

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D-3926 of 2011

M/s Pakistan Steel Mills Corporation
Versus

Member, Sindh Labour Appellate Tribunal & others

Date of Hearing: 29.08.2019 & 18.09.2019

Petitioner: Through Mr. Khalid Imran Advocate.

Respondent No.2: Through Mr. Ashraf Hussain Rizvi Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.-Petitioner in this petition has challenged the decision dated 27.10.2011 passed by learned Member, Sindh Labour Appellate Tribunal in Appeal No.KAR-500 of 2010.

2. Brief facts are that petitioner is a state-owned corporation and is registered as a public limited company under Companies Ordinance, 1984. Respondent No.2 was appointed by petitioner and employed as skilled worker on 24.12.1980. While he was a permanent employee of the Corporation, an FIR bearing No.230/1995 under section 302/34 PPC was registered against him at Orangi Police Station and he was arrested on 25.02.1999 and in consequence thereof petitioner issued termination order dated 26.07.1999. He was released on bail on 22.03.2001. He claimed to have sent representation on 08.05.2001. He also claimed to have sent application through Superintendent Jail as well as his wife for leave. Respondent No.2 was terminated on 26.07.1999 in following terms:-

“Whereas it is evident from your application dated 18th March 1999 that you were absent since 25.2.1999 and were arrested under Crime No.230/95, P.S. Orangi Ext. and are

in the jail with effect from 5.3.1999 till date as confirmed by Superintendent Central Prison, Karachi.

On account of above mentioned fact you can not perform your services under Standing Order 12(1)(3) of the West Pakistan Industrial and Commercial Employment (S.O) Ordinance 1968 on payment of one month's wages in lieu of notice period.

Accordingly your services are terminated with immediate effect in terms of standing order 12(1)(3) of the West Pakistan Industrial and Commercial Employment (S.O) Ordinance, 1968.

On production of No Demand Certificate you will be paid your dues including one month's wages in lieu of notice period referred to above."

3. Against his termination, respondent No.2 filed appeal before Federal Service Tribunal along with stay application regarding official accommodation. While the matter was pending, in June 2006 a judgment was announced by Hon'ble Supreme Court in case of Muhammad Mubeen-us-Salam and others v. Federation of Pakistan reported in PLD 2006 SC 602 and the appeal was abated. Respondent No.2 then approached Labour Court in shape of Grievance Application No.101 of 2006. The case of petitioner and other employees were returned for obtaining judicial order vide order dated 30.05.2008 from the Tribunal. The respondent no.2 claimed to have approached Federal Service Tribunal and obtained order on 21.07.2008 which was delivered on 31.07.2008 whereafter respondent approached the Labour Court through grievance application No.47 of 2008.

4. The Labour Court rejected the grievance application by observing that no mala fide was alleged against the Petitioner nor even termination order was said to be a colorable exercise of power. The Labour Court observed that his (respondent No.2's) arrest and absence from duties would fall under clause 15(3) of Standing Order, 1968 and thus nothing but misconduct. Thus, the Labour Court held this to be a termination simpliciter, which is covered by Standing Order 12(1) and

since post could not be kept vacant for an indefinite period, the Corporation (petitioner) had no alternate but terminate services of petitioner.

5. The respondent No.2 preferred an appeal before Sindh Labour Appellate Tribunal (SLAT) which reversed the findings and reinstated respondent No.2 with back benefits by observing that from the facts and circumstances, the Corporation took it as a case of misconduct but terminated the services in terms of 12(1), which is contrary to the requirement of law. The intention of the Corporation regarding misconduct is deduced from the fact that gratuity and other dues were not extended to the respondent.

6. With this background the Corporation filed this petition challenging the impugned judgment passed by Sindh Labour Appellate Tribunal.

7. Learned counsel for petitioner at the very outset was asked to explain as to whether the jurisdiction exercised by the Sindh Labour Appellate Tribunal was not vested in it under the law or is it a case of misreading or non-reading of evidence, to which the counsel urged that though the jurisdiction was vested in it under the law but the judgment passed by Sindh Labour Appellate Tribunal is contrary to the evidence as well as contrary to Section 12 of Standing Order, 1968.

8. We have heard the learned counsel for parties and perused material available on record.

9. The fact regarding registration of the FIR and his arrest are not disputed. Respondent No.2 was arrested on 25.02.1999 and was released on 22.03.2001 whereas personally he approached the Corporation immediately on 08.05.2001. Thus, he was prevented by sufficient cause for not attending the duties and the application submitted to the Corporation through Superintendent Jail as well through his wife ought

to have been considered as an excuse for not attending the duties. He was thus entitled for a show-cause notice in terms of 12(3) of Standing Order and not just termination letter simplicitor. The only excuse forwarded by the petitioner's counsel was that the inquiry and reasoning in terms of 12(3) of Standing Order is not required since it is an admitted fact that he was arrested.

10. We are of the view that it may have been admitted by respondent No.2 that he was behind bars and facing trial in FIR No.230/1995 but that cannot dispense with the requirement of giving reasons after inquiry as required under section 12(3) of Standing Order, 1968. This was not a termination in simplicitor. They have extended it to the extent of misconduct which entails the applicability of the ibid provisions of Standing Order, 1968. Furthermore, it is not a misconduct on the part of respondent No.2 that he was arrested unlawfully as he was acquitted.

11. Sindh Labour Appellate Tribunal discussed the evidence of the parties recorded and it was concluded that there was no one posted at his post nor any one was transferred from any other department to fill the vacancy of respondent No.2. Thus, this reasoning was never available with the Corporation that they could not leave the post vacant permanently or for an indefinite period. The judgment of Sindh Labour Appellate Tribunal was thus based on the evidence recorded by the parties. Even on merit it is not a case of habitual absence. It is the only incident where he remained absent on the count of being in jail for unjustified cause thus would not made it a case of "habitual absence" in terms of 15(3) of Standing Order.

12. The only question that now may require consideration is of back benefits. Respondent No.2 remained absent from duty for about 25 months. The question is why should the Corporation be blamed and burdened by granting him back benefits for a period during he did not

render any service. No doubt he was prevented by a lawful cause to attend his duties but the Corporation is not to be blamed for this. The respondent No.2 is claiming back benefits for a period including the one when he did not perform his duties while he was in jail. Respondent No.2 may have a legitimate cause to claim monetary benefit for this period, but the recourse for monetary compensation to that effect would extend against those who were involved in his malicious prosecution, which admittedly the Corporation/petitioner has nothing to do. Thus, respondent No.2 could claim the compensation under malicious prosecution against those who lodged frivolous/false FIR wherein he was arrested. However, the moment he was released and submitted his representation, it is for the Corporation to consider the case of respondent No.2 as far as reinstatement and back benefits is concerned. The Corporation may be exonerated for a period he remained behind bars but not for the period when he submitted his representation and onwards. Thus, we score of the back benefits to the extent of 25 months, i.e. the period during which respondent No.2 remained behind the bars, as has been conceded by learned counsel for respondent in his arguments as well. With this modification we feel that in substance there is nothing else that this Court should intervene vis-à-vis reinstatement of respondent No.2 and back benefit, subject to above.

13. Petition as such is disposed of in the above terms along with application.

Dated:

Judge

Judge