

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D -2966 of 2020

Raees Ahmed and 03 others

Versus

Karachi Dock Labour Board and another

Date of hearing

& order : 24.02.2021

Mr. Ayan Mustafa Memon, advocate for petitioner.

Mr. Bashir Ahmed, advocate for respondent No.1.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON, J. - In pith and substance, through this petition, the petitioners are seeking enforcement of Board Resolution (BR) 13(f)/2011 dated 14.05.2011 passed by the respondent-Karachi Dock Labor Board (KDLB). They are further asking for setting-aside the decisions dated 04.02.2020, and 21.01.2020 issued by respondent No.1 to the extent of calculation of their leave encashment.

2. At the outset, we directed the petitioners to satisfy this Court about the maintainability of the instant petition on the ground that the subject matter does not fall within the purview of Article 199 of the Constitution of the Islamic Republic of Pakistan 1973; and the Resolution bearing reference No.BR to the extent of clause 13(f)/2011 dated 14.05.2011 passed by the respondent- KDLB could be looked into under Sindh Industrial Relations Act, 2013; and, the petitioners have the adequate remedy to apply to the learned Labour Court for the redressal of any grievance or enforcement of any right guaranteed or secured to it or him by or under any law or any award or settlement.

3. Mr. Ayan Mustafa Memon, learned counsel for the petitioners, replied that respondent No.1 was established under Karachi Dock Labour Workers (Regulation of Employment) Scheme, 1973, for looking after the affairs of Karachi Dock Labour; that Karachi Dock Labor Board Management approved 70% leave encashment of the retired staff of KDLB vide resolution dated 14.05.2011 in terms of the memorandum of settlement signed with KDLB staff union on 14.5.2011, whereby the payment of the certain portion of leave encashment was allowed to all the retired staff since its approval from the Board with effect

from 01.07.2010 till 30.6.2012. He further pointed out that the Auditor General of Pakistan vide objections have raised many observations on various KDLB issues but none of the observations had been taken care of by the KDLB, except payment of 70% leave encashment and pension benefits over and above the prescribed rates-Rs.2.269 Million. His emphasis is that the Audit observation of the Ministry of Maritime Affairs in respect of the petitioners leave encashment are illegal, arbitrary, and not sustainable in law and/or fact on the premise that since the recommendation of the Public Accounts Committee did not receive as such the policy of the board was required to remain intact. He further argued that the decisions dated 04.02.2020, and 21.01.2020 taken by respondent No.2 are also illegal arbitrary, capricious, malafide, without jurisdiction, in violation of principles of natural justice, Section 24-A of the General Clauses Act and Article(s) 24, 25 r/w 4 of the Constitution, 1973 and the same are not sustainable in law and/or facts on the ground that the petitioners have been paid their retirement dues, however, their leave encashment was wrongly deducted in violation of the aforementioned decision of the Board. Learned counsel tried to justify the entitlement of the retired employees by referring to the table showing entitlement of leave encashment. In support of his contentions, he relied upon in the case of Muhammad Yousuf v. Karachi Dock Labor Board and 2 others (1986 CLC 1619), Karachi Dock Labor Board v. Gulbahar and other (1979 PLC 349) and Karachi Dock Labor Board v. Ahmed and 02 others 1982 PLC 36. He lastly prayed for setting-aside the impugned decisions dated 04.02.2020, and 21.01.2020 issued by respondent No.1 to the extent of calculation of leave encashment of the petitioners.

4. Conversely, Mr. Bashir Ahmed learned counsel for Respondent-KDLB, has argued that the instant petition is not maintainable because it involves factual controversy which requires evidence. Besides, no fundamental rights of the petitioners are violated; learned counsel referred to the various provision of Karachi Dock Labor Board Service Rules, 1977 and argued that subject resolution to the above extent could not be implemented under Rule 44 of Karachi Dock Labor Board Service Rules, 1977 and other enabling laws. He prayed for the dismissal of the instant petition.

5. Mr. Muhammad Nishat Warsi, learned Deputy Attorney General supported the contentions of learned counsel for the respondent-KDLB. However, he added that the petition is not maintainable as the subject matter does not fall within the purview of Article 199 of the Constitution of the Islamic Republic of Pakistan 1973. He further argued that the Petitioners are apparently and merely

beneficiaries of the Board Resolution BR. 13(f)/2011 dated 14.05.2011 passed by the respondent-Dock Labor Board, in haste, thus cannot invoke the Constitutional jurisdiction of this Court. He has further contended that the petition is not maintainable as the Petitioners are seeking the enforcement of certain clause of Board Resolution, which is ultra vires to the Karachi Dock Labor Board Service Rules 1977 and the Constitution; that KDLB passed a resolution in violation of the law, as the subject that is unconstitutional benefits are no more than ill-gotten gains and all such gains are liable to be returned to its owner; that the Petitioners were performing their duties for which they were paid just the same way as their contemporaries/co-workers, who were/are not entitled to any such illegal benefits of leave encashment beyond the entitlement under the law, therefore the Petitioners are not entitled to these benefits under the garb of Board Resolution. Lastly, he prays for dismissal of the instant petition.

6. We have heard the learned counsel for the parties and perused the material available on record and case-law cited at the bar.

7. In the first place, we would like to examine the issue of whether the Karachi Dock Labour Board was lawfully entrusted with the task to grant payment of leave encashment to the retired employees/beneficiaries and to pass such Board Resolution BR. 13(f)/2011 dated 14.05.2011 under Karachi Dock Labour Workers (Regulation of Employment) Scheme, 1973 (the Scheme, 1973) and subsequently ask for its implementation through the petitioners.

8. It is an admitted position that the Karachi Dock Labour Board is a statutory body established under the Karachi Dock Labour Workers (Regulation of Employment) Scheme, 1973. On merits, we have also noticed that the petitioners were performing their duties and stood retired against which they were duly paid their terminal dues/salaries; therefore, the question of additional benefits i.e. 70% leave encashment does not arise under the revised Leave Rules, 1980 as amended up-to-date. An excerpt of SRO.70(KE)/2012 dated 29.8.2012 is as under:

- a) In rule 17, for the words “one hundred and eight”, wherever occurring the words “three hundred and sixty-five” shall be substituted; and
- b) In rule 18-A,

i. In sub-rule (2), for the words “one hundred and eight” the words “three hundred and sixty-five shall be substituted;

ii. After sub-rule (2), amended as aforesaid, the following new sub-rules shall be inserted, namely:-

“(2A) Encashment of leave preparatory to retirement (LPR) not exceeding three hundred and sixty five days shall be effective from the first day of July, 2012 and shall, for the entire period of leave refused for opted for encashment, be applicable to a civil servant retired or, as the case may be, retiring on or after the first day of July 2012, provided such leave is available at his credit subject to a maximum of three hundred and sixty five days.

(2B) the encashment of LPR shall also be applicable to the employees of the autonomous and semi-autonomous bodies under Administrative control of the Federal Government which have adopted basic pay scales scheme and these rules in toto.”

iii. For sub-rule (3) the following shall be substituted, namely.

“(3) If at any time during such period, leave is granted on account of ill health supported by medical certificate or for performance of Hajj, the amount of cash compensation on account of leave pay shall be reduced by an amount equal to the leave pay for the period of leave so granted”, and

iv. After sub-rule (5) the following new sub-rule shall be added namely:-

“(6) Leave pay for the purpose of encashment of LPR shall be computed on the basis of pay and allowances reckonable towards pension as shown in the last pay certificate of a civil servant.

9. Besides that the provision of Karachi Dock Labor Board Service Rules 1977 explicitly provides that if in case of retirement or attaining the age of superannuation a KDLB employee cannot, for reasons of public service, be granted leave preparatory to retirement duly applied for the insufficient time, he will in lieu thereof be granted lump sum leave pay, for the leave refused to him subject to a maximum of 180 days leave on full pay, therefore, the subject resolution passed by the respondent-KDLB is of no legal effect, in the light of revised Rules, 1980 as discussed supra couple with Rules 36, 37 and 44 of KDLB Service Rules.

10. We have noticed that the Auditor General of Pakistan raised a similar objection and the respondents are bound under the service law to follow and remove the audit Para, thus the decision of the respondent-KDLB whereby 70% leave encashment was allowed to the retired employees of KDLB in pursuance of the Chartered of Demands of KDLB Staff Union dated 14th May 2011 was/is not supported by the law, thus the request of the petitioners cannot be acceded to. At this stage, learned counsel for the respondent-KDLB submitted that as per clause 7(2) of the scheme which provides that the Board may make rules consistent with the Ordinance and Scheme for giving effect to the provisions of this scheme. He further argued that rule 44 of Karachi Dock Labour Board Service Rules provides that if in case of retirement or attaining the age of superannuation KDLB employees cannot, for reasons of public service, be granted leave preparatory retirement duly applied for in sufficient time, he will in lieu thereof be granted lump sum leave pay for the leave refused to him subject to a maximum of one hundred and eighty days leave on full pay. We have noticed that the management of KDLB paid an amount of Rs.1.80 million to one Waseem Shahzad, Assistant on account of leave encashment at the time of retirement on attaining the age of superannuation. However, the audit observed as under:

- a. The leave encashment of 823 days was paid instead of the maximum 180 days resulting in an overpayment of Rs.1.413 million.
- b. Similarly, the official was paid an amount of Rs.855,640 on account of benefits for above thirty years of service in violation of rules as the official was entitled for maximum benefits of 30 years.

11. The auditor opined that the payment was made over and above the prescribed rate and was thus declared irregular and unauthorized. However, the respondent-KDLB resorted to the Boards resolution as discussed supra, and as such the reply was not acceptable because KDLB adopted Government Pension Scheme which did not allow such payments

12. We have further noticed that a great loss to a public exchequer has been caused by passing such Resolution BR. 13(f)/2011 dated 14.05.2011 and the public money has been influx to give benefits to the employees of respondent-KDLB. The competent authority has not accorded any permission for accepting the demand of CBA under the law.

13. We are of the considered view that the petitioners have neither authority nor title to claim amount, which is public money. The beneficiaries have received ill-gotten gain, therefore all the persons, who have received benefits out of the public money are liable to be accounted for in law and the public money must be returned to the public exchequer account forthwith, under law.

14. We are of the view that the action of respondent-KDLB has to be within the four corners of the Constitution and law framed thereunder. The authorities/statutory bodies/organizations are not permitted to use the allocation of public funds at their sole discretion; and, they have to take care of the public money and its proper usage, strictly within the parameters of the Constitution and law. Thus no public funds could be disbursed to any person and/or organization without complying with the legal sanction. We have noticed that transferring such benefits to only a selected group of employees of respondent-KDLB violated the law, and therefore such a transfer of public money in the accounts of beneficiaries is a nullity in the eyes of law.

15. The case-laws cited by the learned counsel for the petitioner are distinguishable from the facts obtained in the present petition.

16. In the light of the above facts and circumstances of the case the Respondent-KDLB has erroneously passed Resolution BR. 13(f)/2011 dated 14.05.2011 and the beneficiaries gained the benefits out of the public money without any justifiable reason, therefore the Respondents have rightly restricted the payment to the Petitioners. This petition for the above reasons is misconceived and is accordingly dismissed.

17. These are the reasons for our short order dated 24.02.2021, whereby we have dismissed the instant petition.

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