Form No: HCJD/C-121

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No. 4144/2026

Democratic Workers Union, SBP-BSC through its Additional Secretary General

VERSUS

Full Bench, National Industrial Relations Commission and 3 others

PETITIONER BY:	Hafiz Bakhtiar Ahmed, Advocate
RESPONDENTS BY:	Mr. Fahad Khan Tareen, Assistant Attorney General. Mr. Shahid Anwar Bajwa, Adv. for Resp. No.3. Mr. Affan Ehsan, Advocate for respondent No.4. Mr. Mehmood Nazir Rana, Advocate/Law Officer, State Bank of Pakistan Ms. Saleha Bashir, Joint Registrar, NIRC.
DATE OF HEARING:	08.09.2026

AYYAZ SHAUKAT, J:- The petitioner is the certified Collective Bargaining Agent in the establishment of the State Bank of Pakistan, Banking Services Corporation, and challenges two orders, both dated 05.08.2026, passed by the learned Authorized Officer of the National Industrial Relations Commission (respondent No.2) in Case No.2(14)/2026. By the first order, the Authorized Officer rejected the petitioner's objections to the management's list of workmen and declined to include in the voters' list four hundred and one persons engaged through contractors. By the second order, as recorded in the minutes of the meeting held on the same day, the voters' list was finalized at six hundred and thirty-five workmen, symbols were allotted to the two contesting trade unions, and 11.09.2026 was fixed as the date of the poll. The petitioner seeks the setting aside of both orders; a direction to respondent No.3 to produce the complete record of all persons working in its establishment through third-party contractors; a direction to the learned Authorized Officer to verify that record and to include such persons in the voters' list; and an interim direction restraining the polling.

2. Learned counsel for the petitioner submitted that the petitioner is a registered industry-wise trade union of the workmen of respondent No.3 and was certified as the Collective Bargaining Agent vide certificate dated 22.04.2024. He submitted that, upon an application under section 19(2) of the Industrial Relations Act, 2012 (the **"Act"**), a Bench of the Commission, by order dated 18.06.2026, authorized an officer under section 19(12)

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of the Act to hold the referendum afresh, and that the Authorized Officer then convened a joint meeting of the two contesting unions and the management.

3. It was further submitted that the management furnished a list of workmen, which was ultimately finalised at six hundred and thirty-five; that respondent No.4 furnished its membership list and raised no objection to the management's list; and that the petitioner furnished two lists. The first comprised four hundred and sixty-eight persons borne upon the rolls of respondent No.3, whose inclusion was not disputed. The second comprised four hundred and one persons described in the list as members of the petitioner union who had been appointed through contractors as daily wagers. Learned counsel submitted that the management's list did not include the persons named in the second list, whereupon the petitioner filed written objections on 29.07.2026. He further submitted that, on 05.08.2026, the petitioner moved a further application upon the management circulating a voters' list while the objections remained pending.

4. On the merits, learned counsel submitted that the terms "worker" and "workman", as defined in section 2(xxxiii) of the Act, are not confined to persons employed directly by the principal employer but extend to persons employed for hire or reward "either directly or through a contractor". According to learned counsel, the mode of engagement is therefore immaterial, and the only requirement for entitlement to vote is that the workman must have been employed in the establishment for not less than three months. Reliance was placed upon Messrs Sui Southern Gas Company Limited v. Registrar of Trade Unions and others (2020 SCMR 638), wherein it was held that the engagement of a worker through a contractor is wholly irrelevant to his enlistment as a voter. Learned counsel emphasized that the petitioner does not claim these persons to be permanent employees of respondent No.3, and that recognition as a workman for the limited purpose of the referendum stands on a footing different from a claim to regularisation.

5. It was next submitted that the Authorized Officer failed to perform the exercise required of him under sub-sections (3), (4) and (5) of section 19 of the Act, in that he adopted the management's list instead of preparing a voters' list of his own after verification; that the membership of a registered trade union cannot be determined upon a list produced by the management; and that the membership register and the subscription record of the union ought to have been examined before any conclusion upon membership was reached.

6. On maintainability, learned counsel submitted that the petitioner has filed Appeal No.12R(16)/2026 before the Full Bench of the Commission; that the Full Bench is not functional; that its constitution is not imminent; and that the petitioner has accordingly been

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left without an efficacious or expeditious remedy, the poll having been fixed for a date little more than a month away.

7. Learned counsel for respondents No.2 and No.3 raised a preliminary objection to the maintainability of the petition. He submitted that a trade union is a body corporate distinct from its members; that a Collective Bargaining Agent may enforce only the rights conferred upon it as such and not the rights of individual workmen; that not one of the four hundred and one persons has ever claimed to be an employee of respondent No.3, whether before the learned Authorized Officer or before this Court; and that the relief sought is, in substance, an adjudication upon the employment status of persons who are strangers to the record. Reliance was placed upon *Karachi Pipe Mills Employees Union v. Karachi Pipe Mills Ltd., Karachi* (1992 SCMR 36), *National Bank of Pakistan v. Anwar Shah (2015 SCMR 434*) and *M. Ashraf Bullo v. Pakistan International Airlines Corporation (2011 PLC 142)*. He added that the petition raises disputed questions of fact which cannot be resolved in the exercise of constitutional jurisdiction.

8. On the merits, he submitted that the persons named in the second list are neither employees of respondent No.3 nor persons employed by it through a contractor, but employees of independent contractors, who engage, pay, supervise, control and may dismiss them; that the words "either directly or through a contractor" in section 2(xxxiii) were intended to bring within the definition the person whom the employer engages through an agency of labour supply, with whom the employer retains a privity, and not the person whom an independent contractor employs upon his own account for the performance of the contractor's own work. Reliance was placed upon *Taj Din v. Punjab Labour Court (PLD 1976 Lahore 1169), Mian Munir Ahmad v. The State* (1985 SCMR 257), *Farid Ahmad v. Pakistan Burmah-Shell Ltd. (1987 SCMR 1463)* and *Fauji Fertilizer Company Ltd. v. National Industrial Relations Commission (2013 SCMR 1253)*.

9. He submitted further that none of these persons has any subscription deducted under the check-off arrangement provided by section 22 of the Act; that no demand statement has ever been furnished in respect of any of them; that no proof of membership was brought upon the record; and that in its own internal election held in September 2025 under the supervision of the Commission the petitioner produced a membership list of four hundred and ninety-eight persons, every one of whom was upon the rolls of respondent No.3. Finally, he relied upon the order of the Hon'ble Federal Constitutional Court dated 26.11.2025 passed in C.P.L.A. Nos.3615 to 3619 of 2024.

10. Learned counsel for the parties have been heard at length, and the impugned orders, the proceedings before the Authorized Officer, the lists and objections filed before him, the

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constitution of the petitioner union and the authorities cited on either side have been examined.

11. Two of the objections raised in answer to the petition do not touch the merits. The first denies the competence of the petitioner to institute a petition of this description. The second denies the propriety of this Court entertaining it while the statutory appeal of the petitioner remains pending before the forum of its own choosing. These objections must be addressed before the scope of interference with the impugned orders is considered.

12. I take up the question of locus standi first. In Karachi Pipe Mills Employees Union (supra) the august Supreme Court held that a Collective Bargaining Agent may raise a grievance for the enforcement of its own rights guaranteed by law, award or settlement, and not the rights of an individual worker who has a remedy of his own. That rule was reiterated in the judgment reported as *National Bank of Pakistan and another v. Anwar Shah (2015 SCMR 434)*, where a union which had taken up the cause of officers seeking to be declared workmen was held incompetent to do so. The august Supreme Court observed: "... 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 ..."

13. To the same effect is M. Ashraf Bullo (supra), where a learned Division Bench of the High Court of Sindh, after noticing the dichotomy between a trade union and its members, reiterated that a Collective Bargaining Agent is not entitled to maintain a constitutional petition in respect of any grievance of its members, and held that, similarly, a member or office-bearer of a trade union cannot maintain one for a grievance of the union. Significantly, the former proposition was drawn from *Democratic Workers Union CBA v. State Bank of Pakistan (2002 PLC (C.S.) 614)*, in which a learned Division Bench of the High Court of Sindh held that a union bearing the same name, then the Collective Bargaining Agent in the establishment of the State Bank of Pakistan, could not invoke Article 199 to espouse the cause of its members.

14. The present petition must, however, be distinguished from a claim for individual service benefits. The petitioner contests the preparation of the electorate in a referendum in which it is a participating union and seeks verification of the disputed names. That challenge concerns its own interest in the lawful conduct of the referendum. The fact that the employment status of some proposed voters is disputed does not, by itself, deprive the union of standing to question the verification exercise. Whether the material warrants

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inclusion of those persons is a separate question. The objection as to locus standi is, therefore, repelled insofar as it is directed against this challenge to the voters' list.

15. The second limb of the objection concerns the remedy provided by the Act. An appeal against an order, decision or proceeding of the Registrar lies to the Commission under section 12 of the Act within thirty days, and the Authorized Officer, acting under sub-section (12) of section 19, performs the functions of the Registrar. The petitioner has not merely had that remedy available; it has invoked it. Appeal No.12R(16)/2026 was filed and, upon the petitioner's own showing, remains pending. The pendency of that appeal is relevant to the exercise of constitutional jurisdiction, but its mere institution does not establish that the remedy is adequate and available in practice. It is well settled that the High Court should discourage the bypassing of a remedy provided by a special statute, but the Hon'ble Supreme Court has made that restraint conditional upon the statutory forum being functional (see *Indus Trading and Contracting Company v. Collector of Customs (2016 SCMR 842)*).

16. The petitioner asserts that the Full Bench is not functional. The adequacy of the statutory remedy must be assessed in the circumstances in which relief was sought, including the scheduled referendum and the availability of interim relief. Section 55(2) empowers the Chairman to constitute the prescribed Benches, while section 55(5) protects proceedings against the specified defects; the latter provision does not, by itself, establish that an appellate Bench was available to hear this appeal. Mere filing of an appeal cannot answer an allegation that the appellate forum is unavailable. Equally, a bare assertion of non-functionality does not establish that allegation. The relevant position must be ascertained from the Commission's record before the petition can be declined solely on the ground of an adequate alternative remedy. The decision of this Court in *Pearl Continental Hotels National Labour Union v. National Industrial Relations Commission (2023 PLC 206)* is illustrative. There, a petition against an order of an Authorized Officer in referendum proceedings was held not maintainable because an appeal lay to the Full Bench under section 58 of the Act and the Full Bench was, at the relevant time, available and functional.

17. To this must be added section 59 of the Act, which provides that no court shall entertain any plea as to the jurisdiction of the Commission or as to the legality or propriety of anything done or purporting to be done by it, and that no order or decision of the Commission shall be called in question in any manner whatsoever. A provision of that kind cannot oust the constitutional jurisdiction of this Court where an order is without jurisdiction, coram non judice, or mala fide (see *Federation of Pakistan v. Malik Ghulam Mustafa Khar (PLD 1989 SC 26)).* Such statutory finality does not exclude review for

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failure to perform a mandatory duty, denial of a fair hearing or a material error of law. In the present case, the learned Authorized Officer was seized of the matter pursuant to an order of a Bench of the Commission. He heard the contesting unions and the management and recorded reasons for his decision. Whatever may be said about the correctness of his conclusion, the order was made in exercise of the jurisdiction conferred upon him by the statute. In these circumstances, this Court exercises supervisory, rather than appellate, jurisdiction and will not substitute its own view for that of a statutory functionary acting within jurisdiction unless a ground for constitutional interference is established. It is settled that, in the exercise of writ jurisdiction, the High Court does not act as a court of facts and does not decide disputed questions of fact which the statutory authority has not determined *(Nawaza v. Additional Settlement and Rehabilitation Commissioner (PLD 1970 SC 39)).* In particular, the Court must examine the complaint that the verification required by section 19 was not undertaken.

18. Since, however, the controversy concerns the right of a body of workmen to participate in the referendum, and the merits were argued at length, I consider it appropriate to examine whether the impugned orders disclose a ground for constitutional interference, without treating this petition as a substitute for the pending statutory appeal.

19. It is necessary, first, to notice what the Act requires. Sub-section (3) of section 19 obliges every contesting trade union, upon notice, to submit a list of its members showing, in respect of each member, his parentage, age, the section or department and the place in which he is employed, his ticket number and the date of his becoming a member. Sub-section (4) obliges the employer to submit a list of all workmen employed in the establishment, excluding those whose period of employment is less than three months, and to provide such facilities for verification of the lists submitted by him and by the trade unions as may be required. Sub-section (5) then provides as follows: "(5) The Registrar shall, after verification of the lists submitted by the trade unions, prepare a list of voters in which shall be included the name of every workman whose period of employment as computed in accordance with sub-section (4), is not less than three months and who is a member of any of the contesting trade unions ..." Verification is thus a statutory precondition to the preparation of the voters' list. Construing these provisions, this Court has held that the Registrar cannot treat the employer's list of workmen as the voters' list without verifying it against the lists of members submitted by the contesting trade unions, the employer's list being the means of confirming the credentials of those members *(Pakistan Steel Mills Corporation Ltd. v. National Industrial Relations Commission (2025 IHC 262)*).

20. Sub-section (6) carries the same two requirements into the act of voting, for it confers the right to vote upon every workman "who is a member of any of the contesting

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trade unions" and whose name appears upon the list so prepared. The electorate is therefore defined by two conditions which stand together. The first is employment in the establishment as a workman for not less than three months. The second is membership of a contesting trade union. A workman who is not a member of a contesting trade union does not figure in the voters' list (Pakistan Steel Mills Corporation Ltd. (supra)). Even under the predecessor Ordinance, the Hon'ble Supreme Court had held that the list prepared by the Registrar is a list of voters and not a list of total workmen (K.E.S.C. Progressive Workers' Union v. K.E.S.C. Labour Union (1991 SCMR 888)). The disputed membership required verification independently of the mode of engagement. That inquiry must nevertheless be conducted fairly and cannot be replaced by an assumption that persons paid through contractors are incapable of union membership.

21. The petitioner asserted that these four hundred and one persons were its members and was required to substantiate that assertion. It is the union, and neither the employer nor the Authorized Officer, that maintains the roll of its own membership. Section 15 of the Act requires every registered trade union to maintain a register of members showing the particulars of the subscriptions paid by each, and clause (f) of sub-section (1) of section 8 requires its constitution to provide for the maintenance of such a list and for adequate facilities for its inspection; the manner of maintaining the register is further prescribed by Regulation 11 of the National Industrial Relations Commission (Procedure and Functions) Regulations, 2016 (Pakistan Steel Mills Corporation Ltd. (supra)). The material necessary to establish the asserted membership was, therefore, within the petitioner's own custody and control. That obligation does not dispense with the Authorized Officer's duty to verify the lists or the employer's duty to facilitate verification under section 19(4).

22. The said material was never produced. The list which was produced does not answer the description which clause (b) of sub-section (3) of section 19 prescribes. It shows no ticket number, no section or department, and no date of becoming a member for any of the four hundred and one persons named in it. It bears upon its face the legend that these are members of the petitioner union appointed through contractors as daily wagers. Omitting the particulars prescribed by section 19(3), the list did not, by itself, establish the asserted membership. The material question is whether the petitioner was afforded an opportunity to supply the missing particulars and its membership record, and whether the Authorized Officer addressed the request for verification before rejecting the objections.

23. The constitution of the petitioner union, which is on the record, further clarifies the position. It provides that any worker employed anywhere in the State Bank of Pakistan, SBP, BSC may become a member upon an application in the prescribed form together with an admission fee of Rs.50; that upon receipt of the application the Secretary General shall enter his name in the membership register and shall issue him a certificate as proof of his

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membership; and that an admitted member shall pay a monthly subscription of Rs.200. The constitution further provides that the membership register shall be open to inspection by the members and by the Registrar of Trade Unions. Yet not a single application, membership certificate, register entry or subscription receipt was produced in respect of any of the four hundred and one persons. A trade union is bound by the constitution under which it is registered. In the absence of any material showing that these persons were admitted as members in accordance with that constitution, the list alone cannot establish their membership. Whether the absence of supporting material justifies rejection depends also upon the opportunity afforded for its production and the verification undertaken.

24. A further circumstance bears upon the petitioner's claim of membership. In its internal election held in September 2025 under the supervision of the Commission, the petitioner submitted a membership list comprising four hundred and ninety-eight persons, all of whom were borne upon the rolls of respondent No.3. In the present proceedings, however, it claims that its membership comprises eight hundred and sixty-nine persons, including the four hundred and one persons in question. If those four hundred and one persons had subsequently become members, the petitioner was required by section 19(3) to furnish the date on which each of them became a member. No such particulars were furnished. The petitioner has thus furnished no explanation, supported by the particulars required by law, for the increase in its claimed membership from four hundred and ninety-eight to eight hundred and sixty-nine. The earlier list is a relevant circumstance but is not conclusive, since membership may change; the current claim must be tested against the relevant membership records.

25. Section 22 of the Act provides for deduction of union subscriptions through the check-off arrangement. Such deduction is not itself a statutory condition of union membership. Where the persons concerned are paid by contractors, the absence of deductions from the payroll of respondent No.3 does not, without more, establish that they are not members of the petitioner union. The membership register, admission record and evidence of subscriptions paid by any permissible mode are the relevant material. The conclusion on membership must rest upon that material and the statutory verification exercise, rather than upon an adverse presumption arising from the absence of check-off.

26. The conclusion reached by the Authorized Officer was based on the material before him and constitutes a finding of fact. The parties were heard, and the petitioner had full opportunity to place before him any material in support of its claim. No such material was produced beyond what has already been noticed. The finding is neither perverse nor unsupported by the record. This Court does not ordinarily reappraise factual material as an appellate forum, and disputed questions of fact as to the employment status of persons sought to be enrolled as voters are, as a rule, not amenable to determination in writ

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jurisdiction (see Sohaib Shaukat v. Labour Department (2010 PLC 265)). That restraint applies with full force here, since the Authorized Officer undertook the verification contemplated by section 19(5), addressed the petitioner's objections and afforded it a fair opportunity to support its claim.

27. I turn to the question upon which the petitioner laid its principal emphasis, namely the status of persons engaged through contractors. Section 2(xxxiii) of the Act defines a worker and a workman as a person employed in an establishment or industry for hire or reward "either directly or through a contractor". Engagement through a contractor does not by itself exclude a person from that definition. The nature of the engagement and the statutory conditions of eligibility must be examined on the record. The distinction was drawn by the Lahore High Court in Taj Din (supra) in the following terms: "The words 'either directly or through a contractor' in section 2(xxviii) of the Act indicate that the employment is by the Management directly or through some kind of employment agency and in either case there is a contract of employment between the Management and the persons employed. There should be a privity of contract between them and the Management. Where for example coolies are not employed by the Management directly nor they are employed by the Management through the agency of an independent contractor it follows that coolies employed by the said contractor are not workers within the meaning of the definition in the Act."

28. The august Supreme Court has observed the same principle on various occasions. In Mian Munir Ahmad (supra), where the labour of a loading and unloading contractor had not been issued attendance tickets by a factory, it was held that an employer is required to issue such tickets only to the persons employed by him as workers, and that the labour which a contractor employs upon his own discretion is not the labour of the factory. In Farid Ahmad (supra) a five member Bench, dealing with the employee of the contractor who ran a petrol pump of the respondent company, explained the very words upon which the petitioner relies: "What was intended by the legislature by this provision was to include amongst workmen or employees not only persons who had been directly employed by the owner or employer but also those who were employed by them through such persons who undertake contracts to supply labour. The word 'contract' in this context does not mean persons employed by owner or an employer of a factory or the company for performing any particular work or task to be done in relation to the running of the factory or the company."

29. Those decisions were examined by the august Supreme Court in Fauji Fertilizer Company Ltd. (supra), and the ratio drawn from them was stated thus: "The ratio of the above case-law is that the employees of the contractor shall not be the employees of the company if:-- (a) they are under the control and management of the contractor and not that

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of the company; (b) they are not on the payroll of the company and the management of the company is not even aware of the number of the workers employed by the contractor or about the terms and conditions of their appointment or service; and (c) the contractor has the power of hiring and firing the employees, and assigns works to them and the company has no concern with it."

30. The same judgment sets out the converse propositions, holding that where the contractor's men run the affairs of the company under its supervision and control, or where the arrangement is found to be a device to deprive them of their rights, they are to be treated as the employees of the company. The Hon'ble Supreme Court there added that control, though an important test, is not the sole test, and that a pragmatic approach weighing all the relevant factors, including the integration of the work into the enterprise, is to be adopted (as reproduced in Messrs Sui Southern Gas Company Limited (supra)). Both sets of propositions ultimately depend upon the facts of each case. In Fauji Fertilizer itself, those facts were established before the Labour Court on the basis of evidence led by both sides. Here, there is no such material. The management's case was that certain activities had been contracted out to independent contractors who hired, paid, supervised, controlled and terminated their own employees. That position also required examination against the relevant records. It is unnecessary, however, to resolve that controversy, since the petitioner’s claim fails at the anterior stage of membership.

31. Messrs Sui Southern Gas Company Limited (supra) directly concerns the inclusion of contract workers in a referendum and requires separate consideration. It cannot be treated as a mere affirmation of findings on its own facts, for the Hon'ble Supreme Court there construed sections 2(xxxiii), 19(4)(a) and 19(5) of the Act and held that, for enlistment as a voter, it is immaterial whether the workman is engaged directly or through a contractor, the only requirements being that he is a workman and has been employed in the establishment for not less than three months, and that a contractual arrangement cannot be used as a device to deprive workers of their right to participate in trade union activity. Engagement through a contractor is not, by itself, a disqualification from participation. The distinction relevant here, if established from the record, is the absence of verified eligibility following a fair statutory inquiry, rather than the mere mode of engagement. Nor does the description “daily wager” establish that a person has served for less than three months. The statutory requirements must be tested on the relevant records, and an omission in the list must not be treated as proof of an adverse fact without the required verification.

32. There is another aspect of the matter that also merits consideration. In its leave-refusing order dated 26.11.2025 in C.P.L.A. Nos.3615 to 3619 of 2024, arising from the outsourcing of services by the National Bank of Pakistan, the Hon’ble Federal Constitutional Court observed: “We are also unable to support the view taken by the

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Supreme Court in the said judgment that outsourcing of employees seemed to be a sham or pretence inasmuch as in the modern times, the employer instead of direct recruitment, makes an arrangement through another entity for providing man-power and not in every case it can be regarded as a sham or pretence. ... One cannot thrust upon the employer the employees specifically when it did not intend to take them on job or engage their services."

33. Under Article 189 of the Constitution a decision of the Federal Constitutional Court on a question of law, or enunciating a principle of law, is binding on every other court in Pakistan. The view so disapproved is that expressed in *M/s State Oil Company Limited v. Bakht Siddique (2018 SCMR 1181)*, to which, together with Fauji Fertilizer Company Ltd. (supra), Messrs Sui Southern Gas Company Limited referred by way of additional observation, its holding resting upon sections 2(xxxiii), 19(4)(a) and 19(5) of the Act. The two cases, it is true, arose in different settings, State Oil having arisen upon a claim to regularisation and Messrs Sui Southern Gas Company Limited upon enrolment as a voter, and I do not read the order of the Hon'ble Federal Constitutional Court as having displaced the definition contained in section 2(xxxiii) of the Act. What it does establish, and what is sufficient for the present purpose, is that an arrangement of outsourcing is not to be assumed to be a sham, and that a person placed with an organisation by a service provider does not by that circumstance alone become its employee. The presumption for which the petitioner contends is therefore unavailable to it, and the burden of displacing the arrangement lay upon the party asserting that it was colourable. To the same effect is the judgment of this Court dated 12.03.2026 in *W.P. No.3718 of 2024 (M/s Total Parco Pakistan Limited v. Ahsan Arshad and others)* and connected petitions, in which persons engaged through an outsourcing contractor and deployed with the principal establishment were held to have failed to prove that the principal establishment was their real employer, the contractor having remained responsible for their recruitment, wages, discipline, dues and service conditions .

34. The matter may also be considered from another perspective. Several underlying issues may require factual inquiry. These include whether the contractors are independent contractors or mere suppliers of labour; what the agreements provide; who appoints, supervises, pays and dismisses these persons; whether the work they do is the work of the establishment or work independent of it; how long each of them has served; and whether any of them ever applied for membership of the petitioner union. Where those matters involve a genuine evidentiary dispute, they are ordinarily examined by the competent statutory forum. Their existence does not prevent this Court from determining whether the Authorized Officer applied the correct law and performed the required verification. The present proceedings should not be used to conduct a trial of individual employment claims.

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35. The petitioner's participation in the process is also relevant. It attended the joint meetings. It received the list of the management and was given the opportunity to verify it. It submitted its symbol and was allotted the symbol “Rose”. It secured the release of eighteen of its members from duty for the purpose of campaigning with effect from 25.08.2026. The minutes of 05.08.2026 record that the date of the referendum was fixed with the mutual consent of both contesting trade unions and the management. Participation in the process and consent to a polling date do not, by themselves, amount to abandonment of the written objections to the voters’ list. Those objections must be considered on their merits. Participation may be relevant to the discretionary relief sought, but cannot validate an unlawful exclusion. Nor is it disputed that every earlier referendum in this establishment proceeded upon a list of the workmen borne upon the rolls of respondent No.3, and that the petitioner, itself the Collective Bargaining Agent, raised no objection upon any of those occasions. The practice followed in earlier referendums likewise cannot dispense with compliance with the Act in the present exercise.

36. Finally, the effect of the proposed restraint upon the other workmen entitled to vote must also be considered. Six hundred and thirty-five workmen, whose entitlement to vote no one disputes, have been waiting since June 2026 to choose their bargaining agent. The Act treats the exercise as one of urgency, for sub-section (2) of section 19 requires the ballot to be held within fifteen days of the application, or within thirty days where the establishment has branches in more than one town. Delay in the referendum may prejudice eligible voters, but expedition cannot substitute for a lawful voters’ list. The appropriate course depends upon the nature of the established defect, the status of the referendum and the availability of prompt relief before the competent forum. In the present case, no defect warranting interdiction of the poll has been established on the material produced before this Court, and there is, accordingly, no occasion to restrain it.

37. By way of conclusion, two matters require clarification. First, nothing in this judgment determines that the persons named in the second list are not workmen within the meaning of clause (xxxiii) of section 2 of the Act. That question has not been determined because the material necessary for its determination was not produced. It remains open to any such person to raise his status before the Commission in appropriate proceedings and on the basis of evidence, and to the petitioner to establish any membership already acquired in accordance with its constitution. Second, the pending statutory appeal is to be determined by the competent Bench in accordance with law. The observations herein are confined to the grounds urged for constitutional interference and shall not be treated as a final adjudication of the disputed employment status or individual membership of the persons concerned.

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38. For the foregoing reasons, no ground for interference with the impugned orders in the exercise of constitutional jurisdiction has been established on the material produced. The petition is, accordingly, **dismissed**, subject to the clarification in paragraph 37 concerning the pending statutory appeal and the unresolved questions of individual status and membership. The parties shall bear their own costs.

(AYYAZ SHAUKAT)
JUDGE

Announced in open Court on 19.10.2026.

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