# IN THE HIGH COURT OF SINDH, KARACHI

***Constitutional Petition No. D-7097 of 2015.***

***Before:-***
***Mr. Justice Riazat Ali Sahar,***
***Mr. Justice Ali Haider 'Ada'***

**Petitioner:**
Pakistan Railways, through its Divisional Superintendent, represented by Mr. Ch. Jaffar Hussain, Advocate for the Petitioner.

***VERSUS***

**Respondents:**
Province of Sindh and others.
*Through* Mr. Zohaib Sarki, Additional Advocate General, Sindh.

Mr. Ch. Muhammad Saeed-uz- Zaman Advocate for Respondent No.3.

Date of Hearing: 13.10.2026.
Date of Decision: 27.10.2026.

## ***JUDGMENT***

***Ali Haider 'Ada' J.-*** The matter originated from an application filed by respondent No.3, an employee of Pakistan Railways, under Section 15(2) of the Payment of Wages Act, 1936, before the Commissioner for Workmen's Compensation and Authority, seeking payment of overtime charges. The applicant asserted that, while serving as a Sanitary Inspector, he was required to perform duties round the clock in three shifts, involving approximately 20 hours of duty, without being granted weekly holidays, festival holidays or gazetted holidays. He further maintained that, despite performing sanitation-related duties beyond the prescribed working hours, Pakistan Railways had failed to pay him overtime charges. Accordingly, he sought recovery of Rs.43,80,515/- on account of overtime payment, as detailed in the schedule annexed to his application.

2. During the proceedings before the Authority, Pakistan Railways engaged counsel, who sought time to file a reply/written statement. However, the matter was adjourned on several occasions

owing to the failure of Pakistan Railways to submit its written statement. On 08.02.2011, when counsel for Pakistan Railways remained absent, respondent No.3 filed his affidavit in support of the application. Despite the opportunity available, Pakistan Railways neither filed its written statement nor cross-examined the applicant. During the proceedings, respondent No.3 also moved an application seeking rectification of the claim amount to Rs.1,24,09,954/-, in place of the amount originally claimed. Thereafter, the Authority assessed the overtime entitlement by calculating eight hours as overtime and determined the amount payable at Rs.82,72,636/-.

3. Feeling aggrieved by the aforesaid determination, Pakistan Railways filed an application under Section 12(2), C.P.C., before the same forum; however, the said application was dismissed. Being dissatisfied with both orders, Pakistan Railways has assailed the original order determining the overtime claim as well as the subsequent order passed on its application under Section 12(2), C.P.C., through the instant constitutional petition.

4. Learned counsel for the petitioner, at the outset, contended that the instant petition is maintainable as the impugned order was passed against Pakistan Railways in ex parte proceedings. In support of this contention, he relied upon the case law reported as 2011 PLC (Labour) 208. He further argued that respondent No.3, being a civil servant, could not be treated as a worker or workman and that the appropriate forum for redressal of his grievance was the Service Tribunal; hence, the Authority lacked jurisdiction to entertain and adjudicate upon his claim. He further contended that the grant of overtime charges was unjustified and that respondent No.3 was not entitled to the relief awarded by the Authority. Accordingly, he prayed for allowance of the instant petition.

5. Conversely, learned counsel for respondent No.3, the employee, submitted that the remedy for recovery of unpaid wages and overtime charges was available under the relevant law and had rightly been invoked by respondent No.3. He contended that Pakistan

Railways had failed to justify the requirement for respondent No.3 to perform duties in three shifts or to establish any lawful basis for denying him overtime payment despite the additional duties performed by him. He maintained that the Authority had rightly determined the claim in accordance with law and that, despite having an opportunity to contest the proceedings, Pakistan Railways had failed to avail itself of the remedy available to it. Accordingly, he prayed for dismissal of the petition.

6. Learned Additional Advocate General submitted that the matter involved a dispute concerning the nature and classification of the post held by respondent No.3 and that the issue required determination before the claim for overtime payment could be adjudicated.

7. Heard learned counsel for the parties and perused the material available on record.

8. At the outset, it is necessary to determine whether the amount claimed by respondent No.3 falls within the definition of ***"wages"*** under ***Section 2(vi) of the Payment of Wages Act, 1936 (Act, 1936),*** which reads as follows:

> *(vi)* ***"wages"*** *means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled,. be payable, whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person employed or otherwise, to a person employed in respect of his employment or of work done in such employment and includes any bonus or other additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his employment, but does not include.--*
>
> *(a) the value of any house accommodation, supply of light, water, medical attendance or other amenity, or of any service excluded by general or special order of the *** Provincial Government;*
>
> *(b) any contribution paid by the employer to any pension fund or provident fund;*
>
> *(c) any travelling allowance or the value of travelling concession;*

*(d) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or*

*(e) any gratuity payable on discharge.*

9. For further elaboration, ***Section 3 of the Act, 1936,*** places the responsibility upon every employer to pay all wages required to be paid under the Act to persons employed by him. ***Section 4*** provides for the fixation of wage periods, which shall not exceed one month in any case, while ***Section 5*** prescribes the time within which wages are to be paid. For ready reference, the relevant provisions are reproduced as under:

***3. Responsibility for payment of wages.–*** *Every employer 3[, including a contractor,] shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:*
*Provided that, in the case of persons employed (otherwise than by a contractor)–*

*(a) in factories, if a person has been named as the manager of the factory under clause (e) of sub-section (1) of section 9 of the Factories Act, 1934,*

*(b) in industrial establishments, if there is a person responsible to the employer for the supervision and control of the industrial establishment,*

*(c) upon railways (otherwise than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned, the person so named, the person so responsible to the employer, or the person so nominated, as the case may be, shall be responsible for such payment.*

***4. Fixation of wage-periods.–*** *(1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable.*

*(2) No wage-period shall exceed one month.*

***5. Time of payment of wages.–*** ***(****1) The wages of every person employed upon or in–*
*(a) any railway, factory or industrial establishment 5[or commercial establishment] upon or in which less than one thousand persons are employed, shall be paid before the expiry of seventh day,*
*(b) any other railway, factory or industrial establishment 6[or commercial establishment], shall be paid before the expiry of the tenth*

*day, after the last day of the wage-period in respect of which the wages are payable.*
*(2) Where the employment of any person is terminated by or on behalf of the employer, the wages earned by him shall be paid before the expiry of the second working day from the day on which his employment is terminated.*
*(3) The [Government] may, by general or special order, exempt, to such extent and subject to such conditions as may be specified in the order, the person responsible for the payment of wages to persons employed upon any railway (otherwise than in a factory) from the operation of this section in respect of the wages of any such person or class of such persons.*
*(4) All payments of wages shall be made on a working day.*

10. Now, adverting to the status of respondent No.3, it is necessary to examine ***Section 2(v) of the Act, 1936***, which defines the term "employed person". For ready reference, the relevant provision is reproduced as under:

> ***(v) "railway administration"*** *has the meaning assigned to it in clause (6) of section 3 of the Railways Act, 1890*

11. Thereafter, it is necessary to examine ***Sections 3(6) and 3(7) of the Railways Act, 1890,*** which further elucidate the relevant statutory framework. For ready reference, the said provisions are reproduced as under:

> ***(6) "railway administration" or administration,"*** *in the case of a railway administered by the Government or a State, means the manager of the railway and includes the Government or the State, and, in the case of a railway administered by a railway company, means the railway company:*
>
> ***(7)"railway servant"*** *means any person employed by a railway administration in connection with the service of a railway:*

12. The scope of the relevant provisions further extends to persons engaged under a contract with the Railways to perform services, as discussed in **S.L. Kapoor v. Emperor (AIR 1937 Lah. 547),** an Indian authority subsequently referred to by this Court in **Mst. Nazir Begum and others v. Province of West Pakistan and others (PLD 1966 (W.P.) Lahore 195.** So far as the claim for wages is concerned, it is evident that the primary object of the Payment of Wages Act, 1936, is to ensure

prompt and full payment of wages to the classes of persons falling within its scope. In this regard, reliance is placed upon the judgment of the Hon'ble Supreme Court in **Divisional Superintendent, N.W.R., Lahore v. Muhammad Sharif, Booking Clerk, N.W.R., Gujrat (PLD 1963 SC 340),** wherein the following principle was laid down:

> *From the above it is clear that the main purpose of Payment of Wages Act (hereinafter referred to as 'the Act') is to compel employers to make prompt and full payment of wages to certain class of persons employed by them. The Act also lays down various periods after the end of which wages must be paid to the employee and also sets out the various permissible deductions, which the employer is entitled to make from the wages of the employee. Under section 15 of the Act jurisdiction is conferred upon the Authority to hear and decide all claims arising out of deductions from the wages or delay in the payment of wages. If the employer makes delay in payment of wages or makes unauthorised deductions from the wages, the Authority may compel him to pay the full wages.*

13. Further, in **Pakistan Railways v. Fazalur Rehman and others (1984 PLC (Labour) 1620),** the relevant legal position was also considered, wherein it was held as under:

> *"Railway" means a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes: ----*
>
> *(a) ... ... ... ... ... ...*
>
> *(b) ... ... ... … ... ...*
>
> *(c) ... ... ... ... ... ...*
>
> *All stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed for the purposes of or in connection with a railway."*
>
> *In these circumstances, the words, upon any Railway" is not restricted to the Railway track. The Payment of Wages Act is applicable not only to the employees engaged specifically upon a Railway track, C but also to other employees of the Administration."*

14. Moreover, a broader reading of the statutory framework, particularly the ***Payment of Wages (Federal Railways) Rules, 1938,*** further supports the applicability of the Payment of Wages Act, 1936,

to the extent provided therein. ***Rule 2(a) defines the term "Act"*** as the Payment of Wages Act, 1936, thereby reinforcing the relevance of the said enactment to the matter in question.

15. Now, adverting to the question of overtime and working hours of railway employees, ***Section 71-C of the Railways Act, 1890***, prescribes the permissible limits of working hours for railway servants whose employment is essentially intermittent. The provision stipulates that such employees shall not be employed for more than sixty hours per week on average in any month, or more than eighty-four hours in any single week. For ready reference, the relevant provision is reproduced as under:

> ***71-C. Limitation of hours of work***. *(1) A railway servant, other than a railway servant whose employment is essentially intermittent, shall not be employed for more than sixty hours a week on the average in any month.*
>
> *(2) A railway servant whose employment is essentially intermittent shall not be employed for more than eighty-four hours in any week.*
>
> *(3) Subject to rules made under section 71-E, temporary exemptions of railway servants from the provisions of sub-section (1) and sub-section (2) may be made:— —*
>
> *(a) when such temporary exemptions are necessary to avoid serious interference with the ordinary working of the railway, in cases of accident, actual or threatened, or when urgent work is required to be done to the railway or to rolling-stock, or in any emergency which could not have been foreseen or prevented; and*
>
> *(b) in cases of exceptional pressure of work not falling within the scope of clause (a).*
> *Provided that a railway servant exempted under clause (b) shall be paid for overtime at not less than one and a quarter times his ordinary rate of pay.*

16. Moreover, upon further consideration of the applicable legal framework, the ***Railway Servants (Hours of Employment) Rules, 1951,*** also provide for the regulation of working hours and overtime. In this regard, **Rule 10** of the said Rules, as reproduced in the Pakistan Railways General Code, is relevant and is reproduced hereunder for ready reference:

> ***Overtime.—****Overtime and overtime pay within the meaning of the Regulations (Section 71-C and Instruction No. 7) is essentially exceptional, i.e., overtime is time worked occasionally over and above certain definite limits, and overtime pay is additional pay for the overtime worked. It may be noted in this connexion that the term "overtime" is at present often used in a very loose sense, to apply to time which is regularly worked, while overtime pay is sometimes used in references to pay for which no true overtime is worked at all. This latter is really an allowance and not overtime pay.*

17. The objection raised by Pakistan Railways regarding the service status of respondent No.3 and the applicability of the Payment of Wages Act, 1936, cannot be entertained at this stage, as despite having been afforded full opportunity before the Authority, the petitioner failed to raise this issue. Whether an employee is a workman or a civil servant is a mixed question of law and fact, requiring examination of the nature of duties performed. In the circumstances, such an objection cannot be permitted to be raised for the first time in constitutional jurisdiction. Even otherwise, the duties of respondent No.3 primarily pertained to sanitation work. In **District Controller of Stores v. Punjab Labour Appellate Tribunal, Lahore and 2 others (1983 SCMR 155),** it was observed as under:

> "*The plea of the Railway before the High Court was that the respondent was a civil servant and as such the Labour Court had no jurisdiction to entertain his application. The learned Judge of the High Court observed that the question whether the respondent was a civil servant was one mixed of fact and law and that as the point had not been pressed during the appeal before the Labour Appellate Tribunal, the Department was deemed to have accepted the finding of the Labour Court and it was no longer open to them to reagitate the matter in the constitutional jurisdiction.*"

18. As regards the contention that Pakistan Railways was condemned unheard, the order sheets reflect that repeated opportunities were afforded to the petitioner to submit its defence, but it failed to do so. Such failure, despite adequate opportunities, cannot subsequently be relied upon to allege a denial of the right of hearing, particularly when the petitioner chose not to avail itself of the opportunities provided before the Authority. Another significant aspect is that Pakistan Railways did not avail itself of the remedy

prescribed under the Act, 1936, against the original order in accordance with law. The relevant statutory provision governing such remedy is reproduced as under:

> ***17. Appeal.--(****l) An appeal against a direction made under sub-section (3) or sub-section (4) of section 15 may be preferred within thirty days of the date on which the direction was made *** before the Labour court constituted under the Industrial Relations Ordinance, 1969 (XXIII of 1969) within whose jurisdiction the cause of action to which the appeal relates arose.*
>
> *(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees: [****]*
> *Provided that no appeal under this clause shall lie unless the memorandum of appeal is accompanied by a certificate of the authority to the effect that the appellant has deposited with the authority the amount payable under the direction appealed against, or (b) by an employed person or, if he has died, by any of his heirs, if the total amount of wages claimed to have been withheld from the employed person or from the unpaid group to which he belonged exceeds fifty rupees, or (c) by any person directed to pay a penalty under sub-section (4) of section 15;*
>
> *(1.A) All appeals pending before any District Court under this section immediately before the commencement of the Labour Laws (Amendment) Act, 1974, shall on such commencement, stand transferred to, and be disposed of by, the Labour Court within whosejurisdiction the cause of action to which the appeal relates arose.]*
>
> *(2) Save as provided in sub-section (1), any direction made under sub-section (3) or sub-section (4) of section 15 shall be final.*

19. Ordinarily, where an adequate statutory remedy is available, the aggrieved party is required to avail itself of such remedy in accordance with law. In the present case, the petitioner failed to invoke the remedy provided under the Act, 1936. Such omission further militates against the maintainability of the instant constitutional petition. Reliance in this regard is placed upon **Indus Trading and Contracting Company v. Collector of Customs (Preventive), Karachi and others (2016 SCMR 842); President, All Pakistan Women Association, Peshawar Cantt. v. Muhammad Akbar Awan and others (2020 SCMR 260); Commissioner Inland Revenue and others v. Jahangir Khan Tareen and others (2022 SCMR 92); and Executive Director (P&GS), State Life, Principal**

**Office Karachi and others v. Muhammad Nisar, Area Manager, State Life Corporation of Pakistan, Peshawar Zone (2025 SCMR 249).**

20. For the foregoing reasons and discussion, the petitioner has failed to make out a case for interference by this Court in its constitutional jurisdiction. Consequently, the instant petition is dismissed as not maintainable, with no order as to costs.

***JUDGE***

***JUDGE***