

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-4920 of 2022

<u>DATE</u>	<u>ORDER WITH SIGNATURE OF JUDGE</u>
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Present:

Mr. Justice Omal Sial

Mr. Justice Syed Fiaz ul Hasan Shah

Petitioners : Bai Virbaiji Soparivala Parsi High School & others through Mr. Muhammad Farhan Khan, Advocate

Respondent No.1 : Ms. Faiza Sajid through Mr. Tanveer Aftab, Advocate

Respondents No.2-3: Through M/s. Shariq Mubashir/ Jan Muhammad Khuharo, Assistants Advocate General Sindh

Date of hearing : 28.8.2025

Date of decision : 16.09.2025

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J— The petitioner has filed the instant constitutional petition challenging the Judgment dated 20.07.2022 (**impugned Judgment**), rendered by the learned Chairman of the Sindh Labor Appellate Tribunal, Karachi (**Appellate Court**) in Appeal No. KAR-259/2021. Through the impugned judgment, the Appellate Court allowed Application No. 27 of 2019 filed by Respondent No.1, thereby upholding the claim for certain workman dues against the petitioner. Consequently, the Appellate Court set aside the judgment dated 04.10.2021 passed by the Sindh Labor Court No.V, Karachi (**Trial Court**).

2. Facts of the case are that the Petitioner is a private educational institution in Karachi duly registered under the Societies Registration Act, 1860 (Act No.XXI of 1860). The petitioner terminated services of the Respondent No.1 without issuance of a written order of dismissal or payment of lawful dues. The Respondent No.1, Librarian, has approached Labor Court contending that she is a "worker" under the ***Sindh Terms of Employment (Standing Orders) Act, 2015 ("STESOA 2015")*** as well as under the ***Sindh Industrial Relations Ordinance, 2002 ("SIRO 2002")***, and thus entitled to compensation.
3. It is stated that on 7th October 2019, the Respondent No.1 filed an Application before the trial Court for her reinstatement in service with back benefits contending that she was permanent worker and she has satisfactorily performing her duties as librarian in the school since 1st March 2013. In the written statement filed by the Petitioner before trial Court, the petitioner pleaded that the Respondent was removed from services due to her misconduct i.e. hiding her health issues, secretly searched another job and appeared in an examination conducted by the Sindh Public Service Commission for the post of librarian without prior permission, having harsh attitude towards her senior and junior colleagues and unsatisfactory work. According to the petitioner, their rules authorized them to terminate services of their employees on the ground of misconduct without assigning any reason.
4. During pendency of application before the trial Court, on 11 December 2019 the Petitioner has filed an application under Order 7 Rule 10 CPC for returning the plaint to the Respondent for presentation before the court having jurisdiction which was dismissed by trial court vide Order dated 6 February 2020. The Petitioner challenged the order before the Appellate Tribunal, but their appeal was also dismissed on 27 August 2020. Later the petitioner has filed Cons. Petition No.D-5556 of 2020 before this Court which was disposed of vide Order dated 6 November 2020, with direction to the Trial Court to decide the issue after recording evidence of both

parties within 60 days. Thereafter, the Respondent No.1 examined herself and her husband, Ali Shan; the Petitioner examined their attorney, Ms. Kermin Soli Parakh. The Trial Court after hearing the parties, dismissed the grievance application on the ground that the establishment was a trust and not a commercial establishment which was set aside by the Appellate Tribunal through impugned Judgment.

5. We have heard the Counsel for the Petitioner, Respondent No.1 and Assistant Advocate General Sindh and have perused the record.
6. The petitioner has assailed the impugned judgment dated 20.07.2022 passed by the Appellate Tribunal, primarily on two grounds. Firstly, it is contended that the petitioner institution is not a commercial establishment but a non-profit organization duly registered under the Societies Registration Act, 1860 (Act No. XXI of 1860). Learned counsel for the petitioner submits that all income or funds generated by the petitioner school are exclusively utilized for its upkeep, administrative expenses, payment of staff salaries, and discharge of municipal and utility liabilities. It is argued that the learned Appellate Tribunal failed to appreciate this fundamental aspect and erroneously held that the petitioner's institution falls within the ambit of Section 2(1)(n) of the STESOA. Counsel further submits that the statutory framework clearly distinguishes between commercial establishments and non-profit entities, and in view of the petitioner's status as a non-profit educational institution, the provisions of STESOA are inapplicable. Consequently, it is urged that the petitioner cannot be held liable for any dues claimed by Respondent No.1 under the said enactment.
7. We have noted that the statutory definition under **Section 2(1)(n) STESOA** is broad in scope. It encompasses: (i) establishments engaged in activities such as advertising, commission, forwarding, commercial agency, clerical departments of factories, and offices of persons executing contracts; (ii) expressly enumerated entities including schools, colleges, private educational institutions, hospitals, health centers, laboratories,

and private security agencies; (iii) other establishments or classes thereof operating on a commercial or profit-oriented basis; and (iv) establishments subsequently notified by the Government as commercial establishments. The **Section 2(l)(b) STESOA** explicitly defines “**commercial establishment**” to include:

“...a club, a hotel, a restaurant or an eating house, a cinema or theater, **school, colleges, private educational institutions, schools, hospitals, private health centers, clinical laboratories, private security agencies**, other establishment or class thereof which run on commercial and profit basis...”

8. The statutory definition of “schools” under Section 2(1)(n) of the STESOA places them squarely within Category (ii), wherein specific establishments are expressly enumerated. The legislature has not drawn any distinction between profit-oriented and non-profit educational institutions, nor has it provided a separate definitional framework to segregate the two. Accordingly, no interpretive latitude exists to exclude non-profit schools from the purview of the enactment. By express inclusion, all schools—irrespective of their financial model—fall within the definition of “commercial establishments” for the purposes of STESOA, 2015.
9. We are not convinced by the submission of the learned counsel for the petitioner that the petitioner’s institution, being a non-profit school, does not fall within the definitional ambit of Section 2(1)(n) of the STESOA, merely because certain other schools operate on a profit-oriented basis. The statutory definition does not hinge upon the profit status of an establishment but rather on the nature and scope of its operations. The petitioner’s reliance on case law to support this contention is misplaced, as the precedents cited are distinguishable on facts and do not advance the petitioner’s claim in the present context looking to the nature peculiar provincial statute for Sindh Province. The ***principle of strict construction*** governs the present context—there exists no latitude for interpreting the provision in a manner that curtails or compromises constitutionally

protected valuable rights. Judicial precedent mandates a restrictive reading, ensuring that any statutory exception does not result in arbitrary or disproportionate acquisition beyond the scope envisaged by the constitutional framework. In support of this proposition, reliance is placed on ***Hamza Rasheed Khan and another v. Election Appellate Tribunal, Lahore High Court, Lahore (PLD 2024 SC 256)***, wherein the Hon'ble Supreme Court reaffirmed that statutory provisions affecting fundamental rights must be construed narrowly to preserve constitutional guarantees.

10. Even if an institution operates on a charitable or non-profit basis, it remains subject to the obligations and protections prescribed under the statute, including but not limited to: (i) regulation of employment conditions for teachers and staff; (ii) safeguards concerning termination, working hours, and minimum standards of employment; and (iii) applicability of standing orders without reference to the institution's profit status. Furthermore, jurisprudence from the superior courts of Pakistan affirms the characterization of schools—whether private or non-profit—as entities engaged in commercial activity, particularly in the context of zoning, land-use, and regulatory oversight. The legal treatment of educational institutions in residential zones has consistently recognized their commercial nature, often requiring formal conversion, licensing, or compliance with municipal regulations. Courts have upheld governmental authority to regulate such institutions, especially in matters relating to fee structures, location, and land-use conformity.
11. We, therefore, hold that **School(s)** are explicitly included within **category (ii)** and are designated as commercial establishments by the legislature without any qualification or distinction based on profit status or otherwise. Therefore, the inclusion of schools under Section 2(1)(b) STESOA is categorical and unconditional, encompassing both profit-oriented and non-profit institutions alike.

12. The second Legal issue for determination is whether a librarian employed in a school qualifies as a “worker” within the meaning of Section 21(1)(n) of STESOA 2015 and Section 2(xxx)(iv) of SIRO 2002, and if so, whether she is entitled to the reliefs provided under labour laws, including reinstatement or compensation in lieu thereof.
13. Section 21(1)(n) of STESOA defines a “**worker**” to mean any person, including an apprentice, employed to perform skilled, unskilled, manual or clerical work for hire or reward, excluding only those in managerial or administrative capacity or supervisors performing managerial functions. This definition is broad, inclusive, and covers employees in schools, which are expressly recognized as “commercial establishments” under Section 2(l)(b) of STESOA. A librarian, by the nature of her duties—cataloguing, maintaining records, issuing books, and assisting students—performs essentially clerical and technical work. She does not exercise managerial authority over hiring, firing, or administrative policy-making. Hence, she falls squarely within the definition of “worker” under Section 21(1)(n) STESOA.
14. Similarly, the Section 2(xxx)(iv) of **SIRO 2002** also defines “worker” and excludes only those in managerial/administrative capacity. Since the Petitioner does not fall in the excluded category, she is also a “worker” for purposes of SIRO 2002. Consequently, she is entitled to invoke the jurisdiction of the Sindh Labour Court under Section 46 SIRO 2002 to challenge her termination and seek compensation. Sindh Labour Courts are empowered under Section 51 of SIRO 2002 to order reinstatement with full back benefits, or compensation in lieu of reinstatement. Where reinstatement is deemed impracticable, compensation is typically awarded as multiple months of wages, depending on length of service and circumstances of termination as has rightly been dealt with by the learned Appellate Tribunal in the Judgment impugned before us.
15. It has been observed that the learned Assistant Advocate General unequivocally supported the petitioner’s position and categorically

opposed the impugned judgment. However, he failed to extend any meaningful assistance or furnish a considered legal opinion, notwithstanding that the matter involved interpretation of a Provincial Statute. It is incumbent upon a Law Officer to appear before the Court fully prepared, to remain vigilant, and to discharge the solemn duty of assisting the Court with informed and objective legal analysis—particularly in matters requiring statutory construction.

16. Be that as it may, upon careful examination of the record and the reasoning employed by the Appellate Tribunal, we find no legal infirmity or jurisdictional error in the impugned judgment that would justify interference under the Constitutional jurisdiction of this Court. Consequently, the petition stands dismissed in limine.

Judge

Judge