IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Constitutional Petition No.D-2636 of 2015

Present:
Mr. Justice Mehmood A. Khan
Mr. Justice Khadim Hussain Tunio

M/s Thatta Cement Company Ltd. ------ Petitioners

versus

Ghulam Muhammad & others ------ Respondents

Ch. Azhar Ellahi, advocate for petitioner.
Miss Nasim Bano, advocate for respondents.
Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

Date of hearing: 2.9.2021
Date of decision: 2.9.2021
Date of reasons: 3.9.2021

ORDER

KHADIM HUSSAIN TUNIO, J.- The petitioner has filed the present constitutional petition, challenging the legality of the impugned order dated 28-10-2015 passed by the Sindh Labour Appellate Tribunal in Revision Application No. 01 of 2015, whereby the order dated 13.01.2015 passed by Sindh Labour Court No. VI at Hyderabad in Appeal No. 04 of 2014 was maintained wherein the appeal u/s 17 of the ***Payment of Wages Act 1936*** had been dismissed being time barred.

2. Succinctly, the facts leading to the filing of instant constitutional petition are that the petitioner (*Thatta Cement Company*) was purchased through Share Purchase Agreement made on 27th February, 2004 by one Haji Abdul Ghani Usman and Arif Habib, joined under the name and style of Al-Abbas Group of Companies. The company had then introduced the Golden Handshake Scheme in the year 2000 and 2004, however did not pay the additional incentive of four salaries for each year's service to workers going with the Golden Handshake Scheme and legal dues of the respondents as per rules framed by SCCP and adopted by the petitioner/company in the year 1982. Thereafter, the company failed to pay such legal dues to its workers/employees (*respondents*) for which they approached the authority

under the ***Payment of Wages Act 1936*** (*respondent No. 34*) and filed various cases *i.e.* 25 of 2011, 30 of 2011, 33 of 2011, 13 of 2012, 198 of 2012 and 14 of 2012 under the ***Payment of Wages Act 1936***. Subsequently, the applications were allowed on 30.07.2013 and the petitioner/company was directed to deposit the legal dues in the sum of Rs.14,915,142/- within 30 days. Dissatisfied with the outcome, the petitioner/company then filed an appeal before the Labour Court No. VI Hyderabad on 23.12.2013, but the same was dismissed being time-barred as stated supra. Afterwards, the petitioner/company challenged the same before the Sindh Labour Appellate Tribunal which too was dismissed vide impugned order dated 28.10.2015.

3. Learned counsel for the petitioner mainly contended that the petitioner had received the copy of the order on 04.09.2013 and could not approach the Labour Court due to non-availability of presiding officer as he would not have been able to obtain stay and instead filed a Constitutional Petition for the same before this Court within the 30 day time limit; that the impugned order is without competence, lacks jurisdiction and holds nullity in the eyes of law; that the lower forums have seriously erred in law; that the respondents, after receiving 5 months of salary were satisfied for almost 8 years and did not file any applications before the competent authority and the given limitation period for filing the same is 3 years under the provision of sub-section (2) of S. 15 of the ***Payment of Wages Act 1936*** and the condonation of such delay by the lower forum was illegal and without reason; that the transaction between the employer and employees was 8 years old and was readily accepted in shape of five salaries as such the transaction was past and closed and the respondents could not claim for more; that the learned trial Court also committed an illegality by not joining the State Cement Corporation of Pakistan and Privatization Commission which were necessary and proper parties.

4. Learned counsel for the respondentson the other hand has argued that the appeal of the petitioner was hopelessly time barred and no explanation was provided by the petitioner for the same; that the petitioner was responsible for solely offering extra incentive to the respondents hence non-joined of the other parties is inconsequential to their case; that the delay was condoned by the Authority rightfully as the denial of payment of wages

is a continuous wrong and the cause of action continues; that the learned lower forums have rightly passed the impugned orders, hence the present petition being meritless is liable to be dismissed.Learned AAG on the other hand has supported the case of respondents and argued in the same line as argued by the counsel for respondents while adding that the appropriate forum for filing appeal against the order of Authority has been provided under S. 17 of the ***Payment of Wages Act 1936*** and the petitioner intentionally did not do the same in order to avoid the payment of arrears as granted by the Authority.

5. We have heard the arguments advanced by the parties and have also gone through the material available on record.

6. We have given serious consideration to the contentions of learned counsel for the parties and have perused the impugned orders and the documents filed by the respective parties. Without dilating to the factual aspects of this case, it will be proper to discuss the provisions of S. 17 of the ***Payment of Wages Act 1936*** which is reproduced herein below for ready reference:-

> **17.(1)** An appeal against a direction made under sub-section (3) or subsection (4) of section 15 may be preferred within thirty days of the date on which the direction was made before the Labour Court constituted under the Industrial Relations Act, 2013 (Act XXIX of 2013), within whose jurisdiction the cause of action to which the appeal relates arose -

The above referred provision provides a limitation period of 30 days for the filing of an appeal within the Act and by now, it is a settled provision of law that where a special statute provides a period of limitation for the filing of an appeal or application *(lis)*, S. 5 of the Limitations Act will not be attracted to the same or in a case where S. 5 of the Limitations Act has specifically been applied through the language of the Act. In this regard, it would be advantageous to reproduce the relevant proviso of the Limitations Act below:-

> Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that Schedule, and for the purpose of determining any period of

limitation prescribed for any suit, appeal or application by any special or local law:

(a) the provisions contained in section 4, sections 9 to 18 and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and
(b) the remaining provisions of this Act shall not apply.

7. Based on the aforementioned Section, it is clear that the ability of a court to condone the delay has been excluded under special or local laws and is authorized ***"specifically"*** where the law of limitation has been made applicable in the said statute. Where the same is not done, the court cannot condone delay and has to ensure that the appeal/application is made within the specified period given in the special statute.Nothing in the ***Payment of Wages Act*** is available to show that S. 5 of the Limitations Act is/was made applicable to the same, therefore the limitation period remains to be 30 days from the ***"date on which the direction was made"*** The petitioner's counsel claimed that they had received a copy of the order of the Authority dated 30.07.2013 on 04.09.2013, but chose to challenge the same on 23.12.2013. The act clearly provides that the period of limitation shall start from the day the directions were passed by the Authority and not from the date on which the party had received a copy of the order, let alone had been informed of the same. Therefore, there was a delay of 146 days in filing of the appeal. The excuse provided for the delay was that no presiding officer was available in the Sindh Labour Court VI, however the same was debunked by the Labour Court in its order dated 13.01.2015 wherein it was found that the Court was in session on the given dates with names of each and every presiding officer as well. Not only this, the staff of the office was present and was readily performing their duties. The petitioner was also expected to provide an explanation for the delay of each and every day and the reasoning/explanation had to be reasonable. This sadly is not the case with us. We are fortified in our view by the cases reported as *Divisional Superintendent P.W.R Multan v. Abdul Khaliq* **(1984 SCMR 1311)**, *Divisional Superintendent, Pakistan Railways Lahore* **(1986 PLC 313)**, *Chairman, Municipal Committee, Toba Tek Singh v. BarkatMasih***(1993 PLC 933)**and *Managing Director, WASA Gujranwala* **(2012 PLC 466)**. Sindh Labour Tribunal has also rightly observed in the impugned order that the condonation of period of

limitation could only be done by the Authority and that the Act while authorizing the original authority to condone delay in filing application under Section 15, has not authorized the appellate authority to condone delay in filing appeal under Section 17.Another contention raised by the counsel for the petitioner was that the Authority failed to incorporate and join the two necessary parties being State Cement Corporation of Pakistan and Privatization Commission. It is a settled law that no proceedings in court could be *ipso facto* defeated ***just*** because of non-joinder or misjoinder of parties and the court always enjoys ample powers to add or delete or transpose parties to a *lis* depending upon the nature of the case. Nonetheless, the respondents only claimed legal dues including gratuity ***(the 1 in "1+4")*** and that, as per the documentation on record, was responsibility of the petitioner alone. No additional incentive was claimed besides that and, therefore, the addition of the purchaser and the Commission being would have been unfair had they been made a party to suffer the litigation.

8. So far the contention regarding the gratuity not being a part of wages is concerned, in this respect the learned tribunal has rightly observed that the petitioner did not dispute the said aspect before the Authority while filing its written reply. Gratuity, in layman's terms is a benefit for faithful service provided overtime to an organization. For better understanding of gratuity, its relationship with wages needs to be understood. Wages include **"any and all"** payments made to a worker by his employer on a permanent basis, over a period of time. Through gratuity, a worker can redeem the payment periodically, though that period generally being more than that of normal wages *i.e.* 6 or 12 months of continuous service. At this juncture, it would be pertinent to refer to the case law reported as ***Zain Packaging Industries Limited Karachi v. Abdul Rashid and 2 others [1994 SCMR 2222]***, wherein the Hon'ble Apex Court has defined wages as:-

> "The word 'wages' therefore has to be interpreted according to its ordinary meaning. In this ordinary sense 'wages' would include ***all*** payments made to a workman by his employer in a ***regular and permanent basis periodically*** in lieu of the service."

Wages are paid to a worker in lieu of his services towards the employer; similarly gratuity is paid to a worker in lieu of his services over a larger period of time, as already stated. Gratuity is a **multiple** of a workman's

salary and years of service and like wages, it depends on the service the workman provides. The term **wage** is very wide in its understanding and includes **all remunerations** capable of being expressed in terms of money, if the terms of a contract of employment, expressed or implied are fulfilled. A thorough review of law concerned provides that gratuity depends on wages; an increase in the wage of an employee will result in the increase in the gratuity amount and therefore gratuity **can** become a part of wages, being directly proportional. However, this is not at dispute before the Court as under the ***Golden Handshake Scheme*** introduced by the petitioner through the share purchase agreement, which it *(the Company)* made itself liable to, was based on a "1+4" and the "1" in the same stood for all ***"legal dues including gratuity e.t.c"***. It was also held in the case ***Zain Packaging Industries Ltd.*** *(supra)* that:-

> "The learned counsel for the appellant relying on the proviso to section 7 ibid contended that as the cost of living allowance was not to be treated as part of 'wages' for the purposes of the Act, the application filed by respondent No. I before the Authority under the Act was incompetent. The contention does not appear to be correct. Firstly, the application filed by respondent No. 1 before the Authority under the Act ***was not for recovery of cost of living allowance as part of wages but it was for recovery of gratuity payable to him in accordance with the provisions of S.O. 12(6) of the Ordinance. Section 15 of the Act was amended by Ordinance IX of 1977 and as a result of this amendment dues relating to provident funds or gratuity payable under any law were specifically made recoverable under section 15 of the Act.*** Therefore, proviso to section 7 of the Act I of 1974 did not come in way of the application filed by the first respondent under the Act before the Authority, for recovering of gratuity payable to him under S.O. 12(6) of the Ordinance."

Similarly, as already held by us above, the respondents prayed for **all legal dues including gratuity** covered by the **"1+4" Golden Handshake Scheme** and not **"wages"**. Resultantly, the authorities cited on behalf of the petitioner do not cover this case, therefore the same being distinguishable authorities, need no further discussion.

9. Even otherwise, it is well settled principle of law that the High Court, in exercise of its constitutional jurisdiction, is not supposed to interfere with findings on controversial question of facts, even if such findings are erroneous. The scope of the judicial review of the High Court

under Article 199 of the Constitution in such cases, is limited to the extent of mis-reading or non-reading of evidence or if the findings are based on evidence which may cause miscarriage of justice but it is not proper for this Court to disturb the findings of facts through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as substitute of revision or appeal. In the case of ***Shajar Islam v. Muhammad Siddique and 2 others [PLD 2007 SC 45]*** the Hon'ble Supreme Court has laid the law to the following effect:-

> "The learned counsel for the respondent has not been able to point out any legal or factual infirmity in the concurrent finding on the above question of fact to justify the interference of the High Court in the writ jurisdiction and this is settled law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal.
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> In sequel to above discussion, we are of the considered view that the interference of the High Court in the concurrent finding of the two Courts regarding the existence of relationship... between the parties was beyond the scope of its jurisdiction under Article 199 of the Constitution and consequently, we convert this petition into an appeal, set aside the judgment of the High Court and allow the appeal with no order as to costs."

Similar view has also been taken by the Hon'ble Apex Court in the case of *FarhatJabeen v. Muhammad Safdar and others* **(2011 SCMR 1073)**.

10. For what has been discussed above, we are of the opinion that the learned two Courts below, while assigning sound reasons, have rightly dismissed the appeals of the petitioners being time-barred, hence the same do not call for any interference by this Court. Accordingly, by our short order dated 02.09.2021, the present Constitutional Petition was dismissed. These are the detailed reasons for the same.

JUDGE

JUDGE