

## **IN THE HIGH COURT OF SINDH, AT KARACHI**

**Present:**

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

**C.P No.D-1885 of 2015**

Messrs. CIM Shipping Inc . . . . . Petitioner

Versus

Tausif Ahmed and another . . . . . Respondents

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**Date of hearing: 05.04.2018**

Mr. Agha Zafar Ahmed Advocate for Petitioner.

Mr. Hassan Shikoh Advocate for the Respondent No.1.

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## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** Through this Constitutional Petition, the Petitioner-Establishment has assailed the impugned orders dated 28.01.2004 passed by the learned Sindh Labour Court (hereinafter referred to as SLC) No. V, Karachi (Respondent No.2) and order dated 09.03.2015 passed by the learned Sindh Labour Appellate Tribunal, (hereinafter referred to as SLAT) Karachi (Respondent No.3) whereby the order passed by the SLC was upheld by the SLAT vide decision dated 28.01.2004.

2. The facts of the case, as per averments of the parties are that on 12.06.1984 the Petitioner was appointed as Accountant, on a consolidated salary under the terms and conditions set forth in the appointment letter, in the Petitioner-Establishment. The Respondent No.1 submitted an application for medical leave with effect from 20.04.2001 due to his heart ailment and remained hospitalized in Cardio Vascular Centre, Liaquat National Hospital Karachi. On 20.08.2001, upon recovery from the ailment, the Respondent No.1 reported for his duty, but the Petitioner-Establishment refused to take him back and he was informed that his services were terminated and some other person had been employed in his place. However the Petitioner-Establishment did not issue any formal letter of termination of his service. The Respondent No.1 impugned his termination of service and served the grievance notice dated 17.9.2001 to the Petitioner-Establishment through Registered A.D, requesting for his reinstatement in the service but the Petitioner-Establishment did not reply. He being aggrieved and dissatisfied with his Termination Order filed Grievance Application under Section 25-A of Industrial Relations Ordinance, 1969 (IRO) before the learned SLC. The Petitioner-Establishment filed written statement, wherein denied the relationship between them. It was urged that the Respondent No.1 was employed in the year 1995 in a managerial and administrative capacity, therefore, Respondent No.1 is excluded from the definition of workman as defined in Section 2 sub-Section XXVIII of the IRO 1969; as such the Grievance Petition was not maintainable. Petitioner-Establishment further pleaded that the

Respondent No.1 had remained absent from 19.03.2001 without intimation and when on 17.04.2001 he visited the office of the Petitioner-Establishment, he voluntarily submitted his resignation letter and collected his all dues on 19.04.2001 as full and final settlement, therefore there was no question for his reinstatement in service and the Grievance Notice was hopelessly time barred and that the Grievance Application was liable to be dismissed. The Respondent No. 1 filed his affidavit-in-evidence before the learned SLC, so also an additional affidavit in evidence along with documents to substantiate his claim. The matter was fixed for evidence of the parties but nobody turned up on behalf of the Petitioner-Establishment to cross examine the witness, finally the witness was discharged by the order dated 27.09.2003 passed by the learned SLC. The Petitioner-Establishment did not lead any evidence in order to prove its contention as claimed in the written statement, which lead to the conclusion that there was no evidence available on record from the Petitioner-Establishment side. Finally the learned trial Court, from the pleadings of the parties, framed the following issues for determination:-

- i) ***Whether the grievance application filed under section 25-A is maintainable?***
- ii) ***Whether applicant had resigned from the service of the respondent and had collected full and final dues?***

After recording the evidence of the Respondent-No.1 and hearing the parties, the learned SLC vide order dated 28.01.2004 awarded compensation to the extent of two years' salary, in lieu of his reinstatement and addition to his other legal dues, within 30

days from the date of the order. Petitioner-Establishment being aggrieved and dissatisfied with the impugned order dated 28.01.2004 passed by the learned SLC preferred Labour Appeal No. 212 of 2004 before the Labour Appellate Tribunal i.e. this Court being Appellate Court at that time. This Court vide order dated 10.04.2004 suspended the operation of the impugned order of the Learned SLC, subject to depositing the Bank guarantee by the Petitioner-Establishment before the Nazir of this Court within 15 days, equitable to the amount of compensation awarded by the learned SLC. Upon repeal of IRO-2002 and enactment of IRO-2008 the subject matter was transmitted under Section 86 of IRO-2008 to the learned SLAT for decision, who after hearing the parties vide order dated 09.03.2015 maintained the order dated 28.01.2004 passed by the learned SLC and directed the Petitioner-Establishment to deposit the additional amount to the tune of Rs. 4,43,820/- as claimed by the Respondent No.1 after proper calculation before the Nazir who was also directed to release the said amount of Rs. 2,34,000/- already deposited by the Petitioner's Company to the Respondent No.1 after proper verification. The Nazir was further directed to release the additional amount of Rs. 4, 43,820/- after it has been deposited by the Petitioner-Establishment to the Respondent No.1. Petitioner-Establishment being aggrieved and dissatisfied with the impugned order dated 28.01.2004 passed by the Respondent No.2 and order dated 09.03.2015 passed by the Respondent No.3 has filed the instant Petition on 8.4.2015.

3. Mr. Agha Zafar Ahmed, learned counsel for the Petitioner-Establishment has argued that the learned Member, Labour Appellate Tribunal passed the Impugned Judgment dated 09.03.2015 without considering the facts and circumstances available on record, hence the same is illegal, unlawful and bad in law; that the learned Presiding Officer, SLC as well as Member, SLAT have failed to appreciate that on 17.04.2001 the Respondent No.1 tendered his resignation without any protest and/ or objections and thereafter the Petitioner-Establishment had duly paid the entire dues of the Respondent No.1 as full and final settlement, which was duly received and acknowledged by the Respondent No.1, therefore, the Impugned Judgment dated 09.03.2015 passed by the Member, SLAT as well as Impugned Judgment dated 28.01.2004 passed by the learned Presiding Officer, SLC are illegal, unlawful and against the law and are liable to be set aside; that the learned Presiding Officer, SLC as well as Member, SLAT have also failed to appreciate the admission of the Respondent No.1 that he was assigned managerial work; that both the orders are illegal, unlawful and void and are liable to be set aside; that both the learned Courts below have also failed to appreciate that Respondent No.1 is not a "workman" as defined under Section 2(i) of the Industrial & Commercial Employment (Standing Orders) Ordinance 1968 as such both the orders passed by both the Courts below are illegal, unlawful and liable to be set aside; that both the learned Courts below have also committed grave error in misreading and non-reading the evidence available on record; that Respondent No 1 was predominantly performing

supervisory and administrative duties during the tenure of his service; that the supervisory performance evaluation documents produced by the Respondent No.1 describes the overwhelming supervisory and administrative nature of different types of duties performed by the Respondent No.1, which clearly oust him from the definition of “workman” under Section 2(xxx) of IRO, 2002 as well as under Section 2(i) of Industrial & Commercial Employment (Standing Orders) Ordinance 1968; that both the learned Courts below have erred in law by holding that the Respondent No.1 falls under the definition of “workman” under Section 2(i) of the Industrial & Commercial Employment (Standing Orders) Ordinance 1968, whereas it has been established that the Respondent No.1 was performing supervisory and administrative nature of duties and was not covered by the definition of workman; that the Grievance Petition of the Respondent No.1 was not maintainable before the learned SLC; that there is no provision in law to award compensation in lieu of reinstatement in the service of the Respondent No.1 as such both the learned Courts below committed grave error in allowing the same to the Respondent No 1. Learned counsel in support of his contention has relied upon the case of Granulars (Pvt.) Limited Vs. Muhammad Afzal and others (2002 PLC 01), Managing Director, Shahi Bottlers (Pvt.) Limited Vs. The Punjab Labour Appellate Tribunal Lahore and 2 others (1993 SCMR 488), Rana Mukhtar Ahmed Vs. Punjab Labour Appellate Tribunal and 2 others (PLD 1992 SC 118), (1985 SCMR 1511), National Bank of Pakistan and another Vs. Anwar Shah and others (2015 SCMR 434), General Manager, Hotel Intercontinental

Lahore and another Vs. Bashir A. Malik and others (PLD 1986 SC 103). He lastly prays for allowing the instant Petition.

4. Mr. Hasan Shikoh learned counsel for the Respondent No.1 has supported the orders passed by the Courts below and contended that the Respondent No.1 performed clerical work in Petitioner-Establishment thus falls within the definition of workman as defined under Section 2(i) of the Industrial & Commercial Employment (Standing Orders) Ordinance 1968; that Petitioner-Establishment terminated the service of the Petitioner without any notice and enquiry and did not pay dues of the Respondent No.1; that the Respondent No.1 denied that he tendered resignation as alleged by the Petitioner-Establishment; the provisions of Standing Orders Ordinance, 1968 and Industrial Relations Ordinance, 2002 are applicable to the Respondent No.1 as well as Petitioner-Establishment; that Respondent No.1 was doing clerical work, therefore he comes under the definition of 'worker' or "workman" within the meaning of Standing Orders Ordinance, 1968 or Industrial Relations Ordinance 2002; that the instant Petition is frivolous, misleading; that there are concurrent findings by the Courts below and this Court has limited jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to dilate upon the evidence lead by the parties; that there is no evidence available on record on behalf of the Petitioner-Establishment to substantiate its claim as argued by the learned counsel for the Petitioner-Establishment. He relied upon the case of Qaisar and others Vs. Muhammad Shafaqat

Sharif (2012 SCMR 743), Farast Hussain and others Vs. Pakistan National Shipping Corporation and others (2005 PLC CS 890), Muhammad Hanif and others Vs. Sultan (1994 SCMR 279), ENMAY ZED Publication Pvt Vs. Sindh Labor Appellate Tribunal and others (2001 SCMR 565) and General Manager National Radio Telecommunication Corporation, Harri Pur District Abotabad Vs. Muhammad Aslam and others (1992 SCMR 2169). He lastly prayed for dismissal of the instant Petition.

5. We have heard the learned counsel for the Petitioner-Establishment and the learned counsel for the Respondent No.1 and with their assistance carefully gone through the material placed on record by both the parties and case law cited at the bar.

6. The primordial question in the present proceedings is maintainability of the grievance application filed by the Respondent No.1 under Section 25-A of IRO, 1969, which covers the issue whether Respondent No.1 is a “Worker” and a “Workmen”?

7. In order to evaluate the above proposition, the learned trial Court framed the following issues and gave its findings in favour of the Respondent No.1:

- i) ***Whether the grievance application filed under section 25-A is maintainable?***
- ii) ***Whether applicant had resigned from the service of the respondent and had collected full and final dues?***

8. To appreciate the controversy in proper perspective, we think it appropriate to have a glance on the term “Worker” and



“Workmen”. Section 2(h) (i) of Standing Orders Ordinance, 1968 and Section 2 (xxx) of Industrial Relations Ordinance, 2002 provide the definitions of “Worker” and “Workmen”. "Worker" and "workman" means any person not falling within the definition of employer, who is employed (including employment as a supervisor or as an Apprentice) in an establishment or industry for hire of reward either directly or through a contractor whether the terms of the employment be expressed or implied, and for the purpose of any proceeding under this Ordinance in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute, but does not include any person:-

- (a) who is employed mainly in a managerial or administrative capacity, or**
- (b) who, being employed in a supervisory capacity draws wages exceeding rupees eight hundred per mensem or performs, either because of the nature of duties attached to the office or by reason of the powers vested in him, functions mainly of managerial nature.**

09. The main ground that has been taken by the learned counsel for the petitioner is that the Respondent No.1 was assigned managerial work during his service tenure as such he did not fall within the definition of "Worker" and "workman".

10. To appreciate the above assertion, we seek guidance from the decision rendered by the Honorable Supreme Court in the case of National Bank of Pakistan and others Vs. Anwar Shah and

others (2015 SCMR 434) and held that designation of a person could not be considered to be a factor determining his status of employment in an establishment to be that of an officer or a workman. Nature of duties and function of a person is to be considered to be the factor which would determine whether his status is that of a “workman” or not, designation per se was not determinative of a person being a “workman” rather the nature of his duties and function determined his status.

11. From the perusal of the findings of the Honorable Supreme Court in the case of National Bank of Pakistan supra, we are of the considered view that Respondent No.1 performed clerical work in Petitioner-Establishment, thus falls within the definition of “workman” as defined under Section 2(i) of the Industrial & Commercial Employment (Standing Orders) Ordinance 1968. Therefore the grievance application filed by the Respondent No.1 under section 25-A of IRO, 1969 was rightly entertained by the SLC. The objection raised by the learned counsel for the Petitioner about the maintainability of the grievance application before SLC, is rejected.

12. The affidavit in evidence/deposition of Respondent No.1 clearly depicts the following factual position:-

**“15. The applicant has filed his affidavit in evidence and stated that his petitioner is competent and there exist relationship of workman an employer between the parties. He has further stated that he was not employed in the management and administrative capacity. He further stated that he was performing clerical and manual work and more than 50 workers are employed in the Respondent establishment. The witness further stated that he has not issued any appointment letter prescribing his duties but the**

**applicant has filed a statement showing the duties performed by his during the employed with the Respondent.**

**The detailed and the nature of the duties as per annexure P/1 filed with affidavit in evidence is as under:-**

- (1) To attend daily employees attendance cards to mark their late Comings and leaves and maintaining their entries in the Register along with other relevant matters.**
- (2) To keep and maintain employees records and their Personal Files under lock and key and to issue letters to them on instructions of the Respondent on his behalf.**
- (3) Preparation of voucher for making payment of employees contribution to the employees Old Age Benefits Institution and preparation of various other forms for submission to the EOBI Department and maintenance of employees EOBI Records.**
- (4) To maintain records of Labour Department, Directorate of Labours, Shops & Establishment, Government of Sindh.**
- (5) To collect and note the figures for Income purposes of every Directors and Their wives relating to their utilities, such as : Telephones, Electricity, Gas Insurances, Motor Vehicles, Foreign Travels, Saving Deposits, Sale and Purchase of Properties, Visa Cards, etc and preparation of statements of their individual accounts.**
- (6) To represent and submit material facts and information to the Income tax Practitioner and keep maintain regular co-ordination with them.**
- (7) To meet all enquiries and provide copies of relevant documents as and when required by the Income Tax Practitioner.**
- (8) Attending and represent Government Departments, Local Bodies and Banks, etc.**
- (9) To fetch cash and open Bank Accounts from time to time and to obtain Bank statements personally for Directors and their wives relating to their local and foreign currency accounts.**
- (10) To handle and maintain all work manually and clerically related to office as well as Directors bungalow for Telephones, Electricity, Gas Water Property Taxes, etc. and maintain their complete files.**
- (11) Maintaining of Shares Stock Records, attending Stock Exchange and Central Depository Company (CDC) and**

**to fetch their Activity Reports of their all Shares Transaction from CDC. To handle correspondence and maintain selling & purchasing of shares with co-ordination of their Brokers.**

- (12) To take Dictations from the Respondent (Chief Executive) and get them typed. To type letters and on the instructions of Respondent to sign letters, statements. Challan, etc. on behalf of Chief Executive.**
- (13) To perform manual and clerical duties personally in connection with the matters relating to all kinds of utility requirements of the office & Bungalow.**
- (14) To prepare Text and to book Advertisements in the newspaper Moorad Shipping News and to collect their Invoices for payments.**
- (15) To correspond and represent personally for and behalf of the Respondent (Chief Executive) with the Board of Investment, Customs Authorities, Chamber of Commerce, Defence Housing Authorities, City Courts Police Stations, KMC Excise & Taxation, etc. from time to time.”**

13. Upon perusal of the above evidence, it is clear that Respondent No.1 denied the allegations of the Petitioner-Establishment and nothing could be brought on record to rebut the contention of the Respondent No 1. Therefore at this juncture we have no option but to believe the contention of the learned counsel for the Respondent.No1 as the Petitioner-Establishment did not adduce the evidence despite the fact that ample opportunity was provided in this regard.

14. After the perusal of aforementioned factual as well as legal position of the case, we concur with the view taken by the learned Labour Court on both the counts that the duties assigned to Respondent No.1 were clerical in nature and award of compensation to the Respondent No.1 equivalent to 2 years' salary in lieu of his reinstatement in service would meet the ends of justice.

15. We are of the view that the learned trial Court has dilated upon the issues in an elaborative manner and gave findings in affirmative by appreciating the material available on record and that the Respondent No.3 also considered every aspect of the case and thereafter passed explanatory Judgment, therefore no ground existed for re-evaluation of the evidence, thus, we maintain the order dated 28.01.2004 passed by the learned Sindh Labour Court as well as order dated 09.03.2015 passed by the learned Sindh Appellate Tribunal. We are fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Dilshad Khan LodhiVs. Allied Bank of Pakistan and other (2008 SCMR 1530) and General Manager National Radio Telecommunication Corporation Haripur District AbotabadVs. Muhammad Aslam and others (1992 SCMR 2169).

16. In the light of the above facts and circumstances of the case, we are of the view that this Court in its Constitutional jurisdiction cannot interfere in the concurrent findings of facts arrived by the two competent forum as we do not see any illegality, infirmity or material irregularity in the judgment dated 28.01.2004 of the learned Labour Court as well as order dated 09.03.2015 of the learned Appellate Tribunal, warranting indulgence of this Court, hence, the instant Petition is meritless and dismissed along with the listed application (s).

Karachi  
Dated:

JUDGE

JUDGE