IN THE HIGH COURT OF SINDH AT KARACHI

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

C P D 6156 of 2015	:	Israr Ahmed vs. Sindh Labour Appellate Tribunal & another
For the Petitioner	:	Mr. Saud Ahmed Khan, Advocate
For the Respondents	:	Mr. Shujauddin, Advocate Mr. Ali Safdar Depar Assistant Advocate General
Date/s of hearing	:	06.10.2022
Date of announcement	:	06.10.2022

ORDER

Agha Faisal, **J**. Briefly stated, the petitioner had filed a grievance petition, which had been determined by the learned Labour Court vide Judgment dated 05.03.2010 wherein the petitioner had been reinstated; however, the prayer for back benefits had been regretted. In appeal, the learned Labour Appellate Tribunal, vide Decision dated 28.08.2012, set aside the earlier judgment and remanded the matter for decision afresh. The petitioner invoked the writ jurisdiction of this Court and vide order dated 10.03.2014 this Court was pleased to *inter alia* maintain the order of remand. In *de novo* proceedings, the learned Labour Court, vide Judgment dated 10.03.2015, decided that the petitioner be reinstated, however, left the issue of back benefits to be determined by the respondent via recourse to an inquiry. The judgment was assailed and the petitioner obtained interim orders restraining the inquiry; however, eventually the matter was determined by the Labour Appellate Tribunal, vide Order dated 10.09.2015 ("Impugned Order"), whereby the reinstatement was maintained and the plea for back benefits was rejected. This petition seeks to once again agitate the denial of back benefits.

2. It was the crux of the petitioner's case that the multiple fora below had failed to appreciate the evidence in its proper perspective, with regard to back benefits; hence this Court ought to conduct the said exercise *de novo* in its writ jurisdiction.

The respondent's counsel articulated that the case for back benefits could not be substantiated before the respective statutory fora and even an

inquiry, to determine the said issue, had been stifled at the beckoning of the petitioner. It was concluded that no case for interference in the Impugned Order had been made out by the petitioner.

The learned Assistant Advocate General submitted that award of back benefits was not a natural corollary of reinstatement and the said issue was required to be determined on its own merits[1].

3. Heard and perused.

4. We had repeatedly queried the petitioner's counsel to demonstrate whether any evidence / record available on file had not been dealt with appropriately by the subordinate fora in the respective edicts, however, he remained unable to do so. On the contrary it was admitted that post dismissal the petitioner went overseas and remained there for over a year. It was also gleaned from the evidence that while the petitioner claimed to have been supported financially during the time that he remained dismissed, no iota of evidence was adduced in such regard. No record of any financial assistance was demonstrated before us and the record is devoid of any affidavit of any third person attesting to having supported the petitioner.

Even otherwise the entire plea of the petitioner is based upon seeking *de novo* evaluation by this Court of the evidence / record, requiring detailed factual inquiry, investigation etc. It is settled law that the adjudication of disputed questions of fact, requiring evidence etc., is not amenable in the exercise of writ jurisdiction[2].

5. It is imperative to denote that this Court is not exercising appellate jurisdiction and the same has already been exhausted by the petitioner. Article 199 of the Constitution contemplates the discretionary writ jurisdiction of this Court and the said discretion may be exercised in the absence of an adequate remedy. In the present matter the alternate remedy has already been invoked and exhausted and no case is made out for entertaining this matter in the writ jurisdiction.

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[1] *1992 SCMR 2169*; paragraph 12 at page 2174.
[2] *2016 CLC* 1; 2015 *PLC 45*; *2015 CLD 257*; *2011 SCMR 1990*; *2001 SCMR* 574; PLD *2001 Supreme Court 415*;

6. It is trite law[3] that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been identified in the order impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the subordinate fora.

7. In view hereof, we are constrained to observe that in the *lis* before us the petitioner's counsel has been unable to set forth a case for the invocation of the discretionary[4] writ jurisdiction of this Court, hence, this matter was dismissed vide our short order announced at the conclusion of the hearing in court earlier today. These are the reasons for the short order.

JUDGE

JUDGE

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[3] 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*.

[4] 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*.