

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(190)2022-K

Usman Ali Vs Ms. Captain P.Q Chemical Industries

Present: Sardar Manzoor Hussain, advocate for the Appellant.
Bach Fazal Manan, Advocate for Respondent.

ORDER
13.09.2023

Shabbir Hussain Awan, Member

The appellant has filed instant appeal under Section 58 of the Industrial Relations Act, 2012 against the impugned orders dated 18.05.2022 passed by learned Single Member Karachi Bench.

2. Briefly stated facts giving rise to the instant appeal are that the Appellant / Petitioner filed grievance petition under Section 33 of the Industrial Relations Act, 2012 Read With S.O 12 (3) of Standing Orders Ordinance, 1968 by stating therein that he being a permanent employee of the Respondent Establishment worked as Tuner in the Leah Machine since July, 2012 as a workman by drawing last salary of Rs.21600/- per month. The General Manager namely Mr. Irfan Younus stopped the appellant from entering the gate on 28.08.2018. He contacted/approached the management of the Respondent Establishment many a times to join duty as is evident from the copy of complaint dated 20.09.2018 alongwith the postal receipt attached as Annexure-A. The gate stop was verbally issued without any written order and ultimately he was verbally informed that his services were no more required. Since, his verbal termination / dismissal he is jobless. He served grievance notice through TCS on 19.09.2018 to the Respondent but to no avail, hence, the petition.

3. The Respondent filed reply by contesting the petition on legal as well as factual grounds by contending therein that the petition is misconceived illegal and unwarranted which is liable to be dismissed outrightly as appellant / petitioner was never engaged and employed by the Respondent Establishment, thus, the relationship of the employer and employee does not exist; that the establishment invariably issued letter of appointment to its employees but the Appellant / Petitioner has not produced any such letter; that the Respondent properly replied the grievance notice; that Appellant / Petitioner has not come with clean hands etc. the petition was also resisted on facts as well.

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

5. In order to prove his case, Usman Ali (Appellant / Petitioner) appeared as Pw-1 by producing his duly sworn affidavit in evidence as P-1, Postal Receipt bearing No. RGL07060300 as Ex-P-2, TCS slip dated 29.09.2016 alongwith two postal slips Registered S.No.773 and 774 P-3, TCS Envelope No.306025551286 P-4, Reply of the grievance notice dated 27.10.2018 P-5, TCS Envelope No.306025458707 P-6, 04 Pictures (color) P-7, Salary receipts P-8 and other photocopies of documents annexed with the petition and affidavit in evidence.

6. In rebuttal Sheikh Muhammad Shafi appeared as Rw-1 by tendering his affidavit in evidence Ex-R-1.

7. After hearing the arguments of the counsel for the parties, the Learned Member dismissed the petition of Appellant / Petitioner. Feeling aggrieved, the instant appeal.

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8. It is argued by learned Counsel for the Appellant / Petitioner, Sardar Manzoor Hussain, that the Appellant / Petitioner in order to prove himself to be the employee of the Respondent produced documentary evidence alongwith his affidavit in evidence but the learned Member did not properly considered the same. He has referred to page 73, 75 and 81 to make the point that in the presence of attendance certificate, over time list etc. there remains no doubt regarding the relationship between the parties as that of employer and employee; that the authenticity of these documents was never questioned by the Respondent as neither in the reply nor otherwise these documents were claimed to be forged. Thus, legally speaking these documents stands admitted; lastly, it is maintained that the Appellant / Petitioner produced the original record which was examined by the learned Member but unfortunately while deciding the grievance petition the same was ignored altogether, therefore, the impugned order being outcome of misreading and non-reading of evidence is no more sustainable, hence, while allowing the appeal the impugned order be set aside by reinstating the Appellant / Petitioner in service with all back benefits.

9. The learned Counsel for Respondent, Bach Fazal Manan, on the other hand contends that the learned Member rightly dismissed the petition because the relationship between the employer and employee does not exist; that the Respondent produced attendance register and Pay Roll etc. to prove that Appellant / Petitioner was no more employee; whereas, the Appellant / Petitioner did not produce any evidence to prove that the relationship of employer and employee exists; that no co-worker came forward to support the version of the Appellant / Petitioner; that the Appellant / Petitioner claims to be member of the union but he has not produced anything in black and white to prove the same which indicates

that the Appellant / Petitioner has told a lie to mislead the court, therefore, he is not entitled to any relief; that all the documents produced by the Appellant / Petitioner available on the file in the shape of photocopies are fake and fabricated because the Respondent from the day first denied the relationship of employer and employee but while filing the grievance petition he did not annex a single document to prove that he worked in the Respondent Company. But, while submitting affidavit in evidence he got procured forged documents, therefore, the same cannot be given any weight. Lastly, it is submitted that all the evidence of the Appellant / Petitioner in the shape of the photocopies has got no relevancy with the point of relationship of employer and employee, hence, the learned Member has rightly dismissed the petition.

10. Having given our decent consideration, it is evident from the pleadings that the crucial point which needs consideration and determination is whether the relationship between the parties i.e. employer and employee exists or not?

11. In order to reach just and proper conclusion the cross examination of Pw Usman Ali (Appellant / Petitioner) is of significance importance, we want to quote the opening part of his cross examination in verbatim:

"I am aware about the documents produced by the company alongwith written reply and its contents. It is a fact that before filing the petition I have also made complaint against the Respondent before Labour Department. I had also given grievance notice to the Respondent. It is a fact that before the Labour Department as well in the reply of the grievance notice the Respondent has stated that I was not employee of their company. It is a fact that with grievance petition I have not produced documents regarding my employment with the company....."

12. It is manifest from what has been quoted above that the Respondent has not stamped the Appellant / Petitioner to be not its employee for the first time in the reply / Para-wise comments submitted in response to the grievance petition. But much prior to it the Respondent had denied the relationship of employer and employee in the previous litigation initiated by the Appellant / Petitioner against the Respondent as admittedly prior to the application in hand he filed a complaint against the Respondent before Labour Department. Similarly, the Appellant / Petitioner served grievance notice to the Respondent, the Respondent specifically denied the relationship of the employer and employee before Labour Department as well as while responding to the grievance notice served by the Appellant / Petitioner to the Respondent which is indicative of the fact that prior to filing of the grievance petition the Appellant / Petitioner had attained the knowledge of denial of relationship of employer and employee. But while filing grievance petition he did not annexed any document to prove the relationship of employer and employee. Though, affidavit in evidence submitted by him is found to be flanked with some pictures / photographs etc. but the fact remains that the grievance petition was filed on 05.11.2018, whereas, affidavit in evidence was produced in the court on 09.12.2021 meaning thereby the Appellant / Petitioner remained silent from 05.11.2018 to 09.12.2021 regarding his status as he did not got place anything in black and white to rebut the version of respondent that he was not employee of the Company. The intervening period from 05.11.2018 to 09.12.2021 that is about three years and one month is very crucial and we are of the considered view that the Appellant / Petitioner got prepared a forged record annexed by him with the affidavit in evidence. Because common sense prevails that had he been in possession of some documents regarding his status then he would have produced the same alongwith the grievance petition in view

verbally terminated on 28.08.2012, the length of the service speaks out that had he been employee of the Respondent Company then he would have been knowing the name and designation of the authority signing the documents produced by him. His ignorance regarding the name of signing authority is more than sufficient to believe that he never remained the employee of Respondent Company.

17. Cumulative effect of the above discussion is that we are of the confirmed view that the relationship of employer and employee does not exist, therefore, learned Member rightly dismissed the petition, hence, instant 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