JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1747 of 2020
Islamabad Electric Supply Company
Versus
National Industrial Relations Commission and others

Date of Hearing:	**14.09.2023**
Petitioner by:	**Mr. Muhammad Asif Khan, Advocate.**
Respondents by:	**Ch. Mudassir Niaz, Advocate.**
Assistance by:	**Mr. Amir Hamza Qureshi, Law Clerk.**

MIANGUL HASSAN AURANGZEB, J:- Through this judgment I propose to decide writ petition No.1747/2020 as well as the writ petitions mentioned in Schedule-A, since they entail certain common features.

2. Through the instant writ petition the petitioner, Islamabad Electric Supply Company ("IESCO"), assails the order dated 11.05.2020 passed by the learned Full Bench, National Industrial Relations Commission ("NIRC") whereby the petitioner's appeal against the order dated 04.02.2020 passed by the learned Member, NIRC, was dismissed. Vide order dated 04.02.2020, the learned Member, NIRC, accepted the grievance petition filed by the private respondent and held that he has attained the status of a permanent workman in IESCO's establishment.

3. The facts essential for the disposal of the instant petition are that on 25.05.2018, respondent No.3 submitted a grievance notice to IESCO wherein he took the position that since the commencement of his employment on 12.01.2015, he had completed 183 days of service and therefore was entitled to be treated as a permanent employee and be paid all benefits payable under the law to such an employee. Without waiting for a response to the grievance notice, respondent No.3 on 28.05.2018 filed a grievance petition under the provisions of the Industrial Relations Act, 2012 ("IRA") before the NIRC. The prayer clause of

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the said petition shows that respondent No.3 had sought his 'regularization' and also the payment of all benefits as were payable to a regular employee of IESCO since 11.01.2016.

4. During the pendency of the said grievance petition IESCO, on 20.07.2018, gave a reply to his grievance notice. In the said reply, the position taken by IESCO was that respondent No.3's engagement as casual labour was made purely on a temporary basis for an initial period of 89 days against work estimates set out in order No.473-79, dated 12.01.2005 from the Project Director, Construction (Operations), IESCO, and that his pay was being charged from the said Directorate. It was also mentioned that IESCO did not have a policy for the regularization of casual labour.

5. The proceedings before the NIRC culminated in the order dated 04.02.2020 whereby the relief sought by respondent No.3 was allowed and it was held that he was a permanent workman in IESCO's establishment. Against the said order dated 04.02.2020, IESCO preferred an appeal before the learned Full Bench, NIRC which was dismissed vide order dated 11.05.2020. The said concurrent orders have been assailed by IESCO in the instant writ petition.

6. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that since respondent No.3 was appointed as casual labour, he had no right to seek the benefits payable to a permanent workman even though he had worked with IESCO for a period of more than 90 days from 11.01.2016 and is still working with IESCO; that IESCO does not have any policy for the regularization of casual labours or to treat them as permanent employees of IESCO; that regularization of service could not be made without subjecting respondent No.3 to a process of selection; that the Government had imposed a ban on recruitment in autonomous bodies and corporations; and that NIRC did not have jurisdiction to direct IESCO to regularize respondent No.3's services.

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7. Learned counsel for IESCO further submitted that respondent No.3 could not have filed a grievance petition prior to the expiry of 15 days of the issuance of the grievance notice; that the grievance petition filed by respondent No.3 just three days after the issuance of the grievance notice was not maintainable and liable to be dismissed; and that since during the pendency of the grievance petition IESCO, on 20.07.2018, gave a reply to the grievance notice, respondent No.3 had a period of 60 days (as prescribed in the proviso to Section 33(4) of the IRA from the said date to file a grievance petition. Learned counsel for IESCO prayed for the writ petition to be allowed and for the concurrent orders passed by the learned Member and the learned Full Bench, NIRC to be set-aside.

8. On the other hand, learned counsel for respondent No.3 submitted that respondent No.3 was employed as casual labour by IESCO on 12.01.2015; that respondent No.3 was *"permanent workman"* as defined in Standing Order 1(b) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (**"the 1968 Ordinance"**); that the mere fact that respondent No.3 has continuously worked for more than six and a half years means that he was engaged on work of a permanent nature; that IESCO has denied the benefits of a permanent workman to respondent No.3 and this amounts to a transgression of various provisions of the 1968 Ordinance; that although respondent No.3 had sought the regularization of his services but in fact he was seeking the benefits of a permanent workman to be granted to him; and that the concurrent orders passed by the learned Member and the learned Full Bench, NIRC do not suffer from any jurisdictional infirmity so as to warrant interference in the Constitutional jurisdiction of this Court. Learned counsel for respondent No.3 prayed for the writ petition to be dismissed.

9. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition

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have been set out in sufficient detail in paragraphs 3 to 5 above and need not be recapitulated.

10. Standing Order 1(a) in the Schedule to the 1968 Ordinance classifies workman into (i) permanent, (ii) probationer, (iii) *badlis,* (iv) temporary, (v) apprentice, and (vi) contract worker. "Permanent workman" has been defined in Standing Order 1(b) to mean a workman who has been engaged on work of a 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. Standing Order 1(e) defines a "temporary workman" as one who has been engaged for work which is of an essentially temporary nature likely to be finished within a period of not exceeding nine months.

11. Section 33(1) of the IRA entitles a worker to bring his grievance in respect of *"any right guaranteed or secured to him by or under any law"* to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent within ninety days of the day on which the cause of such grievance arises. The grievance with respect to which respondent No.3 had issued notice dated 25.05.2018 to IESCO was that despite having served for more than ninety days he was being denied the benefits of a permanent workman. Three days after issuing the grievance notice, respondent No.3 filed a grievance petition before NIRC.

12. The burden was on IESCO to prove that respondent No.3 had not been engaged on work of permanent nature. Respondent No.3, in his examination-in-chief, had clearly deposed that he had been engaged on work of a permanent nature. In his cross-

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examination, respondent No.3 had deposed that he was appointed as casual worker having no defined post and that in his letter of appointment, it was mentioned that his employment was temporary. IESCO's witness, in his examination-in-chief, did not depose that respondent No.3 had not been engaged on work of a permanent nature or that the work against which respondent No.3 was engaged could not have lasted for more than nine months but had instead deposed that respondent No.3 was *"not appointed against any particular post and [his] salary was not charged to any particular post and for work estimates."* Given the evidence on the record, I am of the view that IESCO did not discharge its burden of proving that respondent No.3 had not been engaged on work of a permanent nature. In the case of Executive Engineer Vs. Abdul Aziz (PLD 1996 SC 610), the Hon'ble Mr. Justice Ajmal Mian speaking for the Hon'ble Supreme Court held as follows:-

> *"14. The ratio of the above judgment in the case of [Muhammad Yaqoob Vs. The Punjab Labour Court No.1 (1990 SCMR 1539)] seems to be that the period of employment is not the sole determining factor on the question, as to whether a workman is a permanent workman or not but the nature of the work will be the main factor for deciding the above question. In other words, if the nature of work for which a person is employed is of a permanent nature, then he may become permanent upon the expiry of the period of nine months mentioned in terms of clause (b) of paragraph 1 of the Schedule to the Standing Orders Ordinance provided, he is covered by the definition of the term "worker" given in section 2 (i) thereof. But if the work is not of permanent nature and is not likely to last for more than nine months, then he is not covered by the above provision. **It may be observed that once it was proved that the respondents without any interruption remained employees between a period from two years to seven years, the burden of proof was on the appellant-department to have shown that the respondents were employed on the works which were not of permanent nature and which could not have lasted for more than nine months.**"*
> ***(Emphasis added)***

13. The position taken by IESCO in its written reply to the grievance petition was that respondent No.3 had been appointed as casual labour on contingent basis and therefore his appointment was temporary which could not be converted into permanent employment. Regardless of what was written in

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respondent No.3's letter of appointment, what is of crucial importance in determining whether a worker seeking benefits to which a permanent workman is entitled to is a permanent workman or not, is whether he had been engaged on work of a permanent nature. For IESCO to say that even though respondent No.3 had remained in IESCO's employment for more than six and a half years but had not been engaged on work of a permanent nature is preposterous to say the least. In the case of Izhar Ahmed Khan Vs. Punjab Labour Appellate Tribunal (1999 SCMR 2557), although the appointment of a worker was described in his appointment letter as purely temporary, since the period of the worker's continuous employment on a certain post admittedly continued beyond a period of nine months, he was held to be a permanent workman within the meaning given to it in Standing Order 1(b) of the 1968 Ordinance. In the said case, it was also held as follows:-

> ***"A careful analysis of the above definition of 'permanent workman' and 'temporary workman' would show that it is the nature of work on which a workman is employed that determines whether the workman is a permanent or a temporary workman. If the work is of a permanent nature and likely to last for a period of more than nine months, the workman employed on such a work, who successfully completes a probationary period of three months, will be deemed to be a 'permanent workman'. On the other hand, if the nature of work is' temporary and is likely to be finished within a period of nine months, then a workman employed on such work will be deemed to be 'temporary workman'. As a corollary, it follows that mere fact that if the work of a temporary nature continues beyond nine months, it would not make a workman employed on such work a 'permanent workman' as the expression "likely to be finished within a period not exceeding nine months" used in the definition clause does admit within its scope that a work of temporary nature may in certain circumstances stretch beyond nine months."***

14. IESCO's contention that respondent No.3 was employed for an initial period of 89 days *"against work estimates vide P.D. Construction (Opr) IESCO Islamabad office order No.473-79 dated 12.01.2015"* would also not take respondent No.3 out of the ambit of a permanent workman. In the case of Pakistan Railways Vs. Sajid Hussain (2020 SCMR 1664), the Hon'ble Supreme Court

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spurned the contention that a workman against a project post could not be treated as a permanent workman. The Hon'ble Supreme Court came to the said conclusion after holding that the engagement of the workman was for work of a permanent nature.

15. The mere fact that respondent No.3 has been working as casual labour for a period of more than six and a half years implies that he was *"engaged on work of permanent nature likely to last more than nine months."* Therefore, he cannot be held to be a temporary workman but would be entitled to all the benefits provided by law to a permanent workman. In holding so, reliance is placed on the following case law:-

(i) In the case of Government of Punjab Vs. Punjab Appellate Tribunal, Lahore (2002 SCMR 878), the Hon'ble Supreme Court did not interfere with the concurrent findings of the Labour Court, the Labour Appellate Court as well as the High Court to the effect that on expiry of ninety days' period, the private respondents assumed the status of permanent workmen and could not be terminated without conforming with the provisions of the 1968 Ordinance.

(ii) In the case of Board of Intermediate and Secondary Education Vs. Muhammad Sajid (2019 SCMR 233), the employer had been appointing workers for eighty-nine days only and re-hiring them for the next eighty-nine days, and in this way the employer continued to avail the services of workers for a long period. This mode of employment was termed by the Hon'ble Supreme Court as the employer's *"clumsy attempt to break the continuity of their service"* and to create artificial breaks in their service period. It was held that the workers had been performing work of a permanent nature and had not been serving on casual posts. They were also held to be entitled to the regularization of their services. A similar relief was also granted to a workman in the case of Pakistan Telecommunication Co. Ltd. Vs. Azeem Kibria Bhatti (2016 PLC 491).

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(iii) In the case of Director General, LDA Vs. Amjad Ali (2004 PLC 224), the Hon'ble Lahore High Court held as follows:-

> ***"[I]ntention and spirit of law could not be permitted to be offended against, by keeping an employee on the road just for 89 days (a day less than probationary span) which is as mentioned above, mala fide and this illegal device is against the aforesaid Ordinance. It is pertinent to mention here that petitioners have extended/re-employed the respondent after 89 days which clearly envisages that petitioners have exercised their power in a manner which is termed as mala fide to frustrate the mandate of West Pakistan Standing Order, 1968."***

(iv) In the case of Saidan Shah Vs. PTCL (2017 PLC 162), the Division Bench of the Hon'ble Peshawar High Court held that the obvious difference between the two cadres, i.e., permanent and temporary, is that permanent employees / workmen are entitled to different and more financial benefits during and after their retirement whereas temporary employees / workmen are entitled to only wages and that too much lesser. It was also held that an employer always exploits the employee's situation by treating him as a temporary employee so that it does not have to give him the rights secured or guaranteed to a permanent employee under the law.

16. The expression *"any right guaranteed or secured to him by or under any law to the notice of his employer"* in Section 33(1) of the IRA is clearly a reference to the rights that the labour statutes bestow on a workman. The Hon'ble Peshawar High Court, in the case of Saidan Shah Vs. PTCL (*supra*), has already held that the rights "guaranteed and secured" under the law would have reference to the Schedule to the 1968 Ordinance which contains the Standing Orders. These Standing Orders set out a range of benefits and entitlements that have to be given and bestowed on workmen. For instance, Standing Order 2(2) of the 1968 Ordinance requires the employer to give a departmental ticket to every permanent workman showing his number; Standing Order 8 sets out a workman's entitlement to leave; Standing Order 10-B(1) obligates the employer to have all the permanent workmen employed by him insured against natural death and disability and

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death and injury arising out of contingencies not covered by the Workmen's Compensation Act, 1923 or the Provincial Employees Social Security Ordinance, 1965; Standing Order 12(1) requires the employer to give one month's notice to a permanent workman for terminating his employment for any reason other than misconduct. It also requires the employer to give one month's wages calculated on the basis of average wages earned by the workman during the last three months in lieu of notice; Standing Order 12(3) prevents the employer from removing, retrenching, discharging, or dismissing from service a workman or terminating his services except by an order in writing which is to state explicitly the reason for the action taken; Standing Order 12(5) bars the employer from terminating the services of a permanent workman on the ground of misconduct otherwise than in the manner prescribed in Standing Order 15; and Standing Order 19 entitles every permanent workman to a service certificate at the time of his dismissal, discharge, retrenchment, or retirement from service.

17. There is no provision either in the IRA or the 1968 Ordinance providing for the regularization of a workman's services. In the case of Pakistan State Oil Company Ltd. Vs. Ghulam Ali (SBLR 2015 SC 233), the Hon'ble Supreme Court held in no uncertain terms that NIRC could not determine nor could it order the regularization of employees as it had a limited scope. For the purposes of clarity, the operative part of the said order passed by the Hon'ble Supreme Court is reproduced herein below:-

> *"3. We have perused the record, which shows that the respondents were employed by the petitioner and working there since years. Respondents were issued security cards by the Civil Aviation Authority on the recommendation of the petitioner company. The entire material was placed before the High Court and the High Court by the impugned judgment has recorded correct findings. It is contended that the issue ought to have been raised before the National Industrial Relations Commission ("NIRC"). We are not persuaded by the contention of the learned counsel on this score as well. NIRC cannot determine nor can order regularization of the respondents as it has limited scope."*
> **(Emphasis added)**

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18. In the case of Secretary, State of Karnataka Vs. Umadevi (2006 (4) SCC 1), the Indian Supreme Court emphasized that it is necessary to keep in mind the distinction between regularization and conferment of permanence in service jurisprudence. After referring to a number of judicial precedents, it endorsed the view that the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments, and that they are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointments. It was held that only something that is irregular for want of compliance with one of the elements in the process of selection which goes to the root of the process can be regularized and granting permanence of employment is a totally different concept and cannot be equated with regularization. Subsequently, in the case of Maharashtra State Road Transport Corporation Vs. Casterive Rajya Parivahan Karmchari Sanghatana (2009 (8) SCC 556), it was clarified that the ratio in the case of Secretary, State of Karnataka Vs. Umadevi (*supra*) does not override the powers of the Labour Courts to pass orders to cure an unfair labour practice on the part of the employer.

19. Learned counsel for respondent No.3 also clarified that the said respondent was not seeking "the regularization" of his services but since he had been engaged on work of a permanent nature with IESCO for a period of more than ninety days when he issued the grievance notice, he had acquired the status of a permanent workman and was entitled to be given all the rights and privileges of a permanent workman guaranteed or secured to him under the law. By the time this petition was heard, respondent No.3 had served for more than six and a half years and is still serving with IESCO. At no material stage has IESCO denied respondent No.3's status as a workman but asserts that he cannot

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be given the rights and privileges as the law grants to a permanent workman.

20. Since in some of the orders passed by the NIRC a direction has been given to IESCO to regularize the services of private respondents, such directions are to be read as directions to give them all rights and privileges as are guaranteed and secured to a permanent workman under the law, including the ones set out in the Schedule to the 1968 Ordinance.

21. As regards the contention made on behalf of the petitioner that respondent No.3 could not have filed a grievance petition without waiting for IESCO's reply to the grievance notice, suffice it to say that an objection of exactly the same nature has already been spurned by the Hon'ble High Court of Sindh in the case of Mukhtiar Shah Vs. Presiding Officer, Sindh Labour Court (2008 PLC 12). In the said case, an objection to the maintainability of a grievance petition was taken by the employer that no grievance petition could be filed unless after service of a grievance notice, fifteen days' time had expired. The Labour Court had dismissed the grievance petition as premature. The Hon'ble High Court of Sindh set-aside the order of the Labour Court by holding that the grievance petition could not be rejected on the technical ground that the workman had approached the Labour Court without the expiry of fifteen days.

22. In the case at hand, indeed respondent No.3 had filed a grievance petition before the expiry of fifteen days from the date of the issuance of the grievance notice, but it was not IESCO's case that had he waited for a period of fifteen days his grievances would have been redressed by IESCO. The provisions of the IRA do not render a grievance petition filed before the expiry of fifteen days as premature. Even though IESCO had issued a reply to the grievance notice during the pendency of the grievance petition, this development had no adverse bearing on respondent No.3's prayer in the grievance petition since IESCO was adamant in

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denying the rights and privileges of a permanent workman to respondent No.3 at all material stages.

23. As regards the plea taken by IESCO that a ban had been imposed by the Government on recruitment process in the Federal Ministries / Divisions / autonomous bodies / Corporations through office memorandum dated 06.02.2014 issued by the Establishment Division, the said restriction was purely an executive measure which could not override the provisions of a beneficial statute conferring rights and privileges on workmen. The rights and privileges of a permanent workman guaranteed or secured to him by the law were to be granted to such workman by operation of law which could not be fettered, restricted or denied through an executive fiat.

24. In view of the above, since I have been given no reason to interfere with the concurrent orders passed by the learned Member and learned Full Bench, NIRC, the instant petition as well as writ petitions mentioned in Schedule-A are dismissed with costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 11.10.2023.

(JUDGE)

APPROVED FOR REPORTING

*Ahtesham**

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Schedule-A

1. Writ petition No.1748/2020, titled "Islamabad Electric Supply Company Vs. NIRC and others"
2. Writ petition No.1749/2020, titled "Islamabad Electric Supply Company Vs. NIRC and others"
3. Writ petition No.1750/2020, titled "Islamabad Electric Supply Company Vs. NIRC and others"
4. Writ petition No.1751/2020, titled "Islamabad Electric Supply Company Vs. NIRC and others"
5. Writ petition No.1752/2020, titled "Islamabad Electric Supply Company Vs. NIRC and others"
6. Writ petition No.1753/2020, titled "Islamabad Electric Supply Company Vs. NIRC and others"
7. Writ petition No.1754/2020, titled "Islamabad Electric Supply Company Vs. NIRC and others"
8. Writ petition No.1755/2020, titled "Islamabad Electric Supply Company Vs. NIRC and others"
9. Writ petition No.1756/2020, titled "Islamabad Electric Supply Company Vs. NIRC and others"
10. Writ petition No.1757/2020, titled "Islamabad Electric Supply Company Vs. NIRC and others"
11. Writ petition No.1758/2020, titled "Islamabad Electric Supply Company Vs. NIRC and others"
12. Writ petition No.1759/2020, titled "Islamabad Electric Supply Company Vs. NIRC and others"
13. Writ petition No.1760/2020, titled "Islamabad Electric Supply Company Vs. NIRC and others"

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