

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-1134 of 2022

M/S Trio Industries Pvt. Ltd.

Petitioner: Through Mr. Farhan ul Hassan Minhas, advocate

Respondent No.1: Through Mr. Bacha Fazal Manan, advocate

Respondent No.13: Through Mr. Ali Safdar Deepar, AAG

Date of hearing
& Decision: 31.01.2023.

ORDER

Petitioner- M/S Trio Industries Pvt. Ltd., being aggrieved by and dissatisfied with the judgment dated 21-12-2021 passed by the learned Chairman, Sindh Labour Appellate Tribunal, (SLAT) Karachi in Appeal No. Kar-120/2020, whereby allowed the appeal of the private respondents and directed to Petitioner company to deposit the amount of Rs.50,00,000/- within one month to disburse to the private respondents, *inter-alia*, on the ground that the impugned judgment is against the law and the facts of the case; that it has been passed without taking into consideration the contents of the pleadings of the parties; that the learned Chairman has passed the impugned judgment in haste without its independent and judicious mind and without going through the record of the case; that the impugned judgment is devoid of reasons and lacks all characteristics of the judicial decision.

2. Per learned counsel for the petitioner company, the learned Chairman has committed a substantial error and has deviated from the settled law on the subject issue as the compensation could not be awarded to the private respondents under the prevailing law; that the learned SLAT has passed the impugned judgment without narrating proper facts, or the reasons for arriving at the just decision of the case, therefore the impugned judgment is a nullity in law; that respondents have not filed a case for payment of wages however the judgment shows that the same has been rendered under the payment of wages Act, 2016, which falls within the jurisdiction of Authority under Sindh Payment of Wages Act 2016.

3. Learned counsel for the petitioner has briefed us on the subject issue elaboratively and submitted that the petitioner-company was engaged in the printing of ceramic tiles, however, due to the advancement of technology, the petitioner company lost its business and was unable to continue as a viable business entity. Learned counsel pointed out that the petitioner-company had applied to the Government of Sindh under section 15 of the Sindh Terms of Employment (Standing Orders) Act 2015 for permission to close down the factory in 2017 in terms of (Standing Orders) 15(2) of the Act, which provides that in case of an application if there is no reply from Government within 15 days then the application shall be deemed to have been accepted. Learned counsel emphasized that since there was no reply from the government, therefore, under the law the petitioner company opined that permission had been granted in terms of the law discussed supra; that when the process of the closure of the factory was in process and almost business had been closed, the respondent No. 1 to 12 filed Grievance Applications before the learned Sindh Labour Court (SLC), Karachi, complaining that, due to their trade union activities, the Petitioner company was bent upon to remove them from service and on the same day the learned SLC, by an interim arrangement, directed the parties to maintain status quo; that on 27th February 2017, the petitioner filed a statement, stating that they shall not terminate services of the private respondents without due process of law and had also no objection for registration of their union except the name of the union. Learned counsel further averred that on 24th March 2017, the private respondents filed another Grievance Application No.02/2017 and complained that the petitioner company had deprived them of their legal rights including their minimum wages and registration with EOBI; that on 1st July 2017, the private respondents filed a third grievance application No. 05/2017 and complained that the petitioner company had removed them from service on 4th April 2017 in violation of the law, stay order of the Court, their undertaking given before the court and without permission of the Registrar before whom their application for registration of the union was pending; that after issuance of court summons, petitioner company filed proper reply/statement and denied all allegations leveled upon petitioner company and submitted that due to advancement of technology, the process of printing the tiles became an integral part of the manufacturing process; that learned Presiding Officer Sindh Labour Court No.3 dismissed the grievance applications of respondents on merits. The private respondents being aggrieved by and dissatisfied with the judgment of Learned Judge of labor Court 3, filed appeals under section 48 (3) of Sindh Industrial relation Act, 2013 (SIRA), and prayed for setting aside the

judgment passed by learned SLC; that after hearing the parties, the Learned Chairman SLAT passed impugned judgment, whereby appeals of the private respondents were allowed and the petitioner company was directed to deposit Rs. 50,00,000/- within one month except for reinstatement of respondents. He lastly prayed for setting aside the judgment dated 21-12-2021 passed by the learned Chairman SLAT and maintaining the order of learned SLC.

4. Mr. Bacha Fazal Manan, learned counsel for respondents No.1 to 12, has raised the question of maintainability of the captioned petition and submitted that the respondents were the permanent workers of the petitioner company and have the requisite length of service to claim adequate compensation and/or reinstatement of their service, which has erroneously been dispensed with on the purported plea of the closure of the petitioner company. Per learned counsel, evidence shows that the representative of the petitioner company simply dispatched the application for closure of the factory in the Labour Department, West Division Karachi without waiting for the outcome and in presence of interim order passed by the learned SLC they dispensed with the service of the petitioner on 04.04.2017. Learned counsel referred to section 15 of the Act-2015 and argued that **no** petitioner company cannot terminate the employment of more than 50% of the workers or closed down the whole of the establishment without prior permission of the Government on this behalf, which legal position has not been controverted by the learned counsel for the petitioner. He submitted that the business of the petitioner company is in a running position and they have misled this Court to avoid compensation to the respondents as ordered by the learned SLAT. He prayed for the dismissal of the instant petition.

5. We have heard the learned counsel for the parties on the subject issue and perused the record with their assistance.

6. The pivotal questions involved in the present proceedings are whether the learned SLAT has jurisdiction to award compensation to the worker in lieu of reinstatement of service under the Sindh Industrial Relations Act, 2013 (SIRA); and, whether the services of the private respondents could be dispensed with based on closure of petitioner company under section 15 of the Sindh Terms of Employment (Standing Orders) Act 2015.

7. The main contention of learned counsel for the petitioner company is that they have closed down their establishment, thus unable to pay the compensation to the private respondents. Primarily, the petitioner company has not even legally

closed as per the provision of Act 2015, therefore, on account of the non-availability of these grounds, the counsel for the petitioner company was not justified in submitting that the petitioner company was/is closed to avoid saddling the company with the liability. The non functioning of the company after 2017 and the company's stand has not been accepted by the learned SLAT vide judgment dated 21.12.2021 and rightly directed the petitioner company to deposit the amount of Rs.50,000,00/- within one month for payment to the respondents keeping in view the length of service of the respondents and the cost of living and other conditions of unemployment instead of reinstating them in service a reasonable compensation of Rs.500,000/- each was awarded to the private respondents Noor Muhammad, Mir Dad, whose service is above 30 years, Rs.400,000/- each was awarded to private respondents Muhammad Hafeez, Syed Bilal, Chinar Gul, Akhtar Hussain, Maqbool Khan, Maula Bakhsh, Abdul Qudoos, whose service was 20 to 25 years, Rs.300,000/- each to private respondents Babo Sher, Sher Ali, Ghulam Raziq and Taj Muhammad, whose service was less than 20 years, total Rs.5,000,000/- as full and final payment, including their all legal dues such as gratuity, leave encashment, unpaid wages etc., for severance of their employment relationship with the petitioner company.

8. The award of compensation, in our view, has not resulted in a miscarriage of justice in any manner to call for any interference under Article 199 of the Constitution of Pakistan.

9. In principle, discretion is vested with the Tribunal or the court to grant relief to the workman by awarding compensation in lieu of reinstatement. The vesting of such discretion with the Court or the Tribunal has been felt necessary in the interest of industrial harmony and peace. While the case of victimization, the workman must be restored to his original position by way of reinstatement. However, in case the order of termination is found illegal on a technical ground or in the case where the post is of trust and confidence and the employer has not entrusted him on the said post, or in the case where the employee is found guilty of such activity subversive to the industry or the office or the organization or where in a case the industry is in the severe doldrums or where the Industry or the Project has been closed down or in a case where there is a long gap from the date of termination, the discretion should normally be exercised not to compel the employer to take him in the job by way of reinstatement.

10. Reverting to the analogy put forward by the learned counsel for the petitioner-company, in this regard we seek guidance from the decision rendered

by the Hon'ble Supreme Court of Pakistan in the case of Baluchistan Engineering Works Ltd v. Abdul Hameed and others **2007 SCMR 1160**, it was held that where an alternate prayer to the reinstatement, compensation is sought then with the consent compensation can be ordered without back benefits. The Hon'ble Supreme Court of Pakistan in the case of Messrs. Ashraf Sugar Mills Ltd through General Manager v. Manzoor Ahmed **2006 SCMR 1751**, it was held that where reinstatement is not considered proper compensation can be awarded. The Hon'ble Supreme Court of Pakistan in the case of Utility Stores Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal and others **PLD 1987 SC 447** has elaborated on the term "just" and "proper" used under Section 25(5) of the Ordinance 1969, would mean right, fair or suitable and according to law; and the word "proper means accurate i.e. adequate application of the substantive provision of Statute. However, subsection (6) of the Ordinance further enables a Labour Court to award compensation, "in lieu of reinstatement" of the workers in service where his termination is held to be wrongful. This is an alternate power that can be invoked in a particular case where the reinstatement of a worker is not considered to be proper.

11. On the findings of the learned SLAT, the basic principle is that where the Court or the Tribunal has jurisdiction and it determines the specific question of fact or even of law unless the patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by this Court while exercising jurisdiction under Article 199 of the Constitution. As we do not see any illegality and perversity in the findings recorded by learned SLAT requiring our indulgence under Article 199 of the Constitution as this court is not a court of appeal. Besides, the parties have already availed and exhausted the appellate remedy under the law, therefore no further deliberation on our part is required.

12. The petition being bereft of merits, deserve rejection and is accordingly dismissed.

JUDGE

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