

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No.D-6723 of 2018

Order with Signature of Judge(s)

1. For order on Misc. No.29378/2018 (Urgent/App)
2. For order on Misc. No.29379/2018 (Exp/App)
3. For order on Misc. No.29380/2018 (Stay/App)
4. For hearing of main case.

26.09.2018.

Mr. Zaheer-ul-Hassan Minhas, Advocate for the petitioner.

1. Urgency granted.
- 2-4. This petition has been filed impugning the notice for the payment of Social Security (S.S) Contribution dated 09.07.2018 whereby the petitioner has been required to pay an amount of Rs.2045349/-.

Mr. Zaheer-ul-Hassan Minhas Advocate has appeared on behalf of the petitioner and stated that the factory of the petitioner was opened in February 2018 hence there was no justification for determining the amount of S.S. Contribution of the petitioner from 2016 by the respondents. He secondly submitted that under Section 61 of the Sindh Employees Social Security Act (Act VI of 2016) (**the Act**) the petitioner is required to pay 25% of the demand and he has approached this Court, without availing the remedy of this section since in his view when the very demand of Rs.2045349/-/ raised by the respondent is illegal hence there would be no question of payment of 25% for avoiding the remedy as provided under the said Section which would cause serious financial hardship to the petitioner.

We have heard the learned counsel at some length and have also perused the record.

At the very outset, it is seen that the instant petition is not maintainable since the same firstly involves the question with regard to factual controversy as to when the petitioner has started its business, as it is the claim of the petitioner that it started business in February 2018, which is being disputed by the respondents in the assessment made by them, as they have worked out the S.S. contribution from 2016. Hence, in our view it is a factual controversy which could only be resolved after detailed deliberation on this issue and after obtaining required documents and ascertaining facts and this Court under Article 199 of the Constitution of Islamic Republic of Pakistan has no jurisdiction (**the Constitution**) to enter into factual controversies. Reference in this regard may be made to the decisions given in the cases of Sheikh Muhammad Sadiq Vs. Elahi Bakhsh and 2 others (2006 SCMR 12) and Col. Shah Sadiq Vs. Muhammad Ashiq and others (2006 SCMR 276).

It is further noted that the instant petition is also not maintainable on the ground that when the petitioner has the remedy to challenge the assessment of the respondents under Section 61 of the Act a writ petition is hardly maintainable. Section 61 of the Act 2016 reads as under:

61. Decisions on complaints, questions and disputes.—*If any complaint is received or any question or dispute arises as to –*

- (a) *whether any person is secured person within the meaning of this Act; or*
- (b) *the rate of wages or average daily wages of a secured person for the purposes of this Act; or*
- (c) *the rate of contribution payable by an employer in respect of an employee; or*
- (d) *the person who is or was the employer in respect of a secured person; or*
- (e) *any benefit and the amount and duration thereof; or*
- (f) *any other matter in respect of any contribution or benefit or other dues payable or recoverable under this Act,*

the matter shall be decided by the Institution, in such manner, and within such time as the regulations may provide, and the Institution shall notify its decision to the person or persons concerned, in writing, stating therein the reason or reasons for its decisions; provided that the question or dispute relates to demand or assessment of social security contribution, the complainant shall deposit twenty five percent of the demand or assessment to the Institution.

On the above plane also, since as per the relevant law remedy has been provided to the petitioner to challenge the assessment made by the department challenging the assessment, calculation and determination of the amount involving determination on facts which falls outside the scope of Article 199 of the Constitution. Therefore, on this aspect also the instant petition is not maintainable.

So far as the objection raised by the learned counsel for the petitioner that due to the proviso as mentioned in Section 61 of the Act the Company has to firstly pay 25% of the demand before availing the remedy of Section 61 of the Act is concerned, we do not find force in this argument of the learned counsel also as, it is a mandatory and legal requirement of the law, which is statutory, and has to be fulfilled, hence no lease on this aspect also could be given to

the petitioner. It could be observed that the legislative mandate to deposit 25% of the demand is for every contributor /employer as required under Section 61 of the Act, hence the plea raised by the learned counsel for the petitioner that the same is quite detrimental to the petitioner, as in his view the amount of S.S. Contribution determined by the respondents was illegal, could not be challenged by way of filing the writ petition, since the same, in our view, could only be assailed as per the provisions of Section 61 of the Act, as mentioned supra as the same involves disputed question or dispute with regard to determination of the amount of contribution.

The right of filing complaint as provided under of Section 61 of the Act is a statutory right which can be subject to qualification, therefore, the requirement of making 25% of the demand is the requirement of law, which has to be complied with and if the argument of hardship or financial inconvenience is accepted then such remedy provided under the law would become redundant.

In view of the factors enumerated above, we do not find any merit in this petition which, in our view, is not maintainable hence the same is dismissed alongwith the listed applications.

Judge

Judge