

Order sheet
IN THE HIGH COURT OF SINDH, AT KARACHI

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Abdur Rehman

C.P No.D-1560 of 2019
(M/s. Rajby Textiles)

Vs.
(Muhammad Saeed alias Saeed Khan & others)

Date of hearing : **02.10.2025**
Date of order : **10.10.2025**

Mr. Farmanullah Khan, advocate for the petitioner
Mr. Khalilullah Jakhro, advocate for respondent No.1
Mr. Kafeel Ahmed Abbasi, Additional Advocate General Sindh

ORDER

MUHAMMAD IQBAL KALHORO, J:- Respondent No.1, Muhammad Saeed alias Khan, filed a grievance application before the Sindh Labour Court No.4, Karachi, seeking reinstatement in service with full back benefits, claiming that he was a permanent workman employed as a beam-fixer in the appellant establishment, namely, M/s. Rajby Textile, Bin Qasim Malir, Karachi, and was terminated illegally.

2. His case was that he was appointed in the year 2007 through respondent No.2, Momin Khan, the Labour Supplier Contractor. His last drawn salary was Rs.10,500/-. On 28.08.2011, petitioner, through the supervisor, verbally terminated his services saying that the same were no longer required, although he was performing his duties to the full satisfaction of his superiors. He sent a grievance notice dated 20.09.2011 to petitioner through registered A.D post but in vain. Hence, he filed a grievance application in the Labour Court as stated above. However, vide order dated 27.02.2018, it was dismissed. Hence, he filed an appeal before the Member, Sindh Labour Appellate Tribunal, Karachi, who has decided the same by the impugned judgment dated 30.01.2019, awarding compensation of Rs.300,000/- as a full and final payment for severance of his employment relationship with the appellant, instead of reinstating him in service with full back benefits as prayed by him. This judgment has been impugned in this petition. Vide order dated 25.03.2019, when this petition was taken up for hearing, subject to deposit of compensation amount of Rs.300,000/- the operation of the impugned judgment was

suspended. Since 2019, therefore, without much progress this petition is pending.

3. We have heard the parties and perused material available on record. The main ground taken up by learned counsel for the petitioner to challenge the impugned judgment is two-pronged. First ground is, petitioner is a trans-provincial entity, therefore, the Member, Sindh Labour Appellate Tribunal, Karachi has no jurisdiction to entertain the grievance application filed by respondent No.1 and that only National Industrial Relations Commission (**NIRC**) has the jurisdiction to adjudicate on the issue. Second, respondent No.1 was not even the employee of petitioner, in fact, he was employed by a contractor. Respondent had failed to put up any proof showing his relationship with the petitioner as his employer. In essence, the relationship of master and servant between the petitioner and respondent No.1 have been denied by learned counsel in his arguments to substantiate his case. He has relied upon the case laws reported in **2021 SCMR 185, 2020 PLC 88, and 1987 SCMR 1463.**

4. On the other hand, the learned counsel for respondent No.2, in his arguments, has relied upon the case of *Fauji Fertilizer Company Limited through Factory Manager vs. National Industrial Relations Commission (NIRC) through Chairman & Others*¹ to state that the Supreme Court has already held that employees of a contractor shall be deemed to be employees of the company, if the contractor engages workers for running the affairs of the company and not for some other independent work, which has no connection with production of the company. If the employees are working in a department of the company, which constitutes one of its organs, the employees of the contractor shall be deemed to be the employees of the company. The employees engaged directly by the company or through a contractor shall be deemed to be the employees of the company, if they perform functions for the benefit of the company. He has relied upon the case laws to support his case².

5. We have considered submissions of the parties and perused material available on record. Insofar as the first objection regarding the jurisdiction of the Labour Court is concerned, it may be stated that petitioner nowhere in the written statement or in evidence of its Factory Manager has questioned jurisdiction of the Labour Court or urged that it is a trans-provincial entity, therefore, instead of the Labour Court, only NIRC

¹ 2013 SCMR 1253

² 2013 SCMR 1253, PLD 1991 SC 660, PLD 1962 SC 60, 1992 CLC 1102 and 2019 MLD 1008.

has jurisdiction to entertain the subject issues. The entire record shows that not a single document was produced before the Labour Court or Member, Labour Appellate Tribunal establishing status of the petitioner as a trans-provincial entity. Even before us no substantial proof has been produced in support of such claim except a bald statement made by learned counsel in arguments that petitioner is a trans-provincial entity.

6. Be that as it may, this question was considered by one of us (Muhammad Abdur Rahman, J) in CP No.731/2021 titled as MCB Bank Ltd. Vs. Zahid & others and decided vide order dated 29.08.2023. According to which, the proposition that a trans-provincial entity is not amenable to the provincial jurisdiction is not correct. As long as the employment of workman is in Karachi (within the province) the provincial jurisdiction would apply to the company. This view of the Court is enshrined in the decisions rendered in the cases of *Messrs Sui Southern Gas Company Ltd and others vs. Federation of Pakistan and others* and *Shafiquddin Moinee v. Federation of Pakistan & Others*³.

7. Not only the petitioner has failed to establish its credentials as a trans-provincial entity by producing a proof, but has also failed to explain that when employment of respondent No.1 was in Karachi, why and how the Labour Court had no jurisdiction to entertain the matter. Therefore, such argument is not sustainable in view of pronouncement already made by this Court holding that if a person is employed in a particular province by any establishment, the establishment would be amenable to provincial jurisdiction.

8. The other objection that respondent No.2 was not even employee of the petitioner has been dealt with in detail by the Member, Sindh Labour Appellate Tribunal in para-7 onwards by considering relevant documentary evidence. It is clear that as per agreement filed by the petitioner with its written statement, the contractor was only required to employ a particular number of workers of various categories. Whereas, everything else pertaining to the factory including building, machine, equipment, etc. belonged to the petitioner, and it was petitioner that was responsible to provide engineering support, material electricity, gas water, etc. The Manager examined by the petitioner in his evidence has admitted that weaving master under whom the workers including respondent No.2 worked was their employee. No evidence was filed or produced to show that any payment was made to the contractor instead of respondent No.2

³ 2018 SCMR 802 & (2018 C.L.D. 1088 (Sindh)

by the petitioner. This fact was even admitted by the Factory Manager in his cross examination. Thus, the claim of the petitioner in the written statement that entire weaving department was outsourced to an independent contractor stood un-proved for want of necessary evidence.

9. With such evidence, it has been rightly concluded by the Member, Sindh Labour Appellate Tribunal that the contractor was simply a labour supplier, required to employ workers, hence, the ratio laid down by the Supreme Court in the case of *Fauji Fertilizer Company Limited through Factory Manager vs. National Industrial Relations Commission (NIRC) through Chairman & Others*⁴ was attracted that the workers employed by the contractor would be deemed to be the workers of establishment. In the said case, the Supreme Court has been pleased to lay down the test for determining whether an individual employee would be considered an employee of the company or of the contractor. It is stated that an employee of the contractor shall not be the employee of company, if: (a) he is under the control and management of the contractor and not that of the company; (b) he is not on the pay role of the company and 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 work to them, and the company has no concern with it.

10. If the said test is applied here, it would appear that the claim of the petitioner that the respondent No.1 was not its employee is not founded on strong footings. There is no evidence that respondent No.1 was under control and management of contractor exclusively; that he was not on pay role of the company or that management of petitioner was not even aware of number employees by the contractor or the terms and conditions of their services, or the contractor had the power of hiring and firing the employees including respondent No.1 and he was the one, who would assign work to them. On the contrary, the agreement produced by Manager of the petitioner shows that the contractor was employed only to supply labour force. He was not being paid by the petitioner any payment to be paid to the employees allegedly employed by him, nor he was independently, without knowledge of petitioner, was hiring or firing the workers in the weaving department, or that he was the one, who was

⁴ 2013 SCMR 1253

assigning the work to them or that weaving department, was outsourced to him either.

11. In such circumstances, claim of petitioner that there existed no relationship of employer and employee between it and respondent No.1 is not correct. The Supreme Court in the case of *Fauji Fertilizer Company Limited*⁵ has held that normally the relationship of employer and employee does not exist between a company and the workers employed by the contractor but in the case where an employer retains or assumes control over the means and methods by which the work of a contractor is to be done, then the relationship of employer and employee would come to exist between the company and the employees of the contractor. It further states that an employee, who is involved in the running of the company's affairs under the direct supervision and control of the company, is working within the premises of the company, is involved directly or indirectly in the manufacturing process shall be deemed to be an employee of the company.

12. The case of respondent No.1 that he was working as beam-fixer in the factory has not been contested by petitioner except that he was there but employed by the contractor. So, it is clear that he was involved in the manufacturing process undertaken by petitioner for production. He was working within the premises of the company and was not performing any chores on behalf of the contractor irrelevant to the affairs of the company to assume that respondent No.1 was not an employee of company.

13. The entire burden was on the petitioner, since it has denied relationship of employer and employee between it and respondent No.1, to prove such fact. Respondent No.1 by examining himself on oath and producing evidence of his employment with petitioner had discharged the initial burden regarding his employment. Even otherwise, the fact that he was working in weaving department of petitioner is not disputed by the later. Nonetheless, the petitioner has maintained that the said department was outsourced to a contractor, namely, Ayoub Khan. Therefore, a heavy burden was on the petitioner to prove such facts. But as stated above the petitioner has failed to bring up any material to substantiate the same. Nothing has been produced to persuade us to form an opinion other than the one taken by the Member, Sindh Labour Appellate Tribunal, Karachi in the impugned judgment. We, therefore, find no merit in this petition and accordingly dismiss it along all pending applications. The amount of

⁵ 2013 SCMR 1253

Rs.300,000/- deposited by the petitioner shall be paid to the respondent No.1, along with profits, if any, accrued thereon, subject to his due verification and identification.

This petition is disposed of in above terms along with pending application(s).

JUDGE

JUDGE

Rafiq/PA.