

IN THE HIGH COURT OF SINDH KARACHI

Before :

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-8446 of 2018

Gul Faraz

Petitioner: Through Mr. Bacha Fazal Manan, advocate

Respondent No.1: Nemo

Respondent No.2: Through Ch. Azhar Elahi, advocate

Date of hearing
& Decision: 17.02.2023.

ORDER

The petitioner is aggrieved by and dissatisfied with the judgment dated 28th September 2018 passed by the learned Member, Sindh Labour Appellate Tribunal, (SLAT) Karachi in Appeal No. Kar-33/2018, whereby judgment dated 29th March 2018 passed by Presiding Officer, Sindh Labour Court No.II Karachi (SLC) was modified and the petitioner was awarded compensation of Rs.600,000/- as full and final payment of severance of his employment relationship with the respondent-Rice Mills, *inter-alia*, on the ground that the impugned judgment is against the law and the facts of the case; that the judgment has been passed without taking into consideration the contents of the pleadings of the parties; that the learned Member has passed the impugned judgment in haste without its independent and judicious mind and without going through the record of the case; that the impugned judgment is devoid of reasons and lacks all characteristics of the judicial decision.

2. The case of the petitioner is that on 31st October 2013, the petitioner filed Application No.51 of 2013, for his reinstatement in service with back benefits, contending that he was working as a permanent worker in the establishment of the respondent since 2008 at a monthly salary of Rs.17500/- but on 1st September 2013, they removed him from service without any reason or order in writing. The petitioner being aggrieved by and dissatisfied with the termination order served upon the respondent-Mills grievance notice and finally filed the grievance application before the learned labor court at Karachi, which was contested by the respondent-mills on the plea that the business entity does not cover under the Industrial and Commercial Employment (Standing Order) Ordinance 1968 as

such grievance application not maintainable and liable to be rejected. Learned labor court framed 4 issues and after recording the evidence of the parties allowed the grievance application vide judgment dated 29th March 2018. Respondent-mills being aggrieved by and dissatisfied with the aforesaid decision challenged the same before SLAT Karachi in Appeal No. Kar-33/2018 whereby the decision of learned SLC was modified to the extent of compensation of Rs.600, 000/- as full and final payment of severance of the employment relationship of the petitioner with the respondent-Rice Mills, which judgment is impugned by the petitioner through the instant petition.

3. Mr. Bacha Fazal Manan, learned counsel for the petitioner, has submitted that the learned Member SLAT has committed a substantial error and has deviated from the settled law on the subject issue as the only compensation could not be awarded to the petitioner under the prevailing law more particularly in terms of the decision rendered by the learned SLC-II Karachi, whereby direction was issued to the respondent Mills to reinstate the petitioner in service with back benefits; that the learned SLAT has passed the impugned judgment without adopting the legal course as provided under the Sindh Industrial Relations Act, 2013, read with Standing Order No.12(3) of the Standing (Orders), Ordinance, 1968, besides there are no reasons for arriving at the just decision of the case by modifying the judgment of the learned SLC-II, therefore the impugned judgment passed by the learned SLAT is a nullity in law and liable to be set aside, consequently the judgment passed by the learned Labor Court is liable to be restored.

4. Ch. Azhar Elahi learned counsel for the respondent Rice Mills has raised the question of maintainability of the captioned petition in terms of the ratio of the judgments rendered by the Hon'ble Supreme Court of Pakistan in the cases of *The Glaxo Laboratories (Pakistan) Ltd. v. Pakistan and others*, **PLD 1962 SC 60** and *Abbasi Textile Mills Ltd., Rahimyar Khan v. The Industrial Court, West Pakistan and others*, **PLD 1966 SC 765**. He further submitted that respondent Rice Mills has long been closed and is unable to pay the compensation amount to the petitioner in terms of the ratio of the judgment passed by the learned SLAT. He prayed for the dismissal of the instant petition. At this stage, we asked learned counsel whether the respondent Rice Mills challenged the findings of the learned SLAT before this court. He replied that as per his instructions, no petition has been preferred. However, he insisted that the learned SLAT has no jurisdiction to award compensation under the Sindh Industrial Relations Act, 2013.

5. We have heard the learned counsel for the parties on the subject issue and perused the record with their assistance.

6. The pivotal question involved in the present proceedings is whether the learned SLAT has jurisdiction to award compensation to the worker in lieu of reinstatement of service under the Sindh Industrial Relations Act, 2013 (SIRA).

7. The main contention of learned counsel for the respondent Rice Mills is that the business entity of the respondent mills is not covered under the Industrial and Commercial Employment (Standing Order) Ordinance 1968 thus the grievance application filed by the petitioner was not maintainable before the learned SLC-II; besides they have closed down their small business establishment, thus unable to pay the compensation to the petitioner in terms of the judgment passed by the learned SLAT. The said contention of the respondent-Rice Mills has already been discarded by the learned SLAT with reasoning, thus not called for interference by this court on the subject point.

8. Primarily, the respondent-Rice Mills has not even legally closed as per the provision of Act 2015, therefore, on account of the non-availability of these grounds, the counsel for the respondent Rice Mills was not justified in submitting that the respondent- Rice Mills was/is closed to avoid settling the liability of the workers. The non-functioning of the Rice Mills and its stand has not been accepted by the learned SLAT vide impugned judgment and rightly directed the respondent-Rice Mills to deposit the amount of Rs.600,000/- within one month for payment to the petitioner keeping in view the length of service of the petitioner and the cost of living and other conditions of unemployment instead of reinstating him in service a reasonable compensation of Rs.600,000/- was awarded to the petitioner as full and final payment, including his all legal dues, etc., for severance of his employment relationship with the respondent-Rice Mills.

9. The award of compensation, in our view, has not resulted in a miscarriage of justice in any manner to call for any interference under Article 199 of the Constitution of Pakistan, therefore, the contentions of the petitioner that the reasonable compensation ought to have been awarded by the learned SLAT keeping in view length of 05 years' service of the petitioner with the respondent Rice Mills cannot be accepted at this stage for the reason that there were certain reasons assigned by the learned SLAT for severance of the employment of the petitioner with the respondent Rice Mills and this Court under Article 199 of the Constitution is not in a position to reopen the case of the petitioner and direct for

his reinstatement in service in terms of the findings of the competent appellate tribunal for the reason that discretion is vested with the learned Tribunal to grant relief to the workman by awarding compensation in lieu of reinstatement.

10. The vesting of such discretion with the Court or the Tribunal has been felt necessary in the interest of industrial harmony and peace. While the case of victimization, the workman must be restored to his original position by way of reinstatement. However, in case the order of termination is found illegal on a technical ground or in the case where the post is of trust and confidence and the employer has not entrusted him on the said post, or in the case where the employee is found guilty of such activity subversive to the industry or the office or the organization or where in a case the industry is in the severe doldrums or where the Industry or the Project has been closed down or in a case where there is a long gap from the date of termination, the discretion should normally be exercised not to compel the employer to take him in the job by way of reinstatement.

11. Reverting to the analogy put forward by the learned counsel for the respondent-Rice Mills, in this regard we seek guidance from the decision rendered by the Hon'ble Supreme Court of Pakistan in the case of Baluchistan Engineering Works Ltd v. Abdul Hameed and others **2007 SCMR 1160**, it was held that where an alternate prayer to the reinstatement, compensation is sought then with the consent compensation can be ordered without back benefits. The Hon'ble Supreme Court of Pakistan in the case of Messrs. Ashraf Sugar Mills Ltd through General Manager v. Manzoor Ahmed **2006 SCMR 1751**, it was held that where reinstatement is not considered proper compensation can be awarded. The Hon'ble Supreme Court of Pakistan in the case of Utility Stores Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal and others **PLD 1987 SC 447** has elaborated on the term "just" and "proper" used under Section 25(5) of the Ordinance 1969, would mean right, fair or suitable and according to law; and the word "proper means accurate i.e. adequate application of the substantive provision of Statute. However, subsection (6) of the Ordinance further enables a Labor Court and/or Appellate Tribunal to award compensation, "in lieu of reinstatement" of the workers in service where his termination is held to be wrongful. This is an alternate power that can be invoked in a particular case where the reinstatement of a worker is not considered to be proper. The case law cited by the learned counsel for the respondent-Rice Mills are of no help to him in the terms of the ratio of the judgments passed by the Honorable Supreme Court discussed supra.

12. On the findings of the learned SLAT, 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. As we do not see any illegality and perversity in the findings recorded by learned SLAT requiring our indulgence under Article 199 of the Constitution as this court is not a court of appeal to reappraise the evidence recorded by the competent forum on the subject issues. Besides, the parties have already availed and exhausted the appellate remedy under the law, therefore no further deliberation on our part is required.

13. The petition being bereft of merits, deserve rejection and is accordingly dismissed.

JUDGE

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