IN THE HIGH COURT OF SINDH KARACHI

Before :
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-2514 of 2017
(*Qutabuddin v. College of Physician & Surgeons Pakistan and another*)

Syed Shoa-un-Nabi, advocate for the petitioner

Chaudhry Jaffar Hussain Advocate for College of Physician & Surgeons Pakistan

Date of hearing
& Decision: 24.02.2023.

O R D E R

Through this petition, the petitioner seeks leave of this Court under Article 199 of the Constitution against the judgment dated 9.3.2017 passed by the learned Sindh Labour Appellate Tribunal Karachi (SLAT) in Appeal No. KAR-1367 of 2010, where the appeal filed by the College of Physician & Surgeons Pakistan (**College**) had been allowed and the order 20.10.2007 passed by Sindh Labour Court V Karachi (**SLAC**) was set aside.

2. Facts necessary for the disposal of the instant petition are that management of respondent- College terminated the services of the petitioner-Qutabuddin (plumber) on 12.5.2006 on the ground that his services were no more required. The petitioner questioned the termination of his service by filing a grievance petition under section 25-A of the Industrial Relations Ordinance. 1969 (hereinafter referred to as the "**I.R.O**.") read with Standing Order No. 12(3) of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (hereinafter referred to as the "**Ordinance**") in the Court of Presiding Officer, Sindh Labour Court V Karachi (**SLAC**). The respondent college resisted the application inter-alia on the ground that the application was not maintainable as the respondent's Organization was/is an educational institution, therefore, it did not fall within the definition of Industry under section 2(x iv) of I.R.O. The objection so raised was not sustained by the trial Court, as a consequence whereof grievance petition filed by the petitioner was allowed and the petitioner was directed to be reinstated in service vide order dated 20.10.2007. Against this order, the respondent-College filed an appeal before the learned SLAT, which was allowed on 09th March 2017 on the analogy put forward by the respondent-college.

3. The petitioner has invoked the Constitutional jurisdiction of this Court by filing this petition inter-alia on the ground that he was appointed as Plumber in the year 2000 and continued to hold the post till 2006 when respondent-College terminated his service on the plea that his services were no more required by misconstruing the provision of Ordinance, 1968 and erroneously held that the aforesaid provision were not extended to the respondent-College; that learned SLAT failed to provide chance to the petitioner to file objection on the appeal; that the learned SLAT failed to appreciate the factum that the respondents were not bothered to appear before the learned SLAC to testify on oath to disclose the aforesaid factum, which they are raising before this court at belated stage; that learned SLAT failed to consider the order passed by the learned SLAC which is self explinatory based on legal parameters; that the learned SLAT failed to appreciate the legal position of the case and erroneously discarded the view point of the petitioner on the question of law; that the learned SLAT failed to appreciate the factum that the respondent-college was/is commercial institution/establishment and running the college affairs on commercial basis by procuring fees from the students, thus students are consumer or beneficiary of the service or facility provided by respondent College and fall within the aforesaid provision of law.

4. Chaudhry Jaffar Hussain learned counsel representing the respondent college refuted the stance of the petitioner and contended that the respondent college is the educational institution, therefore, it does not fall within the definition of Industry or Industrial Establishment in terms of section 2 (xiv) of I.R.O. and section 2(f) of the Ordinance; nor its employees fall within the definition of worker or workmen for any proceedings under I.R.O. to the industrial dispute, therefore, learned SLAT, was justified in allowing the appeal of the respondent-college. The learned counsel argued that to invoke the jurisdiction of labor court under section 25-A, I.R.O. it is essential for an employee to satisfy that he is a worker 'or workman either under the provisions of the Ordinance or the I.R.O. and his grievance relates to an industrial dispute meaning thereby that an industrial dispute can only be raised when such aggrieved person is connected with the industry or industrial establishment, therefore, both expressions industry or industrial establishment which interpretation in their origin and true sense has already been set at naught by the Honourable Supreme Court to the effect that institution imparting education does not fall within the definition of industry or industrial establishment. The learned counsel next argued that the basic concept of 'industry' or its derivative 'industrial

undertaking;' is that there must be the joint economic endeavor of the employer and the employee, to produce wealth or render services which factum is missing in the present case. Learned counsel added that what comes out of an 'industry' must be the result of the combined effort of both the capital and the workmen and must be distinguished from what is commonly known as business or trade. He further submitted that the institutions responsible for imparting education like the respondent's organization do not fall within the definition of industry. He prayed for the dismissal of the instant petition.

5. We have considered the submissions of the parties in the light of the dicta laid down by the Hon'ble Supreme Court in the case of *Board of Governors Aitchison College, Lahore v. Punjab Labor Appellate Tribunal* **2001 SCMR 1928**.

6. The petitioner has been nonsuited by the learned SLAT on the ground that respondent-College was/is not an industrial or commercial establishment and distinguished the applicability of the Sindh Terms of Employment (Standing Orders) Act, 2015 on the premise that this enactment had no retrospective effect. The reasons assigned by the learned SLTA is that the petitioner was relieved from service on 10.05.2006, whereas, the aforesaid enactment was assented to by the Governor of Sindh on 25.04.2016 specifically mentioned schools, colleges, and private educational institutions run on commercial and profit basis falls in the definition of commercial establishment, whereas in Ordinance 1968 is silent on the subject, perhaps this reasons prevailed and the appeal filed by the respondent-college was allowed. The findings of the learned SLAT are based upon the case of *Board of Governors Aitchison College* supra, wherein, the Hon'ble Supreme Court held that Aitchison College did not fall within the definition of industrial establishment.

7. It is emphatically urged by the learned counsel for the college that the respondent college is not carrying out an industrial and commercial undertaking, therefore, the IRO or the Standing Order Ordinance does not apply to the respondent educational institution, and this is the reason that the employees of educational institutions do not fall within the definition of Worker or Workman to the Industrial dispute under section 2(XXX) read with Section 2 (XVII) and Section (ix) of the IRO, 2002 and it has been held variously by the Hon'ble Supreme Court that IRO and Standing Order Ordinance 1968 do not apply to the educational institutions and prayed for dismissal of the grievance application filed by the petitioner before the learned Labor Court Karachi.

8. The aforesaid stance has been refuted by the petitioner on the ground that IRO or the Standing Order Ordinance 1968 are fully applicable in the case of the petitioner as the respondent institution is running its business on a commercial basis and every institution which is commercial entity could come within the definition of commercial establishment under the Standing Order Ordinance 12(3) of the Schedule given under the Ordinance 1968 as petitioner had been doing the skill nature job as a plumber thus falls within the definition of the worker as defined under IRO 2002.

9. The question arises whether the College of Physician & Surgeons Pakistan falls within the definition of industry and its employees are workmen and whether the educational institutions earn profit through the fee collected from students, thus falling within the ambit of services and /or business.

10. To appreciate the aforesaid questions, firstly, it is expedient to look at Section 1 (3) of the Ordincae 1969 as its provisions do not apply to any person employed:-

> (a) in the Police or any of the Defence Services of Pakistan or any services or installations connected with or incidental to the Armed Forces of Pakistan including an Ordnance Factory maintained by the Federal Government; or
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> (b) in the administration of the State other than those employed as workmen by the Railway, Posts, Telegraph, and Telephone Departments; or
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> (c) as a member of the Security Staff of the Pakistan International Airlines Corporation, or drawing wages in such pay group, not lower than group V, in the establishment of that Corporation as the Federal Government may, in the public interest in the interest of the security of the Airlines, by notification in the Official Gazette, specify in this behalf; or
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> (d) by the Pakistan Television Corporation or the Pakistan Broadcasting Corporation; or
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> (e) by the Pakistan Security Printing Corporation or the Security Papers Limited; or
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> (f) by an establishment maintained for the treatment or care of sick, infirm, destitute as mentally unfit persons; or
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> (g) as a member of the Watch and Ward, Security or Fire Service Staff of an oil refinery; or
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> (h) as a member of the Security or Fire Service staff of an establishment engaged in the production, transmission or distribution of natural gas or liquid petroleum gas.

11. Section 2 (ix) of Ordinance 1969, which defines the word "Establishment" means any office, firm, industrial unit, undertaking, shop, or premises in which workmen are employed to carry on any industry; and, except in section 22EE, includes a collective bargaining unit, if any, constituted under that section in any establishment or group of establishments. Section 2 (xiii) defines "Industrial dispute" means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen, which is concerned, with the employment or non-employment or the terms of employment or the conditions of work of any person; and is not in respect of the enforcement of any right guaranteed or secured to him by or under any law, other than this Ordinance, or any award or settlement for the time being in force; section 2 (xiv) "Industry" means any business, trade, manufacture, calling, service, employment or occupation; section 2 (xx) provides "Public utility service" means any of the services specified in the following Schedule;

1. The generation, production, manufacture, or supply of electricity, gas, oil, or water to the public.

2. Any system of public conservancy or sanitation.

3. Hospitals and ambulance services.

4. Fire-fighting service.

5. Any postal telegraph and telephone service.

6. Railways and Airways.

7. Ports.

8. Watch and Ward staff and security services maintained in any establishment.

12. Section 2 (xxviii) defines "Worker" and "workman" means any person not falling within the definition of the employer who is employed (including employment as a supervisor or as an Apprentice) in an establishment or industry for hire of reward either directly or through a contractor whether the terms of employment be express or implied, and for the purpose of any proceeding under this Ordinance in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute, but does not include any person -

(a) who is employed mainly in a managerial or administrative capacity, or

> (b) who, being employed in a supervisory capacity draws wages exceeding rupees eight hundred per mensem or performs, either because of the nature of duties attached to the office or by reason of the powers vested in him, functions mainly of managerial nature.

13. Section 2(xi) of the IRO 2002, which defines establishment to mean any office, firm, factory, society, undertaking, company, shop, premises or enterprise which employs workmen directly or through a contractor for the purposes of carrying on any business or industry and includes all its departments and branches, whether situated in the same place or in different places having a common balance sheet and profit and loss account and, except for section 54, includes a collective bargaining unit, if any, constituted under that section in any establishment and clause (xxx) of the same section defines "worker" and "workman" to mean any and all persons not falling within the definition of employer who are employed in an establishment or industry for remuneration or reward either directly or through a contractor, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Ordinance in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off or removal has led to that dispute but does not include any person who is employed mainly in a managerial or administrative capacity. Sections 44 and 45 provide for the establishment of labour Courts for the purposes of (a) adjudicating and determine an industrial dispute which has been referred to or brought before it under the said Ordinance. Clause (xvi) of section 2 defines industrial dispute to mean any dispute or difference between employers and workmen or between workmen and workmen which is concerned with the employment or non-employment or the terms of employment or the conditions of work and is not in respect of the enforcement of any right guaranteed or accrued to workers by or under any law, other than this Ordinance, or any award or settlement for the time being in force.

14. Having gone through the aforesaid provisions of the law on the subject issue, and looking at the present case, it appears from the record that the respondent college is a statutory body, established under Ordinance (x) of 1962 and imparting education and training for postgraduate in the medical profession and matters ancillary thereto and their employees are public servants; besides their election dispute could be finally resolved by Central Government under the Ordincae,1962.

15. The question involved is whether the respondent college is running on a commercial basis or not would turn upon the attending circumstances and the status that has been conferred upon by different laws as discussed supra which are directly relevant to the question of profit and the income derived on that basis to return the answer to the primary question regarding the commercial activity of the respondent-college. Primarily the intrinsic nature of the activity of an organization and its purpose and consequence would be the determining factor. Any educational institution is bound to make a profit but the real question is that the profit should not enrich the management of the institution imparting education. It must be diverted back to the charitable and welfare activities of the institution.

16. In principle, the Shops and 'Establishments Ordinance applies to a shop, commercial establishment, industrial establishment, private dispensary, maternity home, residential hotel, restaurant, eating house, cafe, cinema, theatre, circus, or another place of public amusement or entertainment and such other establishment or class thereof as Government may by notification in the official Gazette declare to be establishment. But by the provision of section 5 of the Ordinance, clubs, hostels, and messes not maintained for profit or gain; and establishments for the treatment or care of the sick, infirm, destitute, or mentally unfit persons; are excluded from its purview. It seems from the definition of establishment as given in the Ordinance that it is intended to apply for the Ordinance to establishments, where dealings are made or services rendered or the public is entertained with the object or for purposes of profit or gain.

17. Upshot of the above discussion is that the judgment dated 9.3.2017 passed by the learned Sindh Labour Appellate Tribunal Karachi (SLAT) in Appeal No. KAR-1367 of 2010 is within the parameters of the law and does not call for interference under Article 199 of the Constitution, more particularly in terms of the ratio of the judgment rendered by the Honourable Supreme Court in the case of *Board of Governors Atchison College* (supra), while dealing with a case under the Industrial Relations Ordinance, 1969, it was held after taking into consideration the definition of word "industry" under the said Ordinance XXIII of 1969, that without any doubt, it can be deemed that institutions responsible for imparting education like the respondent's organization do not fall within the definition of industry.

18. In view of the aforesaid decision, this petition is not maintainable under Article 199 of the Constitution, which is accordingly dismissed with no order as to costs, leaving the petitioner to avail his remedy before the appropriate forum under law.

JUDGE

JUDGE

Nadir*