JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO. 2460 OF 2022

PAKISTAN TELECOM MOBILE LIMITED (UFONE) ETC.,

VS

THE LEARNED FULL BENCH, NIRC, ISLAMABAD ETC.

Petitioners by	**:**	**Mr. Asif Nazir Advocate, in Writ Petitions No.2460-2022 to 2464-2022, and Writ Petitions No.3378-2022 to 3383-2022.** **Mr. Shahid Anwar Khawaja, Advocate in Writ Petitions No.3395-2022 to 3399-2022.**
Respondents by	**:**	**Mr. Muhammad Arif Khawaja, Advocate for Private Respondents in all Petitions.** **Mr. Nauman Ahmed, Manager Legal (PTML)**
Date of hearing	**:**	**15.04.2025**

MUHAMMAD AZAM KHAN, J.

1. Through this consolidated Judgment, I intend to dispose of 16 Writ Petitions i.e. Writ Petition No. 2460 to 2464-2022, 3378 to 3383-2022, and 3395 to 3399-2022 as the same have been filed by Pakistan Telecom Mobile Limited **("PTML")**, Ufone, etc. (**"Petitioners")** against the same Order dated 12.04.2022 **("Impugned Order")** passed by the learned Full Bench of National Industrial Relations Commission, Islamabad (NIRC), whereby Appeals No. 12A(32)2021 to 12A(52)2021 filed by the petitioners/appellants against the consolidated Order dated 21.12.2020 passed by the learned Single Bench, NIRC, Islamabad Bench, were dismissed.

2. Briefly, the facts of the case are that all Private Respondents were appointed on a contract basis by different contractors for various posts in the years 2005, 2006, 2007, and 2008 to render services for the Petitioners' establishment, and by virtue of their duties, they fell within the definition of "workers." After completing more than nine months of continuous service, they attained the status of permanent

workmen under the applicable labour laws, but the Petitioners' establishment did not regularize their services despite submission of application. Consequently, the Respondents filed Grievance Petitions under Section 33 of the Industrial Relations Act, 2021 **("IRA")** before the NIRC seeking regularization. Interim relief was granted therein, and the same was confirmed vide Order dated 02.07.2013. During the pendency of the stay orders, the Petitioners terminated the Respondents on 08.11.2018, 31.10.2018, 11.09.2018, 10.09.2018 & 26.09.2018. Being aggrieved, the Respondents issued Grievance Notices on 27.11.2018 and 17.08.2018 to the Petitioners' establishment, but when they received no reply, they filed Grievance Petitions for reinstatement with all back benefits. The Petitioners filed written replies controverting the contentions of the Respondents and raising various objections on points of law and fact, praying for dismissal. HRSG Outsourcing (Pvt) Ltd, the service provider, also filed written replies and sought dismissal. After recording evidence and hearing arguments, the learned Single Bench, NIRC accepted the grievance petitions vide consolidated order dated 21.12.2020. Feeling aggrieved, the Petitioners filed Appeals before the learned Full Bench of NIRC, Islamabad. However, the learned Full Bench, NIRC also dismissed all Appeals vide the Impugned Order dated 12.04.2022 and upheld the order of the learned Single Bench, NIRC. Feeling aggrieved by the Impugned Order, the Petitioners have filed the instant Writ Petitions.

3. The learned counsel representing the Petitioners in Writ Petitions No.2460-2022 to 2464-2022, and 3378-2022 to 3383-2022 argued that the Impugned Order is against the facts and law, and has been passed in ignorance, misconception, and mis-appreciation of not only the facts but also the law; that the Impugned Order rests on assumptions, and lacks reasoning regarding the specific issues involved and the factual and legal objections raised by the Petitioners; that the learned Full Bench, NIRC has not responded adequately to the factual and legal submissions or the evidence brought on record; that no definite finding on any of the legal submissions has been recorded in the Impugned Order, hence the order is liable to be set aside; that the Impugned Order suffers from inherent legal defects, and is not sustainable in the eyes of law; that the learned Single Bench, NIRC had rightly held that no grievance notice under Section 33 (1) and (2) was served, and therefore the petition under Section 33(4) of the IRA, 2012 was not maintainable, as

subsections 1 and 2 clearly require service of grievance notice on the "Employer"—the term "Employer" having been defined in Section 2(ix) of the IRA, 2012; that the learned Single Bench, NIRC rightly held that the "Employer" of the respondent was the "Service Manager (HR)" and not the CEO; that the reasoning of the learned Full Bench, NIRC is not sustainable and negates the very intent of Section 33(1) and (2); that the legislative intent cannot be defeated by assumptions, and it is trite law that where a statute requires an act to be done in a particular manner, it must be done in that manner only; that the provisions of IRA, 2012 being a special statute must be strictly construed. Therefore, the Impugned Order constitutes a material irregularity and illegality warranting issuance of a writ of certiorari; that the learned Full Bench, NIRC failed to address a basic jurisdictional objection—whether the Respondents fell within the definition of "Workman" under Section 2(i) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ["the Ordinance"]; that the Petitioners had raised this objection in both their written replies and affidavits; that Respondents were employed as "Executive Business Centre" staff in Customer Service Operations and did not fall within the category of skilled, unskilled, manual, or clerical workers; that such roles involve multifaceted responsibilities and cannot be reduced to a “workman” classification based on isolated tasks; that extensive case law supports that sales representatives and similar roles are not “workmen”; that the Respondents' job descriptions do not meet judicial tests for the classification of a workman; that lack of hiring/firing authority does not in itself classify one as a "workman"—the nature of duties is determinative; and that ignoring this pivotal jurisdictional defect renders the Impugned Order bad in law; that the finding of the learned Full Bench, NIRC regarding rescindment of services also reflects misreading of Standing Orders 12(3) and 13 of the Ordinance; that no evidence was led by the Respondents to show that the termination was mala fide, victimization, or otherwise illegal; that Standing Order 13 does not impose a mandatory “last-in, first-out” rule; and that the employer retains full discretion to reorganize or restructure its operations; that the Impugned Order reflects legal perversity and ignores that discretionary authority must be exercised lawfully; and that without prejudice to earlier arguments, the learned Full Bench, NIRC erred in law in awarding back benefits without any proof of the Respondents being

unemployed hence, both the Impugned Orders dated 12.04.2022 and 21.12.2020 are illegal, ultra vires, and void, and must be set aside.

4. The learned counsel for the Petitioners in Writ Petitions No.3395-2022 to 3399-2022 argued that the NIRC has no judicial authority equivalent to a civil or criminal court; that it lacks jurisdiction over matters under Standing Order 12(3); that reinstatement was claimed under this provision while the Ordinance allows contractor-based employment; that the reliance on the case of *Fauji Fertilizer* reported as **(2013 SCMR 1253)** was misplaced as the judgment was fact-specific; training certificates and computer records do not establish employment; that no approved leave applications were produced; Ex.P31 was a Christmas greeting with no link to the Respondents' religion or entitlement; and that the Respondents' names were absent in Ex.P32; that the learned Full Bench, NIRC wrongly held that Standing Order 15(4) was violated without considering that the reason for termination was restructuring, not misconduct; that this restructuring aspect was neither analyzed nor addressed; and that reliance on the case of *Bakht Siddique* reported as **(2018 SCMR 1181)**, a leave-refusal case, was legally untenable.

5. On the other hand, the learned counsel for the Private Respondents opposed the Petitioners' arguments, contending that no illegality had been identified in the Impugned Order; and that both the learned Single Bench, NIRC and the learned Full Bench, NIRC decisions were based on proper appreciation of facts and evidence. The learned counsel prayed for dismissal of the petitions.

6. I have heard the learned counsel for the parties and examined the record with their valuable assistance.

7. The learned counsel for the Petitioners submitted his arguments primarily on the ground that the Private Respondents were not "Workmen" within the meaning of the law, and therefore could not invoke the jurisdiction of the NIRC. This contention was also raised by PTML in its written reply to the grievance petitions. It was further contended that the Private Respondents failed to discharge the burden of proving that they were workmen in the establishment of PTML.

8. The Private Respondents, in their grievance petitions, categorically pleaded that they were permanent workers/workmen; their duties were manual and clerical

in nature; no person was subordinate to them; and they lacked the authority to sanction leave. They also pleaded that they did not exercise supervisory, executive, or managerial functions, including the power to hire or fire.

9. Standing Order 1(A) in the Schedule to the 1968 Ordinance classifies "workmen" into six categories: (i) permanent, (ii) probationary, (iii) badlis, (iv) temporary, (v) apprentices, and (vi) contract workers. A "Permanent Workman" is defined in Standing Order 1(B) as one engaged on work of a permanent nature likely to last more than nine months and who has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment. This includes breaks due to sickness, accident, leave, lockout, strike (except for illegal ones), or involuntary closure, and also includes a badli who has been employed continuously for three months or for 183 days in any 12 consecutive months.

10. In their Grievance Petitions before the NIRC, the Private Respondents sought a declaration that they were permanent workmen in PTML and also prayed for regularization of their services. The burden, therefore, shifted to PTML to prove otherwise that the Respondents were not engaged in work of a permanent nature. It is an admitted fact that the Private Respondents worked for PTML for more than nine continuous months. Hence, they attained the status of ‘permanent workmen’ as defined under labour laws, but the Petitioners failed to regularize their services. The determining factor in such cases is the nature of the work: if the work is of a permanent nature, likely to continue beyond nine months, then the employee is deemed a permanent workman under Clause (b), Paragraph 1 of the Schedule to the Standing Orders Ordinance. Conversely, if the work is temporary or unlikely to continue beyond nine months, the employee does not fall within this definition.

11. The second contention raised on behalf of PTML was that the Private Respondents were not its employees but those of the service provider. However, the appointment letters of the Private Respondents clearly state that they were appointed to perform duties assigned to the service provider by PTML. Although these letters do not indicate privity of contract between PTML and the Respondents. The superior Courts have held that workers employed in this manner

may still be considered employees of the establishment in whose premises and for whose benefit they perform their duties. In this regard, reliance is placed on the judgment of the august Supreme Court of Pakistan passed in *Fauji Fertilizer Company Limited v. National Industrial Relations Commission*, **(2013 SCMR 1253)**, wherein it was held that:-

> *"(a) the word 'employed by the factory' is wide enough to include workmen employed by the contractors of the company;*
>
> *(b) the employees of the contractor shall be the employees of the company if the contractor engaged the workers for running of the affairs of the company and not for some other independent work which has no concern with the production of the company;*
>
> *(c) if the employees are working in a department of the company which constituted one of the principal organs of the company, the machines belong to the company, the raw material is supplied by the company and the said department is controlled by the supervisors of the company, the employees of the contractor shall be the employees of the company;*
>
> *(d) the employees, engaged directly or through a contractor, would be deemed to be the employees of the company for whose benefit they perform functions;*
>
> *(e) even though 'control' test is an important test, it is not the sole test; a multiple pragmatic approach weighing up all the factors for and against the employment has to be adopted, including an "integration" test; and*
>
> *(f) if the contract is found to be not genuine and a device to deprive the employees from their legitimate rights/benefits, the so called contract employees will have to be treated as employee of the company."*

12. Similarly, in *IFFCO Pakistan (Pvt.) Ltd. v. Ghulam Murtaza and Others*, **(2024 PLC 226)**, the august Supreme Court observed as under:

> *"7. The tug of war is unending from time immemorial between an employer/company and employee with regards to whether an employee is an employee of such company or employee of an outsourced contractor. Time and again, the matter has reached this Court with heated arguments for and against the proposition that such agreement with a contractor to provide labour is a sham arrangement and fabricated with the sole aim of circumventing and thwarting the labour laws, and that by and large it boosts up the employer in an advantageous position with an undue advantage over the legitimate employees. On the contrary, the employer argues in favour of the arrangement and insists that the labour or manpower provided by the contractor are not its employees and also produce agreements with the contractors. In fact, a sham agreement is meant to achieve some advantage artificially with the sole aim of circumventing legal obligations with ulterior motives. In the present scenario, the respondent workers claimed it to be an unlawful*

strategy where IFFCO pretended that the relationship is only through an independent contractor, but for all practical purposes, they are in control and conduct supervision through its own management, and so-called agreements were used as a tool of avoiding enforcement and implementation of labour laws. Under the garb of such arrangements the employees are being treated as employees of independent contractors. In our view, the foremost distinction, rather the yardstick to decide the controversy rampant between a direct employee of E company and an employee through an independent contractor rests or the extent of control and supervision on human resource, ongoing control of independent contractor, if any, financial risks and obligations, as well as the provision of plant, machinery, and premises, and finally supply of raw material and allied set-up.

11. Without a doubt, the employer has the right to administer, operate and carry out its business activity in the best suited manner, strategy and discernment and may make use of the most efficacious and proficient resources in its business planning. There is no bar to contract out the whole job or in the bits and pieces to the outsource contractor, including human resource within its own premises or through toll manufacturing agreements but what is crucial is that the outsourcing should not be used as a weapon of circumvention of labour laws by means of sham agreements. In the case in hand, it was established that the respondent employees were under the direct supervision and control of IFFCO and were working within their premises and involved directly or indirectly in the manufacturing process and were also performing their duties for the past many years. The agreements produced in evidence had also expired and reliance on such expired agreements could not be placed. Despite expiry of alleged contracts, the respondent employees were not disengaged but continued to perform their duties. The alleged outsourcing arrangement cannot be allowed to be used as a device to deprive the workers of their legitimate rights envisaged under the labour laws. Throughout the proceedings, the alleged contractors never came forward to rescue IFFCO and to show that they are the actual employers of the respondent workers which is also quite a strange state of affairs. There is a huge distinction between bona fide and mala fide outsourcing. The weapon of outsourcing should not be used to exploit the labourers and labour laws."

13. A similar view was taken by the apex Court in *Pakistan State Oil Company Limited v. Bakht Siddique*, **(2018 SCMR 1181)**, holding that:-

"As regards the question that the respondents were not the employees of the petitioner but the contractor, suffice it to say that it is a normal practice on behalf of such industries to create a pretence and on that pretence to outsource the employment of the posts which are permanent in nature and it is on the record that the respondents have been in service starting from as far back as 1984. This all seems to be a sham or pretence and therefore,

it being not a case of any disputed fact and no evidence was required to be recorded."

14. In the present case, the Private Respondents produced documentary evidence before the NIRC, which was duly exhibited, showing their engagement with PTML. These include: a document dated 29.08.2006 congratulating a Respondent for selection as a Customer Facilitating Agent at Ufone; another dated 07.09.2006 regarding completion of an internship in the Customer Care (Call Center) Department at Ufone (MSC) Islamabad; a Merry Christmas greeting on Ufone letterhead issued by the Human Resource Department, signed by Waheed Anwar (a witness for the Petitioners); and an employment letter dated 14.07.2015 issued to S. Raza Haider Naqvi, showing employment at PTML-Ufone as a Customer Facilitation Agent in the Customer Operations Department.

15. Notably, the service provider, who was impleaded as a respondent in the Grievance Petitions, did not file an appeal against the Order dated 21.12.2020 passed by the learned Member, NIRC. The service provider was also impleaded in the present Petitions but, despite service of notice, failed to appear or assert that the Respondents were its employees. Waheed Anwar, witness for PTML, admitted in cross-examination that the Respondents worked at PTML's building in Commercial Market, Rawalpindi, and were engaged in duties for Ufone. This admission supports the conclusion that the Respondents were in fact employees of PTML. There is no evidence on record to show that, while working in PTML premises, the Respondents were under the direction or control of the service provider. The practice of engaging workers through third-party service providers solely to avoid compliance with the labour laws is a tactic that must be deprecated in the strongest terms.

16. Both the learned Member and the learned Full Bench, NIRC reached concurrent findings that the Private Respondents were employees of PTML. In the presence of such concurrent findings, the scope of interference by the High Court in its Constitutional Jurisdiction is limited. The Writ Jurisdiction of the High Court does not extend to reappraisal of evidence or to act as a Court of appeal in factual matters. Interference is only warranted where there is a misreading of the record or omission of material evidence that directly impacts the decision. In the present case, no such conditions have been met to justify interference.

17. In its written reply, the service provider stated that PTML was restructuring its business model, which led to the termination of the Private Respondents' services. However, where restructuring is cited as the reason for retrenchment, compliance with Standing Orders 12(3) and 13 of the 1968 Ordinance is mandatory. Standing Order 13 stipulates that in cases of retrenchment, the "last-in, first-out" principle must be observed within the relevant category of workers. There is nothing on record to demonstrate that the Petitioners complied with these mandatory requirements.

18. In light of the foregoing discussion, the aforementioned Writ Petitions are hereby **dismissed with costs**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of April 2025.

JUDGE

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