

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

C.P No. S-517 of 2007

Hearing of case.

1. For hearing of main case.
2. For orders on C.M.A No.1371/2007

Date of hearing: 04-10-2021

Date of Order: 04-10-2021

Mr. Muhammad Imran Khan, Advocate for petitioners.
Mr. Muhammad Hamzo Buriro, D.A.G
Mr. Zulifqar Ali Naich, Assistant Attorney General.

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ORDER

Through this petition, petitioners have impugned judgment dated 13.06.2007 passed by the Sindh Labour Court No. VII, at Sukkur, whereby the order passed by the Commissioner, Workmen's Compensation and Authority under payment of Wages Act, at Sukkur dated 28.02.2005 has been maintained.

Learned counsel for the petitioners has argued that respondent No.3 was not entitled for leave encashment of 180 days as he was compulsory retired; that in fact the Commissioner had no jurisdiction, hence no order could have been passed; that the matter pertains to the jurisdiction of the Service Tribunal; and therefore, the impugned order is liable to be set aside.

Insofar as Respondent No.3 is concerned, he was duly served, whereas, a Counsel was also engaged; but no one has turned up to assist the Court, and therefore, the matter is being decided on the basis of available record.

I have heard learned counsel and perused the record.

It appears that insofar as the question of jurisdiction of the Commissioner, Workmen's Compensation is concerned, earlier an order of the said Commissioner, whereby, he had declined to assume jurisdiction in the matter was impugned by Respondent No.3 by way of petition No.S-143/2005 and a learned Judge of this Court, vide Judgment dated 14.04.2007 was pleased to set aside the said order of the Commissioner by holding that the Commissioner had jurisdiction in view of sub-section (4) of section 1 of Payment of Wages Act, 1936; hence the objection regarding jurisdiction is misconceived.

As to the merits of the case, admittedly, the order of compulsorily retirement of respondent No.3 dated 24.04.2001 was impugned by him by way of an appeal and was modified by the Federal Service Tribunal through order dated 18.02.2004, to the extent that the said compulsorily retirement was converted in the withholding of increments for a period of three years. Admittedly the said order was never impugned any further by the Petitioners, whereas, the Respondent No.3 attained superannuation and stood retired during pendency of his Appeal before the Tribunal. Since the order of his compulsory retirement was no more in field and was modified, for all legal and practical purposes he could only retire on attaining the age of superannuation; and hence, was entitled for all post-retirement benefits as may be available to an employee who retires on attaining superannuation, including leave encashment.

This is what has been held by the two Courts below, and the orders passed by these forums appear to be correct in law; therefore, no case for indulgence is made out; hence the petition being misconceived is hereby **dismissed.**

J U D G E