

# IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D – 5661 of 2024

[Sindh Club *versus* Syed Muhammad Taqi Naqvi and 2 others]

**Present:**

**Mr. Muhammad Faisal Kamal Alam, J.**

**Mr. Nisar Ahmed Bhanbhro, J.**

Date of hearings : 11.02.2025 and 17.02.2025.

Date of Decision : 17.02.2025.

Petitioner : Sindh Club, through M/s. Muhammad Ali Khan and Shuja Uddin, Advocates.

Respondent No.1 : Syed Muhammad Taqi Naqvi, through Mr. Manzoor Hussain Khan, Advocate.

Respondents Nos.2 and 3 : *Nemo.*

## **J U D G M E N T**

**Muhammad Faisal Kamal Alam, J:** Through this Petition, the Petitioner has challenged the Judgment dated 31.10.2024 of the Sindh Labour Appellate Tribunal at Karachi in Appeal No.KAR-53 of 2024, filed by Respondent No.1, questioning the Judgment dated 25.01.2024 of Respondent No.2 [the Sindh Labour Court No.V, Karachi – “**Labour Court**”], whereby, the Grievance Application filed by Respondent No.1 was dismissed, which was overturned in the impugned Appellate Judgment.

2. Mr. Muhammad Ali Khan, Advocate representing the Petitioner, assisted by Mr. Shuja Uddin, Advocate, has contended that the Appellate Forum without considering the evidence led by the Parties, overturned the Decision of the learned Labour Court, which has concluded that since Respondent No.1 is not the Workman, therefore, his case does not fall

within the ambit of the Sindh Industrial Relations Act, 2013 [the “**Governing Law**”]. In support of his arguments, learned Counsel has cited the following case law\_

- i. 2004 P L C 213 [Supreme Court of Pakistan]  
[*Riaz Ahmed Malik versus Administrator, Municipal Corporation, Bahawalpur and another*];
- ii. P L D 1986 Supreme Court 103  
[*General Manager, Hotel Intercontinental, Lahore and another versus Bashir A. Malik and others*];
- iii. 1993 S C M R 672  
[*National Bank of Pakistan versus Punjab Labour Court No.5, Faisalabad and 2 others*] – NBP Case; and
- iv. 2015 S C M R 434  
[*National Bank of Pakistan and another versus Anwar Shah and others*] – Anwar Shah Case.

3. Mr. Manzoor Hussain Khan, Advocate representing Respondent No.1, has controverted the above line of arguments and has referred to the definition of ‘Workman’ as provided in Section 2(1)(n) of the Sindh Terms of Employment (Standing Order) Act, 2015; contended that since Respondent No.1 did not have authority to hire or fire, therefore, merely because he was promoted as Assistant Manager Procurement does not change his status as Worker to Management Cadre. Counsel has filed his Statement [taken on record] enclosed therewith are the documents, viz. Grievance Application, Representation / Letter of 02.06.2022 to the Petitioner, Affidavit-in-Evidence and Counter Affidavit. Except for the Letter as Annexure “A/1”, the remaining documents are already part of the record. Respondent No.1’s Counsel has read the contents of this Representation and emphasizes that the resignation was not given voluntarily, but it was due to the coercive measures adopted by the Petitioner-Club, the said Resignation was tendered; since this aspect was overlooked by the Labour Court, which error was corrected by the Appellate Forum, therefore, the impugned Judgment should be maintained

and the present petition be dismissed. In support of his arguments, he has cited the following case law\_

- i. 1992 S C M R 2166  
*[Pakistan Engineering Co. Limited Lahore through Managing Director versus Fazal Beg and 2 others]* – **Pakistan Engineering Co. Case**; and
- ii. 1998 S C M R 644  
*[Mustekhum Cement Limited through managing Director versus Abdul Rashid and others]* – **Mustekhum Cement Case**.

4. Arguments heard. Record perused.

5. The case law cited by the Petitioner’s counsel, mainly deals with the criteria laid down by the Honourable Supreme Court concerning the *status* of a ‘Workman’ as envisaged in the Labour Laws; besides, it is held, that onus is on the person, which has brought the grievance petition as workman, to prove his status.

6. *Whereas*, the first case of Pakistan Engineering Co. [*supra*], cited by Respondent No.1’s Counsel, is distinguishable, because the respondent / employee (of the reported Decision) was held to be a Worker, as he was working as Security Jamadar, the work performed involves more physical exertion distinct from intellectual one involving decision making. In the second case of Mustekhum Cement [*ibid*], the Respondent was working as Assistant Officer Accounts and taking into account his work (*monitoring accounts, distribution of edibles to workers from the Counter*), it was held that he falls within the definition of ‘Workman’ provided in Standing Order 12(3) of Standing Orders Ordinance [of the relevant time]; this Case Law also does not apply to the facts of present *Lis*.

7. Paragraph-5 of the impugned Judgment is considered, for which it is stated by the Petitioner’s counsel that it is beyond pleadings. In Paragraph-

5, the Appellate Tribunal has determined the *status* of Respondent No.1 as Worker on the ground that since it is not challenged in the arguments [by the Petitioner's side] that Respondent No.1 was in fact the Worker and his primary responsibility was loading / unloading, Computer Operator with no authority of hire and fire, hence, Respondent No.1 is 'Workman'. In the opinion of the learned Appellate Tribunal, the Sindh Terms of Employment (Standing Orders) Act, 2015 – the **STESOA**, has broadened the definition of Worker to cover the employees working in Management Cadre, but lacking hiring or firing authority and, thus, the case of Respondent No.1 also falls within the above law and since he was removed without any inquiry in terms of Standing Order 21(4) of the STESOA, thus, the Order of the Labour Court is incorrect with the result that Respondent No.1 was reinstated in service with back benefits.

8. The definition of Workman has been summed up by the Honourable Supreme Court in the case of Anwar Shah [*supra*] that the Workman is one who does not fall within the definition of employer; employed as supervisor or as an apprentice, but does not include the person who is employed mainly in a managerial or administrative capacity. It is ruled, that Courts have not considered the designation of a person to be a factor determining about his status of employment in an Establishment, rather considered the nature of duties and functions one performs to determine his status as a Workman or not. In this reported Case, Officers in Grade-I to III of the Bank were excluded from the List of Members being not Workmen for the election of Union in the National Bank – the Establishment. Eventually, the Order of NIRC [National Industrial Relations Commission] was maintained, and learned High Court was set aside, with the result that the Officers in Grade-I to III, were not treated as 'Workmen'.

9. In his cross-examination, Respondent No.1 has admitted that he was promoted in Management Post and tendered resignation on 07.09.2018 from the Membership of Sindh Club Employees Union. Through the evidence, it has come on record that, his title was also changed from Purchaser to Assistant Purchase Manager, besides, he admitted to have represented to Petitioner to upgrade his designation. It means that Respondent No.1 himself accepted his new status in the management cadre till his separation from service [four years thereafter]; thus, he is estopped from claiming his status as 'Workman'. This crucial aspect is overlooked in the impugned Judgment.

10. The Appellate Labour Tribunal, we may observe with due deference, has overturned the Decision of the Labour Court without any appraisal of evidence, which the Appellate Tribunal or Court is bound to discuss, if disagreeing with the Decision of the learned Trial Court, in the present case, the Labour Court. This illegality in addition to the above discussion must be corrected.

11. In view of the above discussion, we accept this Petition and set aside the Decision of the learned Labour Appellate Tribunal and maintain that of the Labour Court. It is necessary to observe that Respondent No.1 may avail remedy, for his separation from the employment, in accordance with law, and time consumed in the litigation will be excluded for the purpose of calculating the period of limitation.

12. In view of what has been discussed herein above, this Petition stands disposed of along with all pending application(s), if any, but with no order as to costs.

**Judge**

**Judge**

Karachi.

Dated: 17.02.2025.