

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1701 of 2015

[Muhammad Ayaz Khanv.....M/s. Feroz 1888 Mils Limited]

Dates of Hearing : 27.09.2021 & 28.09.2021
Date of Decision : 18.03.2022
Plaintiff : Plaintiff in person.
Defendant : Mr. Faisal Mehmood Ghani, Advocate
alongwith witness Kazi Anis-ur-
Rehman.

JUDGMENT

Zulfiqar Ahmad Khan, J:-This lawsuit has been brought to entreat compensation and damages.

2. Quintessentially, the transitory facts as described in the plaint are that the plaintiff was an Electrician in the predecessor in interest of the defendant, serving satisfactorily but abruptly terminated from service on 19.07.2007. The Plaintiff impugned the said termination notice before the Commissioner Workmen compensation & Authority under payment of Wages Act by filing an application under Section 15 of the Payment of Wages Act and beseeched for payment of his benefits/dues which was allowed vide order 31.10.2009 and the defendant was directed to deposit the amount, with one time penalty within thirty days for payment to the plaintiff. The Defendant establishment impugned the said order before this Court by filing a petition bearing C.P. No.S-955 of 2009 which was also dismissed by this Court vide order dated 26.05.2010 and the said verdict was also impugned by the defendant before the Apex Court where leave was refused by the Apex Court vide order dated 11.11.2010. It is alleged by the plaintiff that the defendant left no stone unturned to irritate

him and the defendant in order to frustrate judicial precedent of the Authority for payment of the wages filed an application under Section 12(2) C.P.C before the Authority challenging the verdict dated 31.10.2009, whereby, the defendant was directed to deposit certain amount as wages of the plaintiff on the ground that the said order was obtained by misrepresentation and concealment of facts. The Authority vide order dated 27.11.2011 allowed the said application of the defendant and recalled its order dated 31.10.2009 whereby the defendant was directed to deposit certain wages of the plaintiff. The plaintiff impugned the order of the Authority dated 27.11.2011 before this Court by filing petition bearing C.P. No.S-704 of 2011 which was allowed and order of the Authority passed on application under Section 12(2) C.P.C. was set aside vide order dated 22.08.2014, thereafter, the Defendant impugned the said order before the Apex Court by filing civil petition No. 2103 of 2014 which was dismissed. The minutiae of the above facts is that the plaintiff through the instant suit is beseeching for compensation as well as damages and following prayers are sought:-

To declare that the plaintiff is entitled for taking the claim of compensation and damages as follow

- i). Compensation nine time above amount Rs. 39,96,603/-
- ii). 18% delaying charges for 7.6 years Rs. 16,84,716/-
- iii). Market devaluation of currency charges Rs. 1,84,411/-
- iv). 103 days courts proceedings dates charges Rs. 1,54,500/-
- v). Metal torture/damages Rs. 1,50,00,000/-

Total compensation/damage charges Rs.
2,10,20,230/-

- vii). To direct the defendant to make the payment of total compensation damages charges to the plaintiff with cost of the suit within thirty days after passing the judgment and decree through depositing the pay order in the office of the Nazir of this Hon'ble Court.
- viii). Any other relief/reliefs which this Hon'ble Court may deem fit and proper in favour of the plaintiff under the circumstances of the case.

3. The Defendant contested the matter by filing its stance in the shape of written statement and raised objections that the relief claimed by the plaintiff was barred by limitation as well as the Payment of Wages Act, 1936, therefore, not maintainable; that the suit was hit by law of acquiescence as the plaintiff did not challenge the order of the Authority under Payment of Wages Act, 1936 which allowed one time penalty and not ten times. The defendant in its written statement denied stance of the plaintiff, as according to the defendant, the plaintiff had been paid full and final settlement dues.

4. The record indicates that on 23.01.2017 issues were framed and parties were directed to file list of witnesses and documents. A review of file shows that on 24.04.2017 Mr. Khursheed Javed, Advocate was appointed as Commissioner for recording of evidence. The issues settled by this court are as under:-

- “1. Whether the suit is maintainable under the law?
- 2. Whether the suit is maintainable after the plaintiff was paid his dues in full and final settlement with penalty as ordered through the Authority under the Payment of Wages Act?

3. Whether the plaintiff suffered mental torture since 19.07.2007?
4. Whether the defendant failed to comply with the order dated 31.10.2009 of the Authority under the Payment of Wages Act?
5. Whether the plaintiff is entitled for the claim of markup and 18% interest of 7.6 years delay payment charges and costs of the suit?
6. Whether the plaintiff is entitled for any damages and compensation if so, to what extent?
7. What should the decree be?"

6. Plaintiff in person introduced on record his grievances at length. He submitted that he was terminated unlawfully by the defendant that led him to file an application before the Commissioner Workmen Compensation & Authority ("Authority") which was allowed with one time penalty and the defendant was directed to deposit a sum of Rs. 8,88,134/- to be paid to the plaintiff but the defendant deliberately failed to make such payment within the stipulated period as ordered by the Authority and dragged him in false and frivolous litigation owing to which he suffered continuously, therefore, he is entitled for damages and compensation as prayed in the plaint.

7. Conversely, learned counsel for the defendant set forth the case of the defendant, and at the very outset he submitted that the suit was not maintainable on the ground that the plaintiff had been paid full and final dues with penalty as ordered by the Authority which the plaintiff had also admitted in his cross-examination. During the course of arguments, he drew court's attention to various documents available on the record and argued that the matter was

under litigation and remained pending for years and after decision by the concerned authority, the plaintiff was paid his dues alongwith compensation. He contended that the appeal was a statutory right of every citizen if one feels aggrieved by an order or action of any court or authority, one has all legal rights to challenge the said order, hence compensation as ordered by the Authority was not paid to the plaintiff within time as the defendants chose to file appeal against the said order. In order to support his submissions, he placed reliance upon the precedents of superior court reported as NLR 2013 Labour 1, 2006 SCMR 1079, 1999 PLC 348, 1973 PLC 297, 1983, PLC 210, 1983 PLC 777, 2019 PLC 51, 2012 PLC (CS) 574, 2013 SCMR 507, 2008 CLD 576, 2008 CLC 576 and 2018 MLD 1268.

7. Heard the arguments and considered the evidence. Issue No.1 is correlated and concomitant to the maintainability of the suit, undoubtedly the relationship between the plaintiff and defendant is to be regulated under the principle of Master and Servant and under this principle though no compulsorily reinstatement can be asked for, but a person aggrieved can always seek damages for his wrongful dismissal or termination. Mindful to the nitty-gritties of the case, I feel no reluctance to hold that this suit is maintainable, therefore, the issue No.1 is answered in **affirmation**.

8. In my considerate view, the Issue Nos. 2 to 6 are inextricably linked, based upon similar evidence and record, therefore, it would be advantageous to discuss the same simultaneously, in the same breath.

9. So as to strengthen and validate his grievances, the plaintiff amid his examination-in-chief produced the material documents, in following sequence:-

“Letter of termination dated 19.07.2007 issued by defendant as Exh. P/2.

Order dated 31.10.2009 passed by the Commissioner Workmen’s Compensation and Authority under Payment of Wages Act, East Division, Karachi as Exh. P/3.

Order dated 26.05.2010 passed in C.P. No.S-955 of 2009 as Exh. P/4.

Judgment dated 11.11.2010 passed by hon’ble Supreme Court in CPLA No. 397-K of 2010 as Exh. P/5.

Copies of orders dated 27.04.2011 and 17.06.2011 passed in C.P. No.S-704 of 2011 as Exh. P/6 & P/7.

Copy of order dated 20.11.2014 passed by the hon’ble Supreme Court in Civil Petition No. 2103 of 2014 as Exh. P/8.

Legal notice issued to defendant, TCS receipts as well as reply of the defendant as Exh. P/9 to P/11 respectively.

Statement dated 09.11.2015 containing summary of 18% interest calculated details filed in civil suit No. 1701 of 2015 as Exh. P/12.

Statement dated 14.04.2016 filed in suit No. 1701 of 2015 as Exh. P/13.

Letters dated 17.12.2009 & 03.06.2010 addressed to the Commissioner Labour, East, Division, Karachi as Exh. P/14 & P/15.

Certificate issued by the Commissioner Workmen’s Compensation as Exh. P/16.

Application dated 25.11.2000 submitted in the Court of Authority of Payment and Wages Company under Workmen Compensation vide Case No. 71/2008 as Exh. P/17.

Application dated 01.12.2010 addressed to Deputy District Officer, Revenue Gaddap/Assistant Controller Landhi Town, Karachi as Exh. P/18.

Application dated 14.12.2010 addressed to Commissioner Workmen's Compensation as Exh. P/19.

Notice dated 07.12.2010 issued by Commissioner Workmen's Compensation as Exh. P/20.

Letter dated 07.12.2010 issued by Commissioner Workmen's Compensation to the Collector and DDO (Revenue), Landhi Town, Karachi as Exh. P/21.

Application dated 08.09.2014 addressed to Commissioner Workmen's Compensation as Exh. P/22.

Letter dated 11.09.2014 addressed to Assistant Collector Landhi, Karachi as Exh. P/23.

Copy of letter dated 25.09.2014 issued by Assistant Commissioner & Special Judicial Magistrate as Exh. P/24.

Letter dated 20.10.2014 issued to the Assistant commissioner, Ibrahim Hyderi as Exh. P/25.

Reminders dated 06.11.2014 and 05.12.2014 in Case No. 71 of 2008 as Exh. P/26 & 27.

Application dated 01.01.2005 in case No. 71 of 2008 as Exh. P/28.

Reference letters dated 09.10.2014 & 27.10.2014 moved to the Deputy Commissioner and Collector, Ibrahim Hyderi as Exh. P/29 & 30."

10. Quintessentially, the plaintiff having been terminated vide Exh. P/2 approached to the Authority and filed a complaint which was numbered as case No. 71 of 2008. The said complaint was contested by the defendant being a contesting party and that the defendant filed written statement. The Authority having given ample opportunity of hearing to the litigating parties and after scanning the record disposed of the complaint of the plaintiff vide order dated 31.10.2009. So as to reach at a just and proper conclusion, it is

considered illustrative to reproduce the relevant excerpts of the order of the Authority (Exh. P/3) which reads as follows:-

“By mutual consent following issues were framed by the Authority:

- 1). Whether the Application is maintainable under the law?
- 2). Whether the Applicant is entitle for the claim or part thereof?
- 3). What should the order be?

The Applicant was cross examined thoroughly by the Respondent. In cross examination of applicant it was admitted by Respondent that the applicant worked in the Respondent establishment from 18-09-1989 to 20-07-2007. Then the case was fixed for the cross examination of the Respondent and the respondent failed to appear for the cross examination on the following dates i.e. 25.08.2009, 12.09.2009 & 29+.09.2009 and then the case was fixed for arguments on 05.10.2009, 10.10.2009, 15.10.2009 and till 31.10.2009 and again respondent failed to file arguments in the case. The court gave so many chances to respondent to appear in this court and record his evidence and he failed to do so. Therefore, authority proceed on the available record in the case.

ISSUE NO.1.

As regard the maintainability of the application I am of the view that the applicant side has provided sufficient documents on his behalf to prove that the application was working in the respondent establishment and his services were terminated without paying his legal dues, hence this issue is settled in the favour of applicant.

ISSUE NO. 2.

As the issue No. 2 is about the entitlement/legality of applicants claim whether it is as per law or not. **As the service of the applicant was terminated all of a sudden without paying any dues to him, which record clearly shows, therefore, the applicant is entitle of his claim hence this issue is settled in favour of the applicant.**

After careful perusal of the available record i.e. main application, written statement, issues, affidavit-in-evidence, cross examination of the applicant and arguments, I therefore, allow the application of the applicant, keeping in view of the above detailed discussion, in his favour, after deducting the demand of applicant in respect of bonus, leave encashment, provident fund w.e.f. 01-07-2006 to 20-07-2007. Therefore, I allow Rupees 4,44,067/- with one time penalty amounting to Rupees 8,88,134/- (Eight Lac Eighty Eight Thousand One Hundred and Thirty Four Rupees) to be deposited to the authority within 30 days, for onward payment to the applicant.”

11. It is gleaned from the appraisal of the foregoing that the Authority having heard and examined the record of the plaintiff and defendant went on to hold that the service of the plaintiff was terminated abruptly without paying any dues, therefore, in order to meet the sufferings of the plaintiff, the Authority not only awarded Rs. 4,44,067/- to the plaintiff but also imposed one time penalty on the said amount upon the defendant company on such wrongful termination of the plaintiff. It is significant to note here that the Authority while exercising its jurisdiction imposed one time penalty upon the defendant company for wrongful termination of the plaintiff despite serving the defendant company for many years and such imposition appears to be lawful as per record.

12. It unfurls from the record that the plaintiff is claiming damages on account of non-complying the order of the Authority dated 31.10.2009 (Exh. P-3 available in the evidence file) owing to which he suffered mental torture. It is an admitted position that the defendant having aggrieved and dissatisfied by the order of the Authority on imposing the one time penalty upon the defendant, it challenged the said order not only in this court but also before the Apex Court but

remained unsuccessful in having the said order set aside. The plaintiff is claiming damages on the premise that owing to the long journey of litigation, he suffered unbearably. It is well settled principle of administration of justice that appeal is a statutory right of every citizen if one feels aggrieved of any decision, verdict or dictum, one can appeal the same before appropriate forum. Per Article 4 of Constitution, 1973 every citizen can enjoy the protection of law and has to be treated in accordance with law and that it is the inalienable right of every citizen.

13. In the case of Pakistan Armed Forces Nursing Services Act, 1952, etc. (PLD 1985 Federal Shariat Court 365), the learned Federal Shariat Court while examining provisions of Pakistan Army Act, 1952, Pakistan Air Force Act, 1953 and other pari materia Laws held at para-71 (page 381) “***...Equality before law and equal protection of law is the main principle inherent in the Islamic law and policy. It is one of the Fundamental Principle of Islam which cannot be ignored....***”

14. The Federal Shariat Court (PLD 1985 FSC 365) has also held that the right of appeal was recognized by the Holy Prophet (Peace be upon him) as well as by the Khulafa-e-Rashideen and discussed this question in great detail. Nothing has been shown in refutation thereof. The plea, thus, that barring the right of appeal does not offend against the injunctions of Islam, cannot, be accepted and similarly the plea of the plaintiff that owing to the filing of appeals/constitution petitions and CPLAs before the apex court by the defendant company against the order of the Authority, he

suffered a lot cannot be accepted at all as none can be deprived from filing of an appeal against the order which the party considers himself aggrieved.

15. Reverting to the plea of damages. The damages can be classified into two types being general damages and special damages. The difference between general damages and special damages is that the former is initially quantified by the person making the claim, while the latter is assessed by the court. Court cases relating to civil claims usually involve a claim for damages. In some cases, a party may be seeking what is referred to as specific relief. This may be in terms of an order to prevent the performance of an act or compelling the performance of a specific act. In the majority of instances, the claim is eventually a monetary one. Hence one often comes across the terms “general damages” and “special damages”. Under Specific Relief Act 1950, it is stated that specific relief is given by taking possession of certain property and delivering it to a claimant or by ordering a party to do the very act which he is under an obligation to do or by preventing a party from doing that which he is under an obligation not to do, and finally by determining and declaring the rights of parties otherwise than by an award of compensation.

16. Now, let’s examine the plea of plaintiff that owing to the act of the defendant company in dragging the plaintiff in a long journey of litigation, he suffered mental torture. It is a fact that mental shock, agony and torture imply a state of mind. Such state of mind can be proved only by a positive assertion of one who experiences the same. Ref: (1996 CLC 627 & PLD 2021 Sindh 1). Upon scanning

record, it surfaces that the plaintiff during the course of examination-in-chief introduced on record various documents and on the said documents, he was put to the test of cross-examination by the learned counsel for the defendant company. Learned counsel for the defendant exercised his all professional abilities to shake the confidence of the plaintiff. While admitting the suggestion of the learned counsel, plaintiff admitted that he failed to produced any certificate of medical practitioner certifying his contention to the effect that due to act of the defendant company, he suffered mental shock, agony and distress. So as to reach at right, just and fair conclusion of the lis in and, it is imperative to reproduce the relevant constituent of the plaintiff admission which he made during cross examination which is delineated hereunder:-

“It is correct that I have not produced any certificate of the medical practitioner in support of my contention that I suffered mental torture on account of non-payment of my legal dues in time”.

17. It is gleaned from the appraisal of the foregoing that the plaintiff admitted that he could not produced any certificate of the medical practitioner certifying that he suffered mental torture and agony on account of non-payment of his legal dues. Not a single document has been introduced on record by the plaintiff to support his contention, therefore, it cannot be said that the plaintiff has suffered any injury, mental shock and agony more particularly when he has already received the legal dues along with one time penalty imposed by the Wage Authority upon his wrongful termination, to which the plaintiff had already admitted in his pleadings as well as in evidence. The plaintiff may have established a prima facie case of

damages on account of mental shock and agony but he ought to produce the relevant medical prescriptions and certificates to validate his claim of damages which otherwise cannot be granted in the absence of the same. Furthermore, the Authority had also imposed one time penalty on the actual/legal dues to which the plaintiff had already received from the defendant company and if the plaintiff had any grievance in respect of one time penalty, he ought to have challenged the said dictum of the Authority before the competent forum claiming ten time penalty instead of one time which the plaintiff could not do so.

18. In sequel to the above discussion, deliberation and rationale, the Issues under discussion are answered as discussed above.

19. So far as issue No.7 is concerned, sanguine to the set of circumstances and ramification as well as connotation of statues, the suit of the plaintiff is dismissed with no order as to costs.

Karachi
Dated:18.03.2022

JUDGE