

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-4506 of 2016

Mushtaque Ahmed Petitioner

Versus

Member, Sindh Labour Appellate Tribunal
& 02 others

.....Respondents

Date of hearing: 09.10.2018

Petitioner present in person.

Mr. Muhammad Musharaf Malik, learned counsel holding brief on behalf of Mr. Ghulam Ali, advocate for the Respondent No.3.

Mr. Shehryar Mehar, Assistant Advocate General, Sindh a/w Mr. Khalil, Ms. Shamin Imran and Ms. Humaira, advocates for the Respondents.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through this Constitutional Petition, the Petitioner has assailed the Judgments dated 06.05.2016, passed by the learned Member of Sindh Labour Appellate Tribunal, Karachi [SLAT] in Appeal No.KAR-555/2010 and the Judgment dated 05th May, 1998 passed by the learned, IIIrd Sindh Labour Court (SLC) in Grievance Application No. 13 of 1995 filed by the Petitioner.

2. The basic claim of the Petitioner is that his services were hired by the Respondent-Company as “Watchman” in the year

1994, without issuing formal letter of appointment, however after lapse of approximately eight months his service was dispensed with on 8th February, 1995 without issuing letter of termination. Petitioner being aggrieved by and dissatisfied with the termination of his service, filed Grievance Application No.13 of 1995, before the learned SLC and the same was dismissed vide Judgment dated 5th May, 1998. Petitioner being aggrieved by and dissatisfied with the aforesaid Judgment filed statutory Appeal No.Kar-555/2010 before the Learned SLAT but the same was also dismissed vide Judgment dated 06th May, 2016. Petitioner being aggrieved by and dissatisfied with both the decisions rendered by both the learned Courts below has approached this Court on 18.8.2016.

3. Petitioner present in person has submitted that the impugned judgments passed by the Respondent No.1 & 2 & are nullity and are liable to be set aside being not sustainable in law; that the Learned Courts below have failed to appreciate the evidence available on record which is in favour of the Petitioner; that the learned Courts below erred in dismissing the service matter of the Petitioner, without appreciating the evidence and the case law pronounced by the superior courts on the issue involved in the matter; that the learned Courts below have failed to appreciate that the Petitioner was appointed verbally in the Respondent-Company and was removed from service verbally without assigning any reason; that the learned Courts below erred in relying upon documentary evidence produced by the Respondent-Company regarding appointment of the Petitioner

through a third party contractor and believed their assertion in violation of law; that the learned Courts below erred in holding that Petitioner was employee of the third party Contractor and not the employee of the Respondent-Company and was allowed to do his duty in the Respondent-Company at the request of Contractor till the end of the contract period. He lastly prayed for setting aside both the Judgments rendered by the learned Courts below.

4. Mr. Muhammad Musharaf Malik, learned counsel holding brief on behalf of Mr. Ghulam Ali, advocate for the Respondent-Company has supported the impugned Judgments passed by the learned Courts below and argued that the instant petition is not maintainable against concurrent findings. He further stated he has instructions of Mr. Ghulam Ali, advocate to apprise the Court that since he has already filed comments on behalf of the Respondent No.3, hence the matter may be decided in view of those comments as filed by Mr. Ghulam Ali, advocate.

5. AAG on the other hand has adopted the comments as filed by the counsel for the Respondent No.3.

6. We have heard the Petitioner, the learned counsel holding brief on behalf of Mr. Ghulam Ali Advocate for the Respondent Company as well as learned AAG and with their assistance have carefully gone through the material placed on record.

7. The primordial question in the present proceedings is whether the Petitioner was verbally appointed by the Respondent-

Company in the year 1994 and was verbally terminated from service after lapse of eight months?

8. Upon perusal of the Judgment dated 05.05.1998 passed by the learned SLC in Grievance Application No.13/1995, which explicitly show that the learned SLC framed the following issues for decision in the case:-

1. **Whether there exist relationship of workman and employer between the parties?**
2. **Whether no cause of action has accrued to the applicant to have filed the present case?**

9. We have noticed that the learned SLC after careful examination of the parties and evidence decided the aforesaid issues and held as under:-

POINT NO. 1 & 2.

Both the points are connected, I shall deal with together. The Complainant Mushtaq Ahmed who is the solitary witness has said that there was no Contractor for security and the document allegedly produced being agreement was a fabricated and manufactured one. He has said that the company was taken work from him, the company's officer used to depute him on duty and paid wages provided the uniform which all was done as employer of the applicant by the Respondent Company and not on behalf of the contractor or anybody else and the job of workman still continued and carried out through juniors after his termination. He has said that he was appointed by the Respondent. In cross he has admitted that there was of union namely Johnson & Philips (Pakistan) Ltd. Workers Union and Chanda of union members was deducted but nothing was deducted from his wages however he has denied that he was member of the union nor worked under the union, he has also denied that he was not paid the settlement benefit. He has denied that he was not paid the settlement benefit. He has denied that he was employed by M/s Sameer International and was supervised by them. He has produced 3 payments voucher as Exb. 3/A to 3/C, time card Exhibit. 3/D to 3/G pertaining to him. These documents issued by M/s Sameer International were concerned to the applicant and Ex. 3/A to 3/C even bears the signature which is wages statement while the attendance card Ex. 3/D to 3/G in original also pertain to the applicant and they all issued by m/s

Sameer International. He has no appointment letter from the Respondent company nor he was given any termination letter by the Respondent, that is the only evidence available on behalf of the applicant. The Respondent witness Muhammad Samad he has said that certain works on Respondent's organization were of such nature which the Respondent decided to be entrusted to an independent Contractor for its performance and the job of security was assigned M/s Sameer International security contractor and such agreement entered upon on 13.02.1994 which was for a period of one year from 13.02.1994 to 12.02.1995 wherein the contractor was obliged to perform the job of security of the Respondent's factory and they had took engaged supervised and deal with its own workers to pay them their salary/wages and other allowances benefits and dues and dues and for that it was agreed that the Respondent shall pay an amount of Rs. 20,000/- per month to the Contractor to undertake the job of security arrangement of the Respondent factory. They were also bound to under the agreement to take necessary permission for the entrance of its staff in the factory premises and names of workers were given to the Respondent from time to time employed by the Respondent to him, he desired for permission them to enter into factory premises and in the letter dated 01.09.1994 contractor asking for his permission to enter the factory premises. he has further said that by another letter dated 06.02.1995 the name of the applicant was withdrawn and such permission to enter the factory premises was requested to be deleted. Such letters issued by the Contractor to the Respondent has been produced. The Respondent by letter dated 08.02.1995 addressed to the contractor from 12.02.1995 which has been produced as Annexure R/8. The contractor therefore removed the establishment from the Respondent factory and settled the full and final dues with the Respondent and therefore it is clear that the applicant at no stage was employed by the Respondent. It has been denied that the applicant was appointed as workman by the Respondent. It has been further said by him that winter uniform and shoes was supplied by the Respondent to the contractor at the request and its costs was deducted by the Respondent from the contractor lump sum payment. He has further said that the Respondent did not supply winter uniform and shoes to the applicant.

This sole evidence on behalf of the Respondent that the applicant was not the employee of the Respondent and they have got it proved from the mouth of the applicant when he own document produced by the Respondent and belonging to the contractor. The applicant has not denied them to admit that pertain to him therefore it is clear that the applicant was employed of the contractor, used to get salary/wages from him and the Respondent has not concerned with

him. Therefore it is proved accordingly that the applicant had no concerned with the Respondent and there does not exist relationship of workman and employer between the parties. Accordingly I find that there is no cause of action which may have approved to the applicant to file the present petition against the Respondent without joining of M/s Sameer International. I therefore held accordingly. Both the point are decided against the applicant.”

10. To appreciate the aforesaid question that the Petitioner was not an employee of the Respondent Company but that of the contractor, in our view this issue has already been settled by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of M/s State Oil Company Limited Vs. Bakht Siddique & others (2018 SCMR 1181). Prima facie in the present proceedings, as per the evidence brought on record, Petitioner has deposed in his deposition that he has no appointment letter from the Respondent Company with further assertion that the Respondent Company had not given him any termination letter which prima facie suggest that there was no relationship between the Petitioner and the Respondent Company. To appreciate and elaborate further on the aforesaid issue it is expedient to have a look at the evidence procured by the parties.

11. The affidavit in evidence / deposition of the Petitioner clearly depicts the following factual position:-

“The Respondent has a large factory and organization. There are about 183 employees as workers with the Respondents. There is a Union namely Johnson & Philipp’s Pakistan Ltd. Workers Union. The Chanda of Union members is deducted but nothing is deducted from my wages. There was settlement between the Company and the Union from time to time. It is incorrect to suggest that I am neither of the union nor work under the union that I am not committed as of the 183 workers or that I am not counted as of the 183 workers

suggest that I was employed by any contractor viz Sameer inter by M/s Sameer International but I was being supervised by the Respondents. It is incorrect to suggest that I was being supervised Respondents. It is incorrect to suggest that the Respondent Company was not supervising me. I see three payment vouchers (in Photostats and say that all the tree vouchers bear my signatures; I produce as Ex. 3/A to 3/C. I produce the time cards, four in numbers as Ex. 3D to 3/G in original and say that these portion to me. Voluntary states that the Respondents used to maintain similar separate time cards also (produced subject to objection of Applicants Counsel). It is incorrect to suggest that the Respondents Company never paid me wages. It is incorrect to suggest that the Uniform and the shoes were supplied by the contractor. It is incorrect to suggest that the Company was depositing the social Security Contribution as per terms of the contract. I have no appointment letter from the Respondents Company. I worked as Security Guard in the factory from 1.09.1994 to 6.2.1995. The Respondents Company has not given documents produced by the Respondents Company are true and genuine documents. It is incorrect to suggest that I have filed a false case.

12. The affidavit in evidence/ deposition of Mr. Abdul Samad witness of the Respondent Company, who deposed as under:-

“ I see Ex. A/1 and produce the same as Ex. R/1 it is correct that it is mentioned therein that the applicant Mushtaque have shown to registered from 1.9.1994 as employee of the Respondent . I also see document annexure A/2 and produce the same as Ex. R/2. It is correct that it has been issued from out department. I also produce annexure A/3 as Ex. r/3. I identified the signature of Mr. Hashmatullah Khan over the document Ex. R/3. It is correct that Respondent used to supply badges, shoes and uniform to the applicant. As per agreement. The security department is still existing in the Respondent factory. It is correct aht the applicant was security guard. I do not know if M/s Sameer International was a registered security firm. It is incorrect that the document attached with my affidavit from R/1 to R/3 are all fabricated and forged documents. It is incorrect that M/s Sameer International was only a paper product and not nay actual firm. One Kamal Ahmed himself to be manager of the M/s Sameer International used to visit our factory in that regard. Agreement between Sameer International and the factory was signed and executed by one Mr. Ikhlaq Ahmed who I do not now but I had heard about the same. The said Manager Mr. Kamal used to visit our factory either daily or in the alternate date in the morning time. The security guard in the factory were delivered in all the shift of the factory. I do not know if the security guard were posted as per desire of the factory authority I also do not know if the security guard were paid their salary by the accountant of the

factory. I know the contents of the written statement, it is incorrect that I have filed a false affidavit.”

13. The learned SLC after recording the evidence of the parties and hearing gave decision against the Petitioner on the aforesaid issues. The Learned Appellate Tribunal concurred with the decision of the Learned SLC on the same premise.

14. We have scanned the evidence available on record and found that, an agreement dated 12.1.1994 was executed between the Respondent-Company and M/s. Sameer International Security i.e. the contractor (not party in the proceedings). A letter dated 1st September, 1994 discloses that Petitioner was an employee of the Contractor and rendered his service for the Respondent-Company in the year 1994, which ended after a lapse of approximately eight months. The termination of agreement letter dated 08.2.1995 (available at page 129 of the file as R/8 brought on record in the evidence), addressed to M/s. Sameer International Security Contractor explicitly shows that the aforesaid agreement executed between the parties stood expired on 12.2.1995. Prima facie, the service of the Petitioner was for a period of almost eight months and as per the record he had received the salary for the period he worked for the Respondent-Company through third party Contractor. Evidence adduced by the parties do not show that the Petitioner was an employee of the Respondent-Company but in fact was a worker of a private contractor, who hired his service for the Respondent-Company and after expiry of the agreement of the private Contractor the Petitioner stood relieved from his service automatically, thus in our view cannot claim reinstatement of his

service from the Respondent-Company, however if he had any claim he would have made M/s Sameer International Security contractor as party in the proceedings but he failed to do so for reasons best known to him. As per record, Petitioner has admitted in his evidence that no appointment letter was issued to him and no termination letter was given to him by the Respondent Company. In absence of these documents no adverse inference can be drawn against the Respondent Company. Learned counsel for the Respondent-Company submitted that in view of the admission of the Petitioner in the evidence coupled with concurrent findings of the learned Courts below no case is made out for interference of this Court and thus the instant petition is found to be devoid of merits.

15. Concurrent findings arrived by the courts below cannot be lightly interfered with unless some question of law or erroneous appreciation of evidence is made out. We are of the view that the learned trial Court has dilated upon the issues in an elaborative manner and gave its findings by appreciating the evidence of the parties. The Respondent No.1 also has considered every aspect of the case and thereafter passed an explanatory Judgment, therefore no ground existed for re-evaluation of the evidences, thus, we maintain the Judgment dated 06.05.2016 passed by the learned SLAT. We are fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Dilshad Khan Lodhi v. Allied Bank of Pakistan and other (2008 SCMR 1530) and General Manager National Radio Telecommunication Corporation Haripur

District Abotabad v. 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 recorded by the two competent fora below and we also do not see any illegality, infirmity or material irregularity in their judgments warranting interference of this Court. Hence, the instant Petition is found to be meritless and is accordingly dismissed along with listed application (s).

Karachi
Dated: 12.10.2018.

JUDGE

JUDGE