IN THE HIGH COURT OF SINDH KARACHI

Before: Mr. Justice Salahuddin Panhwar, &
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 4048 of 2012

M/s Dalda Foods (Pvt) Ltd
Petitioner
Through : Ch. Atif Rafiq, advocate along with Adnan Habib Khan, Vice President-Admin & Legal Dalda Foods.

Respondent No.1 & 2 : Mr. Muhammad Nishat Warsi, DAG
Through

Respondent No.3 : Mr. Muhammad Ali Khan, advocate
Through

Respondent No.4 to 16
Through : M/s Ashraf Hussain Rizvi and Bacha Fazal Manan, advocates.

Respondents No.157 to 162
Through : Mr. Farhatullah, advocate.

C.P. No. D- 128 of 2013

M/s Haq Engineering & Packing Services (Pvt) Ltd
Petitioner
Through : Muhammad Ali Khan, advocate.

Respondent No.1 & 2 : Mr. Muhammad Nishat Warsi, DAG
Through

Respondent No.3
Through : Ch. Atif Rafiq, advocate.

Dates of hearing : 30.09.2021 and 06.10.2021

Date of Order : 06.10.2021

O R D E R

ADNAN-UL-KARIMMEMON, J. We intend to dispose of the captioned petitions by way of this single order as the aforesaid petitions have the same circumstances, questions of law, and facts.

2. The petitioner-M/s Dalda Foods (Pvt.) Ltd has impugned the consolidated order dated 22.10.2011, passed by the learned Sindh Labour Court (SLC) in grievance Applications of the private respondents

maintained by the learned Sindh Labour Appellate Tribunal (SLAT) vide common order dated 31.10.2012 in Appeal No. KAR-273/2011, Appeal Nos. KAR-445/2011 to KAR 496/2011 and KAR-498/2011 to KAR-603/2011, preferred by both the petitioners.

3. At the outset, we asked the learned Counsel for the petitioners to satisfy this Court on the following propositions:-

i) Whether learned Labour Court has jurisdiction to entertain the grievance petitions of the private respondents?

ii) Whether the verbal termination of the services of private respondents was justified under the law?; and

iii) Whether the private respondents were/are employees of petitioner-M/s Dalda Foods (Pvt.) Limited or third party contractor i.e. M/s Haq Engineering & Packing Services (Pvt.) Limited / petitioner in C.P. No. D-128/2013 and respondent No.3 in C.P. No. D-4048/2012.

iv) Whether against the concurrent findings of facts and law by the two competent fora could be interfered.

4. Ch. Atif Rafiq, learned counsel for the petitioner in C.P No.D-4048 of 2012 has briefed us on the factual and legal aspects of the case; besides that, petitioner / M/s Dalda Foods (Pvt.) Limited is a Trans-Provincial Establishment, thus fully aggrieved by the decisions rendered by the learned SLC and SLAT. He submitted that the petitioner is a registered company engaged in manufacturing activity of products of Dalda Brand items as mentioned in the Memorandum of Association. He averred with the strong assertion to setaside both the orders passed by the learned SLC and SLAT, inter-alia, on the ground that private respondents were/are employees of third-party contractor/respondent No.3 and petitioner has only engaged the services of respondent No.3 to fulfill its contractual obligations under service contract, as executed initially in 2004, re-executed in 2005 and extended upto 2007, 2009 and 2010, which were done through its employees and both courts below have failed to take into consideration this aspect of the matter,however, he emphasized that institution of the labor proceedings by the private respondents, before the learned SLC was ab-inito, void; and, of no legal effect on the premise that petitioner is a Trans-Provincial Establishment, thus

learned SLC and SLAT had no jurisdiction under the Industrial Relations law to entertain the Grievance Applications of the private respondents. He further submitted that the NIRC was/is vested with the jurisdiction to entertain the industrial disputes and not the learned SLC. He added that the proceedings initiated before the SLC, and subsequent recording of evidence by the SLC could not be treated or construed as legal evidence. He further averred that the basic Grievance Petitions of the private respondents were not an industrial dispute under the labor law.He emphasized that though there are concurrent findings passed in favor of the privaterespondents, however in the present case, as noted above, the learned SLC and SLAT have exercised their jurisdiction beyond its lawful mandate under the industrial laws. Per learned counsel, this gross jurisdictional error could not be ignored. He asserted that when the very foundation of the claim of private respondents lacked legal sanctions, then the superstructure built thereon must also fall. This crucial jurisdictional lapse escaped the attention of the learned courts below, and thus, warrants correction by this Court in its Constitutional jurisdiction. He lastly argued that the matter needs to be remanded to the NIRC to look into the subject affairs and take the decision under the law within a reasonable time.In support of his case, he relied upon the judgment dated 04.08.2014 passed by the Full Bench of this Court in C.P. No.D-3195 of 2010 and C.P. No.D-7678 of 2015 and other connected petitions. Besides above, learned counsel for the petitioner also referred to the memo of petition and documents attached therewith and argued that the grounds as mentioned in the petition are sufficient to discard the version of the private respondents as well as the findings of both the learned Courts below. On the point of petitioner-Dalda, being a Trans-provincial establishment, he emphasized that after the repeal of Industrial Relation Ordinance (IRO) 2008 through sunset clause on 30.4.2010 and before the promulgation of IRA 2011/ 2012, the Industrial Relations Ordinance 1969 stood revived; that in view of above, such findings of learned SLC and SLAT on assuming the jurisdiction in the matters ofTrans-provincial organization are per incuriam and against the law laid down by the Honorable Supreme Court in the case of *Air League of PIAC Employees through President vs. Federation of Pakistan M/O Labour and Manpower Division Islamabad and others* (**2011 SCMR**

1254) wherein it was held that IRA 2012 would be applicable retrospectively with effect from 1.5.2010 when the IRO 2008 ceased to exist. Alternatively, he prayed for setting aside both the impugned decisions. At this stage we reminded him that the term Trans-provincial came into existence under inIndustrial Relation Ordinance 2011, and then IRA, Act 2012before that learned laborCourts had the jurisdiction in all matters ofunfair labor practices /industrial disputes, and prima-facie, these matters are the outcome of labor law; and,do not fall within the ambit of National Industrial Relation Commission in the light of law laid down by Full Bench of this Court in the case of *KESC v. N.I.R.C.* [**PLD 2014 Sindh 553**]. Besides that petitioner never pleaded before both the Courts below with regard to the status of the petitioner as a Trans-provincial organization, which is now being purportedly claimed. He has no satisfactory answer but to say that the legal point could be raised at any stage of the proceedings.

5. Mr. Muhammad Ali Khan, learned counsel for the petitioner in C.P. No. D-128 of 2013 has adopted the arguments of Ch. AtifRafiq learned counsel for the petitioner in C.P No.D-4048 of 2012.However, he has further submitted that the impugned judgments passed by the learned SLC and SLAT are a nullity and are liable to be set aside being not sustainable in law; that the Learned Courts below have failed to appreciate the evidence available on record which is in favour of the Petitioner in C.P. No. D-128 of 2013; that the learned Courts below erred in allowing the service matter of the private respondents, without appreciating the documentary evidence brought on record and the case law pronounced by the superior courts on the issue involved in the matter; that the learned Courts below have failed to appreciate that the private respondents were appointed by the petitioner-M/s Haq Engineering & Packing Services (Pvt) Ltdand were removed from service in three phases, in the year 2008 by exercising powers under the mandatory provision of Standing Order 12(3) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1969; that the learned Courts below erred in not relying upon the evidence produced by the petitioner-company regarding appointment of the private respondents through a third party contractor/petitioner and believed private respondents' assertion in violation of law; that the learned

Courts below erred in holding that private respondents were employee of the petitioner in C.P No. D-4048 of 2012; who were simply allowed to do their duty in the petitioner / M/s Dalda Foods (Pvt.) Limited at the request of service provider/petitioner till the end of the contract period. He emphasized that under the Industrial Relation law the service of third party contractor is protected as such it is unbelievable to construe that the private respondents were not the employees of the petitioner-company, who paid them, got registered them with SEESI and EOBI, their services were given to petitioner / M/s Dalda Foods (Pvt.) Limited under the agreement. He pointed out that no grievance notices were served upon the petitioner which was/is the mandatory requirement under the labor law. He also pointed that out of 206 grievance applications of the private respondents 40 grievance applications were dismissed/withdrawn. In support of his contentions, he relied upon paragraph 19 of the memo of the petition and urged that there existed a relationship between the petitioner and private respondents, therefore the findings of both the courts below are liable to be annulled. He lastly prayed for setting aside both the Judgments rendered by the learned Courts below.

6. In the last, Learned counsel for petitioner has contended that respondents were hired through contract in 2002, at that time IRO 2002 was in field, thereafter in 2008 there was a new legislation named Sindh IRA 2008 wherein jurisdiction of trans-provincial establishments was with Sindh Labour Courts however in IRA 2010, mechanism was provided whereby employees of trans-provincial establishments were required to file grievance petition before NIRC, that ordinance was promulgated in 2011, at that time matter was pending before appellate authority hence Tribunal was not competent to decide the same; though IRA 2012 was challenged before this court but ultimately that was maintained in 2014 as intra vires, therefore, proceedings before the Sindh Labour Court and Sindh Labour Appellate Tribunal and their respective orders dated 22.10.2011 and 31.10.2012, were corum non judice.

7. M/s Ashraf Hussain Rizvi and Bacha Fazal Manan, learned counsel for the private respondent No. 4 to 16 have supported the impugned judgments passed by the learned SLC and SLAT. As regards

the question that the private respondents were not the employees of the petitioner-/ M/s Dalda Foods (Pvt.) Limited but the third party contractor/respondent No.3, suffice it to say that it is a normal practice on behalf of such industries to create a pretense and on that pretense to outsource the employment of the posts which are permanent and it is on the record that the private respondents have been in service starting from as far back as 2004. He emphasized that the case of private respondents also falls within the four corners of the principle enunciated by the Honorable Supreme Court in the cases of *Fauji Fertilizer Company Limited vs. National Industrial Relations Commission*, **2013 SCMR 1253 and** *State Oil Company Limited v. Bakht Siddiqui* (**2018 SCMR 1181**). He added that this all seems to be a sham or pretense as observed by the Honorable Supreme Court in its various pronouncements and prayed for dismissal of the instant petitions.

8. Mr. Farhatullah learned counsel for the private respondent No. 157 to 162 has also supported the impugned judgments passed by the learned Courts below and contended that the private Respondents in both the petitions were permanent workers in the Petitioner- M/s Dalda Foods (Pvt.) Limited, thus Grievance Applications were maintainable under the law; that the captioned petitions are liable to be dismissed under the law; that there are concurrent findings recorded by the competent forum under the special law and the grounds raised in the instant petitions are untenable; that Petitioner- M/s Dalda Foods (Pvt.) Limited terminated the services of the private-Respondents in both the petitions without any notice and inquiry and did not pay dues to the private Respondents; that both the aforesaid Judgments are passed within the parameters of law that instant petitions are frivolous, misleading as there are concurrent findings by the courts below and this Court has limited jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to dilate upon the evidence led by the parties; that private Respondents in both the petitions had performed their duties with full devotion; that the terms and conditions of the employment in the shape of letters of appointment were not issued to the private Respondents; that the private Respondents were terminated from service without any fault; that aforesaid action of the

Petitioner-M/s Dalda Foods (Pvt.) Limitedwas illegal therefore private Respondents in both the petitions raised their grievance notice which was served upon the Petitioners but was not redressed at the initial stage, they had no alternative except to approach the learned SLC for the aforesaid remedy and relief; that the learned SLC after recording the evidence passed just, proper and fair Judgments in both the cases holding their termination as illegal and reinstated them in service with all back benefits and the Petitioner- M/s Dalda Foods (Pvt.) Limiteddid not reinstate them on duty and filed statutory appeals before the learned SLAT; that the learned Member of SLAT after hearing the learned counsel for the parties passed the Judgment in both the petitions however the Petitioner- M/s Dalda Foods (Pvt.) Limitedhas now approached this Court. He lastly prayed for the dismissal of both the instant petitions.

9. Mr. Muhammad Nishat Warsi, learned Deputy Attorney General, supported the contention of learned Counsel for Respondents and argued that the instant petition is not maintainable on the ground that there are concurrent findings against the petitioners by both the courts below. So far as the jurisdiction of the learned SLC and SLAT is concerned since the petitioner failed to prove its status as a trans-provincial establishment before both the courts below thus the case of the petitioner does fall within the ambit of labor laws and the jurisdiction assumed by the learned Courts below are well within the parameters of the law.

10. We have heard learned counsel for the parties at some length, perused the material available on record and case-law cited at the bar.

11. To cut short the story narrated by the petitioners-management, the said narration is untenable in the light of decisions of the Honorable Supreme Court in the cases of *Fauji Fertilizer Company Limited vs. National Industrial Relations Commission*, **2013 SCMR 1253**, *Messrs. State Oil Company Limited vs. Bakht Siddique and others*, **2018 SCMR 1181**, and *Messrs. Sui Southern Gas Company Limited vs. Registrar Trade Unions and others*, **2020 SCMR 638**, in which the workers employed by the third-party contractor were held to be the

workers of the company. On the question as to whether there existed an employer-employee relationship between the workers and the Management, the Honorable Supreme Court has already settled this proposition and held that the mere fact of formal employment by an independent contractor will not relieve the master of liability where the servant is, in fact, in his employment. In that event, it may be held that an independent contractor is created or is operating as a subterfuge and the employee will be regarded as the servant of the principal employer.The aforesaid principle is fully applicable in the present case on the premise that the jobs offered to the private respondents were /are being performed by them in the petitioner-company i.e.M/s Dalda Foods (Pvt.) Limited was/is permanent; and, for that purpose, their services were hired against the said posts. Besides that, there are concurrent findings against both the petitioners that's why we asked learned Counsel for the petitioners to satisfy this Court about the maintainability of these petitions under Article 199 of the Constitution.

12. To evaluate the above legal proposition the learned trial Court, framed the issues in The Grievance Applications of the private Respondents and gave its findings in favor of the private Respondents in both the petitions. Issues framed by the learned trial Court are that: -

> *1. Whether the grievance notices were served on the respondents and whether any relief claimed against the respondent No.2?*
>
> *2. Whether the grievance notices to respondent No.2 is time barred and whether the contents of notices are fall within the ambit of grievance notice as provided under law?*
>
> *3. Whether there is relationship of employee and employer between applicants and respondent No.1?*
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> *4. Whether applicant Arshad Khan, Yar Salam and Abdullah received dues in full and final settlement?*
>
> *5. Whether the services of applicants were terminated illegally?*
>
> *6. Whether there is no relationship of employee and employer between 7 applicants namely Malik Junaid, Bakht Mir, Abdul Jabbar, Muhammad Asghar, Abdul Sattar, Saeed Khan and Liaquat Ali and respondent No.2 Haq Engineering and Packaging Services Pvt. Ltd?*

7. What should the order be?

13. To appreciate the controversy froma proper perspective, we deem it appropriate to have a glance at the evidence brought on record by the parties. At the first instance, the relevant portion of the conclusive findings of learned Courts below is as under:-

> ***"Crucial issue in this matter is that of the relationship of the respondent workers with the appellant management M/s. Dalda Foods Limited and it is the appellant who claimed before learned Labour Court that the respondent workers were not its employees, but actually employed by contractor/respondent No. 2 under service contract, as executed initially in 2004, re-executed in 2005 and extended into 2007, 2009 & 2010.*** It is a matter of record that the name of respondent # 2 as used in the agreement executed in 2005, 2007 was as Haq Engineering & Packaging Services. In Agreement of 2004, 2005 & 2007 was as A-26, X/1, 137-A, Gulshan-e-Maymar Karachi. Whereas the agreements executed in 2009 & 2010 having address as 34, Masood Chamber, Campbell steet with the remark that the said company has now incorporated as Haq Engineering & Packing Services (Pvt) Limited. It means that Haq Engineering & Packing Services having office at 34, Masood Chamber, Campbell Street is a different entity and Haq Engineering & Packing Services (Pvt) Limited having office at A-26, X/1,137-A, Gulshan-e-Maymar Karachi is a different entity. The claim of the appellant is that both are one and single entity and only different is that prior to 2009 Haq Engineering & Packaging Services was not a company registered under the Companies Ordinance but later on it got registration as Private Limited Company, as show from the agreement produced by the appellant.
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> The claim of the appellant is that in the agreement executed 30th April 2010 that the Haq Engineering & Packing Services put) Limited was formerly known as "Haq Engineering & Packaging Service" and having registered office at 34, Masood Chamber, but the office address as shown in the previous agreement was that of Gulshan-e-Maymar. It is further noted carefully that company was registered in the year 2010, whereas the appellant used the name of contractor as service company since the beginning, which is the violation of law, as the contractor may be considered as proprietor firm because in the agreement of 2004 Mr. Ekramul Haq Rizwan signed the agreement as sole proprietor. Careful examination of all the agreements reveals that if it is a service contract, then the amount required to be paid to the contractor shall also be mentioned in the agreement in order to determine the monetary value of the agreement for the purpose of determination of stamp duty, which has been deliberately not mentioned Appellant is a huge company enjoying/controlling considerable share in foods products in this country and earning a huge profit by selling of food products, so appellant company should have mentioned, its working requirement and had to pay the stamp duty as required under the Stamp Act, but by doing so the appellant company has caused loss to the Government Exchequer. More particularly all the agreements are neither registered nor notarized, even none of the agreement bears any rubber stamp of any of the two parties. Whereas, in cross-examination the witness of the appellant Adnan Habib has deposed as under:

"It is correct to suggest that every decision takes place with the approval of the Directors. It is correct that every approval is in writing. It is correct to suggest that I have not produced said approval in Court."

Perusal of the agreement at annexure "A/2" with the appeal has no mentioned of approval of the Board of Directors. Besides the above, the witness of the respondent # 2 has deposed regarding the existence of Haq Engineering & Packing Services which is reproduced as under:

"It is correct to suggest that Haq Engineering & Packing Services (Pvt) Limited on behalf of which W.S. & affidavit in evidence were filed was registered on 18.6.2010 under Companies Ordinance. On 22.01.2009 in Labour Department as commercial establishment and 03.02.2010 in EOBI."

On the basis of the above, it would be summarized that respondent # 2 was established after termination of services of the workers as admitted by the witness of the appellant, which reads as under:

"It is correct to suggest that in letter dated 24th May 2008 annexure A/7 with the main petitions is not showing the name of contractor. I do not remember that name of contractor not mentioned in objection filed in NIRC and petition filed before Hon'ble High Court of Sindh dated 27.5.2008 and 16.6.2008. I do not remember that we have not annexed copy of agreement in NIRC and Hon'ble High Court."

It is a matter of fact that appellant had also filed Constitution Petition bearing # S-259/2008 and in the said petition the contractor has not been impleaded as party and no name of the contractor was placed before High Court of Sindh Karachi, but it is mentioned that the production of various products of Dalda Foods (Pvt) Limited is done by a number of independent contractors.

On the same point Assistant Director from the Labour department had also appeared before learned Labour Court who deposed during his evidence as under:

"It is correct that there was no registration of Haq Engineering & Packing Services prior to 22.01.2009. It is correct that as per our record no establishment of M/s. Haq Engineering existed prior to 22.01.2009."

If it is considered that the Limited Company was established after termination of present respondents, so who was the employer before the termination of services as already noted above that the termination letter does not bear the name of the contractor. If it is considered that Mr. EkramulHaqRizwan being sole proprietor of Haq Engineering (non-registered or incorporated company) can perform the work of a contractor in the establishment like Dalda foods and for that purpose cross-examination of EkramulHaqPizwan is very important, which reproduced hereunder:

"It is correct to suggest machines, plot, building, raw material are property of Dalda Foods. It is correct Sui gas and electricity bills are to be paid by Dalda Foods. It correct Marketing is also responsibility of Dalda Foods. It 'is correct to suggest that without Dalda Foods no one can

continue his work/production process. It is correct to suggest that I am keep in touching with the management of Dalda Foods."

On the same issues witness of the appellant had deposed as under:

"It is correct to suggest that building, plot, machinery, plants, fittings, fixtures and assets are property of Dalda Foods. It is correct to suggest that there is one main gate, one is for pedestrian and other for vehicles. It is correct to suggest that all employees passed from the same gate. It is correct to suggest that there is one canteen for workers and employees. It is correct to suggest that electricity and Sui gas connection is one in the name of Dalda and Dalda made payment of all connections. It is correct that Dalda Foods bears expenses of first aid. It is correct that Dalda Foods contributed some share in canteen. It is correct to suggest that some shares pay by Dalda and some by meal taker. It is correct to suggest that all employees, management, contractor staff, technical staff take foods from canteen. It is correct to suggest all raw materials belong to Dalda Foods. It is correct to suggest that Dalda Foods is responsible for marketing."

It is further claimed by the appellant that workers employed by the contractor were registered in EOBI and the representative of FOBI during his evidence before learned Labour Court had deposed as under:

"It is correct to suggest that registration number 03213 was allotted to Dalda Foods in 2005. It is correct to suggest that sub-code is allotted to any branch of sub-branch of same employer. It is correct 003 sub-code was allotted from same registration number 03213. It is correct to suggest prior to 04.6.2008 no any information/application was given to EOBI Region or Head Office for any unknown person shown Dalda Foods employees strength at Website..... It is correct we did not conduct inspection prior to issuance of certificate. It is correct certificate of incorporation Exbt. RW-1 was issued on 18.6.2008. It is correct that this company was not registered prior to 17.6.2008."

The conclusion of above discussions would be that, prior to 24.5.2008 no company was in existence under the name and style of "Haq Engineering & Packaging Services" or "Haq Engineering & Packing Services (Pvt) Limited". It is claimed to be a sole proprietor who is allowed to be entered in the premises of M/s. Dalda Foods to perform contractual liabilities of a company working for manufacturing/preparing foods items and enjoying/sharing a handsome purchase in the foods stuffs in the country and I have also gone through the annexure annexed with the first agreement with appeal, which though mentioned of certain quality specification, but I am not satisfied with the same, as the foods products shall always manufactured/prepared in a good atmosphere by trained persons under supervision of established company and not by the sole proprietors, as because it is an admitted position that the sole proprietor Mr. EkramulHaqRizwan had no experience of work as contractor in any food industry. In the situation, learned Counsel for the respondent workers relied upon the judgment in the case of *ABDULLAH & 10 OTHERS versus DAWOOD COTTON MILLS & 04 OTHERS*, as reported in **1998 P.L.C. 147**, the said judgment was written by Mr. Justice (Retd) Mushtak Ali Kazi the then Chairman,

> Sindh Labour Appellate Tribunal and the point of relationship has been decided in favour of workers on the plea that *though the workers were shown to be employed through Contractor, but the machines, tools, raw materials were supplied by the employer mills and distribution of cloth was also done by the employer mills. Employer mills were responsible for quality of cloth and over all supervision of production. Employer mills were not leased out to alleged Contractors but mills were very much in possession of employer. Employer had not produced any evidence with regard to actual payment made by employer to alleged Contractors with regard to supply of labours either in Trial Court or even in Appellate Stage. Such fact would show that alleged Contracts were not genuine but had been executed for the purpose of denying the relationship of employer and employees by the employers with their workers. The said judgment of the Tribunal was challenged before the Hon'ble Division Bench of the High Court of Sindh and reported as* ***2004 P.L.C. 348****, same petition was dismissed vide order dated 26.01.2004. The management of M/s. Dawood Cotton Mills approached the Hon'ble Supreme Court of Pakistan in Civil Petition for Leave to Appeal and the Hon'ble Chief Justice Mr. Justice Iftikhar Chaudhry had declined leave and the same is reported in* ***2007 P.L.C. 27****,* so in view of the above citations, I am in agreement with the learned Presiding Officer that the appellant ***M/s. Dalda Foods Limited is the "employer" and not the "contractor M/s. Haq Engineering & Packing Services (Pvt) Limited***", hence the above appeals are dismissed and ***the order of learned Labour Court is maintained.***
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> ***I have also gone through the arguments of the learned Counsel on the other issues and am of the firm view that the order of the learned Labour Court is not suffered with any lacuna, mis-reading, non-reading of facts or evidence, especially the time limitation regarding grievance notice as I have held that appellant is the employer and there exists relationship between the appellant and the respondent workers."*** Emphasis Added

14. The learned SLC after recording the evidence of the parties and hearing gave a decision against both the Petitioners on the aforesaid issues by reinstating the services of the private respondents vide judgment dated 22.10.2011. The learned Appellate Tribunal concurred with the decision of the Learned SLC on the same premise vide judgment dated 31.10.2012. The impugned Judgments passed by both the learned Courts below explicitly show that the matter between the parties has been decided on merits based on the evidence produced before them on the subject issues.

15. We have scanned the evidence available on record and found the admission of the witness of the Petitioners in both the cases, as discussed in the preceding paragraph which resolves the entire controversy concerning the jurisdiction issue of the learned SLC and SLAT on the purported pleas taken by the petitioners.

16. As regard the last contention thereby challenging the jurisdiction while referring to IRO, it is pertinent to mention here that normally new plea (s), are not allowed to be raised at such stage, rather the parties were / are under legal obligation (s) to raise all plea (s) at first stage. It is matter of record that petitioner failed to move application to the concerned forum regarding such plea that Sindh Labour Courts or Sindh Labour Appellate Tribunal were not competent; they remained silent and such plea has been taken at this stage when admittedly two courts have decided the all the issues, came out of pleadings. Instant petition was preferred against orders of the Courts below hence plea of the counsel that retrospective effect is provided to procedural law is, prima facie, of no help. It is not disputed that in the Act itself it is not provided that cases pending with the Sindh Labour Court or the Sindh Labour Appellate Tribunal are to be transferred ipso facto pursuant to IRA 2012. As well, it is matter of record that this case was not pending before the forum when the Act which was promulgated in August 2011 rather it is evident that impugned judgment is of a date after three months. Petitioner failed to move such application on that procedural issue even when it was subjudice before this court therefore, it, prima facie, appears that such plea was either deliberately not raised or least was waived. In either case, the petitioner can't take an exception to his own fault or silence because legally an aggrieved was / is to object with what he / she feels aggrieved else principle of estoppels shall come into play. Guidance is taken from the case, reported as PLD 2015 SC 212 that:-

> "Where a person was aggrieved of a fact, he had a right, rather a duty to object thereto to safeguard his right, and if such a person did not object, he shall be held to have waived his right to object and subsequently shall be estopped from raising such objection at a later stage—person….Such waiver or estoppel may arise from mere silence or in action or even inconsistent conduct of a person."

Besides, Act of 2012 is not providing such directions that cases are to be transferred automatically. On the contrary, that mechanism was provided in the judgment passed by this court in the case of KESC and others vs. NIRC reported in 2015 PLD 1, hence at that time these cases were not pending before lower forum, therefore these arguments are without any substance.

17. In view of the foregoing, we are of the considered view that the learned SLC had the jurisdiction to entertain the grievance applications of the private Respondents.

18. We, in view of such facts and circumstances, would not proceed to reappraise the entire material including the evidence on the assumption that such reappraisal could lead us to a different view than the one taken by the two competent fora. This Court's interference in the concurrent findings would be justifiable only when some illegality apparent on the record having nexus with the relevant material is established. Learned SLC and SLAT have discussed the entire evidence adduced by the parties, and there appears no illegality in their findings recorded on the facts and law; besides both the learned SLC and SLAT have concluded that allegations leveled against private respondents could not be proved to justify their termination from service.

19. It would be conducive to refer that petitioner during pendency of this petition after five years of its filing, preferred application under order VI rule 17 CPC (CMA No.24659/2017) wherein petitioner prayed that :-

> "Declare that the learned labour court and the learned labor appellate tribunal had no jurisdiction to entertain or decide the subject grievance application or any appeals there from after **15.7.2011 i.e. the date of promulgation of Industrial Relations Ordinance 2011** and remand the original grievance applications for fresh hearing before the competent bench of the NIRC."

Prima facie, such plea was, first, brought on record through said application which, too, in a petition wherein concurrent findings were challenged. Such plea was never there when matter was pending before lower forum (s) hence the petitioner can't surprise the rival (s) nor even can ask for a decision in their favour with reference to such plea. It is settled principle of law that both courts while reaching at factual aspect with regard to employment of private respondents which, otherwise, appears to be well reasoned, hence cannot be disturbed in writ jurisdiction.

20. With regard to plea of trans-provincial establishments, petitioner was put on notice that whether in 2012 petitioner was trans-provincial establishment.

21. To this, petitioner has taken plea that the petitioner company is a trans-provincial establishment having branches at different places. In support of his version, petitioner has filed certain lease agreements of 2007 but surprisingly, these documents, though claimed to be in possession, were not produced before Sindh Labour Court or the Sindh Labour Appellee Tribunal. Even this plea was not taken there. On query, counsel contends that they have franchise of chips in Kasoor established in 2016.

22. Such assertion of establishment of franchise of chips in Kasoor in 2014 creates smoke on the screen and appears that it is, prima facie, after thought in order to defeat the employees who are contesting their case for the last 14 year before different forums as well as it is not disputed that petitioner in CP No.D-128/2013 was not company before 2008 and thereafter same was registered with the SECP. The question of involvement of third party has also been dealt with by the lower fora properly hence bringing such plea again with reference to what was never raised is not tenable. It shows an attempt by employer on the proposition of third party contract by depriving the employees who are working with the petitioner directly.

23. The findings of the lower forums, prima facie, are legal and proper appraisal of the available material, hence needs no interference particularly within meaning of Article 199 of Constitution.

24. We find that the private respondents were deprived of their due process rights. They were not confronted with the material based on which their services were verbally terminated. Even otherwise, the process followed by the petitioners was sketchy, one-sided, non-transparent, and not supported even by the law. We, therefore, find that both the Learned SLC and SLAT were justified in passing the impugned orders and recorded valid and cogent reasons for doing so, therefore, no ground existed for re-evaluation of the evidence, thus, we maintain the consolidated order dated 22.10.2011 passed by the Sindh Labour Court (SLC) in grievance Applications of the private respondents and common

order dated 31.10.2012 passed by the learned Sindh Labour Appellate Tribunal (SLAT) in Appeal No. KAR-273/2011, Appeal Nos. KAR-445/2011 to KAR 496/2011 and KAR-498/2011 to KAR-603/2011.

25. On the concurrent findings, the Honorable Supreme Court further deliberated on the subject; and, held that the basic principle is that where the Court or the Tribunal has jurisdiction and it determines the specific question of fact or even of law unless the patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by this Court while exercising jurisdiction under Article 199 of the Constitution.

26. We are of the considered view that this Court in Constitutional Jurisdiction cannot interfere in the findings on facts arrived at by a competent forum until and unless there are misreading and non-reading of evidence, perversity, illegality, or irregularity in the proceedings as we do not see in the findings recorded by both the Courts below warranting interference of this Court. Hence, the instant Petitions are found to be meritless and are accordingly dismissed along with the listed application(s).

27. These are the reasons for our short order dated 06.10.2021, by which we have dismissed both the petitions.

JUDGE

JUDGE

ShahzadSoomro