

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C.P. No.S-731 of 2021

Dated: Order with signature of Judge(s)

1. For Hearing of CMA No. 4695 of 2021
2. For hearing of Main Case.

Date of Hearing : 24 May 2023, 25 May 2023, 26 May 2023
and 30 May 2023

Petitioner : MCB Bank Limited through Mr. Javed
Asghar Awan, Advocate.

Respondent No. 1: : Zahid Ali through Mr. Imdad Ali Saheto,
Advocate

Respondent No. 2 : Nemo

Respondent No. 3 : Nemo

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 impugning an order dated 31 August 2021 passed by the Authority Constituted under the Payment of Wages Act, 2015 (South) in Application No. 31 of 2018 and whereby an application was moved by the Petitioner seeking the dismissal of Application No. 31 of 2018 for want of jurisdiction.

2. The Respondent No. 1 has maintained Application No. 31 of 2018 before the Authority Constituted under the Payment of Wages Act, 2015 (South) for what he alleges are amounts owed to him pursuant to his employment with the Petitioner. The Petitioner is a banking company and is admittedly the employer of the Respondent No. 1 and by virtue of its operating in all the provinces in Pakistan is a trans-provincial organisation.

3. The Petitioner had maintained an application seeking the dismissal of Application No. 31 of 2018 before the Authority Constituted under the Payment of Wages Act, 2015 (South) on various grounds including but not limited to the ground that being a trans provincial organisation it fell outside the legislative competence of the Provincial Legislature and could only be legislated on by the Federal Legislature. The claim that had been maintained by the Respondent No. 1 having been instituted under a provincial statute i.e. the Sindh Payment of Wages Act, 2015 could not therefore be made applicable to the Petitioner and should therefore be dismissed. The Petitioner for the purposes of this Petition did not argue all the other grounds raised in his application and restricted himself to only this issue.

4. The contention of the Petitioner did not find favour with the Authority Constituted under the Payment of Wages Act, 2015 (South) who on 31 August 2021 was pleased to follow a decision of High Court of Peshawar reported as **Telenor Pakistan (Private) Limited vs. Presiding Officer Labour Court and 17 others**¹ wherein it was held that:

“ ... 9. While going through the above provisions it is clear that only the “person Employed” can approach the Authority under the Khyber Pakhtunkhwa Payment of Wages Act, 2013. Similarly, section 1(3)(d) made applicable the provisions of PWA of 2012 also to all factories, industrial and commercial establishments under the control of Federal Government or Provincial Government which are situated in the territorial jurisdiction of the province. The purpose of referring to the above provisions of law is mainly aimed that the jurisdiction of the wages Court has been extended to all the industrial and commercial establishments constituted in the province of Khyber Pakhtunkhwa and in the PWA of 2013 the trans-provincial establishment, as defined in the IRA, 2012, have not been excluded. I have also examined the provisions of Khyber Pakhtunkhwa Minimum Wages Act, 2013(Act No.XII of 2013), wherein too, similar provisions exist in the definition clause and specifically ‘Pakistan Railway’, finds mention which is a Trans-provincial organization. Thus, the arguments advanced at the bar and the judgments relied upon by the learned counsel for the petitioner are not applicable to the proceedings before the wages authority. The argument that after the promulgation of IRA, 2012, the jurisdiction of the wages Court has been completely ousted is misconceived because the Payment of Wages Act, 1936 still hold the field, besides every province has promulgated its own law and both these legislation are not in any manner overriding or contradicting each other. The jurisdiction of the National Industrial Relations Commission established under section 54 of the IRA, 2012 remained the same as it had jurisdiction either under the repealed IRA, 1969, IRO, 2002 or IRA, 2008 with a little modification that earlier its jurisdiction was restricted to unfair labour

¹ 2019 PLC 240

practice and matters of Registration of Union and now it can also adjudicate industrial disputes and individual grievances under section 33 of the IRA, 2012."

On this basis it was held that the status of an entity as being trans provincial would exclude it from the provincial legislatures domain in respect of matters pertaining to trade unions and industrial disputes. However, as far as matters pertaining to payment of wages was concerned, the domain clearly fell within the scope of the provincial legislature.

5. Being aggrieved and dissatisfied by the order dated 31 August 2021 passed by the Authority Constituted under the Payment of Wages Act, (South) in Application No. 31 of 2018 Javed Asghar Awan maintains this Petition on the sole ground that where an entity is working across more than one province of Pakistan then the scope of the provincial legislature is excluded under the doctrine of occupied field. In this regard he relied on the decision reported as **Sui Southern Gas Company Limited vs. Federation of Pakistan**² and wherein while considering the application of the Industrial Relations Act, 2012 to trans provincial organisations it was held that Entries No.58 and 59 of the Part-I of the Federal Legislative List will be applied to give the Federal Government jurisdiction over the legislative area of trans provincial entities and as the Petitioner is clearly a trans provincial entity it naturally follows that the jurisdiction of the Sindh Payment of Wages Act, 2015 cannot extend over such entities. He conceded that while the High Court of Peshawar in the decision reported as **Telenor Pakistan (Private) Limited vs. Presiding Officer Labour Court and 17 others**³ had come to the conclusion that the provincial legislature had the relevant jurisdiction to legislate on the issue of payment of wages, conversely the Lahore High Court, Lahore had in two unreported decisions bearing Writ Petition No 2812 of 2013 entitled **President, the Bank of Punjab vs. Authority under Payment of Wages Act** and Writ Petition No.

² 2018 SCMR 802

³ 2019 PLC 240

818 of 2015 entitled **Habib Bank Limited vs. Muhammad Aslam** conversely held that as per the decision of the Supreme Court of Pakistan in **Sui Southern Gas Company Limited vs. Federation of Pakistan**⁴ all trans provincial entities are excluded from the jurisdiction of the Provincial Legislature under Entries No.58 and 59 of the Part-I of the Federal Legislative List.

6. Mr. Imdad Ali Saheto entered appearance on behalf of the Respondent No. 1 and supported the order dated 31 August 2021 passed by the Authority Constituted under the Payment of Wages Act, 2015 (South) in Application No. 31 of 2018. He contended that in the decision of this Court reported as **Shafiquddin Moinee vs. Federation Of Pakistan Through Secretary, Ministry Of Human Resources Development, Islamabad**⁵ that in respect of matters pertaining to trans provincial entities in respect of payments under the Sindh Companies Profits (Workers' Participation) Act, 2015 a provincial law would occupy the field, even in respect of trans provincial entities and submits that jurisdiction vests with this Court.

7. I have heard the counsel for the Petitioner and the Counsel for the Respondent and have perused the record. The Petition raises an important question regarding the constitutional jurisdiction that has been conferred on the provincial legislature to regulate the payment of wages as between an employee and a trans provincial entity under the Sindh Payment of Wages Act, 2015.

8. The Jurisdiction of the Federation of Pakistan and of a Provincial Legislature to enact legislation is admittedly governed by Article 141 and

⁴ 2018 SCMR 802

⁵ 2018 CLD 1088

Article 142 of the Constitution of the Islamic Republic of Pakistan, 1973 and which read as under:

- “ ... 141. Subject to the Constitution, Majlis-e-Shoora (Parliament)] may make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof.
142. Subject matter of Federal and Provincial laws
- (1) Subject to the Constitution –
- (a) Majlis-e-Shoora (Parliament)] shall have exclusive power to make laws with respect to any matter in the Federal Legislative List;
- (b) Majlis-e-Shoora (Parliament) and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence;
- (c) Subject to paragraph (b), a Provincial Assembly shall, and Majlis-e-Shoora (Parliament) shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List;
- (d) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province.

9. It would be convenient to summarise that, these provisions of Constitution of the Islamic Republic of Pakistan, 1973 prescribe that any subject that comes with a legislative field that is identified in the Federal Legislative List would be a matter within the sole legislative competence of the Federation of Pakistan and where any subject that comes with a legislative field that is not identified in the Federal Legislative List, the same would be within the Legislative Competence of a Province. Such a power to legislate has to be read in conjunction with Article 97 and Article 137 of the Constitution of the Islamic Republic of Pakistan, 1973 and which reads as under:

- “ ... **97. Extent of executive authority of Federation. -**
- Subject to the Constitution, the executive authority of the Federation shall extend to the matters with respect to which Majlis-e-Shoora (Parliament) has power to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan:*
- Provided that the said authority shall not, save as expressly provided in the Constitution or in any law made by Majlis-e-Shoora (Parliament), extend in any Province to a matter with respect to which the Provincial Assembly has also power to make laws.*

137. Extent of executive authority of Province.- Subject to the Constitution, the executive authority of the Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws:

Provided that, in any matter with respect to which both Majlis-e-Shoora (Parliament) and the Provincial Assembly of a Province have power to make laws, the executive authority of the Province shall be subject to, and limited by, the executive authority expressly conferred by the Constitution or by law made by Majlis-e-Shoora (Parliament) upon the Federal Government or authorities thereof.

When these two Articles are read in conjunction with Article 141 and Article 142 of the Constitution of the Islamic Republic of Pakistan, 1973 the interpretation has been settled by the Supreme Court of Pakistan in the decision reported as **Sui Southern Gas Company Limited vs. Federation of Pakistan**⁶ wherein it was held that:

“ ... In this regard it is to be noted that Article 97 of the Constitution provides that “subject to the Constitution, the executive authority of the Federation shall extend to the matters with respect to which the both Majlis-e-Shoora (Parliament) has power to make laws, including exercise of rights, authority and jurisdiction in and in relation to areas outside Pakistan”. Under the said Article, the executive authority of the Federation is not restricted to the areas within Pakistan but also extended in relation to the areas outside Pakistan. However, as per proviso thereto, “the said authority shall not, save as expressly provided in the Constitution or in any law made by Majlis-e-Shoora (Parliament), extend in any Province to a matter with respect to which the Provincial Assembly has also power to make laws”. Under Article 137 of the Constitution, “subject to the Constitution, the executive authority of the Province shall extend to the matters with respect to which the Provincial Assembly has power to make laws”. As per proviso thereto, “in any matter with respect to which both Majlis-e-Shoora (Parliament) and the Provincial Assembly of a Province have power to make laws, the executive authority of the Province shall be subject to, and limited by, the executive authority expressly conferred by the Constitution or by law made by Majlis-e-Shoora (Parliament) upon the Federal Government or authorities thereof”. Further, as per Article 141 of the Constitution, “subject to the Constitution, Majlis-e-Shoora (Parliament) may make laws (including laws having extra-territorial operation) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof”. Under Article 142 of the Constitution, the Parliament has exclusive power to make laws with respect to (1) any matter in the FLL, (2) criminal law, criminal procedure and evidence and (3) all matters pertaining to such areas in the Federation as are not included in any Province; whereas, a Provincial Assembly has power to make laws with respect to (1) criminal law, criminal procedure and evidence and (2) any matter not enumerated in the FLL. Under Article 232(2) of the Constitution, in case of emergency, the Legislative authority of the Federation extends to enacting laws for a Province, or any part thereof, with respect to any matter not enumerated in the FLL. Thus, from the above provisions of the Constitution it is clear that the Federal Legislature has extra-territorial authority to legislate, but no such extra-territorial authority has been invested with the Provincial Legislature.”

⁶ 2018 SCMR 802

10. Having settled the basis for understanding the domain of the Federation and the Province to legislate under the Constitution of the Islamic Republic of Pakistan, 1973, it would be necessary to examine the Federal List to see whether legislative field pertaining to the payment of wages comes within or outside the purview of the Federal Legislative List. In summary as a Province's right to legislate cannot traverse the boundaries of a Province, it cannot therefore enact legislation that would be beyond the perimeters of its province; this being the sole domain of the Federation. The Sindh Payment of Wages Act, 2015 repealed a federal legislation known as the Payment of Wages Act, 1936 and which was necessitated post the 18th Amendment to the Constitution of the Islamic Republic of Pakistan, 1973 and by which the legislative field indicated as serial No. 26 of Part II of the Fourth Schedule relating to:

“ ... *Welfare of labour, conditions of labour, provident fund, employers liability and workers compensation, health insurance including invalidity pensions and old age pensions*”

was omitted on the deletion of the Concurrent list on 19 April 2010. The intention being to bring the issue of payment of wages into the provincial domain, I am satisfied that post the 18th Amendment to the Constitution no legislative field existed relating to the Payment of Wages in the Federal Legislative List, consequentially the legislative competence to enact legislature regarding the Payment of Wages would vest in a Province.

11. The issue that remains, as raised by the Petitioner is as to whether the fact that the wages are being paid by a trans provincial entity would bring such an activity within the legislative competence of any of the fields identified in the Federal Legislative list and thereby excluding it from the purview of the Province. This issue of the status of the activity of a trans provincial entity viz a viz the legislative capacities of the Federation of Pakistan and a Province in Pakistan has been examined by the Supreme

Court of Pakistan in the decision reported as **Sui Southern Gas Company Limited vs. Federation of Pakistan**⁷ wherein it was held that:

“ ... Needless to observe that to deal with such a matter, the Constitution itself has provided a mechanism i.e. entries No.58 and 59 in Part-I of FLL, whereby the Federal Legislature has been mandated to legislate in order to preserve and regulate a right, which in its exercise transcends provincial boundaries, especially one guaranteed under Article 17 of the Constitution. The scope of Entries No.58 and 59 shall be discussed in detail at the latter part of the judgment, considering the scope of the Entries in the FLL...

17. Additionally, Entries No.58 and 59, which fall at the end of the Part-I of the FLL, have their own significance. These two entries are independent and unfettered. Entry No.58 *ibid* covers the “Matters which under the Constitution are within the legislative competence of Majlis-e-Shoora (Parliament) or **relate to the Federation**”. Further, Entry No.59 deals with the “Matters **incidental or ancillary** to any matter enumerated in this Part”. From the plain reading of these two Entries, it is clear that besides the subjects enumerated in the previous Entries, these Entries provide extended powers to the Federal Legislature; inasmuch as, by means of these Entries, the legislative competence of the Federal Legislature extends not only to the matters which under the Constitution are **within the legislative competence of the Parliament** but also to the matters which **relate to the Federation** and also the matters **incidental or ancillary** thereto. Thus, in addition to the matters specifically enumerated in any of the Entries in Part-I of the FLL, the matters which in some way relate to the Federation would also fall within the legislative competence of the Parliament. This interpretation also finds support from the fact that in terms of Article 141 of the Constitution, a Provincial Legislature does not possess extra-territorial legislative competence and therefore, cannot legislate with regard to a subject which in its application has to transcend the provincial boundaries. It is to be noted that as clarified by the learned High Court the resort to Entry No.58 *ibid* could only be made to deal with an extra-ordinary situation i.e. **when a matter may fall within the legislative competence of the Province but when it comes to its application it has to travel beyond the territorial boundaries of the Province, bringing it into the domain of the Federal Legislation.** Thus, it is held that the federal legislature has the competence to legislate relating to the Establishments/Trade Unions functioning at the Federal as well as trans-provincial level.

(Emphasis is added)

12. Having come to the conclusion that the field regarding payment of wages is clearly within the legislative competence of the Province, the test to determine whether Federation could exercise legislative competence has to be assessed as against the threshold to see as to “**when it comes to its application it has to travel beyond the territorial boundaries of the Province.**” In this regard, I have examined the decision of a Division Bench of this Court that was relied on by Mr. Imdad Ali Saheto, Advocate reported as **Shafiquddin Moinee vs. Federation Of Pakistan Through**

⁷ 2018 SCMR 802

Secretary, Ministry Of Human Resources Development, Islamabad.⁸ In

that decision a Division Bench of this Court was called on to consider the legislative competence of a province to enact legislation in respect of an entitlement of workers in a share to a company's profits under the Sindh Companies Profits (Workers' Participation) Act, 2015. The Court framed various questions and held that:

" ... Applying the first principles, we again recall the conclusion reached as regards the pith and substance of the two Acts: it is relatable to the legislative competence of "welfare of labor". That is the purpose of both the statutes: to enhance labor welfare by allowing workers to participate in profits of a company with whom they are associated in the manner stipulated by law. But, and this is where the first principle comes into operation, the welfare of which workers? Is it all the workers of a company that has its registered office in this Province regardless of where the workers themselves may be (i.e., all over the country) ? Or. It is only the workers in Sindh of a company that has its registered office in Sindh (i.e. both conditions must apply)? Can it apply to the workers here of a company has its registered office elsewhere? What about a situation where the company's registered office is located here but the industrial undertaking is else where, and vice versa, or even both are outside of the Province? It will be seen that these questions in fact relate to the various submission made, and solutions offered, by learned counsel. In our view, with respect, focusing on the company and/or where its registered office is located and/or where its industrial undertaking is situated and any other similar considerations tends only to obscure what lies, and must necessarily lie, at the heart of the statutes: the welfare of labor by allowing them to share in the profits of the company. At the same time, it must also be kept in mind that in enacting the Sindh Act as beneficial legislation, the legislative intent is clearly to benefit all workers. Once these aspects are to be kept in mind, and the constitutional principle of territorial limitation is applied, the solution is clear. **In relation to any company, the Sindh Act, applied to all the workers but only to those workers who are in this Province. In other words, it is irrelevant whether the registered office or the industrial undertaking of the company is located. It is equally irrelevant whether the company is trans-provincial or not. The focus of the Act must be on the workers alone and nowhere else. And, since the statute is territorially limited, it must only be on those workers who are in this province and nowhere else.** In our view therefore, it is the solution suggested by learned counsel for the Government of Sindh (Labor Department) that is correct. It is this solution that properly relates the Sindh Act, to the legislative competence with reference to what it was enacted, the principle that the statute is territorially limited, and the rules of interpretation that apply to beneficial legislation.

(Emphasis is added)

13. The questions raised by the Court in **Shafiquddin Moinee vs. Federation Of Pakistan Through Secretary, Ministry Of Human Resources Development, Islamabad.**⁹ regarding the location of

⁸ 2018 CLD 1088

⁹ 2018 CLD 1088

the registered office of a trans provincial entity or where the undertaking is performing its work is equally relevant to the decision of this issue and clearly the conclusion reached by the court are equally applicable here. The focus of the Court in determining this issue would be first to look at the legislative field that is being occupied i.e. workers compensation or payment of wages and to see whether the application of that field is limited to a province or alternatively to see whether the application of the field transcends the boundaries of the province. If it is the former, the Province has jurisdiction and if it is the latter, then under Item 58 and 59 of the Fourth Schedule read with Article 97, 137, 141 and 142 of the Constitution of the Islamic Republic of Pakistan, 1973 the Federation of Pakistan. To my mind payment of wages that are made as between an employer and an employee are in respect of a service agreement. Such an agreement would ordinarily specify the primary place where the employee would find himself to be employed. While, I can understand that the nature of the responsibilities entrusted to an employee may be trans provincial and that the entity itself may be operating in more than one province, this to my mind would not take away from the fact that the employer had employed an employee to serve primarily at a designated place and which being at a single place the application of the payment of wages cannot be considered "**in it's application**" to "**to travel beyond the territorial boundaries of the Province**" so as to oust the legislative competence of the Province to regulate that activity .

14. I have considered the decision of the High Court of Peshawar reported as **Telenor Pakistan (Private) Limited vs. Presiding Officer Labour Court and 17 others** ¹⁰ and while I have reached the same conclusion as that Court but, for the foregoing reasons, the rationale of that decision is one that I must respectfully disagree with. With regard to the decisions of the Lahore High Court, Lahore being Writ Petition No. 2812 of

¹⁰ 2019 PLC 240

2013 entitled *President, the Bank of Punjab vs. Authority under Payment of Wages Act* and Writ Petition No. 818 of 2015 entitled *Habib Bank Limited vs. Muhammad Aslam* I respectfully am of the opinion that they do not correctly apply the ratio decidendi of the decision of the Supreme Court of Pakistan reported as *Sui Southern Gas Company Limited vs. Federation of Pakistan*¹¹ and which I am under Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 mandated to follow. The legislative competence in respect of the field of Payment of Wages under the Constitution of the Islamic Republic of Pakistan, 1973 to my mind clearly vests with a Province.

15. As per the facts of this Petition, while the Petitioner is clearly a trans provincial bank operating in all the provinces of Pakistan, however as the Respondent No. 1 was an employee of the Petitioner at Karachi, I am of the opinion that the Authority Constituted under the Payment of Wages Act, 2015 (South) was properly seized of Application No. 31 of 2018 and a challenge to its jurisdiction on the ground that the Petitioner was a trans provincial bank and therefore not amenable to provincial jurisdiction under the Sindh Payment of Wages Act, 2015 cannot be sustained. While the rationale of the Authority Constituted under the Payment of Wages Act, 2015 in its order dated 31 August 2021 dismissing the objections raised by the petitioner as to the maintainability of Application No. 31 of 2018 was clearly misplaced, for the foregoing reasons, I am in agreement with the conclusion of that court that the objection raised by the Petitioner, that being a trans provincial organisation it fell outside the legislative competence of the provincial legislature and could only be legislated on by the Federal Legislature, cannot be sustained. This Petition must therefore fail.

16. For the foregoing reasons, while there are irregularities in the reasoning given by the Authority Constituted under the Payment of Wages

¹¹ 2018 SCMR 802

Act, 2015 (South) in its order dated 31 August 2021 dismissing the objections raised by the petitioner as to the maintainability of Application No. 31 of 2018; I am of the opinion that the Authority Constituted under the Payment of Wages Act, 2015 (South) has the requisite jurisdiction to adjudicate on Application No. 31 of 2018. This Petition therefore being misconceived is dismissed, along with all listed applications, with no order as to costs.

JUDGE

Karachi dated 29 August 2023