

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Muhammad Junaid Ghaffar and Agha Faisal, JJ.**

CP D-3541 of 2017 : Unilever Pakistan Ltd vs.  
Federation of Pakistan & Others

For the Petitioner : Mr. Hyder Ali Khan, Advocate

For the Respondents : Mr. Muhammad Ahmer  
(Assistant Attorney General)  
Mr. Amir Baksh Maitlo  
(For Respondent No. 6)  
Mr. M. Mazhar-ul-Hasan, Adv  
(For Respondent No. 4)

Date/s of hearing : 14.10.2020

Date of announcement : 14.10.2020

## JUDGMENT

**Agha Faisal, J:** The present assails a notice issued to the petitioner by the Federal Tax Ombudsman (“FTO”) dated 11<sup>th</sup> April 2017 (“Impugned Notice”), in respect of a complaint made thereto, by the respondent no. 4, alleging non-payment / short payment of pension thereto, predicated primarily on the ground that the same was patently without jurisdiction.

2. Briefly stated, the respondent no. 4 claimed non-payment / short payment of pension against the petitioner, being a multi-national public limited company, and in such regard lodged a complaint with the FTO. Pursuant thereto the FTO ordered an investigation and required the petitioner to submit to adjudication. The petitioner disputed<sup>1</sup> the jurisdiction of the FTO to entertain the complaint there against, however, upon issuance of the Impugned Notice, notwithstanding such objection, has preferred this petition.

3. It was argued on behalf of the petitioner<sup>2</sup> that a writ petition<sup>3</sup> was maintainable<sup>4</sup> if an action of an ombudsman was demonstrated to be

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<sup>1</sup> Vide reply dated 27.04.2017.

<sup>2</sup> Mr. Hyder Ali Khan, Advocate.

<sup>3</sup> *PLD 1972 Supreme Court 279.*

<sup>4</sup> *1998 SCMR 841; PLD 2016 Supreme Court 940; PLD 1992 Karachi 339; PLD 1992 Karachi 65; PLD 2001 Karachi 304; PLD 2003 Karachi 405.*

without jurisdiction<sup>5</sup>. Learned counsel demonstrated from the Establishment of the Federal Tax Ombudsman Ordinance 2001 (“Ordinance”) that the jurisdiction of the FTO did not encompass resolution of a purported labor / service dispute.

The learned Assistant Attorney General<sup>6</sup> supported the case of the petitioner and argued that the Impugned Notice was *prima facie* without jurisdiction. Learned Counsel<sup>7</sup> for the Chief Commissioner Inland Revenue (respondent no. 6) also echoed the arguments advanced by the petitioner and supplemented that even if the grievance of the respondent no. 4 merited adjudication, such consideration could only be meted out by the learned labor court.

4. The learned counsel<sup>8</sup> for the respondent no. 4 supported the Impugned Notice and argued that his client was entitled to the relief claimed on the basis of the factual assertions contained in the complaint. However, the learned counsel was unable to demonstrate before us as to how his complaint was maintainable before the FTO and / or how the Ordinance conferred jurisdiction upon the FTO to resolve a labor dispute.

5. We have appreciated the arguments of the respective learned counsel and have also considered the law to which our attention was solicited. It is trite law that disputed question of fact<sup>9</sup> are not generally amenable for determination in the exercise of writ jurisdiction. Therefore, no observation shall be proffered herein with respect to the conflicting facts, observations and interpretations articulated by the contesting parties<sup>10</sup>. The only question for determination before us is whether the Impugned Notice suffers from any infirmity meriting interference by this Court in the exercise of its writ jurisdiction.

6. It is settled law<sup>11</sup> that a show-cause notice may not ordinarily be justiciable in writ jurisdiction; unless it is manifest that the same suffers

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<sup>5</sup> PLD 1966 Supreme Court 1; PLD 1987 Supreme Court 447; 2018 SCMR 1444.

<sup>6</sup> Mr. Muhammad Ahmer, Advocate.

<sup>7</sup> Mr. Ameer Baksh Maitlo, Advocate.

<sup>8</sup> Mr. Mazhar-ul-Hassan, Advocate.

<sup>9</sup> 2016 CLC 1; 2015 PLC 45; 2015 CLD 257; 2011 SCMR 1990; 2001 SCMR 574; PLD 2001 Supreme Court 415;

<sup>10</sup> Per *Mushir Alam J.* in *Province of Sindh vs. Abdul Sattar Arbani (CP 654-K of 2018) & connected matters*

<sup>11</sup> Per *Muhammad Ali Mazhar J.* in *Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* reported as PLD 2019 Sindh 516.

from want of jurisdiction; amounts to an abuse of process; and / or is *mala fide*, unjust and / or prejudicial towards the recipient.

7. Section 9 of the Ordinance confers jurisdiction upon the FTO to investigate allegations of maladministration on the part of the Revenue Division<sup>12</sup> or any Tax Employee<sup>13</sup>. Notwithstanding the fact that the definition of aforementioned terms do not extend to the petitioner, section 9(3) of the Ordinance<sup>14</sup> specifically excludes matters in respect of any personal grievance relating to service.

Therefore, it is our considered view that the Impugned Notice, and the proceedings contemplated therein, appears to have been rendered in excess of jurisdiction, hence, cannot be sustained<sup>15</sup>.

8. This petition is allowed and the Impugned Notice and the proceedings contemplated therein are hereby set aside. The respondent no. 4 shall remain at liberty to seek the mitigation of any grievance before the forum of appropriate jurisdiction in accordance with the law.

JUDGE

JUDGE

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<sup>12</sup> "Revenue Division" means the administrative unit responsible for the conduct of business of the Federal Government in matters relating directly or indirectly with the collection of revenue from federal taxes, levy of taxes, duties, cesses or fees and declared as such by the Federal Government, and includes all its subordinate departments, offices and agencies.

<sup>13</sup> "Tax Employee" means an employee of the Revenue Division and includes an officer and any other functionary serving in, or any office subordinate to, the said Division.

<sup>14</sup> Notwithstanding anything contained in sub-section (1), the Federal Tax Ombudsman shall not accept for investigation any complaint by or on behalf of a Tax Employee concerning matters relating to the Revenue Division in respect of any personal grievance relating to his service.

<sup>15</sup> Per *Amir Hani Muslim J. in Peshawar Electric Supply Company Limited vs. Wafaqi Mohtassib (Ombudsman) Islamabad & Others* reported as *PLD 2016 Supreme Court 940*; *PLD 2019 Islamabad 352*.