

IN THE HIGH COURT OF SINDH AT KARACHI

J. C. M. No. 37 of 2002

Applicant: Israr-ul-Haq in person.

Respondents: Pakistan International Airlines
Through Mr. Usman Tufail Shaikh
Advocate.

Dr. Ch. Muhammad Waseem Iqbal,
Official Liquidator of M/s Hotel
Midway House Limited.

For hearing of CMA No. 348/2018.

Date of hearing: 10.02.2020.

Date of order: 10.02.2020.

ORDER

Muhammad Junaid Ghaffar, J. This application has been filed by the applicant claiming his unpaid dues/back benefits from the Company under liquidation on the ground that in some earlier proceedings, he had approached the Hon'ble Supreme Court of Pakistan and vide order dated 15.08.2018, he was directed to approach the Company Judge in respect of Company in liquidation from which he is claiming the above amount. He appears in person and submits that though in earlier proceedings in C.P. Nos. D-1429 and 1430 of 2012, he was given certain payments by the Official Liquidator, but he was still dissatisfied and approached the Hon'ble Supreme Court, whereas, according to him, the amount earlier paid does not commensurate with his entitlement in respect of various heads including back benefits, amount of Golden Handshake, provident fund and other benefits for which an employee is entitled. He has also filed some statement pursuant to directions of this Court in which he has setup his claim to the extent of Rs.12,49,010/- (Rupees Twelve Lac Forty-Nine Thousand Ten only) and has prayed that this amount may be given to him by the Official Liquidator.

2. Learned Official Liquidator has argued that all benefits of the applicant have been paid pursuant to directions of learned Division Bench in the aforesaid two petitions with which the petitioner was satisfied and his petitions were disposed of; but surprisingly he approached the Hon'ble Supreme Court and now once again, he has come up with a similar claim which stands satisfied and fully paid. Learned Official Liquidator has also referred to order dated 23.01.2018 passed in the petitions filed by the applicant and has prayed for dismissal of the application as according to him no further amount is payable; nor is any amount available with him on behalf of the Company.

3. Learned Counsel appearing on behalf of PIA, the previous owners of the Company in which the applicant was employed, submits that all dues have been paid after confirmation and calculation of the same through a Chartered Accountant, whereas, no Golden Handshake Scheme ever materialized and therefore, applicant has no case. He submits that even otherwise, he was dismissed from the service and according to PIA excess amount has been paid to him.

4. I have heard the applicant as well as the Official Liquidator and Counsel for PIA. It appears that the applicant's claim is against the Company under liquidation as according to him, certain dues were outstanding against the said Company and for that purposes, he filed two separate petitions bearing C.P. Nos.D-1429 and 1430 of 2012 in which he had also impugned orders of the lower forums. In these petitions, his prayer was as follows: -

“C.P. No.D-1429/2012

- i. To set aside the impugned order passed by the Respondent No.2 in application No.93/2008 and order of the Learned Respondent No.1 in appeal No.KAR-01/2010 and may further be pleased to allow the application No.103/94 filed U/S 25-A of I.R.O. 1969 read with Section 51 of I.R.O. 1969;
- ii. To pass an order/ decision which deems fit and proper under the circumstances of the case;
- iii. To declare that Respondent No.4 is the defacto employer of the Petitioner and the both Respondents No.3 and 6 are/were one establishment, running under different titles, and the Respondent No.4 has closed down just one title whereas other one is still functioning;

- iv. To determine and direct the Respondents No.4,5 and 6 or any of the Respondent to pay the amount of arrears of salary and back benefits to the tune of Rs.2,605,373.00 up to December, 2011 with Markup/Interest and markup accrued thereon, which is unpaid legal dues;
- v. Any other relief as deem fit in the circumstances.

C.P. No.D-1430/2012

- i. To set aside the impugned order passed by the Respondent No.2 in application No.94/2008 and order of the Learned Respondent No.1 in appeal No.KAR-03/2010 and also hold the impugned order of termination of the Petitioner from service dated 24th January, 2001 is illegal and unlawful;
- ii. To pass an order/ decision which deems fit and proper under the circumstances of the case;
- iii. To declare that Respondent No.4 is the defacto employer of the Petitioner and the both Respondents No.3 and 6 are/were one establishment, running under different titles, and the Respondent No.4 has closed down just one title whereas other one is still functioning;
- iv. To re-instate the Petitioner in employment with all back benefits with markup, continuity of service by placing him with Respondent No.6 or Respondent No.4:
Or
- v. To order the Respondent No.4 or 6 to grant VGHS with markup as offered and obtained by the Respondent No.3:
Or
- vi. To direct the Official Assignee nominated by the Honourable Sindh High Court Karachi, for liquidation of Respondent No.3, to pay the amount of Dues/back benefits and VGHS (with markup) to the Petitioner;
Or
- vii. Any other relief as deem fit in the circumstances.”

Perusal of the aforesaid prayers in the two petitions reflect that the applicant was aggrieved by certain orders passed by the Labour Appellate Tribunal and had come before the Court for setting aside certain orders and had also claimed arrears of salary and back benefits with markup and interest accrued thereon. This was the applicant’s precise prayer in C.P. No. D-1429 of 2012, whereas, in C.P. No. D-1430 of 2012, he had also asked for grant of Golden Handshake amount with markup with directions to the Official Liquidator to pay his dues and back benefits and the amount of Golden Handshake Scheme. Both these petitions were disposed of vide order dated 23.01.2018 in the following terms: -

“23.01.2018

Petitioner Israr-ul-Haq present in person.

Mr. Usman Tufail Shaikh, Advocate for the Respondents No.4 & 6.

Official Assignee Ch. Waseem Iqbal.

Both these petitions have been filed on the ground that there were certain amounts/dues of the petitioner outstanding against the respondent No.3 which company has gone under liquidation. Thereafter, the matter was referred to the Official Assignee for clearing out the dues of the petitioner. Today, the Official Assignee Ch. Waseem Iqbal is in attendance and stated that whatever the outstanding amounts were against the respondent No.3 have been cleared and as per his report and verbal statement no amount is now outstanding against the respondent No.3. The petitioner though has endorsed the view of the Official Assignee but stated that there are some additional amounts which remained to be paid.

We have heard the Official Assignee at some length and have found that the amounts claimed by the petitioner in the instant petitions admittedly have been paid and the cheques also admittedly have been delivered to the petitioner, hence, so far these petitions are concerned no amounts are remained to be paid to the petitioner. **However, if the petitioner has some other claims he should contact the Company Judge in respect of the said additional payments which are not the subject matter of these petitions.** With these observations both the above petitions along with the listed applications stand disposed of." [emphasis supplied]

Perusal of the aforesaid order reflects that Court was informed by the Official Liquidator of this very Company in liquidation that all amounts have been cleared, which were acknowledged and while doing so, the applicant stated that some additional amounts still remains to be paid. The Court while passing the above order disposed of the petitions by observing that so far as these petitions are concerned, no amount remains to be paid to the petitioner; however, if the petitioner has some other claims, he can approach the Company Judge in respect of the said additional payments, which are not subject matter of these petitions. The applicant instead of approaching the Company Judge, impugned the said order in Civil Petitions for Leave to Appeal Nos.77-K and 78-K of 2018 and vide order dated 15.08.2018 same were disposed of by the Hon'ble Supreme Court in the following terms: -

"In terms of the impugned order of the Division Bench of the High Court, the entire claim lodged by the petitioner against the Company under liquidation has been paid, and the petitions have been disposed of with the observation that if the petitioner has any other claim against the Company under liquidation, he may approach the Company Judge in respect of such further / additional claim. We find no anomaly in the impugned order either factual or legal, leave to appeal is refused in both the petitions which are accordingly dismissed. However, the petitioner, if so advised, may approach the Company Judge in terms of the impugned order."

5. Time and again, the applicant was confronted as to his fresh claim in the matter as apparently it appears that the applicant had made all his claims in the aforesaid two petitions, which stands paid and satisfied, whereas, learned Division Bench had only permitted him to approach this Bench for any additional amounts, which were not subject matter of these two petitions and to this the applicant has not been able to satisfy and discharge his burden. Though, he has made an attempt to detail out different amounts through his statement; however, it needs to be appreciated that all these amounts which the applicant is now claiming, were already a subject matter of his two petitions, and now he cannot claim the same. The learned Division Bench had only permitted him to approach this Bench for any additional amounts not being covered in those petitions and not otherwise.

6. Notwithstanding this admitted position, even if he had not claimed these amounts in those petitions, which in law he was obliged to; he cannot split the claims in different proceedings. Learned Division Bench was conscious of this fact and therefore, had only permitted the applicant to approach this Bench in respect of only those claims and amounts, which were not subject matter of the earlier two petitions, which apparently is not the case. It is settled law that claims cannot be split or made in parts, and if so, the bar under Order 2 Rule 2 CPC would squarely apply. In the alternative, the claim of the applicant would also be hit by Explanation V to section 11 CPC.

7. Moreover, Learned Official Liquidator has submitted that all payments have been made, whereas, no Golden Handshake Scheme was ever extended to anyone and therefore, any claim under that head is baseless. He has also informed the Court that as of today he is left with no money on behalf of the Company under liquidation and therefore, at such belated stage, the applicant's claims cannot be paid, otherwise.

8. In view of the above facts and circumstances of the case, I am not convinced with the arguments and submissions made by the applicant who appears in person, as apparently his dues so claimed in the petitions have been paid, whereas, no Golden

Handshake Scheme has ever materialized, therefore, any claim in that regard is also misconceived. As per record his entire claims stands paid; rather in excess of what he was entitled for. Accordingly, the listed application is dismissed.

Judge

*Faizan PA/ **