

IN THE HIGH COURT OF SINDH, KARACHI

C.P.No.S-879 of 2011

Tausif-un-Nabi

vs.

Presiding Officer, First Sindh Labour Court &
M/s. Metal Containers (Pvt.) Ltd.

Before: Mr. Justice Zulfiqar Ahmad Khan

Date of Hearing : 01.12.2016.
Date of Order : 05.12.2016
Petitioner : Through Mr. Ashraf Hussain Rizvi, Advocate
Respondents : Through Mr. Muhammad Humayun, Advocate
for the Respondent No.2..

Ms. Yasmin Sultana, State Counsel

JUDGMENT

Zulfiqar Ahmad Khan, J.:- The only question involved in this petition is that the back benefits granted to the Petitioner through the Order passed in Labour Appeal No.41/2005 under section 46(5) of the Industrial Relations Ordinance, 2002 (the IRO, 2002) would be restricted to 30 months basic salaries etc. or these benefits will be payable till the final adjudication of the dispute between the parties at the Apex Court's level.

Brief facts are that the Petitioner was offered employment within the premises of Respondent No.2 (the Establishment) for an initial prohibitory term of three months w.e.f. 30.01.1980 (page 141 of the R & P). Upon having satisfactorily served for the period of three months, he was issued a letter dated 07.04.1980 (page 143 of the R & P), wherein his services were confirmed and he was informed that he would be entitled to avail all the facilities enjoyed by the confirmed employees. Also per paragraph 3 of the said letter, the age of retirement was fixed at 55 years from the date mentioned in his NIC.

The services of the Petitioner were terminated by the Establishment on 05.11.1994. The Petitioner sought reinstatement with full consequential benefits through a Grievance Petition, but it was rejected by Sindh Labour Court-I, Karachi vide order dated 01.02.2005 passed in applications No.154/1999 and 216/1999. The Petitioner preferred an appeal being Labour Appeal No.41/2005, where the Appellate Court vide its order dated 13.12.2006 directed that the Petitioner be compensated by way of awarding 30 months wages in lieu of reinstatement beside the back benefits in terms of section 46(5) of the IRO 2002. Being dissatisfied with such findings, the Establishment of preferred an appeal before the Apex Court, which was dismissed and leave was refused vide Apex Court's Order dated 06.08.2007. Upon such determination, the Establishment made the statement of the sums payable to the Petitioner in the light of the Labour Appellate Court's order, which sums were duly received by the Petitioner. However, the Petitioner being aggrieved filed an application under section 62 of the IRO 2002, alleging that the Respondents were required to pay a sum of Rs.20,86,082/- instead of the sum paid by them, therefore, these unpaid sums should be recovered and made payable to the Petitioner. Vide Order dated 12.04.2011, the First Sindh Labour Court at Karachi in the matter of application No.01/2008 dealt with the disputed matter at length and raised a number of issues and gave a judicial finding on all of these issues, which are detailed in the following:

"15. Now points for determination would be as under:

Point No.I. Whether the issuance of prior notice of retirement of the Applicant by the Respondent was mandatory?

Point No.II. Whether the Applicant is entitled for benefits till passing of order dated: 06-08-2007 by Honourable Supreme Court of Pakistan?

Point No.III. Whether the Applicant is entitled for grant of benefits till the attaining the age of retirement of fifty five (55) years as mentioned in confirmation of appointment vide letter dated: 07-04-1980?

Point No.IV. Whether the Applicant is entitled for benefits after expiry of the settlement held between the management and the then CBA in the year 1985 and expired in the year 1987?

Point No.V. What should the order be?

16. *My findings to the above points with reasons are as under:*

Point No.I. In Negative.

Point No.II. In Negative.

Point No.III. In Affirmative.

Point No.IV. In Negative.

Point No.V. Application partly stand allowed.”

Through the instant petition, the Petitioner has challenged the above referred order. The core contention as reproduced hereinabove was that the back benefits would not be restricted upto 30 months, rather should be payable till the date of disposal of this matter by the Apex Court. As it could be noted from the foregoing that this was precisely the issue taken by the Labour Court being Issue No.II. Order seemingly has conclusively dealt this issue (between pages 13 to 17) and has resulted with a reasoned outcome.

It can be seen that the only benefit of this entire episode of litigation to the workman was that through the order passed in Labour Appeal No.41/2005, 30 months wages in lieu of reinstatement beside the back benefits in terms of Section 46(5) were granted to him. With this ray of hope, the Petitioner has contended to broaden the scope and seemingly tried to push his luck aiming that the relief provided to him should continue to extend till the date of the Apex Court finally determined the matter on 06.08.2007.

In this regard it is relevant to make reference to Section 46(5) of the IRO, 2002, which is reproduced herein below:

“The Labour Court, in case the termination of services of a workman is held to be wrongful, may award compensation equivalent to not less than twelve months and not more than thirty months basic pay last drawn and house rent, if admissible, in lieu of reinstatement of the worker in service.”

As it could be seen, the Section is absolutely clear that the maximum benefit that could have been provided to a workman was not more than 30 months’ basic salaries etc. which has been so rightly awarded through the order of the Labour Appellate Court dated 13.12.2006. Imagine the scenario that the Establishment would not have filed any appeal before the Apex Court against the said order, thus the matter would have come to an end on the date of above referred Appellate Court’s judgment. By merely filing an appeal before the Apex Court, the Establishment has done no illegality and its failure to seek a favourable order from the Apex Court cannot be of any advantage to the Petitioner, therefore, his wish that since Establishment challenged the order, the entire period in which the matter remained pending before the Apex Court, should be accrued in his credit, is an utterly unreasonable wish, full of greed.

Also of relevance is a technical objection as to the very maintainability of the instant petition. When alternate remedy was available to the Petitioner under section 48(3) of the IRO 2002, where a Revision Petition could have been preferred against the order impugned through the instant petition. Notwithstanding that the IRO 2002 has lapsed, however, in the subsequent legislations which culminated with the promulgation of the Sindh Industrial Relation Act, 2013, such remedy was constantly available to the Petitioner, which he failed to avail.

For the aforesaid reasons when the maximum statutory benefit has already been accorded to the Petitioner notwithstanding that the petition is not maintainable since an alternate remedy was already available, I also failing to find any merit in the assertions made here that

the wages should be paid till the decision of the Apex Court dated 06.08.2007. I, therefore, see the instant petition as a blatant abuse of the process of law and in the circumstances where the Courts are already chocked with pending cases such unwarranted indulgence rightly results in further delays causing miseries to people at large. I, accordingly, dismiss the instant petition with cost of Rs.50,000/- .

Judge