

THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

C P D 5923 of 2019 : Shakoor & Company Ltd. vs.
Nasir Khan & Others

For the Petitioner : Mr. Ghulam Rasool Korai, Advocate

For the Respondents : Mr. Pervaiz Khurram, Advocate
Mr. Inayat Hussain Shah, Advocate
Mr. Muhammad Khalid Tanoli, Advocate
Mr. Faisal Ghulfan, Advocate

Mr. Saulat Rizvi,
Additional Advocate General Sindh

Date/s of hearing : 08.12.2022

Date of announcement : 08.12.2022

ORDER

Agha Faisal, J. The private respondents herein had filed grievance applications before the learned Labour Court IV at Karachi and vide order dated 08.04.2019 the said applications were allowed and the respondents were reinstated with back benefits. In appeal, the learned Sindh Labour Appellate Tribunal upheld the findings under appeal, however, modified the relief granted to compensation, in lieu of reinstatement, vide Judgment dated 03.09.2019 ("Impugned Judgment"). The petitioner has assailed the said judgment, however, the respondents are satisfied with the variation in relief and seek for the Impugned Judgment to be maintained.

2. Per petitioner's counsel, the Impugned Judgment ought to be set aside as the issue of limitation had not been addressed and the evidence had not been appreciated in its proper perspective. The respondent's counsel supported the judgment impugned and submitted that it warranted no interference.

3. Heard and perused. It merits no reiteration that writ jurisdiction is not yet another forum of appeal and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned.

4. The learned Labor Court had formulated an issue with respect to the matter of limitation, being point for determination no. 2, and addressed it

exhaustively. The order reproduced the cross examination of the petitioner's witness and it is manifest therefrom the objection with respect to limitation was *prima facie* unsustainable. The petitioner's contention that the respondents left employment of their own volition much earlier in time was dispelled by its own witness, who admitted that the respondents were terminated by him and that no gratuity / other legal dues were paid thereto. Paragraph 14 of the Impugned Judgment also resonated the said findings and recorded that the plea of limitation had no legs to stand on. In so far as the evidence on record is concerned, it appears consonant with the findings of the respective fora and is conclusively bulwarked by admissions of the petitioner's witness himself. The petitioner's counsel remained unable to articulate before us today as to why the impugned findings could not be rested on the law / record relied upon.

5. Article 199 of the Constitution contemplates the discretionary¹ writ jurisdiction of this Court and the said discretion may be exercised in the absence of an adequate remedy. In the present matter *admittedly* there existed an adequate remedy, however, the same was duly availed / exhausted. It is trite law² that where the fora had exercised its discretion in one way and that the discretion had been judicially exercised on sound principles, interference in such discretion would not be merited unless the same was contrary to law or usage having the force of law. It is our considered view that no manifest illegality has been identified in the judgment impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned.

6. In view hereof, we are constrained to observe that no case has been set forth to entertain this matter in the writ jurisdiction of this Court, hence, this petition, along with pending application/s, was dismissed vide our short order announced in Court earlier today upon conclusion of the hearing. These are the reasons for our short order.

JUDGE

JUDGE

¹ Per Ijaz Ul Ahsan J. in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.

² Per Faqir Muhammad Khokhar J. in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as PLD 2006 Supreme Court 1124; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as PLD 2013 Supreme Court 323.