

# IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

## Constitutional Petition No. D -6031 of 2017

Ayub Khan

*Versus*

The learned Member the Sindh Labor Appellate Tribunal and 03 others

Date of hearing

& order : 13.01.2021

Sardar Shabrez Khan, advocate for the petitioner.

Mr. Bashir Ahmed, advocate for respondents 3 and 4.

Mr. Ali Safdar Depar, Assistant Advocate General.

### ORDER

**ADNAN-UL-KARIM MEMON, J.** - Through this petition, the petitioner has assailed the judgment dated 01.02.2017 passed by the learned Sindh Labour Appellate Tribunal (SLAT), whereby judgment dated 09.01.2016 passed by the learned Sindh Labour Court No.IV, Karachi (SLC) was set aside and the petitioner's grievance application was dismissed.

2. Sardar Shabrez Khan, learned counsel for the petitioner, mainly contended that after the retirement of petitioner from the service of respondent-Karachi Dock Labour Board (Board) on 20<sup>th</sup> March 2005, his son namely Jahangir Khan, was entitled to be appointed based on son quota under the agreement on demand No.27 of the settlement between respondent-Karachi Dock Labour Board and the Collective Bargaining Agent (CBA). Per learned counsel, he deposited requisite amount with the respondent-board for the aforesaid purpose, which is still retained by them, however, they failed and neglected to appoint his son on the quota prescribed for retiring employees of Dock-Board. Learned counsel referred to various documents attached with the memo of the petition and argued that the learned SLAT while deciding his case ignored all factual as well as legal aspects of the case. He supported the judgment passed by the learned SLC and contended that the petitioner was a permanent worker in the respondent-board, thus his Grievance Application was maintainable before SLC under the law, therefore the captioned petition is liable to be allowed under the law. It is urged that there are conflicting findings recorded by the competent forum under the special law and the grounds raised in the instant

petition are tenable. He emphasized that the aforesaid judgment passed by the learned SLAT is against the parameters of the law and this Court has jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to dilate upon the evidence led by the parties. He lastly prayed for allowing the instant petition.

3. Mr. Bashir Ahmed, learned counsel for the respondent-board, refuted the claim of the petitioner and argued that this Court has already settled the question involved in the present proceedings in the case of Muhammad Kashif v. Messrs Karachi Dock Labour Board through Chairperson and others, 2013 PLC 374, therefore no further indulgence of this Court is required in the matter. He prayed for dismissal of the instant petition.

4. We have heard the learned counsel for the parties on the subject issue and perused the material available on record.

5. The important question involved in the present proceedings is whether the petitioner at the time of filing his grievance application before the learned SLC was a worker as defined under Section 2(xxix) of the Industrial Relations Act, and was rightly nonsuited by the learned SLAT vide judgment dated 01.02.2017?

6. To appreciate the aforesaid question, we have noticed that on 31<sup>st</sup> October 2011, the petitioner filed a grievance application, under section 41 of the Industrial Relations Act, (Act) before learned SLC on the ground that on his retirement on 20<sup>th</sup> March 2005, his son Jahangir Khan, was entitled to be registered as a dockworker under the agreement on demand No.27 of the settlement between the respondent-Board and the CBA. The learned SLC to evaluate the controversy between the parties framed the issues in the grievance application of the petitioner and gave its findings in his favour vide judgment dated 09.01.2016 on the analogy that since he did not receive an amount of Rs.100,000/-, therefore, he was held entitled for the relief claimed in the grievance application with direction to the respondent-Board to register his son as dockworker. The respondent-board being aggrieved by and dissatisfied with the aforesaid findings of learned SLC impugned the aforesaid judgment dated 09.01.2016 before the learned SLAT. The learned Appellate Tribunal did not concur with the decision of the Learned SLC on the premise that the petitioner at the time of filing his grievance application was not a worker as defined under Section 2(xxix) of the Act; and, elaborated on the subject with the declaration that a worker means 'a worker in service and, only

for the purpose of any proceedings concerning an industrial dispute, includes a person who has been dismissed, discharged, retrenched, laid off or otherwise removed from employment in connection with or in consequence of an industrial dispute or whose dismissed, discharge, retrenchment, layoff or removal has led to such dispute.’

7. We have scanned the evidence available on record and found the admission on the part of the petitioner to the extent that he stood retired from service in the year 2005 in the normal course and was not removed from service in connection with or in consequence of any industrial dispute, nor his removal had led to such dispute. We have noticed that as per the memorandum of settlement demand No.27 it was made clear that in case of retirement if the dockworker does not want his son to be recruited he be paid Rs.1,50,000/- in lieu of the son quota. This demand was considered with demand No.74. Agreed that in lieu of getting employment for a son a dockworker shall be paid Rs. 100,000/- instead of Rs. 60,000/- without any condition as to the length of service. Primarily under section 41 of the Act, only a worker could file an application for the redressal of his grievance. Since at the time of filing the grievance application, the petitioner was not a worker, therefore grievance application filed by him before learned SLC was not maintainable in law. Prima-facie the dispute between the parties was/is also not an industrial dispute as defined under section 2(xiii) of the Act, 2008 as amended up to 2010. Even otherwise his case does not fall within the ambit of section 2(xxix) of the Act for the reason that he stood retired from service in the year 2005 and sought enforcement of his right allegedly guaranteed to him under a settlement, as defined under section 2(xxv) thus his case is specifically excluded from the industrial dispute as discussed supra. However, the law on the subject is very clear that the industrial dispute can be raised by both the CBA or the employer/government and not by any retired worker before the Labour Court as provided under section 50 of the Act. So far as the implementation of a settlement is concerned, the learned Labour Court is competent to enquire into and adjudicate any matter relating to the implementation or violation of a settlement which is referred to by the Provincial Government as provided under section 52(4) (b) of the Act.

8. Reverting to the claim of the learned counsel for the Petitioner that he has been condemned unheard by the learned SLAT on the issues involved in the matter, Record reflects that the learned SLAT dilated upon the issues in an

elaborative manner and gave its findings by appreciating the evidence of the parties, therefore we do not agree with the assertion of the learned counsel that he was unheard on the issues. These findings arrived by the learned SLAT 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 SLAT has considered every aspect of the case and thereafter passed an explanatory Judgment.

9. We have also noted that in the present case, there is no material placed before us by which we can conclude that impugned judgment passed by the learned SLAT has been erroneously issued, therefore no ground existed for the re-evaluation of the findings/evidence, thus, we maintain the order dated 01.02.2017 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 12 1530 and General Manager National Radio Telecommunication Corporation Haripur, District Abbottabad vs. Muhammad Aslam and others, 1992 SCMR 2169 and Muhammad Kashif v. Messrs Karachi Dock Labour Board through Chairperson and others, 2013 PLC 374.

10. 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 findings of law recorded by the competent fora below as we do not see any illegality, infirmity, or material irregularity in the Judgment dated 01.02.2017 passed by the learned SLAT warranting interference of this Court. Hence, the instant Petition is found to be meritless and is accordingly dismissed along with the listed application (s).

11. These are the reasons for our short order dated 13.1.2021, whereby we have dismissed the petition.

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