

# THE HIGH COURT OF SINDH AT KARACHI

CP.No.D-4496 of 2018

**Before:** Mr. Justice Salahuddin Panhwar  
Mr. Justice Adnan-ul-Karim Memon

Petitioner : Muhammad Sadiq present in person

Respondents : Chairman EOBI through Mr. Ashfaq Hussain Rizvi advocate

Mr. Muhammad Nishat Warsi Deputy Attorney General of Pakistan

Date of hearing : 25.08.2021

Date of announcement : 10.09.2021

## J U D G M E N T

**SALAHUDDIN PANHWAR J.**-Through captioned petition, Muhammad Sadiq (the petitioner) has assailed the orders dated 29.08.2017 and the order dated 16.10.2017 passed by Adjudicating Authority and Appellate Authority of Employees Old Age Benefits Institution (EOBI).

2. Precisely the relevant facts of the instant Petition are that petitioner was employed with respondent No.4 in the year 1992, however, in the year 1996, due to formation of union by the workers, the respondent No.4 terminated the petitioner and other workers orally, which termination was challenged by the petitioner and other workers by preferring Grievance Application before Labour Court at Karachi, which was allowed and the petitioner and other workers were reinstated in service, but the respondent No.4 did not reinstate the petitioner and other workers, however, the petitioner after reaching the age of superannuation, made several applications to the EOBI Authorities for grant of pensionary benefits, but all in vain. Thereafter, the petitioner filed a complaint No.A-A-I,52-KCR/2013/5405 before Adjudicating Authority of EOBI which was disposed of in terms that:

*“Keeping in view of this, the case is disposed off from this Authority and whenever the decision is passed by the Honourable*

*High Court of Sindh he may please approach this forum whatever directives are issued from the Honourable High Court of Sindh will be followed in letter or spirit. The present Complaint is disposed off accordingly."*

3. After dismissal of his complaint, the petitioner approached to the Appellate Authority, Board of Trustee, Employees' Old-Age Benefits Institution Camp at Karachi (EOBI), which was disposed of by order dated 16.10.2017, the same is reproduced as under:

"D E C I S I O N

*Being aggrieved with the decision of the Adjudicating Authority-1 dated 29-08-2017. The Appellant preferred this appeal u/s of EOBI act, 1976 stating therein that he had worked with M/s. Paradise Hotel from 1992 to 1996 after 4 years i.e. in 1996 the employer verbally instructed and barred him from entering the premises of the Hotel. As a result he filed an application in the Labour Court which was decided on 14-02-1998 in his favour with 25% back benefits. He requested to consider his employment with said establishment from 1992 to 1998 and award him Old Age Pension."*

2. Respondent stated that since the order of the Labour Court was not implemented by the employer the Appellant had filed a Writ Petition before the Honourable High Court Sindh, hence the claim of the Appellant could not be considered at this stage for awarding any benefits under the said Act. The Respondent further stated that the Adjudicating Authority-I has also dismissed his petition on the above ground and prayed for dismissal of the appeal.

3. On the date of hearing both the parties were present the Appellant confirmed that the case is pending in Honourable High Court Sindh as employer has neither implemented the order of the Labour Court nor any contribution on his behalf has been paid to the Institution. The Board is of the considered opinion to dismiss the appeal and uphold of the Adjudicating Authority-I."

4. The petitioner is claiming employment in M/s Paradise Hotel (the Respondent No.4), as such on that basis he insists that pensionary benefits as provided under EOBI should have also been extended to him.

5. It is a matter of record that there was litigation between petitioner and Paradise Hotel (respondent No.4) before Sindh Labour Court at Karachi, wherein Grievance Application No. 237/94 filed by the present petitioner was disposed of by order dated 14<sup>th</sup> February 1998. Being conducive point Nos.3 and 4 are reproduced herewith:-

"POINT NO. 3

*It is admitted fact that all the applications were terminated verbally by the respondents. The respondents have taken the plea that the applicants were the employees of the Contractors and were terminated in writing but the respondents have failed to file the termination letter of the Contractors. In absence of any termination letter is clear that the applicants were terminated verbally and without assigning any reason which is against the provisions of standing order 12 (3) of the West Pakistan Industrial & Commercial Employment (Standing Orders) Ordinance, 1968. I, therefore, answered this point in affirmative.*

POINT NO. 4

*In view of my findings on point Nos. 1, 2 & 3, the applications are allowed as prayed. The respondents are directed implement this order within 30 days from the date of this order."*

6. Since 2018 the instant matter is pending before this Court and despite issuance of warrants, the respondent No.4 has failed to cause appearance. Learned DAG contends that since the petitioner was restored in service by the Labour Court, therefore, he shall be treated as "in service" upto the age of superannuation, hence the petitioner may be accommodated by the EOBI. On the other hand, learned counsel for EOBI contends that employer of petitioner (M/s Paradise Hotel) has failed to get registration of the petitioner with the EOBI as well as they have also failed to provide contribution, as such, EOBI is not bound to grant/pay and pensionary benefits likewise registered members.

7. Admittedly, the petitioner was in service in Paradise Hotel thus comes within the category of "*secured worker*". Registration with EOBI and contribution by the employer pertains between employer and EOBI as is evident from the Section 11 of the Act *itself* which reads as:-

**"11. Registration of Establishment, Etc. (1)** Every employer shall, before the expiration of thirty days from the day on which this Act becomes applicable to the industry or establishment in respect of which he is the employer, communicate to the Institution the name and other prescribed particulars of the industry or establishment.'

(2) Every insured person may also communicate his name and other prescribed particulars to the Institution.'

8. *Prima facie*, the Section 11(1) contains the word '*shall*' thereby puts the employer under a *mandatory* obligation to get registration of its industry /

establishment while the *insured person* was / is not under such mandatory obligation. Here, it may be added that *insured person*, as defined by the Act is:-

“2(i) **insured person** means (an employee) who is or was in insurable employment.”

9. In the instant matter, the status of the petitioner as that of an *employee* of the respondent no.4 is not a matter of dispute. It is also not a matter of dispute that Sindh Labour Court at Karachi *did* allow the grievance petition of the petitioner and respondent no.4 was directed to implement the order of Sindh Labour Court which, *however*, was not implemented by the respondent no.4 which, *too*, without getting the order of Sindh Labour Court, Karachi set-aside. Thus, the status of the petitioner as that of *insured person* can't be denied by the respondent no.4 as well by the institution.

10. Further, it is also matter of record that the *fault* in not giving effect to the order of the Sindh Labour Court, Karachi was / is on part of the respondent no.4 and since the institution was also in active knowledge of such fact therefore, it was obligatory upon it (institution) to check the record of the establishment (respondent no.4) as provided under section 12 of the Act. It may also be added that since the petitioner was not being allowed to work hence no '**wages**' was being paid to him, therefore, such aspect was also to be kept in view by the institution before denying the entitlement of the petitioner an *insured person*. A referral to Section 22A of the Act, being relevant, is made hereunder:-

“22A. **Old Age Grant.** If an insured person, not otherwise, entitled to old age pension, retires from insurable employment after attaining the age of sixty years, or fifty five years in case of woman and mine worker, and contributions in respect of him were payable for less than 15 years, but not less than four (than two) years, he shall be entitled to an old age grant payable in lump sum equal to his one month's average monthly wages for every completed year of insurable employment or part thereof in excess of six months (: ) 5.

Provided that where the employees was insured under the provision of the Act on or before 30<sup>th</sup> June 2002, and contribution

payable under the Act by the employer prior to 30<sup>th</sup> June 2002 in respect of said insured person had not been paid, the insured person shall enjoy the rights under this Act as if for the word (payable) the word "paid" were not substituted.

Provided further that where the contribution under section 9B is paid regularly by the insured person himself in accordance with the prescribed procedure, his entitlement to the benefit shall not be effected by default in payment of employer share of contribution under section 9."

11. The above, *prima facie*, leave a room for a situation, so involved in the instant matter, where there appears no fault on part of the petitioner rather he (petitioner) despite being ordered to be employed was kept out of the establishment (respondent No.4), therefore, it would be quite unjustified to deprive him of his entitlement, particularly where the objective of the Act was / is for the benefits of Old Age benefits, employed in establishment. Further, there is a complete hierarchy with the EOBI with different officers, who are required to compel employers to get registered their employees and to pay the contribution enabling the low paid employees with pension coverage by the EOBI. It is pertinent to mention here that enactment of EOBI is meant for welfare of the workers while getting contribution from employers, hence, this burden cannot be shifted on employees who *normally* are illiterate persons working as labourers in different industries having no knowledge about the schemes introduced by the Government. This is not a case of EOBI that any notice was ever given to the Paradise Hotel (employer) with regard to registration of the petitioner as employee and contribution thereof.

12. With regard to length of service, counsel for the EOBI contends that the petitioner remained employee of the respondent for a period of four years, therefore, he is not entitled for any benefit. Needless to mention that decision/termination was challenged by the petitioner in referred grievance application which was allowed, hence, it cannot be said that length of service of the petitioner was only four years. That service would be treated as upto the age of superannuation.

13. Worth to add here that welfare authorities are required to work with dedication for the welfare of workers and shall not be deprived of any worker on technical grounds, however, in the present case the petitioner is running pillar to post and even filed application with adjudicating Authority but those petitions/applications were disposed of within the spirit that matter is pending before this Court and they will obey that order. Mere pendency of the petition for seeking direction to EOBI was no justification to refuse application preferred by the petitioner with the Adjudicating Authority.

14. Under these circumstances, the instant petition is allowed, EOBI shall pay pensionary benefits to the petitioner. However, EOBI Authorities would be competent to take coercive measures against the employer to receive contribution of that period, if permissible by the law.

JUDGE

JUDGE