

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

**Mr. Muhammad Shafi Siddiqui, J.
Mr. Zulfiqar Ahmad Khan, J.**

C.P Nos.D-3701 of 2012

Muhammad Mursleen v/s Member Sindh Labour Appellate Tribunal & Others

Petitioner : Through Mr. Ashraf Hussain Rizvi, Advocate
Respondent No. 3 : Through Mr. Jawed Asghar Awan, Advocate
Date of Hearing : 20-11-2019

JUDGMENT

Zulfiqar Ahmad Khan, J.: This Constitutional Petition has been moved against concurrent findings on the grievance petition filed under section 46 of the Industrial Relations Ordinance, 2002 (“IRO”) by the petitioner who stated that he was appointed by a sister concern of Respondent No.3 (“the respondent”) on 01-04-1997 as Computer Operator, on 25-12-2003 he was reappointed as Bailing Incharge and later transferred to the present respondent and designated as Outdoor Quality Supervisor and was given a motorcycle for visiting different units of the respondent establishment for checking the quality of cloth. In the month of Ramzan in the year 2004, he got leave to sit for Aitekaf and when he returned after Eid holidays he was not permitted to enter the factory premises. He tried contacting the officers via fax even, however no answer was forthcoming, which forced him to file the aforementioned grievance petition on 05-01-2005 after giving a notice of the same to the employer via registered A/D post, which too remained unanswered. The Labour Court through its order dated 18-08-2009 dismissed the petition on the preliminary ground that the petitioner failed to satisfy the court that he was a workman under section 2(i) of the Commercial Employment (Standing Order) Ordinance 1968. This finding was maintained by the Appellate Court, hence the petition.

2. While the petitioner has asserted that he fulfilled the requisites of section 2(i) of the Ordinance, 1968 the respondent denied the same. But it is interesting to note that in the Affidavit-in-Evidence filed on behalf of the employer dated 24-11-2005 before the Labour Court, the General Manager (Admin) of the respondent in paragraph 7 stated that *"I say that the applicant was lastly performing the duties of Quality Supervisor and he used to go to various mills in order to check the quality of cloth on behalf of the respondent establishment"* [page 87]. Same is also admitted by him in his cross where he admits that *"it is correct to suggest that Mursaleen was supervisor to check the quality of cloth"* [page 95]. Thus the question before us is whether the petitioner who was working as Quality Supervisor with duty of going to various mills of the respondent in order to check the manufacture quality of cloth on behalf of the respondent establishment on a motor cycle provided by the employer, would be a workman under 1968 Ordinance or not.

3. The learned counsel for the petition while arguing in favour of the petitioner that he qualifies to be a workman under the Ordinance 1968 relied upon the case of Nasir Abbas Naqvi v/s Punjab Labour Appellate Tribunal (2003 PLC 443) where the court held that *"mere oral assertion of the witness that employee was performing supervisory duty was not sufficient to prove that the employee was in fact performing such functions"*; while the learned counsel for the respondent supported the findings of the court below and relied on the cases of Wisram Das v/s SGS Pakistan (Pvt.) Ltd., and another (SBLR 2010 SC 10) and Bashir Ahmed Zia v/s The Chairman Punjab Labour Appellate Tribunal and another (1982 SCMR 407) where on account of the worker performing supervisory duties, the Apex Court held that he was not a workman in the meaning of section 2(i) of the Ordinance, 1968.

4. Heard the counsel and perused the record.

5. In a recent judgment of this court authored by us [Re: Constitutional Petition Nos. 275 to 281 of 2014, Messrs Pharmatech Pakistan (Pvt.) Limtd v/s various workers] taking guidance from the Apex court's judgment regarding *"workmen"* being Habib Bank Limited v/s Gulzar Khan (2019 SCMR 946); Aurangzaib v/s Medipak (Pvt.) Ltd (2019 PLC

51); Soneri Bank Ltd v/s Federation of Pakistan (2016 SCMR 2168); National Bank of Pakistan v/s Anwar Shah (2015 SCMR 434); Qaisar v/s Muhammad Shafaqat Sharif (2012 SCMR 743); Wisram Das v/s SGS Pakistan (Pvt.) Ltd., (2010 SCMR 1234); Tehsil Municipal Administration v/s Muhammad Amir (2009 SCMR 1161); Mahmood Hussain Larik v/s Muslim Commercial Bank Limited (2009 SCMR 857); Muslim Commercial Bank Limited v/s Muhammad Shahid Mumtaz (2009 PLC 281); Javid Hussain Naqi v/s Member Board of Directors MCB (2009 PLC 260); Dilshad Khan Lodhi v/s Allied Bank of Pakistan (2008 SCMR 1530); Fauji Foundation v/s Punjab Labour Appellate Board (2007 SCMR 1346); Nasir Jamal Qureshi v/s Sindh Labour Appellate Tribunal (2005 SCMR 1049); Sabir Mehmud Bhati v/s General Manager (2001 SCMR 1291); Executive Engineer v/s Abdul Aziz (1996 PLD 610); Sadiq Ali Khan v/s Punjab Labour Appellate Board (1994 PLC 211); National Bank of Pakistan v/s Punjab Labour Court No.5, Faisalabad (1993 SCMR 488); Ihsan Sons Limited v/s Abdul Razzaq (1992 SCMR 505); Pakistan Engineering Co., Limited Lahore v/s Fazal Beg (1992 SCMR 2166); Ganga R. Madhani v. Standards Bank Ltd. (1985 SCMR 1511) and Brooke Bond Pakistan Limited v/s Conciliator appointed by the Government of Sindh (1977 PLD SC 237), and after considering various aspects of such controversy, we reached to the following conclusion:-

“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”.

6. In the following, we will be considering the aforementioned parameters while superimposing the facts of the case thereon and examine what results are yielded:-

a. Was the petitioner performing repetitive, laborious manual work not requiring any great amount of imagination and supervision in discharging the same? We, while particularly relying on the judgment rendered in the case of and Brooke Bond Pakistan Limited v/s Conciliator appointed by the Government of Sindh (supra), where *salesmen were going places to sell tea, 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....the scope of this definition (of worker) ...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; safely reach to the conclusion that the petitioner was doing laborious repetitive job of checking quality of cloth made at various mills of the employer on motorcycle given to him by the employer without any supervision from the management, not requiring any great amount of imagination to perform such a work, positively fits this conditionality;

- b. Did he belong to the labour class? The answer is "yes" as per clause 7 of the employment agreement [page 67] he was obligated to comply with Labour laws;
 - c. Did he expose himself to the peril of hazardous and polluted work environment? The answer is "yes". He was working in cloth factories (operating under the Factories Act, 1934) and as laid down in paragraphs 7-12 of the aforementioned judgment (reproduced hereunder), he definitely exposed himself to all perils of working in a factory including inhaling cotton fibre most of the day:-
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 where Courts have been empowered to issue writ against private individuals, if the issues relate to public duty or public interest.

7. In the light of the foregoing and following the rule of consistency, we are of the considered view that the petitioner was a workman in the purview of clause 2(i) of the Ordinance 1968 and both the courts below made gross error of law to disqualify him from such hard earned position, we thus set aside both the judgments and remand the case back to the Labour Court to decide the case on merit, preferably within 4 months from the date of this order and submit compliance through MIT-II of this Court.

Judge

Judge

Karachi: _____ 2020