

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Before: Muhammad Shafi Siddiqui, J
Adnan Iqbal Chaudhry, J

C.P. Nos.D-3786 of 2015

M/s. Rajby Industries

Versus

Sajjad Ali & others

AND

C.P. Nos.D-3787 of 2015

M/s. Rajby Industries

Versus

Rahim Dad & others

Date	Order with signature of Judge
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C.P No.D-3786/2015

1. For hearing of MA No.16845/15
2. For hearing of main case

C.P No.D-3787/2015

3. For hearing of MA No.16848/15
4. For hearing of main case

Date of Hearing: 30.10.2019

Petitioner: Through Mr. Famanullah Khan Advocate

Respondents: Through Mr. Rafiullah Advocate

ORDER

Muhammad Shafi Siddiqui, J.- Petitioners aggrieved of the orders, passed by the Sindh Labour Court No.I dated 23.9.2008 followed by the order of the Sindh Appellate Tribunal dated 23.5.2015, have preferred these petitions on the ground that the Labour Court and Tribunal had no jurisdiction on the count that petitioner is a Trans Provincial Entity. On this premise, learned Counsel for the petitioners has taken us through definition of “Trans Provincial” in terms of Section 2(xxxii) as well as of

“worker” under section 2(xxxiii) of the IRA, 2012. Learned Counsel has relied upon the provisions of Section 54 of the IRA, 2012 that deals with the functioning of the Commission and Section 57 of the IRA that relates to the powers of Commission. Thus relying on these provisions, it is their case that since the matter pertains to jurisdiction of the Commission, the jurisdiction exercised by the two Courts below i.e. Labour Court and Labour Appellate Tribunal were coram-non-judice.

2. On the other hand learned Counsel for the respondent submits that never before the petitioners disclosed their status as of trans-provincial. The matter was contested before the Labour Court when petitioners failed to raise such question of law and fact and similarly before the Tribunal no such objections were raised. Insofar as the additional documents submitted through a statement dated 24.9.2019 are concerned, it relates to an issue of collective bargaining agent and the subject certificates were the properties of trade union and not of petitioners. Such certificates otherwise claimed are irrelevant for the purposes as to whether the petitioners enjoy “trans-provincial” status.

3. We have heard the learned Counsel and perused the material available on record.

4. To begin with, we have to first understand what the “industrial dispute” is all about the law”. The “industrial dispute” is defined in terms of subsection 2(xvi) of the IRA, 2012 which means that any dispute or difference between employees or employers or between employer and workmen or between workmen and workmen which is connected with the employment or non-employment or terms of the employment or the conditions of work of any person. The functions of Commission are defined in terms of Section 54 of the IRA, 2012. It is meant to adjudicate and determine an industrial dispute in the Islamabad Capital Territory and trans-provincial entities to which a trade union or a federation of such trade unions is a party and which is not confined to matters of

purely local nature and any other industrial dispute which is, in the opinion of the Government, of national importance and is referred to it by that Government. Section 54-A of the IRA, 2012 at the most could need an interpretation as to its applicability in the present case. Similarly section 57(2) of the IRA, 2012 also delegates powers to the Commission in relation to initiating prosecution, trial or proceedings or take action, with regard to matters related to its functions. Section 57(2)(b) empowers the Commission to withdraw from Labour Court of a province any application, proceedings or appeal relating to unfair labour practice which fall within the jurisdiction of the Commission whereas 57(2)(c) empowers the Commission to grant relief as it deem fit including interim injunction. Except as provided in subsection (4) the Registrar of the Labour Courts or Labour Appellate Tribunal shall not take any action or entertain any application or proceedings in a matter which falls within the jurisdiction of the Commission. The subject issue involved in this petition is now narrowed down to understand unfair labour practice which is being dealt with by the Commission in terms of IRA, 2012.

5. The definition of “industrial dispute” as provided under the law relates to a difference between employees or employers or between employer and workmen or between workmen and workmen which is connected with the employment or non-employment or terms of the employment or the conditions or work of any person. None of the category as defined as an industrial dispute in the aforesaid definition is available for its application in the present case where the petitioners were terminated under section 12(3) of the Standing Order, 1968. There were no differences between employer and workman which is connected with terms of employment or non-employment or conditions and work of any person The employer thought to terminate an employee despite having no difference and it did so under the Standing Order of 1968. The private respondents in these cases were gatekeepers and labours

respectively and were terminated in terms of Section 12(3) of the Standing Order, 1968, thus it is not an “industrial dispute” which could empower the Commission to assume and exercise its jurisdiction in terms of Sections 54 and 57 of the IRA, 2012. Such provisions empowering the Commission in terms of Sections 54 and 57 of the IRA, 2012 were also in existence well before its promulgation and also while the provisions of IRO(xxiii) of 1969 were in existence. In presence of the reciprocal provisions of Sections 54 and 57 of the IRA, the Hon’ble Supreme Court in the case of Pak Arab Refinery Limited vs. Muhammad Rashid reported in 1999 SMCR 373 concluded that the termination of service of a security guard on a charge of violation of employer’s security orders can be agitated before the Labour Court by the aggrieved party. Since it relates to removal, retrenchment, discharge or dismissal or otherwise in connection or as a consequence of industrial dispute with his grievance under provisions of Standing Order 12(3) of the West Pakistan Industrial & Commercial Employment (Standing Order) Ordinance, 1968, provided that he was a “workman” within the meaning of Standing Orders Ordinance, 1968. The parties do not dispute insofar as the status of the private respondent as being workman is concerned. The respondents’ services have not been terminated, in connection or in consequences of an industrial dispute, have a right to seek redress of their grievance in terms of Section 12(3) of the Standing Order before the Labour Court. Reliance is placed on the case of Mustehkum Cement Limited vs. Abdul Rashid & others reported in 1998 PLC 172.

6. Thus, on the aforesaid count, the petitioners have failed to make out a case of any interference against the concurrent findings of two Courts below. Accordingly both the petitions were dismissed by a short order dated 30.10.2019 and above are the reasons for the same.

Judge

Judge