

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Constitutional Petition No. D -650 of 2021

Order with signature of Judge

Fresh Case

1. For orders on office objections No.12, 18 & 19.
2. For orders on Misc. No.2703/21 (Exp)
3. For hearing of main case.

Dated : 04.02.2021

Syed Shoa-un-Nabi, advocate for the petitioners.

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It is contended inter-alia that Pak Saudi Fertilizer Limited (PSFL) was privatized, through the Privatization Commission of Pakistan (PC) in 2002; and, under a pre-privatization labour severance scheme/agreement, a golden handshake (GHS) was offered to the petitioners/workers, according to which a worker opting to leave the job was entitled to “1” + “4” denoted legal dues, including gratuity, etc. of the worker to be paid by PSFL and “4” denoted four basic salaries per every complete year of service of the worker to be paid by the successful bidder and the PC in equal shares. The Fauji Fertilizer Company Limited (FFCL) was the successful bidder. Four hundred sixteen workers, including the petitioners, applied for GHS under which payments were made to them, but they were not satisfied with the payments. As per petitioners, the amount paid to them was less than the actual amount payable under the GHS. They complained that “1” + “4” were wrongly calculated by showing their basic pay less than their actual basic pay and certain dues such as medical allowance, bonus 5% profit, and rest and recreation allowance were not included in the legal dues. They being aggrieved by and dissatisfied with the above actions of respondent-company filed Constitutional Petition No.51 of 2007 before this Court Bench at Sukkur, which was dismissed vide order dated 17.2.2011 for want of jurisdiction, leaving the petitioners to avail their remedy under the law. Petitioners assailed the aforesaid decision before the Honorable Supreme Court by filing Civil Petition for Leave to Appeal No.523 of 2011, which was not pressed by the petitioners vide order dated 21.6.2012 with a view to avail remedy before the Court of plenary jurisdiction. Petitioners approached the Court of Commissioner Workmen’s Compensation Act and Authority under Payment of Wages Act Sukkur Zone @ Sukkur by filling an Application under section 15/16 of Payment of Wages Act 1936. The decision came in favour of the petitioners with the findings that they were entitled to their claim, however, ten-time compensation was not allowed to them vide order dated 22.9.2016 passed by the learned Commissioner. The respondent-company being aggrieved by and dissatisfied with the aforesaid decision challenged the same before learned Sindh Labour Court No. VII, at Sukkur by filling Appeal No.3 of 2016 under section 17 of

Payment of Wages Act 1936. The learned SLC allowed the appeal vide order dated 9.1.2018 and set aside the decision dated 22.9.2016 passed by the learned Commissioner. Petitioners being aggrieved by and dissatisfied with the findings of learned SLC approached the learned Sindh Labour Appellate Tribunal Karachi (SLAT) in Revision Application No.SUK-14/2018 which was too dismissed vide order dated 29.1.2020. Now the petitioners have approached this Court against the concurrent findings of the two courts below.

Syed Shoa-un-Nabi, learned counsel for the petitioners, further contended that the impugned orders passed by the two forums below are based on a misconception; and/or non-appreciation of facts, law, and circumstances, hence not sustainable; that the two forums below failed to appreciate that claim of the petitioners was within the ambit of “Bid documents” which was a sort of an agreement under which the payment was to be made to the employees under the scheme of Voluntarily Separation Scheme VSS/GHS. It was a case of disallowing the legal claim to the petitioners to which they were entitled, which violated their fundamental rights; that the two courts below erred in holding that the remedy laid before this Court under section 28 of the Privatization Commission Ordinance, 2000, that no such objection was taken by the office of the lower forums while entertaining the application and revision of the petitioners; that due to this the petitioners are likely to be deprived of their remedy under section 28 of the Ordinance even as observed by SLAT on account of delay; that the learned Tribunal failed to appreciate that in the instant case the respondent-FFC deliberately and malafidely miscalculated the dues of the petitioners and also ignored other dues and in such cases disposing of the matters on a technicality was likely to create hardship and such decision is against the principles of natural justice. He emphasized that even otherwise this Court can entertain the petition of the petitioners by directing the respondent-company to clear the outstanding dues of the petitioners under bid documents.

To appreciate as to whether Golden Handshake approved and announced by Privatization Commission was not properly implemented and the petitioners were paid less amount by showing their basic pay less than their actual basic pay and not including medical allowance, bones, 5% profit and recreation allowance on their legal dues, let notice be issued to the respondents as well as to learned DAG. To be listed after two weeks.

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