

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No.S-329 of 2011

Clariant Pakistan Limited

Versus

The Court of Commissioner for Workmen Compensation  
& Authority under Payment of Wages Act, 1936 & another

Date	Order with signature of Judge
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1. For hearing of CMA 1488/13
2. For hearing of CMA 1488/13
3. For hearing of CMA 1488/13
4. For hearing of main case

**Date of hearing: 29.05.2019**

Mr. Mehar Qazi for petitioner.

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This petition is arising out of an order passed by the Commissioner Workman Compensation & Authority under the Payment of Wages Act (East Division) Karachi.

It appears that an application under section 15 of Payment of Wages Act, 1936 (1936 Act) was filed by respondent No.2 for the payment of allegedly deducted amount from the entitled amount of the applicant/respondent No.2, as claimed. In paragraph 20 of the application it is claimed that there was correspondence through email and the amount was never refused. One such email referred in paragraph 20 is of 21.04.2009.

On this set of pleadings an application for rejection of the aforesaid application, as being barred by time under section 15(2) of 1936 Act was filed by petitioner as it was beyond three years period. The application was dismissed vide impugned order with the observation that the issue of limitation on the basis of pleadings of the parties appears to be a mixed question of fact and law. The said interlocutory application for rejection was dismissed vide order dated 25.02.2011.

The Statute does not provide any remedy of appeal insofar as the interlocutory order is concerned, since the forum is meant for Workmen's Compensation and Authority under Payment of Wages Act,

1936 Act, the petitioner considered itself as an aggrieved party and filed this petition.

I have heard the learned counsel.

At the very outset when the Statute does not provide a remedy of appeal, how then, a recourse through this petition could be exhausted under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. This petition is pending since last eight years despite the fact that proceedings under 1936 Act were apparently expeditious and for that reason subject interlocutory order is not made appealable. The contention of learned counsel for petitioner that the authority does not enjoy jurisdiction to proceed with the matter on account of the fact that it was belated and time barred claim, is not appealable to mind since the Authority itself has the jurisdiction to decide the question of jurisdiction. Claim being claimed to be time barred does not take away the jurisdiction of the Authority to decide such issue on the principle of Competence-Competance. Once the issue is decided, though tentatively, it had the authority to proceed and decide, which order may be appealable along with all interlocutory orders. In the case of Divisional Superintendent, PWR Multan v. Abdul Khaliq reported in 1984SCMR 1311 Hon'ble Supreme Court on some identical facts observed as under:-

*“The first proviso to subsection (2) of section 15 lays down the limitation within which the application has to be filed whereas the second proviso authorizes the condonation of delay for sufficient cause. Subsection (3) provides the procedure to be followed where an application under subsection (2) is entertained. Section 17 provides for an appeal against the direction made under subsection (3) or subsection (4) of section 15. Here what is omitted is an appeal against an order refusing to entertain an application on the ground that it is barred by time or for sufficient cause the delay is condoned. The intention of the Legislature seems to be in that case where the application is beyond time and the authority fails to condone the delay under the second proviso to subsection (2), no appeal shall lie against that order under section 17. On the same footing where the delay is condoned still no appeal would lie on that ground and the matter would be liable to be adjudicated upon in the manner laid down by subsection (3). If this would not have been the intention a provision would have been made in section 17 as in 'the case of directions made under subsections (3) and (4). Clearly, therefore, an order dismissing the application as being barred by time or condoning the delay for sufficient cause does not qualify as a direction to make it appealable under section 17.”*

It is also pertinent to point out that evidence of respondent No.2, the claimant, has already been recorded and per learned for the petitioner, the affidavit-in-evidence of petitioner has also been filed. It could have taken a few months to decide the controversy finally on merit and it is now eight years have passed and on the basis of this petition entire proceeding before the Authority is stayed/halted.

In these circumstances, I do not see any reason to interfere in the order of the Authority dated 25.02.2011 impugned in these proceedings and consequently the petition is dismissed along with listed application. The Authority however may frame all relevant issues including issue of limitation and in priority decide the matter in accordance with law on the basis of pleadings and the evidence that may come on record.

Above are reasons for short order dated 29.05.2019.

Dated:

**Judge**