IN THE HIGH COURT OF SINDH, AT KARACHI

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

C.P No.D-5408 of 2014

Sultan Zareen & another .... Petitioners

Versus

Sindh Labour Appellate Tribunal
[SLAT] & 02 others ....Respondents

Date of hearing: 22.11.2018

Petitioners are present in person.
Mr. Shehryar Mehar, Assistant Advocate General, Sindh a/w Ms. Shamim Imran and Ms. Humaira, advocates for the Respondents.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- Through this Constitution petition, the Petitioners have assailed the orders dated 03.08.2006, passed by the learned Sindh Labour Court No. VI at Hyderabad in Grievance Applications 33 of 2005 and 53 of 2005 and common Judgment dated 02.09.2014 passed by the learned Sindh Labour Appellate Tribunal at Karachi, dismissing both the matters of the Petitioners.

2. Brief facts of the case are that the Petitioners were seasonal employees of Shah Murad Sugar Mills Limited / Respondent No.3 for several years and they worked for the season 2003-2004 and thereafter they were relieved from service after

payment of their dues. Petitioners have submitted that on 21.11.2004 Petitioners were directed by the management of the Respondent Factory to resign from the Union Membership, however they were not allowed to join their respective duties. Petitioners have submitted that they served upon the Respondent Factory, grievance notices, thereafter filed their respective grievance petitions under section 46 of the Industrial Relations Ordinance 2002 before the learned SLC, praying their reinstatement in service and the learned SLC after recording the evidence of the parties dismissed their grievance petitions vide separate orders dated 03.03.2006. Petitioners being aggrieved by and dissatisfied with the aforesaid decisions assailed the same before the learned SLAT, which was too dismissed vide common order dated 02.09.2014. Petitioners being aggrieved by and dissatisfied with the aforesaid decisions have filed the instant petition on 16.10.2014.

3. Petitioners who are present in person have submitted that the Impugned Judgments passed by both the Courts below are contrary to the law; that the Learned Courts below have failed to appreciate the evidence available on the record in favour of the Petitioners; that the learned Courts below erred in dismissing the matters of the Petitioners without appreciating the case law pronounced by the superior courts; that the learned Courts below have failed to appreciate that the Petitioners, though were seasonal workers but their services ought not to have been terminated without assigning any reason; that the learned Courts

below have failed to appreciate the annexure B to B/5 as they were not called to appear in the witness box to record evidence and they were not allowed to be cross examined by the opposite side; that the learned courts below have failed to appreciate that on the basis of cross examination of some other workers, the decision was taken against the Petitioners by the learned SLC; that the learned SLC failed to appreciate that the Petitioners filed their respective synopsis but the same were not considered; that the learned courts below have failed to appreciate the evidences of the representative of Respondent Factory who produced a number of documents specially cash payment vouchers as well as letter dated 10.12.2003 but the same were ignored; that the impugned orders are bad in law, opposed to the evidences and the material available on record and are the result of misapplication of the mind, non-appreciation of the evidences and mis-interpretation of the law, hence the same are liable to be set aside; that the learned SLC has failed to appreciate the admission of the Respondent No.3 that the Petitioners had continuously worked for every season and were being given appointment for season 2004-2005 and no unsatisfactory work was found against them; that the impugned orders are sketchy in nature thus not sustainable in law; that the learned courts below have failed to appreciate the law that at the end of the season in a seasonal Factory the same cannot be termed as closure of the establishment or retrenchment of the workers under Standing Order 11-A, 13 and 14 of Ordinance 1968; that both the learned courts below have failed to appreciate that no show cause notices were issued to the Petitioners before refusing

the engagement for the season 2004-2005. They lastly prayed for setting aside both the Judgments rendered by the learned Courts below.

4. Mr. Shehryar Mehar, learned AAG has supported the impugned Judgments passed by the learned Courts below and argued that the instant petition is not maintainable against concurrent findings.

5. We have noticed that we issued several notices to the Respondent No.3 which were served upon them as per Bailiff's report dated 10.11.2018, but they have failed to appear before this Court to rebut the allegations therefore we proceed ex-parte against them.

6. We have heard the Petitioners, who are present in person and learned AAG and with his assistance carefully gone through the material placed on record by both the parties.

7. The primordial question in the present proceedings is whether the grievance applications of the Petitioners before the learned SLC were maintainable under the law.

8. Upon perusal of the order dated 03.08.2006 passed by the learned Sindh Labour Court No. VI, at Hyderabad, in Grievance Applications No. 33 of 2005 and 53 of 2005, the Court has framed the following issues:-

i. Whether the petition is not maintainable under the law?

ii) Whether the Petitioners are entitled to the relief claimed?

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

> ***"Moreover under law the seasonal worker has preferential right of re-employment and that may accrue only if the respondent ignoring the petitioner has taken in his employment new workers or junior workers to petitioners. No such allegation is made either in petition or even in affidavit of evidence and in absence of such fact no right of the Petitioner is infringed. Hence he is not entitled for the relief claimed".***

10. The learned SLC after recording the evidences of the parties and hearing gave its decision against the Petitioners on the aforesaid issues. The Learned Appellate Tribunal concurred with the decision of the Learned SLC on the same premise.

11. We have perused both the judgments passed by the learned courts below and are of the considered view that the Petitioners were seasonal and temporary workers; therefore they cannot claim reinstatement of their service as a matter of right. We are cognizant of the fact that seasonal workers had the right of preference for re-employment but that right is subject to all just exceptions as provided under the law. Petitioners have admitted in their evidence that they were appointed as seasonal workers, they further admitted that the appointment is to be made in every season before seasonal start of the Mills. They also admitted that no grievance notice was served upon the Respondent Factory after receiving their dues. They also admitted that they had not given name of any junior or senior to them in their grievance petitions to justify their appointment.

12. It is a settled proposition of law that 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 both the Judgments dated 03.08.2006 passed by the learned SLC and Judgment dated 02.09.2014 passed by the learned SLAT. In this behalf we are fortified by the decisions rendered by the Hon'ble Supreme Court of Pakistan in the cases of Dilshad Khan Lodhi v. Allied Bank of Pakistan and other (2008 SCMR 1530) and General Manager National Radio Telecommunication Corporation Haripur 10 District Abotabad v. Muhammad Aslam and others (1992 SCMR 2169).

13. 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. Moreover we also do not see any illegality, infirmity or material irregularity in their judgments warranting interference by this Court. Hence, the instant Petition is found to be meritless and is accordingly dismissed along with the listed application (s).

JUDGE

JUDGE

Shafi Muhammad P.A