IN THE HIGH COURT OF SINDH AT KARACHI
C.P No. D-6807 of 2015
(***Imam Bux Vs M/s Sea Boards Services & others)***

| Date | Order with signature of Judge |
|---|---|

Disposed of Matter
For hearing of CMA No. 22292/2023 ( Review)

**Date of hearing and order:- 05.12.2024**

Petitioner Imam Bux is present in person.
Mr. Muhammad Humayoun advocate for Respondent No.1.
Mr. Sagheer Ahmed Abbasi Addl. A.G

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**O R D E R**

**Adnan-ul-Karim Memon, J :-** The petition was dismissed on 24.12.2018 because the petitioner withdrew it. An excerpt whereof is reproduced as under:-

> *"The petitioner present today before us had categorically conceded that whatever amount was due has already been drawn by him from his bank account. Since the due amount of salary/arrears has already been received by the petitioner this petition has become infructuous, in view of the statement given today by the petitioner, and is dismissed as such."*

2. The petitioner, dissatisfied with the dismissal of his initial petition and subsequent review applications, filed another review application (CMA No. 22292/2023) submitting that the original dismissal order contradicts Supreme Court judgments and he was not heard on merits as such his case be reopened by setting aside the dismissal order.

3. The respondent's advocate argues that the petitioner voluntarily resigned on July 9, 2004, received all dues, including gratuity, and acknowledged the settlement in writing. The advocate claims that the petitioner remained silent for over three months after the resignation filed a grievance petition before the Sindh Labor Court and failed to provide any written evidence of an oral agreement for a golden handshake or additional payments. He prayed for the dismissal of the review application as he had already availed the remedy before the payment of Wages Court, which matter is pending.

4. Petitioner who is present in person has refuted the claim of the respondent company and submitted that respondent No.1 promised to clear his dues, however, they failed to pay the dues/outstanding amount to him, and the petitioner filed an afresh

petition bearing CP. No. 1775 of 2019 before this Court but the same was dismissed with direction to file proper application in the instant petition for recalling the order 24.12.2018. It is submitted by the petitioner that he was working as a lift operator in the respondents' establishment, and sought his reinstatement alleging that he had resigned from service on a verbal understanding that he would be paid a golden handshake equal to five times gratuity and that he will be reappointed on the same post; that the respondents did not fulfill their verbal commitment and deposited the normal gratuity amounting to Rs. 30,360/- through pay order in his bank account deceitfully; however before acceptance of his resignation he withdrew it and was taken on the job but failed to pay his dues. He submitted that the resignation tendered by him was not voluntary but agreed on the terms of the respondent company, who later on recoiled as such the petitioner ought to have served the respondent company till the age of superannuation and entitled to all service benefits. In support of his submission he relied upon the cases of *Dr. Muhammad Munir-ul-Haq and others v Dr, Muhammad Latif Chaudhry and others* **1992 SCMR 2135**, *Muhammad Zahoor v Registrar Lahore High Court Lahore and another* **2005 PLC (CS) 1155** and *Muhammad Aslam & others v General Manager, National Radio Telecommunication Corporation, Haripur, District Abbottabad* **1992 SCMR 2160**. He prayed for setting aside the order dated 17.08.2022 passed by this Court and deciding the matter on merit.

5. I have heard the petitioner and learned counsel for respondent No.1 on the review application as well as on merit and have perused the material available on record with their assistance.

6. The petitioner, a former lift operator, claims that he was promised a golden handshake and reinstatement upon resignation. However, the respondent only paid the standard gratuity and denied any such agreement. The petitioner seeks to overturn the dismissal order and have the case heard on its merits. On the premise that his resignation from service was not voluntary but based on the agreed terms of employment as set forth by the respondent company when recoiled he continued to serve the

respondent company and all of a sudden, he was stopped at the gate.

7. The prime question is whether the resignation once tendered by the petitioner on 09.07.2004 voluntarily and accepted by the competent authority of the respondent company on 10.07.2004 with effect from 09.08.2004 ( page No. 305 of memo of petition) and he received his dues on 18.082004 in the full and final settlement could be considered to be final and could not be revoked afterward.

8. The word resignation has been defined in Corpus Juris Scandium, Volume LXXVII on page 77 as follows:-

> *"Resignation: It has been said that "resignation" is a term of legal on, having legal connotations that describe certain legal results. It is characteristically the voluntary surrender of a position by the one resigning, made freely and not under duress, and the work is defined generally.*

9. Besides the above, withdrawal of resignation after its acceptance but before it becomes effective (i.e. before the employee concerned is relieved). It should be open to the authority accepting the resignation to allow the employee concerned to withdraw the resignation on the merits of the case.

10. Primarily, resignation is characteristically the voluntary surrender of a position by the one resigning, made freely and not under duress, here petitioner moved an application to the competent authority of the respondent company for withdrawal of his resignation on 07.08.2004, however before the subject application, the respondent company accepted the resignation of the petitioner on 10.07.2004 (page No. 305 of memo of petition) and it was accepted, but the petitioner remained mum and waited for 27 days to move the application to the respondent company for withdrawal of resignation. Prima facie, the petitioner was/is responsible for such delay, failure thereof, and the respondent company could not be held responsible.

11. On the issue of the back benefits, the back benefits do not automatically follow the order of reinstatement where the order of dismissal or removal has been set aside; and, the onus of proof in cases where a workman 'is entitled to receive the back benefits it

lies on the employer to show that the workman was not gainfully employed during the period of the workman was deprived of service till the date of his reinstatement thereto; that the workman has asserted at least orally, in the first instance, that he was (not) gainfully employed elsewhere. On his mere statement to this effect, the onus falls on the employer to show that he was so gainfully employed. On the aforesaid proposition, I am fortified by the decision of the Supreme Court in the case of *Dilkusha Enterprises Ltd. v. Abdul Rashid and others* (**1985 SCMR 1882**). However, in the present case, the petitioner received his dues on 18.08.2004 in full and final settlement vide his acknowledgment dated 18.08.2004 (page No.311).

12. The Petitioner has charted a somewhat convoluted course towards invoking the writ jurisdiction of this Court, seeking correctional Orders by way of certiorari that have ensued before the Courts below and finally culminated into its logical conclusion by this Court vide order dated 17.08.2022.

13. On the issue of review, whilst the principles laid down by the Supreme Court on the subject issue are well established, the fact remains that the scope of review under S.114 CPC is far narrower than that of a first appeal, which permits a larger inquiry on a broader plane. As such, grounds that may be taken in such an appeal could well be, and often are, beyond the bounds permissible for review. However, the petitioner failed to file an appeal before the Appellate forum and opted to file a review application against the impugned order, though the same was passed with the consent of the petitioner.

14. From a perusal of the review application as well as submissions advanced by the applicant, it is evident that the principal thrust of the Petitioner's case for review was that this court had essentially committed a material irregularity in passing the order dismissing the case on his statement in as much as there had been a complete failure to consider the aspect of law laid down by the Supreme Court in the cases of *Dr. Muhammad Munir-ul-Haq Muhammad Zahoor* and *Muhammad Aslam*, as discussed supra on the issue of resignation in that regard and that this constituted an error apparent on the face of the record.

15. So far as the submission that mere acceptance of legal dues by an employee would not amount to waiver to estop him challenging the order of dismissal and such remedy could not be denied to him if the charge of misconduct had not been established. Suffice it to say that the petitioner sought his reinstatement on the ground that he had resigned from service on 09.07.2004 on the verbal understanding that he would be paid a Golden handshake equal five times gratuity and that he would be reappointed on the same post. According to him the respondent company did not fulfill its verbal commitment and deposited the normal gratuity amounting to Rs. 30,360/- through a pay order in his bank account deceitfully. The aforesaid stance has been denied by the respondent company that no undertaking was given to the petitioner for paying him any Golden Shake or appointing him afresh as he resigned of his free will and received the amount of Rs. 30,360/- through pay order and executed such acknowledgment they produced an original letter of resignation of the petitioner and pay order was credited in his account and received by him on 18.08.2004; besides the bill showing the calculation of gratuity duly signed by him. This matter was entertained by the labor court vide order dated 31.07.2009, which decision was concurred by the Sindh Labor Appellate Tribunal Karachi in Labor Appeal No. KAR-125/2009 vide order dated 03.09.2015, which he assailed before this court, and the petition was dismissed on 24.12.2018 on his statement. In such a situation, the matter cannot be reopened on the plea of the petitioner on the analogy so put forward by him as proper adjudication has been made by two competent forums as the concurrent findings cannot be upset in writ jurisdiction as the petitioner has failed to point out any illegality in the judgment/orders of Labor Court and Labor Appellate Tribunal as he has no case on merits as well. The case law cited by the petitioner is of no help to him at this stage as the petitioner has received the amount and only stated that he deposited the cheque in Labor Court without the actual amount, which remained with him for an entire period, therefore no indulgence of this court is required if the case is reopened.

16. Having perused the order, I am of the view that the submissions of the Petitioner as to there being a failure on the part of this court to consider the issue of resignation of the petitioner and subsequent joining of the petitioner in the respondent establishment and failure to clear his outstanding dues is misconceived, in as much as it is evident from a plain reading thereof that a reasoned finding on the matter has quite clearly been recorded in terms of what has been noted by me herein above, as has been recognized in the subsequent Orders disposing of the restoration/Review Applications respectively.

17. I am afraid that this line of submissions, whilst perhaps constituting a viable ground for an appeal, which he failed, is simply not permissible within the scope of these proceedings, in as much it is beyond the ambit of Order XLVII, Rule 1, C.P.C to delve deeply into the evidence to claim that there is an error apparent on the face of the record. As per the very case set up by the Petitioner, the Review Application was advanced and could be entertained only on the ground of error apparent on the face of the record and not on any other ground. Such an error must be one that immediately strikes the onlooker and does not require any long-drawn process of reasoning on points where there may conceivably be two reasonable opinions. It is well settled that review proceedings have to be strictly confined to the scope of Order 47 Rule 1 CPC, which is very limited and cannot be used as a substitute for a regular appeal. As such, a review will not lie merely due to a Court having taken an erroneous view on a question of fact or law, or the ground that a different view could have been taken on such a point.

18. Furthermore, the term ”mistake or error apparent” does not extend to every erroneous decision, but by its very connotation signifies an error that is so evident that its detection does not require any detailed scrutiny and elucidation. An error that is not self-evident and has to be extracted from the record and detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the exercise of power under Order 47 Rule 1 CPC.

19. I consider it unnecessary to burden this court with the discussion of earlier decisions, where this settled position was/is set out.

20. In view of the foregoing discussion, this petition is restored to its original position; and, after hearing the parties, is found to be misconceived and is hereby dismissed along with pending review application(s). There will be no order as to costs.

JUDGE

**Shafi**