JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.706 of 2022

Pearl Continental Hotels National Labour

Versus

National Industrial Relations Commission through its Chairman and 4 others

Petitioner by	:	Hafiz Arfat Ahmed Ch., Ms. Kashifa Niaz Awan, Mr. Tariq Zaman Ch., Advocates for the petitioner.
Respondents by	:	Syed Naeem Bukhari and Mr. Muhammad Imad Khan, Advocates for respondent No.5
Date of Hearing	:	10.08.2022

ARBAB MUHAMMAD TAHIR, J.:- By means of this writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "Constitution"), the petitioner, Pearl Continental Hotels Labour Union has sought the following relief:-

> *"In view of the above, submission, it is, therefore, most respectfully prayed that this writ petition may kindly be accepted and this Hon'ble Court may be pleased to:-*
>
> *i. To set-aside the impugned order dated 22.02.2022 passed by the respondent No.3/Authorized Officer whereby he has stopped the referendum proceedings for determination of CBA contrary to orders of Islamabad High Court Islamabad dated 05.08.2021, 01.11.2021 & 21.12.2021 passed in Writ Petitions No.2780/2021 & 4542/2021 as well as to order dated 27.04.2021 passed by Sindh High Court in Writ Petition No.2780/2021."*

ii. *To direct the NIRC/Respondent No.1 to 3 to continue the referendum proceedings for determination of CBA.*

iii. *Any other appropriate relief, which this honourable court deems fit and proper in the circumstances of the case, may also be awarded."*

02. Facts in brief of this writ petition are that through order dated 15.07.2021, the learned Member of the National Industrial Relations Commission (hereinafter referred to as the "Commission") appointed Private Secretary to the Chairman of the Commission as Authorized Officer for the purposes of conducting referendum for determination of the Collective Bargaining Agent (hereinafter referred to as "CBA") in the establishment of PC Hotels. Respondent No.5 filed objections before the Authorized Officer which were turned down through order dated 30.07.2021. Both the said orders dated 15.07.2021 and 30.07.2021 were assailed before the learned Full Bench of the Commission, but due to its non-availability, respondent No.5 filed writ petition No.2780/2021 before this Court in which the following interim relief was granted.

> *"Let the referendum proceedings be conducted in accordance with the provisions of the I.R.A. However, until the next date of hearing the NIRC is restrained from issuing a Certificate of CBA to the trade union which receives the highest number of vote in the referendum."*

03. Soon after the constitution of the learned Full Bench of the Commission, the said writ petition was disposed of in the following terms:-

> *"In view of the matter, no further proceedings in this petition are necessary. The interim relief already granted vide order dated 05.08.2021 shall continue until the petitioner's appeal is fixed for hearing before the learned Full Bench, NIRC. The*

petitioner's appeal ought to be decided expeditiously and preferably within a period of two months from today."

04. Subsequently, the Authorized Officer fixed the date of referendum on 17.08.2021, against which, respondent No.5 preferred an appeal before the learned Full Bench of the Commission, but due to its unavailability, respondent No.5 filed suit No.1880/2021 before the Hon'ble Sindh High Court and the learned High Court suspended the operation of the order dated 17.08.2021, whereby the Authorized Officer had fixed the date of referendum. Against the same very order dated 17.08.2021, respondent No.4 (Pearl Continental Hotel Staff Union) also filed an appeal before the learned Full Bench of the Commission, but due to its unavailability, respondent No.4 filed writ petition No.3061/2021 before this Court, which was dismissed by this Court in *limine*.

05. Hafiz Arfat Ahmed Ch., learned ASC appearing on behalf of the petitioner contends that the petitioner insisted for commencement of the referendum proceedings pending ever since 2017, but the Authorized Officer, for no valid reasons, stopped the referendum proceedings; that in writ petitions No.535 of 2022 and 536 of 2022 pending before this Court, no specific order had been passed by this Court directing the referendum proceedings to be stayed; that the management of respondent No.5 (Pakistan Services Limited) persuaded the Authorized Officer to stop the referendum proceedings; that in writ petitions No.535 of 2022 and 536 of 2022, this Court vide order dated 16.02.2022 suspended the operations of the impugned orders passed by the learned Full Bench of the Commission and no stay order was issued with respect to the referendum proceedings to be suspended; that the referendum has already been delayed for almost five years, as such the workers are being deprived of their lawful right regarding casting of votes. Learned counsel prayed that

the writ petition be allowed and the impugned action of the Authorized Officer be declared to be illegal and unlawful.

06. On the contrary, Syed Naeem Bukhari, learned ASC appearing on behalf of respondent No.5 has raised a preliminary objection as to the maintainability of the writ petition at hand on the ground that there exists an alternate statutory remedy of an appeal provided under the law against the impugned order. He however, contended that the petitioner filed the writ petition at hand by ignoring the fact that the order passed by the Authorized Officer is an order which ought to be deemed to have been passed by a Bench of the Commission and such an order is in fact an order appealable before the learned Full Bench of the Commission; that there exists an efficacious and alternate remedy to the petitioner by filing an appeal under Section 58 of the Industrial Relations Act, 2012 (hereinafter referred to as "the Act") before the learned Full Bench of the Commission; that in the presence of an alternate remedy, the instant petition merits outright dismissal; that the power under Article 199(1) of the Constitution could only be exercised only if no alternate remedy is provided under the law; that it respondent No.5's right to deal with a validly registered CBA whose registration is determined in accordance with law; that the existence of the alternate statutory remedy of an appeal disentitles the petitioner from the relief sought by it in the writ petition at hand. He prayed for the writ petition to be dismissed with costs. In order to supplement his arguments, learned counsel for respondent No.5 placed reliance on the judgment reported as **1988 PLC 286.**

07. Heard the learned counsel for the parties and have perused the available record with their valuable assistance.

08. This Court, at the first instance, deems it appropriate to deal with the objection taken by respondent No.5 in its written comments regarding the maintainability of the present petition. For ease of reference, the relevant portions of the written comments are reproduced herein below:-

> *"10. The Petitioner has merely challenged the order of the Authorized Officer dated 20.02.2022 (Annex-A), without realizing the import that the Authorized Officer's decision are actually the decision of a Bench of the Commission and challengeable before the Full Bench of the Commission.*
> *11. The Petitioner has conveniently overlooked the existence of an efficacious and alternate remedy by way of filing an Appeal before the Full Bench, when at the time of filing the instant Petition, the Full Bench of the Commission was already available and functional"*

09. Through Act No.X-2012 of the Majlis-e-Shoora (Parliament), the Act was enacted and got published in the Official Gazette of Pakistan (Extraordinary) on 14.03.2012. The National Industrial Relations Commission has been constituted under Section 53 of the Act. The functions of the Commission have been described in Section 54 of the Act *ibid,* which include the following:-

> ***(a) to adjudicate and determine an industrial dispute in the Islamabad Capital Territory and trans-provincial to which a trade union or a federation of such trade unions is a party and which is not confined to matters of purely local nature and any other industrial dispute which is, in the opinion of the Government, of national importance and is referred to it by that Government;***
> *(b) …*
> *(c) ….*
> *(d) …*
> *(e) ….*
> *(f) ….*
> *(g) …*

(h) to deal with cases of individual grievance in the manners prescribed in Section 33.
(i) …
(j) Such other powers and functions as the Government may, by notification in the official Gazette, assign to it from time to time."

10. Some additional powers have also been conferred upon the Commission in terms of Section 57 of the Act. Section 58 of the Act pertains to the matter regarding appeals. For convenience and reference, the said Section is reproduced herein below:-

"58. Appeals.—(1) Notwithstanding anything contained in this Act, or in any other law for the time being in force, ***any person aggrieved by an award or decision given or a sentence or order determining and certifying a collective bargaining unit passed by any Bench of the Commission, may, within thirty days of such award, decision, sentence or order prefer an appeal to the Commission.***
(2) An appeal preferred to the Commission under sub-section (1) shall be disposed of by the Full Bench of the Commission which shall—

(a) if the appeal is from an order determining and certifying a collective bargaining unit, have the power to confirm, set aside, vary or modify such an order.
(b) if the appeal relates to any other matter, the Full Bench may, confirm, set aside, vary or modify the decision or sentence passed and shall exercise all the powers required for the disposal of an appeal.
(c) The decision of the Full Bench shall be delivered as expeditiously as possible, within a period of sixty days following the filing of the appeal, provided that such decision shall not be rendered invalid by reasons of any delay in its delivery.
(d) The Full Bench may, on its own motion at any time, call for the record of any case or proceedings under this Act in which a Bench within its jurisdiction has passed an order for the purpose of satisfying itself as to the correctness, legality, or propriety of such order, and may pass such order in relation thereto as it thinks fit:
Provided that no order under this sub-section shall be passed revising or modifying any order adversely

> *affecting any person without giving such person a reasonable opportunity of being heard.*
>
> *(3) In an appeal preferred to it against the order of a Bench directing the re-instatement of a workman, the Full Bench may make an order staying the operation of the order of the Bench.*
>
> *(4) The Full Bench shall decide such appeal within twenty days of its being preferred:*
>
> *Provided that, if such appeal is not decided within the period aforesaid, the stay order of the Full Bench shall stand vacated on the expiration of that period."*
>
> ***(Underlining is mine for emphasis)***

11. From perusal of Section 58 of the Act, it is thus abundantly clear that a remedy of an appeal has been provided to an aggrieved person against an order, award, a decision given or a sentence or order determining and certifying a collective bargaining unit passed/given by any Bench of the Commission before the Commission. The "Commission" means the Industrial Relations Commission constituted under Section 53 of the Act. For ease of reference, Section 53 of the Act is reproduced as under:-

> ***"53. National Industrial Relations Commission.****—(1) The Federal Government shall constitute a National Industrial Relations Commission.*
>
> *(2) The Commission shall consist of not less than ten full time members, including the Chairman.*
>
> *(3) The qualification for appointment as a member or as the Chairman of the Commission shall be such as may be prescribed.*
>
> *(4) The Chairman and other members of the Commission shall be appointed by the Government in the prescribed manner.*
>
> *(5) Two of the members shall be appointed in the prescribed manner to advise the Chairman, one to represent the employers and the other to represent trade unions and the federations of such trade unions.*
>
> *(6) …*
>
> *(7) …"*

12. It is provided in Section 58 that the appeals be disposed of by the Full Bench of the Commission within the meaning of Sub-section (2) of Section 58 of the Act.

Subsection (2) of Section 56 of the Act envisages that any order or decision made, award given, sentence passed, power exercised, function performed or proceeding taken by any Bench of the Commission in accordance with the Act and the order constituting the Bench shall be deemed to be the order or decision made, award given, sentence passed, power exercised, functions performed or proceedings taken, as the case may be, by the Commission.

13. Furthermore, from the plain reading of the provisions of Section 58 of the Act, it is crystal clear that the appeal lies before the Full Bench of the Commission only against an award, decision given or an order passed by any Bench of the Commission. The order that has been assailed by the petitioner in the writ petition at hand is an order of the Officer, who had been authorized by the learned Member of the Commission through order dated 15.07.2021. The order dated 22.02.2022 passed by the Authorized Officer is to be construed as such as would mean to be an order of the learned Member of the Commission so as to bring it within the ambit of ***"any order or decision made, award given, sentence passed, power exercised, function performed or proceeding taken by any Bench of the Commission in accordance with the Act".*** The said order dated 22.02.2022 is in fact an order that shall be deemed to have been passed by any Bench of the Commission since the learned Member by authorizing the Private Secretary as an **"Authorized Officer"** delegated his power and function to the Authorized Officer. Hence, the order passed by the Authorized Officer comes within the term of **"any order, decision by any Bench"** and thus the same is appealable before the learned Full Bench of the Commission by virtue of Sub-section (2) of Section 58 read with Subsection (1) of Section 58 of the Act.

14. Furthermore, jurisdiction has been invested in the Commission by virtue of Sections 31 and 32 of the Act besides all other allied and connected matters enumerated in various provisions of the Act.

15. From perusal of Section 58 *ibid*, it is crystal clear that an appeal is indeed provided to the learned Full Bench of the Commission only against an order, decision etc. passed by a Member of the Commission. It is further abundantly clear that the remedy of an appeal against an award or decision or an order passed by any Bench of the Commission is available before the Commission under Section 58 Sub-Section 1 of the Act and such an appeal is to be disposed off in terms of Sub-section 2 of Section 58 of the Act.

16. Insofar as the question of maintainability of the present constitutional petition is concerned, suffice it to say that the impugned order dated 22.02.2022 passed by the Authorized Officer is in fact an order against which a statutory remedy of an appeal is provided in terms of Section 58 of the Act. It is settled law that where a statute under which the impugned order is passed, itself provides the remedy of an appeal, the Court of Constitutional causes ought to be reluctant to by-pass the Special Statute and should not resort to exercise the judicial review. In holding so, I am guided by the law laid down in the case titled ***"Willam Lawrence Vs. Government of Pakistan and others (1986 PSC 383), Government of Pakistan through Secretary, Ministry of Interior Vs. Muhammad Yasin etc. (PLD 1997 SC 401), Al Ahram Builders (Pvt.) Ltd vs. Income Tax Appellate Tribunal (1993 SC 539).***

17. In the judgment reported in C.P.S.L.A No.832-L of 1995 titled ***Muhammad Jameel Sohail etc vs. The Income Tax Officer/Tax Recovery Officer, Lahore,*** the Hon'ble Supreme Court has *inter-alia* held that there is difference

between **"lack of jurisdiction"** and **"wrong exercise of jurisdiction"** and in case of wrong exercise of jurisdiction, ***the constitutional petition cannot be filed in presence of alternative statutory remedy***. Similarly, in case ***Wealth Tax Officer etc vs. Shaukat Afzal etc (1993 SCMR 1810),*** the Hon'ble Supreme Court has *inter alia* held that "the tendency to bye-pass remedy provided under the relevant statute to press into service constitutional jurisdiction of the High Court had developed lately, which is to be discouraged". Law to the said effect has also been laid down in the cases of ***Wealth Tax Officer etc Vs. Shaukat Afzal etc (1993 SCMR 1810) and Syed Qamar Ahmad etc Vs. Anjum Zafar etc (1994 PSC 206).***

18. From the aforesaid case laws, it is thus clear that the jurisdiction of the High Court in terms of Article 199(1) of the Constitution could only be invoked when there exists no other adequate remedy provided under the law. In the presence of an alternate remedy, the High Court must be cautious in exercising constitutional jurisdiction. In this regard, guidance may be sought from the law laid down by the Hon'ble Supreme Court of Pakistan in the case titled ***"Ch. Muhammad Ismail Vs. Fazal Zada, Civil Judge, Lahore and 20 others (PLD 1996 SC 246),*** whereby it was held as follows:-

> *"7. It is also noteworthy that the jurisdiction conferred on the High Court under Articles 199 and 203 of the Constitution is of extraordinary nature and is, therefore, to be exercised sparingly. The High Court has to be specially cautious in exercising its Constitutional jurisdiction when other adequate remedy is available to the party invoking that jurisdiction"*
>
> *It is also noteworthy that the jurisdiction conferred on the High Court under Articles 199 and 203 of the Constitution is of extraordinary nature and is, therefore, to be exercised sparingly. The High Court has to be specially cautious in exercising its Constitutional jurisdiction when other adequate remedy is available to the party invoking that*

jurisdiction. Similar observations were made by the Peshawar Bench of the erstwhile High Court of West Pakistan in the case of Fazal Din alias Mina etc., cited by the learned counsel for the petitioner, while deciding a writ petition under Article 98 of the Constitution of 1962, the provisions whereof were somewhat similar to those of Article 199 of the present Constitution of 1973. The observations in point read as follows:--

> *"The basic principle, however, to be kept in view by the Court should be that the power under Article 98, where the alternative remedy is not exhausted, is exercised sparingly with caution and circumspection; and ordinary only in those cases where grave injustice may otherwise ensue."*

19. Additionally, it was observed as follows:-

> *"9. The High Courts are already huddled up with thousands of cases. If the litigant public is permitted to take all sorts of disputes to the High Court without first availing of the other remedies available to them, under law, it not only necessarily increase the work-load of the High Courts but would also defeat the provisions of law by which the said remedies have been made available. Such a spree on the part of the litigant public would, if we may say so, amount to abuse of the Constitutional jurisdiction which is to be exercised by the High Courts in exceptional cases to provide justice which cannot be otherwise obtained by the aggrieved parties."*

20. In the case of **Commissioner Inland Revenue Vs. Jahangir Tareen Khan,** it was held as follows:

> *----Art. 199---Show cause notice issued by tax authorities---Show cause notice challenged in Constitutional jurisdiction of the High Court---Maintainability---Court may take up writs to challenge the show cause notice if it was found to be barred by law or abuse of process of the court or was coram-non-judice---Where a special law provided legal remedy for the resolution of a dispute, the intention of the legislature in creating such remedy was that the disputes falling within the ambit of such forum be taken only before it for resolution---Bypassing the proper forum was contrary to the intention of the provisions of Art. 199(1) of the Constitution which conferred jurisdiction on the High Court only and only when there was no adequate remedy was available under any*

law---Where adequate forum was fully functional, the High Court must deprecate such tendency at the very initial stage and relegate the parties to seek remedy before the special forum created under the special law to which the controversy related---Abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities must be the normal rule--- Challenge to show cause notices in writ jurisdiction at premature stages and tendency to bypass the remedy provided under the relevant statute was by and large deprecated and disapproved in many dictums laid down in local and foreign judgments in which courts had considered the interference as an act of denouncing and fettering the rights conferred on the statutory functionaries specially constituted for the purpose to initially decide the matter.

21. In the case of ***Indus Trading and Contracting company v.. Collector of Customs (Preventive) Karachi and others (2016 SCMR 842),*** the Hon'ble Supreme Court has held that "*where a special law provides legal remedy for the resolution of a dispute, the intention of the legislature in creating such remedy is that the disputes falling within the ambit of such forum be taken only before it for resolution. Such bypass of the proper forum is contrary to the intention of the provisions of Article 199(1) of the Constitution which confers jurisdiction on the High Court only and only when there is no adequate remedy is available under any law. Where adequate forum is fully functional, the High Court must deprecate such tendency at the very initial stage and relegate the parties to seek remedy before the special forum created under the special law to which the controversy relates.*"

22. Similarly, in the case of ***A1 Ahram Builders (Pvt.) Ltd. Vs. Income Tax Appellate Tribunal (1993 SCMR 29),*** the Hon'ble Supreme Court discouraged the tendency to bypass the remedy provided under the relevant statute to press into service Constitutional jurisdiction of the High Court.

23. For what has been discussed above, I am of the considered view that the instant petition is not maintainable and is therefore, accordingly **dismissed** with no order as to costs. Before parting with this order, it may be observed that it is the petitioner who made itself to suffer for approaching the wrong forum instead of resorting to the alternate remedy available to it under the law and especially when the learned Full Bench of the Commission at the relevant time was available and functional.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____09.2022.

JUDGE

ISLAMABAD | 09.2022
APPROVED FOR REPORTING

//Kamran//*