

NATIONAL INDUSTRIAL RELATIONS COMMISSION
LAHORE

No. 7(51)/2020-L

Before: **Muhammad Siraj ul Islam Khan, Member**

Abdul Majeed Khan S.o Muhammad Azeem Khan
 Versus
Sabir Ali Barohi

Present: Mr. Haris Saeed, advocate for the petitioner.
 Pirzada Aurangzeb, advocate for the respondents.

Date of Arguments: **12.07.2023**

ORDER
 27.07.2023

This is an application filed under section 57 read with section 64 of IRA 2012 for initiation of contempt proceedings against the respondents for non compliance of order dated 13.03.2018 passed by the learned Member, NIRC, Lahore Bench.

2. Brief facts of the matter are that the petitioner filed the case bearing No. 4A(56)/2018-L, CMA 24(63)/2018-L before this Hon'ble Commission wherein it was prayed that respondents may be restrained from passing any adverse order against the petitioner. Prayer in the main petition is reproduced for ready reference:

"It is therefore prayed that the respondents may be directed not to commit any further unfair labour practice against the petitioner. The impugned show cause notice dated 26.02.2018 may kindly be declared illegal and act of unfair labour practice and the same may kindly be set aside. It is also prayed that the respondents may be permanently restrained and directed not to dispense with the services of the petitioner on the basis of the impugned show cause notice dated 26.02.2018 and also not to resort to the acts of unfair labour practice as contained in section 31 of IRA, 2012, by way of termination, dismissal, discharge or otherwise injuring the services of the petitioner.

It is further prayed that pending the disposal of the main petition the operation of the impugned show cause notice dated 26.02.2018 may kindly be suspended and the respondents may be directed not to dispense with or otherwise injure the services of the petitioner and status quo qua the services of the petitioner may kindly be maintained

Any other relief which this Hon'ble Court may deem fit and proper may also be awarded to the petitioner against the respondents”.

Learned Commission vide order dated 13.03.2018 passed a restraining order which is reproduced as under:

“The instant petition is under section 54(e)&(g)) read with section 31 of IRA-2012 by the petitioner against the respondents. Contention of learned counsel for the petitioner is that petitioner is employed as Catering Operator in PIA and he is performing his duties to the entire satisfaction of the respondent establishment; that he is an active member of People Unity of PIA Employees union and due to his trade union activities, the respondents has issued a show cause notice dated 26.02.2018 which to the petitioner contained that the allegation that the petitioner submitted fake certificate of matriculation, which is illegal and unlawful..

2. Contention raised needs consideration. Admit. Notice be issued to the respondents for 25.04.2018 for filing parawise comments.

CMA No. 24(63)/2018-L. Notice be issued to the respondents for the above said date. Meanwhile, the respondents are restrained to pass any final adverse order qua service of the petitioner, till next date. However, they are at liberty to continue with the inquiry proceedings, if any in accordance with law”.

It is pertinent to mention here that petitioner have only challenged the show cause notice but when the respondents during pendency of the petition of unfair labour practice, dismissed the petitioner, then the then learned Member vide order dated 29.12.2020 dismissed the petition of unfair labour practice being infructuous. Petitioner have challenged the said dismissal through filing of grievance petition bearing No. 4B(48)/2021-L and also filed the instant application under section 57 of IRA, 2012.

3. Learned counsel for the petitioner has argued that the order dated 13.03.2018 was communicated to the respondents. Even otherwise, on 25.04.2018, Mr. Ashfaq Bhatti, advocate appeared before this Commission on behalf of the respondents. So it is presumed that the respondents were well aware about passing of the order dated 13.03.2018. The respondents during pendency of the instant application dismissed the petitioner on 12.08.2020 in violation of order dated 13.03.2018. The petitioner filed the instant application under section 57 of IRA, 2012 for initiation of the contempt proceedings against the respondents on 18.08.2020. Learned counsel for the petitioner further contended that the matter falls under the domain of IRA, 2012 which is a special law and the same will

prevail upon the general law. He further argued that the case of petitioner clearly falls under the relevant clauses of IRA, 2012, which empowers the commission vide section 33 sub section 6 to punish the defendants with imprisonment maximum to one year and fine of Rs. 75000/- maximum to implement its orders in letter and spirit. The respondents in violation of the injunctive order dated 13.03.2018, dismissed the petitioner which is a clear contempt of the orders passed by the learned Commission, as the order dated 13.03.2018 still holds the field. As the respondents did not challenge the same till the day.

He further argued that the dismissal of petitioner is illegal and held to be declared as illegal and without justice. In support, he relied on section 64 of IRA, 2012, which says that:

“64. Conditions of service to remain unchanged while proceedings pending.—

(1) No employer shall, while any conciliation proceedings or proceedings before an Arbitrator or the Commission in respect of an industrial dispute are pending, alter to the disadvantage of any workman concerned in such dispute, the conditions of service applicable to him before the commencement of such conciliation proceedings, or of the proceedings before an arbitrator, as the case may be, nor shall he save with the permission of the Conciliator, the Arbitrator or the Commission, discharge, dismiss or otherwise punish any workman except for misconduct not connected with such dispute.

(2) Notwithstanding anything contained in sub-section (1), an officer of a registered trade union shall not, during the pendency of any proceedings referred to in sub-section (1), be discharged, terminated, dismissed or otherwise punished for misconduct, except with the previous permission of the Commission. However, the terms and conditions of employment secured by the workers through collective bargaining agreements, awards and decisions of Courts shall continue to be binding upon the parties until revised for betterment of workers”.

In support of his arguments, learned counsel for the petitioner has relied upon PLD 1950 Dacca 37, 2014 SCMR 1567, PLD 2016 Peshawar 84, PLD 1975 Lahore 126, PLD 2001 Lahore 444 and 2017 YLR 1916.

4. Learned counsel for the respondents while submitting reply argued that respondent's establishment does not intend to violate any orders of this learned Commission. The application in hand is frivolous and devoid of any legal or factual merits of the case. It is further contended that the restraining order has come to an end when the original petition bearing No. 4A(56)/2018-L was disposed off vide order dated 29.12.2020 passed by this commission. The said order dated 13.03.2018 was expressly operational till the next date of hearing and was not of a permanent nature. The said order should be extended on each and every date. Furthermore,

according to the provisions of order 39 and section 151 CPC, this restraining orders were valid for one year. After the lapse of one year, restraining order lost their legality. Learned counsel for the respondents further contends that the petition filed by the petitioner under section 54 (e) of IRA-2012 has been dismissed being infructuous because the petitioner was terminated. The instant application has been filed with malafide intentions and concealment of facts, thus is deserved to be dismissed. Learned counsel for the respondents placed his reliance on 2011 PLC 171, 1995 PLC 562, 2013 CLC 776, 2023 MLD 380, 2005 PLC 184, PLD 2023 Lahore 139, 2006 PLC 1, 2005 PLC 147, 2003 CLD 1178, 2021 SCMR 702 and 1998 PLC 268.

5. Arguments heard and record perused.

6. Record shows that the restraining order was passed on 13.03.2018, during the pendency of the said order, the petitioner was dismissed from his service. Petitioner filed grievance petition bearing No. 4B(48)/2021-L against his termination dated 12.08.2020. It is observed that the instant complaint has been clubbed with the grievance petition, it is important to note that the said order was never challenged. Furthermore, the contempt petition will proceed as criminal proceedings under Cr.P.C and it is a settled law that criminal and civil proceedings can proceed independently. The objection raised by the respondents that the order dated 13.03.2018 lost its validity after the expiry of one year.

This objection has been dealt by the Superior Courts through judgment reported as **1999 SCMR 2215** which says,

“that no specific order was required to be passed on each date of hearing while extending injunctive relief and that injunctive relief once granted could only be rendered of no legal effect if the High Court were to vacate it itself. The precedent case notes that when no request was made for discharge of injunctive relief, the legal position would be that the injunctive relief would continue despite no specific order having been passed extending the order granting injunctive relief”.

In Raja Talat Mehmood v. Ismat Ehtishamul-Haq (2000 MLD 1755), It is held that,

“an injunctive order even if not extended by a specific order would be extended and it would be presumed that the extension had been granted. In the same judgment, it has been noted that any order granting interim relief will remain in force and operational till the date such interim relief order was either expressly cancelled, vacated or recalled through an order or the case is finally disposed of”.

The Violation of restraining order has been dealt by Hon’ble Lahore High Court Lahore, which is reported as PLD 1975 Lahore 126, ratio of the same is reproduced as under:

“When an injunction order has been issued, it must be obeyed, and the only remedy of the aggrieved party is to come up in appeal to a superior court to have the order vacated.

So long as the order stands and its operation has not been suspended by another court or by the Court which passed the order, it will not be tolerated that any person should disobey that order. It is so because the administration of justice can only be effective if it has the means to enforce court orders and to punish acts tending to impair public confidence in the authority or integrity of the judges who administer the course of justice”

In another judgment, titled Gun and Country Club Islamabad Vs. NIRC etc, reported as 2017 PLC 130, it has been held that:

“ 8. In the instant case the additional powers are conferred on National Industrial Relations Commission under Section 57 of the Act. The bare perusal of section 57(2)(c) shows that the power to grant interim relief by way of injunction or otherwise is not restricted to any particular kind of proceedings and it extends to all kinds of proceedings before the National Industrial Relations Commission. In light of said facts respondent No. 1 did have the jurisdiction to grant interim relief while issuing notice in the contempt proceedings under section 57(2)(c) of the Act. It is an established principle that no petition under Article 199 of the Constitution is maintainable against interim order unless the same is without jurisdiction or patently illegal. As mentioned hereinabove National Industrial Relations Commission did have the jurisdiction to grant interim relief while issuing notice in contempt proceedings, therefore, the order passed by it and assailed in the instant petition are not without jurisdiction or otherwise illegal.

9. For the reasons set out above, the instant petition is without merit and is accordingly dismissed”.

Section 33 sub section 6 of IRA-2012 is also relevant which states that;

“If a decision under sub-section (4) or an order under sub-section (5) given by the Commission or a decision in an appeal against such a decision or order is not given effect to or complied with within seven days or within the period specified in such order or decision the defaulter shall be punishable with

imprisonment for a term which may extend to one year, or with fine which may extend to seventy-five thousand rupees, or with both”.

7. What has been discussed above, it is clear and obvious that the order dated 13.03.2018 was in the knowledge of the respondent establishment as they appeared before this Commission on 25.04.2018 through Mr. Ashfaq Bhatti, advocate and was in field when the petitioner was dismissed. The respondents had all the rights to challenge the same but they chose not to challenge it in appeal as provided in statute. When a party not challenge any order passed by court of law then it will be presumed that the same is accepted by the party and its implementation becomes imperative and violation is contempt. Even otherwise, the law and validly passed orders are meant to be followed and not to abrogate.

Let show cause notice be issued to the respondents to appear in person and to explain in writing as to why contempt proceedings under Article 204 of Constitution of Pakistan and Sections 57 & 33(6) of IRA, 2012 may not be initiated against them. Now to come up on 15.08.2023.

Announced

(Muhammad Siraj ul Islam Khan)
Member