

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Labour Revision No.09-P/2017

Pakistan Tobacco Board (PTB),
 Through its Chairman, Phase-V,
 Hayatabad, Peshawar etc.

Petitioner (s)

VERSUS

Shah Hussain and others.

Respondents

For Petitioners :-
 For Respondents :-

Mr. Aamir Javed, Advocate.
Mr. Nasir Mehmood Shah, Advocate.

Date of hearing: **14.05.2018**

JUDGMENT

ROOH-UL-AMIN KHAN, J:- Through this common judgment/order, I, propose to decide the instant Labour Revision (**LR**) and connected L.R. No.10-P/2017, both filed by Pakistan Tobacco Board (*hereinafter to be referred **PTB***) through its Chairman etc, as identical questions of law and facts are involved therein. In both the petitions, the petitioners have questioned the orders dated 28.02.2017 of the learned Presiding Officer Labour Court, Peshawar, whereby their applications in respect of return of complaints No.1/6 and 2/6 of 2016 to the respondents, for its presentation before the proper forum, have been dismissed.

2. Petitioners have averred that **PTB**, a statutory authority owned and controlled by the Government of

Pakistan, is a trans-provincial research oriented Institution, having its offices all over the Pakistan, including Districts Mardan, Mansehra, Bannu (**KPK**), Attock, Gujrat, Okara, Rajpur (**Punjab**) and Pishin (**Balochistan**). Respondents were the contractual employees of the petitioners/PTB, however, during the period of contract their services were terminated, against which the respondents filed grievance petitions before the Labour Court, Peshawar with a prayer for reinstatement. Their petitions were partially allowed in the manner that they were re-instated in the service, however, claim to the extent of back benefit was relinquished by them vide judgments/orders dated 17.12.2009, upheld upto the Hon'ble Apex Court vide judgment dated 16.11.2015 in *C.A's No.1119 and 1120 of 2016*. A legal question as to whether the petitioners/PTB is a Commercial or Industrial Establishment falling under the domain of Labour Laws/Standing Orders, Ordinance, 1968, was left open by the august apex Court in its judgment, to be raised at any later stage.

3. For implementation of the judgment dated 17.12.2009, the respondents filed complaints under section 37 (6) of the Industrial Relations Act, 2010, during pendency of which, the petitioners/PTB, filed applications with regard to return of the complaints to the respondents for its presentation to a proper forum due to lack of the jurisdiction of Labour Court under the provisions of the

Industrial Relation Act, 2012. Respondents contested the applications by filing reply. The learned Presiding Officer Labour Court, after hearing both the sides, dismissed the applications vide orders dated 28.02.2017, hence, these revision petitions.

4. Arguments of learned counsel for the parties heard and record perused.

5. In pursuance of 18th Constitutional Amendment, the Federal Government enacted IRA, 2012, for dealing with the matter of trans-provincial establishments. Under section 53 of which **NIRC** was constituted, whereas section 54 thereof elaborately explains its functions and jurisdiction. Under section 54 (e), the **NIRC** is empowered with the jurisdiction to deal with the cases of unfair labour practices specified in section 31 and 32 of the Act of 2012 on the part of employers, workers, trade unions, either of them or persons acting on behalf of any of them, whether committed individually or collectively, in the manner laid down under section 33 or subsection 9 of section 33 or in such other way as may be prescribed, and to take, in such manner as may be prescribed by regulations under section 66, measures calculated to prevent an employer or workman from committing an unfair labour practice. Under section 57 (a) Ibid, the NIRC has also been conferred additional powers, which includes the **powers to punish** for contempt of court and may award simple imprisonment

which may extend to six months or with fine, which may extend to Rs.50,000/- or with both. Relevant part of section 57 of the Act of 2012, is reproduced below:-

“S.57. Additional powers of the Commission:- (1)

In addition to powers which the commission has under this Act:-

- (a) The Commission shall have power to punish any person who obstructs or abuses its process or **disobeys any of its orders or directions** or does anything which tends to prejudice the case of a party before it or tends to bring it or any of its members in relation to proceedings of the Commission into hatred or contempt or does anything which by law, constitutes contempt of court, with simple imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees or with both; and

- (b)

6. Similarly, under section 57(2) (b), of the Act of 2012, the Commission has been **empowered to withdraw from a Labour Court** of a Province any application, proceedings or appeal relating to unfair labour practice which fall within its jurisdiction and under section (c) thereof, has the power to **grant such relief as it may deem fit** including interim injunction.

7. Perusal of the two laws i.e. the Act of 2010 and the Act of 2012, would reveal that two parallel forums have been created under these laws, one on a Provincial basis and the other on the Federal level, called **NIRC**. Both the forums are having jurisdiction to deal with industrial disputes and unfair labour practice and other allied matters

either attributable to the employer or the workers/workmen, however, the Federal law has drawn a clear demarcation line of jurisdiction of these two different forums i.e. the Labour Court in the Provinces and the **NIRC** at the Federal Level. It is not the nature of dispute, particularly, unfair labour practice, which confers jurisdiction on one or the other forum, but it is the status of the employer or the group of employers, which would determine the jurisdiction of the Provincial Labour Court and that of the **NIRC**. Once it is established by any means that the employer or group of employers has an establishment, group of establishments, industry, having its branches in more than one Provinces, then the jurisdiction of the **NIRC** would be exclusive in nature and of overriding and super imposing effects over the Provincial Labour Court and re-course has to be made by the aggrieved party to the **NIRC** and not to the Provincial Labour Court. Admittedly, PTB is a trans-provincial research oriented Institution, having its offices all over the Pakistan, thus, falls within the definition of establishment under the Act of 2012. In this view of the matter, I am of the considered view that in the present cases the provision of the Act of 2012, shall have overriding effect over the Act of 2010. Though, section 78 of the Act of 2012, provides that no court other than a Labour Court or that of a Magistrate of the first class, as the case may be, shall try

any offence punishable under this Act and the offences to be tried by the Labour Court, however, section *ibid* speaks about those offences which have been enumerated in Chapter-IX (Penalties and Procedures), from sections 67 to 77 of the Act of 2012. Except the above mentioned offences, all other offences shall be tried by the Bench of **NIRC** in exercise of its powers and jurisdiction under section 55 (3) (c) of the Act of 2012. Though in the case in hand, the judgments under implementation have been rendered by the Labour Court, but after enactment of the Act of 2012, there is no ambiguity in the provision of section 57(1) (a) and section 2 (b) of the Act of 2012, according to which the **NIRC** has the power to implement its judgment and to withdraw any case from the diary of the Labour Court at any time, respectively. Under section 37 (6) read with section 48 (3)(c) of the Khyber Pakhtunkhwa Industrial Relation Act, 2010, Labour Court is empowered to implement the judgments of the Labour Court, which at the time of filing applications, were not pertaining to the matters of trans-provincial establishment or not falling in the domain of **NIRC**. The impugned complaints filed by the respondents does not fall in the category of any offence enumerated under Chapter (*ibid*), rather, falls within the powers of the Commission under section 57 of the Act of 2012, under which the commission is empowered to punish any person who obstructs or

abuses its process or disobeys any of its orders or direction etc. In this view of the matter, the Act of 2012, having overriding effect, the Labour Court established under the Khyber Pakhtunkhwa Industrial Relation Act, 2010, is not vested with the power to proceed with the complaints filed by the respondents with regard to contempt by not obeying the orders of the Labour Court. The learned Presiding Officer Labour Court while passing the impugned orders has not properly comprehended the intentions and objects of the legislature and thus arrived at a wrong conclusion.

8. Accordingly, both the revisions petitions are allowed. The impugned orders of the learned Presiding Officer, Labour Court, Peshawar, dated 28.02.2017 are set-aside. The applications of the petitioners are allowed, resultantly, the complaints of the respondents are withdrawn from the diary of the Labour Court and entrusted to **NIRC** for onward proceedings that end.

Announced:

14.05.2018

Siraj Afridi P.S.

JUDGE

