

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

C.P. Nos. D-3687 to D-3694 of 2017

(1) Khushi Muhammad, (2) Muhammad Saeed, (3) Francis Khokhar,
(4) Chand Ram, (5) Muhammad Siddiqui (6) Irfan Jamil, (7) Devjee
and (8) Shakeel Ahmed

Versus

Hon'ble Sindh Labour Appellate Tribunal & another

Date of Hearing: 21.08.2019

Petitioners in all petitions: Through Mr. Abdul Zubaid Advocate

Respondent No.2: Through Mr. Muhammad Faruq Ghani
Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- These Petitions are filed by labours being aggrieved and dissatisfied of the order of the Labour Appellate Tribunal whereby the order of the Labour Court was modified. Since these are arising out from a common judgment dated 28.02.2017 passed by learned Labour Appellate Tribunal and are based on common facts and law hence are being disposed through this common judgment.

The petitioners filed grievance applications under section 46 of the IRO 2002 for their reinstatement and after a contest by the respondent No.2, the petitioners were reinstated in service with all back benefits w.e.f. date of dismissal from service vide order of Labour Court No.5 Karachi dated 31.05.2007. Aggrieved of the order of the Labour Court respondent No.2 preferred an appeal under section 48(3) of IRO 2002, which jurisdiction at the relevant time was exercised by this

Court, however, subsequently these statutory appeals were sent to the Labour Appellate Tribunal Sindh for decision in accordance with law.

The Tribunal heard the appeal and modified the order of the Labour Court to the extent where some of the labours/petitioners were granted compensation at the rate of Rs.4 lacs whose services were of more than 10 years whereas an amount of Rs.3 lacs was awarded as compensation to those petitioners whose services were of less than 10 years. The said amount was deposited by respondent No.2 and the petitioners withdrew the same without any objection or condition. These petitions impugn an order whereby compensation was awarded to the petitioners and the order of reinstatement was set aside. Learned counsel for petitioners has not opposed/controverted withdrawal of the amount unconditionally.

We have heard the learned counsel and perused the material available on record.

Petitioners were agitating the case of their reinstatement before Labour Appellate Tribunal by defending the appeals of respondent No.2. Though they have also taken a preliminary objection regarding appeals being barred by time however the point of limitation was decided against the petitioners and the appeals were held to be within time. In these petitions apart from merits of the case petitioners have also challenged that the appeals should not have been maintained as these were barred by time.

We are afraid neither preliminary issue of limitation nor any case on facts is available to the petitioners since they have already conceded to the judgment of the Tribunal as they have received the compensation in lieu of their terminations. The Tribunal awarded the compensation in full and final settlement for severing their employment relationship with respondent No.2. It was further observed by the Tribunal that any

amount deposited by respondent No.2 as back benefits shall be adjusted towards lump-sum amount awarded to petitioners by the Tribunal i.e. compensation. Hence, the petitioners knowingly, intentionally and willingly withdrew the amount of compensation thus cannot be allowed to blow hot and cold at the same time. They have received the compensation for wrongful termination and now seek their reinstatement with back benefits, thus cannot be allowed to have a cake and eat it at the same time.

In one of the similar cases i.e Independent Newspaper Corporation (Pvt.) Limited v. Punjab Labour Appellate Tribunal Lahore reported in 2013 SCMR 190 the Hon'ble Supreme Court observed that since the aggrieved party already accepted their terminations and received their emoluments in full and final settlement without any coercion or duress as such the relationship of employee and employer discontinued as they have severed themselves from the establishment. The relevant part of the judgment is reproduced as under:-

“A perusal of the above settlement, admission of the respondents and orders indicate that the respondents have accepted their termination and received their emoluments in full and final settlement without any coercion or duress, as such the relationship of employees and employer stood discontinued as they have severed themselves from the establishment. As such they are estopped under the law to put up any claim of whatsoever nature against the petitioner - Corporation in respect of their reinstatement or monetary gains.”

Thus by their conduct the petitioners have estopped under the law to put up their claim of reinstatement and back benefits since they have succumbed to the orders of the Tribunal by virtue of receiving the compensations in the above terms.

The judgments relied upon by learned counsel for petitioners, in the light of above discussion, appears to be not relevant to the facts and circumstances of these matters and are distinguishable.

Instant petitions along with pending applications were accordingly dismissed vide short order dated 21.08.2019 and above are the reasons of the same.

Judge

Judge