

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. NO.D-2784/2022

**Before: Mr. Justice Salahuddin Panhwar
& Mr. Justice Amjad Ali Sahito.**

Petitioners : The Board of Trustees of the Port of Karachi & another.
through Mr. Bashir Ahmed, advocate.

Respondents : Muhammad Rehan and two others,
through Mr. Pervez Khurram, & Mr. Mumtaz Jarwar, advocates for respondent No.1.

Date of hearing & judgment : 12.09.2024.

J U D G M E N T

SALAHUDDIN PANHWAR, J. Concisely relevant facts are that respondent (Employee) filed grievance petition before Sindh Labour Court for his reinstatement in service with back benefits with contention that he was employed by petitioner as lascar in 2012, and was dismissed on 11.05.2020 over allegation of obtaining employment on the basis of a bogus bachelor degree whereas he had been hired on the basis of matric certificate which upon verification was found genuine; grievance notice was sent, same was not resolved, he filed grievance petition. Whereas in their written statement, the petitioner was employed on political influence without advertisement, test, or interview; that B.A. degree produced by the employee was bogus following an inquiry during that employee (respondent) was afforded an opportunity to defend himself, he was dismissed lawfully.

2. We have carefully listened to and considered the arguments presented by the learned counsel for both parties, and we have thoroughly evaluated the material available in the record with the utmost care and diligence.

3. Upon thorough examination of the available record, it appears that the Petitioner, as the employer, has challenged the concurrent findings of fact recorded by the two lower forums, which have respectively allowed the grievance petition and the appeal. The relevant Paragraphs Nos. 9, 10, and 11 of the judgment of the appellate tribunal, along with Points Nos. 1 and 2 of the order issued by the Sindh Labour Court, are hereby reproduced as follows:

“9. In his cross-examination, the Assistant Manager of the appellants stated that services of the respondent were regularized on the basis of his matric certificate, which on verification was found genuine. Such report of the Port Intelligence Officer of the appellants is also available on record. The admission of the appellants' manager that services of the respondent were regularized on the basis of his matric certificate and the verification report of the matric certificate available on record supports the contention of the respondent that he had obtained the employment on the basis of his matric certificate and not on the basis of the alleged B.A. degree.

10. According to the appellants, the B.A. degree allegedly produced by the respondent was got verified and found fake in 2014; while the charge-sheet was given to him in 2019 i.e. after five years, instead of within one month prescribed under the law. Standing Order 21(4) of the Sindh Terms of Employment (Standing Orders) Act, 2015 provides that "no order of dismissal shall be made unless the worker concerned is informed in writing of the alleged misconduct within one month of the date of such misconduct or of the date on which the alleged misconduct comes to the notice of the employer". Thus, the statutory provision of giving charge-sheet / show-cause notice within one month is mandatory, non-compliance of which will have the effect of vitiating the proceedings. The action taken against the respondent was hopelessly time-barred also. It was, therefore, without lawful authority.

11. As for the contention of the appellants that the grievance notice was not served on them, the respondent produced copy of the notice, postal receipt and certificate of the postal authorities showing that the consignment (notice) was delivered to the addressee i.e. the appellants. The presumption under Article 129 of the Qanun-e-Shahadat, 1984 and Section 27 of the General Clauses Act, 1897, will be that the notice was delivered to the appellants. Their bare denial is not sufficient to rebut the presumption. For this, reference may be made to the cases of Rehmat Khan versus Anjum Hayat Mirza,

reported as 1993, CLC 1102 Karachi and WAPDA versus Saeed Badar, reported as PLD Supreme Court 660.”

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“POINT NO.1: This point framed from the pleadings of parties. The respondent in his Written Statement, in legal objection has clearly stated that at the time of employment, the applicant has submitted his fake BA degree. He has further stated that the said BA certificate sent for verification & the report received by the respondent that the same is fake, therefore proper enquiry was conducted by the respondent against the applicant & after giving him final show cause notice, his service was removed. The burden lies upon him to prove beyond reasonable shadow of doubt that applicant has obtained job on fake degree. The applicant has denied the allegation & has stated that he has obtained job on Prime Minister's directives. In this respect, he has filed his regularization letter in service which is on record at Ex.A/2 filed by him alongwith main petition. It is admitted fact on record that for the post of Lascar, the qualification is required as Matric. It is also matter of record that the respondent management has sent the Matriculation certificate of the applicant for its verification & the same has been received is 'genuine'. As the post requires qualification of the Matric, therefore the degree of B.A does not matter. However, the applicant has denied the same as Ex.A/2 clearly shows that the job for the post of Lascar obtained by the applicant in 2012 & subsequently he was regularized on 01.01.2013 through PM's directives No.PM.DIR/2255/D(IMP)PAW/12 dated 10.12.2012. The Minister for Ports & Shipping has directed that the services of all temporary employees working under the Port Qasim Authority & KPT etc. may also be regularized immediately.

Now the question of fake degree is concerned, it is the duty of respondent management that whether at the time of appointment or at the time of regularization, they have sent for verification, answer is 'No'. There is clear negligence on the part of respondent management by not sending the degree for its verification at the time of appointment or subsequently at the time of regularization. The services of the applicant is on the PM's directives & he has also submitted genuine Matric certificate, which is the required condition, therefore the question of BA degree does not arise. Hence point answered as above.

POINT NO.2: This point also framed from the pleadings of the written statement, wherein the respondent has stated that the full-fledged enquiry was initiated and thereafter issue final show cause to the applicant & giving him personal hearing. It is further stated that the applicant remained absent from his personal hearing, therefore he was removed from service. The record of this Court reveals that detailed enquiry report is not exhibited in evidence & Enquiry Officer did not appear in witness box to record his statement in support of enquiry held by

him, such enquiry cannot be taken into consideration in evidence unless author of the enquiry is produced as a witness in witness box for cross-examination to dig out the truth of findings of enquiry.

The learned advocate for the respondent has also taken another plea that applicant was absent from his duty without prior permission & intimation. He has also stated that the applicant showing the sanction of his leave, even after 17.11.2019 he neither reported for duty, nor appeared before CMO of KPT & leave for his medical checkup. It is stated that the applicant has abandoned his job w.e.f. 08.11.2019 & did not bother to contact hospital for his treatment & for grant of leave on medical grounds. In this respect, I have perused the charge sheet. The allegation leveled by the respondent against the applicant in charge sheet are reproduced herewith:-

"a. Whereas, you submitted B.A. Degree to the KPT Administration for the purpose of getting job as "Lascar" in KPT, the same has been declared "BOGUS" by the concerned authority i.e. University of Jamshoro, Sindh.

b. Whereas, you have committed fraud for getting job/appointment as "Lascar" in KPT by submitting Bogus B.A. Degree. Your this act of omission & commission constitute misconduct."

Nothing is mentioned in the charge sheet that applicant remain absent from his duty. Hence the absence of the applicant from his duty did not consider. The learned counsel for the respondent in his Written Statement has also taken that this Court has no jurisdiction to try this matter. In this respect I rely upon case law reported in 1975 SCMR 46 that the division bench of the Hon'ble Supreme Court while declining leave to appeal with reference to the Standing Order 15(4) of the W.P. Industrial & Commercial Employment (Standing Orders) Ordinance 1968, held that the Labour Court is only concerned with the question that whether the action taken against the petitioner was in accordance with the law & the question whether the petitioner has committed any fraud, was the question of fact & can only be enquired into by the Enquiry Officer. Here the Enquiry Officer did not attend the Court, therefore in this respect I rely upon case law reported in 1987 PLC 605, wherein Lordship Mr.Justice Ajmal Mian has held as follows:-

"---S.25-A---Constitution of Pakistan (1973), Art. 199---Dismissal from service on basis of enquiry-- Charge of partiality and misconduct against Enquiry Officer in grievance petition---Enquiry Officer not produced by appellant establishment in support of his Enquiry Report and to rebut allegations of partiality and misconduct---By non-production of Enquiry Officer in evidence. In support of his enquiry and in rebuttal of allegations against him, inference drawn by Labour Court and confirmed by Labour Appellate Tribunal,

held, was in consonance with law---High Court declined to interfere with just and lawful order, of lower forum in exercise of constitutional jurisdiction."

So far the grievance notice is concerned, the applicant had sent the grievance notice through registered post AD & has also submitted the report for service of the said notice upon the Chairman of KPT, therefore the question of mandatory notice does not arise. In view of my above discussion, I am of the opinion that respondent has miserably failed to defend his case. However on the other hand, the applicant has fully proved his case beyond reasonable shadow of doubt. The point answered as not proved."

4. The learned counsel for the Petitioner, relying on **2022 SCMR 292** and **1994 SCMR 2213**, contends that the Respondent's case does not fall within the definition of a "workman", thereby rendering both lower forums incompetent to adjudicate the matter. He asserts that the appropriate remedy for the Respondent employee was to file an appeal with the federal government, and subsequently, if aggrieved, to pursue a constitutional petition. Furthermore, he argues that the Petitioner submitted a fraudulent B.A. degree and that his appointment was based solely on matriculation credentials. He further contends that this matter does not constitute an industrial dispute; however, the Respondent employee was terminated on the grounds of the fraudulent degree, which was duly verified following the completion of all requisite codal formalities prior to his termination/dismissal from service. He has relied upon 1990 PLC 14 (Zahoor Ahmed vs. Trustees of Port Trust of Karachi), 1983 SCMR 769 (Trustees of Port of Karachi vs. Abdul Ghani), 1995 PLC 205 (Pakistan Post Office vs. Nadeem Ahmed Khan), 2013 SCMR 279 (DDO Revenue Kasur vs. Muhammad Munir Sajid), 2009 SCMR 1492 (Anwar Ali and another vs. Chief Executive HESCO), 2010 SCMR 11 (Federation of Pakistan vs. Naheed Naushahi), 1992 PLC 924 (Province of Sindh and others vs. Gul Hassan and others).

5. In contra, learned counsel for respondent employee contends that there is no illegality committed the forums below hence this is not a case any indulgence under the writ jurisdiction hence petition is liable to be dismissed.

6. We have examined the case law as submitted by learned counsel. In the case of ***Trustees of the Port of Karachi v. Muhammad Saleem (1994 SCMR 2213)***, the Supreme Court of Pakistan established critical principles regarding the definition and rights of a "worker" under the relevant labor legislation, particularly focusing on Section 25 A of the Ordinance. The Apex Court emphasized that the rights conferred by Section 25-A are not common law rights but are statutory rights. This distinction is crucial, as statutory rights often come with specific conditions and frameworks governing their exercise.

7. The Case of ***Trustees of the Port of Karachi v. Abdul Ghani (1983 SCMR 769)*** [decided by a larger bench comprising Honourable 4 Judges] is significant in the context of labor relations in Pakistan, particularly regarding the interaction between specific legislation governing industrial relations and the general provisions under which certain institutions operate. It was observed by the Apex Court that: *“There is no provision in the Karachi Port Trust Act, 1886, which can be read to exclude the applicability of the Industrial Relation Ordinance, 1969, and for that matter section 25-A of the Ordinance, it is true that an appeal is provided under section 23 of the Karachi Port Trust Act, 1886, but there is no apparent bar against the availability of section 25-A of the Ordinance; and ought it be said that the two remedies are available, side by side, as prima facie the Industrial Relations Ordinance, 1969, by its scope, over-reaches an establishment which satisfies the definitions of employer, worker or*

workman and the establishment. On this view of the matter, it is difficult to accept that the Karachi Port Trust Act is a special act qua it workmen which are governed by it”.

8. The principle established by the Division Bench of this Court in **Zahoor Ahmed v. The Trustees of Port Trust of Karachi [PLC 1990 (Labour) 14]**, as cited by the learned counsel for the Petitioner, states: “A careful reading of the above paragraph will show that it was specifically contended before the Supreme Court in Abdul Ghani's case that a dismissed employee of K.P.T. could not maintain a petition under section 25-A as he does not come within the definition of ‘workman’ as given in the I.R.O. Although it was observed by the Honourable Supreme Court that it was an open question at all levels in that case, yet in the final analysis, the Court reached the, conclusion that remedy by way of a grievance petition by a dismissed employee of K.P.T. under section 25-A of I.R.O. was not barred under any of the provisions of the K.P.T. Act and, consequently, reinstatement ordered by the High Court in that case was not interfered with. In our humble view the effect of the above decision of Hon'ble Supreme Court in Abdul Ghani's case is that it cannot be argued now that a grievance petition by a dismissed employee of the K.P.T. is not maintainable before the Labour Court. We accordingly allow these petitions and declare the orders passed by the Appellate Tribunal holding the grievance petitions of the two petitioners in the above cases as not maintainable under section 25-A of the I.R.O. as without lawful authority and of no legal effect”. This principle laid down by the Division Bench does not support the arguments of the learned counsel for the Petitioner; instead, it reinforces the case of the respondent.

9. In addition, learned counsel for the petitioner has stressed that the law governing the service in question is applicable on a provincial

basis, as the management/establishment falls within the territorial jurisdiction of the Province of Sindh. Furthermore, counsel conceded that the petitioner is a federal institution, and that statutory rules governing service matters are in place under the relevant legal framework.

10. The Honourable Apex Court of Pakistan's ruling in ***Divisional Superintendent, Quetta Postal Division v. Muhammad Ibrahim (2022 SCMR 292)*** clarified the legal status of postal workers, categorizing them as “workmen” rather than “civil servants”. This distinction is crucial as it determines the legal protections and rights available to postal workers, who can seek redress for grievances through the National Industrial Relations Commission (NIRC). The judgment affirmed that postal workers are entitled to rights under the Standing Orders Ordinance, 1968, which ensures fair treatment and due process. Additionally, the Apex Court ruled that the Industrial Relations Act, 2012 supersedes the Balochistan Industrial Relations Act, 2010, due to the trans-provincial nature of postal services. It declared section 1(4)(b) of the Balochistan Act void, reinforcing the authority of federal legislation in labor relations. This decision is based on Article 143 of the Constitution, highlighting the need for a unified legal framework for labor relations across the country.

11. It is pertinent to note that it is a well-established principle of law that findings of fact, concurrently decided by two subordinate forums, cannot be interfered with in writ jurisdiction, provided such findings are based on a proper appreciation of evidence. However, this principle does not extend to cases involving misreading or non-reading of evidence, which is not the issue in the present case. The matter at hand pertains to the applicability of the law as determined

by the Appellate Tribunal and the Labour Court. Therefore, we are of the considered view that the writ of certiorari may only be invoked to address a jurisdictional error or a violation of law. Since no such error or violation has been demonstrated in the present case, the petition is liable to be dismissed. Reliance is placed on the principle enunciated by the Honourable Supreme Court of Pakistan in its authoritative judgment in the case of **United Bank Limited (UBL) through its President and others v. Jamil Ahmed and others (2024 SCMR 164)**, wherein it was affirmed that: *“However, if the concurrent findings recorded by the lower fora are found to be in violation of law or based on flagrant and obvious defect floating on the surface of record, then it cannot be treated as being so sacrosanct or sanctified that it cannot be reversed by the High Court in the Constitutional jurisdiction vested in it by Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as a corrective measure in order to satisfy and reassure whether the impugned decision is within the law or not and if it suffers any jurisdictional defect, in such set of circumstances, the High Court without being impressed or influenced by the fact that the matter reached the High Court under Constitutional jurisdiction in pursuit of the concurrent findings recorded below, can cure and rectify the defect”*.

12. For the reasons elaborated above, the present Constitutional Petition, being devoid of substantive merit, is hereby dismissed. The parties to the *lis* shall bear their own costs.

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