

**ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.**

C.P.No.D-104 of 2011

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For Orders on application as flagged.
2. For Katcha Peshi.
3. For Orders on M.A 558/2011.
4. For Orders on M.A 3157/2011.

Date of hearing                      15.09.2011.  
Date of announcement:              05.10.2011.

Mr. Ansari Abdul Latif Advocate for the Petitioners  
Miss Naseem Abbasi Advocate for the Respondent No.4.  
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Through this petition, Petitioners have prayed as under:-

- a) To call for the Record and Proceedings of Grievance Application No.133/2006 under section 46 (3) of IRO, 2002 from the Office of Labour Court No.VI Hyderabad/ Respondent No.3 and Appeal No.Hyd-36/2010 from the office of Respondent No.1,2 and after hearing the parties set-aside Annexure A dated 10.11.2010;
- b) To allow the instant petition of the petitioners by setting aside Annexure 'A' dated 10.11.2010 and restore order dated 16.08.2007 passed by Presiding Officer of learned Labour Court No.VI Hyderabad and dismiss Grievance Application No.133/2006 filed by private Respondent No.4 while holding the order of dismissal (Annexure "D") dt. 31.03.2000 as legal, valid and justified in all respects;
- c) Or to pass any other order/orders in favour of the petitioners against the Respondent No.1 and 2 so also against private Respondent No.4 which may deemed to be fit, proper, judicious under the circumstances of the case redressing the grievances of the Petitioners.
- d) The private Respondent No.4 be saddled with costs of the petition.



The relevant facts giving rise to this petition are that the Respondent No.4 was appointed as Chowkidar in WAPDA vide appointment order dated 01.11.1981. In the year 1998 M/s Rehman Ansari and Muhammad Ayoob of Tando Adam made complaints against Respondent No.4, following which the petitioners got conducted investigation through Mr. Mehmood Ahmed Director Investigation, Wapda Lahore. However, during the course of investigation, none from the complainants came forward in support of the complaints. The investigation officer on completion of investigation recommended for departmental action against the Respondent No.4. However on 31.03.2000 the Respondent No.4 was dismissed from the service under the orders of the Petitioners. He assailed the said order through grievance application No.133/2006 but the same was turned down by the Respondent No.3 vide his order dated 16.08.2007, which was called in question through appeal and the same was allowed by the Respondent No.1 vide decision/ Judgment dated 10.11.2010 which has been impugned in the present proceedings.

Mr. Ansari Abdul Latif learned Counsel for the Petitioners contended that prior to filing grievance application, the Respondent No.4 had filed Service Appeal No.264-K(C.S)/2003, which was dismissed for non prosecution vide Judgment dated 13.10.2005 but the Respondent No.4 neither got his dismissed appeal restored nor disclosed the above fact while approaching the Labour Court. Per learned Counsel, the Respondent NO.4 has concealed the fact and by playing fraud and cheating took U turn as after availing departmental forums as well as Federal Service Tribunal, where his appeal was dismissed, he malafidely filed the grievance application before the Labour Court No.VI Hyderabad. He urged with vehemence that since the Respondent No.4 has already filed an appeal before Federal Service Tribunal, which was dismissed for non prosecution and is not restored till today, therefore, the matter attained finality and under these circumstances, the grievance application of Respondent NO.4 was not maintainable, consequently the impugned Judgment passed by Respondent No.1 is also not sustainable. He further contended that neither the Respondent No.4 was workman nor his grievance application was maintainable before



the Labour Court as such the impugned Judgment passed by the Respondent NO.1 is not maintainable and nullity in the eyes of law.


Conversely Ms. Naseem Abbasi Counsel for Respondent No.4 contended that the appeal dismissed for non prosecution by the Service Tribunal was restored and subsequently in the light of Muhammad Mubeen Salam's case reported in PLD 2006 SC 602, the Respondent NO.4 approached the Labour Court through grievance application. She further contended that Petitioners have admitted that the Respondent No.4 was a workman as they have admitted in para No.4 of their written statement as well as in para No.5 of affidavit in evidence of R.W Sattar Bux Soomro. Per learned Counsel since it is an admitted fact therefore, Respondent No.4 was not required to prove the same.

We have heard learned Counsel for the parties and perused the record. Upon a perusal of record, it appears that in the light of the Judgment passed by the Honourable Supreme Court in Mubeen Salam's case, appeal No.264-K/2003 filed by the Respondent No.4 was abated vide order dated 30.06.2006, which reflects that after dismissal, appeal of Respondent No.4 was restored. Even in preliminary objections/reply filed by the Petitioners before the Labour Court, they have categorically stated that the Labour Court has got jurisdiction to entertain the grievance application. We have also perused the preliminary objections filed by the Petitioners before the Labour Court and did not find any objection with regard to the status of the Respondent No.4 as workman. Even from the perusal of affidavit in evidence of Sattar Bux Soomro, filed before the Labour Court, it appears that the contents of para No.1 of the grievance application were admitted by the petitioners. Apart from two grounds, viz. dismissal of the Service Appeal for non prosecution, filed by the Respondent No.4 before the Service Tribunal and the status of Respondent No.4 as workman, learned Counsel for the Petitioners did not pin point any illegality in the impugned decision/Judgment. Record reflects that service appeal of the Respondent No.4 was dismissed for non prosecution on 13.10.2005 but same was subsequently restored. The petitioners also admitted in their preliminary objections/affidavit in evidence that the Respondent No.4 is workman.



For the foregoing reasons, we do not find any illegality in the impugned Judgment, passed by the Respondent No.1, consequently instant petition stands dismissed. However, the Petitioners are directed to implement the Judgment of the Respondent No.1 in its letter and spirit.

The petition stands disposed of alongwith listed applications.

  
JUDGE  
JUDGE