ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3406 of 2018
Raja Muhammad Saleem
Versus
The Honourable Full Bench, NIRC, Islamabad and another

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	08.10.2020	**Ch. Muhammad Junaid Akhtar Chohan, Advocate along with the petitioner in-person.** **Mr. Khurram Mumtaz Hashmi, Advocate for respondent No.2.** Through the instant writ petition, the petitioner, Raja Muhammad Saleem, who is working as Data Unit Attendant in Oil and Gas Development Company Limited (**"O.G.D.C.L."**), impugns the order dated 08.06.2018 passed by the learned Full Bench, National Industrial Relations Commission, Islamabad, (**"N.I.R.C."**), whereby his appeal against the order dated 31.01.2018 passed by the learned Member, N.I.R.C., was dismissed. 2. On 22.09.2020, the petitioner appeared in-person but was not able to assist the Court. Barrister Zafarullah Khan, who was present in the Court for another case, volunteers to assist the Court *pro bono* on the behalf of the petitioner. Today, at the very outset, Barrister Zafarullh Khan submitted that he had studied the brief and had also advised the petitioner. He further submitted that his views about the case were not compatible with those of the petitioner. This Court appreciates his efforts in advising the petitioner. Due to his views about the case, he need not represent the petitioner. 3. Ch. Muhammad Junaid Akhtar Chohan, learned counsel appeared and submitted that he had studied the case and would assist the Court on behalf of the petitioner. He submitted that the learned Member as well as the learned Full Bench, N.I.R.C. have concurrently erred by not appreciating that the

petitioner was entitled to the payment of bonus at the rate of 30% of net profit of O.G.D.C.L. in terms of Order 10-C of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("**the 1968 Ordinance**"**); that the settlement between O.G.D.C.L. and C.B.A., which forms the basis of this petition has lost its efficacy since the same was executed in the year 2008; and that even otherwise the same could not override the benefit expressly conferred by the law. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.**

4. On the other hand, learned counsel for O.G.D.C.L. submitted that the concurrent orders passed by the learned Member, and the learned Full Bench, N.I.R.C. are strictly in accordance with the law and do not suffer from any jurisdictional infirmity; that on 28.04.2008, the management of O.G.D.C.L. and the C.B.A. had entered into a settlement, as the result of which benefit in the form of bonus at a rate higher than 30% of the employees' gross salary was given; that vide letter dated 24.08.2016, bonus under Order 10-C of the 1968 Ordinance was allowed to be granted to workmen who had completed continuous period of service not less than 90 days in the financial year 2015-16; and that O.G.D.C.L. has not violated the requirement of Order 10-C of the 1968 Ordinance. Learned counsel for O.G.D.C.L. prayed for the writ petition to be dismissed.

5. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

6. The petitioner's case is that he should be given bonus in terms of Order 10-C(1) and (2) of the 1968 Ordinance, which is reproduced herein below:-

> ***"[10-C. Payment of bonus. – (1) Every employer making profit in any year shall pay [for that year***

> ***within three months of the closing of] that year to the workmen who have been in his employment in that year for a continuous period of not less than ninety days a bonus in addition to the wages payable to such workmen.***
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> ***(2) The amount of the bonus payable shall –***
>
> ***(a) if the amount of the profit is not less than the aggregate of one month's wages of the workmen employed, be not less than the amount of such aggregate, subject to the maximum of thirty per cent of such profit."***

7. The making of profit in any year by an industrial or commercial establishment is a *sine qua non* for the applicability of the said provision. The beneficiaries for the payment of bonus under the said provision are workmen who have been employed in the industrial or commercial establishment for a continuous period of not less than 90 days in a year.

8. Order 10-C(2) of the 1968 Ordinance sets the maximum and minimum limit of the bonus that is to be paid by an employer to the workmen under Order 10-C(1) *ibid.* Where the amount of profit made by an employer is not less than the aggregate of one month's wages of all the workmen employed, the amount of the bonus payable shall not be less than the amount of the aggregate of one month's wages of all the workmen employed, subject to the maximum of 30% of such profit. The lower limit of the bonus has been fixed at an amount not less than the aggregate of one month's wages of the workmen employed whereas the maximum limit of such bonus has been fixed at 30% of the profit (if it is more than the aggregate of one month's wages of the workmen employed. Order 10-C(2)(a) of the 1968 Ordinance does not obligate the employer making a profit to pay bonus at the rate of 30% of the employer's profit.

9. The *"Settlement on Payment of Bonus under Order 10-C"* executed on 28.04.2008 between O.G.D.C.L. and the C.B.A. provides for the payment of bonus to workmen at a rate which is not less than the

aggregate of one month's wages of the workmen employed in O.G.D.C.L.

10. The contention made on behalf of the petitioner that the profit payable under Order 10-C of the 1968 Ordinance has to be 30% of the profit made by O.G.D.C.L. in a year (provided that such profit is not less than the aggregate of one month's wages of the workmen) has no legal basis. Since the settlement dated 28.04.2008 between O.G.D.C.L. and the C.B.A. does not in any manner violate the requirements of Order 10-C of the 1968 Ordinance, there is no substance in the argument made by the learned counsel for the petitioner that the rights and benefits conferred on workmen under the provisions of the 1968 Ordinance had been taken away through the settlement dated 28.04.2008.

11. In view of the above, I do not find any merit in this petition which is accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan

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