

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Constitutional Petition No.S-358 of 2022

[Irshad Ahmed Vs. Commissioner Workmen's Compensation and another]

Petitioner: In person.

Respondent-1: Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

Respondent-2: Syed Sardar Hussain, Advocate.

Date of hearing & order: 04.11.2022.

ORDER

ADNAN-UL-KARIM MEMON, J. Petitioner seeks transfer of Application No. 02 of 2021 pending adjudication before Commissioner, Workmen's Compensation and Authority under the payment of Wages Act Mirpurkhas, to another Authority for adjudication and determination of wages of respondent No.2, in terms of sub-section (3) of Section 15 of the Sindh Payment of Wages Act, 2015, *inter-alia*, on the ground that the authorized officer of Pak Oman Microfinance Bank Limited / petitioner has lost faith on the Presiding Officer of Commissioner Workmen's Compensation and Authority on various premises that he is favoring the respondent No.2 and he has grave apprehension of decision being given against the Microfinance Bank.

2. Brief facts of the case are that respondent No.2 filed an application No.2/2022 under Section 15(2) of the Sindh Payment of Wages Act, 2015, before the Authority appointed under the Payment of Wages Act for recovery of his wages in the terms that he was appointed as Customers Relations Executive in the Microfinance Bank in 2018 and his service was confirmed accordingly. However, due to certain reasons respondent, No.2 tendered resignation from the service on 5.8.2021, which was duly accepted by the regional business head vide letter dated 16.08.2021 and surprisingly the same was subsequently revoked vide letter dated 10.09.2021 with direction to respondent No.2 to continue reporting to the Branch and cooperate in the investigation of certain issues, which direction was complied with and his service was restored. Respondent No.2 claims that Microfinance Bank did not pay wages / salaries for October, November, and December 2021 and 14 days of January 2022, and subsequently terminated from service vide letter dated 14.01.2022 with the approval of competent authority. Respondent No.2 also claimed recovery of compensation amounting to Rs.87,27,565/- from the Microfinance Bank. Before the aforesaid issue could be adjudicated by

respondent No.1, the authorized officer of Microfinance Bank Limited reposed no confidence in the Presiding Officer / Respondent No.1 and sought transfer of Application No. 2/2022 to some other authority on the aforesaid analogy.

3. At the outset, I asked the petitioner as to how this petition is maintainable under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, against the pendency of application of respondent No. 2 under the Sindh Payment of Wages Act, 2015.

4. Petitioner, who is present in person, has submitted that he is authorized officer of Pak Oman Microfinance Bank Limited; that respondent No.2 was caught while attempting sexual assault upon the bank employee and such complaint was reported to police as well as to learned Justice of Peace under Section 22-A&B Cr. P.C, however, the same was disposed of order dated 1.2.2022; that respondent No.2 was terminated from service vide letter dated 14.1.2022, thus he was / is not entitled to any wages. He also referred to the grounds taken in the memo of petition and reiterated the same and added that respondent No.1 is bent upon favoring the respondent No.2 thus he has lost confidence in him to adjudicate the matter between the parties. On the maintainability of this petition, he submits that there is no other remedy available to the petitioner except under Article 199 of the Constitution; therefore, this petition can be heard and decided on merits, and the case pending before respondent No.1 is liable to be transferred to another Commissioner for adjudication under law. He prayed for allowing the instant petition.

5. The aforesaid stance has been refuted by respondent No.2 on the ground that this Court cannot assume jurisdiction of Appellate Court / Labour Court under Section 17 of the Sindh Payment of Wages Act, 2015, and jurisdiction of Labour Appellate Tribunal under Section 48(10) of the Sindh Industrial Relations Act, 2013, as Sindh Labour Appellate Tribunal has jurisdiction either on its motion or on the application of the party to transfer any application or proceedings from Labour Court subject to its appellate jurisdiction to any other Labour Court under Labour hierarchy. Learned counsel for respondent No.2 has submitted that the petitioner has no locus standi to invoke the constitutional jurisdiction of this Court in his capacity as Microfinance Bank is not the petitioner in the present proceedings, thus he lacks legal capacity to call in question the proceedings pending adjudication before respondent No.1; that petitioner has just apprehension of decision to be given against him which apprehension is unfounded and just imaginary; therefore, his apprehension cannot be treated as truth to transfer the case from the competent authority under the Wages Act, 2015. He prayed for dismissal of this petition.

6. I have heard the petitioner who is present in person, counsel representing respondent No.2 as well as learned AAG, and perused the material available on record.

7. The question involved in the present proceedings is whether the application of respondent No.2 under the Sindh Payment of Wages Act, 2015, could be transferred to another authority in terms of Sections 17 and 18 of the Act 2015.

8. To appreciate the aforesaid proposition, it is expedient to have glance at Sections 17 & 18 of the Act-2015. For convenience's sake, Sections 17 and 18 of the Act-2015 are reproduced as under:

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 –

(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees:

Provided that no appeal under this clause shall lie unless the memorandum of appeal is accompanied by a certificate of the authority to the effect that the appellant has deposited with the authority the amount payable under the direction appealed against; or

(b) by an employed person or, if he has died, by any of his heirs, if the total amount of wages claimed to have been withheld from the employed person or from the unpaid group to which he belonged exceeds fifty rupees; or

(c) by any person directed to pay a penalty under sub-section (4) of section 15;

(2) All appeals pending before any Court under this section immediately before the commencement of this Act, shall on such commencement, stand transferred to, and be disposed of by, the Labour Court within whose jurisdiction the cause of action to which the appeal relates arose.

(3) Save as provided in sub-section (1), any direction made under subsection (3) or sub-section (4) of section 15 shall be final.

18. (1) Government may, by notification in the Official Gazette, appoint an authority to be an officer not below the rank of BPS-18 from the Directorate of Labour for the purpose of this Act.

(2) Every authority appointed under sub-section (1) of section 15 shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXX of the Code of Criminal Procedure, 1898.

(3) Every Authority shall have the powers of Collector Grade-I and may exercise such powers for the purposes of this Act. For the purpose

of execution, the Deputy Commissioner shall facilitate the Authority if so requested.”

9. Prima facie, respondent No.1 has not passed any order adversely affecting the rights of Microfinance Bank under the Sindh Payment of Wages Act, 2015. Petitioner has just shown his apprehension that he will not get justice at the hands of respondent No.1, which cannot be construed to have been materialized as nothing has been done yet. However, if the petitioner feels aggrieved against any decision, if given, by respondent No.1 he can file an appeal against that decision under Section 17 of the Wages Act, merely saying that he has lost confidence is no ground to seek transfer of case based on apprehension.

10. From the above legal position of the case, primarily, the proper forum for recovery of wages, if any, is the authority appointed under Section 18 of the Sindh Minimum Wages Act, 2015 and he is also authorized to recover the wages from the employer in terms of Section 19 and no Court other than labor court established under the Sindh Industrial Relations Act, 2013 shall take cognizance of a complaint against any person in terms of sub-section(1) of Section 20 of the Act-2015. Besides, no court shall entertain any suit for recovery of wages or of any deduction from wages insofar as the sum so claimed in terms of section 22 of the Act-2015.

11. In view of the above, other courts are barred to entertain claims for recovery of wages that can be recovered by an application under the Act. If a claim arises regarding payment of fewer wages otherwise than fixed under the Minimum Wages Act, the remedy lies under the Payment of Wages Act and the aggrieved person was bound to move the said authority under the Act. The present application of transfer is an obvious circumvention of the statutory provisions of law and hence not maintainable. Besides, it is well-settled proposition of law that has been expounded by Hon'ble Supreme Court that the order passed under the provisions of Payment of Wages Act can be assailed before the Labor Appellate Tribunal under its revisional jurisdiction.

12. The allegations contained in the present petition comprise of unsubstantiated statement and the same cannot be made the basis to entertain or sustain the allegation of bias against respondent No.1. The concept of impartiality or bias of a judge has been discussed exhaustively by the honorable Supreme Court in the case of *Government of NWFP & Another vs. Dr. Hussain Ahmed Haroon & Others* (2003 SCMR 104), and the present matter does not merit consideration upon the anvil of the said judgment.

13. In the light of above facts and circumstances of the case, this petition is found to be misconceived and is hereby dismissed with costs.

14. These are the reasons of my short order dated 04.11.2022, whereby the captioned petition was dismissed alongwith pending application(s).

JUDGE

Karar_Hussain/PS*