

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Syed Hassan Azhar Rizvi

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-3573 of 2014

Messrs. Wyeth Pakistan Limited..... Petitioner

Versus

Nasimul Hassan and others Respondents

Date of hearing: 19.09.2017

Mr. Muhammad Humanyoon Advocate
for Petitioner.

Mr. Ch. Muhammad Ashraf Khan
Advocate for the Respondent No.1.

J U D G M E N T

ADNAN-UL-KARIM MEMON,J:- Through this constitutional petition, the petitioner has assailed the judgment dated 20.5.2014, passed by the learned Sindh Labour Appellate Tribunal, Karachi (“Respondent No.2”), in cross appeal No.KARA-696/2010 and Appeal No.KAR-697/2010 whereby it upheld the decision dated 24.2.2004 of learned Labour Court No. 2, Karachi (“Respondent No.3”) for re-instatement of the worker Nasimul Hassan (“Respondent No.1”) with full back benefits and findings of the

learned Labour Court No. 11, Karachi, with regard to allowing compensation in lieu thereof was set-aside.

2. The facts of the case are that the Petitioner-Company/ Messrs. Wyeth Pakistan Limited ("Petitioner"), hired the service of the Respondent No.1 and posted him at its Lahore office. Per Petitioner-Company Respondent No.1 had resigned from service of Petitioner-Company on 31.07.1984; however he again joined the Petitioner-Company on 16.03.1986 as Temporary Assistant Supervisor at Karachi and resigned from service on 28.06.1988 which was accepted by the Petitioner's management on 29.06.1988. As per averments the Respondent No.1 was again appointed as Assistant Supervisor Personnel in the management cadre vide appointment letter dated 10.07.1988 and was subsequently promoted from the post/position of Assistant Supervisor-Personnel to the post/position of Supervisor Personnel and Administration in Grade-7 vide promotion letter dated 24.06.1993 w.e.f. 01.07.1993 and his emoluments were also enhanced/increased and all the terms and conditions contained in the appointment letter dated 10.07.1988 were duly accepted by the Respondent No.1. Per petitioner-company, the service of the Respondent No.1 was terminated vide letter dated 30.10.2002, by assigning cogent reasons. Respondent No.1, being aggrieved by and dissatisfied with the impugned termination order 30.10.2002, filed grievance petition on 30.12.2002, under section 46 of Industrial Relation Ordinance 2002, before learned labour court No.2, Karachi. Petitioner-company filed objections. Learned Sindh

Labour Court No. 2, Karachi, after recording evidence of the parties and hearing them passed the impugned Judgment dated 24.02.2004, in Case No. 142/2002, directed reinstatement of Respondent No.1 but awarded compensation in lieu of reinstatement which was assailed by both the parties before learned Sindh Labour Appellate Tribunal. learned Sindh Labour Appellate Tribunal, Karachi after hearing the parties passed the impugned Judgment dated 20.5.2014, in cross Appeal No.KARA-696/2010 and Appeal No.KAR-697/2010 whereby it upheld the decision dated 24.2.2004 of learned Labour Court No. 11, Karachi for reinstatement of the worker Nasimul Hassan (“Respondent No.1”) with full back benefits and findings of the learned Labour Court No. 2, Karachi, with regard to allowing compensation in lieu thereof was set-aside. Petitioner-company, being aggrieved by and dissatisfied with the decisions rendered by both the courts below has approached this court on 4.7.2014.

3. Mr. Muhammad Humanyoon learned counsel for the petitioner has argued that learned Member, Sindh Labour Appellate Tribunal directed to the respective parties to file their synopsis of written Arguments; that learned Member, Labour Appellate Tribunal passed the impugned Judgment dated 20.05.2014 without considering the facts and circumstances available on record hence the same is illegal unlawful and bad in law; that the learned Presiding Officer, Sindh Labour Court No.II, Karachi as well as Member, Sindh Labour Appellate Tribunal have failed to appreciate that the Respondent No.1 had accepted his termination letter

dated 30.10.2002 without any protest and/ or objections and thereafter the Petitioner's company had duly paid the entire dues of the Respondent No.1 in full and final settlement which was duly received and acknowledged by the Respondent No.1, therefore the impugned Judgment dated 20.05.2014 passed by the Member, Sindh Labour Appellate Tribunal, Karachi as well as impugned Judgment dated 24.02.2004 passed by the learned Presiding Officer, Sindh Labour Court No.II, Karachi are illegal, unlawful and against the law and are liable to be set aside; that the learned Presiding Officer, Sindh Labour Court No.II Karachi as well as Member, Sindh Labour Appellate Tribunal have also failed to appreciate that the Respondent No.1 during his cross-examination has admitted in the following manner that:-

“It is a fact that I received leave fair assistance amount Rs. 21224/- at the time of termination. It is fact that besides that I received an amount of Rs. 155803/- being full and final settlement of account.”

Learned counsel has further contended that impugned Judgment dated 20.05.2014 passed by the Sindh Labour Appellate Tribunal Karachi and impugned Judgment dated 24.02.2004 passed by the learned Presiding Officer, Sindh Labour Court II, Karachi are illegal, unlawful and void and are liable to be set aside; that the learned Presiding Officer, Sindh Labour Court No. II Karachi as well as Member, Sindh Labour Appellate Tribunal have also failed to appreciate that a Suit for Damages in this court of is filed by the Respondent No.1 and this fact was admitted by the Respondent No.1 during his cross examination, therefore the impugned Judgment dated 20.05.2014 passed by the Member

Sindh Labour Appellate Tribunal Karachi and impugned Judgment dated 24.02.2004 passed by the learned Presiding Officer, Sindh Labour Court No. II, Karachi are illegal, unlawful and liable to be set aside; that the learned Presiding Officer, Sindh Labour Court No.II, Karachi as well as Member Sindh Labour Appellate Tribunal have also committed grave error in misreading and non-reading the evidence available on record that the Respondent No.1 who was promoted as Supervisor Personnel and Administration since 1993 was predominantly performing supervisory and administrative duties during the tenure of his service; that the supervisory performance evaluation sheets produced by the Respondent No.1 describes the overwhelming supervisory and administrative nature of different types of duties performed by the Respondent No.1 which clearly oust him from the definition of workman under Section 2(xxx) of IRO, 2002 as well as under Section 2(i) of Industrial & Commercial Employment (Standing Orders) Ordinance 1968; that the learned Presiding Officer, Sindh Labour Court No.II, Karachi as well as Member, Sindh Labour Appellate Tribunal have erred in law by holding that the Respondent No.1 falls under the definition of workman under section 2(i) of the Industrial & Commercial Employment (Standing Orders) Ordinance 1968, whereas it has been established that the Respondent No.1 was performing supervisory and administrative nature of duties and was not covered by the definition of workman. He lastly prays for allowing the instant petition.

4. Mr. Ch. Muhammad Ashraf Khan Advocate for the Respondent No.1 has contended that the Respondent No.1 worked in Lahore office of Petitioner for 14 years and resigned on 31.07.1984 and he again joined Petitioner's company at Karachi office on 16.03.1986 as temporary Assistant Supervisor Personnel; that the resignation of the Respondent was again accepted on 29.06.1988 and he was again appointed by Petitioner's company as Assistant Supervisor Personnel on 10.07.1988, subsequently the designation of Respondent was changed as Supervisor Personnel & Administration with effect from 01.07.1993; that during course of employment Respondent No.1 was doing clerical work, neither any body was working under him nor he was supervising work of anybody; that the provisions of Standing Orders Ordinance, 1968 and Indus Relations Ordinance, 2002 are applicable to the Respondent No.1 as well as establishment of Petitioner-company; that in the month of January, 2002 some wrong information was furnished by Karachi office to Government Agencies, when it came to the knowledge of Respondent No.1 he reported the matter to Head office and such enquiry was conducted in the matter regarding Respondent No.1 that after promotion he was doing supervisory duty and two persons were working under him; that Respondent No.1 was doing clerical work therefore he comes in the definition of 'worker' or 'workman' within the meaning of Standing Orders Ordinance, 1968 or Industrial Relations Ordinance 2002. Per learned counsel for the respondent No.1, the instant petition of the Petitioner is frivolous, misleading. The learned counsel prayed for dismissal of the instant

constitutional petition on the ground that there are concurrent findings of fact by the courts below and this Court has limited jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan to dilate upon the evidence of the parties. He lastly prayed for dismissal of instant petition.

5. We have heard the learned counsel for the Petitioner and the learned counsel for the Respondent No.1 and with their assistance carefully gone through the material placed on record by both the parties and case law cited at the bar.

6. The grievance of the Petitioner is with respect to findings of Respondent No.2 and 3 that Respondent No.1 is workmen and learned labour Court had no jurisdiction to decide the matter between the parties.

7. We have also gone through the Trial Court Order of the Respondent No.3 wherein the following issues had been framed:

- i) Whether applicant was a worker or workman within a meaning of standing orders ordinance, 2002.
- ii) Whether services of respondent No.1 were terminated legally.

8. We have also seen the deposition of Respondent No.1 and Mr. Humayun Nazir Associate Director, Human Resource and (admin), Muhammad Younis Lodhi, dispatcher and Muhammad Bashir, photocopier of petitioner-company.

9. We also note that representative of the Petitioner-company has admitted in the cross examination that:-

“It is a fact that the work, which was being done by the applicant is still being done in the Respondent’s company. Voluntarily says that said work has been distributed between two persons”.

10. From the aforementioned excerpt, we note that the duties assigned to Respondent No.1 were clerical and in manual nature therefore we concur with a view taken by the learned Labour Court that the services of the applicant were terminated prior to the abolition of the posts but later on the duties of applicant were distributed amongst two officers and the post has been abolished, however we do not agree with the finding of Labour Appellate Court that reinstatement of Respondent No.1 in service and will create problems from the both the parties and wrongly reached at the conclusion that compensation equivalent 20 months wages will meet the ends of justice. The learned Labour Appellate Tribunal has rightly passed the impugned judgment dated 20.05.2014 which is not called for interference.

11. The Respondent No.3 has dilated upon the issues in an elaborative manner and gave findings in affirmative by appreciating the evidence of the parties and that the Respondent No.2 also considered every aspect of the case and thereafter passed the explanatory Judgment. So far as the finding of learned labour court to the extent that the “post of the employee was abolished and besides that the reinstatement of Respondent No.1 in service will create problems for both the parties thus desisted from

passing any order with regard to reinstatement of the Respondent No.1 and awarded compensation in lieu thereof". Learned Labour Appellate Court corrected the decision of labour court and reinstated the service of the Respondent No.1 with all back benefits and set aside the compensation in lieu thereof awarded by the learned Labour Court, which is correct position of law, therefore we concur with the findings of the learned Labour Appellate Tribunal and maintain the impugned order dated 20.05.2014.

12. 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 concurrent findings of facts arrived by the two competent forums and we do not see any illegality, infirmity or material irregularity in the Trial Court Order and the Judgment passed by the Respondent No. 2 and 3 respectively, warranting our interference.

13. In the light of above facts and circumstances of the case, the instant petition is meritless and dismissed along with listed application (s).

Karachi
Dated:

JUDGE

JUDGE

