

HIGH COURT OF SINDH CIRCUIT COURT, MIRPURKHAS

C.P. No.D-326 of 2025

[MCB vs. Ghulam Mustafa and Ors]

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Before:

JUSTICE ADNAN-UL-KARIM MEMON
JUSTICE RIAZAT ALI SAHAR

Mr. Shoukat Ali Choudhry, advocate for petitioner(s)

Mr. Muhammad Sabir, Assistant Attorney General

Mr. Muhammad Sharif Solangi, Assistant Advocate General Sindh

Mr. Ghulam Mustafa, the private respondent No.1, is present in person.

Date of hearing & decision: 12.11.2025

ADNAN-UL-KARIM MEMON J.- Through these petitions, the petitioner have prayed to declare; the entrustment of judicial authority to Respondent No.2 as unconstitutional; orders dated 16.9.2024 & 25.6.2024 passed by respondent No.2 are without lawful authority and of no legal effect and the said orders be set-aside. He further prayed to declare the deposit of decreetal amount under Section 17 of the Sindh Payment of Wages Act, 2015 is ultra vires. An excerpt of the order dated 25.6.2024 is reproduced as under:-

16. Adverting to the objection of respondent regarding jurisdiction of this Authority for adjudicating the claims of applicant as being out of ambit of jurisdiction of this court, it is observed that the sub-section (1) of section 15 of the Act empowers the Authority to hear and decide for any specified area all claims arising out of deductions from the wages, or non-payment of dues relating to provident fund or gratuity payable under any law or delay in the payment of wages, of persons or paid in that area. Further it was held by higher courts and reported in 1985 PLC 762. 1979 PLC 384, and 1987 PLC 263, that claim regarding gratuity and provident fund is within the jurisdiction of Authority. The Authority had also been conferred with specific powers to affect the pensionary benefits 'Payable under law'. In the view that the above objections of respondent are not tenable hence overruled. Accordingly, issue No.1 is answered in affirmative.

Issue No. 2:

The applicant has claimed the difference of commutation as he has acclaimed that once benefit extended to employees cannot be

curtailed but applicant was not paid his due right of commutation and medical allowance, therefore, applicant is entitled for an amount of Rs. 4244831/-on a/c of remaining amount of commutation and an amount of Rs. 344250/- on a/c of medical allowance, however, applicant is not entitled for 40% profit(markup) as claimed having premises on accrual of profit on provident fund.

Accordingly, issue No.2 is answered partly in affirmative.

2. The case of the petitioner Muslim Commercial Bank (MCB) is that, it is a company incorporated under the Companies Act, 2017, operating under the Banking Companies Ordinance, 1962 with its Head Office at Lahore and branches across Pakistan and abroad; that Respondent No.1 was employed as Assistant and opted for Voluntary Separation Scheme (VSS) floated on 15.08.2013. His request was accepted and was relieved on 27.09.2013 after receiving all dues and benefits on 10.10.2013. On 17.10.2016 Respondent No.1 applied for the Payment of Wages Act, which was barred by limitation and without any request for condonation of delay. The Authority under the Sindh Payment of Wages Act, 2015, dismissed the Bank's objections and vide order dated 25.06.2024 allowed the claim of private respondents for Rs.8,030,891/- (including commutation, medical allowance, and compensation). The Bank filed Appeal under Section 17 of the Sindh Payment of Wages Act, 2015, which was dismissed on the ground of non-deposit of decretal amount. The Bank now challenges the entrustment of judicial powers to the Authority (Respondent No.2) as violative of Article 175 of the Constitution and asserts that it is a trans-provincial establishment governed by Federal law, not under the Sindh Act 2015. Since vires were challenged, notice under section 27-A CPC was issued to the learned A.G. Sindh to appear and assist.

3. Learned counsel for the petitioner-Bank submitted that the impugned orders dated 25.06.2024 and 16.09.2024 were passed without jurisdiction, as the petitioner is governed by the Federal Payment of Wages Act, 1936, not the Sindh Payment of Wages Act, 2015; that the requirement of deposit of decreetal amount under Section 17 of the Sindh Act violates constitutional guarantees and the dicta of the Supreme Court; that the application before the Authority was barred by limitation and no cause for condonation was shown; that Respondent No.1 was fully paid under the VSS including commutation and medical benefits; yet, the Authority granted double payment without any evidence; that entrusting judicial functions to an executive officer (Respondent No. 2) violates Article 175 of

the Constitution. In similar matters, the Supreme Court in CPLA 2175/2023 dated 08.05.2024 has issued notices and suspended impugned orders. He emphasized that establishments operating across more than one province with unified management fall within federal legislative competence, not provincial labor jurisdiction. He submitted that in trans-provincial establishment cases provincial labour laws, including the Sindh Payment of Wages Act, 2015, do not apply. Any orders passed by provincial authorities in such matters are void for want of jurisdiction. He submitted that trans-provincial entities fall within Federal Industrial Relations jurisdiction regardless of the employee's provincial posting. It is also settled law that an employee who has accepted Voluntary Separation Scheme (VSS), received full and final dues, and signed a no-claim declaration cannot reopen wage or benefit claims further submitted that VSS constitutes complete severance, and no subsequent claims can be revived, especially before an Authority that itself lacks judicial independence under Article 175(3). Any award made without jurisdiction is a nullity. He added that in the present case, MCB is undeniably a trans-provincial undertaking; therefore, the Sindh Payment of Wages Act, 2015, is inapplicable. Respondent No.2 lacked jurisdiction to take cognizance of the matter. Respondent No.1 opted for VSS, received all dues on 10.10.2013, and executed full and final settlement. His application filed nearly after three years without any request for condonation was hopelessly time-barred and not maintainable. Furthermore, Section 17 of the Sindh Act, which requires deposit of decreetal amount as condition of appeal, cannot be applied to defeat a statutory right of appeal, as held in the Supreme Court's order dated 08.05.2024 in CPLA 2175/2023. In support of his contention, he relied upon the cases of (1) M/s. Mondelez Pakistan Limited v. Province of Baluchistan (Civil Appeal No. 481 of 2019) (2) Taimoor Ali v. M/s. Continental Biscuits Ltd & others (SBLR 2024 Sindh 1276 (3) Muslim Commercial Bank Limited v. Muhammad Anwar Mandokhel etc. (Civil Appeal No. 377 of 2014) (4) Syed Zia ul Hussnain Shamsi etc. Government of Punjab (W.P. No. 17858 of 2011) (5) M/s. Agri Tech Ltd v. Authority under Payment of Wages Act, Hazara Division (Civil Appeal No. 2123 of 2020) (6) Messrs K-Electric Limited v. Muhammad Aslam Shah (2021 PLC 108) (7) Habib Bank Ltd v. Authority under Payment of Wages Act and another (2016 PLC 61); (8) Imran Maqbool President MCB Bank Ltd. V. Federation of Pakistan (PLD 2019 Lahore 17) (9) Messrs Sui Southern Gas Company Ltd and others v. Federation of Pakistan and others (2018

SCMR 802) (10) Senior Joint Director Foreign Exchange Operations Division SBP v. Federation of Pakistan and others (PLD 2025 S.C. 440). He prayed to allow these petitions.

4. The respondent present in person has supported the impugned orders and submitted that this court in a similar case held that the Sindh Payment of Wages Act 2015, applies to all factories, industries, and commercial establishments in Sindh; that Sections 2(m), 3 & 6 define Wages and fix the employer's responsibility to pay wages including through bank transfer with pay slips; that the Sindh Terms of Employment (Standing Orders) Act, 2015, also applies in the present case; that before the 18th Amendment, the Federal Payment of Wages Act, 1936 applied nationwide; after devolution, provincial law governs; that a specialized law overrides a general law and the petitioner bank cannot challenge the applicability of the Sindh Act after previous litigation, which attained finality; that earlier orders passed in CP. No. S-398 of 2021 affirmed the Authority's jurisdiction and directed the release of deposited amounts; as such, no deviations can be allowed in these cases; that there is no illegality in the impugned orders passed by the Respondent Authority, which has been pointed out, and only a jurisdiction issue has been raised, which this Court has already settled, and NIRC only deals with industrial disputes and unfair labor practices, not wage claims under the Sindh Act, therefore the claim of the petitioner bank is illegal and without legal justification as such liable to be discarded. He next submitted that the prior order of this Court in a similar petition has not been challenged in the Supreme Court thus attained finality. He prayed for dismissal of these petitions. For convenience's sake, an excerpt of the order dated 08.05.2023 passed in CP No. S- 82 of 2023 is reproduced:—

“7. The question involved in the present case is whether Grievance Application No.151 of 2022 under section 15(3) of the Sindh Payment of Wages Act, 2015, filed by respondent No.1 before the Commissioner Workmen's Compensation and Authority under the Payment of Wages Act, 2015, has jurisdiction to entertain the grievance application regarding payment of wages.

8. Primarily, there is no dispute to the fact that the private respondent was an employee of petitioner-Bank and during the tenure of service, his services were dispensed with vide letter dated 03.06.2022, and his grievance application is pending before NIRC Karachi. There is no cavil to the proposition that the status of employer and its establishment determines the applicability of federal or provincial laws, and it is yet to be determined whether Petitioner Bank is a Trans-Provincial Establishment or not, and if yes, whether the question of payment of wages and other ancillary issues could be entertained by the NIRC.

Primarily, the NIRC has jurisdiction to settle the dispute/grievance of workers in terms of Section 33 of the IRA-2012. Whereas, in the present case, the private respondent has not called in question the issue of industrial dispute or unfair labor practices on the part of petitioner-bank rather he moved grievance petition under Section 15(3) of the Sindh Payment of Wages Act, 2015 before respondent No.2 and prayed for direction to the petitioner-bank to pay/deposit his dues amounting to Rs.1,10,00,000/- (Rupees one crore ten lacs only).

9. Before proceeding ahead on the subject, primarily the Sindh Payment of Wages Act, 2015, applies to all factories, industries, and commercial establishments in the Province of Sindh, whereas Section 2(g) deals with Industrial Establishment as well as the establishment of third-party contractors. 10. To appreciate the legal position of the case, it is essential to have glance at the term wages, the same term is defined under Section 2(m) of the Sindh Payment of Wages Act, 2015 as:- (m) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied were fulfilled, be payable whether conditionally upon the regular attendance, good work, or conduct, or other behavior of the person employed or otherwise, to a person employed in respect of his employment or of work done in such employment and includes any bonus or other additional remuneration of nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include – (a) the value of any house accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of Government; (b) any contribution paid by the employer to any pension fund or provident fund; (c) any traveling allowance or the value of traveling concession; (d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (e) any gratuity payable on discharge.

11. Section 3 of the Act 2015 has fixed the responsibility for payment of wages upon every employer, including a contractor, for the payment to persons employed by him. Section 6 also provides that all wages shall be paid to the employed persons in current currency through cross cheque or bank transfer of any scheduled bank or commercial bank along with the payslips showing the details. It is noted that the Sindh Terms of Employment (Standing Orders) Act, 2015, is also applicable to Industrial and Commercial employment in the Province of Sindh and for matters connected therewith or ancillary thereto. Prima facie, the petitioner-bank falls within the ambit of a commercial establishment and the aforesaid laws are fully applicable in such a scenario so far as the term wages is concerned.

12. I have also noticed that before the 18th Constitutional Amendment, the Act of 1936 applied to the whole of Pakistan, but since labour matters were entrusted to the provinces, as such, the Sindh Government enacted its law on the subject as discussed supra, and its applicability has already been defined. Besides, it is settled that a special law always overrides a general law. Since Act 2015 deals with the issues of wages, as such the petitioner bank cannot call into question the applicability of such law at this juncture, after failing to achieve a favorable result in previous litigation. 13. In principle, the issue of jurisdiction of respondent No.2 has already been set at naught by this Court vide order dated 18.04.2022 in C.P.No.S398 of 2021 and thereafter vide Order dated 03.06.2022 a direction was issued to the Additional Registrar of this Court to release the awarded amount deposited by the petitioner-Bank in terms of Order dated 18.11.2021 to respondent No.1. An excerpt of the order dated 18.04.2022 passed in C.P.No.S-398 of 2021 is reproduced as under:-

“8. As it be seen, in the impugned order as reproduced above, both the contentions of the learned counsel for the parties have been put to rest. It is also an established legal position that a specialized law always overrides a general law and where Act 2015 is available especially for issues pertaining to wages (defined to include “Bonus” u/s 2(1)(m) of the said Act) adjudication of such grievance under a different general law would be an abuse of the process of law, hence I do not find any reasons to interfere with these well-placed findings of the court below. The petition is accordingly dismissed along with the listed application.”

14. In the light of above facts and circumstances of the case, I do not see any illegality or irregularity in the order dated 3.2.2023 passed by the respondent No.2, as the law does not de-bar the respondent No.2 to decide the question of payment of wages of employed person in terms of Section 2(m) of the Sindh Payment of Wages Act, 2015. So far as the jurisdiction of 8 NIRC is concerned, it deals only with unfair labour practices and industrial disputes under the IRA-2012.

15. Without prejudice to the rights of the parties before the NIRC, this petition is liable to be disposed of in terms of the orders passed by this Court in C.P. No. S-398 of 2021 is liable to be implemented in its letter and spirit as the same has attained finality.

16. Resultantly, the instant petition is disposed of in the above terms along with the listed / pending application(s).”

5. We have heard learned counsel for the parties and perused the record with their assistance. The vires of the subject law cannot be taken into consideration at this stage as the law is still in operation in Sindh and no valid justification has been provided to declare the Sindh Payment of Wages Act, 2015 as ultra vires based on the analogy of direction of the Authority to deposit the decreetal amount as the Act provides the competent authority to allow deposit of decreetal amount if the Appeal is filed; however, the petitioner bank has deposited the decreetal amount with this court vide order dated 15.7.2024. As such the Act and its provisions cannot be declared ultra vires to the provision of the Constitution as depicted by the petitioner’s counsel.

6. The issues raised by the petitioner bank stand concluded by earlier judgments of this Court, particularly those rendered in CP No. S-82 of 2023 and CP No. S-398 of 2021. In those matters, this Court unequivocally held that the Sindh Payment of Wages Act, 2015, applies to the concerned bank as a commercial establishment operating within Sindh. Consequently, the Authority / Commissioner under the said Act is fully competent to entertain wage-related grievances including the grievance application filed by the respondent employee. This Court further observed that the NIRC lacked jurisdiction over wage disputes, its authority being confined solely to industrial disputes and unfair labour practices under the Industrial Relations

Act, 2012. It was also reaffirmed that, following the 18th Constitutional Amendment, the specialized provincial legislation, the Sindh Payment of Wages Act, 2015, overrides any general law on the subject. The concerned bank had earlier challenged the Authority's jurisdiction without success, and those determinations had already attained finality. Since the case of the present bank is akin, no further deliberation on the part of this Court is required.

7. In the present case, the petitioner had also deposited the awarded amount and no illegality or irregularity is found in the Authority's order dated June 25, 2024, and September 16, 2024, passed under the Sindh Payment of Wages Act, 2015. Since the present petitions raised the same issues previously decided, this Court cannot take a contrary view. Therefore, the petitions are dismissed, along with pending application(s).

JUDGE

JUDGE

Karar_Hussain/PS*