

NATIONAL INDUSTRIAL RELATIONS COMMISSION
FULL BENCH AT KARACHI

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

Appeal No. 12A(232)/2022-K

SAPS Vs. Riaz Ahmed Khan

Present: Mr. Nishat warsi advocate learned counsel for the appellant
Mr. Ali Uzair advocate learned counsel for the respondent.

Date of Hearing:- 12.09.2023.

ORDER

Abdul Rasool Memon, Chairman

The appellant by filing the instant appeal under Section 58 of the Industrial Relations Act, 2012 seeks to assail the order dated 07-04-2023 (hereinafter to be referred as 'impugned order') passed by learned Single Member, NIRC Karachi Bench whereby the grievance petition filed by the respondent was allowed with the directions that respondent be reinstated into service within 30 days. However, he shall be treated as regular employee from date of filing of the petition because before that he has not applied for regularization, as regards the back benefits are concerned he shall be entitled for half benefits from filing of petition for reinstatement.

2. Briefly the facts of the case as narrated in the grievance petition, inter alia, are that respondent was appointed by appellant in January 2007 as Cargo Assistant against vacant post of permanent nature; that at the time of his appointment no letter of appointment was given to the respondent as required under Industrial & Commercial Employment (Standing Orders,) Ordinance, 1968, however, contract of appointment was given to respondent in the year 2008; that during the entire period of his service the appellant take duty from the respondent with a label of so

called contractor; that on 18-10-2018 respondent was informed that his services are no more required and consequently release letter was issued on 30-10-2018; that he served grievance notices against order dated 18-10-2018 and 30-10-2018 which were not responded by the appellant, hence, the respondent has filed grievance petition before the learned Single Member which was accepted in the terms mentioned in para supra.

3. The appellant feeling aggrieved of the impugned order has filed this appeal to assail the same amongst the grounds that the impugned order is based on conjecture and surmises and that the respondent was not permanent workman as he was employed on contract basis, hence, provisions of Industrial & Commercial Employment (Standing Orders,) Ordinance, 1968 are not applicable as he cannot claim regularization on the basis of length of his contractual service or reinstatement in service upon completion of his contractual service; that all the employment in respect of service providing purely temporary in nature, based on contractual requirement hence, the case of the respondent falls under the classification of contract employment and not under the clause of permanent employment; that the ground handling services contracted out to the appellant establishment by various Airlines are based on their requirements subject to availability of their Aircrafts, number of flights, cargo handling, which has been varied from time to time; that the finding of the learned Single Member are based on those considerations which were neither material nor relevant and that the impugned order is against the law and facts of the case, hence the impugned order is liable to be set aside. The learned counsel for the appellant has prayed that the appeal may be allowed and the impugned order may be set aside.

4. The learned counsel for the respondent has contended that the learned single bench has passed a well-reasoned order warrants no interference; that the respondent was working in the appellant establishment for more about 10 years without any break and by

operation of law became permanent workmen; that admittedly, the respondent was initially hired on contract basis but the said contract has neither been extended nor revoked thus, the respondent acquired the status of permanent workmen; that the appellant in violation of law and rules through letter dated 19.10.2018 released from service with effect from 20.10.2018 which act of the appellant was against the law; that the appellant cannot be permitted to deal the employees/workers by their own choice but should have to be proceeded in accordance with the provision of law and rules; that the respondent by operation of law was permanent workmen and procedure for termination/dismissal from service of the workman has been provided in Standing Order No. 12(3) of Industrial and Commercial Employment (Standing Orders) Ordinance, 1968; that the respondent performed his duties with full devotion and dedication and nothing has been brought on record regarding misconduct on the part of the respondent; that the appellant while terminating the service of the respondent has not followed the provision of law and thus, the learned Single Bench has rightly allowed the grievance petition. The learned counsel for the respondent has prayed that the appeal may be dismissed. The learned counsel for the respondent has relied on case law i.e. 2018 SCMR 1181, 2013 SCMR 1253 and 2018 SCMR 157.

5. The learned counsel for the parties have been heard and record perused.

6. The main thrust of the arguments of the appellant is that the respondent was appointed on contract basis which after completion came to an end. It is evident that the services of the respondent were utilized for span of years on permanent basis and he was neither dealt with in accordance of contract agreement nor considered as permanent employee. The law laid down in Standing Order 1(b) for a permanent worker is that, he should be engaged in work of a permanent nature likely to continue for last more than nine months. For better

appreciation of the classification of workman it would be appropriate that the permanent workmen and contract workers as provided in Standing order (1) may be reproduced below:-

"1. Classification of Workmen: (a) Workmen shall be classified as-

- (1) permanent;
- (2) probationers;
- (3) badlis;
- (4) temporary;
- (5) apprentices;
- (6) [contract worker].

(b) A "permanent workman" is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment, and includes a badli who has been employed for a continuous period of three months or for one hundred and eighty three days during any period of twelve consecutive months, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lock-out or strike) or involuntary closure of the establishment [and includes a badli who has been employed for a continuous period of three months or for one hundred and eighty-three days during any period of twelve consecutive months]."

.....
"(g) a contract worker means a workman who works on contract basis for a specific period of remuneration to be calculated on piece rate basis."

7. There is practically no dispute between the parties regarding the services of the respondent rendered by him, however, the claim of the appellant is that the services of the respondent were hired on contract basis, which contract has come to an end while on the other side the respondent claimed that being workman he served the appellant establishment for about ten years i.e. more than the prescribed period on a post which continued for more than nine months without any break and by operation of law he become permanent workmen. It is admitted fact that the respondent performed his duties against the work of permanent nature which remained continued for indefinite period and his period of employment was for much longer period than the one which entitled him to be classified as permanent workman under the

provisions of the Standing Orders, altogether different from the classification of contract worker as referred herein clause 'g' of the Standing Order No.1. From the above discussion it is quite clear that by operation of law the respondent has attained the status of permanent worker irrespective of contract appointment. Since the respondent as noted above had attained the status of permanent worker by operation of law, therefore, this right cannot be taken away by any contract agreement.

8. The status of the respondent was workman at the relevant time by dint of nature of his duties and the Standing Order 12 (3) contemplates that the services of a workman shall not be terminated, nor he shall be removed, retrenched, discharged or dismissed from service, except by an order in writing containing the reason for the action taken. It is further provided that in case a workman is aggrieved by the termination of his services or removal, retrenchment, discharge or dismissal, he may take action in accordance with the provisions of section 25-A of the Industrial Relations Ordinance 1969 and thereupon the provisions of said section shall apply as they apply to the redress of an individual grievance. The Section 25-A of the Industrial Relations Ordinance 1969 (Redress of individual grievance) is now provided as section 33 in the IRA 2012. It is thus manifest on the strength of the referred discussion that it would be the labour laws which would govern the relation between the employer and the employees and a contract which is in conflict with labour law would not be applicable rather the contract agreement if any would not be a hurdle in application of labour laws.

9. It is settled law that the service of a permanent workman could only be terminated by giving explicit reasons as provided in Standing Order 12(3). In this regard reliance can be placed on the judgment of the Honorable Supreme Court of Pakistan reported as 2018 SCMR 376 titled Khalid Mehmood versus State Life Insurance Corporation of

Pakistan and others. The relevant part of the judgment for convenience is reproduced herein below: -

"4. Admittedly the appointment of the appellant was confirmed on 21.06.1990. His services were terminated without assigning any reason whatsoever, which termination was found illegal by the Labour Court as well as by the concerned Labour Appellate Tribunal. Regulation 22(1) (a) of the State Life Employees (Service) Regulations, 1973, relied upon by the respondent-Corporation for appellant's termination without assigning any reasons, has been rightly held by the appellate Tribunal to be against the provisions of Standing Order 1 of Standing Ordinance, 1969. In terms of Standing Ordinance 1986, a person who has satisfactorily completed the probation period of 90 days, and is employed against a permanent post likely to last for more than nine months, becomes a permanent employee, and in terms of Standing Order 12(3) of the Standing Ordinance, 1968, the service of a permanent employee can be terminated only by giving explicit reasons."

10. It is constant view of the Superior Courts that an employee serving for more than the period prescribed in the Standing Order against the work of permanent nature acquires the status of permanent employee. The trend of the Superior Courts is very much clear regarding the issue of regularization/ permanency in the employment i.e. under labour law or civil service, where any employee/worker performing duty, serving for more than the period prescribed in the Standing Order would be entitled to be regularized. The Honorable Apex Court in a case titled Province of Punjab through Secretary Communication and Works Department and others V/S Ahmad Hussain, reported as 2013 SCMR 1547, has held that the service of respondent shall be governed by Standing Orders Ordinance, 1968 and he shall be considered permanent employee, as he is performing his duties continuously for more than 9 months since 1998 and the learned High Court has rightly issued writ in his favour. Similarly the Honorable Supreme Court of Pakistan in another case reported as 2018 PLC (C.S.) 383, titled Abdul Ghafoor V/S The President National Bank of Pakistan etc, has held as follow:-

"7. As the petitioners for all intents and purposes were engaged/employed by the respondents bank for manual jobs and were being paid salary/compensation for the services they rendered for the respondent-bank, on monthly basis and from year to year personally/manually, and having so served for more than one year, on several 11 months stints, have entitlement for regularization of their services with the respondent-bank.

8. In the circumstances, we would convert this petition into an appeal and allow the same by setting-aside the impugned judgment, and direct the respondent bank to regularize the services of the petitioners as their permanent employees." *Emphasis provided.*

The Honorable Supreme Court of Pakistan in another case reported as 2018 SCMR 1181 titled as State Oil Company Limited versus Bakht Siddique has held as follow: -

"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."

11. It is the case of the appellant that respondent was appointed in the year 2008 on contract basis for a period of one year and after that his contract was being extended year-wise. The appellant's representative Mehran Reman filed his affidavit and in his cross examination he has admitted that respondent was working as Cargo Assistant. He further submits that

other employees are also working on the said posts. It is also admitted by him that contract in the year 2008 was for one year (extendable) He has also admitted that the respondent has worked in the company from 2008 to 2018 without break and no charge sheet was ever issued to him during his entire period.

12. The service of the respondent without break from 2008 to 2018 though as claimed by the appellant on contract basis but as per their witness no such extension letter was provided. In view of above facts and circumstances his service w.e.f 2008 to 2018 as Cargo Assistant without break clearly shows that by operation of law he has attained the status of permanent workman.

13. In the light of the above referred case law it is quite clear that the respondent by operation of law attained the status of permanent workman and releasing him from service in the garb of expiry of the service contract was not justifiable and the appellant cannot be allowed to exploit the respondent and to defeat the spirit and purpose of law and the judgments of the Superior Courts.

14. In view of what has been discussed above and on the strength of the case law discussed herein above, the impugned order warrants no interference which is hereby maintained and the appeal in hand is hereby dismissed. The file be consigned to record room after its due completions.

Announced in open Court
On dated 14.09.2023.

