IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Muhammad Shafi Siddiqui, J.
Mr. Zulfiqar Ahmad Khan, J.

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C.P Nos.D-275 of 2014

[Pharmatec Pakistan (Pvt.) Ltd. v. Muhammad Tariq and others]

C.P Nos.D-276 of 2014

[Pharmatec Pakistan (Pvt.) Ltd. v. Muhammad Shaheen and others]

C.P Nos.D-277 of 2014

[Pharmatec Pakistan (Pvt.) Ltd. v. Bakht Rahman and others]

C.P Nos.D-278 of 2014

[Pharmatec Pakistan (Pvt.) Ltd. v. Asghar Ali and others]

C.P Nos.D-279 of 2014

[Pharmatec Pakistan (Pvt.) Ltd. v. Mehroz Rehman and others]

C.P Nos.D-280 of 2014

[Pharmatec Pakistan (Pvt.) Ltd. v. Abdul Sattar and others]

C.P Nos.D-281 of 2014

[Pharmatec Pakistan (Pvt.) Ltd. v. Amjad Khan and others]

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Petitioners	:	Through Mr. S.M. Iqbal, Advocate
Respondents	:	Through Mr. Abdul Ghaffar, Advocate
Date of Hearing	:	25-11-2019
Date of Decision	:	25-11-2019

JUDGMENT

1. **Zulfiqar Ahmad Khan, J.:** If there was a straight forward way of determining that whether an employee was a "workman" or not under the West Pakistan Industrial and Commercial Employment (Standing Order) Ordinance 1968 and/or the Industrial Relations Ordinance, 1969 (or its later version, being IRO 2002 in the present case) deciding a large number of cases (just like the present bunch) would have been a simple flip of a coin. Astonishingly starting from the earliest recorded case decided under the (then prevailing) Industrial Disputes Act, 1947 being the British India Engineering Works v/s Akhtar Hussain Khan & Others (1959 PLD Sindh 403) where this court held that a contract employee could also be a workman, such a pursuit has not been easy. In the first part of this judgment, we have attempted to survey some landmark cases decided by the Hon'ble Supreme Court where determination as to who is a workman (or not)

was made, also included at the rear-end is the famous case decided by a divisional bench on this court titled Rehmat Ali v/s the Security Papers Ltd (PLD 1982 Karachi 913).

a. In the case of Habib Bank Limited v/s Gulzar Khan, the Hon'ble Supreme Court held that under S. 2(xxx) of the Industrial and Commercial Employment (Standing Orders) Ordinance (VI of 1968) a Bank Manager (Officer-Grade II) was not a workman (2019 SCMR 946);
b. In the case of Aurangzaib v/s Medipak (Pvt.) Ltd., the Hon'ble Supreme Court held that aSalesman was not a "workman" within the meaning of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (2019 PLC 51);
c. In the case of Soneri Bank Ltd v/s Federation of Pakistan the Hon'ble Supreme Court held that the question as to whether a person was a "workman" within the purview of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 was a matter of jurisdictional fact (2016 SCMR 2168);
d. In the case of National Bank of Pakistan v/s Anwar Shah, the Hon'ble Supreme Court held that Officers Grade I to III of the Bank were not "workmen" (2015 SCMR 434);
e. In the case of Qaisar v/s Muhammad Shafaqat Sharif the Hon'ble Supreme Court held the petitioner being a "production supervisor" was a workman (2012 SCMR 743);
f. In the case of Wisram Das v/s SGS Pakistan (Pvt.) Ltd., the Hon'ble Supreme Court held that a Rice/Cotton Inspector in the Agricultural Division of a private company, whose posting at godowns of the company comprised of drawing samples, checking weights, sealing samples and transmitting the same to company for onward action; the nature of such duties discharged by him were that of an inspector involving application of mind and making of decisions on a subject based on rational approach and such duties were not merely clerical in nature, thus he was not a workman under S. 2(xxviii) (2010 SCMR 1234);
g. In the case of Tehsil Municipal Administration v/s Muhammad Amir, the Hon'ble Supreme Court held that the petitioner who was performing work as a "tube-well operator" and his work was connected with water, and "well" falling within the meaning of "construction Industry" as defined in S.2(bb) of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, was a workman (2009 SCMR 1161);
h. In the case of Mahmood Hussain Larik v/s Muslim Commercial Bank Limited, the Hon'ble Supreme Court held that the bank employee who was working as officer Grade III in the managerial cadre and performing the functions of signing paying slips, vouchers, debt vouchers, collecting transfer bills cheque books as well as demand drafts was not doing any

manual or clerical work and such officers being posted as managers of the branch were not workmen doing any manual or clerical work. In the same case the apex court held that while determining whether an employee was a workman or not, court has to consider the nature of the work done by him and not his designation, title etc. The bank employee, who was Accountant of the Branch and was an Officer Grade-III and used to supervise a number of workers, his duties were certainly not manual or clerical in nature, thus he was not a workman (2009 SCMR 857);

i. In the case of Muslim Commercial Bank Limited v/s Muhammad Shahid Mumtaz the Hon'ble Supreme Court interpreting S.2(xxviii) of the Industrial and Commercial Employment (Standing Orders) Ordinance (VI of 1968) held that Officer Grade-II posted as Branch Manager of the Bank was not a workman (2009 PLC 281);

j. In the case of Javid Hussain Naqi v/s Member Board of Directors MCB, the Hon'ble Supreme Court viz S.2(xxviii) held that size of Branch of Bank, either small or large, had no nexus with the nature of duties of its manager. Such a Manager was not a "workman" (2009 PLC 260);

k. In the case of Dilshad Khan Lodhi v/s Allied Bank of Pakistan, the Hon'ble Supreme court held that an employee of the Bank being in Officer Grade-II heading a department of the Bank independently and supervising work of five persons was preliminary not employed as workman for doing manual, clerical, skilled or unskilled work and the nature and duties performed by such an employee primarily and essentially appear to be of managerial and of supervisory nature, thus such an employee would fall beyond the ambit and purview of the term "workman" (2008 SCMR 1530);

l. In the case of Fauji Foundation v/s Punjab Labour Appellate Board, the Hon'ble Supreme court held that under S.2 (xxviii) question whether a person is a "workman" or not is a mixed question of law and facts, thus must be decided in the light of facts of each case. In the same case the court held that neither supervisory designation itself nor doing some manual work while being in the supervisory capacity would bring a person in or out of the category of "workman" (2007 SCMR 1346);

m. In the case of Nasir Jamal Qureshi v/s Sindh Labour Appellate Tribunal, the Hon'ble Supreme court held that the petitioner who was serving as sales representative and where per Hon'ble Court selling required imagination, application of mind and know-how of the things offered for sale to the customers, and while making sale, sales representative could

also undertake some incidental manual work, but by doing such small manual work connected with sale of products, his status could not be changed nor for that reason he could be regarded as workman, as his job was to sell the products for which he had to use faculty of his mind and wisdom and such was not manual or clerical work. In these circumstances the petitioner was not a workman (2005 SCMR 1049);

n. In the case of Sabir Mehmud Bhati v/s General Manager, the Hon'ble Supreme Court for that petitioner who was working on the post of Inventory Controller and as Assistant Purchase Manager and was responsible for purchases, held that the petitioner was not a workman (2001 SCMR 1291);

o. In the case of Executive Engineer v/s Abdul Aziz, the Hon'ble Supreme Court held that work-charged employees employed by Pakistan Public Works Department were covered by the definition of workman given in S. 2(i)(n) read with Schedule 11 of the Act (1996 PLD 610);

p. In the case of Sadiq Ali Khan v/s Punjab Labour Appellate Board, the Hon'ble Supreme Court held that the mode for determining where a person is to be considered workman, onus would be on him to show that he was so within the definition of law and that onus must be discharged by leading evidence and while evaluating evidence, pith and substance of duties should be considered, and not designation. Evidence brought on record showed that the employee recommended leave applications of other employees by signing relevant columns reserved for the head of department; checked travelling vouchers and also checked pay rolls, the over-time wages could not be paid to other employees unless checked by him showed that he performed duties of supervisory nature and since the employee failed to produce any evidence in support of his claim that he was "workman" and did not perform duties of supervisory nature. Leave to appeal was dismissed (1994 PLC 211);

q. In the case of National Bank of Pakistan v/s Punjab Labour Court No.5, Faisalabad, the Hon'ble Supreme Court held that person who approaches a Court on the basis of averment that he was a "workman " within the definition of S.2(xxviii) of the Ordinance, the burden of proof lies on him and not on the employer. Question whether a person is a workman within the purview of S.2(xxviii) can be determined not on the basis of the designation of his post, but on the basis of the duties which he was performing (1993 SCMR 672), similarly in the case of Managing Director Shahi Bottlers (Pvt.) Limited v/s Punjab Labour Appellate Board the Hon'ble Supreme Court held that whether an employee was a "workman" or not has to

be proved by him through production of documentary or oral evidence in his support (1993 SCMR 488);

r. In the case of Ihsan Sons Limited v/s Abdul Razzaq, the Hon'ble Supreme Court laid down test for determining the question as to whether an employee was a "workman " in field of labour legislation. The Apex Court held that it is the nature of the work done by the employee that would be essential and fundamental consideration for determining the question, and not his designation which is not conclusive. The question to be examined is whether manual or clerical work is incidental to the main work or a substantial part of it, so that, the fact that a person employed in a supervisory capacity does some manual or clerical work as ancillary or incidental to such employment has been held not to bring him within the ambit of the definition. The main features, the pith and substance of his employment must be manual or clerical before the definition is attracted. The words "any manual" and "work" employed in section 2(i) of the Ordinance are susceptible to a very wide connotation, and, therefore, they will cover a person, who performs any manual work while discharging his duties irrespective of the quantum of such manual work, provided he belongs to a labour class. The question, whether a person predominantly performs a manual work or that manual work is incidental to his main work will be relevant when the question for consideration is as to whether the person concerned falls within the category of worker or in category which is excluded from being worker like in section 2 (xxviii) of the IRO. When a Court is to determine whether a person falls within the category of a managerial staff or within the category of worker or workman, in that event this question is to be determined with reference to the factum as to whether the person concerned predominantly performs manual work or predominantly performs managerial work. Similarly if a person falls in the class of executives like a General Manager or an Executive in a company, in that event the mere fact that such a person uses his hands, which takes a fraction of the time of his working hours, will not make him a worker or workman within the ambit of either section 2(i) of the Ordinance or 2(xxviii) of the IRO However, where a person admittedly belonged to the labour class, he cannot be excluded from the definition of the workman given in section 2(i) of the Ordinance on the ground that the performance of duties by him involves insignificant use of hands or that manual work takes a fraction of time as compared to the hours of duties. The labour laws are beneficial laws provided for the labour class with the object to provide inexpensive and expeditious remedy before a

labour Court and, therefore, the Ordinance being a beneficial enactment is to be construed liberally in favour of the labour class and no restriction can be placed to the scope of the definition of workman given in section 2(i) of the Ordinance (1992 SCMR 505);

s. In the case of Pakistan Engineering Co., Limited Lahore v/s Fazal Beg, the Hon'ble Supreme Court held that workman as defined in Ordinance XXIII of 1969 and Ordinance VI of 1968, is to be a person employed to do any skilled or unskilled, manual or clerical work for hire. Work performed by such workman is to involve physical exertion more or less, distinct from intellectual or the one involving decision-making at a higher or lower level (1992 SCMR 2166);

t. In the case of Ganga R. Madhani v. Standards Bank Ltd. and others, the Hon'ble Supreme Court held that a "workman" is the one employed in an industry to do skilled or unskilled work which is "manual" or "clerical". Manual work entails physical exertion to distinguish from the mental or intellectual exertion involved in the clerical work. But both the manual and clerical work, in the sense these terms are used here, connote that it is more or less a routine work, not requiring any great amount of initiative, imagination, direction and supervision in discharging the same. The true nature of the duties performed by the employee is the determining factor in ascertaining if he was a workman or not within this definition. In case the manual work forms only a small and auxiliary part of his responsibilities or he is incidentally required to prepare a statement, maintain a register or submit a report, he cannot be considered to be a workman if otherwise his main and primary duties do not belong to this category. The true test, therefore, is to look to the direct, immediate and the substantial part of the work for which he is employed and not the sundry duties incidentally performed by him. The true answer to this question will, therefore, depend upon the proved facts in each case (1985 SCMR 1511);

u. In the case of Brooke Bond Pakistan Limited v/s Conciliator appointed by the Government of Sindh, the Hon'ble Supreme Court held that since Salesman having to go around markets for distribution and sale, not concerned with Management, but incidentally having to account for sales and submit returns to manager in charge, was a workman. It was elaborated that in enacting section 2 (xxviii) of Industrial Relations Ordinance, the legislature did not adhere to the old definition of the term "worker" given in the earlier enactments and has in fact altered the entire scheme behind it. The scope of this definition is more comprehensive. It includes all persons employed in an establishment or industry,

other than the employer. But it does not include any person who is employed mainly in a managerial or administrative capacity or who, being employed in a supervisory capacity, draws wages exceeding eight hundred rupees per mensem or performs, either because of the nature of duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature. A salesman in the Brooke Bond Company as his designation implies is to go round the market in the area for which he is appointed for the distribution and sales of its products. Primarily the salesman as such is not concerned with management. Incidentally, however, in his capacity as a salesman he has to account for daily and weekly sales and submit his returns to the manager in charge of the depot. But all this is an insignificant and a minor part of the duties for which he is appointed as a salesman therefore, a salesman in this company is a "workman" within the definition of the term in section 2(xxviii) of the Industrial Relations Ordinance, 1969 (1977 PLD SC 237);

v. A Divisional Bench of this court in the case of Rehmat Ali v/s the Security Papers Ltd held that the words "any manual" and "work" employed in section 2(i) of the Ordinance are susceptible to a very wide connotation, and, therefore, these will cover a person who performs any manual work while discharging his duties irrespective of the quantum of such manual work, provided he belongs to a labour class. In court's view, whether a person predominantly performed a manual work or that manual work is incidental to his main work, will be relevant when the question for consideration was as to whether the person concerned falls within the category of worker or in a category which is excluded from being worker under section 2(xxviii) of the IRO, the managerial staff or the person who supervises that work of others and draws monthly salary of Rs. 800 are excluded from the ambit of the definition of worker and workman given in the above provision. It may be observed that when a Court is to determine whether a person falls within the category of a managerial staff or within the category of worker and workman, in that event this question is to be determined with reference to the factum as to whether the person concerned predominantly performs manual work or predominantly perform managerial work. Similarly if a person falls in the class of Executives like General Manager or an Executive in a Company, in that event the mere fact that such a person uses his hands which takes a fraction of the time of his working hours will not make him a worker or workman within the ambit of either section 2(i) of the Ordinance or 2(xxviii) of the IRO. However. where a person admittedly belongs to the labour class, in our view he cannot be excluded from the

definition of the workman given in section 2(i) of the Ordinance on the ground that the performance of duties by him involves insignificant use of hands or that manual work takes a fraction of time as compared to the hours of duties. We cannot be unmindful of the fact that the labour laws are beneficial laws provided for the labour class with the object to provide inexpensive and expeditious remedy before a labour Court and therefore the Ordinance being a beneficial enactment is to be construed liberally in favour of the labour class and no restriction can be placed to the scope of the definition of workman given in section 2(i) of the Ordinance.

2. As it could be seen, while in case of commercial establishments (in particular banks etc.) it has been a rather straight forward path to determine that such officers were not workmen, the trouble arises when the workers come from industrial establishments where a review of the above judgments show that the Hon'ble Supreme Court has laid down the following factors to be considered while answering this question while being cognizant of the fact that such a determination is a mixed question of facts and law:-

    a. Is the worker from a labour class?
    b. Does he predominantly performs manual or managerial work?
    c. Does his work entails physical exertion or mental exertion?
    d. Is the produce industrial or not?
    e. It is not the title or designation of his post, decision has to be made on the basis of the duties which a worker is predominately performing;
    f. Labour laws are beneficial laws provided for the labour class with the object to provide inexpensive and expeditious remedy before a Labour Court and, therefore, the Ordinance being a beneficial enactment is to be construed liberally in favour of the labour class.

3. Clause (f) of Section 2 of the 1968 Ordinance defines "industrial establishment" to mean (i) an industrial establishment as defined in clause (ii) of section 2 of the Payment of Wages Act, 1936 (IV of 1936); or (ii) a factory as defined in clause (j) of section 2 of the Factories Act 1934 (XXV of 1934); or (iii) a railway as defined in clause (4) of section 3 of the Railways Act, 1890 (IX of 1890); or (iv) the establishment of a contractor who, directly or indirectly, employs workmen in connection with the execution of a contract to which he is a party, and includes the premises in which, or the site at which, any process connected with such execution is carried on, whereas clause (b) defines commercial establishment as an establishment in which the business of

advertising, commission or forwarding is conducted, or which is a commercial agency, and includes a clerical department of a factory or of any industrial or commercial undertaking, the office establishment of a person who for the purpose of fulfilling a contract which the owner of any commercial establishment or industrial establishment employs workmen, a unit of a joint stock company, an insurance company, a banking company or a bank, a broker's office or stock exchange, a club, a hotel, a restaurant or an eating house, a cinema or theatre, and such other establishment or class thereof, as Government may, by notification in the official Gazette, declare to be a commercial establishment for the purpose of this Ordinance. It is pertinent to note that while commercial establishment includes clerical department of a factory, other departments (not including managerial) are left outside this definition.

4. Section 2(xi) of the IRO 2002 defines establishment to mean any office, firm, factory, society, undertaking, company, shop, premises or enterprise which employs workmen directly or through a contractor for the purposes of carrying on any business or industry and includes all its departments and branches, whether situated in the same place or in different places having a common balance sheet and profit and loss account and, except for section 54, includes a collective bargaining unit, if any, constituted under that section in any establishment and clause (xxx) of the same section defines "worker" and "workman" to mean any and all persons not falling within the definition of employer who are employed in an establishment or industry for remuneration or reward either directly or through a contractor, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Ordinance in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off or removal has led to that dispute but does not include any person who is employed mainly in a managerial or administrative capacity.

5. Sections 44 and 45 provide for the establishment of labour Courts for the purposes of (a) adjudicating and determine an industrial dispute which has been referred to or brought before it under the said Ordinance and while trying an offence, a labour Court is to follow as nearly as possible summary procedure as provided under the Code of Criminal Procedure, 1898 (Act V of 1898); whereas for the purpose of adjudicating and determining any industrial dispute, is deemed to be a Civil Court and has the same powers as vested in such Court under the Code of Civil Procedure, 1908 (Act V of 1908). Clause (xvi) of section 2 defines industrial dispute to mean

any dispute or difference between employers and workmen or between workmen and workmen which is concerned with the employment or non-employment or the terms of employment or the conditions of work and is not in respect of the enforcement of any right guaranteed or accrued to workers by or under any law, other than this Ordinance, or any award or settlement for the time being in force.

6. Section 46 deals with the redressal of individual grievances and provides that:

> (1) A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement for the time being in force to the notice of his employer in writing, either himself or through his Shop Steward or collective bargaining agent, within one month of the day on which cause of such grievance arises.
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> (2) Where a worker brings his grievance to the notice of an employer himself or through his Shop Steward or collective bargaining agent, the employer shall, within fifteen days of the grievance being brought to his notice, communicate his decision in writing to the worker.
>
> (3) If an employer fails to communicate a decision within the period specified in sub-section (2) or if a worker is dissatisfied with such decision, the worker or Shop Steward may take the matter to his collective bargaining agent or the Labour Court, as the case may be, and where the matter is taken to the Labour Court, it shall give a decision within seven days from the date of the matter being brought before it as if such matter were an industrial dispute:
>
> Provided that a worker who desires to take the matter to the Labour Court, he shall do so within a period of two months from the date of the communication of the employer or, as the case may be, from the expiry of the period specified in sub-section (2).
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> (4) In adjudicating and determining a grievance under sub-section (3), the Labour Court shall go into all the facts of the case and pass such orders as may be just and proper in the circumstances of the case.
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> (5) The Labour Court, in case the termination of services of a workman is held to be wrongful, may award compensation equivalent to not less than twelve months and not more than thirty months basic pay last drawn and house rent, if admissible, in lieu of reinstatement of the worker in service.

(6) If a decision under sub-section (4) or an order under sub-section (5) given by the Labour Court or a decision of the High Court in an appeal against such a decision or order is not given effect to or complied with within one month or within the period specified in such order or decision, the defaulter shall additionally be punishable with fine which may extend to ten thousand rupees.

(7) No person shall be prosecuted under sub-section (6) except on a complaint in writing by a workman if the order or decision in his favour is not implemented within the period specified therein.

(8) For the purposes of this section, workers having common grievance arising out of a common cause of action may make a joint application to the Labour Court.

7. It is pertinent to observe that most of the highly contested workers being party in the litigation detailed in the foregoing paragraph 1 came from factories operating under the provisions of the Factories Act, 1934 but seemingly no attention was focused if some guidance could be sought from this statute which interestingly is not at all intended for the operation of factories, rather enacted to consolidate and amend the law regulating labourers working in factories, thus it becomes essential that we examine the machinery of this law to seek some help in answering question as to who is workman in industrial establishments. For the province of Sindh the said Act was repealed with Sindh Factories Act, 2015. The said Act of 2015 defines factory to mean any premises, including the precincts thereof, whereon ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily carried on with or without the aid of power. The said Act is moulded on the foundation of the Factories Act, 1934 and defines worker to mean a person employed in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work whatsoever, incidental to or connected with the subject of the manufacturing process and includes clerical staff, but does not include occupier and manager having the hiring and firing authority; provided that no worker shall be employed through an agency or contractor or sub-contractor or middleman or agent, to perform production related work.

8. Just to understand with what perils a factory worker is exposed to while at his workplace, mere mention of section headings in Chapter III titled ‘Health and Safety’ would give a peep into his work life. The law requires factories to be clean and free from effluvia arising from any drain, privy or other nuisance (S.15); Effective arrangements for the disposal of wastes and effluents

created by the manufacturing process are to be ensured (S.16); Workrooms to have adequate ventilation by circulation of fresh air and where manufacturing processes take place at high temperatures, adequate measures are to be taken to protect the workers by insulating the hot parts (S.17); Dust, fumes and other impurities are to be prevented and in particular if internal combustion engines are operated in the factory, those to have insulated exhaust pipes to remove exhaust to open sky (S.18); Humidity is to be controlled (S.19); Overcrowding not to be permitted (S.20); Proper efficient and suitable lighting and well as emergency lighting means to be provided in the passages (S.21); Drinking water to be provided at suitable points (S.22); Latrines, urinals and spittoons to be provided at convenient places (S.23-24); To save factory workers from contagious or infectious diseases, each worker is to be provided with hygiene cards and compulsory vaccination and inoculation against diseases are to be performed (S.25-26); Fire escapes and proper fire fighting equipment are to be provided (S.29); Machines which move, have fly wheel, waterwheel or water turbines, or have stock-bars which projects beyond head stock of a lather must be properly fenced to avoid accidents (S.30-31); Where self-acting machines are in operation, special protection to the workers are to be ensured (S.34); Casing of all machinery to be effectively guarded (S.35); Special safety means to be ensured in case of cranes and other lifting machinery (S.37); Protection against hoists and lifts to be ensured (S.38); If grinding process is used in a factory, safe peripheral speed indicators and other protective means to be ensured in such work areas (S.39); If pressure plants are in action, effective measure to ensure safe working pressure are to be put in place (S.40); No one be forced to lift carry or move any load to cause him injury (S.43); Screens and goggles to be provided for the protection of eyes (S.44); Defective machine parts to be (timely) removed (S.45); Safety of building, machinery and manufacturing process to be ensured (S.46); Precautions against dangerous fumes to be put in place (S.48); Explosive or inflammable dust, gas etc to be properly handled (S.49). It is also worth noting that specialised safety protocols in case of boilers, bio-hazard and radio-active materials if used in factory premises, additional protective means have to be put in place. Also, means to control pollution and injuries caused by noise and vibration are to be installed additionally.

9. A plain reading of the above provision of law gives an insight into the working life of a factory worker. How the life and environment around the shop-floor exists, how he interacts with machines and what risks and perils he exposes himself to while positioned inside an industrial establishment. With poor standards of monitoring of such establishments, gas leaks, fire and

boiler explosions take place frequently resulting in deaths and injuries to the workers. Even if a worker survives any such industrial mishaps, because of his exposures to un-friendly and hazardous environment, life expectancy of a factory worker is quite shorter than those working in commercial establishments. It is for these reasons the Factories Act (S.62) requires maintenance of a Register of Adult Workers showing *inter alia* nature of work being performed by each worker. Review and examination of this register could give clear indication as to what is the job description of each factory worker, answer to the question as to whether he is a workman or not can also be given in the light of the entries found in that register. Courts so far has also not considered this vital dataset.

10. Now in these hazardous working conditions, when workers are performing their duties with sweat, the employers and management being on the other side of spectrum; usually find each other at odds. Such disputes are globally known as industrial disputes and rather than being adjudicated under the principle of master and servant (2013 SCMR 1707), International Labour Organization of which Pakistan is a member since its inception and has ratified 35 ILO Conventions and all eight fundamental conventions, and where expeditious resolution of industrial disputes is core objective of ILO's conventions, that's why since its inception, even in the first legislation on Industrial Disputes settlement being the ID Act of 1947, through Section 7, labour courts were introduced in the country to adjudicate a variety of industrial disputes. Section 7(1) of the ID Act is reproduced hereunder:

> Labour Courts.—(1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them under this Act.

11. The Second Schedule listed the following matters falling in the exclusive jurisdiction of Labour Courts:-

    (a) The propriety or legality of an order passed by an employer under the standing orders;

    (b) The application and interpretation of standing orders;

    (c) Discharge or dismissal of workmen including re-instatement of, or grant of relief to, workmen wrongfully dismissed;

    (d) Withdrawal of any customary concession or privilege;

    (e) Illegality or otherwise of a strike or lock-out; and

(f) All matters other than those specified in the Third Schedule

12. Courts have time and again held that the proceedings of industrial adjudication (under the ID Act, 1947) were not to be considered as proceedings purely between two private parties having no impact on the industry as such. Such proceedings are held to involve larger public interest in which the industry as such and employer/labour are vitally interested. This mechanics of law usually known as industrial adjudication is designed to promote industrial peace and harmony so as to increase production and help the growth and progress of national economy. As a matter of fact these are very exceptional circumstances were Courts have been empowered to issue writ against private individuals, if the issues relate to public duty or public interest.

13. Having held that the Industrial Disputes Act, 1947 has gotten a laudable object behind it as it was meant for resolving disputes since it covered a wide spectrum of disputes, courts held this law as a social welfare legislation aimed to create a congenial industrial environment and to give succour to the workmen. A plethora of judgments were rendered by the Hon'ble Supreme Court under this Act being 1962 PLD 60 SC; 1961 PLD 479 SC; 1961 PLD 479 SC; 1961, PLD 403 SC; 1961 PLD 383 SC; 1961 PLD 329 SC; 1960 PLD 151 SC; 1959 PLD 31 SC and 1959 PLD 337 SC which aimed to foster this legal balance.

14. The ID Act of 1947 was repealed by the Industrial Disputes Ordinance 1959. The later was the first major enactment after Pakistan's ratification of the ILO Conventions No. 87 and 98. The labour legislation comprising the Industrial Dispute Ordinance, 1959, was later amended as the Industrial Disputes Ordinance, 1968; the Trade Unions Act, 1968; the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968; and importantly the Industrial Relations Ordinance, 1969. The latter being superseded by the Industrial Relations Ordinance, 2002 and the Industrial Relations Act, 2008. After devolution, the Sindh Terms of Employment (Standing Orders) Act, 2015 is presently holding the field. However the present petitions were dealt with IRO 2002 where the grievance petitions were filed in September 2007, these were thus decided under the 2002 IRO. Facts of CP No. D-275/2014 are taken for the sake of brevity while deciding this bunch of connected petitions.

15. The Petitioner through a letter dated 2-Oct-2005 was appointed a Production Technician on contract basis wef 01-Oct-2005 for an initial period of 15 months expiring on 31-Dec-2006 at the fee of Rs.4,000 per mensem. It is worth noting that while IRO 1969 made a determination and excluded the following workers from the definition of workman under Clause (xxviii) of Section 2, who (a) were employed mainly in a managerial or administrative capacity, or (b) were

employed in a supervisory capacity drawing wages exceeding Rs.800 per mensem or performed, either because of the nature of duties attached to the office or by reason of the powers vested in them, functions mainly of managerial nature, IRO 2002 removed these exceptions and included all workers in the definition of workman who were not falling within the definition of employer (defined to mean any person or body of persons, whether incorporated or not, who or which employs workmen in an establishment under a contract of employment and included (a) an heir, successor or assign, as the case may be, of such person or, body as aforesaid; (b) any person responsible for the direction, administration, management and control of the establishment; (c) the authority, in relation to an establishment or group of establishments run by or under the authority of any department of the Federal Government or a Provincial Government, appointed in this behalf or, where no authority is appointed, the Head of the department; (d) the office bearer, in relation to an establishment run by or on behalf of a local authority, appointed in this behalf, or where no officer is so appointed, the chief executive office bearer of that authority; (e) the proprietor, in relation to any other establishment, of such establishment and every director, manager, secretary, agent or office bearer or person concerned with the management of the affairs thereof; (f) a contractor or an establishment of a contractor who or which undertakes to procure the labour or services of workmen for use by another person or in another establishment for any purpose whatsoever and for payment in any form and on any basis whatsoever; and (g) office bearers of a department or Division of the Federal or a Provincial or local authority who belong to the managerial, secretarial or directional cadre or categories of supervisors or agents and those who have been notified for this purpose in the official Gazette). Employees at hand clearly did not fall in the definition of employer.

16. Just for the sake of comparison to judge whether the respondent workmen fell in the labour class or not it would not be out of place to examine gold prices prevalent in the year 1968 (Rs.138 per tolla) with the same in 2005 (Rs.9,900 per *tolla*). As it could be seen that the diving line between a workman and an employer was the salary of Rs.8000 in 1968, when a workman could have afforded to buy 7.8 tollas of gold from his wages every moth; a wage to buy equal amount of gold in 2005 comes to Rs.57,391 per month, which clearly is not the wage of any of the responding workman. Thus, just to consider the first requisite that whether the workmen fell in the labour class or not, the answer comes in affirmative. Actually the fact is that the responding workers even fall below from the labour class to 'hand-to-mouth class' where a wage of Rs.4,000 per month would hardly be enough to sustain basic necessity of life.

17. It is also an admitted fact the petitioner's establishment is a factory established under the Factories Act, 1934. Page 99, provided along with the present petition shows the factory timings applicable during the employment of the responding workers. Therefore all the perils, dangers, risks and hazards which factory workers are exposed to under the said Act were faced by the responding workers. And if they had any grievance against the employers should they have filed a civil suit pretending to have a master-servant relationship or the specific remedy provided by the international conventions and built in the labour/workman laws since the inception of the country in the year 1947 should have been availed? It does not require one to be a rocket scientist to imagine that the under the ILO Conventions No. 87 and 98 and the IROs for these high risk workers who expose their life while working on the shop-floor of a factory for a meagre wage sufficient to keep them alive to show up for work on the following morning begs some respect and Article 21 of the Constitution guaranteeing dignity of life must also be unveiled in their favour.
18. The employees were hired by the petitioner admittedly as Production Technician on contractual basis where the initial contract effective 01-Oct-2005 expired on 31-Dec-2006. Clause 4 of the contract provided work to commence from 08:30 hrs to 17:00 hours Mondays thru Saturdays and on Friday, working hours were between 08:30 to 18:00 hrs. Differences arose when the petitioner change factory timings by declaring Saturdays as weekly off day but changed timings of work from Mondays to Thursdays to fall between 08:30 to 05:30 hrs. Warnings dated 20-Jun-2007 and 20-Jun-2007 were given to the respondent workers as it was alleged that they were leaving 30 minutes earlier. While this confrontation was going heads-on, by a letter dated 02-Jul-2007 designation of the worker was changed from Production Technician to Jr.Technical Officer, seemingly the workers were promoted to officer grades. Just within 5 days of this 'upgradation' a Show Cause Notice was issued to these workers (again on the same ground of leaving work 30 minutes earlier). An apology (page 115) was tendered by the worker on which a Final Warning was issued on 13-Jul-2007, however alleging that since the worker has been upgraded to management cadre he was not to follow labour timings and this 30 minutes' early departure called for severe punishment of termination from the service, termination notice dated 25-Jul-2007 brought relationship between the parties to a sudden deadend.
19. Being aggrieved, the workers sent grievance notices to the employer and respite of any relief forced them to file a grievance petition u/s 46 of IRO 2002 before the Sindh Labour Court No.III at Karachi where immediate protest came to the maintainability from the petitioners alleging

that since the workers were “re-designated” to officer cadre, thus they left the ambit of workman, to which this first point of determination was addressed by the Labour court, along with other two pints of determination being whether the applicants committed misconduct and whether they were entitled to back benefits. Through a well-reasoned and speaking order dated 29-Apr-2010 Labour Court decided that the applicants were workmen, reinstated them but the applicants were held disentitled to back benefits. This order was challenged by both the petitioner and the workers (the latter seeking back benefits) while the former challenging reinstatement and jurisdiction of the court. The Appellate Tribunal dismissed petitioner’s appeal and conversely allowing back benefits to the workers.

20. Learned counsel for the petitioner argued that the workers were not workmen under Clause (xxx) of IRO 2002 and under the 1968 Ordinance but officer on specific terms and conditions in the management cadre on contract basis which was extended on the same terms, hence they were not workmen having *locus standi* to invoke the jurisdiction of the Labour Court and job description duly signed and received by the respondent, and the Service Rules of the petitioner company were totally ignored by the learned trial court and that the these respondents violated sections 34 and 36 of the Factories Act, thus were terminated in accordance with law. The learned counsel also argued that onus was on these respondents to prove that they fell within the definition of workmen by adducing evidence. The learned counsel relied upon the cases of National Bank of Pakistan v/s Anwar Shah & others (2015 SCMR 434), Managing Director, Shahi Bottlers (Pvt) Limited v/s The Punjab Labour Appellate Tribunal (1993 SCMR 488) and National Bank of Pakistan v/s Punjab Labour Court No.5, Faisalabad (1993 SCMR 672) to support his arguments.

21. Learned counsel for the respondent supported the concurrent findings of the court below and submitted that the respondents have shown through evidence that they fall within the definition of workmen and both the courts have thoroughly considered this issue. Nonetheless by referring to section 21 of the Factories Act the learned counsel submitted that leaving work 30 minutes earlier does not count as misconduct, and at best could be held an omission under section 21(1) thus severe penalty of termination was not attracted. Counsel stated that the mischievous act of upgradation on 02-Jul-2007 when warning notices of 20-Jun and 29-Jun were already served on the workers, was a calculated move from the petitioner to defraud the workers from invoking the jurisdiction of the Labour Courts. The counsel prayed for the dismissal of the petitions.

22. Admittedly the respondent entered into the employment as of 01-Oct-2005 at a monthly salary of Rs.4,000 and in his cross he admitted that he was given a raise of Rs.500 in the beginning of 2006 and that he was terminated in July 2007. Though it's not known what was worker's salary at the time of his termination, but considering that he was getting increments of Rs.500s, such statistical projection does not yield to any impressive number. National Minimum Wage as per https://countryeconomy.com/national-minimum-wage/pakistan?year=2005 in the year 2005 was Rs.3,000 per month so that the salary of the respondent worker (no matter with what designation one calls him) was just above this National Minimum Wage therefore the first criterion as set by the Hon'ble Supreme Court (para 2 hereof) that whether the worker is from the labour class or not is answered in the affirmative. Any factory worker paid just above NMW, no matter with what designation he is called, would always be a labour class worker and imagining that he will have to pay Rs.15,000 (more than 3 and a half times higher than his salary) as court fee to file a suit to enforce a master-servant relation, particularly when he has been terminated, is a practical impossibility and would lead to a dystopian future if permitted. Pakistan is under ILO's commitment to setup Labour Courts to provide speedy and inexpensive justice. Violations of such international covenants beg serious international retaliations.

23. Now coming to the second parameter as to whether he predominantly performed manual or managerial work. Neither the 1968 Ordinance, nor IRO 2002 define managerial work. This being question of fact, as per the dictum laid down in Packages Limited v/s Muhammad Akbar (supra) a High Court in its constitutional jurisdiction is not competent to substitute the findings of fact of the courts below and since in this case both the courts have dilated upon this aspect of the case and have given their findings affirming the responding worker as workman, thus we retrain ourselves from interfering in these concurrent findings. However, by referring to In the case of Nasir Jamal Qureshi v/s Sindh Labour Appellate Tribunal (supra) where the Hon'ble Supreme court laid down the parameters for such determination and examined whether the worker was performing work with imagination, using faculty of his mind and wisdom. Also in the case of Ihsan Sons Limited v/s Abdul Razzaq (supra), the Hon'ble Supreme held that to be a workman, the pith and substance of his employment must be manual or clerical before the definition could be attracted. The words "any manual" and "work" employed in section 2(i) of the Ordinance as held were susceptible to a very wide connotation and therefore these to be interpreted to include every person who performs any manual work while discharging his duties irrespective of the quantum of such manual work provided he belongs to a labour class. Which as shown above

is clearly the case. The Apex Court held that where a determination shows that a worker admittedly belongs to the labour class, he (must) not be excluded from the definition of section 2(i) of the Ordinance particularly when the performance of duties involved significant use of hands. It was held that the labour laws are beneficial laws provided for the labour class with the objective to provide inexpensive and expeditious remedy through labour court and, thus expelling such class from this hard-earned jurisdiction would be a criminal act in our view. Lastly guidance must also be sought from the case of Ganga R. Madhani v. Standards Bank Ltd. (supra) and others where the Hon'ble Supreme Court observed that a workman is the one employed in an industry to do skilled or unskilled work which could be manual or clerical. To be manual, the work is to entail physical exertion to distinguish from the mental or intellectual exertion involved in the clerical work but both the manual and clerical work, in the sense these terms are used in the law connote that it is more or less a routine work, not requiring any great amount of initiative, imagination, direction, central and supervision in discharging the same. In the light of these compelling guidelines, we have no hesitation in our mind that the responding workers are workmen under the IRO 2002 and the 1968 Ordinance as well.

24. Coming to the third parameter evolved from the dictum laid down by the Hon'ble Supreme Court as to whether work performed by the workers entails physical exertion or mental/intellectual exertion. While this question being already dealt with in the preceding paragraph in pure legal context, but putting it on the litmus test of actuality, position summaries for both the positions held by the responding worker (ie Production Technician and Junior Technical Officer) are reproduced hereunder:

    i. Production Technician: Responsible for supervision and control of assigned machined operations in accordance with company laid down procedures and GMP requirement (page 175)

    ii. and Junior Technical Officer: Responsible for supervision and control of assigned machined operations in accordance with company laid down procedures and GMP requirement (page 173)

25. As it could be seen there is no change in the overall position summery for both the positions, but it is worth noting that in both the cases, the worker has to be engaged with machines i.e. that he has to work in a machine shop or a part of factory where the worker remained exposed to dangerous environment, health/safety hazards, noise, vibration, smoke and alike perils as described in para 8 hereof demanding serious physical exertion. Also none of the above position

involved the worker using his imagination, faculty of his mind or wisdom in accomplishing the work. Both the positions also entailed physical exertion where he was performing more or less a routine work, not requiring any great amount of initiative, imagination, direction, central and supervision in discharging the same. Thus clearly he remained a workman, under both the positions. Notwithstanding a production technician, even for a production supervisor, the Apex Court in the case of Qaisar v/s Muhammad Shafaqat Sharif (supra) has held that such a worker would be a workman. On the contentions of the learned counsel for the petitioner that worker's designation was changed in the last few weeks of his employment, this initiative, in our minds appear to be a clear calculated attempt to forcefully push the worker off the ambit of workman, to derail him from the efficacious remedy provided by the labour courts. This principle has been strengthened through the Apex Court's judgment rendered in the case of Syed Arshad Ali v/s PTCL (2008 SCMR 314) when in similar circumstances when alternate efficacious remedy of approaching the Labour court was present, the apex Court held that "petitioners being workmen and having been employed by a Corporation, their remedy would lie before Labour Court under Industrial Relations Ordinance, 2002".

26. Second last parameter considers produce of the factory, which in the case at hand are medicines; which are clearly industrial products. This also strengthens the case of the responding workers that Factory Act are applicable to them.

27. Lastly as held by the Hon'ble Supreme court through various judgment that it is not the title or designation of the post, rather courts are to make decision (as to whether a worker is a workman or not) on the basis of the duties which a worker is performing. The Position Summaries reproduced in paragraph 24 and the discussion in para 25 hereof clearly shows that the workers being fully exposed to the perils of the work place and the environmental hazards associated with their jobs appears to be industrious, clearly qualify as workman under the law as their work as per paragraph 23 has all the requisite ingredients to qualify as such.

28. Another angle to look at the issue is from the lens of the Payment of Wages Act, 1936 which defines industrial establishment under clause (ii) of section 2 to include "workshop or other establishment in which articles are produced, adapted or manufactured, with a view to their use, transport or sale", which clearly includes the petitioner factory manufacturing medicines. In the case of Tehsil Municipal Administration v/s Muhammad Amir (supra), the Hon'ble Supreme Court held that the petitioner who was performing work as a "tube-well operator" and his work connected with "water" and "well" falling within the meaning of "construction Industry" as

defined in clause (bb) of Section 2 of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 was a workman, therefore applying this ratio to the case at hand, the responding workers whose work is resulting in the manufacture of pharmaceutical articles (tablets, capsules, syrups, etc.), thus they would also fall in the definition of industrial establishment as defined by the Payment of Wages Act, 1936, and having been so qualified, they would freely walk into the Ordinance 1968 via clause (f) of Section 2, making them workmen for the purposes of the said Ordinance.

29. With regards to the case-law presented by the learned counsel for the petitioner, the case of National Bank of Pakistan v/s Anwar Shah (2015 SCMR 434) where the Hon'ble Supreme Court held that Officers Grade I to III of Bank were not "workmen" has already been discussed hereinabve and it clearly does not apply to the instant case as here the workers are from a Factory operating under the Factories Act producing Medicines (an industrial article). The case of Managing Director Shahi Bottlers (Pvt.) Limited v/s Punjab Labour Appellate Board (1993 SCMR 488) where the Hon'ble Supreme Court held that to prove a "workman", an employee has to establish this fact by producing documentary or oral evidence in his support is also discussed in the earlier part of this Judgment and does not apply to the case at this juncture as both the courts below have considered this aspect of the case and have reached to the conclusion that the workers were workmen. Also in paragraphs 23-25 hereof we have also considered this issue and reached to the conclusion that sufficient evidence was available on record to show that the employees were workmen. The third citation of National Bank of Pakistan v/s Punjab Labour Court No.5, Faisalabad (1993 SCMR 672) is also discussed in the first part of this judgment where the Hon'ble Supreme Court held that person who approaches a Court on the basis of averment that he was a "workman" within the definition of S.2(xxviii) of the Ordinance, the burden of proof lies on him and not on the employer and such a question can be determined not on the basis of the designation of his post, but on the basis of the duties which he was performing. We have in the above paragraphs has made threadbare analysis of this aspect of the case and has taken guidance from this case too and reached to the conclusion that the said judgments supports the respondent workers, rather than the petitioner.

30. The ratio drawn from the judgments of the Apex court cited herein and the conclusion reached from the above discussion is that all workers who are employed in industrial establishments defined under The Commercial Employment (Standing Orders) Ordinance, 1968 and Industrial Relations Ordinance performing repetitive, laborious manual or clerical work not requiring any

great amount of imagination and supervision in discharging the same, belonging to labour class, exposing themselves to the peril of hazardous and polluted work environment, carrying whatsoever designation, would fall in the definition of workmen under the these Ordinances and be assumed to have earned the right to have their industrial disputes adjudicated through the Labour Courts.

31. It is for these reasons we chose to not to interfere with the impugned judgments of both the forums below and through our short order dated 25-Nov-2019 these petitions were dismissed, however there is no order as to costs.

Karachi: 31 January 2020 Judge

Judge