

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. 12(04)/2022-S

SSGCL Vs Saleem Akhtar Dogar

Present: Mr. Abdul Hakeem Juneju advocate learned counsel
for the appellant
Mr. M. Saad Siddique advocate for the respondent
along with respondent No. 1

ORDER

11.09.2023 Abdul Ghani Mengal, Member

Through this appeal, under Section 58 of IRA, 2012, the petitioner is asking for setting aside the order dated 14-04-2022 (impugned order) passed by the learned Single Member (NIRC) Sukkur in case No. 4A(03)/2019-S according to which the grievance petition of respondent / petitioner was accepted by reinstating him in his service with all back benefits.

2. The case of the petitioner is that he was appointed as Superintendent in year 1996 on the basis of his BA along with other employees in the year 1997-98, subsequently he was reinstated under the Sacked Employees (Reinstatement) Ordinance, 2009/Act, 2010. The respondent department vide its letter dated 01-03-2018 sent the Pacca original Secretary School Certificate bearing Seat No. 62779 of Mr. Saleem Akhtar S/o Rehmatullah Dogar, to the Board of Intermediate & Secondary Education Sukkur for verification of the same, the Board of Intermediate & Secondary Education Sukkur vide its letter dated 26-03-2018 reported that the certificate regarding Mr. Saleem

Ahmed, there is tempering in his Grade, actually his Grade is 'D' as per our office record, but he has made tempering himself in his Grade as 'B' instead of 'D' hence, it may be treated as manipulated & tempered. The Board of Intermediate and Secondary Education Sukkur has reported and confirmed the tempering and manipulating of Mr. Saleem Ahmed but not in respect of Mr. Saleem Akhtar son of Rehmatullah Dogar. The concerned Board of Intermediate & Secondary Education confirmed that Mr. Saleem Ahmed has tempered the matric certificate; that Board has not said, reported / confirmed about Mr. Saleem Akhtar that he has tempered his Matric certificate or otherwise, hence, the learned Single Member vide the impugned order has accepted the grievance petition .

3. The appellant / respondent (M/s SSGCL) being aggrieved and dissatisfied with the aforesaid decision filed this appeal under Section 58 of the Industrial Relations Ordinance, 2012. The learned counsel for the appellant has contended that learned Single Member failed to appreciate the record and also failed to read the same in juxta position with the impugned order dated 14-04-2022 passed by learned Single Member, further contended that Board of Intermediate & Secondary Education Sukkur in its reply vide letter bearing reference No. BISE / Verification / Sukkur/1241 dated 26-03-2018 communicated the following remarks, the certificate which belongs to Mr. Saleem Ahmed, there is tempering in his Grade, actually his Grade is 'D' as per in office record but he has made tempering in his Grade as 'B' instead of 'D' hence, it may be treated as manipulated and tempered, further contended that the same was a clerical mistake as the BISE Sukkur would invariably have checked the seat number of the respondent rather than conducting a name



search; that on the basis of aforementioned evidence the appellant issued show cause notice to the respondent to provide him an opportunity to clarify his position within stipulated time; that respondent submitted reply which was found unsatisfactory in the presence of concrete evidence; that thereafter, the management served the charge sheet vide letter dated 22-06-2018 to the respondent and appointed an independent inquiry officer; that the respondent was provided fair opportunity by the inquiry officer however, the respondent has failed to provide any evidence or satisfy the inquiry officer in his support; that the appellant after fulfilling all the principles of natural justice and complying with the statutory labour law, dismissed the respondent from service which he assailed before the learned Single Member by filing grievance petition which was accepted by the learned Single Member vide the impugned order dated 14-04-2022 on the basis of misreading and non-reading of evidence by ignoring all the material available on record hence, the impugned order is liable to be set aside. In support of his contention learned counsel has relied upon the case law reported as **2004 SCMR 149, 2005 PLC 351 (Lahore High Court)**.

4. The learned counsel for the respondent refuted the claim of the appellant and contended that the learned Single Member, NIRC Sukkur Bench after hearing both the parties at length by appreciating the evidence on record, rightly concluded the matter and committed no illegality in passing well-reasoned order according to spirit of law, that the learned Single Member has passed the impugned order after recording evidence, that the impugned order is based on correct reading of relevant record and evidence produced by the parties; that

the appellant is not allowed to take the benefit from its own wrong doings, well reasoned, findings, facts and legal reasoning; that the impugned order does not warrant any interference; that no final show cause notice was issued or a right of personal hearing was granted to the respondent prior to the issuance of dismissal order which is violative of Article 4, 9 and 10A of the Constitution of Islamic Republic of Pakistan; that the appeal is illegal in nature and devoid of any merits, hence, the same is liable to be dismissed. He prayed accordingly. Learned counsel has placed reliance on case law reported as **1996 SCMR 883 titled Millat Tractor Limited vs. Punjab Labour Court No. 3, Lahore and others, 1991 PLC 316 (Peshawar High Court) M. Hanif vs. Chairman Labour Appellate Tribunal and others, 2020 PLC 209 (National Industrial Relations Commission) M.Tahir Khan vs. Pakistan Internal Airlines and others, 2020 PLC 200 (Sindh High Court Hyderabad) M/s Dadex Eternit Ltd. vs. Sindh Labour Appellate Tribunal, Sindh Secretariat Karachi and two others.**

5. We have considered the contentions of the learned counsel for the appellant and learned counsel for the respondent and have minutely gone through the material available on record.

6. In the first place, we would like to examine the issue of maintainability of the charge sheet, show cause notice and dismissal order dated 24-10-2018. Surface of record shows that petitioner / respondent was appointed in the year of 1996 on the basis of B.A., meanwhile petitioner / respondent was terminated his services in the year 1997/98, then he was reinstated in view of Sacked Employees (Reinstatement) Ordinance, 2010, likewise it should be taken from 2010 excluding earlier years the appellant

(Sui Sothern Gas Company Limited) wakeup after the eight years, and verifying the documents of the petitioner / respondent, but certificate is not forged only grade 'D' instead of grade 'B' The inquiry was conducted in violation of Section 15 (4) of Industrial & Commercial Employment (Standing Orders,) Ordinance, 1968. The relevant provision is reproduced as under:-

"15(4) 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 is required in every case of dismissal and, {the employer shall institute independent inquiry before dealing with charges against a workman

7. For what has been discussed above and keeping in view of the provisions of Industrial & Commercial Employment (Standing Orders,) Ordinance, 1968, we are of the considered opinion that the impugned order does not require any interference of this Bench, hence, the same is upheld and the appeal in hand is hereby dismissed, leaving the parties to bear their own costs. File be consigned to the record room after due completion.

Announced.

