

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(127)/2022-K

Schleumberger Seaco Inc. Vs Gulzar Ali Khaskheli & HRSPL

Appeal No. 12A(128)/2022-K

Schleumberger Seaco Inc. Vs M. Riaz & Hilcresst

Appeal No. 12A(129)/2022-K

Schleumberger Seaco Inc. Vs M. Tauheed Khan & Hilcresst

Appeal No. 12A(130)/2022-K

Schleumberger Seaco Inc. Vs Syed Safder Ali & Hilcresst

Appeal No. 12A(131)/2022-K

Schleumberger Seaco Inc. Vs Rauf Ahmed & HRSRG

Appeal No. 12A(132)/2022-K

Schleumberger Seaco Inc. Vs M. Saleh & HRSRG

Appeal No. 12A(133)/2022-K

Schleumberger Seaco Inc. Vs Abdul Malik & Hilcresst

Appeal No. 12A(134)/2022-K

Schleumberger Seaco Inc. Vs Ghulam Mustafa & Hilcresst

Appeal No. 12A(135)/2022-K

Schleumberger Seaco Inc. Vs Mohsin Ali & HRSRG

Appeal No. 12A(135)/2022-K

Schleumberger Seaco Inc. Vs Mohsin Ali & HRSRG

Schleumberger Seaco Inc. Vs Appeal No. 12A(136)/2022-K
Abdul Hameed & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(137)/2022-K
Iqbal Hussain & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(138)/2022-K
Sikander Ali & HRSPL

Schleumberger Seaco Inc. Vs Appeal No. 12A(139)/2022-K
Niaz Hussain & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(140)/2022-K
Aurangzeb Khan & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(141)/2022-K
Jibran Ali & HRSPL

Schleumberger Seaco Inc. Vs Appeal No. 12A(142)/2022-K
Asad & HRSPL

Schleumberger Seaco Inc. Vs Appeal No. 12A(143)/2022-K
Naseeb Syed & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(144)/2022-K
M. Nadeem & HRSPL

Schleumberger Seaco Inc. Vs Appeal No. 12A(145)/2022-K
Hanif Khan & HRSPL

Schleumberger Seaco Inc. Vs Appeal No. 12A(146)/2022-K
Shahid Ali & HRSPL

Schleumberger Seaco Inc. Vs Appeal No. 12A(147)/2022-K
Syed Ghafar & HRSPL

Schleumberger Seaco Inc. Vs Appeal No. 12A(148)/2022-K
Fajjar Ali & HRSG

Schleumberger Seaco Inc. Vs Appeal No. 12A(149)/2022-K
Ghulam Yasin & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(150)/2022 -K
Amjad Khan & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(151)/2023-K
Nadeem Hussain & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(152)/2022-K
ZAhir Gul & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(153)/2022-K
M. Ibrahim & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(154)/2022-K
M. Nadeem Ansari & HRSPL

Schleumberger Seaco Inc. Vs Appeal No. 12A(155)/2022-K
M. Bakhsh & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(156)/2022-K
M. Iqbal & HRSPL

Schleumberger Seaco Inc. Vs Appeal No. 12A(157)/2022-K
Shujja Muhammad & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(158)/2022-K
riaz Hussain & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(159)/2022-K
Attai Khan & Hilcresst

Schleumberger Seaco Inc. Vs Appeal No. 12A(160)/2022-K
M. Hussain & HRSPL

Schleumberger Seaco Inc. Vs Appeal No. 12A(161)/2022-K
Anwar Ali & Hilcresst

Schleumberger Seaco Inc. Vs Sarfraz & HRSPL
Appeal No. 12A(162)/2022-K

Schleumberger Seaco Inc. Vs Hassan Ahmed & HRSPL
Appeal No. 12A(163)/2022-K

Schleumberger Seaco Inc. Vs Sohail Ahmed & HRSPL
Appeal No. 12A(164)/2022-K

Schleumberger Seaco Inc. Vs Qazi Keerio & HRSPL
Appeal No. 12A(165)/2022-K

Schleumberger Seaco Inc. Vs Inayat & Hilcresst
Appeal No. 12A(167)/2022-K

Schleumberger Seaco Inc. Vs Syed Wali Shah & HRSPL
Appeal No. 12A(168)/2022-K

Schleumberger Seaco Inc. Vs M. Arshad
Appeal No. 12A(169)/2022-K

Schleumberger Seaco Inc. Vs Rashid Ali & HRSPL
Appeal No. 12A(170)/2022-K

Schleumberger Seaco Inc. Vs Sheyan Sh. & HRSPL
Appeal No. 12A(171)/2022-K

Schleumberger Seaco Inc. Vs Afser Khan & HRSPL
Appeal No. 12A(172)/2022-K

Schleumberger Seaco Inc. Vs Rashid Mehmood & HRSGL
Appeal No. 12A(173)/2022-K

Schleumberger Seaco Inc. Vs Ahmed & HRSPL
Appeal No. 12A(174)/2022-K

Schleumberger Seaco Inc. Vs Khizer Hayat & HRSPL

Appeal No. 12A(175)/2022-K

Schleumberger Seaco Inc. Vs Sajjad Sajid &HRSPL

Appeal No. 12A(176)/2022-K

Schleumberger Seaco Inc. Vs Zafar Iqbal & HRSG

Appeal No. 12A(177)/2022-K

Schleumberger Seaco Inc. Vs M. Rauf &Hilcrest

Appeal No. 12A(178)/2022-K

Schleumberger Seaco Inc. Vs Hadi Bukhsh &Hilcrest

Appeal No. 12A(179)/2022-K

Schleumberger Seaco Inc. Vs Abdul Aziz &Hilcrest

Appeal No. 12A(180)/2022-K

Schleumberger Seaco Inc. Vs Ahmed Saeed &Hilcrest

Appeal No. 12A(181)/2022-K

Schleumberger Seaco Inc. Vs Zafar Iqbal &Hilcrest

Appeal No. 12A(182)/2022-K

Schleumberger Seaco Inc. Vs Abdul Hameed &HRSPL

Appeal No. 12A(183)/2022-K

Schleumberger Seaco Inc. Vs Mohsin Ali &Hilcrest

Appeal No. 12A(184)/2022-K

Schleumberger Seaco Inc. Vs M. Sabir &Hilcrest

Present: Mr. Shaheer Roshan advocate learned counsel for the appellant

M/s. Arshad Mehmood and Ali Uzair advocate learned counsel for the respondents (Individuals)

Mr. Ghulam Nabi Deeshak advocate learned counsel for the respondent (HRSG & Hillcrest Solution outsourcing)

Nemo for HRSPL.



Date of Hearing:- 11.09.2023

ORDER Abdul Rasool Memon, Chairman

Through this single order we intend to decide above mentioned 58 appeals filed against common order dated 21.03.2022 passed by the then learned Member of the Commission at Karachi. The learned Single Bench through impugned order has allowed the petitions with the following conclusion:-

"13. Under the circumstances when Petitioners are still working admittedly with the Respondent No. 1, therefore, petitions are allowed and Petitioners are declared regular employees of the Respondent No. 1 Establishment since the date of completing probation period or period of 90 days of their appointment."

Brief facts leading to file instant appeals are that the respondents (individuals) approached the Commission by filing petitions in original jurisdiction for treating them as permanent employees of respondent No. 1 (M/S Schlumberger Seaco Inc. appellant before this Bench). Their claim was that they are working in the appellant establishment since 2008 in different categories of the workers but the appellant in order to deprive them from the entitled benefits has introduced third party contractors, which infect having no nexus with the employment of the petitioners (respondents individuals). The appellant contested the grievance petitions by filing written replies and denied the relationship with the respondents. While the respondents No.2 contractors also filed written replies to the grievance petitions wherein it has been claimed that the petitioners are their employees and the petitions have been filed without any cause of action. The learned single bench vide impugned order has allowed the petitions and the appellant being aggrieved from the impugned order has filed these appeals.

3. The learned counsel for the appellant has contended that the appellant is a company engaged in oil drilling services and engages the services through respondent No. 2 service provider company; that the learned Single Bench while passing the impugned order has failed to appreciate the important aspect of the matter that in earlier round of litigation in the year 2019 the Bench of the Commission has held that the respondents individuals never remained in the employment of the appellant; that the said findings of the Bench of the Commission had never been assailed further, thus attained finality; that the respondents individuals deliberately suppress the fact of earlier litigation which amounts to fraud with the Commission; that the learned Single Bench without recording of pro and contra evidence has ordered for regularization of the respondents individuals which is against the spirit of settled principle of law; that the learned Single Bench without examining the pith and substance regarding nature of the duties being performed by the respondents as workmen or otherwise has directed for regularization of their services; that the respondents individuals are the employees of the respondents No. 2 and the appellant has no control over the employees of respondents No. 2 as the work are being assigned to them by the respondents No.2, the emoluments are being paid by respondent No.2 but the learned single bench without recording evidence has held that the respondents individuals are the permanent employees of the appellant; that it is established law that once the employer denies the employees as workmen the onus was rest with the employees to disprove the same stance by leading evidence which has not been done in the instant matters; that even otherwise Section 33 of the IRA, 2012 does not confer jurisdiction to the Commission to regularize the services of the workers. The learned counsel for the appellant has prayed that the appeal may be allowed and the impugned order may be set aside. The learned counsel for the appellant has relied

upon case law i.e 1997 PLC 24, 1984 PLC 1342, 2021 PLC 56, 2016 PLC 532, 2003 PLC 134, 2003 CLC 189, 1983 PLC 1284, 1977 PLC 6, 1972 PLC 190, PLD 1969 Kar. 646, 2006 PLC 151, 2002 SCMR 1183, 1985 SCMR 635, PLD 1987 SC 145, 2004 MLD 1310, 2015 YLR 2572, 2014 YLR 10822021 SCMR 1313, 2000 CLC 1107, 1997 MLD 406, SBLR 2015 SC 233, 2013 SCMR 1253, 1993 SCMR 672, 1993 SCMR 488, PLD 1994 SC 273, 2015 SCMR 434, 1985 SCMR 1511 and PLD 1986 Sc 103.

4. The learned counsel for the respondents contractors HRSG and Hillcrest Solution outsourcing has supported the arguments advanced by the learned counsel for the appellant and has contended that the respondents individuals are actually their employees and have nothing to do with the appellant; that the learned single bench without recording evidence in hasty manners has passed the impugned order which is not sustainable in the eye of law. The learned counsel has prayed that the appeals may be allowed and the impugned order may be set aside.

5. As none has appeared on behalf of the HRSPL contractors despite issuance of notices for 21.06.2023, 15.08.2023 and 11.09.2023 thus, having left with no option but to decide the appeals in their absence.

6. The learned counsel for the respondent individuals has contended that the learned single bench has passed a well-reasoned order warrants no interference; that the respondents are working within the premises of the appellant, rendering services for the appellant, the work performed by them is permanent in nature but just in order to deprive them from their legitimate right of permanency in service has brought contractors in the papers; that the said so called contractors having no nexus with the services of the respondents; that the respondents are serving the appellant establishment from 2008 and the alleged contractors have been introduced in recent past; that it is the consistent view of the superior courts that the so called contractors are being used as device/

pretext to deny the legitimate right of regularization in service; that the appellant has regularized one Mohsin Ali Channa one of the respondent in appeal No. 12A(135)/2022-K because he has been managed by the appellant and he is working for the appellant against the office bearers and members of the union; that the respondent individuals are office bearers/ members of the CBA union and the appellant are negotiating with the CBA union before the conciliator; that Section 33(5) of the IRA, 2012 mandated the Commission to go into the facts of the case and pass order in the circumstances of the case, therefore, the learned single Bench has found appropriate to decide the matters without recording evidence of the parties; that the respondents are serving for more than 90 days and by operation of law attained the status of permanent workmen as provided in Industrial and Commercial Employment (Standing Orders) Ordinance, 1968; that the respondents are working manual work and by dent of nature of duties they are workmen. The learned counsel for the respondents has prayed that the appeal may be dismissed and the impugned order may be upheld. The learned counsel in support of his arguments has relied on case law i.e 2013 SCMR 1253, 2018 SCMR 1181, 2018 SCMR 157,2020 PLC 57.

6. The learned counsel for the parties have been heard and the record of the case has been perused.

7. It is admitted position that the respondents are performing their jobs in the appellant establishment, they approached this Commission through filing petitions under Section 33 of the IRA, 2012 with the prayer that the respondent No.1 (appellant) may be directed to treat the petitioners as its permanent employees. The respondents alleged in the grievance petitions that they are performing their duties continuously against work of permanent nature. The respondents claimed that they are rendering there services for appellant establishment and requested

that they may be considered as the regular employees of the appellant establishment, for whom they are being performed work. The learned Single Bench through impugned order has held that the petitioners (respondents) are still working with the respondent No. 1 (appellant) are regular employees of the respondent (appellant) establishment since the date of completing probation period or period of 90 days of their appointment. The appellant has vehemently opposed the stance of the respondent individuals and stated that they are employees of contractors. The alleged contractors though parties before the Single Bench but they did not chose to assail the impugned order by filing appeals, however, the learned counsel for the contractors M/S HRSG and Hilcrest Solution outsourcing has supported the stance of the appellant and has argued that the respondents individuals are their employees. The respondent individuals are performing their duties within the premises of the appellant establishment and for the appellant establishment. The Honorable Supreme Court in a case reported as 2013 SCMR 1253 titled Fauji Fertilizer Company Versus National Industrial Relations Commission and others, in such like issue has laid down the following principles in the matter: -

16... "(a) the word 'employed by the factory' are wide enough to include workmen employed by the contractors of the company;

(b) the employees of the contractor shall be the employees of the company if the contractor engaged the workers for running of the affairs of the company and not for some other independent work which has no concern with the production of the company;

(c) if the employees are working in a department of the company which constituted one of the principle organs of the company, the machines belong to the company, the raw material is supplied by the company and the said department is controlled by the supervisors of the company, the employees of the contractor shall be the employees of the company;

(d) the employees, engaged directly or through a contractor, would be deemed to be the employees of the company for whose benefit they perform functions;

(e) even though 'control' test is an important test, it is not the sole test; a multiple pragmatic approach weighing up all the factors for and against the employment has to be adopted, including an "integration" test; and

(f) if the contact is found to be not genuine and a device to deprive the employees from their legitimate rights/ benefits, the so called contract employees will have to be treated as employee of the company.

17. Normally, the relationship of employer and employee does not exist between a company and the workers employed by the Contractor; however, in the case where an employer retains or assumes control over the means and method by which the work of a Contractor is to be done, it may be said that the relationship of employer and employee exists between him and the employees of the contractor. Further, an employee who is involved in the running of the affairs of the company; under the direct supervision and control of the company; working within the premises of the company; involved directly or indirectly in the manufacturing process, shall be deemed to be employees of the company. " *Emphasis Added.*

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."

The Honorable Supreme Court in another case titled as Abdul Ghafoor and others versus The President National Bank of Pakistan and others reported as 2018 SCMR 157 has set aside the impugned order and held as below:

"7. In the present case also, the respondent bank cannot be allowed to persist in its similar practice and machination to exploit its workers and to defeat the spirit and purpose of law and the judgments of this Court, by describing the employment of the petitioners as a contract and calling such workers as "contractors" instead of "contract employment" and "contract employees". As the petitioners for all intents and purposed were engaged/ employed by the respondent 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 earned entitlement for regularization of their services with the respondent-bank.

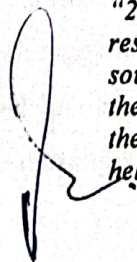
8. In the circumstances, we would convert this petition into an appeal and allow the same by setting-aside the impugned judgment, and direct the respondent bank to regularize the services of the petitioners as their permanent employees."

The Honorable Islamabad High Court, Islamabad while deciding a matter reported as 2020 PLC 57 titled as Shell Pakistan Limited versus Registrar Trade Unions and others, while maintaining the impugned order has observed as follow: -

"24. Since the definition of "worker" and "workman" includes a person employed directly or through a contractor; and since the workmen who were members of respondent No.2/union had been working against posts of a permanent nature; and since such workmen had been working at the petitioner's premises since several years; and since there was nothing brought on the record to show that the service provider's representative had been supervising the duties performed by such workmen at the petitioner's premises; and since I do not find any jurisdictional infirmity in the impugned order dated 16.02.2018 passed by respondent No. 1/R.T.U., the instant writ petition is dismissed with no order as to costs."

The Honorable Islamabad High Court, Islamabad while deciding another writ petition No. 3374/2017 titled M/S Sui Southern Gas Company Versus Ghulam Nabi Deeshak, has observed as follow: -

"25. The documents on the record show that most of the respondent No.3/Union's members, whose names were sought to be included in the voter's list, had been working at the petitioner's premises for more than a decade—some of them for more than two decades. Given this fact, it cannot be held that the works performed by such workmen/workers at



the petitioner's premises were not of a permanent nature. Furthermore, if the duties performed by such workers were not related to running the affairs of the petitioner/Company, it does not appeal to reason as to why such workers had been working at the petitioner's premises for such long period of time. The agreements between the petitioner and the service providers may well provide for such workers to work under the supervision and control of the service providers but the fact remains that there was nothing brought on the record to show that it was the service provider's representative at the petitioner's premises under whose orders or dictation such workers performed their duties.

The Honorable High Court of Sindh (Karachi) in a case titled M/S Dawood Cotton Mills Limited versus Sindh Labour Appellate Tribunal and others, reported as SBLR 2004 Sindh 614, has held as follow: -

"6. Learned counsel indeed appears to be correct to the above extent and it needs to be seen in every case whether the person described as a contractor is really an independent contractor required to perform contractual obligations in relation to an establishment for which he has to employ workers to carry out duties under his own supervision and control or whether he acts as a mere agent of the owner of the establishment for supplying work force to the latter. Such question have cropped up on several occasions and Courts have carefully gone behind paper arrangements described as "contracts" and at times it has been found that such "contracts" were merely designed to deprive workers of the rights and privileges that they would have enjoyed by virtue of being employees of the establishment."

8. It has not been shown as to what specific work the appellant has given to the alleged Contractors to perform in the appellant's establishment. The respondent individuals are rendering services at the appellant's premises for a number of years. The Superior Courts of the Country already in a number of judgments have extensively thrashed out the issue and arrived at the findings that such service agreements in-fact are nothing but sham agreements by which the employer get the employees employed in its establishment and the Contractor's name is used just as a reference to ensure that the employer's liability towards the employees is not created. The respondents in order to deprive them

facilities available to the employees have been shown the employees of contractors which fact has not been proved from the above discussion.

9. As far as the arguments of the appellant regarding recording of evidence is concerned, the provisions of the CPC are not applicable in *stricto sensu*, while dealing the matters of individual grievance further, as discussed above, the crucial point involved in the matter is that of the employment of the respondents being contractor or appellant, while the other issues like the service of grievance notices by the respondents were not disputed before the learned Single Bench. The recording of evidence required on disputed facts and if a matter can be decided in the light of pleadings, the material available on record and submissions the recording of evidence is not required. The Honorable Supreme Court of Pakistan in a case reported as 2018 SCMR 1181 titled State Oil Company Limited versus Bakht Siddique referred herein above, has held that where the case having no disputed fact no evidence required to be recorded.

Further Section 33(5) of the IRA 2012 which does not visualize the recording of evidence, the matter can be decided on the basis of available material and arguments and there is no need to record evidence in the matter. The sub Section 5 of Section 33 of the IRA for convenience is reproduced herein below:-

“ 33. Redress of individual grievance.-----

(5) In adjudicating and determining a grievance under sub-section (4), the Commission shall go into all the facts of the case and pass such orders as may be just and proper in the circumstances of the case.”

The Regulation No. 60 of NIRC (Procedure & Functions) regulations 2016 also provides that in the interest of expeditious disposal of the business the Commission can direct any examination or cross-examination or re-examination to be cut short or dispensed with. In the light of the above position and particularly in absence of any

crucial disputed fact the recording of evidence in every case was not necessary and arguments of the appellants in this context having no force.

10. There is cavil with the proposition laid down in the case law relied by the learned counsel for the appellant but in our humble view in the light of latest cases of apex Court referred herein above the case law (relied by the appellant) is not applicable in the circumstances of these cases.

11. In view of what has been discussed above, it is held that the respondent individuals are permanent employees of the appellant's establishment and the learned Single Bench has rightly declared the respondent individuals as regular employees of the appellant establishment, however, as observed by the Hon'ble Supreme Court of Pakistan in case reported 2018 SCMR 1181 referred herein above, the respondent individuals are entitled for regularization with effect from the date when they approached the Commission through filing grievance petition and they would be entitled for their pensionary benefit and other long terms benefits, if any, available under the law from the date when they have joined the service of the appellant establishment. All the ^{above} mentioned 58 appeals are disposed of in above terms. Files be consigned to record room after its due completions.

Announced in open court
Dated 14.09.2023.