

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C. P No. S-613 of 2022

[Abdul Sattar versus Secretary Labour Sindh & Ors]

Petitioner : Through Ms. Shahida Ghani advocate
Respondent No.4 : Through Syed Sardar Hussain Shah advocate
Mr. Allah Bachayo Soomro, Additional A.G
Date of hearing : 05.05.2023
Date of Judgment : 26.05.2023

J U D G M E N T

ADNAN-UL-KARIM MEMON, J.- Through this constitutional petition, the petitioner has impugned the Order dated 13.05.2022 passed by the Registrar of Trade Unions Hyderabad Region Hyderabad, whereby the objection raised by General Secretary, Irrigation Workers Union Hala to the extent of including the names of Darogha and Telephone Operators in the voter list to cast vote in the referendum proceedings in the establishment of M/s. Hala Irrigation Division Hala, was rejected, however, the legality of order was assailed in Labour Court No.VI, Hyderabad, but the objection did not bear fruit and his appeal was declined vide Order dated 11.05.2022 on the same analogy. The petitioner has now challenged the schedule of referendum proceedings as well as issuance of Collective Bargaining Agent Certificate dated 13.5.2022 by Registrar of Trade Unions Hyderabad Region Hyderabad.

2. Facts of the matter are that respondent No.4 / General Secretary Abpashi Porhiat Itehad Union moved an application before Registrar Trade Unions for determination of Collective Bargaining Agent through secret ballot in the establishment of M/s. Hala Irrigation Division Hala under Section 24(2) of Sindh Industrial Relations Act 2013 (SIRA, 2013). The petitioner-General Secretary, Irrigation Workers Union Hala objected to the list of workers on the ground that names of Darogha and Telephone Operators could not be included in the voter list, as they were / are not workmen under SIRA, 2013; however, his objection was turned down by the Registrar of Trade Unions vide Order dated 13.04.2022; against which he preferred Appeal No.61 of

2022 before Labour Court No.VI Hyderabad; and, during pendency of appeal, he moved an application under Section 9(10) of SIRA, 2013, for stay but the said application was dismissed vide interlocutory order dated 11.05.2022.

3. The question whether 'Darogha' and 'Telephone Operators' of Irrigation Department, Government of Sindh are civil servants in terms of Section 2(1)(b) of the Sindh Civil Servants Act, 1973, and can form a Union as Worker / Workmen in terms of Section (2)(xxxii) of SIRA, 2013.

4. To assist on the above question, Ms. Shahida Ghani counsel for petitioner has submitted that Darogha and Telephone Operators of Irrigation Department, Government of Sindh are civil servants and they are not workmen as defined in Section 2 (xxxii) of SIRA, 2013 to cast vote in the referendum proceedings in the establishment of M/s Hala Irrigation Division Hala. She prayed for allowing the instant petition as prayed.

5. Syed Sardar Hussain Shah counsel for respondent No.4 refuted the submissions of the counsel for petitioner and read various provisions of law including Section 2(1)(b) of the Sindh Civil Sindh Servants Act, 1973 and contended that Darogha and Telephone Operators do not fall within the definition of 'civil servant' but they are ousted from the definition of civil servant; rather keeping in view the nature of their duties they fully qualifies to be considered as workman; that the Darogha and Telephone Operators can hardly be described as a person employed in the administration of the State, therefore, the provisions of SIRA, 2013, will be applicable and for redressal of any grievance, the right forum would be Sindh Labor Court under SIRA, 2013. He further contended that the respondent was fully justified to file a grievance petition before Labour Court and this aspect of the case was fully attended to by the courts below and there are concurrent findings on this aspect, which makes it a close transaction. Learned counsel next argued that every registered trade union is a body corporate by the name under which it is registered, and can sue or be sued. However the petitioner has filed the instant petition in his personal capacity; that the petitioner is neither aggrieved person nor any of its fundamental rights have been infringed; therefore, petition being not maintainable is liable to be dismissed; that the remedy available to the petitioner was to approach the labor Court/ labor Appellate Tribunal and exhaust the remedy before filing instant petition; that referendum has already taken place and result has been announced on 12.5.2022. In support of his contention, he relied upon the cases of Sindh Irrigation and Drainage Authority Versus Government of Sindh 2022 SCMR 595, Secretary Irrigation

and Power Department, Government of Punjab Versus Muhammad Akhtar 2009 SCMR 320, Tehsil Municipal Administration Versus Muhammad Amir 2009 SCMR 1161, and Province of the Punjab Versus Punjab Labor Appellate Tribunal 2002 PLC 67, M.Asharaf Bullo Vs. PIA 2011 PLC 142 and M/s TNB Liberty Power Ltd Vs. Director Labour 2014 PLC 382.

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

7. It is not disputed that the term “civil servant” includes a person who is or has been a civil servant within the meaning of Sindh Civil Servants Act, 1973, so I will have to see to what the term ‘civil servant’ means under the Civil Servants Act, 1973. The definition of Civil Servant is as under: -

“Civil servant” means a person who is a member of a civil service of the Province or holds a civil post in connection with the affairs of the Province but does not include –

- (i) a person who is on deputation to the Province from the Federation or any other Province or authority; or
- (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
- (iii) a person who is "worker" or "workman" as defined in the Factories Act, 1934 (XXV of 1934), or the Workmen's Compensation Act, 1923 (VIII of 1923)."

8. The plain reading of above-referred definition of ‘civil servant’ brings me to the conclusion that a civil servant is one whose characteristics/ qualifications are given in sub-clause (1) above and the Civil Servants Act, 1973 applies to all “civil servants” wherever they may be but sub-clause ‘iii’ excludes a person who is a "worker" as defined in the Factories Act, 1934 or "workman" as defined in SIRA 2013, which reads as under:-

“Section 2 (xxxii) defines “worker” and “workman” mean a person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment be expressed or implied, and, for the purpose of any proceedings under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity.”

9. From the above definition, it is clear that a permanent employee of Irrigation Department, Government of Sindh, whose terms and conditions of service are settled under Sindh Civil Servants Act, 1973, does not fall within

the definition of “worker” as defined in Section 2 (xxxii) of SIRA, 2013, Section 2(h) of the Factories Act, 1934 as well as Section 2(i)(ii) and (iii) of the Sindh Civil Sindh Servants Act, 1973

10. In principle, the term “workman”, as defined above includes any person who is employed in any occupation ordinarily involving outdoor work on contingency basis such person will be excluded from the definition of “civil servant”

11. The Supreme Court in the case of *Muhammad Mubeen-usSalam and others v. Federation of Pakistan through Secretary, Ministry of Defence and others* (PLD 2006 SC 602) has been held as under: -

“37. Thus, in view of ratio decidendi of the above judgments, it can be held that a worker or a workman as defined in Factories Act, 1934 or the Workmen's Compensation Act, 1923, notwithstanding the fact that the controlling share in the industry vests in the Federal Government shall not be treated as civil servant. Similarly, persons on contract, even though discharging their functions in connection with the affairs of the Federation and likewise, as well as the deputationists from the Provinces to the Federal Government have not been granted protection of CSA, 1973, therefore, they were excluded from the definition of ‘civil servant’ and as per terms and conditions of the person of later category, laid down in CSA, 1973 they shall not be entitled to approach the Service Tribunal, established under Article 212 of the Constitution. It may be noted that this Court in the case of Qazi With Muhammad (ibid), has crystallized the proposition, leaving no ambiguity in respect of ‘civil servant’ or other persons, as per section 2(1)(b)(i), (ii) and (iii) of the CSA, 1973 to avail remedy before the Service Tribunal in respect of their terms and conditions, being in the service of Pakistan, including disciplinary matters, as per the mandate of Article 212(1) of the Constitution.”

12. To resolve these questions, we will first examine Section 1 of the SIRA, 2013, which reads as under: -

1. Short title, extent, application and commencement.–

(1) This Act may be called the Sindh Industrial Relations Act, 2013.

(2) It extends to the whole of the Province of Sindh.

(3) It shall apply to all persons employed in any establishment or industry, including fishing and agriculture but shall not apply to any person employed

–

i. in the Police or any of the Defence Services of Pakistan or any services or installations exclusively connected with or incidental to the Armed Forces of Pakistan including an ordnance factory maintained by the Federal Government;

ii. in the administration of the State other than those employed as workmen by the Railway and Pakistan Post;

iii. as a member of the security staff of the Pakistan International Airlines Corporation, or drawing wages in pay group, not lower than group V, in the establishment of that Corporation as the Government may, in the public

interest or in the interest of security of the Airlines, by notification in the official Gazette, specify in this behalf;

iv. by the Pakistan Security Printing Corporation or the Security Papers Limited;

v. by an establishment or institution for the treatment or care of sick, infirm, destitute or mentally unfit persons excluding those run on commercial basis;

vi. as a member of the watch and ward, security or fire service staff of an oil refinery or an airport;

vii. as a member of the security or fire service staff of an establishment engaged in the production, transmission or distribution of natural gas or liquefied petroleum gas; and

viii. in an establishment or institution providing education or emergency services excluding those run on commercial basis.

(4) It shall come into force at once.

13. From the perusal of the above provision, it is clear that the SIRA, 2013 applies to all persons employed in any 'establishment' or 'industry', in the province of Sindh but shall not apply to any person inter alia employed in the **administration of the State**, other than those employed as 'workmen'.

Emphasis supplied.

14. Freedom of Association is a fundamental right in terms of Article 17 of the Constitution 1973, however, subject to restrictions imposed by law. Ensuring that workers and employers have a voice and are represented; therefore, essential for the effective functioning not only of labor markets but also overall governance structures in the country.

15. Section 3 of SIRA, 2013 provides formation of Trade Unions and Freedom of Association as under:-

“Subject to the provisions of this Act and notwithstanding any other law

(i) workers without distinction whatsoever, shall have the right to establish and subject to the rules of the organization concerned, join trade union and associations of their own choice without previous authorization: Provided that in the establishment where women are also employed, the trade union shall include the women in the executive and office bearers of the said trade union with the same proportion in which they are employed in the establishment;

(ii). a worker shall not be entitled to be a member of more than one trade unions at any one time and on joining another trade union, his earlier membership of the other trade union shall stand cancelled;

- (iii) employers may establish and, subject to the rules of the organization, may join associations of their own choice without previous authorization;
- (iv) every trade union and employers association shall frame its own constitution and rules to elect its representatives in full freedom to organize its administration and activities and to formulate its programmes; and
- (v) workers' or employers' organizations may establish and join federations and confederations and any such organization, federation or confederation may affiliate with international organizations and confederations of workers' or employers' organizations

16. The telephone operators and Darogas of Irrigation Department Government of Sindh are not workman to participate in the subject referendum to cast vote in terms of Sindh Industrial Relations Act, 2013, rather they are Civil Servant working on permanent posts under the law. However the employees of Sindh Irrigation and Drainage Authority are not civil servants as declared by the Supreme Court in the case of *the Sindh Irrigation and Drainage Authority Versus Government of Sindh* **2022 SCMR 595**.

17. In the light of above facts and circumstances of the case, the referendum proceedings initiated by the Registrar Trade Union are declared as void abinitio. However, the Registrar Trade Union shall initiate Referendum Proceedings under SIRA, 2013 by allowing the genuine voters to cast vote in the proceedings other than civil servants of the Irrigation Department, Government of Sindh as discussed in the preceding paragraphs. The aforesaid exercise shall be completed within reasonable time strictly under the law.

18. For what has been discussed above, the petition is allowed and the impugned orders passed by the Registrar and Labor court are accordingly set aside. Consequences shall follow.

JUDGE