

NATIONAL INDUSTRIAL RELATIONS COMMISSION

Peshawar Bench Peshawar

Before: Muhammad Zubair Khan, Member

Case No. 4B (06)/2023-P

Bakhtiar Khan, Ex-Caretaker, State Engineering Corporation
Islamabad..... Petitioner

Versus.

The Chief Executive Officer, State Engineering Corporation,
Islamabad and others.....Respondents

Present: Mr. Waleed Adnan, counsel for petitioner

Mr. Muhammad Ahmed Tariq Fani, counsel for
respondents

ORDER

18.09.2023

Petitioner filed this grievance petition u/s 33 of the Industrial Relations Act, 2012, contending that he was initially appointed as Attendant/Caretaker in the respondent establishment vide order dated 01.12.1980 and had performed his duties with zeal and zest; that petitioner got retirement from service on attaining the age of superannuation w.e.f 30.11.2022 vide letter dated 01.11.2022; that petitioner has been granted single gratuity on retirement vide order dated 01.11.2022 but he has been deprived of TA/DA in lieu of expenses incurred on shifting to village after retirement. Feeling aggrieved, he served the grievance notice to the respondents on 29.11.2022 which was not replied hence this petition.

2. The petitioner annexed with his petition copy of appointment letter as annexure-A, copy of retirement letter as annexure-B, copy of grievance notice as annexure-C and copy of application for redressal of grievance annexure-D.

3. Respondents contested the petition by filing written reply wherein preliminary objection was raised on the ground that the petitioner is a retired person and is not come within the definition of workman so his petition is not proceed-able. On facts, it is contended that the petitioner has been paid gratuity as per existing SEC Policy on his retirement, however, with regard to TA/DA, employees are entitled for TA/DA on official tour and transfer and no TA/A is being paid on retirement and that the petitioner has been treated in accordance with law. The respondents requested for dismissal of the instant petition.

4. Arguments heard and record perused.

5. Admittedly, the petitioner was working in the respondent establishment as Attendant/Caretaker and now he has been retired from service on attaining the age of superannuation vide order dated 01.11.2022. The petitioner has not questioned the veracity of his retirement order rather he sought for TA/DA expenses incurred on shifting to village after his retirement. According to section-2(xxxiii) of the Industrial Relations Act, 2012 "worker" and "workman" mean a person not falling within the definition of employer who is employed (including employment or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment be express or implied, and for the purpose of any proceedings under the

Ordinance in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity. In the light of above definition, the petitioner is no more in the employment of the respondent establishment as he is a retired person. He was neither dismissed nor discharged, laid-off or removed from service in connection or consequence of any industrial dispute, thus he does not fall within the definition of workman as laid down in the Industrial Relations Act, 2012. Here I referred the case law reported as 2015 PLC 137 titled Syed Ali Salman v. Editor, Pakistan BBC Urdu, Islamabad & others, where it has been held that:

---S.2(xxxiii)---'Workman'---Status---Determination of---
Every workman who was in service was a 'workman' while a former workman, was to be regarded as a workman only, if his services were terminated in connection with, or a consequence of an industrial dispute---Former workman, whose services were terminated, not in connection with or a consequence of an industrial dispute, was not a workman in terms of S.2(xxxiii) of Industrial Relations Act, 2012

In view of the above, the instant petition is dismissed, being not workman. File be consigned to record room.

Announced in the open court

(Muhammad Zubair Khan)
Member

Certificate:

Certified that this order consisting of Five pages. Each page is corrected and signed.

(Muhammad Zubair Khan)
Member

Ifthikhar