ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. D-1404 of 2018
(Abdul Waheed versus M/s Movenpick Hotel Karachi & others)

Constitutional Petition No. D-1747 of 2018
(Movenpick Hotel Karachi versus Learned Sindh Labour Appellate Tribunal & others)

Date	Order with signature of Judge

Bfore:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:-29.4.2026

Mr. Abdul Zubaid advocate for the petitioner in CP No. D-1404/2018
M/s Javed Asghar Awan and Muhammad Siddique Ghani advocates for respondent No.1 in CP No. D-1404/2018
Mr. Muhammad Siddique Ghani advocate for the petitioner in CP No. D-1747/2018
Mr. Abdul Jalil Zubedi, Additional AG

ORDER

Adnan-ul-Karim Memon, J. Petitioner Abdul Waheed has filed Constitutional Petition No. D-1404 of 2018 under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the following relief: -

> ***That the petitioner respectfully prayed that this Court may be pleased to set aside the order dated 06.12.2017 passed by learned Member Sindh Labour Appellate Tribunal and restore the order dated 15.08.2017 passed by the Presiding officer of Learned Sindh Labour Court No.4 to reinstate him in his service with full back benefits. Because the petitioner is still jobless and has no sources of income, the petitioner also prayed that any other relief which this Court may deem fit and proper as per the circumstances of the case, or in the interest of justice.***

2. Petitioner Movenpick Hotel Karachi has filed Constitutional Petition No. D-1747 of 2018 under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the following relief: -

> ***i)*** ***To declare that the order dated 06.12.2017 passed by respondent No.1 is without lawful authority as the petitioner management after conducting the domestic inquiry against respondent No.3 had dismissed respondent No.3 from service for committing an act of misconduct on account of absenting himself from the duty for more than 10 days and the grievance application filed by respondent No.3 was time barred by four (04) years, hence the order dated 06.12.2017 passed by respondent No.1 is liable to be set aside.***
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> ***ii)*** ***Directing the Respondent No.1 (learned Sindh Labour Appellate Tribunal) not to issue any notice for depositing of compensation by the petitioner management for the misconduct committed by the respondent No.3 under the Industrial and Commercial Employment (Standing Orders) Ordinance 1968, as amended to date, and not to proceed with any further proceeding against the petitioner management on this subject matter.***

iii) To declare that the order dated 15.08.2017 passed by respondent No.2 is void and without lawful authority, and the learned Labour Court could not, of its own, override the law by limitation, as the grievance application of the respondent No.3 was barred by limitation of 04 years, and no grievance notice was served upon the petitioner management, and the same is liable to be set aside.

2. The petitioner submits that he was a permanent employee of the respondent establishment since 1982 and, therefore, is entitled to protection under the relevant Standing Orders. He submits that his absence from duty commenced on 30.01.2005 due to a serious road accident, which was duly communicated to the employer, supported by medical records, hospital documents, and written applications. It is argued by his counsel that after being declared fit on 02.08.2005, the petitioner repeatedly approached the respondent to resume duty, but was unlawfully refused reinstatement on arbitrary conditions, including resignation from union membership. The petitioner maintains that the subsequent disciplinary proceedings, including the charge sheet, inquiry, and dismissal, were mala fide, time-barred, and based on fabricated documents, as the charge sheet was issued after an inordinate delay and was never served upon him. The petitioner's counsel further submits that no proper inquiry was conducted in accordance with law, as required under the Standing Orders, and the alleged ex parte proceedings violated principles of natural justice. It is emphasized that no written dismissal order was ever served, which is mandatory under the law. He argues that he diligently pursued his remedy before the NIRC, which also observed mala fide conduct on the part of the respondent. Therefore, the grievance application filed before the Labour Court was within the limitation after exclusion of time spent before the NIRC. The petitioner challenges the impugned judgment of the Labour Appellate Tribunal to the extent that, despite holding the dismissal unlawful, it denied reinstatement and instead awarded inadequate compensation. He submits that this finding is contrary to law and evidence, and seeks restoration of the Labour Court's order granting reinstatement with full back benefits. Learned counsel for the petitioner, Abdul Waheed, in support of his contentions has relied upon the cases of *Gul Hassan v. Divisional Superintendent* (1990 PLC 757), *Khalid Mehmood v. State Life Insurance Corporation* (2018 SCMR 376). For convinence sake an excerpt of the judgment of Sindh Labour Court dated 15.08.2009 is reproduced as under:-

From the perusal of case file and documents produced by both the sides The respondent through out the proceedings denied the service of gnevance notice and also stated in their written statement and affidavit in evidence that the charge sheet and show cause notice were issued to the applicant but he did not reply

therefore inquiry was conducted against applicant and on the findings of inquiry officer the service of the applicant were terminated.

In this regard the cross examination of the respondent witness is reproduced below,

> "It is correct to suggest that applicant was working in the Respondent's Hotel since 1982 and that applicant was met with an accident on 30-01-2005 in which he was seriously injured. It is correct to suggest that Respondent did not issue any charge sheet, show cause notice or conducted any enquiry".
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> From the perusal of record which shows that during the course of cross examination of Respondent witness it was revealed that respondent had full knowledge about the accident of applicant and they shown ignorance of applicant accident They further stated in their reply that enquiry was conducted against applicant and on the recommendation of enquiry officer termination letter was issued but witness of respondent during cross examination admitted that no enquiry was ever conducted against applicant. This all shows malafide intention on the part of Respondent against applicant and nowhere any token of receipt has been produced by the respondent to show that charge sheet or show cause notice was received by applicant nor the same has been sent to his residential address of the applicant therefore it transpires from the record that Respondents has been failed to prove that the same has been delivered to applicant address and under the circumstances it smells fishy and malafide on the part of the Respondents as they failed to fulfill the requirement of law as prescribed in labour laws.
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> It is submitted that applicant was stopped by Respondent on the ground that he was willfully absent from duty whereas actually it was within the knowledge of Respondents that due to accident he was unable to attend his duty and such fact was admitted by witness of Respondents during Cross Examination and when after recovery he reached to the gate he was verbally informed that his services were terminated Under the Law any permanent employee should be dealt with the prescribed Law which Respondents deliberately ignored. Thus verbal termination has no value in the eyes of Law. It seems that Respondents failed to prove their case version through any documentary evidence Applicant has made out his Case by filing certificates of hospital which proves the Applicant was admitted in the penal hospital of RespondentI hold the above point in affirmative as given.
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> In view of findings of point No. 1, It is crystal clear that case in hand reveal that a harsh punishment of removal from service was awarded to applicant by Respondent which is not sustainable in Law.
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> Under the circumstances and in view of the above it appears that act of the Respondents is based on malafide and applicant was terminated without adopting legal procedure, therefore I hereby set aside the verbal termination of applicant and allow the grievance application of applicant as prayed and direct the Respondents to reinstate the applicant in service with full back benefits within two month."

3. The counsel for the respondent in CP No. D-1404/2018 and the petitioner in Constitutional Petition No. D-1747 of 2018 raises a preliminary objection that the grievance application was hopelessly time-barred, having been filed several years after the alleged cause of action. It is argued that limitation provisions are

mandatory and must be strictly applied, and the petitioner failed to explain the delay. On merits, the respondent submits that the petitioner Abdul Waheed remained absent from duty without authorization from 30.01.2005, and after due process, including issuance of charge sheet, inquiry notice, and ex parte inquiry, he was lawfully dismissed from service on 16.12.2006. The respondent's counsel contends that all procedural requirements under the law were fulfilled and that the petitioner was given opportunities to participate in the inquiry but failed to do so. It is further argued that the petitioner had already approached the NIRC earlier, and his subsequent grievance before the Labour Court was not maintainable. Additionally, the respondent's counsel asserts that, being a trans-provincial establishment, the matter falls within the exclusive jurisdiction of the NIRC under the Industrial Relations Act, 2012, thereby barring the jurisdiction of the Labour Court. The respondent's counsel supports the impugned judgment of the Labour Appellate Tribunal, submitting that, given the long lapse of time, strained relations, and practical considerations, reinstatement was not appropriate, and the award of compensation was justified, and submitted that if the CP No. D-1404/2018 is dismissed; he will not press his Petition No. D-1747 of 2018. Learned counsel for Movenpick Hotel Karachi in support of his contentions has relied upon the case of *Azeem Weaving v. Muhammad Arshad* (2021 PLC 124), *Muslim Commercial Bank Limited v. Punjab Labour Appellate Tribunal* (2025 SCMR 269), and *Karachi Shipyard and Engineering Works Ltd. v. Sindh Labour Appellate Tribunal* (2024 PLC 100).

4. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

5. It appears from the Labour Court's decision that the petitioner had rendered long and satisfactory service without any complaint. He met with a serious accident on 03.01.2005 and remained under treatment at Civil Hospital and the respondent's panel hospital until declared fit. Upon recovery, when he reported for duty, he was not reinstated and was pressured to resign from union membership, after which he approached the NIRC and issued a grievance notice. The respondent denied receipt of the notice and claimed that disciplinary proceedings had been conducted. However, during cross-examination, its witness admitted that no charge sheet, show cause notice, or inquiry was ever conducted. No documentary evidence was produced to prove compliance with legal requirements, indicating mala fide intent. The petitioner's absence was due to his accident, and his verbal termination held no legal value. Accordingly, the Labour Court held the termination unlawful, set it aside, and directed reinstatement of the petitioner with full back benefits within two months.

6. The learned Sindh Labour Appellate Tribunal (SLAT), vide judgment dated 06.12.2017, observed that the respondent had been employed as a Chef

since 1982 and was dismissed on 16.12.2006 on the allegation of absence from duty w.e.f. 30.01.2005 after an ex parte inquiry. The respondent's case was that his absence was due to a serious road accident, after which he remained under treatment and, upon recovery, reported for duty with a fitness certificate, but was not allowed to resume work and was subjected to unfair conditions. The Tribunal noted that the respondent had earlier approached the NIRC, which found the employer's conduct mala fide but advised him to seek a remedy before the Labour Court. Thereafter, the respondent filed a grievance application, which was allowed by the Labour Court with a direction for reinstatement with back benefits. Upon appraisal of evidence, the Tribunal held that the employer was aware that the respondent's absence was due to circumstances beyond his control, yet initiated disciplinary proceedings belatedly during the pendency of proceedings before the NIRC. It was further observed that the employer failed to prove proper service of charge sheet and inquiry notices, and even the dismissal order was neither served upon the respondent nor produced before the NIRC, reflecting mala fide conduct. The Tribunal also held that the grievance application was not time-barred, as the respondent had been pursuing his remedy before the NIRC in good faith, and the time spent therein was liable to be excluded under Section 14 of the Limitation Act, especially when the dismissal order was never served. While concluding that the dismissal was unjust and not sustainable in law, the Tribunal declined reinstatement on the grounds of prolonged litigation, strained relations, and practical difficulties. Instead, it awarded a lump sum compensation of Rs. 500,000/- along with legal dues such as gratuity, considering the respondent's length of service, age, and last drawn salary.

7. After examining the decision of learned SLAT, it emerges that the learned Labour Court rightly appreciated both the facts and the law, and its findings warranted no interference. The impugned judgment of the learned Sindh Labour Appellate Tribunal, to the extent it substituted reinstatement with compensation, is not sustainable for the reasons that it stands conclusively established on record that the petitioner's absence from duty was neither willful nor misconduct, but the result of a serious road accident, which was within the knowledge of the respondent establishment. The medical evidence, hospitalization in a panel hospital, and issuance of a fitness certificate remained uncontroverted. Even the respondent's own witness admitted such facts. Therefore, the very foundation of the charge of "unauthorized absence" collapses, rendering the entire disciplinary proceedings void ab initio. The respondent failed to comply with the mandatory requirements of law governing dismissal from service. No cogent evidence was produced to establish that the charge sheet, inquiry notice, or proceedings were ever served upon the petitioner. The alleged ex parte inquiry, conducted without notice or opportunity of hearing, is in clear violation of the principles of natural justice and the provisions of the Standing Orders. It is settled law that dismissal

without affording a reasonable opportunity of defense is illegal and of no legal effect. The conduct of the respondent establishment is manifestly mala fide. The disciplinary proceedings were initiated belatedly, during the pendency of proceedings before the NIRC, despite full knowledge that the petitioner's absence was due to unavoidable circumstances. More importantly, the alleged dismissal order was neither served upon the petitioner nor produced before the NIRC for several years, which strongly supports the finding that such proceedings were an afterthought and a mere attempt to defeat the petitioner's lawful claim. The objection regarding limitation is misconceived and has rightly been rejected. The petitioner had been bona fide pursuing his remedy before the NIRC, which itself observed mala fide conduct on the part of the respondent and permitted recourse to the Labour Court. In such circumstances, the benefit of Section 14 of the Limitation Act is fully attracted, and the time spent before a wrong forum is liable to be excluded. Moreover, the limitation in service matters runs from the communication of a written order of dismissal, which admittedly was never served upon the petitioner. Hence, the grievance application was well within time. The contention regarding the lack of jurisdiction of the Labour Court based on the establishment being trans-provincial is without merit in the peculiar facts of the case. The dispute pertains to an individual grievance, and the respondent itself contested the matter on merits before the Labour Court without any effective challenge at the relevant stage. Such an objection, raised belatedly, cannot defeat substantive rights, particularly when no prejudice has been demonstrated. The learned Labour Appellate Tribunal itself recorded clear findings that the dismissal was unjust, improper, and mala fide. Once such findings are recorded, the normal and legally recognized relief is reinstatement with back benefits, especially in cases of wrongful dismissal. The substitution of reinstatement with compensation on speculative grounds, such as passage of time or strained relations, is contrary to settled principles of labour jurisprudence, which prioritize restoration of employment over monetary substitution, particularly where the employee has been illegally deprived of livelihood.

8. The objections raised by the learned counsel for the respondent are misconceived both on facts and in law and do not sustain in light of the record. The plea of limitation is without substance. The petitioner had been diligently and bona fide pursuing his remedy before the NIRC immediately after the cause of action arose. The NIRC itself, while disposing of the matter, granted liberty to the petitioner to approach the Labour Court. In such circumstances, the case squarely falls within the ambit of Section 14 of the Limitation Act, whereby the time spent before a forum, pursued in good faith, is liable to be excluded. Moreover, it is an admitted position that the alleged dismissal order was never served upon the petitioner nor produced before the NIRC for several years. It is settled law that limitation in service matters runs from the date of communication of the order. In

the absence of a communicated written dismissal order, the question of limitation does not arise. Hence, the grievance application was rightly held to be within time. The contention that the petitioner remained willfully absent is contrary to the record. It stands proved through documentary evidence and even admission of the respondent's witness that the petitioner suffered a serious road accident and was treated in a hospital on the panel of the respondent. His absence was thus involuntary and beyond his control. The so-called disciplinary proceedings are legally unsustainable. The respondent failed to establish that the charge sheet, inquiry notice, or proceedings were ever served upon the petitioner. The alleged ex parte inquiry, conducted without notice and without affording an opportunity of hearing, is in blatant violation of the principles of natural justice and mandatory provisions of the Standing Orders. Such proceedings are void and of no legal effect. The objection regarding maintainability is equally untenable. The petitioner initially approached the NIRC seeking protection against illegal removal. The NIRC, while observing mala fide conduct on the part of the employer, expressly directed the petitioner to seek reinstatement before the Labour Court, as it lacked jurisdiction to grant such relief. Therefore, the subsequent grievance before the Labour Court was not only maintainable but was pursued in accordance with the direction of the competent forum. The plea that the Labour Court lacked jurisdiction is an afterthought and devoid of merit. The respondent actively participated in proceedings before the Labour Court, led evidence, and contested the matter on the merits without raising any effective jurisdictional objection at the appropriate stage. Furthermore, the dispute pertains to an individual grievance arising out of alleged wrongful dismissal, which squarely falls within the jurisdiction of the Labour Court. The mere assertion that the establishment is trans-provincial does not automatically oust jurisdiction, particularly when the respondent failed to conclusively establish such status in accordance with law. The argument that reinstatement is not appropriate due to the passage of time or strained relations is legally flawed. Once termination is held to be illegal, void, and mala fide, the normal rule is reinstatement with back benefits. Deviation from this principle requires exceptional circumstances, which are absent in the present case. The learned Labour Appellate Tribunal itself recorded categorical findings that the dismissal was unjust and improper. Having reached such a conclusion, denial of reinstatement and substitution with a meager compensation defeats the settled principles of labour jurisprudence and undermines the petitioner's right to livelihood. The authorities relied upon by the respondent are distinguishable on the facts. Those cases relate to situations where delay was unexplained, proceedings were not pursued bona fide, or dismissal orders were duly communicated. In the present case, the petitioner continuously pursued his remedy, the employer acted mala fide, and the dismissal order was never served. Hence, the cited precedents do not advance the respondent's case. In view of the above, the objections raised by the respondent are legally

unsustainable. The learned Labour Court rightly exercised jurisdiction, correctly appreciated evidence, and passed a lawful order of reinstatement with back benefits. The impugned modification by the Labour Appellate Tribunal, substituting reinstatement with compensation, is not supported by law and warrants interference.

9. In these circumstances, the learned Labour Court correctly ordered reinstatement with full back benefits, and the same reflects a proper exercise of jurisdiction in accordance with law and evidence. The impugned judgment of the learned Labour Appellate Tribunal, to the extent it denies reinstatement and substitutes it with compensation, suffers from legal infirmity and is set aside.

10. Consequently, both petitions are disposed of in the above terms.

JUDGE

JUDGE

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