JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4165 of 2019
M/s Sui Southern Gas Company Limited
Versus
Shah Muhammad and others

Dates of Hearing: 03.11.2020 & 01.04.2021
Petitioner by: Mr. Muhammad Asim Iqbal, Advocate
Respondents by: Ch. Muhammad Junaid Akhtar, Advocate
Mr. Muhammad Nadeem Khan Khakwani, learned Assistant Attorney-General.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner / M/s Sui Southern Gas Company Limited **("S.S.G.C.L.")**, impugns the order dated 28.10.2019 passed by the learned Full Bench National Industrial Relations Commission **("N.I.R.C.")** whereby the petitioner's appeal against the order dated 07.09.2015 passed by the learned Member, N.I.R.C., was dismissed. Vide said order dated 07.09.2015, the learned Member, N.I.R.C. had declared the private respondents to be permanent workmen in the establishment of S.S.G.C.L. and entitled to all the benefits, allowances, salaries etc. available to the permanent employees of the said organization. Furthermore, the petitioner was directed to regularize the services of the private respondents from the date of their initial appointments with all back benefits and entitlements under the law.

2. Learned counsel for the petitioner submitted that earlier the learned Full Bench, N.I.R.C. vide order dated 22.02.2017 had remanded the matter to the learned Member, N.I.R.C. to record evidence on the question as to whether the duties being performed by the private respondents were core functions of the petitioner so as to give them the status of *"workmen"* in the establishment of the petitioner; that this Court, vide judgment dated 26.04.2019, remanded the matter to the learned Full Bench, N.I.R.C. to determine the question as to the maintainability of the grievance petition filed by the private respondents; that in the said judgment, it was also observed that after the said question is determined, the need for a decision whether or not to remand the case to the learned Member, N.I.R.C. for the recording of evidence would arise; that the learned Full Bench, N.I.R.C. has

ventured beyond the mandate in the remand order; and that the N.I.R.C. does not have the jurisdiction to direct the petitioner to regularize the services of its employees. Learned counsel for the petitioner prayed for the instant petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgments reported as *PLD 1994 SC 501* and *2009 MLD 106*.

3. On the other hand, learned counsel for the private respondents submitted that the private respondents were workmen and were appointed in S.S.G.C.L. between 01.01.1984 and 26.04.2011; that the dates on which the private respondents were appointed and their designations in S.S.G.C.L. are set out in the first paragraph of the grievance petition; that the private respondents had been working in S.S.G.C.L. from seven to twenty four years without any break; that the private respondents came within the meaning of *"permanent workmen"* as defined in Section 2(g) of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("the 1968 Ordinance") read with Standing Order 1(b) contained in the Schedule to the said Ordinance; that the private respondents are entitled to the benefits of permanent workmen since they had been engaged for work of permanent nature for more than nine months; that S.S.G.C.L. had deprived the private respondents of the benefit of proper pay, allowances and other advantages that were available to the permanent workmen of S.S.G.C.L.; that the private respondents satisfied the test laid down by the Hon'ble Supreme Court in the case of Fauji Fertilizer Company Limited Vs. National Industrial Relations Commission (2013 SCMR 1253) to be treated as permanent workmen in the establishment of S.S.G.C.L.; and that the concurrent orders passed by the learned Member, and the learned Full Bench, N.I.R.C. do not suffer from any jurisdictional infirmity so as to warrant interference in the Constitutional jurisdiction of this Court. Learned counsel for the private respondents prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. This is the second round of litigation between the contesting parties before this Court. The record shows that on 03.09.2014, a joint grievance notice was sent on behalf of the private respondents to S.S.G.C.L. seeking the regularization of their services. The position taken by the private

respondents was that they had served in the establishment of S.S.G.C.L. for several years without any break and were, therefore, entitled for their services to be regularized. Having not received any response from S.S.G.C.L., the private respondents filed a grievance petition before N.I.R.C. (Quetta Bench). S.S.G.C.L. contested the said grievance petition by filing a written reply. The position taken by S.S.G.C.L. was that the private respondents were on the payroll of third party contractors, who were responsible to cater the grievances of its employees and that S.S.G.C.L. was not responsible to address the private respondents' grievances.

6. Vide order dated 07.09.2015, the learned Member, N.I.R.C. allowed the private respondents' grievance petition and declared them as permanent workmen and consequently held them entitled to all the benefits, allowances, salaries, promotions etc. as were given to S.S.G.C.L.'s permanent employees. Furthermore, S.S.G.C.L. was directed to regularize the private respondents' services with effect from the dates of their initial appointments with all back benefits in accordance with the law.

7. The said order dated 07.09.2015 was assailed by S.S.G.C.L. in an appeal before the learned Full Bench, N.I.R.C. One of the grounds taken by S.S.G.C.L. in its appeal was that the learned Member, N.I.R.C. had no jurisdiction in the matter since there was no provision in the I.R.A., 2012 under which the private respondents' services could be regularized.

8. Vide order dated 22.02.2017, the learned Full Bench, N.I.R.C. allowed S.S.G.C.L.'s appeal and set-aside the order dated 07.09.2015, passed by the learned Member, N.I.R.C. Furthermore, the matter was remanded to the learned Member, N.I.R.C. with the direction to record the evidence of the contesting parties and thereafter decide the private respondents' grievance petition in accordance with the law.

9. The private respondents impugned the said order dated 22.02.2017 passed by the learned Full Bench, N.I.R.C. in its entirety in writ petition No.1115/2017 whereas S.S.G.C.L. impugned the said order only to the extent of remanding the matter to the learned Member, N.I.R.C. in writ petition No.1190/2017. Through consolidated judgment dated 26.04.2019, the said writ petitions were decided by this Court. The operative part of the said judgment is reproduced herein below:-

> ***"16. As mentioned above, S.S.G.C.L. in its appeal against the order dated 07.09.2015, had specifically taken the ground that N.I.R.C. did not have the jurisdiction to direct S.S.G.C.L. to regularize the petitioners' services. I have gone through the appellate order dated 22.02.2017, passed by the learned Full Bench, N.I.R.C. and have noted that the said forum did not advert to or address the said ground taken by S.S.G.C.L. in its appeal. It would not be safe to hold that since the learned Full Bench, N.I.R.C. had remanded the matter to the learned Member, N.I.R.C. with the direction to record evidence of the contesting parties before deciding the matter, S.S.G.C.L.'s said objection to the maintainability of the petitioners' grievance petition was impliedly spurned by the learned Full Bench, N.I.R.C. Since the learned Full Bench, N.I.R.C. did not give a finding on S.S.G.C.L.'s above-mentioned ground taken in its appeal, I do not deem it appropriate to give a finding on the said ground in these proceedings.***
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> ***17. Mr. Kamran Murtaza, Advocate, learned counsel for the petitioners had suggested that the matter could be remanded to the learned Full Bench, N.I.R.C. with the direction to first decide S.S.G.C.L.'s above-mentioned objection to the jurisdiction of the N.I.R.C. I am of the view that the said suggestion is just and reasonable. Therefore, without expressing my opinion on the merits of the case, the impugned order dated 22.02.2017 is set-aside and the matter is remanded to the learned Full Bench, N.I.R.C. with the direction to give a finding on S.S.G.C.L.'s objection to the maintainability of the petitioners' grievance petition before the N.I.R.C. seeking the regularization of the petitioners' services. While deciding the issue of maintainability, learned Full Bench, N.I.R.C. shall take into consideration the law laid down by the Hon'ble Supreme Court in the cases of Fauji Fertilizer Company Ltd. Vs. National Industrial Relations Commission (2013 SCMR 1253) State Oil Company Limited Vs. Bakht Siddique (2018 SCMR 1181) Pakistan State Oil Company Ltd. Vs. Ghulam Ali (SBLR 2015 SC 233) and judgment dated passed by the Hon'ble Supreme Court in C.P.No.409-K to 414-K/2017. Consequently, writ petition No.1190/2017 is disposed of in the above terms. It is only after the learned Full Bench, N.I.R.C. gives a finding on S.S.G.C.L.'s said objection to the jurisdiction of N.I.R.C. would the need for a decision whether or not to remand the case to the learned Member, N.I.R.C. for the recording of evidence arise. Consequently, writ petition No.1115/2017 is dismissed."***

10. Post-remand the learned Full Bench, N.I.R.C. dismissed S.S.G.C.L.'s appeal against the order dated 07.09.2015 passed by the learned Member, N.I.R.C. The learned Full Bench, N.I.R.C., after making reference to the law laid down by the Hon'ble Supreme Court in the cases of State Oil Company Limited Vs. Bakht Siddique (2018 SCMR 1181) and Fauji Fertilizer Company Limited Vs. National Industrial Relations Commission (2013 SCMR 1253), held that no evidence was required to be recorded and that N.I.R.C. had the jurisdiction to entertain the private respondents' grievance petition. It was also held that the judgment in the case of Pakistan State Oil Company Limited Vs. Ghulam Ali (SBLR 2015 SC 233) relied upon by the S.S.G.C.L. was distinguishable.

11. In the earlier round of litigation, the reason why the learned Full Bench, N.I.R.C. had vide order dated 22.02.2017 remanded the matter to

the learned Member, N.I.R.C. with the direction to record evidence is because it took the view that in order to ascertain whether the private respondents had been directly appointed by S.S.G.C.L. or by a third party contractor it had to be determined as to (a) who is the appointing authority, (b) who is the paying master, (c) who can dismiss, (d) how long alternative service lasts (e) the extent and control of supervision, (f) the nature of the job, (g) whether it is professional or skilled work, (g) nature of the establishment, and (h) the right to reject. These were the factors which according to the learned Full Bench, N.I.R.C. were required to be considered in view of the law laid down by the Hon'ble Supreme Court in the case of Fauji Fertilizer Company Limited Vs. National Industrial Relations Commission (*supra*).

12. In the second round i.e. post remand, the learned Full Bench, N.I.R.C. did not feel the need to record evidence since the Hon'ble Supreme Court in the case of State Oil Company Limited Vs. Bakht Siddique (*supra*) had held the practice of out sourcing employment against posts of permanent nature to be a sham or pretence.

13. The vital question that needs to be determined is whether every employment in an industrial or commercial establishment through a third party service provider is liable to be declared as sham or pretence without further ado. I would think not. Each case has its own peculiar facts and needs to be decided on the basis of the material on the record. The material on the record in the case at hand leads me to hold that the private respondents are entitled to all the benefits under the labour laws as are available to the permanent employees of S.S.G.C.L.

14. Learned counsel for the private respondents has clarified that the private respondents would be satisfied, if they are granted the benefits which a permanent workman in the establishment of S.S.G.C.L. is entitled to. *"Worker"* and *"workman"* have been defined in Section 2(xxxiii) of the I.R.A to mean *inter alia* a person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor. A *"permanent workman"* has been defined in Standing Order I(b) in the Schedule to the 1968 Ordinance in the following terms:-

> ***"A "permanent workman" is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment, including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lock-out or strike) or involuntary closure of the establishment [and includes a badli who has been employed for a continuous period of three months or for one hundred and eighty-three days during any period of twelve consecutive months]"***

15. In the case at hand, the private respondents had been working against posts in S.S.G.C.L. for more than a decade. Some of the private respondents have been working since more than two decades. This fact has not been disputed. S.S.G.C.L. has not denied the fact that all the private respondents worked at the premises of S.S.G.C.L. S.S.G.C.L., in its written reply before the N.I.R.C., had unequivocally pleaded that the initial appointments of the private respondents had been made with the approval of the Managing Director and the Board of Directors of S.S.G.C.L. Therefore, I am of the view that the private respondents satisfied the test of being permanent workmen employed in the establishment of S.S.G.C.L.

16. In the case of Sui Southern Gas Company Limited Vs. Ghulam Nabi Deeshak, Registrar Trade Unions (2019 PLC 130), this Court had dismissed a writ petition filed by S.S.G.C.L. against the order passed by the Registrar Trade Union on an application filed by a registered trade union in the establishment of S.S.G.C.L. seeking the names of its members, who had been employed through contractors/service providers to work at S.S.G.C.L.'s premises, to be included in the voters list of the said union for the purpose of a referendum. This Court, after making reference to the law laid down in the cases of Fauji Fertilizer Company Limited Vs. National Industrial Relations Commission *(supra)* and State Oil Company Limited Vs. Bakht Siddique *(supra),* held as follows:-

> ***"24. Respondent No.1 allowed respondent No.3/Union's application after holding that the workers, whose names were sought to be included in the voter's list, were performing their duties under the direct control and supervision of the petitioner, and that the agreements with the service providers had been made only to deprive such workers from their legal rights under the labour law. This finding is in consonance with the observations of the Hon'ble Supreme Court in the case of State Oil Company Ltd. (supra). Furthermore, respondent No.1 was also given reason to believe that a representative of the contractor/service provider was not available at the petitioner's premises to supervise the work of the workmen, whose names were sought to be included in respondent No.3 / Union's voter's list. This finding of fact, the learned counsel for the petitioner has given me no reason to interfere with.***

25. The documents on the record show that most of the respondent No.3/Union's members, whose names were sought to be included in the voter's list, had been working at the petitioner's premises for more than a decade - some of them for more than two decades. Given this fact, it cannot be held that the works performed by such workmen/workers at the petitioner's premises were not of a permanent nature. Furthermore, if the duties performed by such workers were not related to running the affairs of the petitioner/Company, it does not appeal to reason as to why such workers had been working at the petitioner's premises for such a long period of time. The agreements between the petitioner and the service providers may well provide for such workers to work under the supervision and control of the service providers but the fact remains that there was nothing brought on the record to show that it was the service provider's representative at the petitioner's premises under whose orders or dictation such workers performed their duties.

26. Since the definition of "Worker" and "workman", includes a person employed directly or through a contractor; and since the workmen, whose names were sought to be included in respondent No.3/Union's voter's list had been working against posts of a permanent nature; and since the such workmen had been working at the petitioner's premises since more than a decade; and since there was nothing brought on the record to show that the service provider's representative had been supervising the duties performed by such workmen at the petitioner's premises; and since I do not find any jurisdictional infirmity in the impugned order dated 16.08.2017, passed by respondent No.1, the instant writ petition is dismissed with no order as to costs."

17. The said judgment passed by this Court was upheld by the Hon'ble Supreme Court in the case of Sui Southern Gas Company Limited Vs. Registrar Trade Unions (2020 SCMR 638).

18. In view of the above, I hold that the private respondents are entitled to all the benefits and protection under the labour laws as are given and afforded to the permanent workers and workmen in the establishment of S.S.G.C.L. The petition stands disposed of in the above terms. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2021

(JUDGE)

*Qamar Khan**