ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3853 of 2019
Mubariz Khan
Versus
Full Bench of National Industrial Relations Commission and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	06.11.2019	**Mr. Abdul Hafeez Amjad, Advocate for the petitioner.**

Through the instant writ petition, the petitioner, Mubariz Khan, impugns the order dated 01.11.2019 passed by the learned Full Bench, National Industrial Relations Commission ("N.I.R.C."), whereby his appeal under Section 58 of the Industrial Relations Act, 2012 ("I.R.A.") against the order dated 02.10.2019 passed by the learned Member, N.I.R.C. was dismissed in *limine*. Vide the said order dated 02.10.2019, the learned Member, N.I.R.C. dismissed the petitioner's petition under Section 54(e) of the I.R.A.

2. The record shows that on 20.12.1994, the petitioner was appointed as a Naib Qasid in the Oil and Gas Development Company Limited ("O.G.D.C.L."). On 29.04.2010, the petitioner was re-designated to the post of Lower Division Clerk after qualifying the test held on 06.01.2010. The petitioner was re-designated as Junior Admin Assistant with effect from 13.04.2010.

3. On 09.12.2015, a charge sheet along with statement of allegations was issued to the petitioner, wherein it was alleged that he had managed to insert a fake matriculation certificate in his file so as to enable him to appear in the test/interview for technical conversion as well as for the post of Lower Division Clerk; that the petitioner was evaluated and converted into

technical cadre as Engine Driver with effect from 16.12.2005 and for this, the requisite qualification was matriculation with five years experience; that the petitioner was promoted from the post of Naib Qasid to Class-I with effect from 01.12.2009 on the basis of his A.C.R. forms and on account of his qualification as matriculation; that while posted in the Human Resource Section, the petitioner succeeded into moving documents, including the matriculation certificate, from his file; and that it was on the basis of the petitioner's matriculation certificate that he was re-designated as Junior Admin Assistant. The petitioner was directed to file his written defence within seven days of the receipt of the charge sheet. Furthermore, in the statement of allegations, the petitioner was alleged to have provided to the fact finding committee a copy of matric certificate registration No.9909110588, date sheet bearing Roll No.147795, and result card No.032403/37516 in which he was declared as *"Failed"* issued by the Board of Intermediate and Secondary Education, Rawalpindi. The petitioner was also alleged to have mislead the H.R. Department by providing a copy of matriculation certificate bearing serial No.37160, registration No.09-PCR-02374 and Roll No.AC-273164 issued by Allama Iqbal Open University on 09.02.2014, and that the said document was not valid since the record regarding the same is not available in the petitioner's file. The petitioner was alleged to have committed gross misconduct rendering him liable for disciplinary action under the O.G.D.C.L. Service Regulations-1994.

4. On 21.12.2015, the petitioner submitted a detailed reply to the charge sheet and the statement of allegations. In the said reply, it was

stated that vide letter dated 17.04.1999, the petitioner had taken permission from the H.R. Department to sit in the matriculation examination; that he had failed in the examination from the Rawalpindi Board; that the petitioner had not submitted a matriculation certificate for his re-designation or promotion; that the petitioner had never represented himself as a matriculate in the A.C.R. forms; that the petitioner had sat for the matriculation examination from Allama Iqbal Open University in January, 2014 which he passed and the matriculation certificate was submitted for verification; and that he had never removed the matriculation certificate from his file or placed irrelevant documents on his file. The petitioner had prayed for the charge sheet and statement of allegations to be withdrawn.

5. On 12.01.2016, a notice of inquiry was issued to the petitioner directing him to appear before the inquiry officer on 20.01.2016 in order to participate in the inquiry proceedings pursuant to the charge sheet and statement of allegations dated 09.12.2015.

6. On 19.02.2016, a show cause notice was issued to the petitioner. In the said show cause notice, it was stated that an inquiry officer had been appointed on 28.12.2015 to inquire into the allegations against the petitioner, and that the inquiry officer had found the petitioner guilty of the charges levelled against him. It was also stated that the authorized officer had gone through the report of the inquiry officer and had found that the charges against the petitioner had been proved. The petitioner was called upon to submit a reply to the show cause notice within seven days. On 01.03.2016, the petitioner submitted the reply to the show cause notice.

7. It was in these circumstances when the petitioner filed a petition under Section 54(e) of the I.R.A. before the N.I.R.C. praying for a direction to O.G.D.C.L. not to commit an unfair labour practice by taking adverse action against the petitioner on the basis of *"false, fallacious and farcical charges"* against him. Vide order dated 02.10.2019, the learned Member, N.I.R.C. dismissed the said petition primarily on the ground that no unfair labour practice was proved to have been committed by O.G.D.C.L. The petitioner was required to face the inquiry and prove his innocence. On 01.11.2019, the petitioner's appeal against the said order dated 02.10.2019 was dismissed by the learned Full Bench, N.I.R.C. The said concurrent orders have been assailed by the petitioner in the instant writ petition.

8. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that vide office memorandum dated 17.04.1999, the Personnel Department of O.G.D.C.L. granted permission to the petitioner to appear in the matriculation examination; that the official documents clearly show that as per the record, the petitioner was appointed in O.G.D.C.L. on the basis of his Middle qualification; that the petitioner had not produced any bogus matriculation certificate in order to obtain any service advantage; that the petitioner stands by his stance that he had passed his matriculation examination from Allama Iqbal Open University and in this regard, the matriculation certificate was issued on 09.02.2014; and that the inquiry/departmental proceedings against the petitioner was based on *malafides*. Learned counsel for the petitioner prayed for the writ

petition to be allowed and for the concurrent orders of the learned Member and the learned Full Bench, N.I.R.C. to be set-aside.

9. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

10. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 7 and need not be recapitulated.

11. In the writ petition, there is no pleading to the effect that the inquiry proceedings against the petitioner are not being conducted in accordance with the O.G.D.C.L. Service Regulations-1994. The petitioner has been given adequate opportunity to submit a reply to the statement of allegations and charge sheet as well as the reply to the show cause notice. There is also no pleading in the writ petition that the inquiry conducted by the inquiry officer pursuant to the notice of inquiry dated 12.01.2016 to be in violation of the principle of natural justice or the abovementioned Regulations.

12. Learned counsel for the petitioner, in his arguments, did not state as to how any unfair labour practice had been committed against the petitioner.

13. In the petition at hand, the petitioner is seeking the issuance of a writ of *certiorari*. *Certiorari* is not a writ of right but one of discretion. Its object is to curb excess of jurisdiction, and to keep inferior Courts and Tribunals within their bounds. The High Court, while judicially reviewing the proceedings and judgments of the inferior Courts and Tribunals, cannot substitute its own decision with that of such inferior Courts or Tribunals. The grounds on which *certiorari* may be invoked is where there is

an error of law apparent on the face of the record, and not every error either of law or fact which can be corrected by the appellate authority. It lies where the inferior Court or Tribunal has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of law which they was meant to administer. It is also issued when the inferior Court or Tribunal acts illegally in exercise of its jurisdiction. For instance, when it decides without giving any opportunity to the parties to be heard or violates the principles of natural justice. The High Court, while issuing a writ of *certiorari,* acts in exercise of a supervisory and not appellate jurisdiction. The High Court will not judicially review findings of fact reached by an inferior Court or a Tribunal unless there is manifest error apparent on the face of the proceedings, or where such findings are based on disregard of the provisions of law. The Superior Courts have also interfered with the findings of the inferior Courts and Tribunals where such findings have been found to be perverse or patently erroneous, i.e. contrary to the evidence on the record. The essential prerequisites for issuing a writ of *certiorari* do not appear to be satisfied in this case.

14. By filing a petition before the N.I.R.C., and obtaining injunctive orders, the petitioner has been successful in preventing the inquiry proceedings to be concluded. It is indeed within the realm of possibilities that in such inquiry proceedings, the petitioner may be exonerated. As regards the petitioner's stance that he had not obtained any service benefit prior to obtaining a matriculation certificate on 09.02.2014 from the Allama Iqbal Open University, the petitioner is at liberty to take the said plea in the disciplinary

proceedings before O.G.D.C.L. which are yet to be taken to their logical conclusion.

15. In view of the above, this petition is dismissed in *limine*.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*

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