

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

C P D 6129 of 2021 : Oman Dyeing Mills vs.
Chairman Sindh Labour Appellate
Tribunal & Others

For the Petitioner : Mr. Sohail Hameed, Advocate

For the Respondents : Mr. Syed Anayat Hussain Shah Bukhari
Advocate

Mr. Ali Safdar Depar
Additional Advocate General Sindh

Date/s of hearing : 18.08.2022

Date of announcement : 18.08.2022

ORDER

Agha Faisal, J. The petitioner has assailed concurrent findings, being the order of the learned Labour Appellate Tribunal dated 14.09.2021 upholding the order of the learned Labour Court -IV dated 25.08.2021 (“Impugned Orders”), whereby the dismissal of the respondent no. 3 was overturned and the said respondent was reinstated with all appurtenant back benefits.

2. Per petitioner’s counsel, the respective fora had not appreciated the evidence in its proper perspective, hence, a *de novo* exercise in such regard was merited in writ jurisdiction¹. It was the crux of the petitioner’s case the onus of discharging the burden of proof was not rightly reflected in the issues that had been framed in the proceedings before the learned Labour Court. The respondent’s counsel supported the Impugned Orders and submitted that they merited no interference in writ jurisdiction.

3. Heard and perused. It is imperative to consider that Article 199 of the Constitution contemplates the discretionary² writ jurisdiction of this Court and the said discretion may be exercised in the absence of an adequate remedy. In the present matter *admittedly* there existed an adequate remedy, however, the

¹ Notwithstanding the fact that the petitioner failed to lead any evidence during the proceedings.

² Per *Ijaz Ul Ahsan J. in Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.

same was duly availed / exhausted and concurrent findings, based on the appreciation of record / evidence, had been rendered in favor of the respondent.

4. The issue in scrutiny pertains to dismissal of a permanent employee vide verbal orders. The learned Labour Court considered the record and held *inter alia* that the law required that the termination of a worker be culminated vide a reasoned order in writing. It was also observed that no requisite procedure for removal from service of the respondent had been followed by the petitioner. It was in such context that the respondent was reinstated.

The learned Labour Appellate Tribunal observed that the petitioner failed to lead any evidence before the forum of original jurisdiction, despite ample opportunity, and appeared only to be motivated to delay the proceedings. The order noted that the petitioner failed to cross examine the respondent / witness, did not adduce any evidence, did not file any written arguments, obtained more than twenty adjournments and changed three counsel. It was also observed that while the petitioner's side was closed on 29.02.2020 and the matter was determined on 25.08.2020, however, in the meanwhile the petitioner did not even deign to seek the reopening of their side for evidence. In conclusion, it was observed that the respondent's claim stood demonstrated by the record filed there by and the impugned order was rightly rested thereon.

5. It was admitted by the petitioner's counsel that the petitioner failed to lead evidence, however, no justification in such regard was provided. It was also admitted that no application whatsoever was ever preferred before the concerned forum seeking any amendment in the issues framed. The counsel also remained unable to rebut the preponderance of record / evidence relied upon by the respective fora, and remained unable to articulate before us today as to why the impugned findings could not be rested on the record / evidence relied upon.

6. The ambit of a constitutional petition is not that of yet another forum of appeal and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order/s impugned. It is trite law³ that where the fora had exercised its discretion in one way and that the discretion had been judicially exercised on sound principles, interference in such discretion would not be merited unless the same was contrary to law or usage having the force of law. It is the considered view of this court that no manifest illegality has been

³ Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

identified in the orders impugned and further that no defect has been pointed out in so far as the exercise of jurisdiction is concerned of the fora.

7. In view hereof, we are constrained to observe that the petitioner has failed to set forth any case to merit indulgence in the discretionary writ jurisdiction of this Court, hence, this petition, along with pending application/s, was dismissed vide our short order announced in open Court earlier today. These are the reasons for the short order.

JUDGE

JUDGE