

IN THE HIGH COURT OF SINDH AT KARACHI

**Present:**  
**Mr. Justice Muhammad Shafi Siddiqui**  
**Mr. Justice Jawad Akbar Sarwana**

**High Court Appeal No.D-372 of 2023**

M/s National Oil Refinery Ltd.  
Versus  
Syed Mansoor Ali and others  
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***Date of hearing: 07.11.2023***

Mr. Shaukat Ali Chaudhry, Advocate for the Appellant.  
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**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.-** In relation to an application under Section 15 of the Payment of Wages Act, 1936 filed by the respondent No.1 in the court of Commissioner for Workmen's Compensation and Authority under the Payment of Wages Act, East Division, Karachi, an application was filed by the appellant for its dismissal. The Commissioner for Workmen's Compensation and Authority under the Payment of Wages Act concludes that a careful perusal of the record reveals that the matter involves question of law and fact and objection raised cannot be addressed unless evidence of the parties recorded. Hence the objections of the appellant were rejected.

2. Aggrieved of it, a Constitution Petition No.S-210/2022 was filed by the appellant. The learned single Judge of this Court, while entertaining the petition, observed that insofar as the claim of the respondent is concerned, that could well be a subject matter of the final arguments after recording evidence and the parties were allowed to submit the documentary evidence.

3. Having failed in their second attempt to convince the learned single Judge of this Court in C.P. No.S-210/2022, the appellant has

filed this High Court Appeal under Section-3 of the Law Reforms Ordinance, 1972 claiming it to be a remedy available to them under the law, which is questioned by this Court alongwith one availed before learned single Judge in C.P. No.S-210/2022.

4. We have heard learned counsel for the appellant and perused the material available on record.

5. The application before the Commissioner for Workmen's Compensation seems to have been filed under Section 15 of the Payment of Wages Act, 1936. It is a statute which provides a remedy of appeal in terms of Section-17 of the Payment of Wages Act, 1936 against the directions made under sub-section-3 or sub-section-4 of Section 15, within 30 days from the date of which the directions were made. The order impugned before learned single Judge in C.P. No.S-210/2022 was not an order either under sub-section-3 or sub-section-4 of Section 15, hence could not be appealed and since could not be appealed, no other recourse is available unless the jurisdiction is said to have been exercised not vested or have not exercised the vested jurisdiction. Both grounds are not available. Sub-section-3 and sub-section-4 of Section 15, for convenience, are reproduced as under:-

*15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claim.-*

*(1) .....*

*(2) .....*

*(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and employer or other person responsible for the payment of wages under section 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person or, if the applicant is one of the heirs of an employed person the payment to such applicant, of the amount*

*deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding ten rupees in the latter:*

*Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to-*

*(a) a bond fide error or bona fide dispute as to the amount payable to the employed person, or*

*(b) the occurrence of an emergency, or the existence of exceptional circumstances, such that the person responsible for the payment of the wages was unable, though exercising responsible diligence, to make prompt payment, or*

*(c) the failure of the employed person to apply for or accept payment.*

*(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application.*

6. The order impugned before learned signal Judge in C.P. No.S-210/2022 is thus not the one arising out of sub-section-3 and sub-section-4 and hence could not be subjected to any litigation and should not have been challenged by way of a writ petition as challenged by the petitioner/appellant. This has been purposely done to cause a delay of proceedings in relation to litigation under the Payment of Wages Act, 1936. The same spirit is followed in Sindh Payment of Wages Act, 2015.

7. Be that as it may, the petitioner/appellant has now made another attempt to file this High Court Appeal under Section-3 of the Law Reforms Ordinance, 1972. Section-3 of said Ordinance, 1972 is categorized under four sub-sections, which are reproduced as under:-

*3. Appeal to High Court in certain cases. (1) An appeal shall lie to a Bench of two or more Judges of a High Court from a decree passed or final order made by a single*

*Judge of that Court in the exercise of its original civil jurisdiction.*

*(2) An appeal shall also lie to a Bench of two or more Judges of a High Court from an order made by a single Judge of that Court under clause (1) of Article 199 of the Constitution of the Islamic Republic of Pakistan not being an order made under sub-paragraph (i) of paragraph (b) of that clause:*

*Provided that the appeal referred to in this sub-section shall not be available or competent if the application brought before the High Court under Article 199 arises out of any proceedings in which the law applicable, provided for at least one appeal or one revision or one review to any Court, Tribunal or authority against the original order.*

*(3) No appeal shall lie under sub-section (1) or sub-section (2) from an interlocutory order or an order which does not dispose of the entire case before the Court.*

*(4) Nothing contained in this Ordinance shall be construed as affecting:*

*(a) any appeal under the provisions of the Letters Patent applicable to a High Court or under section 102 of the Code of Civil Procedure, 1908 (V of 1908) which was pending immediately before the commencement of this Ordinance; or*

*(b) any appeal or petition for leave to appeal from a decree, judgment or order of a single Judge of a High Court made to the Supreme Court before the commencement of the Law Reforms (Amendment) Ordinance, 1972.*

8. Sub-section-2 of Section-3 provides an appeal to a Bench of two or more Judges of High Court from an order made by a single Judge of that Court under clause-1 of Article-199 of the Constitution of Islamic Republic of Pakistan, not being an order made under sub-paragraph (i) of paragraph (b) of that clause. To our understanding, it excludes an appeal in relation to a subject summarized in Article-199(1)(b)(i), whereas, rest of the “subjects” of Article-199(1) have been subjected to appeal. Subject of dismissal of a claim made under Section-15 of the Payment of Wages Act, 1936 is already subjected to appeal under Section-17, but this is not the “subject” which could be impugned in any of the lower fora and hence neither appeal nor

petition is a remedy. For the purpose of appeal under Law Reforms Ordinance or this appeal in particular wherefrom the impugned order has arisen, out of proceeding under Article-199 from a single Bench, we may sum-up by referring to Appellate side of Sindh Chief Court Rules. Rule-8 confers jurisdiction ordinarily exercised by two Judges of this Court, except otherwise provided by law in particular. Similarly Rule-9 discussed matter to be decided by single Judge of appellate side, not necessarily under Article-199 as there may be some miscellaneous lis etc. Such work (subject) assigned under Rule-9 ibid is not the one impugned by the appellant before learned single Judge, hence jurisdiction was not vested and incorrectly exercised. For convenience, Rule-9 of Sindh Chief Court Rules (Appellate Side) is reproduced as under:-

*9. Matters disposed of by a single Judge.- The following matters may be disposed of by a single Judge:-*

- (i) applications under rules 8 and 10 of Order XXII of the Code;*
- (ii) applications for postponement or for expediting the hearing of cases, not otherwise provided for, or for fixing and particular day for the hearing of a case;*
- (iii) applications to excuse delay in respect of, or to decide as to the admissibility of, any appeal or application presented after the period prescribed by law;*
- (iv) applications to be allowed to appeal as a pauper under O.XLIV of the Code;*
- (v) appeals or applications in which no steps have been taken or in which all endeavors have failed to serve notice on a respondent or opponent within the period prescribed by law or these rules;*
- (vi) applications under O.1., rr. 10 and 11 of the Code;*
- (vii) applications under O.XLI, rr. 5, 6 and 10 of the Code;*
- (viii) applications for the transfer of any suit, appeal or other proceeding from one of the Civil Courts subordinate to the Chief Court to another of such Courts or to the Chief Court;*

- (ix) *applications for the transfer of an inquiry or trial or other proceedings from one of the Criminal Courts subordinate to the Chief Court to another of such Courts or to the Chief Court;*
- (x) *applications under section 215, 426 and 498 of the Code of Criminal Procedure;*
- (xi) *applications against order of the Registrar passed under these rules;*
- (xii) *during the vacation or holidays, civil or criminal applications of an urgent nature.*

9. Further, it is not an order identified under sub-section-2 of section-3 of Law Reforms Ordinance that saved clause-1 of Article-199 with an exception; “not being an order made under subparagraph (i) of paragraph (b) of that clause”. Thus, the subject work remains, (excluding *ibid*) are already being heard by Division Bench in our jurisdiction and the one appealed before us does not fall within appealable subjects.

10. The distinguishing feature of our jurisdiction is that petition under Article-199(1) (a) (i) (ii) (b) (ii) (c) and 2 of the Constitution of Islamic Republic of Pakistan are already heard by a Bench of two Judges in terms of part-2, chapter-3 of our Sindh Chief Court Rules, that concerns with the constitution and powers of the Benches.

11. The said subjects highlighted above, excluding Article-199(1)(b)(i), is to be heard by a Bench of two Judges. The Appeal as such is misconceived and is dismissed.

Dated:-14.11.2023

JUDGE

JUDGE

Ayaz Gul