

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

C.P No. D-1016 of 2018

Pehlwan Ali

V/s

Sindh Appellate Tribunal and another

Petitioner : Through Ms. Abida Parveen Channar Advocate

Respondent No.1 : Through Ch. Muhammad Rafiq Rajorvi
Additional Advocate General.

Respondent No.2 : Nemo

Date of hearing: 12.03.2018

J U D G M E N T

ADNAN-UL-KARIM MEMON, J:- Through the instant Petition, the Petitioner prays for setting aside the impugned order dated 21.11.2017 passed by learned Sindh Labour Appellate Tribunal, Karachi.

2. Brief facts of the case as per averments made in the memo of petition are that on 09.09.2003 Petitioner was appointed as Line Supervisor in Respondent-Company, on monthly salary of Rs. 12,950/- and continued to serve upto 01.08.2010 and had voluntarily resigned from service on 1.8.2010, due to his personal issues. Petitioner has claimed that at the time of leaving the job of the Respondent-Company his monthly wages were Rs. 12,950/-. Petitioner has submitted that he demanded his legal dues i.e. Gratuity, Notice pay, earned wages, bonus 5% etc but the Respondent-Company refused to pay him with certain reasons. Petitioner being aggrieved by and dissatisfied with the refusal of payment of his legal dues and other benefits owed by the Respondent-Company, on 31.8.2010 filed Compensation Case No. 435 of 2010 (15) before the Commissioner Workmen's Compensation and Authority, Karachi East Division, under

Section 15 of Payment of Wages Act 1936. Learned Commissioner after adducing respective evidence of the parties, passed the order dated 03.09.2012 and allowed the application of the Petitioner and directed the Respondent-Company to deposit an amount of Rs. 4,85,625/- being the legal dues of Petitioner, against which the Respondent-Company filed Statutory Appeal No. 03/2015, under section 17 of the Payment of Wages Act 1936, before Sindh Labour Court No. V, Karachi. The learned Sindh Labour Court maintained the impugned order dated 03.09.2012 passed by the Commissioner, vide its order dated 08.04.2015. The aforesaid Order was assailed by the Respondent-Company before the learned Sindh Labour Appellate Tribunal, Karachi, in the Revision Application No. 24 of 2015. The learned Appellate Tribunal, Karachi, vide its order dated 21.11.2017 disposed of the Revision Application of Respondent-Company and set aside the order dated 08.04.2015 passed by the Learned Sindh Labour Court and with certain modification in the amount awarded by the learned Commissioner, with the following observation:-

“It is, therefore, clear that the order of the Authority, upheld in appeal by the labour court, awarding compensation of Rs. 323,750/- to the respondent No.1 is without lawful authority. It is accordingly set aside and in its place a token compensation of ten rupees is awarded. The respondent No.1 shall be entitled to receive Rs. 161,875/- plus token compensation of Rs 10/- total Rs. 161, 885/- instead of Rs. 485,625/- awarded to him by the Authority. The revision is disposed of accordingly”.

Petitioner being aggrieved by and dissatisfied with the impugned order dated 21.11.2017 has filed the instant petition on 07.02.2018.

3. This Court issued notice to the Respondent-Company but the Respondent-Company has chosen to remain absent in the proceedings.

4. Ms. Abida Parveen Channar, learned counsel for the Petitioner has contended that impugned order passed by the learned Sindh Labour Appellate Tribunal, Karachi is a nullity in the eyes of the law, thus the same is liable to be set aside being not sustainable in law; that the Petitioner was entitled to gratuity from 09.09.2003 to 31.07.2010, annual

leave for last three years and five percent profit for hold period and compensation; that evidence was brought on record by the Petitioner to substantiate his claim of legal dues; that the learned Commissioner released the decretal amount in favour of the Petitioner, who left to his native town from the date of receiving of the said amount; that no notice of revision application was served upon the Petitioner; that the impugned order passed by the learned Labour Appellate Tribunal is ex-parte order thus not sustainable under the law; that the Petitioner is entitled to a fair opportunity as provided under the law; that through the impugned order awarding the Petitioner Rs. 1,61,885/- instead of Rs. 4,85,625/- is against the payment of Wages Act; that the learned Sindh Appellate Tribunal has failed to appreciate that the Petitioner received the decretal amount as such the Revision Application filed by the Respondent-Company had become infructuous and not maintainable; that the learned Commissioner and Sindh Labour Court had rendered correct verdict based on appreciation of evidence; that the learned Sindh Labour Appellate Tribunal wrongly held that award of compensation of Rs. 3,23,750/- equal to two times of the unpaid amount under section 15 (3) of the Payment of Wages Act, 1936, gives discretion to the Authority to award compensation not exceeding ten times the amount deducted; that the learned Labour Appellate Tribunal wrongly held that in the cases of deducted wages and not exceeding ten rupees in the cases of delayed wages, gratuity is specifically excluded from the definition of wages under section 2(iv)(e) of the Act 1936 and therefore no compensation can be awarded of any amount of gratuity, whether deducted or delayed; that the learned Appellate Tribunal wrongly held that non-payment of leave encashment and workers share in five percent profit, the case cannot be treated as a case for deducted wages because the amount payable to a worker on account of leave encashment and worker share in 5 percent profit or not pre-determined amount payable to him as part of regular wages; that the learned Labour Appellate Tribunal failed to appreciate that the documents filed by the Respondent-Company are manipulated documents; that on the contrary finding of learned Labour Appellate Court is based on

misreading and non-reading of evidence and as such the order passed by the learned Sindh Labour Court as well as Commissioner could not have been disturbed, in exercise of revision powers. She lastly prayed for allowing the instant petition.

5. Ch. Muhammad Rafiq Rajorvi learned AAG has supported the impugned judgment passed by the learned Sindh Labour Appellate Tribunal Karachi.

6. We have heard the learned counsel for the Petitioner and the learned AAG and with their assistance have carefully gone through the material placed on record.

7. Upon perusal of the pleadings and arguments extended thereon by the Parties, the basic primordial questions require our determination, which are as follows:

i) Whether the order dated 21.11.2017 passed by the learned Sindh Labour Appellate Court is within the parameters of law?

ii) Whether Respondent-Company's case can be reopened when all fora below have non-suited the Respondent-Company after considering the matter on merit?

8. We have also gone through the learned Commissioner Workman Compensation and authority's Order dated 03.09.2012, an excerpt of the same is reproduced as under:-

"I am of the clear view that this is a clear case of deducted wages hence, the application is allowed in favour of applicant with two time compensation. However, annual leaves are admissible for two years only and the claim against annual leaves is allowed as Rs. 25,900/- instead of Rs. 38,850/- i.e. claim amount.

The respondent is directed to deposit Rs. 4, 85,625/- within 30 days for onward September, 2012."

9. The learned Commissioner Workman Compensation and authority's Order dated 03.09.2012 was maintained by the order dated 8.4.2015 passed by the learned Sindh Labour Court No. Vth Karachi, with the following observation:-

"I, therefore, fully agree with the findings of the learned Authority and need not to interfere in the impugned order.

With the result instant appeal is hereby dismiss accordingly."

10. The aforesaid findings are based on the sole ground that the learned Sindh Labour Court concurred with the findings of learned Commissioner who based his findings on evidence brought on record by the respective parties; that this is a clear case of deducted wages. Record reveals that both the orders were placed before the learned Sindh Labour Appellate Tribunal, Karachi, who fairly dilated upon the issues involved in the matter.

11. We have perused the deposition of representative of the Respondent-Company, who has stated certain facts, which supports the stance of Respondent-Company. It has also come on record that the Respondent-Company had paid decretal amount to the Petitioner. He further stated that Petitioner resigned from Respondent-Company and collected 5% workers participation fund Rs. 45,325/- and gratuity for 7 years Rs. 906, 50/- in all Rs. 135975/- in cash against a receipt as full and final settlement on 11.08.2010. Therefore, in our view the Respondent-Company was rightly granted the relief by the Learned Sindh Labour Appellate Tribunal Karachi under Revision jurisdiction.

12. The Respondent No. 1 has dilated upon the issues in an elaborative manner and gave findings in affirmative by appreciating the evidence of the parties and considered every aspect of the case and thereafter passed the explanatory order.

13. In view of the forgoing, we concur with a view taken by the learned Sindh Labour Appellant Tribunal vide order dated 21.11.2017, however the findings of the learned Sindh Labour Court No V at Karachi as well learned Commissioner is not based on the correct position of law and was rightly upset by the Revision Court.

14. In the light of the above facts and circumstances of the case, we are of the view that this Court in its constitutional jurisdiction cannot interfere in the findings of facts arrived by the competent forum as do not see any illegality, infirmity or material irregularity in the Sindh Labour Appellate Tribunal order, warranting our interference.

15. Resultantly, the instant petition is meritless and is dismissed along with listed application(s).

Karachi
Dated: 14.03.2018.

JUDGE

JUDGE

Shafi Muhammad P.A