

IN THE HIGH COURT OF SINDH AT KARACHI

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

C P D 1320 of 2017 : Karachi Shipyard & Engineering Works Ltd.
vs. Sindh Labour Appellate Tribunal &
Another

For the Petitioner : Mr. Muhammad Nishat Warsi, Advocate

For the Respondents : Mr. Ehsanullah, Advocate

Mr. Abdul Jalil Zubedi
Additional Advocate General

Date/s of hearing : 22.11.2022

Date of announcement : 22.11.2022

ORDER

Agha Faisal, J. Briefly stated, the petitioner had been absorbed into service vide letter dated 20.09.1995 in Pay Scale 2. Almost sixteen years later, on 15.03.2011, the petitioner served a grievance notice agitating that his initial appointment ought to have been in Pay Scale 5. A grievance petition followed, which was dismissed by the learned Labour Court V Karachi¹ on the grounds *inter alia* that no entitlement for engagement in the higher pay scale could be proved. It was also observed that the grievance notice / petition was in any event barred by limitation. In appeal, the learned Labour Appellate Tribunal Sindh, vide judgment dated 29.11.2016 (“Impugned Judgment”), reversed the findings and granted the petitioner the pay scale sought on the surmise that similar treatment *must have been given* by the respondent to others and that it would be *unfair and indeed impermissible* for the petitioner to be non-suited on the *technical* plea of delay, hence, this petition.

2. Learned counsel for the petitioner articulated that the impugned findings were patently rested on surmises, contrary to the record itself and that under no circumstances could the issue of limitation be brushed aside casually. Respondent’s counsel supported the Impugned Judgment and submitted that it warranted no interference whatsoever.

¹ Vide order dated 23.07.2015.

3. Heard and perused. We are cognizant that ambit of writ jurisdiction is not that of a subsequent forum of statutory appeal and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from a judgment impugned. It is also the duty of this Court to ensure that any discretion exercised by a subordinate forum was done judiciously pursuant to sound legal principles and not contrary to law or usage having the force of law.

4. We have considered the evidence² that was adduced in the proceedings and it demonstrates *inter alia* that the petitioner was aware of his pay scale at the time of appointment in 1995; he admitted having received the salary as fixed from time to time; clearly stated that the terms of engagement never said that his employment would be in Pay Scale 5; and admitted that the salary slips placed on record pertained to senior employees and those in other distinct categories, excluding the category wherein the petitioner befell. It is also gleaned from the evidence that the first time the petitioner agitated the issue of his pay scale was almost sixteen years post his appointment.

5. The learned Tribunal appears to have disregarded the uncontroverted evidence and relied on its conjectures instead. Patently uncorroborated observations were rendered pertaining to pay scales, ostensibly based on a 1989 circular, admittedly superseded at the time of the petitioner's appointment in 1995. The Tribunal also assumed that since certain documents were not placed there before³, hence, it must be presumed that they would be adverse to the respondent. Such brazen miss appreciation of evidence can neither be appreciated nor sustained by this Court.

6. We have noted that the learned Tribunal has considered limitation to be a merely *technical* plea and while articulating no cavil to the admitted delay has chosen to disregard the law; while observing that limitation is always viewed with disfavor and morality precluded limitation to defeat the claim of a citizen.

7. We are of the deliberated view that the prescriptions of limitation are not *mere technicalities* and disregard thereof would render entire law of limitation otiose⁴. It has been maintained by the Superior Courts consistently that it is incumbent upon the Courts to first determine whether the proceedings filed there before were within time and the Courts are mandated to conduct such an exercise regardless of whether or not an objection has been taken in such

² Including the cross examination of the petitioner dated 12.01.2013, available at page 209.

³ Notwithstanding it not even being established whether such documents existed.

⁴ *Mehmood Khan Mahar vs. Qamar Hussain Puri & Others* reported as *LDA vs. Sharifan Bibi* reported as 2019 MLD 249; PLD 2010 SC 705.

regard⁵. It has been maintained by the honorable Supreme Court⁶ that each day of delay had to be explained.

8. The record demonstrates that the petitioner's regular employment commenced from 1995 and he did not agitate any grievance in respect thereof till 2011; sixteen years later. The law⁷ provides a time period of three months for a worker to bring his grievance to light, from the date of accrual of cause. In the present facts the cause was brought to light well beyond the limitation period and this fact has not been controverted in the Impugned Judgment. In view hereof, we are constrained to observe that the learned Tribunal erred in disregarding the applicable law of limitation.

9. The evidence before the learned Tribunal did not support its findings, which *prima facie* are rested on unjustified surmises and conjectures. The learned Tribunal articulated no cavil to the grievance being hopelessly time barred, however, inordinately disregarded the law of limitation while terming it merely *technical* and *immoral*. Therefore, we are of the deliberated view that the Impugned Judgment is *prima facie* predicated upon erroneous assumption of facts and misapplication of the law, hence, cannot be sustained.

10. In view hereof, this petition had been allowed and the Impugned Judgment dated 29.11.2016 rendered by the learned Labour Appellate Tribunal Sindh had been set aside vide our short order, announced in Court upon conclusion of the hearing earlier today. These are the reasons for our short order.

JUDGE

JUDGE

⁵ *Awan Apparels (Private) Limited & Others vs. United Bank Limited & Others* reported as 2004 CLD 732.

⁶ *Lt. Col. Nasir Malik vs. ADJ Lahore & Others* reported as 2016 SCMR 1821.

⁷ S.34 of the Sindh Industrial Relations Act 2013. Redress of individual grievances. (1) A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent within three months of the day on which the cause of such grievance arises.