

# IN THE HIGH COURT OF SINDH AT KARACHI

**C.P No. S-1632 of 2016**

Present

Mrs. Justice Kausar Sultana Hussain

Muhammad Sabir.....Petitioner

Versus

Commissioner for Workmen's Compensation & Authority & another.....Respondents

Date of Hearing 16.04.2018

Date of Order 17.07.2018

Mr. Chaman Lal, advocate for petitioner

Mr. Ghulam Murtaza Saryo, advocate for respondent No. 2.

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

**Kausar Sultana Hussain, J.** :- This petition is directed against the order dated 15.6.2016 passed by the Commissioner for Workmen's Compensation and Authority under the payment of Wages Act (South Division), Karachi, respondent No. 1, whereby setting aside the exparte order and allowed the respondent No. 2 to file written statement within two weeks.

2. Relevant facts necessary for disposal of instant petition are that petitioner filed an application under section 15 of the Payment of Wages Act, 1936 against the respondent No. 2 for a claim of gratuity amounting to Rs. 1,24,000/- with ten times compensation. After admission, on failure of respondent No. 2, proceeding was declared exparte. The petitioner filed affidavit in exparte proof on 12.8.2014 to the tune of Rs. 1,24,000/-, vide order dated 19.8.2014. Thereafter, the respondent No. 2, moved application for setting aside the exparte order before the authority on or about 22.08.2014, which was resisted by the petitioner, filed counter objection and after hearing both the parties, exparte orders

were set aside, vide order dated 15.06.2016. Aggrieved by the said order, the petitioner has preferred this petition.

3. The learned counsel for the petitioner has stated that the authority under payment of Wages Act, allowed the application inspite of its being fettered by time. He has further pointed out that respondent No. 2 firstly on 22.08.2014 moved an application for recalling of the said order, which was dismissed by the trial authority on 24.3.2015, but the trial authority on the same day passed another order, whereby it recalled earlier order without any application. He has further argued that on 15.4.2015, the trial authority again dismissed the said application of the respondent No. 2 for recalling of exparte order dated 19.08.2014. He has further stated that after a long delay, the respondent No. 2 filed another application under Rule 8 (2) of payment of Wages (Procedure) Rules, 1937 for correction of the dairy sheet order dated 15.04.2015, which was also dismissed by the trial authority vide order dated 16.09.2015. He further pointed out that despite all codal formalities the respondent No 2 did not comply the orders of compensation and again third time moved another application on 18.09.2015 for recalling of order dated 16.09.2015 with his own affidavit, without any authority of the respondent No. 2 resisted by the petitioner by filing objection. He has argued that the trial authority keeping aside all earlier dismissal orders passed on application for restoration of matter, passed the impugned illegal order and travelled beyond its jurisdiction. He has further argued that impugned order is perverse and unlawful, liable to be reversed.

4. In rebuttal the learned counsel for the respondent No. 2 has supported the impugned order and stated that the same was passed by the respondent No. 1 on cogent reasons and merits. He has further argued that the Hon'ble Apex Courts in a series of cases have held and

favoured adjudication on merits and also held that no one should be condemned unheard. He has further argued that trial authority passed the impugned order lawfully as provided under the Rules within its jurisdiction and recognized the fair opportunity to defend the case to be provided to the respondent No. 2, hence instant petition merits no consideration. In support of his contentions, he has relied on 2008 PLC 60 (Karachi), 2010 PLC 510 (Karachi) and 2011 PLC 208 (Sindh).

5. Considered the submissions and perused the impugned order, so also available record in the perspective of relevant provisions of law. Bare reading of ex parte order dated 19.08.2014 passed by the trial authority, it appears that on the basis of service through TCS dated 19.05.2014, the matter was straight away fixed for hearing on 21.05.2014 and subsequently on failure of the respondent No. 2 passed ex parte order in favour of petitioner. It is also noted that on application for recalling the order dated 18.8.2014, moved on behalf of the respondent No. 2 on 22.08.2014, the trial authority passed two orders, firstly "allowed" with another order to "issue notice to other side", subsequently, on 24.03.2015, the said application was dismissed and on the same dated passed another order and reopened the case with the observation that earlier order was passed, due to oversight, once again, on 15.04.2015, the trial authority passed another diary sheet as follows :

*"Both sides present, as I have already passed order and allowed recalling. Due to oversight I proceed to filing of W/S without hearing both the sides. After hearing both the parties and being satisfied I dismissed the application for recalling the order dated 19.08.2014. Case disposed off."*

6. On examination of record, it is found that the trial authority passed number of orders, referred above by committing mistakes observing to

have been passed, due to over sight. It may be observed that such acts of the Presiding Officer of the trial authority appears to be unjustified and showing extreme lack of concentration towards the legal proceedings adjudicated upon. Such a unlawful manner of proceedings adopted by the Presiding Officer of the trial authority is un-warranted and cannot be recognized under the law, rather it has not only caused inordinate delay of the proceedings but also over burden the either side. No party could be condemned on account of confusion created by itself. The apex court in case of **Iftikhar Baig V. Azam & others. (1996 SCMR 762)** has been pleased to held **"that no act or omission of the court should be allowed to prejudice rights of parties and court is bound to rectify error brought to its notice."**

7. Having said so and in the attending scenario on record, the present Presiding Officer being the Authority under the payment of Wages Act (South Division), Karachi with mode of service adopted till passing of exparte order, passed rightly recalling the exparte order and committed no illegality in providing a fair opportunity to the respondent No. 2 to place their defence, so as to decide the controversy on merits. Rule 8 of payment of Wages (procedure) Rules, 1937 empowers the Authority under which it could recall an exparte order.

8. For the reasons, recorded above, I found no lawful justification to interfere with the impugned order under this Constitution Petition. Consequently, instant petition is hereby dismissed. The trial Authority is directed to dispose of the application of the petitioner as per law expeditiously, without any further delay. Order accordingly.

J U D G E