

IN THE HIGH COURT OF SINDH, KARACHI

C.P. NO. D- 219 of 2019

PRESENT:

Mr. Justice Khadim Hussain Shaikh

Mr. Justice Arshad Hussain Khan

M/s. Combined Industries

vs.

Shabir Hussain and another

Petitioner: Through Syed Inayat Hussain Shah, Advocate

Respondents 1&2 [In person]

Upon Notice: Mr. Abdul Jalil Zubedi, AAG

Date of hearing: 19.03.2019

JUDGMENT

ARSHAD HUSSAIN KHAN, J. The petitioner through instant constitutional petition challenging a consolidated judgement dated 22.11.2018, passed by Learned Member, Sindh Labour Appellate Tribunal, Karachi [SLAT], in Appeal No.KAR-58/2018 and Appeal No.KAR-59/2018, filed by Respondents 1 and 2 respectively as well as Appeal No. KAR-67/2018 filed by petitioner, has sought the following reliefs:

“a) In view of the aforesaid facts and circumstances, it is respectfully prayed by the petitioner company that this Hon’ble Court may be pleased to call record from Sindh Labour Court No.3rd at Karachi in application No.01/2015, application No. 12/2015 and record from SLAT at Karachi and after perusal of the same this Hon’ble Court may be pleased to set aside the order dated 15.05.2018 and order dated 22.11.2018, which are illegal, without jurisdiction, without applying judicial mind, and having no force at all.

b) Any other better relief which this Hon’ble Court may deem fit and proper under the circumstances of the case.”

2. Brief facts leading to filing of the present petition are that two grievance petitions bearing No. 01 & 12 of 2015, under Section 12 (3) of Standing Orders Ordinance 1968, read with Section 34 of SIRA, 2013, were filed by respondents 1 and 2 respectively against the petitioner for their reinstatement in service along with all back benefits.

On 15.05.2018, the said grievance petitions were disposed of whereby Learned Labour Court awarded compensation of fourteen (14) months basic pay for respondents in lieu of their re-instatement in service. The said order of Labour Court was challenged before the Learned Member, Sindh Labour Appellate Tribunal, Karachi, by respondents in Appeals No.KAR-58/2018, & No.KAR-59/2018 and the petitioner in Appeal No. KAR-67/2018. The said appeals were subsequently disposed of through a consolidated judgement passed by the Learned Member, SLAT, on 22.11.2018, whereby an amount of Rs.200,000/- was awarded to each respondent [as full and final payment for severance of respondents' employment relationship with the petitioner], instead of fourteen (14) months basic pay. The aforesaid judgement of SLAT and the Order dated 15.05.2018, passed by the Learned Labour Court impugned by the petitioner in the instant petition, inter alia, on the grounds: that the impugned judgements/orders are untenable in law as the same are contrary to the facts and law and have been passed without applying the judicial mind; further the forums below while passing the impugned judgements/orders have completely failed to take into consideration the evidence available on the record.

3. Upon notice of the present petition, the respondents appeared in person and stated that they themselves will argue their case as they do not have financial capacity to engage a counsel in the matter. According to them the judgement impugned before this Court was passed in accordance with the law after taking into consideration all the material available on the record, hence the same cannot be challenged in the present petition and as such the same is liable to be dismissed.

4. From a perusal of the record, it also appears that on 07.02.2019, the petitioner pursuant to the directions of this Court in the present petition deposited an amount of Rs.400,000/-, the compensation awarded to the respondents in the impugned judgement dated 22.11.2018, with the Nazir of this Court.

5. Learned counsel for the petitioner during the course of his arguments has contended that the impugned judgement is not sustainable in law and liable to be set-aside as both the forums below while passing the orders have failed to consider the fact that respondents were daily wages workers and they worked with the

petitioner less than six months and thereafter, they themselves left the job and received their dues according to the law without recording any protest. Learned counsel argued that both the forums below have also failed to take into consideration the fact that the grievance petition of respondent No.1 was time barred as the same was filed after the laps of prescribed time. It is further argued that the respondents have also failed to prove his case before the Learned Labour Court and that the Learned Member, SLAT, failed to consider the material available on the record, yet it awarded compensation of Rs.200,000/- to each of the respondents. He further argued that the impugned judgement is void and this Court under supervisory jurisdiction can entertain the present constitutional petition. Lastly, argued that this Court in its constitutional jurisdiction is vested with the power to undo any action or order, which is a result of an arbitrary exercise of authority, and/or passed without jurisdiction.

6. Conversely, respondents in their arguments have contended that the present petition is not maintainable in law as the judgement impugned in the present proceedings was passed in accordance with the law after taking into consideration all the material available on the record, therefore, the petition is liable to be dismissed. Lastly argued that they are poor persons and jobless since 2014 and as such are facing very hard time. In the circumstances, the amount so deposited by the petitioner in this case may be ordered to be released to them.

7. Learned Additional Advocate General, Sindh, upon notice, supports the impugned judgment and submits that the impugned judgment is just, fair and equitable, hence the same is not liable to be interfered with in the present proceedings.

8. We have heard the learned counsel for the petitioner and the respondents 1 & 2, who appeared in person, and perused the documents available on the record.

9. From a perusal of the record, it transpires that the learned Labour Court after considering the evidence passed the orders in grievance petitions bearing No. 01 and 12 of 2015 and decided the issue No.3 "*What should the order be*"? in the following manner:-

“ Issue No.3: As I have observed on Point Nos. 1 & 2, that the applicants were the employees of the respondents establishment

as a ‘Mechanic’ and ‘Weaver’ from the year 2014, and their oral termination / dismissal by the respondents establishment are illegal and unjustified and orders for dismissal of the applicants are accordingly set aside and the grievance notices were duly served through Pakistan post upon the respondents establishment. Now the question arises what should be the appropriate reliefs for the applicants?

As for the just and proper orders in the facts and circumstances that applicants had filed the present grievance petitions/applications in the year 2015, since then they are in litigation. Because of the litigation in between the parties and in the wake of such strength relations between them. There is no evidence on record to show whether the applicants are in other service or not. Therefore, keeping in view of mitigating circumstances of the instant grievance petitions, including length of services. I am not inclined to reinstate in service will not be viable or productive. It will not be proper to impose an unwanted workers upon on unwilling employees. However, under these circumstances compensation for fourteen(14) months basic pay for the applicants for last drawn are awarded as provided under Section 46(5) of IRO, 2002, in lieu of reinstatement of applicants in services. For this reference may be made to case laws reported in PLD 1962 SC 60, and PLD 1966 SC 765. However, respondents establishment is directed to comply the order within thirty (30) days of passing of this order. The grievance petitions/applications filed by the applicants are partly allowed in the above terms.”

[Emphasis supplied]

The petitioner as well as both the respondents have challenged the above said judgment in Appeals No.KAR-58/2018 & No.KAR-59/2018 filed by Respondents 1 and 2 respectively and Appeal No. KAR-67/2018 filed by the petitioner. Learned Member, SLAT, who after hearing learned counsel for the parties disposed of the said appeals through a common judgement dated 22.11.2018, which is impugned in the present proceedings. Relevant portion whereof for the sake of ready reference is reproduced as under:-

“21. The labour court has awarded compensation equal to 14 months basic pay to each worker but without determining the amount of the basic pay for which they will have to go through a fresh round of litigation. In order to save the parties from further litigation, it will be proper to fix the amount to be paid to the workers as full and final payment. Keeping in view all the facts and circumstances, including length of litigation, length of worker’s service, the amount of their wages, rate of inflation, general conditions of textile industry, which are not good these days, a reasonable amount of Rs.200,000/- is awarded to each worker as full and final payment for severance of their employment relationship with the employer, which the employer is directed to deposit within 30 days for payment to the workers. The appeals are disposed of accordingly.”

[Emphasis supplied]

10. From the perusal of the above orders, it appears that the decision of the Labour Court was not upset by Learned Member, SLAT, and in fact the said decision was modified only to the extent of compensation as instead of fourteen (14) month basic salary, a fixed amount of Rs.200,000/- was awarded to each respondents as full and final payment for severance of respondents' employment relationship with the petitioner.

11. From the perusal of the pleadings and the arguments submitted on behalf of the petitioner, it appears that the petitioner through present petition has sought reappraisal of the evidence by this Court to arrive at a conclusion other than what have been arrived at, concurrently, by the learned forums below. In this regard, it is a settled proposition of law that, where there are concurrent findings of facts recorded by the courts below against the petitioner, this Court under its constitutional jurisdiction cannot reappraise the evidence in the matter, as such jurisdiction besides being discretionary in nature is very limited and not plenary in nature. Reference can be made to the case Messrs MEHRAJ (PVT.) LTD. v. Miss LAIMA SAEED and others (2003 MLD 1033). Moreover, the question pertaining to appreciation of facts cannot be resorted to in exercise of constitutional jurisdiction as by doing the same it would amount to converting the petition into a revision or second appeal whereas a writ petition is not a substitute either of a revision or a second appeal.

12. It is also well settled that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the frame work of the Constitution, and if there is any error on the point of law committed by the courts below or the tribunal or their decision takes no notice of any pertinent provision of law, then obviously this Court may exercise constitutional jurisdiction subject to the non-availability of any alternate remedy under the law. This extraordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation. This constitutional jurisdiction is limited to the exercise of powers in the aid of curing or making correction and rectification in the order of the courts or tribunals below passed in violation of any provision of law or as a result of exceeding their authority and jurisdiction or due to exercising jurisdiction not

vested in them or non-exercise of jurisdiction vested in them. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice. However, if it is found that substantial justice has been done between the parties then this discretion may not be exercised. So far as the exercise of the discretionary powers in upsetting the order passed by the courts below is concerned, this Court has to comprehend what illegality or irregularity and/or violation of law has been committed by the courts below which caused miscarriage of justice. Reliance is placed upon the case of *Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others (2015 PLC 259)*.

13. Reverting to the case in hand, the precise ground to challenge the impugned judgments is that both the forums below did not consider the evidence available on the record and the plea taken by the petitioner before the Learned Labour Court as well as Learned Member, SLAT, was not considered. Whereas from the perusal of the impugned judgements, it appears that both the forums below while passing the impugned judgements have taken into consideration the evidence available on the record. Furthermore, the learned Member, SLAT, while modifying the award of compensation fixed the amount of compensation as full and final payment for severance of respondents' employment relationship with the petitioner, keeping in view all the factors including length of litigation, length of service of respondents, the amount of their wages, rate of inflation and general condition of textile industry. Moreover, learned counsel for the petitioner also could not point out any substantial error and or any illegality, infirmity or jurisdictional error in the impugned judgement, which could warrant interference by this Court in extra ordinary jurisdiction of High Court as such the judgements impugned herein are well reasoned, fair, equitable and in accordance with law. On the touchstone of the legal precedents referred to above, we do not find any merit in the case.

14. The upshot of the above discussion is that in the instant case the two forums below have given concurrent findings of facts against the petitioner, against which the petitioner has not been able to bring on record any concrete material or evidence whereby such findings could be termed as perverse or having a jurisdictional defect. In the

circumstances, no case for interference is made out, hence the present constitutional petition being devoid of merit is dismissed. The amount so deposited by the petitioner with the Nazir of this Court along with profits accrued thereon, if any, may be released to respondents 1 & 2 upon proper verification and identification.

Judge

Judge

Karachi

Dated: 22.03.2019