JUDGMENT SHEET
HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD.

Present:
1. Mr. Justice Ahmed Ali Shaikh,
2. Mr. Justice Salman Hamid.

C.P.NO.D-502 OF 1995.

Muhammad Usman Rajar. . . . . .PETITIONER.

Versus.

Sindh Labour Appellate Tribunal
and 2 others. . . . . RESPONDENTS.

Petitioner: In person.

Respondent No.3: Through Mr. Muhammad Sabir, Advocate.

Date of hearing: 16.9.2010.

Date of judgment: 07.10.2010.

JUDGMENT.

SALMAN HAMID, J.-The petitioner in the year 1969 was employed with respondent No.3 and was, in due course, promoted as assistant stores keeper. Because of hard work and honesty, the petitioner earned 15 years' and 20 years' continuous service certificates. In 1989 the petitioner met with a road accident and fractured his leg and was referred for treatment. On 15.11.1989 the petitioner made an application to the concerned officer of respondent No.3 for making payment of his pending bill of November 1988. The respondent No.3 upon verification of the application and the bill of November 1988 found that such bill was paid off earlier under his signature on or about 29.11.1988. The respondent No.3 therefore found the application of payment of bill to be an act of misconduct and served him with a charge sheet and after inquiry he was dismissed from service.

2. Aggrieved by the dismissal order, the petitioner preferred application bearing No.131 of 1990 under section 25-A of the Industrial Relations Ordinance 1969, before Labour Court No.VI, Hyderabad which was decided in his favour in terms of Order dated 28.09.1992 whereby the respondent No.3 was directed to reinstate the petitioner in service with all back benefits as he remained jobless during the tenure of proceeding before the Labour Court.

3. Order of reinstatement of the petitioner was challenged by the respondent No.3 in shape of an Appeal No.644 of 1992 before the Sindh Labour Appellate Tribunal, Karachi. The Appeal went in favour of the respondent No.3 when the Appellate Tribunal handed down it Decision dated 15.05.1995.

4. It is this Decision which is before us for determination: the grounds whereof as raised by the petitioner were that the Decision was a result of misreading and non-reading of evidence and was based on theoretical and hypothetical consideration without appreciating the facts and law involved in the case. It was urged by the petitioner that the Appellate Tribunal failed to appreciate the evidence that was brought on record; that merely making of an application and/or complaint to the higher authorities with respect to discrimination and asking for payment of bill by no means amounted to misconduct. It was also argued that in the first place since there was no case of misconduct by the petitioner, no proceedings in respect thereof could have been initiated and even if it was presumed that such were initiated on the ground of misconduct, the same were from the very initial stage commenced incompetently and/or carried out by a person who was not a notified manager and therefore the enquiry proceedings were void abinitio. The petitioner also argued that order of dismissal was passed without hearing him. the factum of mens rea, it was argued by the petition was also completely gone astray when it comes to be gauged with his application for payment of his pending bill as there was no evidence to prove any intention or deliberate act of fraud. According to the petitioner the inquiry proceedings were biased, perverse, fanciful and capricious, inasmuch as, that despite his request that the enquiry officer who commenced the inquiry proceedings should not undertake the same, he being partial, no heed was paid to it. The petitioner also argued that the Decision of the Appellate Tribunal was grossly erroneous as a foreign company

cannot be absolved of the responsibilities in compliance of law and cannot be given any premium or favour as was done by it by was of the Decision. The petitioner next contended that the Appellate Tribunal traveled beyond its jurisdiction in holding that the foreign companies may be allowed to remove their workers if and when they smell slightest act of dishonesty. It was also argued by the petitioner that while reversing the Order of the Labour Court, which was comprehensive, elaborate and lucid, no reason in reaching to the impugned Decision was given and therefore great injustice had been caused. The petitioner arguing on the above legal and factual plain prayed that the impugned Decision be declared unlawful, invalid, beyond jurisdiction and without lawful authority and of no legal effect and that the Order dated 28.9.1992, passed by the Labour Court No.VI be upheld.

5. Countering the above arguments of the petitioner, the learned counsel appearing on behalf of the respondent No.3 argued that no case was made out by the petitioner for his reinstatement and that he has not even specifically prayed for such reinstatement. It was also argued that under the provisions of Standing Order V of the Standing Order Ordinance 1968, (1968 Ordinance) there was no bar in terminating the service of worker who has committed serious act of misconduct once the requirements of 1968 Ordinance were fulfilled, which according to the learned counsel for the respondent No.3, in the present case, had been fully complied with. Having argued on such legal ground, it was urged that the petition does not fall within the ambit of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 and that the Decision given by the Appellate Tribunal was an outcome of deeper appreciation of evidence by it which was pondered upon when it observed that the act of the petitioner had lost confidence of the respondent No.3, and therefore, after following the proper course the petitioner was dismissed from his service and that the

Decision of the Appellate Tribunal, it was urged, be maintained. Combating the arguments of the petitioner of exparte inquiry it was argued that the petitioner despite notice of such inquiry deliberately did not appear before the enquiry officer which dis-entitled him to challenge it now. No arguments in rebuttal to the ground of in-competency of the enquiry officer or that he was biased were advanced. Supporting the action of dismissal of the petitioner from service and the impugned Decision, the learned counsel in the first instance relied upon the bare provisions of Section 15(3) of 1968 Ordinance and stated that under sub-section (b) thereof the case of the petitioner squarely fell in to the category of *"dishonesty"* which had clear nexus with the respondent No.3's business and such dishonesty required nipping in to the bud. Number of precedents were cited by the learned counsel for the respondent No.3 in support of his above arguments and would be discussed by us in the later part of this decision.

6. Heard.

7. The record of the file as well as detailed Order, passed by the Presiding Officer of VIth Labour Court, Hyderabad would show that the petitioner moved an application with the respondent No.3 on or about 15.11.1989 that one of his bills was not paid and the same may be cleared. Application of the petitioner proved fatal to him inasmuch as, that he was dismissed from service on the charge of misconduct after he was served with a charge sheet on the ground that the payment of the bill which was sought by him had already been received by the petitioner under his own signature. Charge Sheet dated 13.12.1989, read as under:

> *"**CHARGE SHEET***
>
> *It has been reported against you that on 15.11.1989 you submitted application dated 15.11.1989 claiming reimbursement of medical bills for the month of November 1988. you narrated to the Executive secretary to Factory*

Manager that a medical bill amounting to Rs.550.65 for the month of November 1988 was submitted but has not been reimbursed to you so far. Upon verification, it has revealed that you were already paid the amount of the bills submitted during November 1988 duly acknowledged. Thus you committed the act of dishonestly.

The aforesaid act on your part constitutes misconduct under Standing Order 15 of the Standing Orders Ordinance 1968. You are, therefore, hereby called upon to show cause within 3 days of the receipt of this letter as to why disciplinary action should not be initiated against you. Please note that in case, you fail to submit your explanation within the stipulated time, Further action will be taken in accordance with the law.

8. The above charge sheet was replied by the petitioner, wherein the allegation of misconduct was vehemently refuted.

9. Looking at the above charge sheet, it is clear that the case of the respondent No.3 solely hinged upon the application and its contents, moved by the petitioner for payment of his pending bill, which according to the respondent No. 3 was already paid and therefore, the application was aimed at to defraud the respondent No.3 and to have the payment once again which reflects dishonesty of the petitioner. For us it is difficult to digest that merely by making an application for payment and/or re-imbursement of pending bill, the same would amount to misconduct. Thus we are unable to reconcile that by merely making an application for payment of outstanding, which according to the record of the respondent No.3 had already been paid and that the petitioner was handicapped of any record keeping, the case of fraud or misconduct evolves, thereby falls mischief to the provision of Section 15(3)(b) of 1968 Ordinance. To our mind a simple application moved through proper channel by the petitioner was stretched to limits and mountain out of mole was created and hyped to the detriment of the petitioner whereas the application of payment of outstanding bills could have very conveniently been answered by stating that the record of the

company shows that the payment was made to the petitioner earlier. Taking the application to such heights smacks all principles of equity and fair play and is reflective of patent mala fides on the part of the respondents No.3. The case of misconduct, according to us, at best, could have been raised against the petitioner had he not made the application for payment of his outstanding bill and was found manipulating or tempering the record of the accounts department of the respondent No.3 or some manipulation or tempering was made on the bill itself that was sought to be paid. Surely this was not the case of the respondent No.3.

10. The various cases cited by the respondent No.3 on the ground of quantum of punishment and misconduct would show that in all of them the employee/worker was found manipulating or tampering with the record/document and/or obtained benefit of employment with the employer through unlawful means on the basis of forged documents and therefore, in all cases the courts found the allegation of misconduct proved whereby various kinds of punishments, including the punishment of dismissal from service was found to be appropriate. Not a single case was cited by the learned counsel for the respondent No.3, wherein the maximum penalty of dismissal from service on the ground of misconduct was imposed merely upon moving of an application for certain purpose and/or making payment of certain dues. The various reported cases cited by the learned counsel would be discussed individually hereinafter.

11. Adverting to the next argument of the petitioner that inquiry officer was biased and that appropriate application for the change of enquiry officer had been made and the enquiry officer having responded to such request that the inquiry would be impartial from the very initial stage was incorrect inasmuch as, that the enquiry officer could have not been a judge of his own cause, particularly when specific allegations were raised by the petitioner against him.

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The rebuttal arguments of the respondent No.3 that it was the prerogative of the respondent to appoint the enquiry officer would have been forceful had there been no allegation of partiality from the side of the petitioner. In our opinion it would have been fair if the respondent No.3 would have changed the enquiry officer as requested. It has also come on record that though it was claimed by the respondent No.3 that the notice dated 17.07.1990 of inquiry was sent at the residence of the petitioner for his appearance on 23.7.1990, it (notice) was received by the petitioner on 27.7.1990. It was also denied and proved through evidence that the notice was not received and/or sent by respondent No.3 at the address of the petitioner. It has also come on the record that the person who was shown to have delivered the notice to the petitioner on 18.7.1990 was an officer of respondent No.3 of some other department and he had nothing to do and/or was not required under his job description to deliver notices/letters. The record of file would also show that the notice of 17.7.1990 was never delivered and/or received by the petitioner prior to 29.7.1990 when by such date the inquiry proceedings had already commenced and determined on 23.7.1990. It was also argued by the petitioner and was not disputed by the respondent No.3 that on the date of hearing of inquiry proceedings, viz. 23.7.1990, the applicant was available in the factory of respondent No.3 and could have been very conveniently informed of the hearing thereof which seemingly was not done for malafide purposes and therefore, the inquiry which was conducted on 23.7.1990 deemed to be ex-parte inquiry. It has also come on record that before commencing the inquiry proceedings the enquiry officer did not verify whether the petitioner was present on duty or not and therefore in our opinion the apprehension of the petitioner that the enquiry officer was biased stood proved. The record of case would also clearly show that the inquiry was not independent inasmuch as, that the enquiry officer had admitted in his cross

examination before the Labour Court that he had written the inquiry report after discussing the same with the advocate of the respondent No.3 who gave dictation of the inquiry report to the typist available in the office of such an advocate. Again the bias of the enquiry officer stood proved. Coming to the last argument that the enquiry officer was not a "Factory Manager" and/or was not duly notified officer and therefore, could have not conducted the inquiry as an "Employer" inasmuch as, that in cross-examination that was conducted before the Labour Court he admitted that he was not a "Notified Factory Manager" and no notification in such respect was produced and such notification according to the Order dated 28.09.1992 of the Labour Court till such date was not produced. It was on this score that the petitioner challenged the very basis of the enquiry proceedings. Since the service of charge sheet and appointment of enquiry officer was not legal, the entire structure raised there upon fell to ground. The record of the file would also show that it was one Mr. Iftikhar Chaudhry who had the power to appoint, dismiss any worker or to issue him charge sheet and it was him who was the competent authority to take action against the petitioner. Admittedly action was not initiated by Mr. Chaudhry against the petitioner.

12. Coming to the various citations, cited by the learned counsel for the respondent No.3, it may be observed, as also mentioned herein above that none is applicable in the facts and circumstances of the present case. In the case of Allied Bank of Pakistan v. Bashir Khan (SBLR 2005 (Sindh) 1518), the employee therein was terminated when charge of embezzlement against him was proved. Such is not the case in the present petition. In Pakistan Tobbaco Company Limited V. Channa Khan and others (1980 PLC 981), the Honourable Supreme Court of Pakistan maintained the punishment of termination from service of the employee therein when it came to the conclusion that such employee was guilty of theft, which

involves moral turpitude and that such employee was employed to prevent pilferage and was found committing the same and therefore, it was dealt with by the Honourable Supreme Court with impunity. This case again even remotely cannot be treated at par with the case of the petitioner. The petitioner was store keeper and was its custodian. There was no complain or allegation against him. As a matter of fact the petitioner was awarded with 2 certificates, while he was working as store keeper. It is difficult to reconcile that a person who was not found misappropriating goods from the store would try to take benefit of Rs.566/- by sending application for its payment when it was already paid off. Under the circumstances it becomes clear that it was an act of bonafide mistake for which the petitioner should not be punished so severely. Pervez Alam v. Pakistan Dairy Products Pvt Limited Karachi and 2 others (2005 SCMR 1840), wherein the Honourable Supreme Court maintained the dismissal order on the ground that the employee therein remained absent from duty and after joining produced a medical certificate of a private practitioner which was found to be in violation of the policy of the employer and ultimately the Tribunal while exercising its jurisdiction according to law accepted the plea of the employee which was challenged before the High Court whereby the order of tribunal was reversed. The Honourable Supreme Court of Pakistan, it may gainfully be added that while reversing the order of the High Court observed that since the tribunal had passed the order with jurisdiction and there was no misreading and non reading of evidence, High Court ought not to have reversed the finding of the Tribunal; whereas in the present case bare reading of the Decision of the Appellate Tribunal would show that the Order of the Labour Court was reversed without giving even an iota of reasoning for upsetting the Order of the Labour Court and therefore hit by the provisions of section 24-A of the General Clauses Act 1897 which requires reasons for making the order. In the case of The Manager

Dean's Hotel v. Chairman Labour Appellate Tribunal and 2 others, 1986 PLC 537, the inquiry of the Inquiry Officer was not interfered with by the courts above, looking at the fact that the worker admitted allegations, with which he was charged whereas the case in hand would show that the petitioner throughout agitated that no misconduct was committed by him and that merely making bona-fide application for payment of his pending bill by no means fall within the meaning of misconduct. Coming to the case of Abdul Razzak v. Chairman, Area Electric Board Hyderabad and others (2000 PLC 74), the division bench of this court held that High Court in exercise of its constitutional jurisdiction would not act in aid of injustice and to perpetuate a wrong and that the High Court while exercising extraordinary constitutional jurisdiction has to foster the ends of justice and to put right a wrong and in appropriate cases where no injustice or illegality was committed and no material prejudice or miscarriage of justice had been caused would not interfere while exercising such jurisdiction. There are no two opinions about the above observation, however, since in the present case we think that grave injustice has been caused by imposing a harsh penalty on the petitioner merely because he made an application for payment of his pending bill, find it appropriate to put right to the wrong done to the petitioner; more particularly when the order of the Labour Court has been set aside by the Appellate Tribunal in an un-ceremonial way by not giving reasons of setting aside such Order which otherwise was well reasoned and was passed after deep appreciation of evidence that was led before it.

13. In the case of Qayoom Nawaz and 9 Others v. N.W.F.P. Small Industries Development Peshawar through Managing Director and 4 others (2000 PLC 215), the Honourable Supreme Court of Pakistan having come to the conclusion that the order of the appellate tribunal was passed after appreciation of the evidence and such having been disturbed by the High Court, the Honourable Supreme

Court reversed the finding of the High Court, whereas in the present case it would become clear from the Decision of the Appellate Tribunal that no reasons whatsoever were given in dislodging the Order of the Labour Court and while dislodging such order the evidence led before the Labour Court was not appreciated or even discussed. Therefore, this case too does not help the respondent in any way. In Akhtar Muneer v. General Tyre And Rubber Company Of Pakistan (SBLR 2007 Sindh 806), the maximum penalty of removal from service was upheld by the High Court by appreciating that in such case the employee was dismissed from service on the ground that he entered office of Senior Manager; used highly objectionable and un-parliamentary language and tried to physically assault him. This case cannot by any angle be compared with the case of the petitioner. In the case of President, Habib Bank Limited and others v. Manzoor Hussian and others (1994 PLC 373), the employee was removed from service when it came to knowledge that he gave false information with regard to his date of birth and got employment on bogus birth certificate. Again this case cannot be used against the petitioner. Similarly, in Nazir Ahmed Pathan and another v. The Muslim Commercial Bank Limited and another (SBLR 2008 SC. 79), the punishment was maintained by the Honourable Supreme Court of Pakistan only because the employee therein was found guilty of misappropriation and embezzlement of public money. Needless to mention that in the cited case the Honourable Supreme Court also laid the principle of quantum of punishment by observing that unless the punishment is found to be either not provided or warranted by law or appears to be excessive or harsh or is totally disproportionate to the guilt, the same would be maintained. In the present case, on the face of it the punishment imposed by the respondent No.3 was not only harsh and disproportionate to the alleged misconduct but was absolutely uncalled for inasmuch as that according to us no case of

misconduct was made out by the respondent No.3, against the petitioner. We are once again constrained to observe that mere making of an application for payment of dues would by no yardstick fall within the definition of misconduct and can, at best, be treated as a case of bona-fide mistake when it comes to be tested from either side.

14. For the forgoing reasons and the raison d'être that the impugned Decision was delivered in a slipshod manner and no rationale whatsoever was given as to why and under what circumstances and under which provision of law and/or the provision of law having been violated by the Labour Court, his Order dated 28.9.1992 was set-aside, we break free the same the petitioner from its threat, more particularly that it was set aside by the Appellate Tribunal only on the notion that the petitioner misbehaved by preferring a false claim and demanding dual payment for medicine bill and therefore the respondent No.3 had lost confidence in the petitioner and that the foreign company being allergic to the slightest of act of dishonesty, the comprehensive and well reasoned order of the Labour Court was set aside by the Appellate Tribunal and that too without any reason as under law, every court or authority dispensing judicial or quasi-judicial function is required to give reasons in support of its decision/ order as ordained by section 24-A of the General Clauses Act 1897 especially when such order/decision deprive someone of his vested rights.

15. Resultantly, we allow this petition and Order dated 28.9.1992, passed by the VIth Labour Court, Hyderabad is upheld and the respondent No.3 are directed to implement it (Order dated 28.9.1992) in letter and spirit and forthwith.

16. It may be noted that on 16.9.2004 this Court allowed the learned counsel for the respondent No.3 to file application to the

effect that after bifurcation of respondent No.3 new company in the name of Clarient (Pakistan) Limited came into existence and thereafter CMA No.1381 of 2004 was filed by the learned counsel for the respondent No.3 whereby photo copy of the Order dated 18.11.1996, passed in JM. No.178 of 1996 was filed, whereby respondent No.3 company was bifurcated into two divisions namely Pharmaceutical Division and the Chemical Division and that the Chemical Division was transferred to the newly formed company i.e. Clarient (Pakistan) Limited, Petaro Road, Jamshoro, District Dadu and that memorandum and articles of association of such company and copy of notice of extraordinary general meeting held on 11.8.1996 of respondent No.3 were filed, which application was allowed and documents were taken on record by this court in terms of order dated 22.8.2007. Such being the position and the fact that the respondent No.3 continued to represent respondent No.3 now Clarient Pakistan Limited, the respondent No.3 mentioned in the title of the present petition be deemed to be read and understood as Clarient (Pakistan) Limited, Petaro Road, Jamshoro, District Dadu and that this judgment shall be binding on such company.

17. This petition is decided and disposed of in terms of the above.

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