

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

W.P No. 752-M/2020

Nawab Ali Vs. Director HRSPL Limited and others.

Present: Mr. Said Muhammad Durrani, Advocate for petitioner.
M/S. Faheem Naeem and Muhammad Ikram Khan, Advocates for Respondents.

Date of hearing: 23.01.2024

JUDGMENT

MUHAMMAD NAEEM ANWAR, J.- Nawab Ali, the petitioner, has filed the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, whereby he has challenged the order of the National Industrial Relations Commission, Islamabad (NIRC) dated 27.04.2020, whereby his appeal against order dated 27.08.2015 pertaining to termination of his services as Area Sales Manager of Human Resource Solutions (Pvt) Limited (respondents No.1 to 6), was dismissed.

2. Summarized facts necessary for disposal of this petition are that the petitioner was appointed as Area Sales Manager by the respondents No.1 to 6 (Human Resource Solutions Limited) on 14.05.2014, with certain terms and conditions on contract, his services were confirmed on 12.08.2014 but subsequently on 27.08.2015 he was terminated on the grounds of misconduct and breach of the company policy, with directions to him to hand over the possession of the property to his immediate superior with a

clearance certificate. Being aggrieved, the petitioner issued notice to respondents for his reinstatement into service, which was followed by Grievance Petition No. 01/IRA of 2016 with a prayer that his termination order dated 27.08.2015 may be declared as illegal, void and ultra vires to the Constitution. The grievance petition was resisted by the respondents through their application under order VII rule 11 of the Code of Civil Procedure, 1908 (C.P.C) for rejection of the grievance petition. The application was allowed by the learned Labour Court, Malakand Division at Swat through its order dated 09.05.2018, where-against the petitioner filed Labour Appeal No.02-M/2018 and this Court vide order dated 09.10.2019 transferred said appeal to the National Industrial Relations Commission for decision with an observation that the worthy Commission is expected to decide the appeal of the petitioner alongwith other matters at the earliest, where the appeal of the petitioner bearing No.12A(54)/2019 was dismissed by NIRC through impugned order dated 27.04.2020. Being aggrieved from said order, the petitioner has filed the instant petition. Respondent No.1 to 6 have submitted their comments jointly whereas, respondents No.3 to 5 have also submitted their detailed comments and have opposed the issuance of writ.

3. Learned counsel for petitioner contended that the petitioner was the workman of respondents' company but earlier the Labour Court and thereafter the full bench of NIRC has misinterpreted the law on the subject. He added that without issuance of notice and without any fault on the part of

petitioner his services could not be terminated. In support of his submissions, he placed reliance on the cases of Syed Mathubul Hassan vs. Brooke Bond Pakistan Ltd (1990 SCMR 456), Nisar Ahmad Siddique vs. Messrs. Pakistan Steel Mills Corporation through Chairman (1996 PLC 223), St. Patrick's High School and college through Rector/ Principal and another vs. Presiding Officer, Sind Labour Court No. V and another (2016 PLC 358).

4. Conversely, learned counsel for respondents supported the impugned order and submitted that the petitioner was acting as Area Sales Manager of the respondents' company, whose duty was supervisory, managerial and administrative, was receiving handsome amount, however, violated the policies of the company, committed breach of contract, thus, on the ground of misconduct, his services were terminated and at the end full & final settlement has affected, through which, the petitioner has received the final amount as such the claim of the petitioner was rightly turned down by the respondents.

5. Arguments heard and record perused.

6. The admitted terms and conditions of the *contract of employment* dated 14th May, 2014 by which the petitioner was appointed as (Area Sales Manager), read as:

1. Your Gross Monthly Salary will be PKR 25,500/-.
2. You shall be entitled to gratuity to 30 days wages for every completed year of service in the same establishment on separation on any ground, other than misconduct.
3. You will be subject to Staff Rules which are applicable to employees of your category.

4. You will follow the Code of Conduct, Policies and Procedures of Client Company wherever you will be required to provide miscellaneous services.

5. You shall be allowed leave in accordance with the Company's rules in force from time to time. You shall be allowed annual leave of fourteen (14) days, after completion of one year of service. You shall also be allowed medical leave of eight (8) calendar days and casual leave of ten (10) calendar days.

6. Your employment can be terminated on giving 30 days notice from either side or pay in lieu of the notice; without assigning any reason whatsoever upon severance, you will be required to handover company property in your possession.

"7 However, your employment can be terminated at any time with immediate effect, and any notice if you: -

a) Commit any act or make any omission, which is contrary to our interests.

b) Conduct yourself in a manner prejudicial to our interest; or misconduct, lack of punctuality, at any point under-performing or unsuited for the duties being or to be carried out by you.

c) In our opinion, you are found guilty of dishonesty, misconduct, disorderly behavior, negligence, indiscipline, insubordinate of any conduct which violates one or more terms of this letter, your service shall be liable to be terminated forthwith without any notice and or any pay in lieu of the notice.


d) If it comes to notice that you have submitted fake credentials or any other document i.e. experience certificates.

e) If you found absent without intimation to immediate supervisor for a period equal to or more than 3 days."

The petitioner remained in service as Area Sales Manager of the respondents till the date of his termination i.e., 27.08.2015. Record reflects that basic salary of the petitioner was 19,040/-, House Rent Allowance was Rs.7,616/-, Utility Allowance was Rs.1,904/- and as such his gross salary was Rs.28,560/- as it appears from his salary slip issued on 01.04.2015, whereas he was terminated from service on 28th of August, 2015. The duties of the petitioner in respondents' company were supervisory, managerial and administrative and

in such an eventuality, the first question requires determination as to whether person performing the duty as Area Sales manager could be termed as workman? In the case of **Getz Pharma (PVT.) Limited, Karachi vs. Muhammad Nafees and others reported in (2022 PLC 33) & (2021 SCMR 1785)** it was held that "that a salesman by very nature of his work was not a workman and did not fall within the ambit of the term workman---Position of a salesman did not predominantly involve manual or clerical work and as such was not considered to be a workman within the meaning of Industrial and Commercial Employment (Standing Orders) Ordinance, 1968[Ordinance of 1968]". **Sahibzada K.A.K. Afridi's** who was working as Office Sales Manager with the respondent and his services were terminated, filed grievance petition which was dismissed by the Labour Court and the order passed by the Labour Court was maintained by the Labour Appellate Tribunal as well as by the High Court, approached to the Hon'ble Supreme Court **(2004 S C M R 523)** wherein it was held that: "The designation shows that he was more in supervisory position than even a salesman. He was provided a car by the Company apparently for marketing the sale. His main job was to contact potential customers of respondent's manufactures products in the market and supply thereof. In this context, this Court in the case of Pakistan Tobacco Company Ltd. v. Pakistan Tobacco Company, Employee's Union, Dacca, and 2 others (PLD 1961 SC 403), has held that the salesman are not workmen mainly for the reason

that the work of salesmen is in a wholly different category from manual work or clerical work. It has been further observed that salesmen were expected "to display qualities of initiative, intelligence and correct speculation, and for doing that they have been given some independence in their own line of action" and therefore, their duties did not appear "to be of mechanical or routine description as the duties of a clerk are". Hon'ble Lahore High Court in the case of **Athar Ali vs. Punjab Labour Appellate Tribunal through Chairman and others (2014 PLC 44)** has held that: "Employees designated as Managers or Officers entrusted the duties of sales promotion are expected to utilize their mental abilities and abilities with a quality and intelligent initiatives to explore new horizons of sales promotion therefore due to the nature of their duties being altogether distinct and distinguishable from manual or clerical work they do not fall within the definition of 'workman'."

 **7.** Learned counsel for petitioner while making reliance on the leave granting order of the Hon'ble Supreme Court in the case of Syed Matlubul Hassan vs. Brook Bond Pakistan Ltd (1990 SCMR 456) submitted that the salesman falls within the definition of workman however, his submission is misconceived because the leave granting order is not a precedent and could not be relied upon as such. Reliance is placed on the cases of **Khairullah Vs. Sultan Muhammad and another (1997 SCMR 906)** & **Muhammad Tariq Badr and another Vs. National Bank of Pakistan and others (2013 SCMR 314)** wherein it was observed that "an order granting and/or refusing leave

which does not lay down a rule of law should not be followed necessarily and imperatively, as per the standardized or settled principles, meant for the purposes of following the precedents". Even otherwise, in the said case leave was granted by the august Supreme Court and later on the case was heard by the larger bench reported as (1992 SCMR 227) and by the majority of opinion the appeal was dismissed while observing that:

"12. In the Leave Granting Order, reference has been made to a subsequent judgment of this Court in the case of Brooke Bond (Pakistan) Ltd. v. Conciliator appointed by the Government of Sindh and 6 others (supra), in which this Court, while construing clause (xxviii) of section 2 of the I.R.O., held that a salesman working in the respondent-Company falls within the definition of the "workman" given in the above clause. However, it was pointed out that the definition provided for in above clause (xxviii) of section 2 of the I.R.O., was more comprehensive as compared to the definition given in the Industrial Disputes Act, 1947, and the Industrial Disputes Ordinance, 1959. The relevant observations read as follows: --

"The definition of the term "workman" in the Industrial Disputes Act, 1947 as well as in the Industrial Disputes Ordinance, 1959 was substantially the same. Workman means any person employed, including an apprentice in any industry to do any skilled or unskilled manual or clerical work for hire or reward. It was on the basis of this definition that in the two reported cases discussed above it was held that a salesman was not a workman as from the nature of his duties it appeared that he was not engaged in a manual or clerical work. But this definition was not adopted in the Industrial Relations Ordinance, 1969"

It is clear that in enacting section 2(xxviii) of this Ordinance the Legislature did not adhere to the old definition of the term "worker" given in the earlier enactments and has in fact altered the entire scheme behind it. The scope of this definition is more comprehensive. It includes all persons employed in an establishment or industry, other than the employer. But it does not include any person who is employed mainly in a managerial or administrative capacity, or who being employed in a supervisory capacity, draws wages exceeding eight hundred rupees per mensem or performs, either because of the nature of duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

Thus, keeping in view the nature of job of the petitioner which was supervisory, managerial and administrative in juxtaposition with the afore mentioned case law, it can safely

be concluded that the petitioner was not a workman in the respondent's company.

8. It was alleged by the respondents that full and final settlement has already been made whereby on 17.09.2016, the petitioner has received a cheque of Rs.1,38,890/- with thanks from respondents No.1 & 2 and this fact has not been disputed by the petitioner. Learned counsel for the petitioner submitted at the bar that it was the salary outstanding against the respondents and same was received by him, however, neither it was mentioned in the petition nor the petitioner has ever alleged that some of the salary was outstanding against the respondents, which he has received from the respondents. Undeniably, the petitioner was appointed as Area Sales Manager and his appointment was on contract, which could be terminated at any time on the grounds mentioned in the letter of his appointment. Respondents, through their letter of termination of services of the petitioner, have categorically taken the plea that the petitioner's services were terminated on the ground of his misconduct as he started to defraud his employer and lost his interest in his contractual obligations, found involved in flagrant violation of breach of contract, disobedience tantamount to "misconduct", as such, he became disentitled to continue his services anymore. He was called upon to explain and refute the allegations but he admitted his default, misconduct, breach of the Contract and involvement in criminal activities. More-so, his degree was forwarded to the University of Peshawar for the purpose of verification, however,

after due verification and scrutiny, it appeared to the Deputy Controller of Examination University of Peshawar that Degree (Academic Certificate) was patently fake and bogus. Deputy Controller of Examination University of Peshawar has recommended legal action against the petitioner vide his letter dated 3.7.2015. All the above facts were mentioned by the respondents in their reply to the legal notice of the petitioner but nothing was mentioned in the grievance petition which was sent by this Court to NIRC by making reliance on the cases of **"Pakistan Telecommunication Company Ltd Vs. Member NIRC and others"** (2014 SCMR 535), **"Muhammad Aslam Vs. United Bank Limited and others"** (Labour Appeal No.04/2009) decided on 30.06.2014 in juxtaposition with the principle laid down in the cases of **"Agritech Limited, Urea Manufacturing Plant through Factory Manager Vs. Workers Union Pak-American Fertilizers Limited through President and General Secretary"** (2010 PLC 100) and **"Iftikhar Ahmad Hammad Vs. Punjab Labour Appellate Tribunal Lahore and 03 others"** (2014 PLC 331) and the full bench of the Commission has held the employment of the petitioner as Area Sales Manager and was not as a worker/workman and over and above, the outstanding amount has already been received by him and full and final settlement has properly been taken place, therefore, he has no claim pertaining to his reinstatement or otherwise with the respondent/ company. It is significant to mention that today before this Court, learned counsel for the petitioner submitted

at the bar that the amount, which was received by the petitioner was, in fact, the outstanding salary, for which, he has submitted C.M No. 160-M of 2023 for placing on record receipts/salary slips along with the incentive evaluation form however, validity of these documents annexed with the application could not be adjudged at this stage when the respondents have alleged that nothing from the salary was outstanding against the them and through settlement all the matters between the petitioner and the respondents have to come to an end and this Court, while sitting in writ jurisdiction, cannot go into the factual controversy as to whether the amount which was paid to the petitioner was his outstanding salary or otherwise, as held by the apex Court in the cases of **Fida Hussain Vs Mst Saiqa (2011 SCMR 1990), & Government of Punjab Vs Ghulam Nabi (PLD 2001 SC 415)**.

9. Hence, for the reasons discussed above, this petition being without substance is hereby dismissed with no order as to cost.

Announced
23.01.2024


JUDGE


JUDGE

SABZ ALI-

(D.B)

HON'BLE MR. JUSTICE MUHAMMAD SAEEMANWAR
HON'BLE MR. JUSTICE SHAHID KHAN

Office
30/1/2024