

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**Present:**

Mr. Justice Adnan-ul-Karim Memon  
Justice Mrs. Kausar Sultana Hussain

**C.P No.D-77 of 2017**

Oil Industries Pakistan (Pvt) Limited ..... Petitioner

Versus

Abdul Rehman and others ..... Respondents

**C.P No.D-78 of 2017**

Oil Industries Pakistan (Pvt) Limited ..... Petitioner

Versus

Ghulam Fareed Bhatti and others..... Respondents

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**Date of hearing: 24.04.2018**

Mr. Syed Irshad-ur-Rehman Advocate for Petitioners.  
Mr. Rafiullah Advocate for Respondent No.1 in both the Petitions.

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**J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J: -** Through these Constitutional Petitions, the Petitioner-Company has impugned the Judgment dated 07.11.2016 passed by the Learned Sindh Labour Appellate Tribunal, (SLAT) in Labour Appeals No. KAR-02/2016 and KAR-03/2016 whereby awarded reasonable compensation of Rs.200,000/- to the Respondent No.1(Private Respondents) in both

the petitions, instead of reinstatement in their services as ordered by the Learned Sindh Labour Court No. IV, Karachi (SLC) vide Judgment dated 3.12.2015 passed in Labour Applications No.08 and 09 of 2013, respectively.

2. Brief facts of the above referred petitions are that the Respondent No.1 in Constitution Petition No.D-77 of 2017 was appointed as Helper in the Petitioner-Company in the year 2008. Respondent No.1 in Constitution Petition No.78 of 2017 was appointed as Manual Worker in the Petitioner-Company in the year 1996 and was reemployed on contract basis on 7.6.2012. Private Respondents have asserted that they performed their duties assigned to them with keen interest and devotion without any complaint and all of sudden on 11<sup>th</sup> and 12<sup>th</sup> April, 2013 they were prevented by the Petitioner-Company to perform their duties, thereby removed them from their services without formal letters of termination. Private Respondents being aggrieved by and dissatisfied with the impugned action of the Petitioner-Company filed Grievance Petitions No. 08 and 09 of 2013 under section 34 of the Sindh Industrial Relations Act, 2013 before the learned SLC, Karachi, which were allowed vide separate Judgments dated 3.12.2015. Petitioner-Company being aggrieved by and dissatisfied with the aforesaid Judgments, filed Labour Appeals No Kar-02 and Kar-03 of 2016 before the learned SLAT, Karachi and the same were disposed of vide separate Judgments dated 7.11.2016 with direction to the Petitioner-Company to pay reasonable compensation of Rs.200, 000/- to the private Respondents in both

the petitions, in lieu of their Reinstatement in service, as ordered by the learned SLC, Karachi. Petitioner-Company being aggrieved by and dissatisfied with the aforesaid Judgments dated 7.11.2016 has approached this Court on 5.1.2017.

3. Upon notice, private Respondents in both the petitions filed Counter-Affidavits and denied the allegations leveled against them and supported both the Judgments passed by the learned SLC and SLAT.

4. Syed Irshad-ur-Rehman learned counsel for Petitioner-Company has contended that the impugned Judgments dated 07.11.2016 passed by the Respondent No.2/ SLAT and Judgments dated 03.12.2015 passed by the Respondent No.3/ SLC are full of errors, based on misreading and non-reading of evidence; that the findings of the learned Courts below are arbitrary and perverse; that the averments of the Petitioner-Company made in the affidavit in evidence were not challenged in cross-examination, which amounts admission on the part of private Respondents, therefore both the Judgments are nullity in the eyes of law; that both the learned Courts below failed to appreciate the aforesaid aspect of the matter; that the learned Presiding Officer of SLC as well as Member, SLAT have failed to appreciate that on 11.04.2013 Respondent No.1 in C.P No.D-77 of 2017 resigned from the service, therefore, the Impugned Judgment dated 07.11.2016 passed by the Member, SLAT as well as Impugned Judgment dated 03.012.2015 passed by the Presiding Officer, SLC are illegal, unlawful and against the law and are liable

to be set aside; that the Presiding Officer, SLC as well as Member, SLAT have also failed to appreciate the admission of the Respondent No.1 in C.P No. D-77 of 2017 in the cross-examination that he had left the employment till the day was jobless and in the intervening period he did not search for another job; that both the Judgments are illegal, unlawful and void and are liable to be set aside; that the Grievance Petitions of the private Respondents in both the Petitions were not maintainable before the SLC; that there is no provision in law to award compensation in lieu of reinstatement in the service of the private Respondents as such the learned SLAT committed grave error in allowing the same to the private Respondents; that Respondent No.2/SLAT wrongly held that the findings of SLC is unexceptionable and failed to differentiate between refusal to work in the employment of the Company, illegally treating resignation of the Respondent No.1 in C.P No.D-77 of 2016 as unlawful removal from service; that the SLC failed to appreciate that without serving grievance notices to the Petitioner-Company, the grievance applications are not maintainable in law; that both the Courts failed to appreciate that the Petitioner-Company filed the objection/written statement denied that the private Respondents in both the Petitions were gate stopped on 11<sup>th</sup> and 12<sup>th</sup> April, 2013 respectively; that the Respondent No.1 in C.P No.D-77 of 2016 was habitual late-comer and absentee from his duties without prior permission/approval of the Competent-Authority of the Petitioner-Company and did not mend him despite warnings; that the private Respondents in both the petitions filed their affidavit in evidence and they were cross

examined on behalf of the Petitioner-Company and their evidence was shaken in cross-examination; that the Petitioner-Company filed affidavit in evidence through their attorney Anjum Baig, Senior Manager Accounts, but despite a number of opportunities given to the private Respondents in both the Petitions, they did not cross-examine the Petitioner-Company's representative. Learned counsel for the Petitioner-Company in support of his contention has placed reliance upon the case of Vice President National Bank of Pakistan Gujranwala Vs. Punjab Labour Appellate Tribunal and others (1985 PLC 1053), Trustees of the Port of Karachi Vs. Muhammad Saleem ( 1994 SCMR 2213), Messrs Wah Industries Limited Vs. Punjab Labour Appellate Tribunal (1998 PLC 1), HMB Tanneries (Pvt) Limited Vs. Wajid Ali Shah and 2 others ( 2016 PLC 39), Abdul Rehman Vs. Zia-ul-Haque Makhdoom and others ( 2012 SCMR 954), Faiz Muhammad Vs. Ghulam Shabbir (2012 YLR 2403), Wahid Bakhsh Vs. Messrs Paracelsus Pakistan (Pvt) Ltd and 2 others ( 2015 PLC 220), Muhammad Saleem Nagani Vs. MCB Ltd and others ( 2006 PLC 304), Shiraz Tufail Vs. The State ( 2007 SCMR 518), Faisal Afzal Sheikh Vs. Additional District Judge, Lahore ( PLD 2004 Lahore 668), Messrs Hilal Trading Company Vs. Swami Narain Temple Estate and 2 others ( 2013 YLR 1103), Baluchistan Engineering Works Ltd Vs. Abdul Hameed and others ( 2007 SCMR 1160). He lastly prayed for allowing the instant Petitions.

5. Mr. Rafiullah learned counsel for the private Respondents in both the petitions has supported the judgments passed by both the Courts below and contended that the private

Respondents in both the petitions were permanent worker of the Petitioner's Company, thus grievance applications were maintainable in law; that the captioned Petitions are not maintainable under the law; that there are concurrent findings recorded by the Competent forums under special law and grounds raised in the instant petitions are untenable; that Petitioner-Company terminated the services of the private Respondents in both the petitions, without any notice and enquiry, and did not pay dues of the private Respondents; that the Respondent No.1 in C.P. No. 77 of 2017 denied that he tendered resignation as alleged by the Petitioner-Company; that the provisions of (Standing Orders) Ordinance, 1968, Industrial Relations Ordinance, 2002 and Sindh Industrial Relations Act, 2013 are applicable to the private Respondents as well as Petitioner-Company as such both the aforesaid judgments are passed within the parameters of law; that the instant Petitions are frivolous, misleading; that there are concurrent findings by the Courts below and this Court has limited jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to dilate upon the evidence lead by the parties; that private Respondents in both the petitions performed their duties with full devotion yet the Petitioner's Company kept them and other workers completely deprived from the minimum legal rights as provided in the schedule of Industrial and Commercial Employment (Standing Orders) Ordinance 1968 as the terms and conditions of employment in shape of letter of appointment was not issued, resignation from the EOBI was not made, holidays with pay and

various statutory allowances including the CLA and share in the Company's profit were not allowed but despite of all these atrocities private Respondents were verbally terminated from the service without any fault; that the action of Petitioner's Company was absolutely illegal, therefore private Respondents in both the petitions by raising their grievance notices served on the Petitioner-Company but their grievances were not redressed at the initial stage, they had no alternative except to approach the learned Respondent No.3/SLC for remedy and relief; that the SLC after recording of evidence, passed a just and proper judgments holding their termination as illegal and reinstated them in service with back benefits vide impugned Judgments dated 03.12.2015 and the Petitioner-Company did not reinstate them on duty and filed statutory Appeals before SLAT, the learned Member SLAT, after hearing the learned counsel for the parties modified the Judgments dated 03.12.2015 passed by SLC to the extent of granting of Compensation of Rs.200,000/- in lieu of reinstatement in service of the private Respondents and other legal dues in terms of the aforesaid Judgments in both the petitions and directed the Petitioner's Company to deposit the same amount within 60 days but the Petitioner's Company approached to this Court. He lastly prayed for dismissal of both the Petitions.

6. We have heard the learned counsel for the Petitioner-Company and the learned counsel for the private Respondents in both the petitions and with their assistance

carefully gone through the material placed on record by both the parties and case law cited at the bar.

7. The primordial questions in the present proceedings are as follows:-

***i) Whether the private Respondents in both the petitions were served with show cause notice along with statement of allegations? And, whether inquiry proceedings were initiated against the private Respondents and they were provided personal hearing before impugned action dated 11th and 12th April 2013?***

***ii) Whether the grievance applications filed by the private Respondents under Section 34 of SIRA, 2013, were maintainable before learned SLC?***

8. In order to evaluate the above legal proposition, the learned trial Court, separately framed the following issues in both the grievance applications of the private Respondents. In application No. 08 of 2013 and gave its findings in favour of the Respondent No.1:-

***i) Whether applicant was habitual of late coming and of quarrel of some nature?***

***ii) Whether the application is maintainable under the law?***

***iii) Whether the applicant orally terminated by gate stopping on 12<sup>th</sup> April 2013?***

9. The learned trial Court framed the following issues in grievance application No. 09 of 2013 and gave its findings in favour of the Respondent No.1.

***i) Whether applicant himself left the job on 31.12.2011 and reemployed on 07.06.2012 as Mechanical Forman on contractual basis against monthly salary Rs. 32,935/- P.M plus all allowances or he was gate stopped on 11.04.2013?.***



**ii) Whether applicant has no cause of action to file this application?**

10. To appreciate the controversy in proper perspective, we think it appropriate to have a glance on the evidence brought on record by the parties. At the first instance, the relevant portion of the findings of learned SLC in grievance application No. 08 of 2013 and 09 of 2013 of private Respondents are reproduced as under:-

**Findings of SLC in grievance application No. 08 of 2013.**

***“I, therefore set-aside the illegal oral dismissal order of the Respondent management dated 12.04.2013 allow grievance petition with direction to the Respondent management to reinstate the applicant in service with full back benefits as per his entitlement.”***

**Findings of SLC in grievance application No. 09 of 2013.**

***“I therefore set aside the oral dismissal of the applicant and direct the respondent to reinstate him on the job with full back benefits within 60 days.”***

11. Petitioner-Company has admitted in evidence that the private Respondents were permanent employee of the Petitioner-Company but Respondent No.1 in C.P No.77 of 2017 was a habitual late comer, however no material was placed on record to substantiate this assertion before this court as well as before the learned SLC. It has also come on record that on 11<sup>th</sup> and 12<sup>th</sup> April 2013 private Respondents were not allowed to enter in the Petitioner-Company. Respondent No.1 in C.P No.77 of 2017 has denied to have tendered his resignation from the job. The representative of the Petitioner-Company in grievance application 09 of 2013 has admitted that Respondent No.1 in C.P No. 78 of

2017 was a permanent employee but he was reemployed on contractual basis, but no document was exhibited in evidence to substantiate the said assertion of the Petitioner-Company.

12. The affidavit in evidence/deposition of the private Respondents in both the grievance applications Nos. 08 and 09 of 2013 clearly depicts the following factual position:-

Deposition in grievance application No.08 of 2013.

***“It is incorrect to suggest that my evidence regarding management enmity and the other contents of para No.9 of my affidavit are totally false. It is incorrect to suggest that I did not send any grievance notice to the respondent management. It is incorrect to suggest that my grievance application is baseless and has been filed with malafide intention against the respondent. Since I have left the employment till the day I am jobless. Since I have left the job I have not searched any other job due to accident of my father which was happened about two weeks before. It is incorrect to suggest that beside me and my father the management has not terminated any other employee of the company, voluntarily says two other employees’ jobs have also been terminated by the respondents. They have not filed their grievances in the Court, as the company had paid them their dues. It is incorrect to suggest that the company has not terminated the job of alleged two employees and neither paid them their dues and that I have deposed this falsely. I have not mentioned this fact in my affidavit in evidence. It is correct to suggest that I have not filed any original document of the annexures annexed with my application. It is incorrect to suggest that whatever I have stated before this Court is false and baseless.”***

Deposition in grievance application No.09 of 2013.

**“ It is incorrect to suggest that on 31.12.2011 I have left the job. It is incorrect to suggest that after about five months on 6<sup>th</sup> June, 2012 I again contacted the respondent company and requested them to take me on employment. It is incorrect to suggest that on 07.06.2012 the respondent company employed me on contractual basis,**

**voluntarily says all this is false. I was doing the job of maintenance. I was working as supervisor. It is correct to suggest that I was working there as foreman and I had myself done the job and also take the work from other employees. The work of mechanical foreman is to give the suggestions to the other employees/ worker and I gave suggestions to them. I see annexure "A" to the reply statement and deny that it bears my signature. It is incorrect to suggest that contents of para No.2 of my affidavit in evidence regarding my permanent employment with the respondent establishment are false and that I was their contractual employee, this is also false as I have already denied that I have ever worked as contractual employee of the respondent. My job was terminated on 11<sup>th</sup> April, 2013, the job of mechanical foreman is bigger than the job of supervisor. I was a worker and suggested the other workers if they had asked me about their work problems. The contents of para No.2 of my affidavit in evidence that the management re-designated me as mechanical foreman is not correct, voluntarily says perhaps due to the mistake of my advocate/representative this was typed. I am not conversant with English, therefore, I cannot say exactly about the contents of my affidavit in evidence, voluntarily says although I narrated all facts to my advocate/representative, there can be some facts he added in the affidavit at his own. I have not well conversant with the English, nor can read properly , therefore, I cannot reply what is written in the affidavit in evidence. I have given the original annexures of my application to my advocate/representative, these would be with him. I have not brought the originals of annexures of my main petition, voluntarily says these are with my representative, therefore, I am unable to produce today. It is incorrect to suggest that the annexures filed by me with my proceedings are forged. It is incorrect to suggest what I have deposited falsely before this Court.**

**Note: - Witness is holding a file wherein originals of the annexures are available, except some that is grievance notice and its service."**

13. The impugned Judgments dated 07.11.2016 passed by the learned SLAT in Appeal No. KAR-02 and KR-03 of 2016

explicitly show that the matter has been decided on merit, the relevant portion of the judgment is reproduced as under:-

**Appeal No. Kar-02 of 2016**

***“7. It is thus clear that removal of the respondent from service on the alleged charges, without show cause notice, charge sheet and enquiry was unlawful.***

***8. As for a just and proper order, in the facts and circumstances of this case, reinstatement of the respondent in service will not prove viable and productive in the wake of estranged relations between the parties. Instead of imposing the unwanted worker upon the unwilling employer, award of reasonable compensation to the worker (respondent) will be in the interest of both the parties and shall meet the ends of justice also. Accordingly, a reasonable compensation of Rs. 200,000/- is awarded to the respondent for the loss of job due to his wrongful removed from service, instead of reinstatement in service, which the appellants are directed to deposit within 60 days for payment to the respondent. The respondent shall also be entitled to his legal dues such as gratuity etc. for 13 years of service to be calculated at the rate of minimum wages for unskilled workers prescribed by the Government of Sindh in 2016, which also the appellants are directed to deposit within 60 days from payment to the respondent. The appeal is disposed of accordingly.”***

**Appeal No. Kar-03 of 2016**

***“7. As for a just and proper order, in the facts and circumstances of this case, reinstatement of the respondent in service will not be viable and productive in the wake of estranged relations between the parties. Instead of imposing an unwanted worker (respondent) upon an unwilling employer (appellants), it will be in the interest of both the parties to award a reasonable compensation to the worker (respondent) for the loss of job and it will meet the ends of justice also. Keeping in view all the facts and circumstances of the case, including length of respondent’s service and his present age, the respondent is awarded compensation of Rs. 200,000/- instead of reinstatement in service, which the appellants are directed to deposit within 60 days for payment to the respondent. The respondent shall also be entitled to his legal dues such as gratuity etc. for his service of 20 years and 9 months, to be calculated at the rate of last pay drawn i.e. Rs. 32, 935/- which also the appellants are directed to deposit within 60 days for payment to the respondent. The appeal is disposed of accordingly.”***

14. From perusal of the pleadings of the parties and evidence recorded by the learned SLC, Karachi it is crystal clear that all these proceedings and actions were taken against private Respondents in both the petitions by the Petitioner-Company on the basis of hearsay evidence and no conclusive findings of guilt of the private Respondents have been established in the evidence. In this regard, we are of the considered view that it was incumbent upon Petitioner-Company to prove allegations against private Respondents as per Qanun-e-Shahadat Order, 1984. It is well settled proposition of law that every person has to establish its own case on merits and cannot rely upon the weakness of other side. Since, the Petitioner-Company has failed to do so and shift its burden of proof; therefore no inference can be drawn against the private Respondents at this stage.

15. We are of the considered view that there were certain allegations against the private Respondents in both the petitions but their services were not supposed to be terminated without holding a full-fledge inquiry and grant of opportunity of hearing to the private Respondents to defend themselves on the allegations made against them. It is well settled proposition of law that right of fair trial and due process is a fundamental right of every person under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. Reference in this regard is made to the case of Engineer Majeed Ahmed Memon Vs. Liaquat University of Medical and Health Sciences, Jamshoro and others (2014 SCMR 1263).

16. Reverting to the plea taken by the learned counsel for the Petitioner-Company that no grievance notice was served upon the Petitioner-Company. Suffice it to say; when the grievance petition of the private Respondents in both the petitions were heard and decided on merit by SLC and SLAT, the question of such service is immaterial, moreover the record does not reflect that Petitioner-Company established such assertion through cogent evidence, therefore no inference can be drawn against the private Respondents at this stage.

17. The second plea raised by the learned counsel for the Petitioner-Company that award of compensation to the private Respondents in both the petitions were not called for. We have considered this aspect of the case and are of the considered view that the reasons assigned by the Member SLAT in the impugned Judgments dated 07.11.2016 are sufficient to discard the assertion of the Petitioner-Company, which need no interference.

18. After perusal of the aforementioned factual as well as legal position of the case, we concur with the view taken by the Member SLAT for award of compensation of Rs.200,000/- to the private Respondents and other legal dues in terms of the aforesaid Judgments in both the petitions in lieu of their reinstatement in services, would meet the ends of justice.

19. We are of the considered view that the learned trial Court/SLC has dilated upon the issues in an elaborative manner and gave findings in affirmative by appreciating the material

available on record and that the Respondent No.2/SLAT also considered every aspect of the case and thereafter passed explanatory Judgments, therefore no ground existed for re-evaluation of the evidence, thus, we maintain the Judgments dated 07.11.2016 passed by the learned SLAT. We are fortified by the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Dilshad Khan Lodhi Vs. Allied Bank of Pakistan and other (2008 SCMR 1530) and General Manager National Radio Telecommunication Corporation Haripur District Abotabad Vs. Muhammad Aslam and others (1992 SCMR 2169)

20. We have noted that case law cited by the learned counsel for the Petitioner-Company is distinguishable from the facts and circumstances of the case.

21. In the light of the above facts and circumstances of the case, we are of the considered view that this Court in its Constitutional jurisdiction cannot interfere in the concurrent findings of facts arrived by the two competent forum as we do not see any illegality, infirmity or material irregularity in the Judgments dated 03.12.2015 of the learned Sindh Labour Court No. IV, Karachi as well as Judgments dated 07.11.2016 of the learned Sindh Labour Appellate Tribunal, Karachi warranting indulgence of this Court, hence, the instant Petitions are meritless and dismissed along with the listed application (s).

Karachi  
Dated: 30.04.2018

JUDGE

JUDGE