

IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No. 101 of 2022

PRESENT:

MR. JUSTICE ADNAN IQBAL CHAUDHRY

MR. JUSTICE ABDUL MOBEEN LAKHO

**K-Electric Limited.....v/s.....Muhammad Shahnawaz
& others**

Date of hearing: 19.11.2024

M/s. Arshad M. Tayebaly and Aitzaz Manzoor Memon, Advocates for the Appellant.

Ms. Nadira Tabassum, D.G.M., K-Electric along with Mr. Saifullah Sheikh Manager (H.R.) and Mr. Sohail Ravi, Manager (Legal), K-Electric are present. Mr. Alla-ud-Din Malick, Advocate for Respondent Nos.3, 16, 20, 21, 23, 24, 25, 26, 30, 34 and 40.

ORDER

ABDUL MOBEEN LAKHO, J: The instant High Court Appeal has been directed against the impugned Order dated 22.02.2022 passed by the learned Single Judge of this Court in Suit No.815 of 2010, whereby the application (CMA No.14754/2020) filed by the Respondents/plaintiffs was disposed of with the directions to the Appellant to provide similar treatment as given to the appellant in HCA No.499 of 2018.

2. Briefly the facts are that the Respondents 1 to 45 filed Suit No.815/2010 (Muhammad Shahnawaz & others v. K.E.S.C. & others) against the Appellant and Respondents 46 and 47, while challenging the termination of their services alleging that the same was done malafidely and prayed as under:-

“(1) Declare that the Plaintiffs are entitled to continue their services at their respective posts/designations and receive all applicable benefits and privileges thereto as prevailing on 18.04.2010;

(2) Cancel the purported termination notices dated 19 April 2010 issued by the KESC to the Plaintiffs;

(3) Restrain the KESC from dismissing, terminating compulsory retiring or award any penalty against the Plaintiffs except in accordance with Chapter 6 of the KESC Officers Policy 2002 and after initiating proper show cause proceedings and observing the rules of natural justice;

(4) Restrain the KESC from altering or revising the terms of the KESC Officers Policy 2002 to the detriment of the plaintiffs without their consent.”

3. The proceedings went up to the Hon'ble Supreme Court of Pakistan vide Civil Appeal No.56-K of 2012 filed by Respondents 1 to 45, which was disposed of on 09.11.2015 with the following observations:

“Mr. Khalid Javed Khan learned ASC for the Respondents has offered for payment of undisputed claim of the appellants as regard the pensionary benefits, gratuity etc. If the appellants so choose, they can avail such benefit, which will be without prejudice to the pending litigation, and subject to the final fate of the suits.”

4. Thereafter, through CMA No.18037/2015 filed in the Suit, the Respondent No.31 sought payment of his undisputed amount, which was paid on 11.01.2016 by the appellant in compliance of the Hon'ble Supreme Court's order. Vide application (CMA No.10630/2018) the Respondent No.31 claimed that “undisputed” amount was of Rs.73,14,193/-, whereas, the appellant had only paid an amount of Rs.12,77,447/- and pursuant to the understanding that if the respondents would withdraw their suit against the appellant ex-gratia amount as were paid to other employees were to be paid to them, therefore, the respondent No.31 was not entitled to the ex-gratia amount, which is also not covered by order of Hon'ble Supreme Court of Pakistan, as the respondent No.31 did not withdraw his claim.

5. Subsequently, in compliance of the order dated 31.10.2018 passed in CMA No.18037/2015 & CMA No.10630/2018 the appellant deposited the ex-gratia amount i.e. Rs.22,58,483/- of the Respondent No.31 with the Nazir of this Court, however, preferred an appeal i.e. HCA No.520/2018 against the order dated 31.10.2018 and the Respondent No.31 also filed an appeal i.e. HCA No.499/2018 against the aforesaid order. Both the HCAs were heard together and on 29.08.2019 the order dated 31.10.2019 was suspended and on 19.09.2019 HCA No.499/2018 was partly disposed of with directions to the appellant to either directly or through the Nazir deposit/release the amount of pensionary benefits and gratuity to the Respondent No.31, which had been paid to the Respondent No.31, but the matter relating to ex-gratia amount is still pending in the aforesaid HCAs.

6. After the aforesaid, the Respondents 3, 16, 20, 21, 23, 25, 26, 29, 30, 35 and 45, who are 11 of the plaintiffs in Suit No. 815/2010, filed CMA No.14754/2020 for payment of undisputed pensionary benefits as offered by the

Appellant before the Supreme Court. The impugned order dated 22.02.2022 was passed on such application and the learned Single Judge has relied upon the order passed in HCA No.499/2018 and while acknowledging the fact that said plaintiffs had already received a settlement amount from the K-Electric (Appellant herein), has ordered that pensionary benefits and gratuity be paid to those 11 plaintiffs (Respondents herein) by way of a similar treatment as given to the appellants of HCA No. 499/2018. Those plaintiffs have also filed contempt application (CMA No.3791/2022) in the suit on which notices were issued on 09.03.2022 seeking implementation of the impugned order.

7. Learned counsel for the appellant argued that the impugned order suffers from misreading and non-reading of material facts, as the respondents had already been paid all amounts and such fact has been highlighted in the impugned order. He argued that the learned single Judge has ordered that the treatment given to the respondents No.31 in HCA No.499/2018 should also be given to such respondents since the facts are similar to HCA No.499/2018, whereas, the facts are entirely different as the respondents have already been fully and finally settled all amounts. Learned counsel for the appellant argued that the impugned order is based on the order passed in HCA No.499/2018 despite the fact that distinction was already made in the impugned order that the respondents are those employees whom the undisputed amounts (in form of ex-gratia payments) have already been paid and this fact was also admitted by respondents, whereas, the respondent No.31 did not fall in that category, therefore, order was passed to pay him the undisputed amounts. He further argued that that respondents cannot avail such remedy once again as these are past and closed transactions. Learned counsel argued that a consent order dated 22.11.2021 was passed in the Suit that the undisputed amounts will be paid to the respondents, whereas, ex-gratia amount will only be determined after leading of evidence. He argued that the ex-gratia amount is only to be paid in the past, subject to the condition of withdrawal of the proceedings against appellant. Learned counsel argued that the order dated 19.09.2019 passed in HCA No.499/2018 was challenged by the appellant before Hon'ble Supreme Court of Pakistan in CPLA No.712-K of 2019 and on 24.12.2021 the same was disposed of with the observation that the interim orders will not affect the appellant's defence in the Suit. Learned counsel further argued that the relief sought in the application was subject to proof, therefore, directions given in the impugned order is liable to be set-aside.

8. Mr. Alla-ud-Din Malick, learned counsel Advocate for Respondents argued that the matter of payment of ex-gratia amount as an undisputed pensionary benefits is pending in the HCA No.520/2018 filed by the appellant, wherein interim order is operating. He argued that in paragraph 7 of the order dated 22.11.2021 the appellant has admitted that the amount of remaining claim of the respondents would be decided on the basis of evidence led by the parties in which the ex-gratia amount is included. Learned counsel for respondents argued that the respondents were permanent employees of appellant in officer cadre and were terminated with other 290 officers on 19.04.2010 without assigning any reason. Learned counsel for the respondents argued that the matter went up to the Hon'ble Supreme Court of Pakistan and by consent of the parties on 09.11.2015 the matter was disposed of in terms that the payment of the undisputed claim of the respondents (herein) as regard the pensionary benefits, gratuity etc. if the respondents so choose, they can avail such benefit, which will be without prejudice to the pending litigation and subject to the final fate of the suits. Learned counsel finally argued that HCA No.499/2018 filed by the respondent No.31 was allowed vide order dated 19.09.2018 directing the appellant to pay the balance amount of pensionary benefits and gratuity within one week from the date of the order.

9. Heard learned counsel for the parties and perused the record. It is to be first noted that the amount that the Appellant had offered to pay the Respondents before the Supreme Court vide order dated 09-11-2015 was only the "undisputed" claim of the Respondents for pension, gratuity etc. The disputed claim is still pending adjudication in Suit No. 815/2010.

10. There is force in the submission of the Appellant's counsel that the 11 Respondents to whom the impugned Order has been granted, had already received a settlement amount from the Appellant, which included the undisputed portion of pension and gratuity. Documents filed as Annexure L (pages 259 to 309) support that submission. Therefore, the case of those 11 Respondents does not appear to be at par with the case of the employee who was appellant in HCA No. 499/2018. This aspect of the matter seems to have escaped the attention of the learned Single Judge in passing the impugned Order. However, having considered the nature of the issues raised in this appeal and noting that the main suit is at the stage of final arguments, we do not express any final opinion or

make any observation or findings in the present High Court Appeal (HCA) as to whether those 11 Respondents received ex-gratia payment from the Appellant, or whether any portion of their pension, gratuity etc. was paid or remains unpaid, as that may unduly influence the final adjudication of the suit. Suffice to state that CMA No.14754/2020 moved by the 11 Respondents in the suit for payment in the interim, required resolution of factual controversies by evaluation of evidence and arguments by the trial court.

11. Accordingly, we allow the instant appeal, set-aside the impugned order dated 22.02.2022, and dismiss CMA No.14754/2020 without prejudice to the claim of those 11 Respondents which may be decided upon final judgment in the suit.

Judge

Judge

Dated: 24 -12-2024