

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

### **Present:**

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

### **C.P No.D-714 of 2016**

Mst. Mehfooza Bano ..... Petitioner

Versus

M/s Haji Ahmed Memorial  
Dispensary and others ..... Respondents

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### **Date of hearing: 01.11.2018**

Naseer Ahmed, Attorney of the Petitioner along with the Petitioner present in person.

Mr. Muhammad Sharif Khawaja Advocate for the Respondent No.1.

Mr. Abdul Jalil Zubedi, Assistant Advocate General, Sindh.

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

**ADNAN-UL-KARIM MEMON,J:-** Through this Constitutional petition, the Petitioner has assailed the concurrent findings arrived by both the learned Sindh Labour Court No. II, Karachi (SLC) and the learned Sindh Labour Appellate Tribunal, Karachi (SLAT).

2. The basic claim of the Petitioner is that on 01.06.2008 she was appointed as Junior Nurse in the Respondent-Dispensary and her service was dispensed with on 17.09.2013 due to poor performance and bad conduct. Petitioner has submitted that for the purpose of seeking redressal of her grievance, she filed Grievance Application before the learned SLC, which was declined

vide Judgment dated 11.02.2017 on the ground that she failed to prove herself as worker in the Respondent-Dispensary and there was no relationship of 'Master and Servant' between the parties, therefore she was wrongly non-suited by the learned SLC. Petitioner being aggrieved by and dissatisfied with the aforesaid Judgment impugned the same before the learned SLAT which was also dismissed on the same premise.

3. During the course of arguments, Petitioner sought permission to allow her to assist this Court through her attorney Naseer Ahmed, permission was granted accordingly. He submitted that the Impugned Judgments passed by both the Courts below are contrary to the law; that the Learned Courts below have failed to appreciate the law applicable at the relevant time; that the learned Courts below erred in dismissing the matter of the Petitioner without appreciating the case law pronounced by the superior courts; that the learned Courts below failed to appreciate that the Petitioner was appointed as Junior Nurse in the Commercial Establishment/ Dispensary. He further added that her service was wrongly terminated by the Respondent-Dispensary in the month of September 2013 on false allegations of poor performance and bad conduct; that the learned SLC failed to appreciate the evidence brought on record in her favour and wrongly held that there was no relationship between the Petitioner and the Respondent No.1 under the Sindh Industrial Act 2013 (SIRA); that the learned SLC wrongly held the termination order of the Petitioner as illegal; that the both the courts below have failed to appreciate that Respondent No.1 does fall within the definition

of Commercial Establishment as defined in Clause IX of Section 2 of SIRA 2013; that the service of the Petitioner was terminated without holding an enquiry and without any notice. He lastly prayed for setting aside both the Judgments rendered by the learned Courts below.

4. Mr. Muhammad Sharif Khawaja, learned counsel for the Respondent No.1 has supported the impugned Judgments passed by the learned Courts below and argued that the instant petition is not maintainable against concurrent findings.

5. Mr. Abdul Jalil Zubedi, learned AAG has adopted the argument of the learned counsel for the Respondent No.1.

6. We have heard the Attorney of the Petitioner and the learned counsel for the Respondent-Dispensary as well as learned AAG and with their assistance have carefully gone through the material placed on record by both the parties.

7. The primordial questions in the present proceedings are as under:-

- i) **Whether the Petitioner was appointed in the Commercial Establishment as defined under Clause XVI of Section 2 of SIRA 2013?**
- ii) **Whether there was any relationship between the Petitioner and Respondent No.1 as a worker?**

8. Perusal of the Judgment passed by the learned SLC in Grievance Application No.125/2016 of the Petitioner, shows that the following issues were framed:-

- i) **Whether the Respondent is establishment as defined in section 1 of sub section 3 Clause V of the Sindh Industrial Relations Act 2013, and that**

**the application is maintainable under provision of Section 2 clause IX of Sindh Industrial Relations Act 2013?**

**ii) Whether the applicant was removed from her service illegally?**

9. We have noticed that the learned SLC after careful examination of the parties and evidence the learned SLC decided the aforesaid issues and held as under:-

*“In the light of the above discussions I have come to the conclusion that redressal of the grievance Under Section 34 of SIRA 2013 is not available to the applicant as the Provisions of SIRA 2013 cannot be invoked against a charitable service provider. Issue No.1 is therefore answered accordingly.*

**ISSUE No. II.**

*Since it has been held in issue No.1 that the respondent establishment does not fall within the definition of establishment defined in Clause IX of Section 2 of SIRA 2013 the provisions of clause IX of Section 2 mentioned above is reproduced for appreciation.*

*“establishment” means any office, firm, factory, society, undertaking, company, shop, premises or enterprise in the province of Sindh, which employees workmen directly or through a contractor for the purpose of carrying on any business or industry and includes or its departments any branches, whether situated in the same place or in different places having a common balance sheet and except in section 25 includes a collective bargaining unit, if any constituted by any establishment or group of establishments”*

*The relationship between applicant and respondent as a worker and establishment within the meaning of SIRA 2013 is not made out thus the relationship between the applicant and the respondent was that of master and servant. The servant in such cases cannot seek any relief against master under Sindh Industrial Relations Act 2013. The termination of the service of applicant by respondent therefore cannot be termed as illegal. Issue No.2 answered in negative.*

**ISSUE No. III.**

*In view of the findings on Issue No. 1 & 2 since the provisions of SIRA 2013 cannot be invoked against a charitable service provider and the termination of the applicant cannot be termed as illegal, therefore the application filed by the applicant is hereby dismissed with no order as to cost.*

10. The learned SLAT concurred with the decision of the learned SLC on the same premise.

11. We have scanned the Grievance Application of the Petitioner filed under section 34 of SIRA 2013 and the Judgment dated 11.02.2017 passed by the learned SLC and the Judgment dated 27.11.2017 passed by the learned SLAT. The findings of the learned SLC on the point of maintainability of the Grievance Application of the Petitioner were quite correct and had rightly arrived to the conclusion that the case of the Petitioner did not fall within the ambit of definition as given under Clause 2 (XXXII) of SIRA 2013.

12. During the course of arguments, we have been informed that the Respondent No.1 is registered under the Society Registration Act 1960 with the sole object of voluntarily social welfare activities. Record does not show that the Respondent Dispensary and Maternity Home is/was running on commercial basis to claim jurisdiction of the learned SLC.

13. In the light of aforesaid definition clause of Worker and Workman, we are of the considered view that the Petitioner was appointed in the Respondent Dispensary and Maternity Home, which provided basic medical treatment to sick and infirm persons, which is excluded from the Commercial Establishment as defined under Clause 2 (IX) of SIRA 2013, therefore at this juncture, the claim of the Petitioner in the present proceedings cannot be endorsed.

14. In the wake of above discussion, we are of the considered view that the concurrent findings arrived by the courts below cannot lightly be interfered with unless some questions of law or erroneous appreciation of evidence is made out. In our view, the learned trial court has dilated upon the issues in an elaborative manner and gave the findings by appreciating the legal position of the case. The learned SLAT also has considered every aspect of the case and thereafter passed explanatory judgment, therefore no ground existed for further appreciation of law on the point involved in the matter, thus we maintain the judgment dated 11.02. 2017 of the learned SLC and the Judgment dated 27.11.2017 of the learned SLAT.

15. In the light of 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 recorded by the two competent fora below and we also do not see any illegality, infirmity or material irregularity in their judgments warranting interference of this Court, hence the instant Petition is found to be meritless and is accordingly dismissed.

Karachi  
Dated: 12.11.2018.

JUDGE

JUDGE