

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

C.P No.S- 398 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
	1. For orders on office objection. 2. For hearing of MA 1021/2021. 3. For hearing of main case.

Date of hearing: 18.04.2022.
Date of order: 18.04.2022.

Mr. Imran Ali Borano, Advocate for Petitioner.
Mr. Manzoor Ali Jessar, Advocate for respondent No.3.
Mr. Ashfaque Nabi Kazi, Assistant Attorney General for Pakistan.
Mr. Wali Muhammad Jamari, Assistant A.G.

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Zulfiqar Ahmad Khan, J: This Constitutional Petition has been filed against the two orders passed by the Court of Commissioner Workmen's Compensation under the Sindh Payment of Wages Act, 2015.

2. Background of the controversy is that respondent No.3 was Assistant Manager and posted at Saddar Branch Hyderabad of the petitioner Bank. His services were confirmed with effect from 01.12.2011. however, his Bonuses were withheld for the year 2014-15, 2015-16 and 2016-17 as well as the Increment which was to be granted to the petitioner for the period of 2015-17 was refused discriminatorily which led the said respondent to file an application u/s 15(3) of the Wages Act, 2015. After notice to the respondents, an order was passed on the said application on 20.01.2021 directing the respondent-bank to make payment of the total sum of Rs.16,48,000/- with one time compensation on the principle amount. Respondent was directed to deposit the total awarded amount of Rs.3,296,000/- in the court within 30 days of the order. It is pertinent to mention that when that order was passed the respondent-bank was represented by the learned counsel who is also present in this constitutional petition.

3. Counsel for the petitioner submits that petitioner challenged the very jurisdiction of the Court for passing such order and made an application for recalling the said order which was decided by order dated 31.03.2021 (Page 61). Learned counsel's arguments were centered on two points, one that the petitioner was being a Bank Officer and not a "Workman" hence the Court of Workmen's Compensation was not competent to pass such an order, and secondly the subject matter ought to have been dealt with under the provisions of Industrial Relations Act, 2012 since the petitioner is a trans-provincial body. In support of his contentions he has relied upon the cases reported as 2018 SCMR 802 [Messrs Sui Southern Gas Company Ltd. and others v. Federation of Pakistan and others], 2022 SCMR 292 [Divisional Superintendent, Quetta Postal Division and others v. Muhammad Ibrahim and others] and 2021 PLC 108 [Messrs K-Electric, Limited through Authorized Personnel v. Muhammad Aslam Shah and others] and 2014 SCMR 535 [Pakistan Telecommunication Company Ltd. v. Member NIRC and others. Per learned counsel Section 54 of IRA 2012 which lists functions of the Commission, under paragraph 'h' makes the latter competent to deal with the cases of individual grievances in the manner prescribed under Section 33, where Section 33 pertains to the redressal of individual grievances in respect of any right guaranteed or secured to individual by or under any law or any award or settlement for the time being in force. Per learned counsel the alleged act of having not been paid Bonuses and the Increment are the acts which fall under the IRA 2012 instead of the Sindh Payment of Wages Act, 2015 therefore, the application made before the Court of Workmen's Compensation and orders passed thereon were not maintainable.

4. Learned Assistant Attorney General for Pakistan supported the contention of the counsel for the petitioner to the extent of jurisdiction that the matter did fall within the ambit of IRA 2012 rather than the Sindh Workmen's Compensation Act, 2015.

5. Learned counsel for the respondent to the contrary submits that Act 2015 was enacted to provide expeditious and speedy redressal to the grievance of workmen through an affordable medium and being a special law solely restricts itself to the payment of wages of workmen at microscopic level whereas Act 2012 deals with trade unions at macroscopic level. Learned counsel has drawn attention to the Section 2(1) (b) of the Act 2015 which defines "Commissioners Establishment" to include a Banking Company and a Bank; where included Section 17 provides a mechanism for redressal of such grievances. Learned counsel states that the remedy sought through the instant petition is violative of the scheme of law, where the petitioner having joined the proceedings at two different instances had a remedy to file an appeal under the provisions of the Act 2015 if it was aggrieved by any or both of the impugned orders. Counsel states that the IRA 2015 as seen from the preamble thereof, primarily pertains to the trade unions and federation of trade unions and possibility of removal of individual grievance particularly with regard to the payment of wages under the said Act is neither speedy, expeditious nor explicit. He has placed reliance on the cases reported as 2017 PLC 65 [Soneri Bank Ltd. Federation of Pakistan through Secretary, Law and others], 2010 PLC 401 [Nakshbandi Industries Ltd. through Factory Manager v. Authority under Payment of Wages Act through Presiding Officer and another], 2003 PLC 395 [Syed Match Company Ltd. through Managing Director v. Authority under Payment of Wages Act and others] and 2011 PLC 258 [Mehmood-ul-Hassan and others v. Government of Sindh and others] in support of his arguments.

6. Heard learned counsel and perused the record.

7. On the face of it, it appears that the very maintainability of this petition was challengeable in the light of judgment cited as 2011 PLC 258 where the alternate remedy was available to the petitioner as it

surrendered itself and joined the proceedings under the Commissioner Workmen's Compensation under the Wages Act 2015. A review of the application made by the respondent No.3 suggests that it was against the discriminatory treatment meted out to him in contrast to his other co-workers, in my humble view even if he would have reached this Court under Article 199, some remedy ought to have been forthcoming. With regards the respondent not being a "workman" under the Act 2015, such views of the learned counsel for the petitioner are not well founded as Section 2(1)(b) of the Act 2015 includes Banks in the list of Commercial Establishments and being an Assistant Manager, he also does not have powers to hire / fire nor is a person who could be considered to be in overall control of the Establishment, hence escapes from the explanation of "Manager" who is declared an incompetent to approach the Court of Workmen Compensation. Nonetheless these issues have been dealt with by order dated 31st March 2021 in the following manner:-

"By this order, I intend to dispose the application along with Affidavit annexed with the copy of Order dated 20.02.2021 entitled as "Application for re-calling of order dated 31.12.2020 & 20.01.2020 filed under order 9 Rule 13 & 14 CPC read with section 21 of General Clause Act." filed by the respondent on 22.02.2021, praying therein that this Honourable Court may be pleased to re-call / set aside the order dated: 31-12-2020 & 20-01-2021 as matter may be decided on merit after hearing both of the parties.

BRIEF FACTS:

For the reason that this Authority after entertaining the application of the applicant served its notice upon the Respondent which was complied with by the Respondent by appearing before this Authority through their Learned Counsel, Mr. Imran Ali Burano.

Where after the above matter remained pending due to Covid-19 and retirement of then Authority Mr. Aijaz Ali Shah. As and when present Authority assumes the charge duly served the another notice to the Respondent dated: 08-10-2020 upon which the Learned Counsel, duly appeared before this Authority on 22-10-2020 with the verbal request to grant some time as such the matter was adjourned to 09-11-2020. Thereafter neither Respondent nor his Counsel appeared before this Authority, despite this Authority was pleased to provide several

opportunities to the Respondent 27-11-2020, 09-12-2020, 23-12-2020 & 31-12-2020.

Due to lack of interest of Respondent in the above matter, this Authority closed the side of the Respondent on 31-12-2020 and declare the Respondent ex-parte, where after Applicant filed his affidavit in evidence as ex-parte on Oath on 07-01-2021.

Finally this Authority passed an Order on 20-01-2021 with the directions to Respondent to deposit the total Amount of Rs. 3,296,000/- including penalty of one time compensation in applications No.66/2018 & 14/2019.

Respondent duly received the copies of Order dated 17.2.2021, which should have been challenged under section 17 of The Sindh Payment of Wages Act, 2015 before the Honourable Labour Court No. VI, Hyderabad. On the contrary of it, the Respondent made an attempt to make the Provision of Section 17 of the Sindh Payment of Wages Act, 2015 ineffective, that is why awarded amount was not deposited with this Authority nor filed any appeal before the Honourable Appellate Forum i.e Labour Court.

Conversely, the Respondent filed an application along with Affidavit and the copy of Order titled "Application for re- calling of order dated: 31-12-2020 & 20-01-2021 filed under Order 9 Rule 17 & 14 CPC read with section 21 of General Clause Act." The same was allowed with order Notice to other side on 22-02-2021. On 15-03-2021 Applicant along with his counsel Mr. Manzoor Ali Jesar called present and filed objection on the application made by the Respondent, copy supplied to other side. Thus next date fixed for the arguments was fixed on 19-03-2021.

The learned counsel for Respondent Mr. Iran Ali Burano advanced his arguments on the application stating therein that no grievance petition can be entertained by this Authority against the answering respondents which is Trans-Provincial establishment and the Apex court in its various judgments has maintained that it does not fall within the purview of provincial legislation, hence this authority has incorrectly exercised its jurisdiction, hence the subject grievance is coram-non-judice liable to be recalled. He gave reliance on SCMR-2014-535, SCMR-2018-802 & Lahore High Court PLC-118 of 2018.

The Learned Counsel for Applicant Mr. Manzoor Jesar advanced his arguments in its rebuttal that the concept of Trans Provincial Establishment is for the formation and Registration of Trade Union under the Industrial Relations Act, 2012. But the instant matter does not relate to formation or registration of trade union in the trans-provincial establishment. The matters of unions pertaining to labour disputes and unfair labour practices will be dealt with the provision of IRA 2012. The Respondent placed reliance upon 2018-SCMR-802, 535, which are on distinguished facts and circumstances as the Honorable Supreme Court of Pakistan held the IRA 2012 to be very legislation by the Parliament for the purpose of formation & Registration of Trade Union in the Trans-Provincial Establishment.

CONCLUSION;

The concept of Trans Provincial Establishment is for the formation and Registration of Trade Union under the Industrial Relations Act, 2012. But the instant matter does not relate to formation or registration of trade union in the trans-provincial establishment. Which is misconceived and against the Law as this Authority had not passed any ex-parte Order even otherwise Order 9 Rule 13 and 14 CPC is not applicable in the proceedings under the provision of Section 15 of the Sindh Payment of Wages Act, 2015 which being Special Law that excludes the application of CPC hence it has on comprehensive Procedure to Regulate the proceedings of this Authority, the same has been provided under Sindh Payment of Wages (Procedure) Rules 1937.

So far the legal objection of respondent that the respondent's company is trans-provincial establishment but the term 'trans-provincial' is defined in the Industrial Relations Act, 2012 and same definition cannot be attracted in other labour legislations including the Sindh Payment of Wages Act, 2015 as it is hit by y principle of Pari Materia. I am fortified in this view by a decision of Hon'ble Supreme Court in case of Zain Packaging Industries (Pvt) Ltd. Vs. Abdul Rasheed and others (1994- SCMR-2222). In view of this discussion, the present objection of respondent is not tenable hence same is ruled out.

As for as the plea of trans-Provincial Establishment is concerned that is of no use and without any substance for the reason that after the 18th Amendment in the Constitution, the Provincial Assembly particularly the Provincial Assembly of Sindh enacted the Sindh Payment of Wages Act, 2015 which applies is to each & every factory, establishment, Commercial Establishment which are established in Sindh. I am convinced that the concept of Trans Provincial Establishment is for the formation and Registration of Trade Union under the Industrial Relations Act, 2012. But the instant matter does not relate to formation or registration of trade union in the trans-provincial establishment. The Respondent placed reliance upon 2018-SCMR-802,535, which is on distinguished facts and circumstances as the Honourable Supreme Court of Pakistan held the IRA 2012 to be very legislation by the Parliament for the purpose of formation & Registration of Trade Union in the Trans-Provincial Establishment. The jurisdiction of NIRC Established under Section 54 of I.R.A 2012 remained the same as it has jurisdiction either under the repealed, I.R.O 1969, I.R.O 2002 or I.R.A or I.R.A 2008 with the little modification that earlier its jurisdiction was restricted to unfair labour practice and matter of union and now it can also adjudicated Industrial disputes and industrial grievances under section 33 of I.R.A 2012, while The Sindh Payment of Wages Act, 2015 its quite different Law which does not relate to the formation and Registration of Trade Unions or adjudication of the industrial dispute, but the person employed without distinctive may make an application under Section 15 of Sindh the Payment of Wages Act, 2015 for recovery of illegal deducted wages, withheld wages and legal dues which have not been paid to the person employed in the factory, industry and commercial establishment.”

8. As it be seen, in the impugned order as reproduced above, both the contentions of the learned counsel for the parties have been put to

rest. It is also an established legal position that a specialized law always overrides a general law and where Act 2015 is available specially for issues pertaining to wages (defined to include "Bonus" u/s 2(1)(m) of the said Act) adjudication of such grievance under a different general law would be an abuse of the process of law, hence I do not find any reasons to interfere with these well placed findings of the court below. Petition is accordingly dismissed alongwith the listed application.

JUDGE

Tufail