely in view of his participation in union activities.

17. So far as, the version of the Appellant / Petitioner that he was victimized simply because of the connectivity with the activities of Labour Union is concerned, the statement of the Appellant / Petitioner himself has contradicted his own stance because he has admitted in the cross examination noted above that *"It is a fact that I have never remained office bearer of any union"* which leads to the conclusion that in fact, he never remained office bearer of any union. He rested upon a false, fabricated and quite after thought plea, which is indicative of the fact that the Appellant has nothing to defend himself.

18. Since, the Appellant / Petitioner committed gross misconduct by criminally assaulting a respectable officer of the Respondent Company. Legally the Management being quite competent to take action against any person violating the rules and regulations, therefore, he was rightly charge sheeted, followed by proper enquiry. He joined the same but failed to defend himself resultantly the Inquiry Officer concluded him guiltily and on the basis of which he was rightly dismissed / terminated from service, hence, the appeal being without force and substance is dismissed. No order as to cost. File be consigned to record room after due completion.

Announced in open Court