

Judgment Sheet
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

C.P No.S-38 of 2019

1. For orders on office objection.
2. For hearing of MA 145/2019.
3. For hearing of main case.

Date of hearing: 08.03.2021
Date of judgment: 19.03.2021.

Ms. Shahida Ghani, Advocate for the petitioner.
Mr. Israr Hussain Chang, Advocate for respondent No.3.
Mr. Wali Muhammad Jamari, Assistant A.G, Sindh.

J U D G M E N T

Arshad Hussain Khan, J: By means of this constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the order dated 28.11.2018 passed in case No.01 of 2018 by Commissioner for Workmen's Compensation and Authority under the Payment of Wages Act, at Hyderabad, whereby the learned Commissioner (respondent No.2) recalled the award earlier granted by him in favour of the petitioner.

2. The facts giving rise to this petition are that petitioner Muhammad Shahid Hussain was an employee / workman of respondent No.3-Hyderabad Development Authority (HDA) on contractual basis, vide appointment order dated 10.05.2007 on monthly emolument of Rs.2000/- and the contract was renewed from time to time till 30.06.2016. It has been stated that during service, the petitioner met with an accident upon which he was admitted to LUMHS, Hyderabad, where his right leg was amputated and he was permanently disabled. The petitioner moved an application to respondent No.2 (Commissioner Workmen Compensation, Hyderabad), who awarded him the compensation of Rs.700,000/- with directions to respondent No.3 to deposit the said amount in Court within thirty days. The respondent No.3 instead of depositing the amount filed a review application seeking review of order of awarding compensation which was allowed by respondent No.2 vide impugned order dated 28.11.2018. Hence this petition.

3. Upon notice of the present petition, although the counsel for respondent No.3 put his appearance, however, he did not file any reply / objection to the present petition and has chosen to argue the matter directly.

4. Learned counsel for the petitioner has argued that the authority neither under the Payment of Wages Act, 1936 nor under the Workmen's Compensation Act, 1923 had any power to review its own order as the said two Acts do not authorize the Commissioner Workmen's Compensation to exercise such powers; that the impugned order is illegal, unlawful and without jurisdiction; that respondent No.3 / HDA moved application on 06.07.2018 for setting aside the order dated 22.05.2018 which was dismissed on 16.08.2018, however, again they moved an application on 07.09.2018 for setting aside the order of compensation which was allowed by respondent No.2 through the impugned order dated 28.11.2018; that there is no provision under the Workmen Compensation Act, 1923, to review its own order, which has been passed even without disclosing any cogent reason. She has lastly prayed for setting aside the impugned order dated 28.11.2018 and allowing this petition. In support of her contention she has placed reliance on the cases of Mst. Noor Begum v. Commissioner For Workmen's Compensation and Authority under Payment of Wages Act and 2 others (2010 PLC 1), Naveed through Special Attorney v. Commissioner Workmen Compensation East Karachi and another (2013 PLC 162), Messrs CIM Shipping Inc. through duly Authorized Person v. Tousif Ahmed and 2 others (2019 PLC 121) and Khayber Pakhtunkhawa Forest Development Corporation through Managing Director and another v. Commissioner Workmen's Compensation Hazara Director at Haripur and 6 others (2019 PLC 18).

5. Mr. Israr Hussain Chang, learned counsel for respondent No.3 has argued that as the provisions of Civil Procedure Code are applicable before the authority in the proceedings arising out of Payment of Wages Act as well as the proceedings under Workmen's Compensation Act, therefore, such authority can, in any appropriate case, exercise the powers of review contained in section 114 of Civil Procedure Code. He has referred to section 18 of the Payment of Wages Act, 1936, and section 23 of Workmen's Compensation Act, 1923, and contended that the authority had the jurisdiction to review its own order. He further contended that the petition in hand is not maintainable under the law as the petitioner instead of availing the remedy as provided under the law by filing an appeal has approached this Court under writ jurisdiction. Learned counsel in support of his stance in case has relied upon the case of Messrs Castrol Pakistan (Pvt.) Ltd. through Accountant v. Additional Commissioner Inland Revenue and others [2015 PTD 2467]

6. Learned Assistant A.G. has supported the contentions advanced by learned counsel for the petitioner.

7. I have heard learned counsel for the parties and perused the material available on the record with their assistance.

From the record, it appears that the petitioner was appointed in Hyderabad Development Authority on contractual basis, vide appointment order dated 10.05.2007 which was subsequently extended from time to time up-till 30.06.2016. During service, the petitioner met with an accident and he lost his right leg and became disabled. The petitioner subsequently, approached respondent No.2 (Commissioner for Workmen's Compensation and Authority under the Payment of Wages Act, at Hyderabad) and by order dated 22.05.2018 he was awarded total compensation amount of Rs.700,000/- ; Rs. 3,50,000/- towards compensation and Rs. 3,50,000/- towards group insurance with the directions to respondent No.3 to deposit the awarded amount in the Court of respondent No.2. Respondent No.3 did not file any appeal against the said order as provided under the law and instead on 06.07.2018 filed an application under Order IX Rule IX r/w Section 114 and 151 CPC (review application) along with application u/s 5 of Limitation Act, 1908 r/w Section 151 CPC for setting aside the order dated 22.05.2018. Learned respondent No.2 on 16.08.2018 dismissed the limitation application. However, thereafter, on 07.09.2018 respondent No.3 again filed a hand written application seeking disposal of the review application. Learned respondent No.2, thereafter heard the review application and allowed the same through the impugned order dated 28.11.2018.

8. First and foremost question before this Court is whether Commissioner Workmen's Compensation have jurisdiction to review its own order. Somewhat on identical issue this Court in the case of Mst. Noor Begum v. Commissioner For Workmen's Compensation and Authority under Payment of Wages Act and 2 others (2010 PLC 1), while dilating upon the issue has observed as under:

"5. There is another aspect of the matter. The question is did the Commissioner Workmen Compensation have jurisdiction to review its own order. Powers of the Commissioner Workmen Compensation are provided in section 23 of the Workmen Compensation Act, 1923 in the following words:--

"23. Powers and Procedure of Commissioners.---The Commissioner shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), for the purpose of taking evidence on oath (which such Commissioner is hereby empowered to impose) and of enforcing the attendance of witnesses and compelling the production of documents and material objects and the Commissioner shall be deemed to be a Civil Court for all the purposes of section 195 and for Chapter XXXV of the Code of Criminal Procedure 1898 (V of 1898)."

6. A bare perusal of the above indicates that the Commissioner Workmen Compensation has no power to review its own order. In any case, the Honourable Supreme Court in Hussain Bakhsh v. Settlement Commissioner, Rawalpindi, PLD 1970 SC 1, has held that power to review any decision by

Court is like right of appeal and is a substantive right and is not a mere matter of procedure. Power of review is not available unless it has been specifically conferred by law. A Division Bench of this Court in *Ahmed Food Industries Ltd., Karachi v. Sindh Labour Appellate Tribunal, Karachi and 2 others* 1974 PLC 225 has very clearly laid down that power of review is not available to the learned Court. Powers of Labour Court under section 54 of the Industrial Relations Act, 2008 are much more extensive and wide compared with powers of Commissioner. Therefore, if learned Court with its wider amplitude of powers, has no power of review, how can Commissioner be asked to review its order in any case did not have any power to review its own judgment.”

This Court in another case viz. *Naveed through Special Attorney v. Commissioner Workmen Compensation East Karachi and another* (2013 PLC 162), held as under:

“6. I have given careful consideration to the arguments advanced by both the counsel for the parties and gone through the relevant papers. I have also consulted with Section 18 of the Payment of Wages Act, 1936 and section 23 of the Workmen's Compensation Act, 1923, which make the provisions of C.P.C. applicable to the proceedings before the authority concerned for a very limited purpose which are mentioned in those sections. The purpose for which the C.P.C. is applicable to the provisions of the Payment of Wages Act and Workmen's Compensation Act are limited to the taking of evidence on oath, for enforcing attendance of the witnesses and compelling production of documents before the authority concerned. In view of this limited scope of the application of C.P.C. to the proceedings under the Payment of Wages Act and Workmen's Compensation Act, I am of the considered view that the provisions of review contained in C.P.C. were not applicable before the authority. If any reference is needed in this regard the case of *Messrs Ahmed Food Industries v. Sindh Labour Appellate Tribunal* (1974 PLC 225) and *Mst. Noor Begum* (quoted supra) may be referred wherein it is explicitly held that the power of review is not a matter of mere procedure but is a question of jurisdiction and the same cannot be exercised unless expressly conferred on the Tribunal by the statute under which it is exercising power. Accordingly, I am of the considered view that the Commissioner Workmen's Compensation and Authority does not possess any inherent power to set-aside its previous order for compensation made by him.

9. In the present case, admittedly, respondent No.3 did not avail the remedy of filing an appeal as provided under the law, and instead filed review application under a provision which, at all, was not applicable under the law for filing such a review application, for setting aside the award passed in favour of the petitioner. Moreover, since the said review application was also filed beyond the time prescribed for filing an appeal, therefore, respondent No.3 along with the review application also filed limitation application for condonation of delay. Learned respondent No.2 dismissed the limitation application, however, subsequently, upon another application filed by respondent No.3 seeking disposal of review application, heard the review application and allowed the same through the order impugned herein.

10. From bare perusal of the impugned order, it appears that the same is lacking reasons and apparently is a non-speaking order, which could not be sustained under the law. Even otherwise, the power of review of its own

order is not available under the law to respondent No.2. as has also been held by this Court in the above referred legal precedents.

11. In view of above facts and circumstances of the case, the case-law cited by the learned counsel for respondent No.1 is distinguishable from the facts of the case in hand and whereas the case-law relied upon by the petitioner's counsel support the stance of the petitioner in the instant case.

12. The upshot of above discussion is that impugned order dated 28.11.2018 passed in case No.01 of 2018 by Commissioner Workmen's Compensation and Authority under the Payment of Wages Act, at Hyderabad, is hereby set aside being without jurisdiction and without lawful authority. Consequently, the earlier order passed by respondent No.2 granting the claims of the petitioner is restored. Respondent No.3 is directed to make payments as ordered earlier to the petitioner within a fortnight. Petition stands allowed in the above terms.

JUDGE

Hyderabad
Dated:19.03.2021

Tufail