

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
CP No. S- 1041 of 2022

Dated: Order with signature of Judge(s)

For hearing of Main Case.

Date of Hearing : 29 May 2023.

Petitioner : Airport Hotel through Mr. Ch Azhar Elahi Advocate.

Respondent: : Muhammad Zafeer through Mr. Syed Nadeem ul Haque, Advocate

ORDER

MOHAMMAD ABDUR RAHMAN, J. This Petition has been maintained by the Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as against the Order dated 19 July 2022 that had been passed by the Commissioner for Workers Compensation & Authority under the Sindh Payment of Wages Act (South Division) Karachi in Case No. 01/2021(15) whereby an application filed by the Petitioner for summary dismissal of the Case No. 01/2021 (15) was dismissed.

2. The facts of this Petition are not disputed. The Respondent No. 1 was employed with the Appellant. He had maintained Case No. 41 of 2015 before the Labour Court No. IV seeking the correction of his age of retirement as indicated as being in the year 1955 to a specific date i.e. 16 April 1957 thereby stating that his age of retirement should be enhanced from 31 December 2015 to 15 April 2017. The matter remained pending before the Labour Court No. IV upto 15 April 2017 and whereafter the Petitioner issued a letter to the Respondent No. 1 in the following terms:

“ ... *Without Prejudice to the difference of Airport Hotel, Skyroom (Pot.) Limited in case/application No. 41/2015 titled Muhammad ZAfeer v/s Airport Hotel pending before the Sindh Labour Court No. IC at Karachi you will stand released from the service of the company on 15th April, 2017 on account of your superannuation as alleged by you.*

Your dues, if any will be settled subject to final order passed in the above case.”

The Petitioner consequentially withdrew Case No. 41 of 2015 before the Labour Court No. IV on 8 May 2017.

3. The withdrawal of Case No. 41 of 2015 before the Labour Court No. IV on 8 May 2017 entrenched the Petitioner who alleging that as the Respondent No. 1 had withdrawn Case No. 41 of 2015 before the Labour Court No. IV on 8 May 2017 he had given up his claim for seeking retirement based on his date of birth being 16 April 1957 and therefore was liable to return the salary earned by him from 1 January 2016 until 15 April 2017 which was being adjusted as against his dues.

4. The Respondent No. 1 on 10 February 2018 filed Case No. 01/2021(15) before the Commissioner for Workers Compensation & Authority under the Sindh Payment of Wages Act (South Division) Karachi claiming his entitlements from his date of birth being 16 April 1957 and impugning the Petitioner's decision to adjust the wages earned between the period from 1 January 2016 until 15 April 2017 against his dues

5. The Petitioner replied and raised a preliminary objection that as the Respondent No. 1 had withdrawn Case No. 41 of 2015 before the Labour Court No. IV on 8 May 2017 he had given up his claim for seeking retirement based on his date of birth being 16 April 1957 and therefore was to be treated as having retired on 31 December 2015. He further reiterated that the Petitioner had sent a letter dated 19 March 2020 to the Respondent No. 1 stating that according to them he stood retired on 31 December 2015 and which letter had not been challenged at any forum. The Petitioner maintained an application for the summary dismissal of the Case No. 01/2021 (15) on this basis.

6. The matter was heard by the Commissioner for Workers Compensation & Authority under the Sindh Payment of Wages Act (South Division) Karachi in Case No. 01/2021(15) who was pleased to dismiss the application maintained by the Petitioner on the grounds that the contentions raised by the Petitioner required evidence and therefore could not be decided summarily.

7. Mr. Ch Azhar Elahi entered appearance on behalf of the Petitioner and contended that the Order dated 19 July 2022 that had been passed by the Commissioner for Workers Compensation & Authority under the Sindh Payment of Wages Act (South Division) Karachi in Case No. 01/2021(15) was clearly incorrect. He stated that the Respondent No. 1 having withdrawn Case No. 41 of 2015 before the Labour Court No. IV on 8 May 2017 clearly meant that he had given up his claim regarding the date of his birth and which could not now be reagitated by him in Case No. 01/2021(15) before the Commissioner for Workers Compensation & Authority under the Sindh Payment of Wages Act (South Division) Karachi.

8. Conversely, Mr. Syed Nadeem ul Haque, on behalf of the Respondent No. 1 contended that the simpliciter withdrawal of Case No. 41 of 2015 before the Labour Court No. IV on 8 May 2017 could not mean that this issue could not be agitated in Case No. 01/2021(15) before the Commissioner for Workers Compensation & Authority under the Sindh Payment of Wages Act (South Division) Karachi. He stated that there was no finding on merits in Case No. 41 of 2015 before the Labour Court No. IV and as such the order that the Respondents age had to be determined through evidence in Case No. 01/2021(15) before the Commissioner for Workers Compensation & Authority under the Sindh Payment of Wages Act (South Division) Karachi was the correct decision.

9. I have heard the Counsel for the Petitioner and the Counsel for the Respondent No. 1 and have perused the record. It is apparent that Case No. 41 of 2015 that had been instituted by the Respondent No. 1 before the Labour Court No. IV was an individual grievance that had been raised by the Respondent No. 1 under Section 34 of the Sindh Industrial Relations Act, 2013 and which was adjudicated on by the Labour Court in its jurisdiction under clause (e) of Sub-Section (4) of Section 45 of the Sindh Industrial Relations Act, 2013. Under Sub-Section (2) of Section 45 of the Sindh Industrial Relations Act, 2013 the provisions of the Code of Civil Procedure, 1908 have been made applicable to the adjudication of disputes before the Labour Court.

10. Section 11 of the Code of Civil Procedure, 1908 prescribes that:

“ ... 11. No Court shall try suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been **heard and finally decided** by such Court.

The Supreme Court of Pakistan while interpreting the provisions of Section 11 of the Code of Civil Procedure, 1908 in the decision reported as **Gulistan Textile Mills & another vs. Soneri Bank Limited & another**¹ has held that:

“ ... As regards civil proceedings, this concept is codified in Section 11 of the C.P.C. However, the said section specifically refers to 'suits and therefore restricts the application of the principle thereto. Interlocutory applications can not be regarded as 'suits'; hence, strictly speaking Section 11 of the C.P.C. would not be attracted to such applications. Nevertheless, the general legal principles of res judicata would most certainly apply. Therefore an order passed pursuant to any interlocutory application at one stage of the proceedings would operate as a bar upon similar interlocutory applications made at a subsequent stage of the proceedings based on the general principles of res judicata. However, this general rule will not apply where the order on such interlocutory application does not involve any adjudication. Examples of such instances are: where there is no decision on merits, but a mere expression of opinion not necessary for the disposal of the application; where a matter, though in issue has, as a fact, not been heard and decided, either actually or constructively; where a matter in issue has been expressly left open and undecided; where the suit is not pressed; **or where the suit is withdrawn.**”

¹ PLD 2018 SC 322

(Emphasis is added)

11. As is apparent Case No. 41 of 2015 before the Labour Court No. IV was simply withdrawn and was never “heard and finally decided” so as to bring it within the scope of Section 11 of the Code of Civil Procedure, 1908 thereby prohibiting the re-adjudication of the issue of the date of birth of the Respondent No. 1 in Case No. 01/2021(15) before the Commissioner for Workers Compensation & Authority under the Sindh Payment of Wages Act (South Division) Karachi.

12. The issue of the date of birth of the Respondent No. 1 being an issue which is a mixed question of fact and law and for which evidence is required I can no see no infirmity or illegality in the Order dated 19 July 2022 that had been passed by the Commissioner for Workers Compensation & Authority under the Sindh Payment of Wages Act (South Division) Karachi in Case No. 01/2021(15) whereby the Commissioner for Workers Compensation & Authority under the Sindh Payment of Wages Act (South Division) Karachi had held that the objections raised by the Petitioner could not be decided summarily.

13. For the foregoing reasons I am of the opinion that the Order dated 19 July 2022 that had been passed by the Commissioner for Workers Compensation & Authority under the Sindh Payment of Wages Act (South Division) Karachi in Case No. 01/2021(15) whereby an application filed by the Petitioner for summary dismissal of the Case No. 01/2021 (15) was dismissed suffers from no illegality or irregularity and this Petitioner therefore being misconceived is therefore dismissed with no order as to costs.

JUDGE

Karachi dated 28 August 2023