

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

C.P. No. D- 2197 of 2019

M/s. Javedan Cement Limited

Petitioner

through : Mr. Asad Iftikhar, advocate

Respondents 1 & 2

Though : Mr. Ali Safdar Depar, AAG

Respondents 3 to 40

through : Mr. Sanaullah Noor Ghouri, advocate

Dates of hearing : **10.01.2022**

ORDER

ADNAN-UL-KARIM MEMON, J. Through this petition, the petitioner- M/s. Javedan Cement Limited has assailed the judgment dated 04th March 2019 passed by the learned Member, Sindh Labor Appellate Tribunal, Karachi, (`SLAT`) whereby, the order dated 20th December 2017, passed by the learned Sindh Labor Court (`SLC`) was modified to the extent of awarding compensation instead of reinstatement in service of the private respondents.

2. The case of private respondents in birds-eye view is that their services were hired by the petitioner-factory, through a third-party contractor, however in middle; their services were terminated by the petitioner-factory, *inter alia*, on the ground of closing down the petitioner-factory and on account of other ancillary industrial disputes. The private respondents being aggrieved by and dissatisfied with their verbal termination orders served upon the petitioner-factory, their respective grievance notices, and failure to reply, filed grievance applications before the learned SLC for their reinstatement in service. The learned SLC after framing of the issues, recording of evidence of the parties, and hearing them passed the judgment dated 20th December 2017 in favor of the private respondents by setting aside their verbal termination orders, an excerpt whereof is as under:

“Point No.3As a result of findings arrived on above points the case of 38-applicants namely: Sher Mohammad Khan, Muhammad Ibrahim, Abdul Majeed, Zahid Hussain, Shakirullah, Muhammad Hashim, Sahib Dad, Ghulam Abbas, Muhammad Zahid, Rasool Bakhsh, Nasir Ali, Rasheed Ahmed, Muhammad

Haleem, Zubair Malk, Abdul Wahid, Naeem Muhammad , Muhammad Yasin, Shah Nawaz, Muhammad Kamal, Syed Shamsul hasan, Adnan Ahmed, Zahoor Khan, Amjad Khan, Fida Hussain, Muhammad Usman, Muhammad Arif, Shah Nawaz, Naeem Khan, Mirza Tughral Baig, Noorani Shah, Ghulam Nabi, Syed Eijaz Hussain Naqvi, Fazalur Rehman, Kashif Ali, Dil Jan, Kher Muhammad Khan, Ashfaq Hussain Khan and Ibrahim Hussain are hereby allowed as payed with direction to Respondent management to reinstate the above named applicants in their respective services with all consequential benefits within a period of one months, as they were remain jobless during the days of their illegal verbal termination without written order and same is set-aside.”

Petitioner-factory being aggrieved by and dissatisfied with the aforesaid decision preferred statutory appeal before the learned SLAT. However, the learned SLAT modified the judgment of learned SLC and awarded compensation to the private respondents vide order dated 04th March 2019 in lieu of their reinstatement in service. An excerpt of the order of SLAT is reproduced as under:

“18. Keeping in view all the facts and circumstances of the case, including length of respondents’ service, loss of expected duration of service, length of litigation, cost of living, conditions of unemployment and condition of appellants’ establishment, a reasonable lump sum amount of Rs.300,000/- is awarded to each of respondents Nos. 4, 7, 9, 12, 13, 15, 18, 22, 23, 24, 26, & 28, whose service was less than 10 years, Rs.400,000/- to each of respondents Nos. 2, 3, 6, 8, 10, 14, 19, 29, 30, 31, 34, 37 & 38, whose service was more than 10 years and less than 20 years, and Rs.500,000/- to each of respondents No.1 ,5 ,16 17, 27 ,32 & 33, whose service was more than 20 years, as full and final payment for severance of their employment relationship with the appellants. The appellants are directed to deposit the amount within 30 days for payment to the respondents.

19. As for respondents 11, 20, 21, 25, 35, & 36, their grievance application had already been dismissed for non-prosecution and the labour court had mistakenly granted them the relief. Therefore, they are not award any compensation and the appeal against these respondents is allowed.

20. As stated above, while the order of the labour court is modified from reinstatement in service with back benefits to the award of compensation in respect of the 32 respondents, it is completely set aside in respect of the six respondents. The appeal is disposed of accordingly.”

3. Mr. Asad Iftikhar, learned counsel for the petitioner-factory, has addressed the aforesaid issue and argued that the judgment/orders passed by the learned SLC and SLAT , in Grievance Petitions filed by the private respondents are full of errors, based on misreading and non-reading of evidence; that the findings of the learned Courts below are arbitrary and perverse; that the learned Presiding Officer of SLC, as well as, Member, SLAT have failed to appreciate that the private respondents were not employees of the petitioner, and were employees of third party contractor, therefore the impugned judgment/order passed by both the courts below are not binding upon the petitioner; that the case of the petitioner was not considered by the learned SLC and ignored the issue involved in the matter; that the impugned

decisions rendered by the Member, SLAT, as well as, SLC are illegal, unlawful and against the law, hence, are liable to be set aside; that there is no provision in law to award compensation to the workers as such the learned SLAT committed grave error by awarding reasonable compensation of Rs. 300,000/- to each of the private respondents as full and final payment to the private respondents and Rs.500,000/- to each respondent whose services was more than 20 years, as full and final payment for severance of their employment relationship with the petitioner-factory; that learned SLAT erred in directing the petitioner to deposit the amount for payment to the private respondents within 30 days. Learned counsel relied upon various documents attached with the memo of the petition and submitted that the respondents 3 to 4 failed to establish their case on merit before the learned SLC as well as SLAT; that the length of service as alleged cannot be considered to be the decisive factor so far as their employment with the third party contractor is concerned; that the agreement reached by and between the petitioner-factory and third party contractor had already expired, thus retaining the services of the private respondents in a closed factory is of no use. He relied upon the cases of Fauji Fertilizer Company Ltd. through Factory Manager v. National Industrial Relations Commission through Chairman and others, **2013 SCMR 1253**, Seagull Exports (Pvt.) Ltd. v. Sindh Labour Appellate Tribunal and others, **2002 PLC 212**, Mushtaque Ahmed v. Member, Sindh Labour Appellate Tribunal and 2 others, **2020 PLC 88**, Distribution Officer, Hoechst Pharmaceuticals Pakistan (Pvt.) Ltd. and another v. Punjab Labour Appellate Tribunal and 2 others, **1993 SCMR 1282**, Farid Ahmad v. Pakistan Burmah-Shell Ltd. and others, **1987 SCMR 1463**, Souvenir Tobacco Co. Ltd. v. Najamuddin and others, **PLD 1977 Karachi 250**, Messer Hinopak Motors Limited v. Chairman, Sindh Labour Appellate Tribunal and others, **2000 PLC 89** and Mian Munir Ahmad v. the State, **1985 SCMR 257**. He lastly prayed for allowing the instant petition.

4. Mr. Sanaullah Noor Ghouri, learned counsel for the private respondents, has supported the impugned Judgments passed by the learned Courts below and contended that the private respondents were permanent workers in the Petitioner-factory, thus Grievance Applications were maintainable under the law; that the captioned petition is liable to be dismissed under the law; that there are concurrent findings recorded by the competent forum under the special law and the grounds raised in the instant petition are untenable; that Petitioner-factory terminated the services of the private-Respondents in without any notice and inquiry and did not pay dues to the private Respondents; that both the aforesaid Judgments are passed within the parameters of law that

instant petition is frivolous, misleading as there are concurrent findings by the courts below and this Court has limited jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to dilate upon the evidences led by the parties; that private Respondents had performed their duties with full devotion; that the terms and conditions of the employment in the shape of letters of appointment were not issued to the private Respondents; that the private Respondents were verbally terminated from service without any fault; that aforesaid action of the Petitioner-factory was absolutely illegal therefore private Respondents raised their grievance notice which were served upon the Petitioner-factory, but were not redressed at the initial stage, they had no alternative except to approach the learned SLC for the aforesaid remedy and relief; that the learned SLC after recording the evidences passed just, proper and fair Judgment in their cases holding their termination as illegal and reinstated them in service with all back benefits and the Petitioner-factory did not reinstate them on duty with frivolous plea of employment of third party contractor, and filed statutory appeals before the learned SLAT; that the learned Member of SLAT after hearing the learned counsel for the parties passed the Judgment in both the petitions however the Petitioner-factory has now approached this Court. In support of his contentions, he relied upon the para-wise comments filed on behalf of 30 private respondents and other documents attached with the comments. He lastly prayed for the dismissal of the instant petition.

5. Mr. Ali Safdar Depar, learned AAG, has supported the decision of both the courts below and argued that there is no perversity in the impugned decisions.

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. It appears from the record that the private respondents filed their respective grievance applications under, Standing Order No. 12(3) Industrial and Commercial Employment (S&Os) Ordinance 1968 read with Section 41(8) of the Industrial Relations Act, 2008, against their verbal termination from service with effect from 17.12.2008 to 19.01.2009, by the petitioner, before the learned SLC Karachi. Their grievance applications were allowed vide judgment dated 20th December 2017 whereby the petitioner was directed to reinstate them in service with back benefits with effect from the date of termination. The petitioner being aggrieved by and dissatisfied with the aforesaid judgment of

learned SLC preferred their respective statutory appeals before the learned SLAT Karachi. The learned SLAT after hearing the parties, dismissed their appeals vide common order dated 04th March 2019 with certain modifications in the judgment of learned SLC as discussed supra.

8. The main ground was agitated by the learned counsel for the petitioner that the respondents were not their employees, but the employees of third-party contractors. This plea is not tenable in the light of judgment rendered by the Hon'ble Supreme Court in the case of Messrs State Oil Company Limited v. Bakht Siddique and others, **2018 SCMR 1181**, in which the workers employed by the third-party contractor were held to be the workers of the company. On the point involved in this petition, we are fortified with the decisions rendered by the Hon'ble Supreme Court as well as this Court and other learned High Courts in the cases of Messrs Dawood Cotton Mills Limited v. Sindh Labour Appellate Tribunal and others, **2004 PLC 348**, Muhammad Pervaiz v. Hussain Spinning Mills Unit No.1, Landhi, Karachi, **2007 PLC 460**, Fauji Fertilizer Company Ltd. v. Sindh Labour Appellate Tribunal and others, **2005 PLC 466**, Fauji Fertilizer Company Ltd. through Factory Manager v. National Industrial Relations Commission through Chairman and others, **2014 PLC 10**, Fauji Fertilizer Company Ltd. through Factory Manager v. Mehmood Ahmed, **2006 PLC 630**, The Glaxo Laboratories (Pakistan) Ltd. v. Pakistan. Mr. Muhammad Bux Memon, Industrial Tribunal, and Glaxo Laboratories Workers' Union and 33 others, **PLD 1962 Supreme Court 60**, Abbasi Textile Mills Ltd., Rahimyar Khan v. The Industrial Court, West Pakistan, Abbasi Textile Mills Workers' Union, and Kale Khan, **PLD 1966 Supreme Court 765**, Muhammad Sadiq v. Punjab Labour Court NOA Lahore and others, **PLD 1988 Supreme Court 633**.

9. Adverting to the second ground that the decision of Labour Court was not under the law, suffice it to say, ample opportunity was given to the petitioner to defend their case, but they failed in all respect to satisfy the learned SLC, resultantly, the grievance applications of the respondents were allowed accordingly.

10. Reverting to the third point that there is no specific provision for the award of compensation in the Industrial Relations Act/Ordinance, we do not agree with the aforesaid assertion for the simple reason that the learned SLAT has dealt with this issue in the impugned common judgment dated 04th March 2019 and assigned valid reasons to award a reasonable compensation of Rs. 300,000/- to each of the private respondents as full and final payment to the private respondents and Rs. 500,000 to each respondent whose services were

more than 20 years, as full and final payment for severance of their employment relationship with the petitioner-factory.

11. In the light of the above facts and circumstances of the case and for the reasons alluded hereinabove, this petition is dismissed along with pending applications, with no order as to costs.

12. These are the reasons for our short order dated 10.01.2022 whereby we have dismissed the instant petition.

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