

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-7369 of 2015

M/s Sindh Club Petitioner

Versus

Mazhar Hussain & others Respondents

C.P No.D-7370 of 2015

M/s Sindh Club Petitioner

Versus

Muhammad Miskeen & others Respondents

Date of hearing: 13.11.2018

Mr. Muhammad Ali Khan Advocate for the Petitioners.
Mr. Rafiullah Advocate for the Respondents.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- Through these captioned Constitution petitions, the Petitioner-Club has impugned the Judgments dated 20.10.2015 passed by the learned Sindh Labour Appellate Tribunal (SLAT) in Labour Appeals No. KAR-443/2011 & 444/2011, whereby maintained the order dated 25.10.2011 passed by the learned Sindh Labour Court No.1 (SLC) Karachi, reinstating the services of both the private Respondents.

2. The brief facts of the above referred petitions are that Respondent No.1 in C.P. No. D-7369 of 2015 was appointed as Baker in the Petitioner-Club in the year 2006. Respondent No.1 in C.P. No. D-7370 of 2015 was appointed as Cook in the year 2005. Private Respondents have asserted that they performed their duties assigned to them with keen interest and devotion without any complaint and all of sudden on 21.11.2007 and 28.11.2007; they were terminated from their services. Private Respondents being aggrieved by and dissatisfied with the impugned termination orders passed by the Petitioner-Club, filed Grievance Applications No. 2 & 3 of 2007 under section 46 of Industrial Relations Ordinance,2002 before the learned SLC Karachi, which were allowed vide separate judgments dated 25.10.2011. Petitioner-Club being aggrieved and dissatisfied with the aforesaid Judgments filed Labour Appeal No. KAR-443 of 2011 and Appeal No. KAR- 444/2011 before the learned SLAT Karachi and both the Appeals were dismissed vide separate judgments dated 20.10.2015. Petitioner-Club being aggrieved by and dissatisfied with the aforesaid Judgments dated 20.10.2015 has approached this Court on 23.11.2015.

3. Upon notice, private Respondents in both the petitions filed counter affidavits and denied the allegations leveled against them and supported the Judgments passed by the learned SLC and SLAT.

4. Mr. Muhammad Ali Khan, learned counsel for the Petitioner-Club has contended that the impugned Judgments

dated 25.10.2011 passed by the learned SLC and Judgment dated 20.10.2015 passed by the learned SLAT are full of errors based on misreading and non-reading of evidence; that the findings of the learned courts below are arbitrary and perverse; that the averments of the Petitioner-club made in the affidavits in evidence were not considered in the impugned Judgments, therefore both the judgments are nullity in the eyes of law; that the both the learned courts below have failed to appreciate the material aspects of the matter; that the learned Presiding Officer of SLC as well as member of SLAT have failed to appreciate that the Private Respondents were not permanent workers of the Petitioner-club, therefore the impugned Judgments are illegal and against the law, thus are liable to be set aside; that both the learned courts below have failed to appreciate the case law cited by the learned counsel for the Petitioner-club and ignored Articles 117 and 118 of the Qanun-Shahadat Ordinance 1984; that both the private Respondents only completed nine months of tenure of their respective services, therefore they were not required to be reinstated in service with back benefits; that the private Respondents ought not to have been treated as permanent workers of the Petitioner-club by the learned SLC; that the learned SLAT failed to consider the grounds of Appeals agitated by the Petitioner-club; that both the learned courts have failed to appreciate that the Grievance Applications of the private Respondents were not maintainable before the learned SLC, therefore both the Judgments cannot be sustained on this score alone, and are thus liable to be set aside; that the learned SLC erred in granting

back benefits to the Private Respondents; that the Private Respondents have failed to prove through cogent evidence that they remained jobless during the intervening period; that the Petitioner-club did not come within the ambit of commercial establishment as per the definition of labour laws, therefore the learned SLC had no jurisdiction to entertain the lis between the parties. He lastly prayed for setting aside both the Judgments rendered by the learned Courts below.

5. Mr. Rafiullah, learned counsel for the private Respondents in both the Petitions has supported the impugned Judgments passed by the learned Courts below and contended that the private Respondents in both the petitions were permanent workers in the Petitioner-club, thus Grievance Applications were maintainable under the law; that the captioned petitions are liable to be dismissed under the law; that there are concurrent findings recorded by the competent forum under the special law and the grounds raised in the instant petitions are untenable; that Petitioner-club terminated the services of the private-Respondents in both the petitions without any notice and inquiry and did not pay dues to the private Respondents; that both the aforesaid Judgments are passed within the parameters of law that instant petitions are frivolous, misleading as 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 evidences led by the parties; that private Respondents in both the petitions had performed their duties with full devotion; that the terms and conditions of the employment in

the shape of letters of appointment were not issued to the private Respondents; that the private Respondents were terminated from service without any fault; that aforesaid action of the Petitioner-club was absolutely illegal therefore private Respondents in both the petitions raised their grievance notice which were served upon the Petitioner-club, but were not redressed at the initial stage, they had no alternative except to approach the learned SLC for the aforesaid remedy and relief; that the learned SLC after recording the evidences passed just, proper and fair Judgments in both the cases holding their termination as illegal and reinstated them in service with all back benefits and the Petitioner-club did not reinstate them on duty and filed statutory appeals before the learned SLAT; that the learned Member of SLAT after hearing the learned counsel for the parties passed the Judgment in both the petitions however the Petitioner-club has now approached this Court. He lastly prayed for dismissal of both the instant petitions.

6. We have heard the learned counsel for the parties and with their assistance carefully gone through the material placed by them.

7. The primordial questions in the present proceedings are as follows:-

i) Whether the private Respondents in both the petitions were permanent employees of the Petitioner-Club?

ii) Whether the private Respondents were legally terminated from their services and were liable to be reinstated in their service with full back benefits by the learned SLC?

8. In order to evaluate the above legal proposition the learned trial court, separately framed the issues in both the Grievance Applications of the private Respondents and gave its findings in favour of the private Respondents in both the petitions.

9. To appreciate the controversy in proper prospective, we deem it appropriate to have a glance on the evidences brought on record by the parties. At the first instance, the relevant portion of the findings of learned SLC, in both the Grievance Applications is as under:-

Point No. III

“In view of discussion of Point No. I & II, application filed by the applicant stand allowed and the termination orders dated 21.11.2007 and 28.11.2007 are hereby set-aside. The applicant is reinstated in his service with all back benefits and respondent is directed to pay the all legal dues to the applicant within thirty (30) days from passing of this order without fail.

10. The affidavit in evidence / deposition of the parties in both the Grievance Applications clearly depicts the following factual positions:-

Deposition of Private Respondent in Grievance Application No. 2 of 2013

“I do not about my date of appointment but I know my date of dismissal from service. Vol. says that I have worked about 1 ½ years. I was Baker in the respondent club. My salary at the time of appointment was Rs. 9500/. P.m and at the time of dismissal was bout Rs. 10,500/- P.M. I was not informed about my pay scale/grade. My above salary was fixed as gross salary. I was not informed about my period of service. I was not given any appointment letter. I have not applied for appointment letter as other old employees informed me that if you will apply for appointment letter you will be dismissed from

service. It is correct to suggest that there are pay grades for the permanent employees in the respondent Club. I was not got registered from social Security Institution & EOBI. No deduction was made from my salary towards EOBI contribution. I did not write any letter to EOBI and Social Security Institution about my non-registration with them. I was providing annual leave, casual leave and sick leave. I did not complain to Labour Department or any Court and the respondent did not complain to Labour Department or any Court and the respondent did not give me the letter of appointment. It is correct that I was providing bonus. I was not given any letter showing my conditions of service. It is incorrect to suggest that I was appointed on one year contract basis on the salary of Rs. 9,500/- per month. It is incorrect to suggest that after one year after negotiation the respondent extended my period of contract by increasing my salary to Rs. 10,300/- out of which Rs. 40/- were deducting towards EOBI contribution. (My signatures were not obtained on any blank paper), however, my signature was obtained on my termination letter. I have two children, one daughter and one son. I have my own house in Natha Khan goth.

Deposition of Witness of Petitioner-Club

14.01.2010

I am serving in this Club since last about 2 years I was posted as Senior Manager Services. There was no post of Senior Manager Services. I know about the facts of above case. Written reply in the above case was not submitted by me, but I have adopted the same in my affidavit-in-evidence. We used to issue appointment letter containing terms and conditions. While issuing appointment letter we do not obtain signature of the person appointed. I do not know whether there is one of the terms that signature of the person appointed is to be obtained while issuing appointment letter to him. It is incorrect to suggest that no such appointment letter containing terms and conditions were delivered to the applicant. I have not produced the proof regarding delivery of such appointment letter to the applicant, and the same is not available with the R & Ps. I can produce such appointment letter (Note at this stage on the request of the learned counsel for the applicant further cross-examination is reserved by consent that the same would be conducted after production the said appointment order.

09.02.2010

After verification of my office record I do hereby state that no record of appointment letter issued was found. It is incorrect to suggest that the Respondent do not issue appointment letter. It is incorrect to suggest that the appointment letter was not issued; therefore, I have not produced the same. The record of appointment of workers is being maintained in separate file of each worker. No register is being maintained for the same, showing the date of appointment of workers. It is a fact that the applicant served for more than 9 months. Workers Union exists in our club since long. It is a fact that the respondent-Club is not a charitable institution or welfare organization I do not know whether the name of "Club" is mentioned in the Standing Orders Ordinance as Commercial establishment and the respondent was not exempted from I.R.O It is incorrect to suggest that the applicant was terminated illegally. It is incorrect to suggest that the contents of my affidavit-in-evidence are false."

Deposition of Private Respondent in Grievance Application No. 3 of 2008

20.08.2009

"My appointment date was 05.11.2005. I was Pakistani cook. My salary at the time of my appointment was Rs. 8000/- P.M and at the time of dismissal was Rs. 8800/- P.M. I was not informed about my pay scale/grade. My above salary was fixed as gross salary. I was not informed about my period of service. I was not given any appointment letter. I have not applied for appointment letter as other old employees informed me that if you will apply for appointment you will be dismissed from service. It is correct to suggest that there are pay grades for the permanent employees in the respondent club. I was got registered from Social Security Institution and EOBI but no care of Social Security was provided to me Rs. 60/- were being deducted from my salary towards EOBI contribution during last 3 months. I was providing annual leave, casual leave and sack leave. I did not complain to Labour Department or any Court when the respondent did not give me letter of appointment. It is correct that I was providing bonus. I was not given any letter showing my conditions of service. It is incorrect to suggest that I was appointed on one year contract basis on the salary of Rs. 8000/- per month. It is incorrect to suggest that after one year after negotiation the respondent extended my period of contract by increasing my salary

upto Rs. 8,800/- P.M. My signatures were obtained on blank papers on 2/3 occasions for which I never complained to Labour Department or at any other forum. It is correct to suggest that my signatures were obtained on my termination letter. I am married having our children out which 2 are daughters and 2 are sons. I am living in rented house at Hijrat Colony Sultanabad. My children are living at my native place and I am alone living there.

Deposition of Witness of Petitioner-Club

14.01.2010

I know about the facts of the above case. Written statement in the above case was not substituted by me but I have adopted the same in my affidavit-in-evidence. I am serving in this Club since last about 2 years. I was posted as senior manager Services. There was post of senior manager Services. We used to issue appointment letter containing terms and conditions. While issuing appointment letter we did not obtain signature of the person appointed. I do not know whether there is one of the terms that signature of the person appointed is to be obtained while issuing appointment letter to him. It is incorrect to suggest that no such appointment letters containing terms and conditions were delivered to the applicant. I have not produced the proof regarding delivery of such appointment letter to the applicant and the same is not available with the R & Ps. I can produce such appointment letter.

09.02.2010

I have verified my office record and say that no record of nay appointment letter being issued was found. It is incorrect to suggest that we do not issue appointment letter. It is incorrect to suggest that because of not issuing appointment letter I have not produced the same. We used to maintain the appointment record of the workers on a file. No register is being maintained in this regard showing the date of appointment of workers. It is a fact that the applicant worked for more than 9 months. It is a fact that workers union in our Club since long. It is a fact that respondent club is not charitable institution. It is a fact that the respondent club is not a welfare organization. I do not know whether the respondent was not exempted from IRO, and the name of club is mentioned in the Standing Orders Ordinance as Commercial establishment. It is incorrect to suggest that the applicant was illegally terminated. It is incorrect to suggest that the contents of my affidavit-in-evidence are false.”

11. The learned SLC after recording the evidence of the parties and hearing gave decision against the Petitioner-club on the aforesaid issues. The learned Appellate Tribunal concurred with the decision of the Learned SLC on the same premise. The impugned Judgments passed by both the learned courts below explicitly show that the matter between the parties has been decided on merits based on the evidences produced before them.

12. We have scanned the evidences available on record and found the admission of the witness of the Petitioner-club in both the cases, which resolves the entire controversy with regard to the jurisdiction issue of the learned SLC. An excerpt of the same is reproduced as under:-

“i) It is a fact that respondent club is not charitable institution.”

ii) “I have verified my office record and say that no record of any appointment letter being issued was found.”

iii) “It is a fact that respondent club is not charitable institution.

iv) “It is a fact that the applicant served for more than 9 months.”

13. From the aforementioned excerpt and depositions of the private Respondents, we have noticed that the duties assigned to the private Respondents as Baker and Cook were in manual nature, which fall within the ambit of a ‘worker and workman’, therefore, we concur with the view taken by the learned Labour Court that the services of the Applicants come under the definition of “worker” or “workman” within the meaning of Section 2(i) of Standing Orders Ordinance, 1968 or under Section 2(xxx) of Industrial Relations Ordinance 2002.

14. In view of the forgoing, we are of the considered view that the learned SLC had the jurisdiction to entertain the grievance applications of the private Respondents.

15. Reverting to the claim of the learned counsel for the Petitioner-club that they have been condemned unheard by the learned SLC and learned SLAT on the issues involved in the matter, Record clearly reflects that the learned SLC dilated upon the issues in an elaborative manner and gave its findings by appreciating the evidences of the parties, therefore we do not agree with the assertion of the learned counsel that they were unheard on the issues. 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 learned SLAT has considered every aspect of the case and thereafter passed an explanatory Judgment.

16. We have also noted that in the present case, there is no material placed before us by which we can conclude that Impugned Orders have been erroneously issued by both the courts below, therefore no ground existed for re-evaluation of the evidences, thus, we maintain the order dated 25.10.2011 passed by the learned SLC and the Judgment dated 20.10.2015 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 vs. Allied Bank of Pakistan and others (2008 SCMR

1530) and General Manager National Radio Telecommunication Corporation Haripur, District Abotabad vs. Muhammad Aslam and others (1992 SCMR 2169).

17. In 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 as we do not see any illegality, infirmity or material irregularity in their Judgments warranting interference of this Court. Hence, the instant Petitions are found to be meritless and are accordingly dismissed along with the listed application (s).

18. These are the reasons of our short order dated 13.11.2018, whereby we have dismissed both the petitions.

Karachi
Dated: 16.11.2018

JUDGE

JUDGE