

Order Sheet
HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No.D-2610 of 2019

[Islamuddin Power Loom Factory v. Muhammad Asif & others]

BEFORE:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Arshad Hussain Khan

Petitioner: Through Ms. Samina Ajmaree, Advocate

Respondent No.1: Through Ms. Shahida Parveen Abdul Ghani, Advocate

Mr. Rafiq Ahmed Dahri, Assistant A.G.

Date of hearing: 27.09.2023

Date of order:

ORDER

ARSHAD HUSSAIN KHAN, J.- The petitioner through instant constitutional petition has assailed the order dated 23.11.2018, passed by the Sindh Labour Appellate Tribunal whereby Appeal No. HYD-73 of 2018, filed by the respondent challenging the dismissal order of his grievance petition was disposed of with the directions to the petitioner to pay a lump sum amount of Rs.200,000/- as full and final payment to the respondent for severance of his employer-worker relationship with the respondent.

2. A gist of the facts as reflected in the petition are that the Respondent [Muhammad Asif] was working in the factory of the petitioner since January 2006, being the permanent workman under the labour law. On 06.02.2016, the respondent during his duty suffered foot injury for which the petitioner arranged his treatment. However, after treatment and recovery, the respondent went to join his duty, the petitioner verbally refused to take him on duty. Consequently, the respondent filed grievance application before the Sindh Labour Court No.VI, Hyderabad. The said application was contested by the petitioner and subsequently the same was dismissed. The respondent challenged the said order before the Sindh Labour Appellate Tribunal, Karachi [SLAT], which was disposed of with the directions to the petitioner to pay a lump sum amount of Rs.200,000/- as full and final payment to the respondent for severance of his employer-worker relationship with the respondent. The petitioner being aggrieved by the aforesaid order filed the present petition.

3. Upon notice of the case, Respondent-Muhammad Asif filed reply by way of counter/objection and while supporting the impugned order he has denied the allegations levelled in the petition. It has been stated that the impugned order is based on the evidence/material available on the record and the law, as such, there is no illegality and/or irregularity in the impugned order, which could warrant any interference by this Court in the constitutional jurisdiction, hence, the petition is liable to be dismissed.

4. Record reflects that on 28.03.2023 this Court in order to secure the amount in question directed the petitioner to deposit the same with Additional Registrar of this Court, which was subsequently deposited by the petitioner.

5. Learned counsel for the petitioner during his arguments has contended that the order impugned in the present proceedings is bad in law, facts and circumstance of the case. He has further contended that Member SLAT while passing the impugned order has failed to consider the material available on the record and the fact that the respondent never worked with the petitioner as permanent workman but was working as a daily wages worker. It has also been argued that the directions of SLAT to pay the compensation to the respondent is untenable in law. Lastly, he has prayed that the impugned order may be set aside.

6. Learned counsel for the respondent while reiterating the contents of counter /objection has contended that the SLAT has passed the order, which is within the parameters of law, as such, does not call for any interference by this Court. Leaned counsel in support of her stance has relied upon the cases of *Azeem Weaving through Manager/owner v. Muhammad Arshad and 2 others* [2021 PLC 124] and *Messrs CIM Shipping INC through duly authorized person v. Tousif Ahmed* [2019 PLC 121].

7. Precisely, the case of the petitioner is that respondent never remained as the permanent workman of the petitioner establishment, however, he was working as daily wages worker and was being paid on daily basis after completion of the work and no dues were outstanding against the petitioner. Further the establishment of the petitioner is registered under the West Pakistan Shops and Establishment Ordinance 1969, as such, the IRA 2013 and Sindh Terms of Employment (Standing Orders) are not applicable to the present case. It is also the case of the

petitioner that the findings of the Labour Court are in accordance with the facts and the law, as such, the same were not required to be interfered with by the SLAT.

8. From perusal of the record, it appears that the petitioner raised similar objections before the SLAT, which have been elaborately answered by learned Member SLAT while passing the impugned judgment. Relevant portions of the said judgment for the sake of ready reference are reproduced here under:

“7. Learned counsel for the respondent argued that it was a small power loom factory registered under the West Pakistan Shops and Establishment Ordinance, 1969, and, therefore, the Sindh Terms of Employment (Standing Orders) Act, 2015, did not apply to it, nor was the respondent obliged to keep record of his employees. The argument is without any force. First, as held by the Hon’ble Supreme Court, in the case of Abdul Razaq versus Messrs Ihsan Sons Ltd. (1992 SCMR 505), registration of an establishment under the Shops and Establishment Ordinance did not deprive the workers of their rights under the Standing Orders. Second, the burden was on the respondent claiming exemption from applicability of the law to prove that the law did not apply to his establishment. For this, reference may be made to the cases of Messrs Urdu Academy versus Sindh Labour Appellate Tribunal (1989 PLC 187 Karachi) and Messrs Huffaz Seamless Pipe Industry Ltd. versus Collector Sales Tax Hyderabad (2010 SCMR 707). In this case, the respondent has not even pleaded exemption from applicability of the Standing Orders. Third, under the Sindh Factories Rules, 1975, as well as under the West Pakistan Shops and Establishment Rules, 1969, the respondent was obliged to maintain record of his employees, particularly the Register of Attendance, the Register of Wages and the Register of Employment and Remuneration in the prescribed forms.

8. Standing Order 16(3) provided that “services of a workman shall not be terminated, nor shall a workman be removed, retrenched, discharged or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken”. The reason must be clear so as to withstand judicial scrutiny. The requirement of written order is for all classes of workers. Admittedly, the respondent has not issued any written order of termination of services of the appellant. In his written statement, the respondent stated that he did not take the appellant on duty because there was no work to be assigned to him, while in his cross-examination he stated that he did not take him on duty because his work was not satisfactory. This shows that the respondent had removed the appellant from service arbitrarily in violation of Standing Order 16(3).

9. As for a just and proper order, a labour court may direct reinstatement of a worker in service with or without back benefits or may award him reasonable compensation, instead of reinstating him in service, keeping in view the facts and circumstances of a particular case.

10. Except for the Industrial Relations Ordinance, 2002, there was no specific provision for the award of compensation in any Industrial Relations Ordinances/Acts. Specific provision for reinstatement in service was also not there and the courts passed order for reinstatement in service as well as awarded compensation, instead of reinstatement, under the general power of passing any just and proper order' provided under the statutes.

11. The Industrial Relations Ordinance, 2002, contained provision for the award of compensation equal to salary of not less than 12 months or more than 30 months. This was introduced for the first time in the field of labour laws and had the effect of restricting discretion of the court in fixing the amount of compensation. Absence of similar provision in the reenacted laws will have the effect of removing the restrictions on the exercise of discretion in fixing the amount of compensation and not of removing the power of awarding the compensation. Before promulgation of the Industrial Relations Ordinance, 2002 also, the courts awarded compensation to workers in the cases of their removal from service, considering facts and circumstances of each case. For this, reference may be made to the cases of Glaxo Laboratories Pakistan Limited versus Pakistan and others (PLD 1962 SC 60) and Abbasi Textile Mills Limited versus Industrial Court and others (PLD 1966 SC 765).

12. It is comparatively a small establishment managed by the respondent (owner) himself. The appellant had also filed two others cases, one for recovery of minimum wages and the other for compensation and group insurance in respect of foot injury, against the respondent, which have been decided against him as not maintainable. After going through the multiple litigation, the relations between the parties have become estranged and the respondent will not only feel hurt to his personal pride, but reinstatement of the appellant in service will create problems for him to maintain discipline in the establishment. It may also cause hardship of removal to a worker employed in place of the appellant, as the respondent is not expected to have kept the post vacant for such a long time in his small establishment. For all these reasons, reinstatement of the appellant in service will not likely prove productive or viable. It will, therefore, be not just and proper to impose the appellant, an unwanted worker, upon the respondent, an unwilling employer. The just and proper course will be to award reasonable compensation to the appellant, instead of reinstating him in service. Keeping in view all the facts and circumstances of the case, including the length of service, amount of wages (which according to the appellant was Rs,2200/- per week), length of litigation, rate of inflation, general conditions of small power loom factories (which are not good these days), the appellant is awarded a reasonable lump sum amount of Rs.200,000/- as full and final payment for severance of his employment relationship with the respondent, which the respondent is directed to deposit within 30 days for payment to the appellant. The appeal is disposed of accordingly.”

9. A perusal of the impugned judgment reflects that SLAT while dilating upon the issues/objections raised before it in detail has

considered every aspect of the case and given its reasonable findings by appreciating the material available on the record.

10. It is also well settled that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the framework of the Constitution, and if there is any error on the point of law committed by the Courts below or the Tribunal or their decision takes no notice of any pertinent provision of law, then obviously this Court may exercise Constitutional jurisdiction subject to the non-availability of any alternate remedy under the law. This Constitutional jurisdiction is limited to the exercise of powers in the aid of curing or making correction and rectification in the order of the Courts below or the Tribunals passed in violation of any provision of law or as a result of exceeding their authority and jurisdiction or due to exercising jurisdiction not vested in them or non-exercise of jurisdiction vested in them, which in the present case is non-existent¹.

11. In view of the above, we do not find any illegality in the impugned judgment. Furthermore, learned counsel for the petitioner also could not point out any illegality, infirmity or jurisdictional error in the impugned judgment, which could warrant any interference by this Court in its extraordinary jurisdiction. Hence, we maintain the judgment dated 23.11.2018, passed by the Sindh Labour Appellate Tribunal, and consequently present petition, being devoid of any merit is dismissed.

The amount alongwith profit accrued thereon, if any, lying with the Additional Registrar of this Court in respect of the present petition may be handed over to respondent No.1 upon proper verification and identification.

JUDGE

JUDGE

Shahid

¹ Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others (2015 PLC 259).