JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 3767 OF 2022.

M/S KUWAIT AIRWAYS COMPANY.
Versus
FULL BENCH NIRC, ETC.

Petitioner by	**:**	**Barrister M. Hassan Alam, Advocate.**
Respondent by	**:**	**Respondent No.3 Ex-parte.**
Date of Hearing	**:**	**22.03.2023.**

SAMAN RAFAT IMTIAZ, J.:-

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner [M/s Kuwait Airways Company] has assailed the Order dated 31.08.2022 ("**Impugned Order**") passed by the Respondent No.2 [Member, NIRC], whereby the Respondent No.3 [Naila Asad] has been reinstated in service with all back benefits.

2. The brief facts as per the Memo of Petition are that the Respondent No.3 joined the Petitioner in the year 2012 as Security Assistant. In the year 2013 her services were terminated, however, subsequently she was reinstated through the orders of the National Industrial Relations Commission **("NIRC")** and she rejoined the office of the Petitioner in the year 2021. Subsequently, the Petitioner again terminated the services of the Respondent No.3 vide Termination Letter No. Ref: KUSSPAK/025/22 dated 11.03.2022 **("Termination Letter")** by invoking the termination procedure envisaged under clause 10 of the Employment Contract along with Standing Order 12 of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 **("Standing Orders")**. The Petitioner terminated the services of the Respondent No.3 without any allegation of misconduct. The Respondent No.3 received Rs. 38,267/- vide Cheque No. 00018248 dated 25.03.2022 as full and final settlement of her dues. The said settlement amount included one months' salary in lieu of notice amounting to Rs. 28,000/- and salary for 11 days from 01.03.2022 to 11.03.2022 amounting to Rs. 10,267/-. Upon receiving the Termination Letter the Respondent No.3 filed a

Grievance Petition under Section 33 of the Industrial Relations Act, 2012 **("Act, 2012")** before the Respondent No.2. The Petitioner filed Written Reply on 21.06.2022 wherein certain preliminary objections were raised regarding the maintainability of the Grievance Petition and the case was fixed for arguments on such preliminary objections vide Order dated 21.06.2022. The arguments on the preliminary objections were concluded on 31.08.2022, whereas, the Respondent No.2 instead of passing an order on the preliminary objections or framing issues directly passed the Impugned Order. Being aggrieved, the Petitioner filed Appeal No. 12A(159)/2022 before the Respondent No.1 [Full Bench, NIRC], however, due to non-availability of the Respondent No.1 such Appeal has not yet been fixed for hearing, hence the present Petition.

3. The learned counsel for the Petitioner stressed upon the fact that the termination of the Respondent No.3's employment by way of Termination Letter was a termination *simpliciter* which is envisaged in terms of sub-section (1) of the Standing Order 12. He further submitted that the Respondent No.3 was paid one month's wages in lieu of notice and as such all applicable provisions were duly complied with by the Petitioner and that therefore, the Impugned Order is illegal and against the principles of settled law. The learned counsel argued that even otherwise the Respondent No.2 erred in passing the Impugned Order without recording evidence. He elaborated that the Respondent No.2 should have recorded evidence to determine whether or not the termination of Respondent No.3's employment was termination *simpliciter* or otherwise. He contended that since the Respondent No.1 is not functional at the moment there is no alternate adequate remedy available to the Petitioner. The learned counsel in support of his contentions placed reliance on *Nestle Pakistan Limited versus Member, NIRC and others,* 2021 PLC 56 [Lahore High Court], *Head Human Resource Management MCB Bank, Lahore and others versus Muhammad Shahzad and others,* 2012 PLC 114, *Muhammad Iqbal versus Regional Business Head and others,* 2011 PLC 292 and *Administrator Zila Council, Sahiwal versus Arif Hussain and others,* 2011 SCMR 1082.

4. Despite service of notice no one entered appearance on behalf of the Respondent No.3 , therefore, she was proceeded against ex-parte vide Order dated 08.02.2023.

5. I have heard the learned counsel for the Petitioner and have also perused the available record.

6. Perusal of the Termination Letter shows that reason given for termination of Respondent No.3's service is that her services are no longer required. There is also no dispute that one month's salary in lieu of notice was paid to the Respondent No.3. Therefore, the Petitioner relies upon the provisions of the Standing Order 12, reproduced herein below, to justify the termination of the Respondent No. 3's employment as valid under the law.

> ***12. Termination of employment.–*** *(1) For terminating employment of a permanent workman, for any reason other than misconduct, one month's notice shall be given either by the employer or the workman. One month's wages calculated on the basis of average wages earned by the workman during the last three months shall be paid in lieu of notice.*
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> *(2) No temporary workman, whether monthly-rated, weekly-rated, daily-rated or piece-rated, and no probationer or badli, shall be entitled to any notice if his services are terminated by the employer, nor shall any such workman be required to give any notice or pay any wages in lieu thereof to the employer if he leaves employment of his own accord.*
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> *(3) The services of a workman shall not be terminated, nor shall a workman be removed, retrenched, discharged or dismissed from service,* ***except by an order in writing which, shall explicitly state the reason for the action taken.*** *In case a workman is aggrieved by the termination of his services or removal, retrenchment, discharge or dismissal, he may take action in accordance with the provisions of Section 25-A of the Industrial Relations Ordinance, 1969 (XXIII of 1969), and thereupon the provisions of the said section shall apply as they apply to the redress of an individual grievance.*
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> *(4) Where the services of any workman are terminated, the wages earned by him and other dues, including payment for unavailed leave as defined in Clause (1) of Standing Order 8 shall be paid before the expiry of the second working day from the day on which his services are terminated.*
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> *(5) The services of a permanent or temporary workman shall not be terminated on the ground of misconduct otherwise than in the manner prescribed in Standing Order 15.*
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> *(6) Where a workman resigns from service or his services are terminated by the employer, for any reason other than misconduct, he shall, in addition to any other benefit to which he may be entitled under this Ordinance or in accordance with the terms of his employment or any custom, usage or any settlement or an award of a Labour Court under the Ordinance, 1969 (XXIII of 1969), be paid gratuity equivalent to thirty days', wages, calculated on the basis of the wages admissible to him in last month of service if he is fixed-rated workman or the highest pay drawn by him during*

the last twelve months if he is a piece-rated workman, for every completed year of service or any part thereof in excess of six months:

Provided that, where the employer has established a provident fund to which the workman is a contributor and the contribution of the employer to which is not less than the contribution made by the workman, no such gratuity shall be payable for the period during which such provident fund has been in existence.

Provided further that if through collective bargaining the employer offers and contributes to an "Approved Pension Fund" as defined in the Income Tax Ordinance, 2001 (XLIX of 2001), and where the contribution of the employer is not less than fifty per cent of the limit prescribed in the aforesaid Ordinance, and to which the workman is also a contributor for the remaining fifty per cent or less, no gratuity shall be payable for the period during which such contribution has been made.

(7) A workman shall be entitled to receive the amount standing to his credit in the provident fund, including the contributions of the employer to such fund, even if he resigns or is dismissed from service.

(8) Where a workman dies while in service of the employer, his dependent shall be paid gratuity in accordance with the provisions of clause (6):

Provided that no payment of gratuity in such case shall be made otherwise than by a deposit with the Commissioner, who shall proceed with the allocation of the deposit to the dependent of the deceased in accordance with the provisions of section 8 of the Workmen's Compensation Act, 1923 (VIII of 1923).

(9) If the employer fails to deposit the amount of the gratuity under clause (8) the dependent of the deceased may make an application to the Commissioner for the recovery of the amount thereof.

Explanation–"Commissioner" and "dependent" in this Standing Order shall have the same meanings as are respectively assigned to them in the Workmen's Compensation Act, 1923 (VIII of 1923). [Emphasis added]

7. Sub-sections (1) and (5) of Standing Order 12 make it clear and apparent that termination on account of misconduct is to be carried out as prescribed in Standing Order 15 and that termination for any reason other than misconduct requires one month's notice or one month's salary in lieu thereof. According to sub-section (3) of Standing Order 12, an order, in writing, explicitly stating the reasons for the action taken is necessary in all cases of termination, removal, retrenchment, discharge and dismissal.

8. The Honorable Supreme Court Pakistan in the case of *Allied Bank Limited versus Zulfiqar Ali Shah*, 2021 SCMR 1213 has held that where powers under Standing Order 12(3) have been exercised and the order issued thereunder meets and fulfills the criteria prescribed therein, a workman cannot be reinstated into service on the ground that no regular inquiry was held and the charges of

misconduct were not established. The apex Court has explained that holding otherwise would negate the very object and purpose of Standing Order 12(3) which envisages that the employer can terminate the services of a workman *"in simpliciter"* by giving explicit reasons justifying such termination. The Court holds that such reasons are justiciable before a court of competent jurisdiction, however, the scope of inquiry of a Labour Court, Labour Appellate Court or a High Court would be limited to whether or not the reasons given by the employer were explicit, sufficiently clear, and valid and that the lower fora can only set aside such termination if the reasons given are found insufficient, invalid or inappropriate but cannot conclude that the dismissal was for misconduct and set aside the termination *simpliciter* for failure to carry out the process for dismissal on account of misconduct i.e., issuance of show cause notice and holding a regular inquiry.

9. In the instant case, the Respondent No. 2 has held that the reason given by the Petitioner for termination of services of Respondent No. 3 i.e. that her services are no longer required is not an explicit reason for termination of a permanent workman. The learned counsel for the Petitioner has failed to satisfy this Court as to how such reason is clear, explicit, and valid. No reason has been identified as to why the services are suddenly not required by the Petitioner especially considering that the Respondent No. 3 was employed as a Security Guard. Since the reason given for termination of services is itself lacking necessary explanation, it cannot be considered valid, sufficient or explicit. I am fortified in this view by the judgment of this Court in the case of Pakistan Mobile Communication Limited Vs. Full Bench N.I.R.C. and others, 2019 PLC (Labour) 86 wherein it has been held that simply informing an employee that his services are no longer required is not a good enough reason for termination of permanent employees and does not satisfy the requirement of Standing Order 12(3).

10. None of the case law relied upon by the learned counsel for the Petitioner addresses the issue of sufficiency of reason stated for termination *simpliciter* and as such all such case law is irrelevant. There is also no force in the argument of the

learned counsel for the Petitioner that the learned Respondent No. 2 ought to have recorded evidence in order to determine whether the termination was termination *simpliciter* or otherwise. The Petitioner's own stance is that it was a termination *simpliciter* which has been accepted by the learned Respondent No. 2 therefore recording of evidence will not change the outcome. The perusal of the Impugned Judgment shows that the arguments submitted were not in respect of preliminary objections but in fact addressed the merits of the case.

11. For all the foregoing reasons, no interference is warranted in the Impugned Order and as such the present petition is **dismissed**.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in open Court on this 23rd day of May, 2023.

JUDGE

ADNAN

Approved for Reporting
Blue Slip added.