

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:

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

C.P. No. D- 8184 of 2017

Adeel Khan

Versus

.....Petitioner

Sindh Labour Appellate Tribunal & others

.....Respondents

C.P. No. D- 8185 of 2017

Abdul Basit

Versus

.....Petitioner

Sindh Labour Appellate Tribunal & others

.....Respondents

C.P. No. D- 8186 of 2017

Muhammad Kashif

Versus

.....Petitioner

Sindh Labour Appellate Tribunal & others

.....Respondents

C.P. No. D- 8267 of 2017

Muhammad Tariq

Versus

.....Petitioner

Sindh Labour Appellate Tribunal & others

.....Respondents

C.P. No. D- 8578 of 2017

The Trustees of the Port of Karachi and another  
Versus

.....Petitioners

Mr. Muhammad Tariq & others

.....Respondents

C.P. No. D- 8579 of 2017

The Trustees of the Port of Karachi and another  
Versus

.....Petitioners

Mr. Abdul Basit & others

.....Respondents

C.P. No. D- 8580 of 2017

The Trustees of the Port of Karachi and another  
Versus

.....Petitioners

Mr. Muhammad Kashif & others

.....Respondents

C.P. No. D- 8581 of 2017

The Trustees of the Port of Karachi and another  
Versus

.....Petitioners

Mr. Adeel Khan & others

.....Respondents

Date of hearing: 26.09.2019  
 Date of order: 26.09.2019

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Mr. Abdul Ghaffar, advocate for the Petitioners in C.Ps No.D-8267 of 2017, D-8184 of 2017, D-8185 of 2017, D-8186 of 2017 and for Respondents in C.Ps No. D-8578 of 2017, D-8579 of 2017, D-8580 of 2017 & D-8581 of 2017.

Mr. Bashir Ahmed, advocate for the Petitioners in C.Ps No.D-8578 of 2017, D-8579 of 2017, D-8580 of 2017 & D-8581 of 2017 and for Respondents in C.Ps No.D-8267 of 2017, D-8184 of 2017, D-8185 of 2017 & D-8186 of 2017.

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## O R D E R

**ADNAN-UL-KARIM MEMON, J:** - All the above referred Constitutional Petitions are being disposed of by this common order as the issues raised are similar in nature.

2. Through these Constitutional Petitions, both the parties have assailed the common judgment dated 30<sup>th</sup> October, 2017 passed by the learned Labour Appellate Tribunal Sindh at Karachi [SLAT] in Appeal No.KAR-21/2016 and other 03 connected Appeals, whereby their respective Appeals were disposed of on the analogy of the length of service of the workers namely Abdul Basit, Muhammad Kashif, Muhammad Tariq and Adeel Khan and conditions of unemployment prevailing in the country, a reasonable compensation of Rs.200,000/- (Rupees two hundred thousand) was awarded to each worker, as full and final payment for severance of their employment relationship with the Karachi Port Trust (KPT).

3. Mr. Abdul Ghaffar, learned Counsel for the workers/petitioners in C.P Nos.D-8267 of 2017, D-8184 of 2017, D-8185 of 2017, D-8186 of 2017 and for Respondents in C.Ps No. D-8578 of 2017, D-8579 of 2017, D-8580 of 2017 & D-8581 of 2017 argued that the impugned common Judgment dated 30<sup>th</sup> October, 2017 passed by the learned SLAT and the impugned orders dated 26.2.2016 and 8.2.2017 passed by the learned Sindh Labour Court (SLC) in Grievance Petitions No.20, 21, 22 and 32 of 2015 are full of errors, based on misreading and non-reading of evidence; that the findings of the learned Courts below are arbitrary and perverse; that the learned Presiding Officer of

SLC, as well as, Member, SLAT have failed to appreciate that the workers were regular employees of KPT and before their termination they were not heard, therefore, the Impugned Judgment passed by the Member, SLAT, as well as, the impugned orders passed by the Presiding Officer, SLC are illegal, unlawful and against the law, hence, are liable to be set aside; that there is no provision in law to award compensation in lieu of reinstatement in the service of the workers as such the learned SLAT committed grave error by not reinstating the workers and only awarded reasonable compensation; that the learned SLAT wrongly held that the findings of SLC is unexceptionable; that the workers filed their affidavit in evidence and they were cross examined on behalf of the KPT and their evidence was not shaken in cross-examination. The learned counsel for the workers in support of his contention has placed reliance upon the cases of Qaisar and others vs. Muhammad Shafqat sharif (2012 SCMR 743), Messrs Wyeth Pakistan Limited vs. Nasimul Hassan and others (2018 PLC 171) and Messrs Kohnoor Marble Industries Limited Vs. Mirza Zamir Baig and others (1991 PLC 408) and argued that he will be satisfied if the workers/petitioners are reinstated in service. He lastly prayed for allowing their Petitions bearing Nos.D-8267 of 2017, D-8184 of 2017, D-8185 of 2017, and D-8186 of 2017.

4. Conversely, Mr. Bashir Ahmed, learned Counsel for the Petitioners in C.Ps No.D-8578 of 2017, D-8579 of 2017, D-8580 of 2017 & D-8581 of 2017 and for Respondents in C.Ps No.D-8267 of 2017, D-8184 of 2017, D-8185 of 2017 & D-8186 of 2017 has questioned the findings of learned SLAT to the extent of award of compensation to the workers. He states that there is no provision in law to award compensation in lieu of reinstatement in the service of the workers; that since their basic appointments in KPT was sketchy, and then the question of awarding compensation to them is against the basic spirit of law. He lastly prayed for allowing the petitions of KPT, bearing No.D-8578 of 2017, D-8579 of 2017, D-8580 of 2017 & D-8581 of 2017.

5. We have heard the learned Counsel for the parties and perused the material available on record and case law cited by them.

6. We have considered the submissions of the learned Counsel for the workers regarding non-issuance of charge sheet/show cause notice in the light of evidence and documents produced before the learned Labour Court.

7. In order to evaluate the above legal proposition, we have seen that the Petitioners were purportedly appointed in the year 2012 on probation and their services were terminated vide office order dated 30.6.2015. The learned trial Court dealt with all the grievance applications of the workers of KPT and gave its findings in favour of KPT-establishment. The findings of the learned Labour Court are based on the evidences that workers lacked the required Educational qualification for the post of Cargoman/Peon/Mazdoor as per recruitment Rules of the KPT (*available at page-67 of the Memo of Petition in C.P No.D-8581/2017*), the qualification "Middle Pass" is required for the aforesaid posts and the workers' plea is that they had not submitted the last School Leaving Certificate as their educational qualifications along with their respective applications, showing them Middle Passed but they had submitted their applications on the basis of Primary Education. The finding of the learned Trial Court that it was sufficient to disqualify them for the post of Cargoman, Peon or Mazdoor as they were not eligible for the aforesaid posts and their initial appointment on the basis of Primary Education was against the law.

8. We have noticed that on the aforesaid basis the learned Labour Court nonsuited them and dismissed their respective grievance applications. We have also noticed that the officer of KPT was examined by the learned Trial Court. His deposition clearly shows that he produced the documents as Ex.-1 to 15 which prima facie suggest that the initial appointment of the workers on probation was not in consonance with law. The deposition of workers explicitly show that they did not attach any educational certificate alongwith their applications for appointment, however, in their deposition some of them admitted that they applied for job in KPT through their relatives and their qualification was only up to the primary.

9. The learned counsel for the Workers is not in a position to dispute that the Middle pass certificate produced by the workers which was later on found fake. However, the workers admitted in their applications form for their respective posts that they had not passed Middle, which was requirement for the post under the recruitment rules as discussed supra but they just signed the application forms and the certificate was not produced by them.

9. We do not see any sense in the aforesaid submissions as to why an appointing authority would furnish a fake certificate, which if not detected would give an edge to the workers. Furthermore, there is no record available as to whether the posts against which the workers were appointed were advertised or any transparent process was initiated in this regard. There can be no two opinions that the Middle Pass certificate was later on found forged. We have also noticed that the Ministry of Ports and Shipping vide letter dated 24.7.2015 ordered for inquiry in the matter.

10. From perusal of the pleadings of the parties and evidence recorded by the learned SLC, Karachi it is crystal clear that all these proceedings and actions were taken against workers in all the petitions by the KPT on the basis of their admission and documentary evidences and conclusive findings of guilt of the workers have been established in the evidence, therefore no inference can be drawn against the KPT at this stage.

11. The second plea raised by the learned Counsel for the KPT is that award of compensation to the workers in all the petitions is not justified. We have considered this aspect of the case and are of the considered view that the reasons assigned by the Member SLAT in the impugned Judgment dated 30.10.2017 are not sufficient to discard the reasoning of learned SLC, which needed no interference and modification. Even otherwise the reasoning of the learned SLAT is shocking that due to unemployment, the workers are entitled for compensation of Rs.2,00,000/- each, in our view the same finding is not sustainable in law.

12. Upon perusal of the evidence recorded by the learned Sindh Labour Court, it is crystal clear that the services of the workers/Petitioners in C.P

No.D-8581/2017 and other connected Petitions were terminated in the year 2015 with effect from 21.8.2014 on the sole ground that they lacked the basic academic qualifications for the post in which they were inducted through trade union in KPT.

13. We are of the considered view that the learned trial Court/SLC has dilated upon the aforesaid issue of appointment in KPT in an elaborative manner and gave findings in affirmative by appreciating the material available on record, therefore no ground existed for reevaluation of the evidence, thus, we maintain the Judgment passed by the learned SLC. 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 other (2008 SCMR 1530) and General Manager National Radio Telecommunication Corporation Haripur District Abotabad Vs. Muhammad Aslam and others (1992 SCMR 2169)

14. In view of the evidence brought on the record, we do not concur with findings of the learned Appellate Tribunal, Sindh, as the private respondents/workers were inducted in service without completing the codal formalities and entire evidence supports the case/contention of the KPT.

15. We have noted that case law cited by the learned counsel for the workers is distinguishable from the facts obtained in the case in hand.

16. In the light of above facts and circumstance of the case, the petitions bearing C.Ps No.D-8578 of 2017, D-8579 of 2017, D-8580 of 2017 & D-8581 of 2017 filed by the KPT are allowed as prayed and the petitions bearing C.Ps No.D-8267 of 2017, D-8184 of 2017, D-8185 of 2017 & D-8186 of 2017 filed by the workers are dismissed with no order as to costs.

**JUDGE**

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