

.ORDER SHEET  
THE HIGH COURT OF SINDH AT KARACHI  
CP.No.D-5063 of 2021

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Date: Order with signature(s) of the Judge(s)  
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For orders as to maintainability of petition.

26<sup>th</sup> August 2021

Syed Muhammad Ali Mehdi, advocate for the petitioner.  
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Heard learned counsel for the petitioner.

2. At the outset, learned counsel has referred to paragraph-8 of impugned order, which is that:

“8. With regard to objection of the respondent that the services of the applicant fall under the managerial category but applicant has negated such rhetoric of respondent with contention that applicant had not any power of hiring and firing and also he had no any final authority in his action but he was subordinate to his superiors. This incident would leave little doubt about the fact that he had not the final say in matters of miscellaneous nature, and in any case he was not responsible for administration of the concern. Mere nomenclature would not indicate or depict the true character or category of his posting. It is generally given to confer upon the incumbent a pseudo status, besides feeling of officer-ship, and with view to ward off his participation in any trade union activity and to preclude him to claim favorite ‘status’ of workman, entitled to variety of monetary benefits, amenities and perquisites, as also a number of ‘protections’ under the labour laws. It is so well-known that mere high-sounding designation and even quantum of emoluments of a person would not decipher and delineate the exact line of differentiation, whether he is a workman or one enjoying a higher status, the determining factor being performed. In the view of above discussion, I am of the humble opinion that **though this objection requires to be settled only through recording of evidence**but in tentative assessment, it is determined through above discussion that applicant seems, by all means as employed person or workman. In such situation, the objection of the respondent merits no consideration and overruled accordingly. Apart from the observation and factual position narrated as above, the provincial labour laws amended and enacted after 18<sup>th</sup>

amendment in the Constitution, clearly show that all people concerned with commercial or industrial establishment can be termed as workers except those who are conferred upon the powers of hiring and as per such definitions, the duties rendered by applicant can be determined as duties of workman, the definitions of work 'workman or employed person' provided under different Labour Laws, being nodal point for deciding the claims of employees, are replicated for convenience here as under:

***Sindh Factories Act, 2015***

***Section 2.***

*(n) "worker" means 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.*

***Sindh Payment of Wages Act, 2015***

***Section 2 (1)***

*(d) "Employed person" means any person employed in any factory or industrial establishment or commercial establishment or a mine or Railway to do any skilled or unskilled, manual or clerical work for hire or reward and includes permanent, probationers, budly, temporary, apprentice and contract workers, but does not include Occupier and Managing having the hiring and firing authority.*

***Sindh Terms of Employment (Standing Orders) Act, 2015***

***Section 2 (1)***

*(n) "worker" means any person employed in any industrial establishment or commercial establishment or a mine to do any skilled or unskilled, manual or clerical work for hire or reward and includes permanent, probationer, badli, temporary, apprentices and contract workers, 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 function relating to their contract of employment."*

Bare reading of above definitions and perusal of above discussion reveal that respondent failed to produce on record that applicant was rendering of hiring and firing powers to exclude him out of definition of workman,

hence applicant maintains his category to make out the jurisdiction of this Court.”

3. Further he contends that since Wages Commission/Authority while deciding application under Rule VII Rule 10 CPC has observed that tentatively jurisdiction lies with the Authority whereas simultaneously that Authority has left the question with the opportunity to the parties that this can finally be decided after leading evidence, hence, when jurisdiction is disputed, Authority is not competent to decide the case side by side on merits, thus, this petition may be disposed of with direction to the Commission /Authority that first preliminary issue may be decided with regard to jurisdiction in terms of definition of employed person inter alia and parties may be allowed to lead evidence or submit additional documents if they desire.

4. Since, it is well settled principle of law that *‘any forum or court, which, if lacks jurisdiction, adjudicates and decides a matter, such decision etc, shall be void and of no legal effect’*, as is held in the case of S.M.Waseem Ashraf v. Federation of Pakistan [2013 SCMR 338], therefore, once the *‘forum’* itself observed in the impugned order that:-

“In the view of above discussion, I am of the humble opinion that **though this objection requires to be settled only through recording of evidence** but in tentative assessment, it is determined through above discussion that **applicant seems, by all means as employed person or workman.**”

then it is never advisable to let such question pending determination till completion of whole proceedings, particularly where an *‘affirmative answer’* to such question shall be sufficient to take the matter out of the jurisdiction and competence of such authority / forum. Needless to add view of larger Bench of five learned Judges of the Honourable Supreme Court on such aspect was referred in the case of Muhammad Iqbal v. Muhammad Ahmed Ramzani & 2 others 2014 CLC 1392 as:-

“The last view expressed by us is supported by Mansab Ali v. Amir & 3 others (PLD 1971 SC 124), wherein a larger Bench comprising of five learned Judges of the Honourable Supreme Court was pleased to hold that it is an elementary principle that if a mandatory condition for the exercise of

jurisdiction by a court, tribunal or authority is not fulfilled, then entire proceedings which follows become illegal and suffer from want of jurisdiction; and, any order passed in continuation of such proceedings, in appeal or revision, equally suffer from illegality and are without jurisdiction."

Further, the law and procedure, nowhere, restricts framing and deciding of such like issue / question as '*preliminary issue*' therefore, whenever there is a challenge to *jurisdiction* of the forum / court then it is always advisable to decide the same *first*.

5. Accordingly, contentions raised by the learned counsel carry weight, therefore, we decide this petition with direction to the Commission / Authority to frame legal issue with regard to jurisdiction, as stated above, particularly in paragraph-8 of the impugned order, and allow the parties to submit documents, including additional documents if not already filed, or lead evidence and thereafter finally decide the jurisdictional question. Needless to mention that observations of impugned order are tentative in nature and shall not come in the way when Commission / Authority shall decide the issue finally.

Instant petition stands disposed of in the above terms.

J U D G E

J U D G E

SAJID.