Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO. 235 OF 2021

Pakistan Telecommunication Company Limited

Vs

Pakistan Telecommunication Employees Union, etc.

PETITIONER BY:	Mr. Shahid Anwar Bajwa, Advocate. Mr. Salman Zafar, GM Legal and Mr. Raheel Zafar, SM Legal, PTCL.
RESPONDENTS BY:	Mr. Muhammad Akhtar Anjum, Advocate for Respondent No.1.
DATE OF HEARING**:**	24.02.2021.

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BABAR SATTAR, J.- The petitioner is aggrieved by order of the National Industrial Relations Commission (**"Commission"**) dated 08.05.2019 and order of the Full Bench of the Commission dated 24.12.2020. Through the impugned orders the Commission has set aside the bonus policy of the petitioner issued by letter dated 27.03.2017 and directed the company to pay bonus to employees in accordance with Standing Order 10-C of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (**"Ordinance"**).

2. Learned counsel for the petitioner has contended that the bonus is based on the profit of the organization and the minimum granted bonus under the said policy conforms to Standing Order 10-C of the Ordinance; that the bonus is in addition to the wages being paid to employees and while Standing Order 10-C of the Ordinance

requires the payment of bonus equal to the one month of salary, the minimum bonus announced under the policy is equal to 1-1/2 months of salary; that the impugned orders suffer from jurisdictional defect as the grievance adjudicated by the learned Commission falls under section 33(1) of the Industrial Relations Act, 2012 (**"Act"**) and not under section 31 of the Act; that a mandatory trigger for such grievance under section 33(1) is for the workmen to bring it to the notice of the employer and other subsections of section 33 prescribe timelines in compliance with which the grievance can finally be brought to the notice of the Commission. The learned counsel has emphasized that such individual grievances can only be agitated by the aggrieved workman, or subject to compliance with provisions of section 33(3), by the Collective Bargaining Agent (**"CBA"**) on behalf of the individual workman; that no grievance was ever brought to the notice of the petitioner by an individual worker for purposes of section 33 and consequently no grievance had ever arisen which could be agitated before the Commission; that section 31 vests the jurisdiction in the Commission to adjudicate unfair labour practices on part of the employer and such practices can only be brought before the Commission for adjudication by the CBA under section 54(e) of the Act. The learned counsel has stated that the CBA cannot be allowed to litigate on behalf of individual workers and this is a settled principle of law in view of judgments reported as Karachi Pipe Mills Ltd. Vs. Sind Labour Appellate Tribunal and 2 others (1984 PLC 1359), Bolan Textile Mills vs. Labour Union Bolan Textile Mills and 2 others (1986 PLC 751), Karachi Pipe Mills Employees Union vs. Karachi Pipe Mills Ltd. Karachi (1992 SCMR 36), Democratic Workers' Union C.B.A vs. State Bank of Pakistan

and others (2002 PLC (CS) 614) and National Bank of Pakistan and another vs. Anwar Shah and others (2015 SCMR 434). He has further stated that the impugned orders have given no finding that the petitioner has engaged in unfair labour practices and has merely found that the bonus policy is in breach of Standing Order 10-C of the Ordinance and such breach in itself does not amount to an unfair labour practice and consequently neither the CBA was vested with any jurisdiction to agitate the matter nor the Commission was vested with jurisdiction to adjudicate the same for purposes of section 54; that since the decisions of the Commission suffer from jurisdictional defect, the petition may be allowed and the impugned orders be set-aside.

3. Learned counsel for the respondent No.1 has submitted that the grievance was agitated in pursuance of section 31 read together with section 54 of the Act and the grievance petition was, therefore, maintainable. He took the Court through the bonus policy and read out its terms and conditions and emphasized that the conditions listed as (d), (e) & (f) fall foul of Standing Order 10-C of the Ordinance. He has further submitted that as the said conditions of the bonus policy were in breach of Standing Order 10-C of the Ordinance, the bonus policy constitutes unfair labour practice, which falls within the jurisdiction of the Commission. He has stated that in view of functions of CBA mentioned in section 20(1)(a) of the Act when read together with section 31, a CBA is entitled to agitate individual grievances of the workmen as well. He has lasty contended that the impugned orders suffer from no jurisdictional defect and the petition should be dismissed.

4. In rebuttal, the learned counsel for the petitioner has submitted that he has advised the petitioner that the conditions listed as (d) and (e) are not in accordance with law and ought not be enforced and he sought an opportunity to enable the petitioner to present a statement before the Court to such effect. On the last date of hearing, the petitioner submitted a statement and the learned counsel for the petitioner sought the disposal of this petition in terms of the such statement. The statement states the following:

> *"1. That the applicable law to all workmen employed in PTCL is the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968.*
>
> *2. That clause (d) and (e) of the Circular dated March 27, 2017 enclosed at page 24 of the petition are withdrawn only in respect of workmen employees and are not being made applicable to the workmen. If any workman has not been paid bonus under Circular dated March 27, 2017, he shall be paid accordingly if he approaches the management.*
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> *3. That for financial year 2017 to 2019 bonus has been paid to the workmen. If any workman has not been paid bonus. Such payment of bonus shall be made to employee approaching the management after due verification".*

5. This Court then invited the learned counsel for respondent No.1 to review the statement and consider if respondent No1 would be satisfied if the petition is disposed of in terms of such statement. Learned counsel for the respondent however stated that he would seek adjudication of the petition on its merits.

6. The impugned order of the Commission dated 26.04.2019 (but announced on 08.05.2019) contains the following reasoning:

> *"It has been observed and find that the basic law/Rules for grant of bonus to employees of an establishment are given in 10-C of*

Standing Orders Ordinance, 1968, where there is no concept of performance based bonus and every workmen is liable for such bonus payable by the establishment. The PTCL policy for award of bonus on the basis of performance which will definitely cause exclusion of workmen who perform duties with the establishment during bonus year but do not meet criteria for grant of bonus given in the impugned policy which act seems contradictory to the provisions of Standing Orders Ordinance 10-C in pursuance to the justice to the workmen, the establishment is bound to distribute bonus among the workmen as prescribed in the Standing Orders Ordinance 10-C and no otherwise and beyond this obligatory bonus the company is at liberty to grant additional bonus according to their own bonus policy. As the counsel for the respondents stated that this is the only bonus company paid to the PTCL employees and it is not in addition to the obligatory bonus".

7. While hearing the appeal against such order, the learned Full Bench of the Commission explained it reasoning for dismissing the said appeal as follows:

*"5**...**The respondent through petition under section 31 & 54 of IRA 2012 and Standing Order 10-C of the Industrial & Commercial Employment Standing Orders, Ordinance, 1968 challenged the clause D, E and F of the letter No. TM&L/Bonus/2017 dated 27.03.2017. For convenience the said clauses are reproduced herein below:*

> *"d) Employees undergoing any disciplinary proceedings against them will not be entitled for Bonus. Decision for the payment of Bonus will be finalized on basis of the outcome of disciplinary proceedings.*
>
> *e) Any person found involved in any illegal activity damaging for the company reputation will not be eligible for Bonus.*
>
> *f) Those officers are not eligible for the Bonus whose performance appraisals have not been completed and also the line managers (EM & EMM) who failed to complete the evaluations of their staff."*

In order to understand the controversy in better way the Standing Order 10-C of Industrial & Commercial Employment Standing Orders Ordinance, 1968 is reproduced herein below:

*"**10-C. Payment of Bonus**. (1) Every employer making profit in any year shall pay [for that year within three months of the closing of] that year to the workman who have been in his employment in that year for a continuous period of not less than ninety days a bonus in addition to the wages payable to such workman.*

(2) The amount of the bonus payable shall.

(a) if the amount of the profit is not less than the aggregate of one month's wages of the workmen employed, be not less than the amount of such aggregate subject to the maximum of thirty percent of such profit;

Illustration I) —If the profit is Rs. 1,20,000,00 and the aggregate of one month's wages of the workman is Rs.30,000,00 the amount of the bonus payable shall be not less than the aggregate of one month's wages that is to say, Rs. 30,000,00.

Illustration II) — If the profit is Rs, 30,000,00 and the aggregate of one month's wages of the workmen is also Rs. 30,000,00, the amount of the bonus payable shall be not less than thirty percent of the profit, that is to say, Rs. 9,000,000.]

(b) if the amount of the profit is less than the aggregate referred to in paragraph (a), be not less than fifteen per cent of such profit.

(3) The bonus payable to workman entitled thereto under clause (1) shall bear to his monthly wages the same proportion as the total bonus payable by the employer bears to the aggregate of the wages referred to in paragraph (a) of clause (2) and shall be paid either in cash or in N. I. T. Units of equivalent value at the option of such workman.

(4) Nothing in this section shall be deemed to affect the right of any workman to receive any bonus other than that payable under clause (1) to which he may be entitled in accordance with the terms of his employment or any usage or any settlement or an award of a Labour Court established under the Industrial Relations Ordinance, 1969.

6. The appraisal of the impugned letter dated 27.03.2017, issued by the appellant management and the Standing Order 10-C clearly demonstrate that the management announced bonus and

while imposing restriction of performance violate the essence of Standing Orders Ordinance 1968. As far as the issue regarding locus standi of the respondent union to challenge the impugned letter dated 27.03.2017 is concerned, the union was CBA and represents the workers of the establishment, therefore, having competency to question any policy matter if found against the interests of the workers of the establishment."

8. In view of the subject matter of the grievance and the reasoning in the impugned orders, the questions before this Court are the following:

(i) Did the grievance amount to unfair labour practices for purposes of section 31 of the Act?

(ii) Did respondent No.1 have a right to initiate proceedings before the Commission on the basis that the bonus policy was in breach of Section 10-C of the Ordinance?

(iii) Was the jurisdiction vested in the Commission to adjudicate the dispute and did it give reasoned findings of insistence of unfair labour practice for purposes of Standing Orders 10-C while passing the impugned orders?

9. In answering the first question as to whether the grievance amounted to unfair labour practices this Court needs to consider section 31(1)(c) under which a cause of action has been claimed by respondent No.1. Section 31(1)(c) states the following:

Unfair labour practices on the part of employers.—(1) No employer or trade union of employers and no person acting on behalf of either shall—

(c) discriminate against any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is, or is not, a member or officer of a trade union;

10. It is patent from the language of section 31(1)(c) that in order to establish that an employer is liable to an unfair labour practices two elements need to be satisfied: (i) there is discrimination against a workman in relation to his employment, promotion, condition

of employment or working condition; and (ii) such discrimination should be motivated by the fact that such workman is a member or officer of a trade union. For a finding of unfair labour practice to sustain the element of discrimination must be motived by the workman's association or lack thereof with the union.

11. In the instant case there is no allegation that the petitioner has discriminated against any employees due to their union activities. In view of the reasoning of the impugned judgment quoted above, there is also no finding by the learned Commission that the petitioner has acted in a discriminatory manner and that such action is motivated by the union activities of employees who have been discriminated against. The Commission without taking into action the elements essential to give a finding of unfair labour practice and without in fact giving such findings has set aside the bonus policy on the basis that it includes conditions that could possibly be used in a manner that would be in breach of Standing Order 10-C of the Ordinance.

12. Section 54 of the Act specifies functions of the Commission which includes subsection (e) which states the following:

> *"54. Functions of the Commission.—The following shall be the functions of the Commission, namely—*
>
> *(e) to deal with cases of unfair labour practices specified in sections 31 and 32 on the part of employers, workers, trade unions or 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 sub-section (9) 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;"*

13. In view of the language of section 54 (e) cases of unfair labour practices under sections 31 and 32 can be adjudicated by the

Commission as well as cases involving individual grievances of employees under section 33 of the Act. The Act, *inter alia*, specifies the functions and obligations of the employer, worker, CBA and the Commission. Section 20 of the Act provides for functions of the CBA and subsection (1)(a) states the following:

> *20. Functions of the Collective Bargaining Agent.—(1) The collective bargaining agent in relation to an establishment or group of establishments shall be entitled to,---*
>
> *(a) undertake collective bargaining with the employer or employers on matters connected with employment, non-employment, the term of employment or the conditions of work other than matters which relate to the enforcement of any right guaranteed or secured to it or any workman by or under any law, other than this Act, or any award or settlement;"*

14. The latter part of subsection (a) of section 20(1) provides that it is not for the CBA to undertake collective bargaining in relation to matters that relate to enforcement of any right guaranteed to a workman under any law. The subject matter of the grievance in question relates to a right guaranteed to workmen under Section 10-C of the Ordinance and as such fell beyond the functions of the CBA under section 21(1)(a). Section 31 deals with grievances that emerge in the context of union activities and that is where the Act vests jurisdiction in the CBA to take up the matter with the employer in the first instance and if no resolution is forthcoming, the grievance can be agitated before the Commission. Section 33, on the other hand, provides for redress of individual grievances and the language of section 33(1) explains the aforesaid exclusion in section 20(1)(a). Section 33(1) provides the following:

> *"Redress of individual grievances.—(1) A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time*

> *being in force 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."*

15. The Act thus deals with a grievance in respect of a right guaranteed to a worker under any law to be an individual grievance which falls beyond the domain of CBA and is to be agitated by the worker himself. For such grievance to mature, a prerequisite is to bring it to the notice of employer either by the worker himself or through a shop steward or CBA, within ninety days of emergence of such grievance. The remaining part of section 33 then provides how the grievance can wind up before the Commission if it is not resolved and also prescribes timelines for each stage through which such grievance must pass. It is only when an individual grievance of a worker for purposes of Section 33(1) has been brought to the employer through a CBA that in case of its non-resolution by the employer the CBA can take it to the Commission on behalf of an individual worker. It is not the respondent's case that a notice was served under section 33(1) of the Act in relation to an individual grievance or that the matter brought before the Commission in an individual grievance. This Court need not to dwell on the scope and requirements of section 33. Given that the subject matter of the grievance relates to the bonus policy being in breach of a law i.e. Standing Order 10-C of the Ordinance, which guarantees certain individual rights to workers and any breach of such rights falls within the domain of section 33(1) and not section 31, respondent No.1 had no locus standi to agitate the grievance before the Commission. It would only be in the event of bonus policy being implemented in a discriminatory manner in breach of Standing Order 10-C of the Ordinance in relation to individual workmen due to their

union activities that the grievance could fall within the scope of section 31. However, no such case has either been built by respondent No.1 nor has any such findings has been given by the learned Commission. In view of the facts and the case presented a finding could not be rendered that the petitioner is liable for unfair labour practices for purposes of section 31.

16. In relation to question (ii) as to whether the CBA had locus standi to agitate the grievance, in view of the discussion above and provisions of sections 20, 31, 33 and 34 of the Act, it can be concluded that respondent No.1 had no locus standi to challenge the possible discriminatory application of the bonus policy to individual workmen in breach of Standing Order 10-C of the Ordinance. In understanding the scheme of the Act and the distinction between collective grievances that fall within the domain of the CBA and individual grievances that must be agitated by individual workers (even where such grievances are pursued by the CBA on behalf of workers subject to compliance with the provisions of section 33) the following judgments are educational:

(i) *Bolan Textile Mills vs. Labour Union Bolan Textile Mills and 2 others (1986 PLC 751), Democratic Workers' Union C.B.A vs. State Bank of Pakistan and others (2002 PLC (CS) 614).*

"We are inclined to hold that there are four stages for a settlement in terms of labour laws, namely, (i) raising of a demand by a Bargaining Agent for the benefit of workmen, (ii) negotiations between a Bargaining Agent and an employer, (iii) signing of a settlement by a Bargaining Agent on behalf of the workmen and by an employer and (iv) the enforcement of the settlement of any right guaranteed to workmen under any law, award or settlement. A Collective Bargaining Agent is to act on behalf of workmen during the first three stages mentioned

hereinabove, but it cannot enforce under section 34 of the I.R.O. any right guaranteed or secured, inter alia, to any workman by or under any law. We are further inclined to hold that under clause (b) of subsection (12) of section 22 of the I.R.O. a Collective Bargaining Agent is authorized to represent all or any of the workmen in any proceeding in terms of the I.R.O. and not in any proceeding which may be in violation or derogation of the I.R.O. We are in respectful agreement with the view expressed in the above Full Bench case, which is applicable on all fours to the instant case."

(ii) *Karachi Pipe Mills Employees Union vs. Karachi Pipe Mills Ltd. Karachi (1992 SCMR 36)*

"In case of an individual grievance of a worker in respect of pre-determined rights an application is to be made under section 25-A of the Ordinance. The procedure laid down in this provision has to be complied with before moving the Labour Court. The CBA has also been authorized to move the Labour Court in case of individual grievance if the worker has brought his grievance to the notice of his employer through his collective bargaining agent. Where the law has empowered the CBA to move an application to the Labour Court it has specifically stated so in the law itself. A construction of the law has to be made which is reasonable and is in consonance with the spirit of law. A foreign element cannot be brought into simply to make it more convenient to litigants."

(iii). *National Bank of Pakistan and another vs. Anwar Shah and others (2015 SCMR 434).*

"We may also here make reference to the case of Karachi Pipe Mills Employees Union v. Karachi Pipe Mills Ltd. Karachi (1992 SCMR 36), where union has filed an application under section 34 of erstwhile Industrial Relations Ordinance, 1969, claiming payment of benefit of overtime to the workers employed in the Mills. This Court, after elaborate discussion, came to the conclusion that CBA in an application under section 34 of the Ordinance can only raise grievance before a Labour Court for enforcement of its own rights guaranteed under the law, award and settlement and not the rights of an individual

> *worker who has remedy under section 25A of Ordinance to raise his own grievance in respect of right guaranteed to him under any law, award or settlement. Sections 60 and 33 of the Act are in similar term as that of sections 34 and 25-A of the Ordinance. Thus, for this reason also NBP Employees Front was not competent in taking up the cause of Officers Grade-I to III of having them declared as 'workmen'.*

17. The scheme of the law is clear. The Act delineates the rights, functions and responsibilities of an employer, worker and CBA. Provisions of the Act, including sections 20, 22, 23, 25 and 27 provide for functions and powers of the CBA and to the extent that a dispute arises that relates to functions of CBA and satisfies the element of unfair labour practices under section 31, such matter can be agitated by the CBA before the Commission under section 54(e). In the event that a grievance is of an individual nature and emanates from any denial of rights under any law or any award or settlement for the time being in force and has not emerged from the union activities of such individual worker, the grievance is to be treated as an individual one to be agitated by the worker himself in the first place or the CBA on his behalf and subject to the satisfaction of conditions and steps prescribed under section 33, the dispute can find its way to the Commission under section 54(e). In the instant case, therefore, the CBA had no authority to initiate proceedings in relation to the grievance in question and the inability of the learned Commission to recognize the same while assuming jurisdiction constitutes a jurisdictional defect. Consequently, neither respondent No.1 had locus standi to agitate a possible denial of rights to individual workers in breach of Standing Order 10-C of the Ordinance before the Commission by projecting it as an unfair labour practice nor the Commission was vested with jurisdiction under section

54 to treat a possible grievance under section 33, even before it had matured and had been agitated by an individual worker, as an unfair labour practice for purposes of section 31. The impugned orders of the learned Commission suffering from jurisdictional defect are therefore void and set aside.

18. In the statement filed before this Court it has been submitted that clause (d) and (e) of the bonus policy dated 27.03.2017 stand withdrawn in relation to workmen employees and any workman who has not been paid bonus under the said bonus policy would also be paid if he approaches the management. The statement submitted before this Court is now binding on the petitioner under the principle of judicial estoppel. Further, to the extent that the bonus policy even in exclusion of clauses (d) and (e) is applied in such manner that breaches Standing Order 10-C of the Ordinance, any worker aggrieved by such application of policy would have the right to agitate the same in accordance with provisions of section 33. This petition is, therefore, **allowed** in the above terms with no order as to costs.

(BABAR SATTAR)
JUDGE

Announced in the open Court on 02.03.2021.

JUDGE

Saeed.