

IN THE HIGH COURT OF SINDH, AT KARACHI

C.P No. D-2381 of 2016

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

Petitioner M/s B.P. Industries (Pvt) Ltd
Through Mr. Nasir Mahmood Advocate.

Respondent No.1& 2 Through Mr. Ali Safdar Deper,
State Counsel.

Respondents No. 3 Rana Ibne-e-Ali present in person.

Dates of hearing 03.10.2018 & 17.10.2018.

J U D G M E N T

ADNAN-UL-KARIM MEMON, J: - The Petitioner-Company has challenged the Judgments dated 09.02.2016 passed by the Learned Sindh Labour Appellate Tribunal, Karachi (SLAT) in Appeal No.KAR-129/2015, filed by the Petitioner-Company, which was dismissed and Judgment dated 18.09.2015 passed by the learned Sindh Labour Court No. II, Karachi (SLC) in Grievance Application No. 27/2013 filed by the Respondent No.3 was allowed.

2. Brief facts of the case as per pleadings of the parties are that on 10.07.1999, the Respondent No.3 was appointed as Driver and his service was verbally terminated by the Petitioner company on 01.11.2012. Respondent No.3 served upon the Petitioner-company his grievance notice dated 14.12.2012 but no reply was received by him. Petitioner being aggrieved by and dissatisfied with the verbal termination order dated 01.11.2012 issued by the Petitioner company filed Grievance Application No. 27/2013 before the

learned SLC. The learned SLC framed the following issues, which are as under:-

- “i) Whether the application of the applicant is maintainable?**
- ii) Whether the applicant voluntarily resigned from his service and collected all the dues.**
- iii) Whether the applicant was terminated by illegally the respondent?**
- iv) Whether the applicant is entitled for the relief he claimed?**
- v) What should the order be?**

The learned SLC after hearing the parties allowed the grievance application of the Respondent No.3 and directed the Petitioner-company to reinstate the Respondent No.3 in his service with all back benefits from the date of termination i.e. 01.01.2012 till the date of the order within 30 days. Petitioner-company, being aggrieved by and dissatisfied with the aforesaid order, questioned the same before the learned SLAT and the same was disposed of vide judgment dated 09.02.2016 by awarding compensation of Rs. 200,000/- (Rupees two lacs) in lieu of reinstatement of Respondent No.3. However, the Petitioner-company was directed to pay legal dues of Respondent No.3 i.e. gratuity etc. for the service rendered by him as admissible under the law. Petitioner-company being aggrieved by and dissatisfied with the aforesaid judgments has filed the instant petition on 25.04.2016.

3. Mr. Nasir Mahmood, learned counsel for the Petitioner-company has contended that learned SLC & learned SLAT passed the impugned Judgments without considering the facts and circumstances available on record, hence the same is illegal unlawful and bad in law; that both the learned courts below have failed to appreciate that the Respondent No.3 had tendered his

resignation voluntarily in presence of the witnesses of the Petitioner company, which was accepted and thereafter the Petitioner company had duly paid the entire dues of the Respondent No.3, therefore the impugned Judgments are illegal, unlawful and against the law and are 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 in favor of the Petitioner-company; that the Impugned Orders are sketchy and contrary to law laid down by this Court and the Hon'ble Supreme Court of Pakistan, hence the same are liable to be set aside; that both the learned courts below have failed to appreciate that the Respondent No.3 did not comply with the mandatory provision of Section 41 Industrial Relations Act 2010, in as much as he had failed to serve the notice of grievance to the Petitioner company; that the learned courts below erred while arriving at the conclusion that the resignation letter tendered by the Respondent No.3 on 31.10.2012 and final payment voucher were not genuine documents; that the learned courts below have failed to take into consideration that the aforesaid documents were required to be sent to the handwriting expert for comparison of signatures of the Respondent No.3, which was not done hence caused grave prejudice to the case of Petitioner company; that both the learned courts below failed to frame the point of determination with respect to voluntarily resignation of Respondent No.3 and payment receipts; that the learned SLC wrongly ordered for reinstatement of the Respondent No.3 with back benefits; that the learned SLAT wrongly allowed compensation to the tune of Rs. 200,000/- to the Respondent No.3 in lieu of his reinstatement

in his service in violation of law; that learned SLAT failed to consider Section 46(5) of Industrial Relations Ordinance, 2002, which was repealed and there no power now is available with the learned SLAT to award compensation to the Respondent No.3 in lieu of his reinstatement in service as ordered by the learned SLC; that both the learned courts below wrongly came to the conclusion that the Petitioner company have not examined any witness before whom Respondent No.3 had signed the resignation and full and final payment voucher; that both the learned courts below failed to examine the handwriting expert on the issue involved in the matter to just arrive at the correct conclusion of the case. He lastly prayed for allowing the instant petition.

4. Mr. Ali Safdar Deper, learned AAG, representing the Respondent No. 1 & 2 has supported both the Judgments passed by the learned SLC and SLAT and contended that the concurrent findings of both the courts below are reasonable and in accordance with the law and do not require further interference; that the learned courts below after recording of evidence of the parties, passed just and proper Judgments holding the resignation of the Respondent No.3 as illegal and reinstated him in service with all back benefits vide impugned Judgment dated 18.09.2015 and same was maintained by the learned SLAT vide Judgment dated 09.02.2016 with certain modification of compensation in lieu of reinstatement of the Respondent No.3 in service. He lastly contended that the instant Petition is not maintainable under the law and is liable to be dismissed.

5. Respondent No.3 present in person has adopted the arguments of the learned AAG.

6. We have heard the learned counsel for the Petitioner and Respondent No.3, who is present in person as well as AAG and have perused the entire material available on record.

7. The moot question in the subject Petition is:-

i) Whether the resignation tendered by the Respondent No.3 on 31.10.2012 was genuine and he was paid full and final payment by the Petitioner-company?

8. Let us take the legal issue of resignation tendered by the Respondent No.3 from his service first.

9. It has been agitated by the learned Counsel for the Petitioner-company that resignation of the Respondent No.3 was voluntarily and the same was tendered in presence of the witnesses of the Petitioner company and he was paid all dues, therefore no relief could have been granted to the Respondent No.3 by both the learned courts below.

10. To resolve the controversy in its proper perspective, we deem it appropriate to have a glance on the evidence brought on record by the parties. The impugned Judgments explicitly show that the matter has been decided on merit, the relevant portion of the judgment of the learned trial Court, is as under:-

“The applicant during his cross examination denied the genuineness of the documents relied upon the respondent and term them as forged. It is also admitted facts that the witness of the respondent did not sign any of the documents produced in evidence. Annexure R-1 dated 20.03.2012 although not related to the issues in the discussion however, it reveals that the same has been prepared by the applicant and also received by him.

Annexure R-2 the alleged resignation was accepted by someone but neither the name nor the designation is mentioned under the signature of a person who accepted the same. annexure R-3 full & final payment voucher is allegedly prepared by person whose name & designation is not mentioned. The same has also been signed by Admin manage none of the person who prepared approved annexure R-1 & R-3 and the person who accepted resignation annexure R-2 did not appear as witness to establish the genuineness of the said documents therefore I am of the opinion that the documents relied upon by the respondent could not be accepted as genuine as the respondent failed to establish the same by producing author of the documents in case of

annexure R-1 & R-3 to produce the person who accepted alleged resignation of the applicant i.e. R-2.

As the respondent failed to establish that the applicant resigned voluntarily therefore his claim that he has been illegally removed from his service through verbal order is established and according to section 12(3) the service of the workman shall not be terminated, nor shall a worker be removed, retrenched, discharge or dismissed from service except by an order in writing which shall explicitly state the reasons for the action.

Issue No.IV

Since it has been held in issue No. III that the applicant was orally and illegally terminated from his service therefore he is entitled for the reinstatement and back benefits from the date of termination from his service i.e 01.11.2012.

Issue No. V

The respondent is directed to reinstate the applicant in his service with back benefits from the date of termination i.e. 01.11.2012 till the date of this order within 30 days.”

11. The learned SLAT maintained the findings of the learned trial court with certain modification with the following observation:-

“11. As for the just and proper order, it may be mentioned that the job of the respondent, a home driver, requires high degree of trust and confidence, which appears to have been shaken due to the litigation hotly contested by the parties. Therefore, reinstatement in service will not be productive and viable and the appropriate order in the facts and circumstances of the case will be to award reasonable compensation to the respondent. Accordingly, the respondent is awarded compensation of Rs. 200,000/- in lieu of reinstatement, which the appellants are directed to deposit within 60 days. The respondent shall also be entitled to the legal dues such as gratuity etc for the service rendered by him as admissible under the law. With this modification in the order of the Labour Court, the appeal is disposed of.”

12. The affidavit in evidence/deposition of the Respondent No.3 in the Grievance Application clearly depicts the following factual position:-

“It is correct to suggest that in exhibit A/1 my designation along with my name is mentioned as home driver. The exhibit A/1 which I produced today was available with me when I file this case. There was no enmity or deference between me and the respondent’s management. It is correct to suggest I obtained loan from the company of Rs. 20,000/- on 30.03.2012. It is correct to suggest establishment used to deduct 2000/- per month as installment against the loan. I see annexure R/1 to the reply statement and say it bears my signature. It is incorrect to suggest I voluntarily resigned from my job on 31.10.2012 vide annexure R/2. It is incorrect to suggest annexure R/2 bears my signature. It is incorrect to suggest that I have given one month notice as per my resignation. It is incorrect to suggest establishment had accepted my resignation immediately. Annexure A/2 filed by me along with my main application bears my signature. It is correct to suggest my monthly salary was Rs. 9,600/- It is incorrect to suggest I received Rs. 9,600/- as one month notice against my resignation. Although I signed

annexure A/2 but I have not received the amount Rs. 9,600/- as per annexure A/2 however I have verbally informed them that I have not received amount Rs. 9,600/- as per annexure A/2. It is incorrect to suggest that I have signed annexure A/2 as receipt of said amount and took away the original voucher. It is correct to suggest that I had taken away the original voucher annexure A/2 and the same is with me. It is incorrect to suggest I had taken away annexure A/2 with malafide intension. It is incorrect to suggest I had received full & final dues as per payment voucher dated 31.10.2012. It is incorrect to suggest annexure R/3 bears my signature. It is correct to suggest the copy of annexure R/2 and R/3 along with reply statement. It is incorrect to suggest I have not specifically denied annexure R/2 i.e resignation and full & final settlement receipt R/3 in my affidavit in evidence. It is incorrect to suggest annexure R/2 & R/3 bears my signature. It is incorrect to suggest I have not filed any receipt of sending grievance notice. It is incorrect to suggest I have filed false case absent the respondent.”

13. The affidavit in evidence/deposition of the representative of the Petitioner-company, who has deposed as under:

“I am working in B.P Industries since last 20 years and doing the work of taxation and litigation of the company. I am manager taxation in the company by designation. My authorization letter is on the Court file. I am producing true copy of annexure R-4 filed by the along with my affidavit in evidence. I do not know whether grievance notice the applicant was received by the company or not. It is also correct I have no knowledge whether the grievance notice was replied by the company or not. I do not know whether any charge sheet was issued by the company in respect of absent of applicant. Company is not ready to take back the applicant on his duty as he has already resigned from his hob. Annexure R-3, annexure R-2 & R-1 does not bears my signature but is incorrect to suggest that the same are forged. Voluntarily says originals are filed along with written statement. It is incorrect to suggest whatever I have stated in my affidavit in evidence and before the Court is false.”

14. From perusal of the pleadings of the parties and evidence recorded by the learned SLC and learned SLAT, it is crystal clear that all these proceedings and actions were taken against Respondent No.3 by the Petitioner-Company on the basis of tendering resignation and not on any evidence and no conclusive findings of guilt of the Respondent No.3 has been established in the evidence. In this regard, we are of the considered view that it was incumbent upon the Petitioner-Company to prove allegations against Respondent No.3 as per Qanun-e-Shahadat Order, 1984. It is a well settled proposition of law that every person has to establish its own case on merits and cannot rely upon the

weakness of other side. Since, the Petitioner-Company has failed to do so and shift its burden of proof; therefore no inference can be drawn against the Respondent No.3 at this stage.

15. We are of the considered view that there were certain allegations against the Respondent No.3 but his services were not supposed to be dispensed with on the basis of resignation which was found to be not genuine, as per the evidence brought on record.

16. After perusal of the aforementioned factual as well as legal position of the case, we concur with the view taken by the learned SLAT.

17. We are of the considered view that the learned courts below have dilated upon the issues in an elaborative manner and gave their findings in affirmative by appreciating the material available on record and thereafter passed explanatory Judgments, therefore no ground now existed for re-evaluation of the evidence, and thus, we maintain the Judgment passed by the learned SLAT.

18. In the light of the above facts and circumstances of the case, we are of the considered view that this Court in its Constitutional jurisdiction cannot interfere in the concurrent findings of facts arrived by the two competent for a, as we do not see any illegality, infirmity or material irregularity in the Judgments passed by the learned SLAT and learned SLC warranting interference of this Court, hence, the instant Petition being meritless and dismissed along with the listed application (s).

JUDGE

JUDGE