Order Sheet

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No.D-1203 of 2023

[Azizullah Brohi & Others v.
Sindh Labour Appellate Tribunal Hyderabad & 3 others]

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Arshad Hussain Khan

Mian Taj Muhammad Keerio Advocate for the petitioners

Date of hearing : 13.09.2023
Date of order : 13.09.2023

ORDER

ARSHAD HUSSAIN KHAN, J.- Through this constitutional petition, the petitioners have sought the following relief(s):-

a) To set-a-side the order of Sindh Labour Appellate Tribunal Hyderabad and remand the cases of the petitioners to trial court i.e Authority under payment of wages Act 2015 Hyderabad for passing proper judgment and decree restoring the order of Sindh Labour Court VI, Hyderabad, as the law of limitation is mix question of law and facts which are not correctly taking into consideration and applicants/petitioners were not given an opportunity to prove their case when they were defrauded by the respondent company.

b) Award any other relief, deemed fit and proper.

2. A gist of the facts as reflected in petition are that the petitioners were the employees of respondent No.4-M/s. Thatta Cement Company Limited. They opted for Voluntary Separation under Golden Handshake Scheme [GHS], introduced by respondent No.4 in the years 1997, 2000 and 2004 and were relieved from their services in the year 2004. It is the claim of the petitioners that they were not paid their legal dues which include gratuity as per their entitlement. It is also the claim of the petitioners that as per policy of GHS they were entitled to four gratuities but the respondent had given them only single gratuity on the basic salary, as such, the petitioners are defrauded by the respondent. Against the alleged illegal act of respondent No.4, the petitioners in the month of December 2021 approached the Commission for Workers' Compensation & Authority under Sindh payment of Wages Act, Hyderabad, by filing application bearing No.09 of 2022, which was dismissed being time barred on 04.08.2022. The petitioners challenged the said decision before VIth Labour Court

Hyderabad, Sindh, in Appeal No.06 of 2022, which was allowed, vide order dated 18.10.2022 against which respondent No.4 preferred Revision Applications bearing No.3 to 11 of 2023 before the Sindh Labour Appellate Tribunal Karachi. The said revision applications were allowed, vide consolidated judgment dated 15.06.2023 whereby the judgment of Labour Court was set aside and the order of the Authority dismissing the petitioners' application as time barred was restored. The petitioners having been aggrieved by the said judgment of the revisional court filed the present petition.

3. Learned counsel during his arguments has mainly contended that limitation is a mixed question of law and facts, which could only be determined on the basis of evidence adduced by both the parties, which in the present case is lacking as the authority / trial Court decided the application of the petitioners summarily on the technical ground of limitation, which order subsequently endorsed by the revisional court as well, whereas, the lower appellate court rightly appreciated facts and remanded the case to the trial court with the directions to decide the matter on merits after recoding evidence. Learned counsel while referring to sub-section (2) of section 15 of Sindh Payment of Wages Act 2015 (The Act), submits that learned authority / trial Court as well as Revisional Court have failed to correctly apply their judicious mind while passing the impugned order; that under the provision the authority / trial Court has ample power to condone the delay, even if, the application is filed beyond the period of limitation. Since much emphasis is made on the provision viz. sub-section (2) of section 15 of Sindh Payment of Wages Act 2015, as such, before going into further discussion it would be conducive to reproduce the said provision hereunder:-

> 15.(1) Government may, by notification in the official Gazette appoint any Commissioner for Workmen's Compensation or any Officer of Directorate of Labour not below the rank of Grade-18 to hear and decide for any specified area all claims arising out of deductions from the wages, or non- payment of dues relating to provident fund or gratuity payable under any law or delay in the payment of wages, of persons employed or paid in that area.
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> (2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages or of any dues relating to provident fund or gratuity payable under any law has been delayed, such person himself, or any legal practitioner, or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or of any heirs of an employed person who has died or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for direction under sub- section (3):

> **Provided** that every such application shall be presented within three years from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be:
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> **Provided** further that any application may be admitted after the said period of three years when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.
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> **[Emphasis supplied]**

4. From perusal of the above provisions, it appears that the application shall be presented within three years from the date on which the deduction from the wages was made or from the date on which the payment of wages was due to be made as the case may be. Admittedly, the petitioners were relieved from service upon receiving golden handshake amount in the year 2004, the claim of the petitioners was alleged to have been due on the said date, as such, the claim must have been filed under subsection (2) of section 15 of the Act, within three years, whereas, the petitioners filed application before the Authority in the month of December 2021, after a delay of more than 17 years, beyond the period of limitation. The above referred second proviso clearly states that the party seeking relief under such proviso shall demonstrate sufficient cause for failure of making or presenting such application within time to the satisfaction of the Authority. A perusal of the application under section 5 of the Limitation Act, filed by the petitioners before the Authority does not show any plausible reason for not bringing the claim before the Authority with the prescribed time. The only ground, mentioned in the affidavit in support of the application for condonation of delay, was that when the petitioners came to know that the case, filed by the other employees of respondent No.4, has been decided in their favour on 03.09.2021, they immediately filed application before the Authority. Such assertion is not plausible explanation. In the instant case, the petitioners willingly opted for the Scheme, coupled with the fact that they were given sufficient time to ponder over it and were informed about their approximate entitlement, to which they accepted without any objection and received the amount as determined against their individual entitlement; thereafter, they remained silent with no objection for more than seventeen years as the Scheme was acted upon in the year 2004 but they, for the first time, approached the Authority in the year 2021, which by itself was a sufficient ground to non-suit them.

5. Laches is a doctrine whereunder a party which may have a right, which was otherwise enforceable, loses such right to the extent of its enforcement if it is found by the Court of a law that its case is hit by the doctrine of laches / limitation. Right remains with the party but it cannot enforce it. The limitation is examined by the Limitation Act or by special laws, which have inbuilt provisions for seeking relief against any grievance within the time specified under the law and if a party aggrieved does not approach the appropriate forum within the stipulated period / time, the grievance though remains but it cannot be redressed because if on the one hand there was a right with a party, which he could have enforced against the other but because of principle of limitation / laches, same right then vests / accrues in favour of the opposite party[1].

6. It is now settled that a party seeking condonation of delay has to explain the delay of each and every day with certainty as after expiry of the limitation period provided in a statute a valuable right is created in favour of the opposite side[2]. It has also now been settled that the question of limitation is not a mere technicality rather it goes to the roots of a litigation until it is proved that cause of action was agitated within a time prescribed by law[3].

7. Insofar as the contention of learned counsel for petitioners is concerned with regard to question of limitation is a mixed question of fact and law, as such, the trial Court in order to resolve the controversy had to record the evidence, it may be observed that the question of limitation rests on the circumstances explained in the pleadings, inasmuch as it has two-fold implications; and being a pure question of law, at times, it becomes mixed question of fact and law particularly when disputed facts in regard to reckoning of limitation from the acquisition of knowledge or origin of the cause of action from a specific date, need probe by recording evidence. Recording of evidence is not mandatory when the averments of the pleadings are silent regarding the factum of case being barred by limitation and recording of evidence cannot be permitted when the pleadings did not disclose any disputed question of fact for application of mixed question of

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[1] State Bank of Pakistan through Governor and another v. Imtiaz Ali Khan and others.[2012 SCMR 280].

[2] Lahore Development Authority v. Mst. Sharifan Bibi and another [PLD 2010 Supreme Court 705] & Muhammad Azhar Khan and another v. Assistant Commissioner/Collector, Toba Tek Singh and others [2006 SCMR 778].

[3] Muhammad Islam v. Inspector General of Police Islamabad and others [2008 SCMR 8].

fact and law nor was there any factual controversy as to the limitation period, to be set at rest in the suit[4].

8. In view of the foregoing, it is held that, in the instant case, the question of limitation was purely that of law indeed and not that of fact. We are unable to accept the argument of learned counsel for the petitioners that the question of limitation is always a mixed question of fact and law. It varies according to the circumstances averred in the plaint. If a bare reading of plaint does not give rise to any such factual probe in respect of institution of suit beyond the limitation period, in such eventuality there is no need to frame issue and record evidence, and it is liable to be considered as a pure question of law. Needless to say that the disputed facts in respect of date of knowledge may call for recording of evidence as a mixed question of fact and law. But in the case under consideration, there is no disputed fact as such requiring the recording of evidence as opposed to the eventuality, discussed above, which might lead to the determination of the question of limitation after recording evidence.

9. Following the settled principle of law, we are of the view that the petitioners admittedly filed the application after more than seventeen years, which was well beyond the limitation period, therefore, being a pure question of law, the application filed before the Authority was barred by limitation and the application was liable to be rejected, which power has rightly been exercised by the Authority / trial Court and so also by the revisional Court while setting aside the order of the lower appellate Court restored the order of the Authority / trial Court.

10. It is also well settled that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the frame work of Constitution, and if there is any error on the point of law committed by the Courts below or the tribunal or their decision takes no notice of any pertinent provision of law, then obviously this Court may exercise Constitutional jurisdiction subject to the non-availability of any alternate remedy under the law. This Constitutional jurisdiction is limited to the exercise of powers in the aid of curing or making correction and rectification in the order of the Courts or tribunals below passed in violation of any provision of law or as a result of exceeding their authority and

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[4] Muhammad Khan v. Muhammad Amin [2008 S C M R 913].

jurisdiction or due to exercising jurisdiction not vested in them or non-exercise of jurisdiction vested in them. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice. Insofar as the exercise of the discretionary powers in upsetting the order passed by the Court below is concerned, this Court has to comprehend what illegality or irregularity and / or violation of law has been committed by the Courts below which caused miscarriage of justice[5].

11. In view of the above, we did not find any illegality in the impugned orders. Furthermore, learned counsel for the petitioners also could not point out any error and / or any illegality, infirmity or jurisdictional error in the impugned orders, which could warrant interference by this Court in extraordinary jurisdiction of High Court, hence, the present constitutional petition is liable to be dismissed in limine being devoid of any merit.

Foregoing are the reasons for our short order dated 19.09.2023, whereby this petition along with listed application was dismissed with no order as to cost.

JUDGE

JUDGE

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Shahid

[5] Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259].