

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitution Petition No.861 of 2011**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Petitioner : Mst. Husn Bano  
Mr. Ashraf Hussain Rizvi, advocate.

**Versus**

Respondent No.1 : Commissioner for Workmen's Compensation  
& Authority under the Payment of Wages Act

Respondent No.2 : Mukhtiar Soomro,  
Secretary Labour Welfare Department.

Respondent No.3 : M/S. Omar Razzq Enterprises (Pvt.) Ltd.

Respondent No.4 : Director Labour Welfare, Govt. of Sindh.

Respondent No.5 : Province of Sindh through Chief Secretary.

Date of hearing : **17.02.2020**

Date of Decision : **18.05.2020**

**JUDGMENT**

**NAZAR AKBAR, J.** Through this constitution petition the

Petitioner has prayed for the following prayers:-

- (i) *To hold and declare that the impugned order as being without jurisdiction and malicious and to set aside the impugned order.*
- (ii) *To hold and declare that Petitioners application 02/2010 (10-B) under Standing Order 10-B of the Industrial & Commercial Employment (Standing Orders) Ordinance, 1968 merits to be allowed and to allow the said application, with costs and mark up @ 20% from the date Petitioner's husband embraced shahadat on 14.09.2009 till the amount of Group Insurance is actually paid to Petitioner.*
- (iii) *To pass such other order/orders granting such other relief as this Honourable Court may find fit*

*and proper in the nature and circumstances of the case and in the interest of justice.*

*(iv) To grant costs and exemplary costs at least equal to the Group Insurance amount.*

2. The facts of this petition are that the Petitioner's husband Mir Ahmed Khan, who was retired from Pakistan Army, had remained in the employment of private Security Management Services/ Respondent No.3 for seven years. During duty as security staff, he resisted armed gang of terrorists preventing them from blowing up the Keamari Oil Terminal and laid down his life in the line of duty and embraced shahadat. Respondent No.3 acknowledged and complimented the bravery of Petitioner's husband through letter dated **03.01.2010**. It was averred that no letter of appointment or other statutory employment document in terms of clause Nos.2 and 2-A of the Standing Orders Ordinance, 1968 (SOO, 1968) was provided by Respondent No.3 to the Petitioner's shaheed husband, except Identity Card issued belatedly on 01.07.2008 without showing the date of appointment, which was also taken away by Respondent No.3 from shaheed's dead body. The Petitioner repeatedly approached Respondent No.3 company seeking release of legal dues and death compensation including Group Insurance amount in terms of Standing Order 10-B of SOO, 1968, but Respondent No.3 failed to do so. Therefore, the Petitioner filed application **No.02/2010(10)** before Respondent No.1 Authority under Standing Order 10-B for recovery of Group Insurance amount other **application No.23/2010(15)** under the Payment of Wages Act, 1936.

3. Respondent No.3 fully contested the applications before Respondent No.1 and, amongst others, raised objection on

maintainability of Petitioner's application. The relevant objection to present controversy is reproduced below:-

Preliminary Legal objections

*(e) That the applicant has also simultaneously filed another application bearing No.02/2010 (10) before this Hon'ble Authority claiming the very same amount on account of Death Claim Workmen's Compensation, Act 1923, hence, the present application in presence of pendency of the said application (for Death claim) is not maintainable.*

The Commissioner for Workmen's Compensation dismissed both applications filed by the Petitioner by order dated **01.6.2011** and order dated **04.6.2011**. The Petitioner has impugned the order dated **01.6.2011** herein this constitution petition.

4. Respondents No.3 filed objections and counter affidavit wherein they contended that application No.02/2010 (10) under **Standing Order 10-B** was dismissed by the Court of Respondent No.1, therefore, they were not required to deposit the claimed amount. They further contended that the prayer of the Petitioner in this petition is merely based on assumption and has no legal value and the Petitioner has failed to place any valid/legal ground in the instant petition. Respondent No.3 has also filed memo of appeal against the same order dated **01.6.2011** filed by the Petitioner before the Labour Appellate Tribunal.

5. I have heard learned counsel for the Petitioner and perused the record.

6. The Petitioner on **30.11.2013** has filed application under **Section 151 CPC** (CMA No.7229/2013) wherein he has contended that the Petitioner has also challenged the other order passed by Respondent No.1 on another application before the Labour Court

against dismissal of her claim of gratuity and leave encashment of her husband. The said appeal of the Petitioner was allowed by the Labour Court by order dated **13.5.2013**. However, till date he has not replied the factual statement of Respondent No.3 that an appeal against the impugned order filed before the Labour Appellate Tribunal is pending or disposed off. Nor the filing of appeal against the order impugned herein has been denied.

7. Besides the above, the Petitioner before the Commissioner for Workmen's Compensation has failed to establish her case by producing any tangible evidence that deceased was PERMANENT EMPLOYEE. The controversy before the Commissioner for Workmen's Compensation was purely factual which has been decided against the Petitioner. However, through CMA No.7229/2013 the Petitioner has very innocently claimed that in view of the findings of the Labour Court arising out of different orders of Respondent No.1, this constitution petition may be allowed. This contention is misconceived, the facts which were not proved before the Court of Commissioner for Workmen's Compensation Authority through the evidence recorded that cannot be treated as proved by reference to some other order which is not subject matter of this petition nor the said findings were before the Court whose order is impugned through this petition. The findings of the Labour Court No.V, even if it has attained finality, cannot be relied by this Court in its constitutional jurisdiction to set aside an order decided by another Court on the basis of evidence produced in the said Court.

8. In the written arguments learned counsel has not explained the maintainability of petition. It is strange when the Authority has passed two orders against the Petitioner one on **01.6.2011** and

another on **04.6.2011**, then why one of the two orders was assailed before Labour Court and other in the Constitutional jurisdiction of this Court. The Petitioner in last almost **9 years** has failed to disclose fate of her own appeal which she has preferred before the Labour Appellate Tribunal at Karachi against the order impugned herein. It was annexed with the objection to the petition. The case laws relied upon by the learned counsel for the Petitioner in the given facts of the case are not relevant.

9. In view of the above, this constitution petition which is pending along with CMA No.7229/2013 is dismissed with no order as to costs.

JUDGE

Karachi, Dated:18.05.2020

Ayaz Gul