

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: SALAHUDDIN PANHWAR, J.

CP NO.S-510/2018

Petitioner : SESSI United Staff Union Sindh and another.
Through Mr. Muhammad Nishat Warsi,
advocate.

Respondents : Province of Sindh and others.
Through barrister G. Shabbir Shah, Additional
Advocate General Sindh.
Mr. Javed Bukhari advocate for respondents
No.2 to 4.
Mr. Sarmad Hani advocate for proposed
interveners.

Date of hearing : 06.03.2018.

Date of order : 06.03.2018.

ORDER

By this order I decide injunction application filed by SESSI United Staff Union Sindh through its General Secretary, praying therein; suspension of list of members provided by respondent No.2 (Sindh Employees Social Security Institution – SESSI); direction that holding referendum process on earlier list; staying the referendum scheduled on 07.03.2018, as same is without deciding the objections filed by petitioners.

2. Precisely relevant facts, as set out in the petition, are that petitioner is collective bargaining agent (CBA) of SESSI; respondent No.1 is the Province of Sindh and by law managing the affairs of labour class through Secretary Labour Department; offices of SESSI are established in whole province, some of the institutions are not covered under the Industrial Relations Act; though all trade

unions as well as employers have filed their list of members and list of employees for the purpose of preparation of voter list which contains 754 names; list of members is extended to 1100 by including workers working in the Institution for healthcare which does not fall within the definition of 'establishment' hence list is disputed; in case referendum is conducted, same would prejudice rights of petitioners.

3. Respondents filed their comments contending that petitioner is not a Collective Bargaining Agent of SESSI as petitioner was elected in the referendum in the year 1999; since then occupying the affairs of the body whereas its term as provided under the law is for two years only; list containing 1100 members is valid and employees included in that list fall within the definition of workmen and none of them is above grade-4; the employees working in medical institution established by SESSI included in the list are not part of paramedical staff and their service is transferable likewise services of other members, including petitioner, hence objection to that list as provided, is not maintainable.

4. Learned counsel for petitioner while reiterating the facts as pleaded above, contends that Registrar of Trade Unions was required to decide their objections first; hospital employees do not fall within the definition of workmen; many employees who are in the list joined service before 1999 but they did not participate in the referendum held in 1999 hence joining of those persons at this stage is illegal. He emphasized over subsection (1) of section 3 of Sindh Employees' Social Security Act 2016.

5. On the other hand, learned counsel for respondents and proposed interveners, contend that instant petition is not maintainable as same involves factual controversy; that the list containing all the members who are falling within the scope of workmen and petitioner cannot delay the referendum as their term was for two years only while they are occupying the office since 1999 as well as no irreparable loss would be caused to them. Reliance is made on the case of *Pakistan National Shipping Corporation Staff Union vs. Registrar of Trade Unions and others* [2006 PLC (Labour) 21].

6. Heard the parties and perused the record *carefully*.

7. While deciding injunction application the Courts are required to see prima facie case, balance of convenience and irreparable loss. In the case of *Feroz Ali Gaba v. Fishermen's Cooperative Society Ltd. & 2 Ors* (authored by me), it is held as:-

“8. Before going any further on merits of the instant application (s), it would be just, proper and necessary to mention that an injunction is not to be granted where the party, claiming injunction, fails in establishing co-existence of all three required ingredients for grant of injunction which are ***‘prima facie case, balance of inconvenience and irreparable loss / injury’***. It is always necessary to give due meaning and weight to each ingredient because each is not simply a word but a circumstance showing existence of some fact to a prudent mind. It is not the claimed rights, convenience of a party or investment and even an apprehension of some loss or injury but what shall make one entitled for grant of injunction is:-

- (i) **Prima facie case is existence of legal right** which should appear to a prudent mind with a probability of success at the end of the day;
- (ii) **Balance of inconvenience is existence of circumstance (s)** through which the plaintiff establishes that his inconvenience shall be greater than that of opposite party if injunction is not granted;

(iii) Irreparable loss / injury do not refer to a damage or loss which can be ascertained or compensated but to such an injury which cannot be adequately compensated.

It should always be kept in mind that plaintiff has to establish co-existence of all said ingredients through pleading, documents attached therewith and affidavit, so sworn in support of the injunction application. Through discretionary powers, including Under Order XXXIX Rules 1 and 2 C.P.C. the Court is bound to protect legal rights, their infringements, malafide exercise of jurisdiction by an authority but such discretion should always to be used in aid of justice, equity and fair play but not in aid of a prima facie illegality or improper relief.”

8. Reverting to merits of the case, at the outset it would be conducive to refer the dictum of this Court in the case of Pakistan National Shipping Corporation Staff Union *supra*, wherein it is contained that :-

“In brief through this constitution petition the petitioners seek a verdict to declare that the "Junior Executives" come within the meaning of "worker and workmen and thereby eligible to cast their respective votes.

In their parawise comments, respondent No.8 have specifically asserted that the "Junior Executives" working in their establishment are part and parcel of the management of their establishment and perform managerial as well as administrative duties and do not come within the meaning of "workers and workmen" as defined under the Industrial Relations Ordinance 2002; it is further specifically pleaded that the said "Junior Executives" are members of Pakistan National Shipping Corporation Officers" Association and they are contributing/ paying monthly subscription to such association; further; elections of the said association having already held on 18.4.2005, all such "Junior Executives/Officers" falling in Grades IX and XIII had actually cast their respective votes to elect the office-bearers of Pakistan National Shipping Corporation Officers' Association.

The facts and circumstances involved in this constitution petition do not require to look into the question as to whether or not the Registrar of Trade Unions competently changed his stand as to the status of the Junior Executives of respondent No.8; suffice it to say that on the face of the above quoted stand taken by the respondent No.8, it is purely a matter of evidence to

arrive at a proper conclusion as to whether or not the "Junior Executives" working under respondent No.8 come within the meaning of "workers and workmen" as defined by the Industrial Relations Ordinance 2002; the, disputed questions of fact can neither be entertained by this Court by means of constitution petition nor any evidence can be allowed to be adduced in support and against the same under the constitutional jurisdiction of this Court; the petitioners are duty bound to approach the proper forum constituted under the relevant provisions of law to first seek a judicial verdict on the status of "Junior Executives" working under the respondent No.8 as is being disputed; in the absence of such a competent judicial verdict regarding their status, nobody else is competent to say as to whether or not the "Junior Executives" are entitled to cast a vote/votes in the referendum to elect Collective Bargaining Agent.

Consequently, this constitution petition is found to be not maintainable which is thereby dismissed in *limini* along with listed Miscellaneous Applications.”

9. From above case, it is quite evident that *extra ordinary* constitutional jurisdiction is not available for entertaining and deciding the *disputed* questions. A question involving ‘*determination of status of one as workmen or otherwise*’ *prima facie* falls within meaning of *disputed* question therefore, maintainability of such a *lis* itself would be a question requiring determination *first*. I would not hesitate in saying that where *maintainability* of a *lis* itself questionable, particular in view of already laid *dictum*, then plea of existence of *prima facie case* would not be available because in such eventuality the requirement of ‘probability of success in end to a prudent mind’ (*prima facie case*) will fall short. This alone would be sufficient for with-holding the *interim* relief as same is always subject to **co-existence of all three ingredients.**

10. Admittedly all members within the list of 1100 employees are not above grade-4 and *prima facie* fall within the definition of workmen however determination whereof is left open for the proper forum / authority. Petition with regard to employees of

medical institution for the care of sick, infirm, etc. it is categorically contended that they are not from paramedical staff and even have no concern with the care of sick and infirm persons. Such *disputed* claims legally cannot be determined by this forum else it would seriously prejudice the authority and domain of proper forum so constituted for such *questions*. Moreover, petitioners were elected in the referendum in 1999 and their term was for two years only; for the last 18 years they are occupying the affairs of employees of SESSI hence *prima facie* are not likely to be suffered from any harm/ prejudice on conduct of *referendum* which *otherwise* was to be conducted after *expiry* of legal term. Their objection with regard to the other employees is not maintainable in constitutional jurisdiction of this court which is meant to protect *fundamental* rights of all even those, not present before the Court particularly when the petitioners *themselves* are workers and they are raising objection against other workers, hence this is not a case whereby petitioners would be deprived of their legal rights and irreparable loss would be caused to them. According, instant application is dismissed. These are reasons for short order 06.03.2018.

To come up on 04.04.2018 when the counsel for the petitioners shall satisfy the question of maintainability of petition in view of *dictum*, laid in the case of Pakistan National Shipping Corporation Staff Union *supra*.

J U D G E