

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**CP No. S- 82 of 2023**

[ JS Bank Limited v. Sahib Dino Soomro & others ]

Petitioner : Through Mr. Shaukat Ali Choudhry, Advocate  
Respondent : Through Mr. Manzoor Ali Jessar, Advocate  
Date of hearing : 17.04.2023  
Date of decision : 08.05.2023

## **ORDER**

**ADNAN-UL-KARIM MEMON, J.-** Through this Constitutional Petition, the petitioner-JS Bank has challenged the order dated 03.2.2023 passed by the Commissioner Workmen's Compensation & Authority under Sindh Payment of Wages Act @ Hyderabad on Application No. 151 of 2022; whereby he dismissed the application moved by the petitioner for dismissal of the case, inter-alia on the ground that it has no jurisdiction and authority to deal with the case of Trans-Provincial Bank; and, the jurisdiction lies with the Bench of National Industrial Relation Commission (NIRC) under the National Industrial Relations Act, 2012.

2. Brief facts of the case as per memo of petition are that Petitioner-JS Bank is registered in Karachi having branches spread all over the country as well as in Azad Jammu & Kashmir. The petitioner-bank claims that it is a Trans-Provincial Establishment as defined under the Industrial Relations Act, 2012 (IRA-2012); that respondent No.1 was appointed as Assistant Manager in the petitioner bank on 30.4.2011. On 1.3.2014 he was promoted to Manager and on 4.9.2015 his service was re-designated as Floor Manager. On 3.6.2022 his services were terminated as per terms and conditions of employment and against such termination respondent No.1 filed Grievance Application under Section 33 of the IRA 2012 before the National Industrial Relations Commission (NIRC) at Karachi. Petitioner-bank has submitted that in July 2022, respondent No.1 also filed an application under Section 15(3) of the Sindh Payment of Wages Act, 2015 before respondent No.2 / Commissioner Workman Compensation seeking direction against the petitioner-bank to pay / deposit his dues of

Rs.1,10,00,000/- before the court; that the petitioner bank moved an application for dismissal of above application moved under Section 15(3) on the ground that it has no jurisdiction to try the application as the petitioner bank is Trans-Provincial Establishment. However, the said application was dismissed vide order dated 03.2.2023 on the ground that the matter of the petitioner-bank has already been decided by this Court vide order dated 18.4.2022 in C.P. No. S-398 of 2021. An excerpt of the order dated 03.2.2023 is reproduced as under: -

“Heard arguments of both parties previous on date 03.11.2022 from the respondent side on the application in hand for dismissal of case and rebuttal of objections from applicant side, today I am of the considered opinion that this court does not lack jurisdiction. As the matter of J.S. Bank has already been decided and upheld by the Honourable Sindh High Court, therefore, application filed by the respondent is hereby dismissed. Parties are advised to proceed the matter by filing written statement. Matter is fixed for written statement on 10.02.2023. (Detailed order is on separate sheet).”

3. Choudhry Shaukat Ali, learned counsel for petitioner-bank has argued that the order passed by Respondent No.2 is in violation of law and dicta laid down by the Supreme Court in Civil Appeal No.481 of 2017 and other connected appeals; that the petitioner Bank is a Trans-Provincial Establishment and the branches of the Petitioner's Bank are situated throughout the country as well as Azad Jammu & Kashmir; therefore, the Authority under the Sindh Payment of Wages Act, 2015, had no jurisdiction to decide / hear the matter of Trans-Provincial Establishment; that the jurisdiction of respondent No.2 under the Payment of Wages Act, 2015 is limited to delay payment of wages or deduction of wages and no such question is involved in the application of respondent No.1; that grievance application of Respondent No.1 for reinstatement with back benefits is pending before NIRC Karachi; therefore, respondent No.2 under Sindh Payment of Wages Act, 2015 lacks the jurisdiction to decide / hear the claim of Respondent No.1. Learned counsel further submitted that respondent No.2 had also no jurisdiction under the Payment of Wages Act, to decide the question as to whether the person before it, is a workman or not; that the Bench of Lahore High Court in its unreported Judgment has held that the jurisdiction of authority against Trans-Provincial Establishment under the Federal Law thus the provincial law is not applicable against the federal entity, though such establishment is situated within provincial limit. He lastly prayed for allowing the petition and dismissal of the Grievance Application of respondent No.1 pending before respondent No.2.

4. Mr. Manzoor Ali Jessar, learned counsel for respondent No.1 submitted that this petition is not maintainable as the remedy against the impugned Order was / is available to the petitioner Bank to file an appeal / revision before Labour Court under Section 17 of the Sindh Payment of Wages Act, 2015; that this court has already decided similar kind of issue in CP No. S-398 of 2021 as such the case of the petitioner-bank falls within the ambit of constructive res judicata; that the petitioner earlier had also made compliance of order dated 20.1.2021 as well as the order dated 31.03.202 passed by respondent No.2. He lastly prayed for dismissal of the instant petition. Learned counsel heavily relied upon the order dated 31.3.2021 passed by respondent No.2 and submitted that the concept of Trans-Provincial Establishment is for the formation and registration of trade union under the IRA, 2012, but in the instant matter such question of formation or registration of trade union, labour dispute, and unfair labor practices was / is not involved rather a simple question of payment of bonus and other ancillary issues were agitated before the respondent No.2 which was rightly entertained and matter arising out of the orders passed by respondent No.2 to this Court attained finality as no further proceedings were initiated by the petitioner-bank before the Supreme Court and the petitioner-bank again agitated the same assertion which has already been discarded by this Court in C.P. No. S-398 of 2021. An excerpt of the order dated 31.3.2021 is reproduced as under:-

“By this order, I intend to dispose the application along with Affidavit annexed with the copy of Order dated 20.02.2021 entitled as “Application for re-calling of order dated 31.12.2020 & 20.01.2020 filed under order 9 Rule 13 & 14 CPC read with section 21 of General Clause Act.” filed by the respondent on 22.02.2021, praying therein that this Honourable Court may be pleased to re-call / set aside the order dated: 31-12-2020 & 20- 01-2021 as matter may be decided on merit after hearing both of the parties.

**BRIEF FACTS:**

For the reason that this Authority after entertaining the application of the applicant served its notice upon the Respondent which was complied with by the Respondent by appearing before this Authority through their Learned Counsel, Mr. Imran Ali Burano. Where after the above matter remained pending due to Covid-19 and retirement of then Authority Mr. Aijaz Ali Shah. As and when present Authority assumes the charge duly served the another notice to the Respondent dated: 08-10-2020 upon which the Learned Counsel, duly appeared before this Authority on 22-10- 2020 with the verbal request to grant some time as such the matter was adjourned to 09-11-2020. Thereafter neither Respondent nor his Counsel appeared before this Authority, despite this Authority was pleased to provide several 5 opportunities to the Respondent 27-11-2020, 09-12-2020, 23-12- 2020 &31-12-2020.

Due to lack of interest of Respondent in the above matter, this Authority closed the side of the Respondent on 31-12-2020 and declare the Respondent ex-parte, where after Applicant filed his affidavit in evidence as ex-parte on Oath on 07-01-2021.

Finally this Authority passed an Order on 20-01-2021 with the directions to Respondent to deposit the total Amount of Rs. 3,296,000/- including penalty of one time compensation in applications No.66/2018 & 14/2019.

Respondent duly received the copies of Order dated 17.2.2021, which should have been challenged under section 17 of The Sindh Payment of Wages Act, 2015 before the Honourable Labour Court No. VI, Hyderabad. On the contrary of it, the Respondent made an attempt to make the Provision of Section 17 of the Sindh Payment of Wages Act, 2015 ineffective, that is why awarded amount was not deposited with this Authority nor filed any appeal before the Honourable Appellate Forum i.e Labour Court.

Conversely, the Respondent filed an application along with Affidavit and the copy of Order titled "Application for re-calling of order dated: 31-12-2020 & 20-01-2021 filed under Order 9 Rule 17 & 14 CPC read with section 21 of General Clause Act." The same was allowed with order Notice to other side on 22-02-2021. On 15-03-2021 Applicant along with his counsel Mr. Manzoor Ali Jesar called present and filed objection on the application made by the Respondent, copy supplied to other side. Thus next date fixed for the arguments was fixed on 19-03-2021.

The learned counsel for Respondent Mr. Iran Ali Burano advanced his arguments on the application stating therein that no grievance petition can be entertained by this Authority against the answering respondents which is a Trans-Provincial establishment and the Apex court in its various judgments has maintained that it does not fall within the purview of provincial legislation, hence this authority has incorrectly exercised its jurisdiction, hence the subject grievance is coram-non-judice liable to be recalled. He gave reliance on SCMR-2014-535, SCMR-2018-802 & Lahore High Court PLC-118 of 2018.

The Learned Counsel for Applicant Mr. Manzoor Jesar advanced his arguments in its rebuttal that the concept of Trans-Provincial Establishment is for the formation and Registration of Trade Union under the Industrial Relations Act, 2012. But the instant matter does not relate to the formation or registration of trade union in the trans-provincial establishment. The matters of unions pertaining to labour disputes and unfair labour practices will be dealt with the provision of IRA 2012. The Respondent placed reliance upon 2018-SCMR-802, 535, which are on distinguished facts and circumstances as the Honorable Supreme Court of Pakistan held the IRA 2012 to be very legislation by the Parliament for the purpose of formation & Registration of Trade Union in the Trans-Provincial Establishment.

#### CONCLUSION;

The concept of Trans-Provincial Establishment is for the formation and Registration of Trade Union under the Industrial Relations Act, 2012. But the instant matter does not relate to formation or registration of trade union in the trans-provincial establishment. Which is misconceived and against the Law as this Authority had not passed any ex-parte Order even otherwise Order 9 Rule 13 and 14 CPC is not applicable in the proceedings under the provision of Section 15 of the Sindh Payment of Wages Act, 2015 which being Special Law that excludes the application of CPC hence it has on comprehensive Procedure to Regulate the proceedings of this Authority, the same has been provided under Sindh Payment of Wages (Procedure) Rules 1937.

So far the legal objection of respondent that the respondent's company is a trans-provincial establishment but the term 'trans provincial' is defined in the Industrial Relations Act, 2012 and same definition cannot be attracted in other labour legislations including the Sindh Payment of Wages Act, 2015 as it is hit by y principle of Pari Materia. I am fortified in this view by a decision of Hon'ble Supreme Court in case of Zain Packaging Industries (Pvt) Ltd. Vs. Abdul Rasheed and others (1994- SCMR-2222). In view of this discussion, the present objection of respondent is not tenable hence same is ruled out.

As for as the plea of the trans-Provincial Establishment is concerned that is of no use and without any substance for the reason that after the 18th Amendment in the Constitution, the Provincial Assembly particularly the Provincial Assembly

of Sindh enacted the Sindh Payment of Wages Act, 2015 which applies to each & every factory, establishment, Commercial Establishment which are established in Sindh. I am convinced that the concept of Trans Provincial Establishment is for the formation and Registration of Trade Union under the Industrial Relations Act, 2012. But the instant matter does not relate to formation or registration of trade union in the trans-provincial establishment. The Respondent placed reliance upon 2018-SCMR-802,535, which is on distinguished facts and circumstances as the Honourable Supreme Court of Pakistan held the IRA 2012 to be very legislation by the Parliament for the purpose of formation & Registration of Trade Union in the Trans-Provincial Establishment. The jurisdiction of NIRC Established under Section 54 of I.R.A 2012 remained the same as it has jurisdiction either under the repealed, I.R.O 1969, I.R.O 2002 or I.R.A or I.R.A 2008 with the little modification that earlier its jurisdiction was restricted to unfair labour practice and matter of union and now it can also adjudicated Industrial disputes and industrial grievances under section 33 of I.R.A 2012, while The Sindh Payment of Wages Act, 2015 its quite different Law which does not relate to the formation and Registration of Trade Unions or adjudication of the industrial dispute, but the person employed without distinctive may make an application under Section 15 of Sindh the Payment of Wages Act, 2015 for recovery of illegal deducted wages, withheld wages and legal dues which have not been paid to the person employed in the factory, industry and commercial establishment.”

5. Learned counsel for respondent No.1 has argued that special law overrides the general law whereas the Act 2015 is available, especially for issues about wages as defined under Section 2(1) (m) of the Act, 2015 which includes the word ‘bonus’, therefore, such issues arising out of wages fall within the ambit of provincial law rather than federal law as the petitioner-bank is functioning within the jurisdiction of Province of Sindh and the provincial law is applicable. In support of his contentions, he relied upon the case reported as 2017 PLC 65 and argued that the case of respondent No.1 in service pending before NIRC has no application in the present case which relates to another question of law whereas the question involved under the Act, 2015 is different as such petitioner’s objection to the jurisdiction is untenable under the law. Learned counsel further argued that so far as the workman is concerned, this issue has yet to be taken care of by the competent forum under law. He lastly prayed for implementation of order dated 18.4.2022 passed by this Court in C.P. No. S-398 of 2021.

6. I have heard learned counsel for the parties and perused the record with their assistance and the case law cited at bar.

7. The question involved in the present case is whether Grievance Application No.151 of 2022 under section 15(3) of the Sindh Payment of Wages Act, 2015 filed by respondent No.1 before, the Commissioner Workmen’s Compensation and Authority under Payment of Wages Act, 2015, has jurisdiction to entertain the grievance application regarding payment of wages.

8. Primarily, there is no dispute to the factum that the private respondent was an employee of petitioner-Bank and during the tenure of service, his services were dispensed with vide letter dated 03.06.2022 and his grievance application is pending before NIRC Karachi. There is no cavil to the proposition that the status of employer and its establishment determines the applicability of federal or the provincial laws and it is yet to be determined whether petitioner-bank is Trans-Provincial Establishment or not and if yes, whether the question of payment of wages and other ancillary issues could be entertained by the NIRC. Primarily, the NIRC has jurisdiction to settle the dispute/grievance of workers in terms of Section 33 of the IRA-2012. Whereas, in the present case, the private respondent has not called in question the issue of industrial dispute or unfair labor practices on the part of petitioner-bank rather he moved grievance petition under Section 15(3) of the Sindh Payment of Wages Act, 2015 before respondent No.2 and prayed for direction to the petitioner-bank to pay/deposit his dues amounting to Rs.1,10,00,000/- (Rupees one crore ten lacs only).

9. Before proceeding ahead on the subject, primarily the Sindh Payment of Wages Act, 2015, applies to all factories, industries and commercial establishments in the Province of Sindh, whereas, Section 2(g) deals with Industrial Establishment as well as establishment of third party contractors.

10. To appreciate the legal position of the case, it is essential to have glance at the term wages, the same term is defined under Section 2(m) of the Sindh Payment of Wages Act, 2015 as:-

(m) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied were fulfilled, be payable whether conditionally upon the regular attendance, good work, or conduct, or other behavior of the person employed or otherwise, to a person employed in respect of his employment or of work done in such employment and includes any bonus or other additional remuneration of nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include –

(a) the value of any house accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of Government;

(b) any contribution paid by the employer to any pension fund or provident fund;

(c) any traveling allowance or the value of traveling concession;

(d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(e) any gratuity payable on discharge.

11. Section 3 of the Act 2015, has fixed the responsibility for payment of wages upon every employer, including a contractor for the payment to persons employed by him. Section 6 also provides that all wages shall be paid to the employed persons in current currency through cross cheque or bank transfer of any scheduled bank or commercial bank along with the payslips showing the details. It is noted that The Sindh Terms of Employment (Standing Orders) Act, 2015, is also applicable to Industrial and Commercial employment in the Province of Sindh and for matters connected therewith or ancillary thereto. Prima-facie, the petitioner-bank falls within the ambit of commercial establishment and the aforesaid laws are fully applicable in such scenario so far as the term wages is concerned.

12. I have also noticed that before the 18<sup>th</sup> Constitutional Amendment, the Act, of 1936 applied to the whole of Pakistan, but since labour matters were entrusted to the provinces, as such, the Sindh Government enacted its law on the subject as discussed supra and its applicability has already been defined. Besides, it is settled that a special law always overrides a general law. Since Act 2015 deals with the issues of wages, as such the petitioner bank cannot call into question the applicability of such law at this juncture, after failing to achieve a favorable result in previous litigation.

13. In principle, the issue of jurisdiction of respondent No.2 has already been set at naught by this Court vide order dated 18.04.2022 in C.P.No.S-398 of 2021 and thereafter vide Order dated 03.06.2022 a direction was issued to the Additional Registrar of this Court to release the awarded amount deposited by the petitioner-Bank in terms of Order dated 18.11.2021 to respondent No.1. An excerpt of the order dated 18.04.2022 passed in C.P.No.S-398 of 2021 is reproduced as under:-

“8. As it be seen, in the impugned order as reproduced above, both the contentions of the learned counsel for the parties have been put to rest. It is also an established legal position that a specialized law always overrides a general law and where Act 2015 is available especially for issues pertaining to wages (defined to include “Bonus” u/s 2(1)(m) of the said Act) adjudication of such grievance under a different general law would be an abuse of the process of law, hence I do not find any reasons to interfere with these well-placed findings of the court below. The petition is accordingly dismissed along with the listed application.”

14. In the light of above facts and circumstances of the case, I do not see any illegality or irregularity in the order dated 3.2.2023 passed by the respondent No.2, as the law does not de-bar the respondent No.2 to decide the question of payment of wages of employed person in terms of Section 2(m) of the Sindh Payment of Wages Act, 2015. So far as the jurisdiction of

NIRC is concerned it deals only with unfair labour practices and industrial disputes under the IRA-2012.

15. Without prejudice to the rights of the parties before the NIRC, this petition is liable to be disposed of in terms that the orders passed by this Court in C.P. No. S-398 of 2021 are liable to be implemented in its letter and spirit as the same has attained finality.

16. Resultantly, the instant petition is disposed of in the above terms along with the listed / pending application(s).

Kamr Hussain\*  
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JUDGE