

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D – 615 of 2020
M/s. K-Electric, Limited V/S Muhammad Aslam Shah & 02 others

Constitutional Petition No. D – 616 of 2020
M/s. K-Electric, Limited V/S Raees Khan & 02 others

Constitutional Petition No. D – 617 of 2020
M/s. K-Electric, Limited V/S Muhammad Boota & 02 others

Date of hearing
& decision : 10.03.2020.

Mr. Ghulam Murtaza Saryo, advocate for the petitioners.

ORDER

ADNAN-UL-KARIM MEMON, J. We intend to dispose of the captioned petitions by way of this single order as the aforesaid petitions have same circumstances, questions of law and facts.

2. Precise facts of the case, as per pleadings, are that private respondents were in the employment of the petitioner / K-Electric Limited since years together in their different capacities/posts and obtained ad-interim order dated 05.10.2011 from the National Industrial Relations Commission (NIRC), Karachi against unfair labour practice. Finally their petitions were dismissed by learned Single Member Bench of NIRC, Karachi vide common order dated 21.11.2016. Private respondents being aggrieved by and dissatisfied with the aforesaid impugned order filed statutory appeals No. 12 (121)2016-K, 12 (123)2016-K and 12 (124)2016-K before learned Full Bench of NIRC, Karachi, which were allowed vide common order dated 07.10.2019, in the terms whereby direction was issued to petitioner K-Electric Limited to release their outstanding salaries and remanded their main grievance petitions to the learned Single Member of NIRC for his decision after recording evidence of the parties. Now the petitioner / K-Electric Limited has impugned common order dated 07.10.2019 passed by the learned Full Bench of NIRC before this court.

3 In view of the above narration, firstly, we asked learned Counsel to satisfy this court with regard to maintainability of these petitions under Article 199 of the Constitution.

4. Mr. Ghulam Murtaza Saryo, learned counsel for the petitioner / K-Electric Limited, has contended that the matter of grant of salaries whether it is salary or wages, special forum has been set up under the Payment of Wages Act, 1936 ; that the case of private respondents does not fall within the scope of Section 54 (e) of the Industrial Relations Act, 2012 (IRA-2012) read with Regulation 32 (2) (c) of NIRC (P&F) Regulations, 1973, and the learned Full Bench of NIRC erroneously held that the act of petitioner/K-Electric Limited tantamount to unfair labour practice, thus the jurisdiction assumed by NIRC on the aforesaid analogy is barred under the law ; that under Section 57 (2) (b) of IRA-2012, the private respondents could only take their grievance petitions or proceeding to Court where the dispute relates to payment of wages, which is a proper forum for the redressal of grievance of both the parties. Learned counsel finally adds that the impugned common order dated 07.10.2019 is without jurisdiction. He, however, asserted that the order dated 21.11.2016 passed by the learned Single Member, NIRC, was just and proper based upon legal proposition of law. An excerpt whereof is as under:

“The crux of my entire foregoing discussion is that I decline the prayer for payment of wages / salary, dismiss the injunction application and entire petition which is sans proof of unfair labour practice and with this finding I also dismiss the application for contempt.”

5. We have heard learned counsel for the petitioner / K-Electric Limited on the issue of maintainability of the captioned petitions and perused the material available on record. It is an admitted fact that the petitioner / K-Electric Limited is a Trans Provincial Establishment, as defined under sub-section (XXXII) of Section 2 of IRA-2012, an excerpt whereof is reproduced as follows:

“trans-provincial” means any establishment, group of establishments, industry, having its branches in more than one province.”

6. In view of the foregoing legal position of the case, we are clear in our mind that National Industrial Relations Commission has jurisdiction to adjudicate upon the matter with respect to the petitioner / K-Electric.

7. Adverting to the main issue of unfair labour practice, which is defined in Sections 31 and 32 of IRA-2012, the individual grievances of worker against petitioner / K-Electric can be lodged before the Commission under Section 54 (h) and Section 33 of IRA, 2012.

8. From perusal of the above provisions of law, it is clear that the provisions of IRA-2012 are applicable where the establishment has trans-provincial character / position. There is no ambiguity in the provisions of Section 57 (2) (b) of IRA-2012, which states that where the dispute has arisen out of unfair labour practice, the jurisdiction of NIRC is absolute, but where there is no allegation of unfair labour practice, the jurisdiction of the Labour Court can be invoked where the cause of action has arisen. However, in the present proceedings, the learned Full Bench of NIRC has remanded the main petitions of the private respondents to the learned Single Member of NIRC for decision after recording evidence of the parties, therefore, no prejudice can be caused to either party, if the decision is made on merit.

9. We have gone through the orders rendered by both the learned Single Bench and Full Bench of NIRC and we do not find any illegality in the aforesaid common order dated 07.10.2019 passed by the Full Bench of NIRC, as the same are in line with the aforesaid provisions of law, therefore, there is no ground for re-evaluation of the same. Thus we maintain the common order dated 07.10.2019 passed by the learned Full Bench of NIRC. Accordingly, these petitions are dismissed in limine with no order as to costs.

JUDGE

JUDGE

Nadir*