

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

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

**C.P No. D-5262 of 2013**

M/s Island Textile Mills Ltd.

V/s

Mehdi Khan and others

Petitioner : Through Mr. Javed Asghar Awan Advocate  
Respondents No. 2 to 4 : Through Ch. Muhammad Rafiq Rajorvi.  
Additional Advocate General.

Date of hearing: : 15.02.2018

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

**ADNAN-UL-KARIM MEMON, J:-** Through the instant Petition, the Petitioner-Company prays for setting aside the impugned order dated 23.09.2013 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 01.09.1986 the Respondent No.1 was appointed as Store keeper in Petitioner-Company, on monthly salary of Rs. 17,000/- and had voluntarily resigned from service on 04.03.2008, due to his personal health issues. Petitioner-Company has claimed that at the time of leaving the job, the Respondent No.1's monthly wages were Rs. 17000/-. Petitioner-Company has submitted that Respondent No.1 demanded his legal dues but the Petitioner-Company refused to pay him on the premise that he voluntarily resigned from service without handing over the charge of the store. Respondent No.1, being aggrieved by and dissatisfied with the refusal of payment of his gratuity of 22 years'

service, compensation with interest and other legal dues, owed by the Petitioner-Company, filed Compensation Case No. 28 of 2008 before the Commissioner Workmen's Compensation and Authority Hyderabad, under section 15 of Payment of Wages Act 1936. Learned Commissioner after adducing respective evidence of parties, passed the order dated 18.10.2010, allowed the application of the Respondent No.1 and directed the Petitioner-Company to deposit the amount of Rs. 3, 78,000/- being legal dues of Respondent No.1, against which the Petitioner-Company filed statutory Appeal No. 23/2010, under section 17 of the Payment of Wages Act 1936, before Sindh Labour Court No. IV, Hyderabad. The learned Sindh Labour Court set aside the impugned order dated 18.10.2010 passed by the Commissioner/Respondent No. 2. The aforesaid Order was assailed before the learned Sindh Labour Appellate Tribunal, Karachi, in Revision Application No. 47 of 2011. The learned Appellate Tribunal, Karachi, vide its order dated 23.09.2013 allowed the Revision Application of Respondent No.1 and set aside the order dated 15.09.2011 passed by the Learned Sidh Labour Court and restored the order dated 18.10.2010 passed by the Respondent No.2. Petitioner-Company being aggrieved by and dissatisfied with the impugned order dated 23.09.2013 has filed the instant petition on 11.12.2013.

3. This Court repeatedly issued notices to the Respondent No.1 through all modes of service to defend the case but the Respondent No.1 has chosen to remain absent in the proceedings.

4. Mr. Jawed Asghar Awan, learned counsel for the Petitioner-Company has contended that impugned orders passed by the Respondent No.2 and learned Sindh Labour Appellate Tribunal, Karachi

are nullity, thus the same are liable to be set aside being not sustainable in law; that Respondent No.1 was not entitled to gratuity as he resigned from service voluntarily; that no document or evidence was brought on record by Respondent No.1 to substantiate his claim of legal dues; that Respondent No. 1 does not fall within the definition of “workman” as defined under section 2(i) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 or any other law; the Respondent No.1 is only entitled to statutory gratuity if his case falls within the ambit of Standing Order 12(5) of the Ordinance 1968; that both the learned Sindh Appellate Tribunal and Commissioner failed to appreciate that the Respondent No.1 was not a workman; that the learned Sindh Labour Court had rendered a correct verdict based on appreciation of evidence that Respondent No.1 was not a “workman” as defined under the Ordinance, 1968 and was therefore, not entitled to statutory gratuity; that the learned Sindh Labour Appellate Tribunal wrongly held that under section 15 of the Payment of Wages Act, 1936 claim for gratuity can be adjudicated upon by the Respondent No. 2; that the Respondent No. 2 had no jurisdiction to adjudicate question of gratuity under the law. The learned Sindh Labour Court had very rightly come to the conclusion that the Respondent No.1 was not employed as workman; that burden of proof was on the Respondent No. 1 that he was a workman, which burden Respondent No.1 miserably failed to discharge; that the Respondent No.4 failed to appreciate that the proceedings pending before him were of Revision and not that of Appeal; that on the question of fact, the learned Sindh Labour Court had rendered a finding that the present Respondent No.1 was not a workman as defined in section 2(i) of the Ordinance of 1968 and on the contrary finding of

learned Appellate court is based on misreading and non-reading of the evidence and as such the order passed by the learned Sindh Labour Court could not have been disturbed, in exercise of the revision powers. He 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-Company and learned AAG and with their assistance carefully gone through the material placed on record.

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

***Whether the learned Commissioner Workmen's Compensation and Authority, Hyderabad Sindh, has jurisdiction to adjudicate the matter between the parties?***

8. To appreciate the above proposition of law, there are certain classifications of Workmen under Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, , which are classified as under:-

- 1. Permanent,**
- 2. Probationers,**
- 3. badlis,**
- 4. Temporary,**
- 5. Apprentices,**
- 6. Contract worker**

9. As per section 2(i) "Workman" means any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or electrical work for hire or reward. As per schedule attached thereto, which provides definitions that is:-

***b) A "permanent workman" is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment including breaks due to sickness, accident, leave, lock-out, strike (not being an illegal lockout or strike) or involuntary closure of the establishment; and includes a badli who has been employed for a continuous period of three months or for one hundred and eighty three days during any period of twelve consecutive months.***

***c) Probationer is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months service therein. If a permanent employee is employed as a probationer in a higher post he may, at any time during the probationary period of three months, be reverted to his old permanent post.***

***d) A "badli is a workman who is appointed in the post of a permanent workman or probationer, who is temporarily absent.***

***e) A "temporary workman is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a period not exceeding nine months.***

***f) An "apprentice is a person who is an apprentice within the meaning of the Apprenticeship Ordinance, 1962 (LVI of 1962)].***

***g) "Contract Worker" means a workman who works on contract basis for a specific period of numeration to be calculated on piece rate basis."***

10. We have also perused the definition of Worker and Workman given in section 2 (xxxii) of the Sindh Industrial Relations Act, 2013 as under:-

***“Worker and Workman” mean person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment be expressed or implied, and, for the purpose of any proceedings under this Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity.”***

11. From the bare perusal of the above definition, the worker and workman mean that person not falling within the definition of ‘employer’ who is employed as a supervisor or as an apprentice but does not include a person, who is employed mainly in managerial or administrative capacity. On the other hand, the ‘employer’ as defined in the Ordinance/Act includes a person, who is proprietor, director, manager, secretary, agent or officer or person concerned with the management of the affairs of the establishment. The term ‘officer’ is specifically mentioned in the definition of term the ‘employer’ However, as has been noted from the above definition, the Courts have not considered the designation of a person to be a factor determining his status of employment in an establishment to be that of an officer or a workman rather the Court has always considered the nature of duties and functions of a person to be the factor, which will determine his status as to whether he is a workman or not. Our view is supported by the decision rendered by the Hon’ble Supreme Court in the case of National Bank of Pakistan and another Vs. Anwar Shah & others (2015 SCMR 434).

12. We have also gone through the order dated 18.10.2010 passed by Respondent No.2, an excerpt of the same is reproduced as under:-

**“ After going through the entire file my findings on such issue are as under:-**

**Issue No. 1,2 3:- The Respondent side admitted that the applicant was permanent employee as a store incharge and voluntarily resigned from his service on 04.03.2008 he had no power of hiring and firing and he was a workman. As such the application of the applicant is maintainable under the law. The factory of Respondent is registered under the Factory Act and the same falls within jurisdiction of this Authority. Thereafter this Authority can adjudicate this matter according to law.**

**Issue No.4:- As the respondents side has failed to deposit the amount of legal dues of the applicant where as the applicant is entitled to his claim, this issue is settled in favour of applicant.**

**Keeping in view the above position and detailed discussion. As the respondent had already paid gratuity to Muhammad Hafeez in Case No. 09/2008 (15) when the designation of Mehdi Khan was same as that of Muhammad Hafeez. As such I allow the application of the applicant and direct the respondent side to deposit the amount of Rs. 3,78,000/- being legal dues of the applicant with payment to the applicant.”**

13. The order passed by Respondent No.2, was upset by the order dated 15.09.2011 passed by the learned Sindh Labour Court No. VI, Hyderabad, based on the sole ground that Respondent No. 1 is not workman and cannot invoke the jurisdiction of the Respondent No.2.

14. 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 and rightly concluded the same in favour of Respondent No.1, which in our view does not requires any further deliberation.

15. We have perused the deposition of representative of the Petitioner-Company, who has stated certain facts, which supports the stance of Respondent No.1 that he was not working in the capacity of officer. It has also come on record that the Petitioner-Company had paid gratuity to one Muhammad Hafeez in case No. 09/2008 having the same designation and nature of job as that of Respondent No. 1.

16. In view of the foregoing, we are of the considered view that the Respondent No.1 was rightly granted the relief by the Respondent No.2 under the Payment of Wages Act, 1936.

17. In view of our finding in preceding paras, we have reached to the conclusion that the duties assigned to the Respondent No.1 were of clerical and manual in nature, therefore, we concur with a view taken by the Respondent No.2 through its order dated 18.10.2010 and the Sindh Labour Appellate Tribunal's order dated 23.09.2013. The findings of learned Labour Court No VI, at Hyderabad, are not based on the correct appreciation of the law and was rightly rejected by the Revisional Court.

18. Reverting to the question raised by the learned counsel for the Petitioner that once Petitioner resigns from the employment, he is not entitled for the payment, gratuity and compensation under section 15 of the Payment of Wages Act 1936. The word resignation has been defined in Corpus Juris Secundum, Volume LXXVII at page 77 as follows:-

***“Resignation:- It has been said that ‘resignation’ is a term of legal on, having legal connotations which describe certain legal results. It is characteristically the voluntary surrender of a position by the one resigning, made freely and not under duress, and the work is defined generally.”***



19. It is well settled that when a public servant / permanent workman submits a letter of resignation, his service/ employment stands terminated from the date on which the letter of resignation is accepted by the Competent Authority. Learned counsel for the Petitioner has failed to place on record that the resignation tendered by the Respondent No.1 was accepted by the Petitioner-Company as per their letters dated 18.03.2008, 10.04.2008 and 24.04.2008. Record also does not reflect that any disciplinary action was taken against the Respondent No.1 for his alleged act of late handing over the charge of Store keeper.

20. Record further reveals that the Respondent No.1 served the Petitioner-Company since 01.09.1986 and left his job on 04.03.2008, which service of the Respondent No.1 comes to 22 years. As far as gratuity is concerned that is a monetary benefit given by the employer to his employee at the time of retirement and the Petitioner-Company is responsible for pay salary and other legal dues of its employee for the period they have served. This issue has been dealt with by the Respondent No.4 in accordance with law, hence does not warrant our interference.

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 for a. Moreover also we do not see any illegality, infirmity or material irregularity in the orders passed by the learned Sindh Labour Appellate Tribunal and the Respondent No.2 respectively.

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

23. These are the reasons of our short order dated 15.02.2018 whereby we dismissed the captioned Petition.

JUDGE

JUDGE

Karachi  
Dated: 16.2.2018.

**Shafi Muhammad P.A**