

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. D-1807 of 2023

(Taimoor Ali Vs. M/S Continental Biscuit Lit (LU) SITE & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;
Adnan-ul-Karim Memon, J;
Muhammad Abdur Rahman, J;

Date of hearing **30-04-2024.**
Date of Order **30-04-2024.**

Mr. Shahzad Dreho, advocate for the petitioner.

Mr. Shoukat Ali Chaudhry Advocate for M/s Continental Biscuit Ltd. (LU) Site Sukkur.

Mr. Ali Raza Baloch AAG

ORDER

Adnan-ul-Karim Memon J:- Through this Constitutional Petition, the petitioner Taimoor Ali has prayed for setting-aside the Judgment dated 04.10.2023 passed by the Sindh Labour Appellate Tribunal (*SLAT*) in Appeal No.Suk-69-70 of 2023, whereby the Judgment dated 07.4.2023 passed by the Sindh Labour Court No.7 Sukkur (*SLC*) in Grievance Application No.2/2020 and 8/2020 was maintained. An excerpt of Judgment dated 7.4.2023 is reproduced as under:-

2. The concise facts giving rise to this petition are that the petitioner was performing his duties as a cutter operator in the respondent factory permanently for the last ten years, and he was removed from service verbally on 23.10.2019. After dismissal from service, the petitioner served a grievance notice dated 19.12.2019 upon the respondent factory which did not respond, compelling him to file a Grievance Application before SLC, wherein the parties led evidence and after hearing them dismissed the Grievance Application vide Judgment dated 7.4.2023. The petitioner being aggrieved by and dissatisfied with the aforesaid decision preferred Appeal No.Suk-69-70 of 2023 before SLAT which was also

disposed of vide Judgment dated 4.10.2023 with direction to return the grievance application to the petitioner to present before National Industrial Commission (*NIRC*). An excerpt of Judgment dated 4.10.2023 is reproduced as under:-

3. It is emphatically argued by learned counsel for the petitioner that the impugned judgments are erroneous, perverse, and arbitrary as it was passed without considering the evidence, or even the merits of the case; that the impugned orders are based on non-reading and misreading of the evidence available on record and without considering the law on the subject, consequently, the impugned judgments have been passed in violation of the concept of natural justice as well as Article 10-A of the Constitution; that since sufficient oral as well as documentary evidence as brought by both parties was available on the record as such the petitioner ought not to have been non-suited on technical grounds. He argued that the termination of service of the petitioner by a verbal order is alien to the labor and service laws; he next argued that it is an elementary rule of law that before taking any adverse action, the affected party must be given a fair opportunity to respond and defend the action, however in the present case no such opportunity was provided to the petitioner, who had rendered more than ten years in the respondent Biscuit factory as a permanent worker. He added that the plea of the respondent is illogical as they have been paying the contribution to the EOBI and now a contrary stance has been taken to the effect that the petitioner was/is not their employee and the SLC has no jurisdiction to entertain his grievance application as the respondent biscuit factory is the transprovincial establishment and NIRC has jurisdiction, though they have admitted in the cross that the respondent factory has no other factory in the country as such the labor court has jurisdiction, these contradictory stances are not appreciated at all. He relied upon the case of *Ltd. And others v. Federation of Pakistan (2018 SCMR 802)*, an unreported judgment passed by Supreme Court in Civil Appeal No.377 of 2014 as well as in Civil Appeal Nos.481 of 2017 & 918 and 904 of 2020.

4. Conversely, the learned counsel for respondent factory while reiterating the facts and grounds as mentioned in his written objections, has supported the impugned judgment passed by the leaned SLAT and has argued that the grievance application filed by the petitioner was not maintainable before SLC as there was/is no relationship between the parties and denied that the petitioner was/is their employee. He also emphasized that the respondent-establishment is Trans-

Provincial establishment as such the learned SLAT has rightly returned the Grievance Application to the petitioner for presentation before National Industrial Commission. He argued that this court would not proceed to reappraise the entire material including the evidence on the assumption that such reappraisal could lead to a different view than the one taken by the two competent fora. He added that this Court's interference in the findings of SLAT would be justifiable only when some illegality apparent on the record having nexus with the relevant material is established which factum is missing in the present case. Though the learned SLC has discussed the entire evidence adduced by the parties, and there was no illegality in the findings of SLC, however, the same judgment has been set aside by the SLAT based on the issue of transprovincial establishment which decision was/is right to the extent of jurisdiction as the subject issue could be resolved by the NIRC and not SLC; he added that it is a settled principle of law that courts while reaching factual aspect about the jurisdiction issue which, otherwise, if appears to be well reasoned, cannot be disturbed in Constitutional jurisdiction. To substantiate that the respondent establishment is a trans-provincial establishment having business places at different places in the country, the learned counsel has filed certain documents along with the statement dated 26.4.2024.

5. The learned Assistant Advocate General, supported the contention of learned Counsel for respondent-establishment and argued that the instant petition is not maintainable on the ground that there are findings against the petitioner by SLAT on the point of jurisdiction; that so far as the jurisdiction of the learned SLC and SLAT, under Sindh Industrial Relation Act, 2013 (**SIRA**) is concerned, since the petitioner failed to dispel the impression about the status of the respondent-establishment as a trans-provincial establishment before the SLAT thus the case of the petitioner does fall within the ambit of provincial labor laws and now the jurisdiction lies with NIRC, therefore the reasons assigned by the SLAT in the impugned Judgment are well within the parameters of the law.

6. We have heard the learned counsel for parties' counsel as well as gone through both the judgments of SLAT and SLC and perused the entire record carefully.

7. At the outset, we note that both section 2(ix) of the SIRA and section 2(x) of the Industrial Relation Act, 2012 (IRA) define an 'establishment' to mean any

office, firm, factory, society, undertaking, company, shop, or enterprise which employees workmen “directly or through a contractor” to carry on business or industry. Again, section 2(xxxii) of the SIRA and section 2(xxxiii) of the IRA define ‘worker’ and ‘workman’ as a person who is employed in an establishment or industry “either directly or through a contractor ...”. Further, section 2(xxxii) IRA defines ‘trans-provincial’ to mean “any establishment, group of establishments, industry, having its branches in more than one province”. In *Pakistan Telecommunication Company Ltd. v. Member NIRC (2014 SCMR 535)*, the Supreme Court held that once it was established through any means that the employer was a trans-provincial establishment, then the IRA, being Federal law, would become applicable to such establishment, and under Article 143 of the Constitution, the provincial industrial relations law would be overridden.⁸ To elaborate further on the subject, we have seen that under Clause (2)(b) of Section 57 of IRA 2012, the Commission has been empowered to withdraw from a Labour Court of a Province any applications, proceedings or appeals relating to unfair labour practice, which fall within its jurisdiction. A proviso has been added to the above provision, to the effect that “no Court, including Labour Court, shall take any action or entertain any application or proceedings in respect of a case of unfair labour practice”. Besides, the Act of 2012 does not provide such directions that cases are to be transferred automatically.

8. In view of the above legal position of the case, the petitioner ought to have been vigilant as it is settled law that ignorance of the law is no excuse, as the petitioner was well aware of the factum that respondent-establishment was/is Trans-Provincial Establishment and grievance application lies before the NIRC and not SLC and/or SLAT. It is also well-settled that the Law favours the vigilant and not the indolent, as such, the proceedings initiated by the SLC were rightly set at naught by the SLAT and returned the Grievance Application to the petitioner to approach NIRC.

9. It is well settled that certiorari is available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or over its jurisdiction or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in the exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in the exercise of supervisory jurisdiction.

10. In view of the above facts and circumstances of the case, the SLC shall transmit the grievance application of the petitioner to Registrar NIRC forth with who shall place the matter before the Bench for appropriate order on merit within reasonable time.

11. This petition stands disposed of in the above terms.

Judge

Judge

Ihsan/P.A