ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Before:
Mr. Justice Aftab Ahmed Gorar
Mr. Justice Adnan-ul-Karim Memon

CP. No. D- 7039 of 2021
(M/s Hilong Oil Services & Engineering Pakistan (Private) Limited v. Mohammad Javaid and another)

CP. No. D- 7040 of 2021
(M/s Hilong Oil Services & Engineering Pakistan (Private) Limited v. Arsalan Hassan and another)

Mr. Rashid Mahar, advocate for the petitioner
Syed Anayat Hussain Shah Bukhari, advocate for respondent No.1

Date of hearing
& order : **15.03.2022**

ORDER

Through these petitions, the petitioner *M/s Hilong Oil Services & Engineering Pakistan (Private) Limited,* has assailed the orders dated 30.11.2021 passed by the learned Sindh Labor Appellate Tribunal Karachi (`**SLAT**`) whereby, the orders dated 02.02.2020, passed by the learned the Sindh Labor Court No. V Karachi (**SLC**), were maintained, with direction to the petitioners to pay the deposited amount of Rs.410, 000/- and Rs.357, 376/- to both the private respondents in respect of their back benefits.

2. As per findings of the learned SLC, the services of the private respondents were wrongfully terminated by the petitioner-company; and, in the intervening period, they were not gainfully employed anywhere. The grievance petitions of the private respondents were allowed accordingly. The appeals preferred by the petitioner-company before learned SLAT was also dismissed on the same analogy, an excerpt of the appellate orders dated 30.11.2021 are reproduced as under:

> *"**Appeal No.Kar-148/2021***
>
> *16. In view of the above, the finding of the labor court that the respondent was a permanent worker, the appellants had removed him from service wrongfully and after his removal from service the respondent could not get himself gainfully employed anywhere else are unexceptionable. Accordingly, the appeal is dismissed. The amount of Rs.410, 000/- deposited by the appellants towards back benefits of the respondent is directed to be paid to him by crossed cheque.*
> *Announced in open court on this 30th day of November 2021."*

> *"**Appeal No.Kar-149/2021***
>
> *16. In view of the above, the finding of the labour court that the respondent was a permanent worker, the appellants had removed him from service wrongfully and after his removal from s*

ervice respondent could not get himself gainfully employed anywhere else are unexceptionable. Accordingly, the appeal is dismissed. The amount of Rs.357, 376/ - deposited by the appellants towards back benefits of the respondent is directed to be paid to him by crossed cheque.
Announced in open court on this 30th day of November, 2021."

3. Mr. Rashid Mahar, learned counsel for the petitioner company, has addressed the aforesaid issue and argued that the impugned orders are erroneous, perverse, and arbitrary as it was passed without considering the evidence, or even the merits of the case; that the impugned orders are based on non-reading and misreading of the evidence available on record and without considering the law as relied upon the Petitioner; that the learned SLAT has completely disregarded the statement of both the private respondents in their cross-examination and has provided fictional interpretation to the same in favor of them; that the learned SLAT has disregarded the settled principle of law that the relief of back benefits cannot be granted until the claimant asserts and produce the documentary evidence to prove that he was not gainfully employed elsewhere; that the learned SLAT has failed to take into account any evidence produced by the Petitioner in clear disregard of the law. Consequently, the impugned orders have been passed in violation of the concept of natural justice as well as Article 10-A of the Constitution; that the learned SLAT has failed to consider and appreciate that the private respondents were involved in an illegal strike and subsequently signed a resignation without any notice and left the Petitioner company, which is misconduct of the highest order; that the learned SLAT has failed to appreciate that even when the private respondents abandoned their work and chose to quit, the Petitioner provided a fair chance to them to join the duty back and also provided a reasonable right of being heard to the private respondents; that the learned SLAT has passed the impugned orders without applying fair judicious mind, are totally against the law, therefore the impugned orders are not sustainable and liable to be set aside. On the issue of back benefits, he submitted that the question of back-benefits to an employee is not to be resolved in his favor as a necessary corollary of his reinstatement in service and the employee has to discharge the burden of proof that, during the relevant period he remained jobless and was not engaged in any other gainful venture. However, this aspect of the matter cannot be resolved without sufficient evidence or other material to clarify the factual position in this regard, whereas in this case, the private respondents have not discharged their burden to substantiate their claim, thus the impugned order granting back benefits to the private respondents is against the law.

4. Syed Anayat Hussain Shah Bukhari, learned counsel for respondent No.1 in CP No.D-7039 of 2021 has supported the impugned order passed by the learned SLAT and argued that the petitioner company had wrongfully terminated the services of the respondent by physically preventing him to enter into the establishment in violation of mandatory provisions of law i.e. the Standing Orders Act and the Constitution. He contended that the respondent had not made the alleged admissions and the petitioner was trying to misguide by reading the so-called admissions out of context and was trying to take advantage of the incorrect syntax used in some sentences while recording cross-examination of the respondent. Per learned counsel, the petitioner had

removed the respondent from service on the allegation of misconduct of making illegal strike without fulfilling legal requirements of charge-sheet and independent inquiry under the misconception that they were free to remove their workers from service at any time under the rule of master and servant. The action of the petitioner company that violates the mandatory provisions of Standing Order 16(3) and 21(4) is illegal and wrongful.

5. We have heard the learned counsel for the parties and perused the material available on record.

6. To evaluate the legal as well as the factual position of the case, the learned trial Court, framed the issues in the Grievance Applications of the private Respondents and gave its findings in favor of the private Respondents in the petition.

7. To appreciate the controversy from a proper perspective, we deem it appropriate to have a glance at the evidence brought on record by the parties. At the first instance, the relevant portion of the conclusive findings of learned SLC in both grievance application No.34 & 36 of SIRA 2013 is as under:

> "Point No. 1: The petitioner in para No. 1 of the petition stated that he is a permanent workman of the respondent establishment since from 12.03.2013. Now the burden lies upon the petitioner to prove that he is a permanent workman of the respondent establishment since from 12.03.2013. In this respect the petitioner has not produced any appointment letter to show that he is a permanent workman of the respondent since 12.03.2013. However, he has only produced Health Insurance Identification Card and grievance notice dated 25.09.2019. Except these 2 documents, no any other document has been produced by the applicant. The respondent in his Written Statement has stated that the applicant was not remained as permanent workman of the employer, but he was only a contractual of the respondent. In this respect, the respondent has produced Contract Renewal Letter dated 03.12.2014. Except his letter, no any other document was produced by the respondent that the contract of the petitioner was extended after 03.12.2014 or not.
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> The applicant has filed his affidavit-in-evidence and his cross examination was conducted. During cross-examination, applicant has admitted that he was the contractual employee in the respondent establishment. The respondent witness in his cross examination has also admitted that the applicant was serving before the establishment on contract basis. As the respondent has not produced any document after 03.12.2014 to show that the contract of the applicant was extended after that period or it was ended. The respondent has not denied the relationship in between the parties as employee and employer. Apart from this, no any other document produced by the parties about the service of the applicant. As the respondent has failed to produce any fresh contract letter after 03.12.2014, therefore it is presumed that the services of the applicant was confirmed as a permanent workman. In view of the above discussion, I am of the opinion that the applicant was a permanent worker, hence point discussed as above.
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> Points No.2&3: Both the points are interconnected with each other, therefore I would like to discuss together. The applicant in grievance petition has stated that on 01.08.2019, the respondent establishment was gate stopped for his entrance and Security Guard has informed him that he was terminated from service of the respondent has not denied the relationship in between parties as employee and employer, therefore I am of the view that the applicant was an employee of the respondent employer. The respondent has not produced any document to show that they have terminated the services of the applicant, after giving him the show cause notice and conducted domestic enquiry against him. It is well settled provision of law and it is held by our Apex Courts that before termination of the services of the employee, the

domestic enquiry must be conducted against him and thereafter on the report of Enquiry Officer, action shall be taken against the employee in accordance with the law. In the present case, the respondent only terminated the services of the applicant that he was sit in the strike, but has failed to conduct any enquiry against him. In view the above, I am of the opinion that the verbal termination of applicant and gate stoppage is illegal and unlawful. Both the points answered in affirmative.

Point No.4: In view of my above discussion on points No.1 to 3, I am of the opinion that the applicant is entitled for relief as prayed, because the applicant has stated in his petition that still he is jobless. The respondent has failed to produce any tangible evidence to show that he was serving in any other place, hence applicant is entitled for relief as prayed.

Point No 5: In view what has been discussed above, I am the opinion that the verbal termination order dated 01.08.2019 of the respondent is illegal, void and against the natural justice. The respondent establishment is hereby directed to reinstate applicant in service with all back benefits."

8. The aforesaid decision of the learned SLC was concurred by the learned SLAT vide judgment dated 30.11.2021. The impugned Judgment/order passed by both the learned Courts below explicitly shows that the matter between the parties has been decided on merits based on the evidence produced before them on the subject issues.

9. The Honorable Supreme Court in the recent judgment has held that there is no provision under the labor or service laws permitting the employer to sack a worker verbally without a written order containing the explicit reasons or cause of termination. Even, it is an elementary rule of law that before taking any adverse action, the affected party must be given a fair opportunity to respond and defend the action as such no employer can terminate the services of its employees on mere verbal instructions without any written order containing explicit reasons or cause for termination and is against the principle of natural justice.

10. The Honorable Supreme Court in another recent judgment has held that if an illegal action/wrong was struck down by the Court, as a consequence, it was also to be ensured that no undue harm was caused to any individual due to such illegality/wrong or as a result of the delay in the redress of his grievance. If under a declaration given by the Court, the employee is to be treated as being still in service, he should also be given the consequential relief of the back benefits (including salary) for the period he was kept out of service as if he were performing duties.

11. From the above extract, it is quite clear that where the order of dismissal, removal, or reduction in rank was set aside unconditionally, back benefits were to be paid necessarily. The grant of back benefits to an employee who had been illegally kept away from his employment was a rule and denial of service benefits to such reinstated employee was an exception. One of the exceptions of not granting full back benefits was that if the reinstated employee had accepted another employment or engaged in any profitable business during the intervening period; in such a case, the said amount would be set off against the salary.

12. We, because of such facts and circumstances, would not proceed to reappraise the entire material including the evidence on the assumption that such reappraisal

could lead us to a different view than the one taken by the two competent fora. This Court's interference in the concurrent findings would be justifiable only when some illegality apparent on the record having nexus with the relevant material is established. Learned SLC has discussed the entire evidence adduced by the parties, and there appears no illegality in the findings of both the forums recorded on the facts and law; besides both the learned SLC and SLAT have concluded that allegations leveled against private respondents could not be proved to justify their verbal termination from service.

13. It is a settled principle of law that both courts while reaching at factual aspect about the employment of private respondents which, otherwise, appears to be well reasoned, hence cannot be disturbed in Constitutional jurisdiction.

14. On the concurrent findings, the Honorable Supreme Court further deliberated on the subject; and, held that the basic principle is that where the Court or the Tribunal has jurisdiction and it determines the specific question of fact or even of law unless the patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by this Court while exercising jurisdiction under Article 199 of the Constitution. Hence, the instant Petition is found to be meritless and is accordingly dismissed along with the listed application(s).

15. These are the reasons for our short order dated 15.3.2022, whereby we have dismissed the instant petition.

JUDGE

JUDGE

Nadir/PA