

IN THE HIGH COURT OF SINDH, KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Agha Faisal

1.	Const. P. 7684/2019	H.D.A VS Province of Sindh and Others
2.	Const. P. 7683/2019	H.D.A VS Province of Sindh and Others
3.	Const. P. 7685/2019	H.D.A VS Province of Sindh and Others
4.	Const. P. 7686/2019	H.D.A VS Province of Sindh and Others
5.	Const. P. 7687/2019	H.D.A VS Province of Sindh and Others
6.	Const. P. 7688/2019	H.D.A VS Province of Sindh and Others
7.	Const. P. 7689/2019	H.D.A VS Province of Sindh and Others
8.	Const. P. 7690/2019	H.D.A VS Province of Sindh and Others
9.	Const. P. 7691/2019	H.D.A VS Province of Sindh and Others
10.	Const. P. 7692/2019	H.D.A VS Province of Sindh and Others
11.	Const. P. 7693/2019	H.D.A VS Province of Sindh and Others
12.	Const. P. 7734/2019	H.D.A VS Province of Sindh & Others
13.	Const. P. 7735/2019	H.D.A VS Province of Sindh & Others
14.	Const. P. 7736/2019	H.D.A VS Province of Sindh & Others
15.	Const. P. 7737/2019	H.D.A VS Province of Sindh & Others
16.	Const. P. 7738/2019	H.D.A VS Province of Sindh & Others
17.	Const. P. 7739/2019	H.D.A VS Province of Sindh & Others
18.	Const. P. 7740/2019	H.D.A VS Province of Sindh & Others
19.	Const. P. 7741/2019	H.D.A VS Province of Sindh & Others
20.	Const. P. 7742/2019	H.D.A VS Province of Sindh & Others
21.	Const. P. 7743/2019	H.D.A VS Province of Sindh & Others
22.	Const. P. 7744/2019	H.D.A VS Province of Sindh & Others
23.	Const. P. 7745/2019	H.D.A VS Province of Sindh & Others
24.	Const. P. 7746/2019	H.D.A VS Province of Sindh & Others
25.	Const. P. 7747/2019	H.D.A VS Province of Sindh & Others
26.	Const. P. 7748/2019	H.D.A VS Province of Sindh & Others
27.	Const. P. 7853/2019	H.D.A VS Province of Sindh & Others

28.	Const. P. 7854/2019	H.D.A VS Province of Sindh & Others
29.	Const. P. 7855/2019	H.D.A VS Province of Sindh & Others
30.	Const. P. 7856/2019	H.D.A VS Province of Sindh & Others
31.	Const. P. 7857/2019	H.D.A VS Province of Sindh & Others
32.	Const. P. 7858/2019	H.D.A VS Province of Sindh & Others
33.	Const. P. 7859/2019	H.D.A VS Province of Sindh & Others
34.	Const. P. 7860/2019	H.D.A VS Province of Sindh & Others
35.	Const. P. 7861/2019	H.D.A VS Province of Sindh & Others
36.	Const. P. 7862/2019	H.D.A VS Province of Sindh & Others
37.	Const. P. 7863/2019	H.D.A VS Province of Sindh & Others
38.	Const. P. 7864/2019	H.D.A VS Province of Sindh & Others
39.	Const. P. 7865/2019	H.D.A VS Province of Sindh & Others
40.	Const. P. 7866/2019	H.D.A VS Province of Sindh & Others
41.	Const. P. 7893/2019	H.D.A VS Province of Sindh & Others
42.	Const. P. 7894/2019	H.D.A VS Province of Sindh & Others
43.	Const. P. 7895/2019	H.D.A VS Province of Sindh & Others
44.	Const. P. 7896/2019	H.D.A VS Province of Sindh & Others
45.	Const. P. 7897/2019	H.D.A VS Province of Sindh & Others
46.	Const. P. 7898/2019	H.D.A VS Province of Sindh & Others
47.	Const. P. 7899/2019	H.D.A VS Province of Sindh & Others
48.	Const. P. 7900/2019	H.D.A VS Province of Sindh & Others
49.	Const. P. 7901/2019	H.D.A VS Province of Sindh & Others
50.	Const. P. 7902/2019	H.D.A VS Province of Sindh & Others
51.	Const. P. 7903/2019	H.D.A VS Province of Sindh & Others
52.	Const. P. 7904/2019	H.D.A VS Province of Sindh & Others
53.	Const. P. 7905/2019	H.D.A VS Province of Sindh & Others
54.	Const. P. 7906/2019	H.D.A VS Province of Sindh & Others

55.	Const. P. 8352/2019	H.D.A VS Province of Sindh & Others
56.	Const. P. 8353/2019	H.D.A VS Province of Sindh & Others
57.	Const. P. 8354/2019	H.D.A VS Province of Sindh & Others
58.	Const. P. 8355/2019	H.D.A VS Province of Sindh & Others
59.	Const. P. 8356/2019	H.D.A VS Province of Sindh & Others
60.	Const. P. 8357/2019	H.D.A VS Province of Sindh & Others
61.	Const. P. 8358/2019	H.D.A VS Province of Sindh & Others
62.	Const. P. 8359/2019	H.D.A VS Province of Sindh & Others
63.	Const. P. 8360/2019	H.D.A VS Province of Sindh & Others
64.	Const. P. 8361/2019	H.D.A VS Province of Sindh & Others
65.	Const. P. 8362/2019	H.D.A VS Province of Sindh & Others
66.	Const. P. 8363/2019	H.D.A VS Province of Sindh & Others
67.	Const. P. 8364/2019	H.D.A VS Province of Sindh & Others

- 1) For orders on Nazir report dated 13.12.2019.
- 2) For hearing of Misc. No. 3398/2019.
- 3) For hearing of main case.

Petitioners: Through M/s. Jamal Bukhari & Sanaullah, Advocates.

Respondents No. 1 & 2: Through Mr. Ali Safdar Deepar, AAG.

Private Respondents: Through Mr. Muhammad Nishat Warsi, Advocate.

Date of hearing: 26.08.2022

Date of Order: 26.08.2022.

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through these Petitions, the Petitioner has impugned a common Judgment dated 03.10.2019 passed by Chairman, Sindh Labour Appellate Tribunal in Appeal No. HYD-95/2018 to HYD-160/2018, whereby, Judgment dated 29.09.2018 passed by Labour

Court-VI at Hyderabad has been maintained and the Petitioner has been directed to regularize the services of private Respondents along with back benefits to the extent of 50%.

2. Learned Counsel for the Petitioner has contended that both the forums below have failed to appreciate that the Industrial and Commercial Employment (Standing Orders) Ordinance 1968 (“Standing Order, 1968”) was not applicable to the Petitioner; hence, the Grievance Petitions of the private Respondents were not maintainable. According to him, the services of these Respondents cannot be regularized as pursuant to proviso to section 1(4)(c) of Standing Order, 1968, it is not applicable to the Petitioner having statutory rules of service, and in support he has relied upon the case reported as *Lahore Development Authority Vs. Abdul Shafique* (P L D 2000 SC 207), *Ghulam Muhammad Vs. Province of Sindh & Another* (2014 P L C (C.S.)797), *National Bank of Pakistan Vs. Punjab Labour Court NO. 5, Faisalabad and 2 others* (1993 S C M R 672), *Faqir Muhammad Vs. The Director of National Savings, Multan Region, Multan* (1992 P L C 163), *Province of Punjab and 3 Others Vs. Gul Hassan and 33 Others* (1992 P L C 924), *Bibi Abida Vs. The Sindh Labour Appellate Tribunal & 2 Others* (P L D 1985 Karachi 112), Order dated 16.10.2020 in C. P. No. D-6632/2019, Order dated 28.02.2022 in CPLA No. 4282/2018, Order dated 14.10.2020 in C. P. No. D-1400/2017.

3. On the other hand, learned Counsel for private Respondents has supported the impugned Judgment and submits that no case is made out as the law is already settled by the Hon’ble Supreme Court to the extent that a worker is not a civil servant under the Civil Servants Act, 1973, and in support he has relied upon the cases reported as (PLD 1996 SC 610) *Executive Engineer Central Civil Division v Abdul Aziz & Others*, (SBLR 2009 Sindh 410) *Saleh Muhammad Soomro v Zarai Taraqqiati Bank Limited*, (2022 PLC 62) *Divisional Superintendent Quetta Postal Division v Muhammad Ibrahim*.

4. We have heard both the learned Counsel and perused the record. Insofar as the argument regarding lack of jurisdiction of the Labour Court and the non applicability of Standing Order 1968 is concerned, the same already stands decided by the Hon’ble Supreme Court in the case of ***Lahore Development Authority Vs. Abdul Shafiq & Others*** (P L D

2000 SC 207) and no exception can be drawn. The Petitioner's argument that in view of Section 1(4)(c)¹ of the Standing Order 1968 and the proviso thereof, the same does not apply on the Petitioner's organization is wholly misconceived as apparently such provision of law was already on the statute and notwithstanding this, the Hon'ble Supreme Court has clearly held that the Ordinance applies to the organizations like the Petitioner. We have not been assisted in any manner as to there being any difference in the constitution and employment mechanism being in force in Lahore Development Authority and the Petitioner. In that case we are not inclined to agree with the contention that since in the case of *Lahore Development Authority (Supra)*, there was no specific finding on the implication of the proviso, and that the rules of employment of the Petitioner are statutory in nature; hence, pursuant to the said proviso, the Standing Orders 1968 or for that matter Sindh Terms of Service of Employment (Standing Orders) Act, 2015² (which is pari-materia to the Standing Order 1968) would not apply; for the simple reason that if the leave granting order in that case is looked into, the proviso is very much there, whereas, this Court now cannot look into and hold that the Hon'ble Supreme Court had overlooked the implication of the proviso in the case of *Lahore Development Authority (Supra)*.

5. Nonetheless, we have, on our own also looked into this aspect of the matter as it was vehemently agitated that it was the only legal ground raised by the Petitioner and must be attended to by this Court though having limited jurisdiction against the finding of the two forums below. We have scanned the entire record including the R&P of the cases and it appears that insofar as the Rules of Employment of the Petitioner are concerned they were never produced in the Evidence before the Labour Court. However, we have perused the Hyderabad Development Authority

¹ 1. Short title, extent and commencement.— (1) This Ordinance may be called Industrial and Commercial Employment (Standing Orders) Ordinance, 1968.

(4) It applies to—

4(c) such classes of other industrial and commercial establishments as Government may, from time to time, by notification in the official Gazette, specify in this behalf:

Provided that nothing in this Ordinance shall apply to Industrial & commercial establishments carried on by or under the authority of the Federal or Provincial Government, where statutory rules or service, conduct or discipline are applicable to the workmen employed therein

² 1. (1) This Act may be called the Sindh Terms of Employment (Standing Orders) Act, 2015.

(4) It applies to

(b) such classes of the industrial and commercial establishments as Government may, from time to time, by notification in the official Gazette, specify in this behalf:

Provided that nothing in this Act shall apply to industrial establishments and commercial establishments carried on by or under the authority of the Federal Government or Government, where statutory rules of service, conduct or discipline are applicable to the workers employed therein

Employees (General Conditions of Service) Regulations 1988 issued pursuant to section 70 of the Hyderabad Development Authority Act, 1976, and it transpires that in view of Regulation (3)³, they shall not apply to a person *who is employed on contract and work-charged staff with less than three years service*. All along it is the case of the petitioner that private Respondents have been employed on work charge basis for limited periods and were never permanent employees of the petitioner. Therefore, even if the argument of the Petitioner is taken into consideration is goes against its own stance taken before the forums below. If the Petitioners are not governed by the Regulations of 1988 as is clear from the above, then they had no other remedy but to approach the concerned Labour Court being workmen under the Standing Orders Ordinance 1968 or the Sindh Terms of Employment (Standing Orders) Act, 2015, as the case may be. It is a settled proposition that Work Charged Employees are not covered by the definition of Civil Servant as given in the Civil Servants Act 1973 and their grievance petition in terms of section 25-A of the Industrial Relations Ordinance, 1969 is competent⁴. A workmen (postman) is excluded from the definitions as provided under the Civil Servants Act, 1973 and the rules thereof, and has guaranteed rights under the Standing Orders Ordinance, 1968⁵.

6. Notwithstanding the above, this legal argument also appears to be an afterthought inasmuch as the Petitioner by itself has admitted and given a concession before the Appellate Tribunal as to the reinstatement of all the private Respondents in service and their regularization as and when the financial condition of the Petitioner improves. It would be advantageous to refer to the said concession given before the Appellate Tribunal in the impugned Judgment at Para 11 which reads as under:-

“11. Learned Counsel for the Appellant as well as its Chief Financial Officer, who was also holding charge of the Director General, stated that for the time being the Respondents would be reinstated in service on contract basis as before and would be regularized as and when Appellant’s financial conditions improved.”

7. After going through the above concession, we are of the view that the Petitioner has no case before this Court in this Constitutional Jurisdiction wherein, the two Forums below have already recorded the

³ (3) They shall apply to all employees of the Authority wherever they may be, but shall not apply to a person who is on deputation to the Authority or is employed on contract and work-charged staff with less than three years service.

⁴ (PLD 1996 SC 610) *Executive Engineer Central Civil Division v Abdul Aziz & Others*,

⁵ (2022 PLC 62) *Divisional Superintendent Quetta Postal Division v Muhammad Ibrahim*

findings of fact as well as law and now at this stage the Petitioner cannot resile from such concession and take an objection as to the very applicability of the Ordinance in question. While confronted, though an attempt has been made by the Petitioner's Counsel that such concession was unwarranted under the law; however, in this Constitutional Jurisdiction, we cannot determine as to whether it was so. The Director General as per the Act and the Regulations was authorized to make such statement and we cannot draw any exception to that. If it was not so, then even the Petitioner has failed to approach the Appellate Tribunal to get these observations expunged or have it reviewed.

8. Lastly, per settled law in this constitutional jurisdiction, we are not sitting as an Appellate Forum to look into the entire facts already determined by the forums below, whereas, in this case at least two forums provided in law have given a finding of fact and now at this belated stage when the Petitioner has already participated in the proceedings without any challenge as to the jurisdiction of the Labour Court by way of a Constitutional Petition or otherwise in any manner; we are not inclined to interfere with the impugned judgments / orders. Though this court is exercising Constitutional jurisdiction under Article 199 of the Constitution and can be regarded as being on a higher pedestal as against other ordinary / statutory jurisdictions; however, it is wholly wrong to consider that this Constitutional provision was designed to empower the High Court to interfere with the decision of a Court or tribunal of inferior jurisdiction merely because in its opinion the decision is wrong. In that case, it would make the High Court's jurisdiction indistinguishable from that exercisable in a full-fledged appeal, which plainly is not the intention of the Constitution-makers⁶. It is not that if no further appeal is provided in law, then a constitution petition can be treated as an appeal and matter could be argued as if this Court is the Appellate Court. Such concept is totally misconceived and uncalled for. The legislature in its own wisdom has restricted further appeal in such matters; therefore, only in cases of exceptional nature and where apparently on the face of it, an order has been passed which lacks jurisdiction and is so patently illegal warranting correction, only then this Court under its constitutional jurisdiction can exercise discretion in favour of an aggrieved petitioner. This Court shall always be slow in exercise of constitutional jurisdiction where the statute has provided appeal and a person has, either availed the remedy or has

⁶ Muhammad Hussain Munir and others v Sikandar and others (PLD 1974 SC 139)

declined to avail such remedy until and unless it is shown that the action taken, or order passed or intended to be passed is palpably without jurisdiction and is violative of the principles of justice⁷. Needless to state that a High Court cannot interfere, in its constitutional jurisdiction, with findings of fact recorded by the competent courts, tribunals or authorities unless such findings are the result of misreading or non-reading of the material evidence or based on no evidence, which amounts to an error of law and thus justifies, rather calls for, interference⁸. No case for any exception is made out in this case.

9. Accordingly, all these Petitions are misconceived and are hereby dismissed. By way of an interim order, dated 03.12.2019 the Petitioner was required to deposit the amount in question before the Nazir of this Court. The same shall be released to the private Respondents in these Petitions upon proper identification and verification along with profit if any, so accrued. All Petitions stand dismissed in the above terms.

JUDGE

JUDGE

Arshad/

1. (1) This Act may be called the Sindh Terms of Employment (Standing Orders) Act, 2015.
- (4) It applies to
 - (b) such classes of the industrial and commercial establishments as Government may, from time to time, by notification in the official Gazette, specify in this behalf: Provided that nothing in this Act shall apply to industrial establishments and commercial establishments carried on by or under the authority of the Federal Government or Government, where statutory rules of service, conduct or discipline are applicable to the workers employed therein

⁷ Ali Muzaffar v Syed Muhammad Ali Abedi (2006 CLC 379)

⁸ See Mohibullah & Co. v. Bahauddin 1990 SCMR 1070; Mahmooda Begum v. Taj Din 1992 SCMR 809; Muhammad Suleman v. Zubaida Bibi 1996 SCMR 1965; Haider Khan v. Mustareen PLD 2001 SC 207; Lehrasab Khan v. Aqeel-Un-Nisa 2001 SCMR 338; Arshad Mahmood v. ADJ 2001 SCMR 516; Muhammad Sadiq v. Elahi Bakhsh 2006 SCMR 12; Allies Book Corporation v. Sultan Ahmad 2006 SCMR 152; Shajar Islam v. Muhammad Siddique PLD 2007 SC 45; S.L.I.C. v. Jaffar Hussain PLD 2009 SC 194; Waqar Haider v. JFC 2009 SCMR 1243 & (*per Mansoor Ali Shah.J.* in Uzma Naveed Choudhry v Fed of Pakistan (CP No.1347 of 2019 dated 27.7.2022)