Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 38 of 2023

Present
Mr. Justice Muhammad Jaffer Raza

M/s Pakistan National Shipping Corporation & another ……..….. Appellants.

Versus

Muhammad Reyaz ……..…… Respondent.

Mr. Abdul Ghaffar, Advocate for the Appellants.
Mr. Muhammad Abu Bakar Khalil, Advocate for the Respondent
a/w M/S Muhammad Absam Khalil & Nency Dean Advocates.
Mr. Ahmed Khan Khaskheli, A.A.G.

Dates of Hearing: 06.03.2025 & 20.03.2025.

Date of announcement: 18.04.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: The instant IInd Appeal has been filed against the Impugned Judgment and Decree dated 13.10.2022 and 19.10.2022 respectively, passed in Civil Appeal No.295/2020. Facts of the case are summarized as follows:

2. Suit No.376/2014 was filed by Respondent No.1 seeking the following prayers:

> "It is therefore, prayed that this Hon'ble Court may graciously be pleased to pass judgment and decree in favour of plaintiff as under:
>
> 1. Remaining Salaries, Benefits & Terminal Dues:

Sr. No.	Item	Basis	Amount
1	Salary Arrears	Difference of due and actual salary during 27.04.2010 to 09.05.2013, as per details at para (ii) and (iii) above.	1,471,974
2	Bonus Arrears	Difference of due and actual bonuses paid during last 4 years, as per details at para (iv) above.	200,080
3	Balance Gratuity	9 months' salary @ Rs.116,157 per month (due @ Rs.336,954 but paid @ Rs.220,797), as per details at para (v) above.	1,045,413
4	Balance Leave Compensation	270.75 days @ Rs.116,157 per month (due @ Rs.336,954 but paid @ Rs.220,797),as per details at para (v) above.	1,033,956
5	Remaining Club	For July 2008 to December 2010 as per details at	44,840

	Membership	para (vi) above.	
6	Notice Period Salary	3 months' salary @ Rs.336,954 per month, as per details at para (vii) .	1,010,862
			4,807,125

2. Compensation for lose of job:
   Salaries, allowances and benefits to plaintiff the due rates for the termination of his job an employment comparable period after 09.05.2013 till employment in comparable cases (e.g. E.D. Finance who is senior in age) continue in PNSC.
3. Mark-up on the unpaid claims since accrual till actual payment at the borrowing rates of PNSC.
4. Damages of Rs.2,000,000, because Plaintiff faced discrimination in age, the due process for removal also not followed and his successor unlawfully appointed without eligibility and despite serious conflict of interest all because of his upright and fair observations conducting internal audit function. The incident also damaged the reputation of Plaintiff and made it extremely difficult to find another job. Hence compensation for the damages.
5. Any other relief(s) which this Honourable Court nay deem fit and proper in the circumstances of the case.
6. Cost of the suit."

3. The said suit was decreed to the extent of Rs.4,807,125/- in addition to damages in the sum of Rs.300,000 in favour of the Respondent No.1 vide judgment and decree dated 14.09.2020 and 21.09.2020 respectively, while framing the following issues:

" 1. Whether the suit of the Plaintiff is not maintainable and time barred according to law?
2. Whether the Plaintiff was employee of the Defendants during claimed period?
3. Whether the Plaintiff is legally entitled for remaining salary, arrears of salaries, benefits and dues for the claimed period with markup?
4. Whether the Plaintiff is entitled for any damages because of his removal from service without due course of law?
5. What should the decree be?

4. The Appellant being aggrieved and dissatisfied with the aforementioned Judgment and Decree passed by the learned trial Court filed Civil Appeal No.295/2020 and the same was dismissed vide Impugned Judgment and Decree dated 13.10.2022 and 19.10.2022 respectively.

5. Learned counsel for the Appellant has argued that Respondent was engaged on purely contractual basis from 27.04.2004 and his contractual period of employment was repeatedly extended from year to year and finally expired on 09.05.2013 and when he was relieved. Learned counsel has invited my attention to the last review contract dated 29.04.2010. It was further argued by the learned counsel for the Appellant that the Respondent was paid his entire terminal benefits including salary, leave encashment and gratuity under letter dated 19.06.2013 vide cheque No.0752219. The Respondent has received his dues fully and suit was filed only to extort money from the Appellants. Further learned counsel stated that during his contractual employment, the Respondent had attained the age of superannuation on 09.12.2010 and at the time when he was relieved, he was 63 years old. Learned counsel for the Appellant has further averred that the Appellant has various categories of employment under the Pakistan National Shipping Corporation Ordinance, 1979 **('Ordinance')** and Pakistan National Shipping Corporation (Service) Regulations 1984 **('Regulations')**.

6. It has been averred that the case of the Respondent is not of a regular employee though he has made an attempt to be granted the privileges which an entitlement only granted to regular employees. Learned counsel has further referred to the Grievance Petition filed by the Respondent on 30.04.2013 and its subsequent dismissal. Lastly learned counsel has argued that the suit was not maintainable under the Sindh Payment of Wages Act, 2015 **('Act 2015')** and the relief, if any, could only be granted by the Payment of Wages Authority, therefore the Impugned Judgment and decree are nullity in the eyes of law and the same require interference by this Court.

7. Conversely learned counsel for the Respondent has argued that the Impugned Judgments and Decrees require no interference and the scope of

second appeal under Section 100 CPC is circumscribed. He has further argued that the Court is not at a liberty to reappraise and to reexamine the issues already discussed and decided by the courts below. He has averred that there are concurrent findings against the Appellants and therefore the instant appeal is liable to be dismissed on this ground alone. Lastly, he argued that the Appellants against the Impugned Judgment and decree of the trial Court had filed an application under Section 12(2) CPC and the same was dismissed.

8. I have heard the learned counsel for the parties and perused the record. In order to decide the instant appeal following points for determination are framed under Order 41 Rule 31 CPC:

1. Whether the suit was competently filed in light of the Sindh Payment of Wages Act, 2015?

2. Whether the claim of the Plaintiff/Respondent in the suit is within the terms of the contract/s?

3. Whether the learned trial Court and the Appellant Court have committed any illegality and infirmity while passing the Impugned Judgments which could warrants interference of this Court?

9. My findings on the above points for determination are as follows:

POINT NO.1 …… In Affirmative

POINT NO.2 …… In Negative

POINT NO.3 …… In Affirmative. The appeal is allowed and Impugned Judgment and Decrees are set aside.

R E A S O N S

POINT NO.1

10. It has been argued by the learned counsel for the Appellant that the suit was incompetently filed by Respondent No.1 and the Respondent No.1 should

have approached the Payment of Wages Authority under the Act 2015. He has argued that findings of both the Courts below in relation to the Respondent not falling in the category of a "workman" is incorrect and the claim of the Respondent, if any, is before the competent authority and not before the Civil Court. Learned counsel in this regard has referred to Section 2(d) of the Act, which is reproduced as under:

> *"2(d) Employed person" means any person employed in any factory or industrial establishment or commercial establishment or a mine or Railway to do any skilled or unskilled, manual or clerical work for hire or reward and includes permanent, probationers, badly ( ), temporary, apprentice and contract workers, but does not include Occupier and Managing having the hiring and firing authority."*

11. Learned counsel has thereafter stated that under Section 2(d) contract workers are mentioned and hence the Respondent should be treated as such and the suit may be dismissed with the direction to approach the competent authority. Learned counsel placed reliance on the case of ***National General Insurance Company Ltd. through General Manager v. Presiding Officer, Punjab Labour Court No.6 Rawalpindi and others***[1]

12. Conversely learned counsel for the Respondent has stated that the provision of Section 2(d) is only available to a workman and does not apply to an individual employee for managerial work.

13. I have heard the learned counsel for the parties on the point No.1 and it is held as under.

14. It has been held repeatedly by the Superior Courts that for a person to be clarified as a workman, the work ought to be manual or clerical and not managerial or supervisory. The pith and substance of the individual duty must be assigned. Reliance in this regard is place on an unreported case of Honourable Supreme Court in ***Muslim Commercial Bank Limited v. Rizwan Ali Khan and others***[2] wherein it has been held as follows:-

> *"The question as to who is a workman has been considered by this Court time and again in various cases. It has been consistently held*

[1] 2004 SCMR 683
[2] Civil Petition No.4980 of 2021

that evidence must be produced to establish the nature of work and functions of the aggrieved claimant, particularly to show that the work in manual or clerical and not managerial or supervisory. It has been emphasized that the court has to give due consideration to the cumulative effect of the evidence in the context of the nature of work that the workman claims he was doing so as to determine if he is a workman and not rely on piecemeal evidence. For a claimant to be categorized as a workman, his designation alone is not relevant and cannot be considered conclusive evidence of his work status rather, it is the pith and substance of his duties and functions which must be manual or clerical. When understanding further the definition of 'worker' and 'workman, mere reliance on the fact that it is routine work does not make one's functions and duties clerical or manual and is not sufficient to establish the workman status. Manual and clerical work involves physical exertion as opposed to mental or intellectual exertion. Furthermore, even routine work can involve the exercise of initiative, imagination, direction and supervision while maintaining registers, submission of reports, preparing of vouchers and statements and such jobs cannot be termed as being that of a workman simply because they are routine work. The judicial consensus of the Court with respect to the determination of the work status is clear such that the court must analyze the nature of the actual duties and functions of the employee to ascertain whether he falls within the ambit of the definition of worker or workman for which collective evidence must be examined to ascertain whether the duties were supervisory or managerial or whether they are manual or clerical."

15. Further in the case of ***Habib Bank Limited v. Gulzar Khan and others***[3], wherein it has been held as follows:

"The very evidence which the Respondent recorded before the Labour Court, as read by us, did not refer to any function of the Respondent that could be considered to be mainly of manual or clerical nature rather the functions which he performed and also stated in his evidence were of OG-II and Manager of the branch and those were mainly of managerial and supervisory nature and under no circumstance could they be considered to be that of a "workman more particularly. when the Respondent in his evidence has stated that he was issuing drafts and cheques, opening of accounts, closing of cash with signature of second officer, depositing of cash in strong room and locking the same are the those which need independent application of mind and making of decisions for that the drafts and cheques are not issued in routine when they are also to be signed. Similarly, opening of bank accounts. depositing of cash in the strong room and locking the same are the functions which are mainly of the Manager and not that of a workman."

[3] 2019 SCMR 946

16. In another case of ***Dilshad Khan Lodhi v. Allied Bank of Pakistan and others***[4], it has been held as follows:

> *"With the assistance of the learned counsel for the parties, we have had the privilege of going through the pleadings of the parties, as well as oral evidence led by the parties in support of their respective versions. On a careful and conscious scanning of the record and appraisal of the evidence, we are firmly of the opinion that mere designation of a person, the amount of emoluments drawn by him or even holding a power of attorney by itself are not the sole criteria for determining his status. The fact remains that undoubtedly the petitioner in his capacity as Officer Grade-II has been heading a department of the Respondent establishment independently and supervising the work of a least five persons. No doubt, he did not have the power of hire and fire, the nature of job as performed by him and evident from the record B including the power of attorney executed in his favour tends to show that he was not primarily employed as a workman doing manual or clerical skilled or unskilled work. The nature and duties performed by him primarily and essentially appeared to be of managerial and supervisory nature, which clearly fall beyond the ambit and purview of the term "workman".*

17. Further the Appellant in his cross-examination had admitted as under:-

> "*the Plaintiff was performing managerial duties and his assignments including planning and organization of the internal audit departments*".

18. It has further been admitted by the Appellant as under: -

> "*the Plaintiff used to recommend new appointments, promotions of employees and performance evaluation of the sub-ordinate staff and when the Plaintiff was appointed his contract was of two years and was expired on 26.04.2006*".

19. It is evident from the dicta of the Honourable Supreme Court reproduced above and also from bare reading of Section 2(d) of the Act 2015 that the Respondent could not approach the authority and therefore correctly invoked the jurisdiction of the Civil Court. Therefore, point No.1 is answered in Affirmative.

20. The reliance on the learned counsel for the Appellant on the case of **National General Insurance Company Ltd** (Supra) is misplaced for the reason as the said judgement only deliberates regarding the applicability of the Payment of

[4] 2008 SCMR 1530

Wages Act 1936 to employees who were employed after the said Act was amended in 2001.

POINT NO.2.

21. Learned counsel for the Appellant has argued most vehemently that the Respondent No.1 was a contractual employee and it is the terms of the contract which will determine his entitlement, if at all. Learned counsel has thereafter referred to the terms of the contract dated 29.04.2010 and has more particularly referred to clause-8 which is reproduced as under:

> *"8. Apart from what is stated in paragraph 1 through 7 above, you will not be entitled, nor will you claim any other allowance, benefit or requisites from the Corporation."* (Emphasis added)

22. It is apparent from the perusal of the above clause that the Respondent No.1 shall not be entitled to any other allowance, benefits or requisites from the Appellant over and above for what has been stated in the said contract. The Appellant has admitted that he was a contractual employee and the said category of employees do not stand on the same footing as permanent employees. The Plaintiff/Respondent No.1 has admitted during his cross-examination as under: -

> "*I never filed representation for converting my status of employment as that of contractual basis into permanent one. Voluntarily stated that it was no such need left since the contract was being renewed time by time.*"

23. It has further been admitted by the Respondent as under: -

> "*the perks and privileges of contractual employees and permanent employees do not stand on same footing.*"

24. Learned counsel for the Respondent was specifically asked the question repeatedly as to which terms of the contract were breached by the Appellant and on what basis the quantum of damages sought were granted by the courts below. Learned counsel in response has stated that the said Respondent is entitled to receive amounts over and above what has been stated in the contract as the competent courts below have already held in his favour. He was further asked to show if any evidence was led on this point and the learned counsel in this respect

as unable to satisfy me on this ground. The learned counsel was also unable to explain the breakup as presented in the plaint and the basis on which the said quantification was made.

25. I have examined in detail the judgments of the learned trial Court and Appellate Court and no justification whatsoever has been given for the grant of Rs. 4,807,125 in the following heads in addition to damages:

1	Salary Arrears	1,471,974
2	Bonus Arrears	200,080
3	Balance Gratuity	1,045,413
4	Balance Leave Compensation	1,033,956
5	Remaining Club Membership	44,840
6	Notice Period Salary	1,010,862
	Total amount	4,807,125

26. The Respondent No.1 in this respect has not led any evidence to show that the amount/s as mentioned above were due under the terms of the contract.

27. I am mindful of the limited scope of Section 100 CPC and even more mindful of the fact that generally the entire exercise conducted by both the Courts below cannot be revisited. However, from the bare perusal of the Impugned Judgments and Decrees I find both of them to be erroneous and liable to be set aside. Reliance in this regard can be placed on the case of ***Sheikh Akhtar Aziz Versus Mst. Shabnam Begum and others***[5] wherein it was held as under: -

> *"14. As far as the argument of the learned counsel for the appellant that the learned High Court had travelled beyond the parameters of section 100, C.P.C., the same in the facts and circumstances of the case has been found by us to be totally misconceived. Although in second appeal, ordinarily the High Court is slow to interfere in the concurrent findings of fact recorded by the lower fora. This is not an absolute rule. The Courts cannot shut their eyes where the lower fora have clearly misread the evidence and came to hasty and illegal conclusions. We have repeatedly observed that if findings of fact arrived by Courts below are found to be based upon misreading, non-reading or misinterpretation of the evidence on record, the High Court can in second appeal reappraise the evidence and disturb the findings*

[5] 2019 S C M R 524

> *which are based on an incorrect interpretation of the relevant law. We have examined the record and found that the issues have not properly been determined by the lower fora and there are material and substantial errors and defects in the reasoning and conclusions drawn by the trial as well as the first appellate Court which materially affected the outcome of the case on merit. The High Court was therefore, in our opinion, quite justified in interfering with this matter and correcting the errors of the lower fora in order to do complete justice."* (Emphasis added)

28. The learned Appellate Court in the Impugned Judgment dated 13.10.2022 and the learned Trial Court in Impugned Judgement dated 14.09.2020 have not examined the terms of the contract between the respective parties and have placed undue reliance on the minutes of 318th meeting of the Board of Directors held on 25.03.2009. At this juncture it will be imperative to examine Section 1(3) of the Regulations which restrict the applicability of the Regulations to contractual employees. Section 1 of the Regulations is reproduced as under:

> *"1. Short Title, commencement and Application:*
> *(1) These regulations may be called the Pakistan National Shipping Corporation (Service) Regulations, 1984.*
> *(2) They shall come into force at once, and, unless otherwise provided in respect of any specific provision, shall be deemed to have taken effect from the 1st July,1979.*
> *(3) They shall apply to all employees, including employees deputed to serve in the Corporation's establishments outside Pakistan, and to the staff engaged on the Corporation's Boats, but not to –*
> *(i) Persons on deputation to the Corporation;*
> *(ii) Persons engaged on contract;*
> *(iii) Officers and crew serving afloat, except those transferred to Shore establishments;*
> *(iv) Workshop workers; and*
> *(v) Persons employed locally in the Corporation's establishments outside Pakistan.* (Emphasis added)

29. Both the learned Courts below, with respect, failed to appreciate that it was not a case of termination of contract as the Respondent No.1 was relieved after the terms of the contract expired. Further the learned Courts below have placed undue burden on the Appellant to prove that a cheque amount to Rs.3,842,555/- was handed over to Respondent No.1 while the same was admitted by the Plaintiff/Respondent No.1 during the course of cross examination. The said admission, as will be reproduced below, finds no mention in the Impugned

Judgements passed by courts below and no deduction and/or adjustment of the above-mentioned payment has been made whilst granting the relief sought to the Respondent. Relevant part is reproduced as under: -

> *"I had accepted part payment of remuneration by the company."*

30. In an unreported judgment involving the same Appellant a learned Divisional Bench of this court in the case of ***Sohail and others versus Pakistan National Shipping Corporation***[6] held as under: -

> *"It is well settled that a temporary employee cannot claim permanent status at the end of his term as a matter of right. It is clarified that if the original appointment was not made by following the due/prescribed process of selection as envisaged by the relevant rules, a temporary / contract employee or a casual wage worker cannot be absorbed in a regular service or made permanent merely for the reason that he was allowed to continue the service beyond the terms of his appointment. It is not open for this Court to allow regular recruitment in the case of a temporary/contract employee, whose period of work has come to an end, or of an ad-hoc employee who by the very nature of his designation, does not acquire any right. Merely because an employee had obtained an Interim order of the Court, would not entitle him to any right to be absorbed or made permanent in the service without the mandatory lawful process.*
>
> *In view of the above, the Appellant-PNSC was well within its rights to dispense with the service of its employees after the expiry of their contract under the law. The General Clauses Act, 1897, also empowers the competent authority to appoint or remove anyone, appointed while exercising that power. In fact, in view of the legal position discussed above, the services of such contractual employees stood automatically dispensed upon expiration of their contract or any extension made therein or thereafter."* (Emphasis added)

31. Civil Petition No.1058-K of 2021 was filed before the Honourable Supreme Court against the above-mentioned judgment and the same was withdrawn vide order dated 21.10.2021.

32. There is another aspect which requires consideration, though not pointed out by either learned counsel. The Appellate Court under Order 41 Rule 31 is mandated to frame points of determination. The said rule is reproduced below: -

> *31. The judgment of the Appellate Court shall be in writing and shall state –*
> *a. the points for determination;*

[6] CPD 830 of 2014

b. the decision thereon;
c. the reasons for the decision; and
d. where the decree appealed from is reversed or varied, the relief to which the appellant is entitled; and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

33. It is apparent that no such exercise was conducted by the learned Appellate Court which inevitably led to the Impugned Judgment and Decree. In light of what has been held above Point No.2 is answered in the "Negative."

POINT NO.3.

34. In light of above discussion, I am of the view that both the Courts below have erred while passing the Impugned Judgments and the same require interference by this Court. Accordingly, the Impugned Judgement and Decree dated 13.10.2022 and 19.10.2022 respectively in Civil Appeal No. 295/2020 and Impugned Judgement and Decree dated 14.09.2020 and 21.09.2020 respectively in Civil Suit No.376/2014 are hereby set aside. Suit 376/2014 is dismissed. Office to prepare a decree accordingly within 15 days from today.

J U D G E

Nadeem Qureshi "PA"