

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan Iqbal Chaudhry

C.P. No. D-3449, D-3450, D-3451, D-3452,
D-3453, D-3454 and D-3455 of 2014

M/s IFFCO Pakistan (Pvt.) Limited
Versus

(1) Hanif Ahmed Siddiqui, (2) Aftab Ahmed, (3) Muhammad Hashim,
(4) Baber Abbasi, (5) Abdul Rehman, (6) Muhammad Asif Khan and
(7) Indrias Tajdin & 2 others

Date of Hearing: 15.10.2019

Petitioner in all petitions: Through Mr. Ghulam Murtaza Saryo
Advocate.

Respondents No.1 in all petitions: Through Mr. Muhammad Nishat Warsi
Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- These petitions are filed against concurrent findings of two Courts below i.e. Sindh Labour Court-II at Karachi and Sindh Labour Appellate Tribunal at Karachi on common facts and law hence are being decided through common judgment.

2. Brief facts of the case are that private respondents No.1 in all the petitions were appointed as drivers with petitioner vide appointment letters available on record. These drivers who are seven in number were terminated by petitioner in view of alleged reorganization and economic reasons when the company outsourced its transport needs. The drivers' posts were abolished and hence the services were no longer required by the petitioner company.

3. Aggrieved of it, the respondents No.1 issued grievance notices and consequently filed grievance applications under section 41 of Industrial Relations Act, 2008. The Labour Court vide judgment dated 09.10.2013 was pleased to reinstate the respondents with all back benefits within 30

days. Aggrieved of it petitioner filed an appeal before Sindh Appellate Tribunal which maintained the order and the appeals were dismissed. Aggrieved of these concurrent findings, the petitioner company has filed these petitions on the grounds that it is a question of misreading and non-reading of evidence.

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

5. The Labour Court while deciding the grievance application under section 41 of IRO 2008 framed following issues:-

1. Whether the applicant waived the right to challenge retrenchment by drawing some amount deposited by the respondent's company in the bank account of the applicant being full and final payment?
2. Whether the applicant was terminated by the respondent illegally?
3. Whether the applicant is entitled to the relief claimed?
4. What should the order be?

6. Issue No.1 was decided in negative whereas Issue Nos.2 and 3 were decided in affirmative and consequently the grievance applications were allowed.

7. Before the Appellate Tribunal the question that required determination, as mentioned in paragraph 6 of the impugned judgment, was whether services of respondent No.1 workers were terminated bona fide due to various economic and structural re-organizational in the year 2009 for closing down the transport department by the petitioner company and that whether the respondents workers have collected their final payments and dues as per documents produced in evidence, leaving no grievance against the petitioner company.

8. The main reason that prevailed in maintaining the order of the labour Court, as mentioned in paragraph 12 of the impugned judgment, is that the Tribunal is of the view that in cross-examination recorded by trial Court the petitioner company admitted that the routes i.e. Landhi, North Karachi, Saddar, Korangi and General Shifts, which were operated for pick and drop of employees and one vehicle plied on one route and thus since five vehicles apparently were in use in the aforesaid routes, therefore, the agreement Annexure R/2 of two vehicles shows mala fide intentions of petitioner company to close down the transport department and removing seven drivers from permanent service. It is also observed by the Tribunal that the expenditure, as claimed in the so called agreement of two vehicles is Rs.300,000/- whereas expenditure of five vehicles naturally increase to Rs.750,000/-. Thus, it prevailed before the Tribunal that the retrenchment or reorganization on economic reasons is baseless, unlawful and not reliable as expenditure has been increased instead of being decreased.

9. Private respondents No.1 have filed their affidavit-in-evidence and they have been subjected to cross-examination. The respondents have admitted in the cross-examination that the vehicles were maintained by the Company, which include payment of taxes and fuel/oil. It was also admitted by the witness/respondent that the company was also making payment of repair of vehicles with regard to damages caused by the accidents. Though the witness has stated that the vehicles were insured but on a query it was replied that the premium was paid by the company.

10. In the 11th line of the cross-examination of the employer's witness, the employee has suggested that the agreement (regarding outsourcing the transport needs) was effected from 01.05.2009. This suggests that the agreement of outsourcing the job was not in dispute.

The further cross-examination of the employer's witness revealed that there were two routes viz Landhi and North Karachi. The witness voluntarily stated that Saddar is also included in the route; there were three shifts from 7:00 a.m. to 3:00 p.m., 3:00 p.m. to 10:00 p.m. and 10:00 p.m. to 7:00 a.m. and further a general shift from 9:00 a.m. to 5:00 p.m. The route of General Shift was Saddar and North Karachi. The witness of the employer has stated that it is incorrect to suggest that route of General Shift was also of Saddar, Nazimabad, Habib Bank, Orangi Town via Liaquatabad. The witness also denied a suggestion that there were four vehicles which run in shifts on Route 1: Mauripur, Lucky Star, Shahara-e-Faisal to Port Qasim (2) Orangi Town, North Karachi, Sohrab Goth, Gulistan-e-Jauhar, Star Gate to Port Qasim, (3) Babar Market, Gulshan-e-Hadeed to Port Qasim, (4) Khokhrapar, Malir Quaidabad to Port Qasim. The witness has admitted three routes. It is also suggested by the employee's counsel that one vehicle ply on one route in one shift. The suggestion of respondent's counsel that three vehicles of Aslam Contractor were hired was denied as the witness voluntarily stated that there were two vehicles which were hired.

11. Thus, this part of the evidence is not in consonance with the findings reached by the Tribunal in paragraph 12. The Tribunal expressed its view that the expenditure, as claimed in the so-called outsourcing agreement of two vehicles, is Rs.300,000/- whereas expenditure of five vehicles naturally increased to Rs.750,000/- is only imaginary and fiction.

12. The Labour Court and the Tribunal have not realized that outsourcing the job would not only take into account paying salary of the drivers but would also take into account hassle of maintaining the vehicles such as petrol, oil change, accidental damages, which may include fatal accidents, the depreciation of the vehicles, injuries

caused, cost of premium, buying and then selling of vehicle on depreciated value and then buying new vehicles etc. All these questions were put to respondents' and/or their witness who have not denied the existence of such expenditures. All this is admitted in the opening paragraph of cross-examination of the employees/private respondents. It was thus proved that the outsourcing was not a façade or malafide, but would eventually reduce the company's expenses.

13. It is thus immaterial that the Board of Director's resolution regarding closing of transport department was not placed on record. It was never required as they (respondents) admit outsourcing the requisite job to a third party.

14. With this set of evidence available on record, we do not see any mala fide that is apparent or floating, which could have convinced the two Courts below to allow the grievance applications. The labour Court in the ultimate paragraph has gone to the extent that respondents/drivers could have been absorbed in other department of the company, if the company had announced such reorganization to protect the rights of the workers. While deciding Issue No.2 and 3 the Labour Court has also went on to observe that the company was not running in loses, therefore, there was no ground of economic constrains available with the petitioner.

15. We are of the view that these business and economy based decisions cannot be imposed by a Court of law upon any management. To call in question the wisdom of outsourcing or accommodating the drivers/ respondents to other departments is also not tenable as it amounts to enforcing a decision of absorbing the drivers/employees who may be useless for the company.

16. In terms of *Standing Order 12(3) of the West Pakistan Industrial and Commercial Employment (S.O) Ordinance 1968*, they (employers)

are required to give reasons of such retrenchment which they did in the instant case. However, the details and/or merit of such decision of retrenchment were not essential as it was a commercial decision of a business organization made by the management which could not be challenged by the employee. All that is required to be seen is whether it was a mala fide decision and that it is not borne out of the pleadings and evidence, which is not the case here.

17. Thus in view of above fact, evidence available on record, we set aside the decision/judgments of Labour Court No.II dated 09.10.2013 and Sindh Labour Appellate Tribunal dated 27.05.2014 and allow the petition with no order as to cost.

Dated: 28.10.2019

Judge

Judge