

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**C.P. No.D-455 of 2013**

**Before:**

**Mr. Justice Abdul Maalik Gaddi**

**Mr. Justice Adnan-ul-Karim Memon**

Hyderabad Electric Supply Company  
Through its Chief Executive Officer ----- Petitioner

VERSUS

Qurban Ali Sahito and others ----- Respondents

**Date of hearing & decision: 16.09.2020**

Mr. Muhammad Arshad S. Pathan, Advocate for petitioner

Ms. Nasim Abbasi, Advocate for respondent No.1

Mr. Muhammad Humayoon Khan Deputy Attorney General alongwith  
Shafique Ahmed Manager (HR) HESCO and Ali Khan Deputy  
Manager (Services) HESCO.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through the captioned Constitutional Petition, the Petitioner-company has impugned the orders dated 30.1.2013 passed by learned Sindh Labour Appellate Tribunal (SLAT) in Labour Appeal No. HYD-35/2011, whereby while maintaining the order dated 23.02.2009 passed by learned Sindh Labour Court No.V1 (SLC) Hyderabad, reinstated the services of Private Respondent.

2. Brief facts of the case are that respondent No.1 was appointed in petitioner-company in the year 2003 and he continued his service till his termination on 31.10.2006. The prime allegations against him were that he was appointed on deceased quota of his deceased brother Rehmatullah Sahito, but he failed to support the widow and children of deceased Rehmatullah. The aforesaid allegations were inquired and culminated in termination of his service vide letter dated 31.10.2006. He preferred departmental appeal which bore no fruit, he preferred grievance notice and then filed grievance petition under section 46 of Industrial Relations Ordinance,2002 before learned SLC Hyderabad, which was allowed vide order dated 23.2.2009. Petitioner-company being aggrieved by and dissatisfied with the aforesaid order filed

Labour Appeal No. HYD 4 of 2011 before learned SLAT Karachi, the Appeal was dismissed vide judgment dated 30.1.2013. Petitioner-company being aggrieved by and dissatisfied with the aforesaid order and Judgment dated 23.2.2009 and 30.1.2013 respectively approached this Court on 30.3.2013.

3. We asked learned counsel to satisfy this Court with regard to maintainability of instant petition on the premise that there are concurrent findings of facts and law against the petitioner company.

4. Mr. Muhammad Arshad S. Pathan learned counsel for the Petitioner-company has contended that the impugned Orders passed by learned SLC and learned SLAT are full of errors, based upon misreading and non-reading of evidence; that the findings of learned courts below / Tribunals are arbitrary and perverse; that the averments of Petitioner-company made in affidavits-in-evidence were not considered in the impugned Orders, therefore both the Orders are nullity in the eyes of law; that both the courts below have failed to appreciate the material aspects of the matter; that learned Presiding Officer of SLC as well as Member of SLAT have failed to appreciate that the Private Respondent No.1 was appointed on deceased quota, therefore the impugned Judgments are illegal and against the law, thus are liable to be set aside; that both the courts below have failed to appreciate the legal as well factual aspect of the case therefore, Respondent No.1 was not required to be reinstated in service with back benefits; that learned SLAT failed to consider the grounds of Appeal agitated by the Petitioner-company; that both the courts below have failed to appreciate that the Grievance Application of private Respondent No.1 was not maintainable before learned SLC, therefore both the Orders cannot sustain on this score alone, and are thus liable to be set-aside; that learned SLC erred in granting back benefits to Private Respondent No.1; that Private Respondent No.1 has failed to prove through cogent evidence that he remained jobless during the intervening period; that the Petitioner-company did not come within the ambit of commercial establishment as per the definition of labour laws, therefore learned SLC had no jurisdiction to entertain the *lis* between the parties; that the post against which respondent No.1 was appointed was based on deceased quota and not on merits; that the wife of deceased filed C.P. No. D-535 of 2009 before this Court which was allowed vide order dated 28.10.2010 and assurance was given to the wife of deceased that her son shall be provided job in the petitioner company on

deceased quota according to his academic qualification. He lastly prayed for setting aside both the Orders rendered by the Courts below.

5. Ms. Nasim Abbasi learned counsel for private Respondent No.1 has supported the impugned Orders passed by learned courts below / Tribunal and contended that private Respondent No.1 was permanent worker in Petitioner-company, thus Grievance Application was maintainable under the law; that there are concurrent findings recorded by the competent forums under the special law and the grounds raised in the instant petition are untenable; that Petitioner-company terminated the services of private-Respondent No.1 without any notice and inquiry and did not pay dues to private Respondent No.1; that both the aforesaid Orders are passed within the parameters of law; that instant petition is frivolous, misleading as there are concurrent findings by the courts below and this Court has limited jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to dilate upon the evidence led by the parties; that private Respondent No.1 had performed his duties with full devotion; that private Respondent was terminated from service without any fault; that aforesaid action of Petitioner-company was absolutely illegal therefore private Respondent No.1 raised his grievance notice which was served upon the Petitioner-company, but was not redressed at the initial stage, that Respondent No.1 had no alternative remedy except to approach learned SLC; that learned SLC after recording evidence passed just, proper and fair Judgments in both the cases holding his termination as illegal and reinstated him in service with all back benefits and the Petitioner-company did not reinstate him and filed statutory appeal before learned SLAT; that learned Member SLAT after hearing learned counsel for the parties passed the Judgment however the Petitioner-company approached this Court. She lastly prayed for dismissal of instant petition.

6. We have heard learned counsel for the parties and with their assistance carefully gone through the material placed on record.

7. The primordial question in the present proceedings is whether the private Respondent No.1 was legally terminated from his service and was liable to be reinstated with full back benefits by learned SLC?

8. In order to evaluate the above legal proposition, learned trial court, framed the issues in the Grievance Application of Private Respondent and gave its findings in favour of Private Respondent No.1.

9. To appreciate the controversy in proper prospective, we deem it appropriate to have a glance on the evidence brought on record by the parties.

10. The affidavit in evidence / deposition of the parties in Grievance Application clearly depicts the factual position of the case which explicitly shows that the matter between the parties was decided as per issues framed by learned Trial Court on merits.

11. The learned SLC after recording evidence of the parties and hearing gave decision against the Petitioner-company. The learned Appellate Tribunal concurred with the decision of Learned SLC on the same premise. The impugned Orders passed by both the courts below explicitly show that the matter between the parties has been decided on merits based on the evidence produced before them.

12. We have scanned the evidence available on record and found the admission of the witness of the Petitioner-company in the case, which resolves the entire controversy with regard to the issue of jurisdiction of learned SLC. An excerpt of the order is reproduced as under:-

“In view of the above the cause of action accrued to the applicant on receiving the order of the competent authority, whereby his departmental appeal was rejected i.e. 31.1.07 and grievance notice was given on 27.2.07 within one month time and this application u/s 46(3) of IRO, 2002, was moved to this court on 19.3.07. According to the calculation of limitation u/s 46 of IRO; 2002 this application is within time. The point is answered in negative.

Admittedly the applicant was permanent employee of the Respondent and after removal from service the enquiry cannot legitimize the action taken earlier unless and until an enquiry is conducted and charges are proved. I would like to refer a copy of show cause notice dated 12.7.06 moved along with application A/2, wherein in paragraph No.2 Chief Engineer HESCO WAPDA Hyderabad has clearly stated as under:-

“ and whereas on the basis of documentary evidence available, it is not considered necessary to have formal enquiry against you and that proceedings are being initiated under Section 5(4) of the Removal from Service (Special Powers) Ordinance 2000 which might entail imposition of one or more major or minor penalties as specified in Section 3 of the said ordinance”.

Although the respondent has annexed the enquiry report and letters along with their written reply, yet they have failed to get it confronted to the applicant in cross examination as the applicant all along denying this fact that an enquiry against his misconduct or on the application of widow, the wife of his deceased brother Rehmatullah was ever conducted by respondent mismanagement. There is no denial to the claim of the applicant by the respondent that widow is receiving

pension and she was not ready to live in the house of his (applicant) father and she left the house along with her children. But he has stated in his statement that he is still ready to look after the widow and her children. The list of allegations is appearing at Ex. A/2-1. No gross misconduct has been reflected against the applicant which may result into major penalty of dismissal or termination of contract, therefore, the point No.2 answered in negative.

In view of discussion of above points, the service of the applicant was terminated without observing due process of law by the respondent, therefore, the applicant is hereby reinstated in service with all back benefits.”

13. From the aforementioned excerpt and deposition of private Respondent No.1, we have noticed that he was permanent employee of the Petitioner-company and the question of quota for the deceased has been kept open by the Petitioner-company which factum is mentioned in the order dated 28.10.2010 passed by this Court in CP No. D- 535 of 2009.

14. In view of the forgoing, we are of the considered view that learned SLC had the jurisdiction to entertain the grievance application of Private Respondent No.1.

15. Reverting to the claim of the learned counsel for the Petitioner-company that they have been condemned unheard by learned SLC and SLAT on the issues involved in the matter; record clearly reflects that learned SLC dilated upon the issues in an elaborative manner and gave its findings by appreciating the evidence of the parties; therefore, we do not agree with the assertion of learned counsel that they were unheard on the issues. Concurrent findings arrived at by the courts below cannot be lightly interfered with unless some question of law or erroneous appreciation of evidence is brought on record. We are of the view that learned Tribunal has dilated upon the issues in an elaborative manner and gave its findings by appreciating the evidence of the parties. The learned SLAT has considered every aspect of the case and thereafter passed an explanatory Judgment. We have also noted that in the present case, there is no material placed before us by which we can conclude that Impugned Orders have erroneously been passed by both the courts below, therefore no ground existed for re-evaluation of evidence, and thus, we maintain the order passed by learned SLC and the Judgment passed by learned SLAT. We are fortified by the decisions rendered by Hon’ble Supreme Court of Pakistan in the cases of Dilshad Khan Lodhi vs. Allied Bank of Pakistan and others (2008 SCMR 1530) and General Manager National Radio

Telecommunication Corporation Haripur, District Abotabad vs. Muhammad Aslam and others (1992 SCMR 2169).

16. In 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 forums below as we do not see any illegality, infirmity or material irregularity in the judgments warranting interference of this Court. Hence, the instant Petition is found to be meritless and is accordingly dismissed along with listed application(s).

JUDGE

JUDGE

Karar-hussain/PS\*