

IN THE HIGH COURT OF SINDH, KARACHI**C.P.No.D-676 of 2024****Karachi Shipyard & Engineering Works Ltd****Vs.****Sindh Appellate Tribunal & others****Before: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Adnan ul Karim Memon**Date of hearing: **12.02.2024.**Date of order: **12.02.2024.**

Mr. Muhammad Nishat Warsi advocate for the petitioner.

==

ORDER

Adnan-ul-Karim Memon, J. Petitioner M/s Karachi Shipyard Engineering Works Limited has questioned the Judgment dated 14.11.2023 passed by the learned Sindh Labour Appellate Tribunal (SLAT) whereby the Revision Application KAR-14 of 2020 filed by Petitioner-Company was dismissed against the order dated 19.02.2020 passed by Sindh Labour Court No.IV Karachi (SLC), being time-barred.

2. Brief facts of the case are that respondent Muhammad Iqbal,(since deceased) had been working in the Petitioner-Company as an Electric Welder since 1968. It is alleged that during his tenure of service, he tendered his resignation, which was accepted by the Company on 01.10.2007 and his legal dues were paid to him accordingly. Respondent No.2, filed an application under Section 15 of the Payment of Wages Act 1936 before the Authority under the Payment of Wages Act 1936 Karachi and claimed payment of Rs. 17,550/ as well as ten-time compensation of Rs. 19,3050/-, which Application was allowed vide order dated 10.02.2015 with direction to the Petitioner-Company to deposit the amount of his deducted gratuity, five-times compensation, plus 5% workers participation works bonus with ten-time compensation amounting to Rs. 13,49,490/- within 30 days. The Petitioner-Company being

aggrieved by and dissatisfied with the aforesaid order preferred statutory appeal under Section 17 of the Payment of Wages Act, 1936 before the SLC Karachi, which was dismissed vide order dated 27.05.2015 on the premise that the Petitioner-Company failed and neglected to comply with the order dated 27.04.2015 passed by the SLC to deposit the amount within time. The Petitioner-Company filed an application for recalling the order dated 27.05.2015, which was also dismissed vide order dated 19.02.2020 on the premise that the appeal presented by the Petitioner-Company was in time-barred under section 17(1) of the Payment of Wages Act 1936. The Petitioner-Company preferred Revision Application under Section 48(5) of the Sindh Industrial Relations Act 2013 before the SLAT, which was also dismissed vide impugned Judgment dated 14.11.2023, on the same analogy.

3. The main theme of the arguments of the Petitioner-Company is that the proceedings before the Commissioner for Workmen Compensation and Authority under the Payment of Wages Act 1936 were ex-parte proceedings as no service was held good upon the Petitioner-Company; and, soon after coming into the knowledge of such proceedings, they applied for certified copies of the orders which were delivered to the Company on 20.04.2015 and thereafter they approached the appellate forums, however, their applications were dismissed being time-barred. Learned counsel further submitted that the private respondent had given an undertaking that he would not prefer any claim against the Petitioner-Company in connection with any matter arising out of his employment, however, he breached his undertaking made on 19.11.2007 and started litigation, compelling the Petitioner-Company to deposit the decretal amount in the office of the Commissioner for Workmen Compensation and Authority under the Payment of Wages Act 1936 and after receiving the amount, he passed away in the intervening period, as such the dues deposited by the Petitioner-Company cannot be retained by the legal heirs of deceased which need to be returned to the Petitioner-Company and/or be recovered from the legal heirs of the deceased Muhammad Iqbal.

Per learned counsel, the orders passed by the Authority under the Payment of Wages Act 1936 as well as learned Courts below are perverse and without jurisdiction and need to be set aside as the Petitioner-Company was/is not liable to pay any more amount to the deceased. Learned counsel emphasized that the respondent had tendered his resignation, which was accepted on 24.10.2007 and he had received the following payments as a full and final settlement as such the order passed by the Authority is liable to be set aside. He has lastly prayed for allowing the instant petition.

- i. Cheque o. 9740092 for Rs. 874430 an Account of Provident Fund***
- ii. Cheque o. 1087256 for Rs. 241,650 an Account of Gratuity and final settlement dues***

4. We have heard the learned counsel for the petitioner on the maintainability of this petition and have also gone through the orders passed by the forums below and the stance taken by the Petitioner- Company.

5. In principle cases in Courts are decided on the preponderance of evidence led in the case by the parties, and to reach a just and proper conclusion, the oral as well as the documentary evidence needs to be taken into consideration. But at the same time, when the matter comes to this Court in Constitutional Jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, it is not the domain of this Court to re-weigh or interpret the evidence and /or material produced before the forums below as this Court is not Appellate Court and under the Constitutional jurisdiction, this court has limited jurisdiction until and unless the findings are shown to be perverse with jurisdictional defect.

6. In the present case it appears that private respondent filed his Grievance Application under Section 15 of Payment of Wages Act 1936 before the Authority in the year 2014; and, as per record proper notices were issued to be served upon the Petitioner-

Company, however they could not put their appearance to defend the case, compelling the private respondent to file affidavit in ex-parte proof on 13.01.2015 on the premise that several chances were given to the Petitioner-Company to appear and assist the Commissioner for Workmen compensation but they failed and neglected to appear and file reply to the allegation levelled in Grievance Application, finally, Commissioner for Workmen compensation accepted the claim of the private respondent vide order dated 10.02.2015 with direction to the Petitioner-Company to deposit the decretal amount of gratuity of private respondent within 30 days, however the Petitioner-Company opted not to deposit the decretal amount in time and chosen to contest the matter by preferring Appeal under Section 17 of the Payment of Wages Act, 1936 before the SLC as well as SLAT but both the forums dismissed the cases of the Petitioner-Company on the premise that the appeal presented by the Petitioner-Company was time barred.

7. While going through the diary sheets, it appears that several notices were issued to the Petitioner-Company to appear in the matter and the matter was adjourned to 24.09.2014, 20.10.2014, 12.11.2014, 26.11.2014, 22.01.2015, 10.02.2015, however, the Petitioner-Company failed to put representation before the Authority on the aforesaid dates. The record further reflects that on 09.04.2015 the Petitioner Company preferred an appeal before the SLC and the learned SLC vide order dated 27.05.2015 dismissed the appeal on the ground that the Petitioner-Company failed to deposit the amount payable under Section 17(1)(a) of the Payment of Wages Act 1936, which was a mandatory requirement of law. However they at the belated stage, without permission of the Court vide statement dated 29.09.2015 requested the Authority to accept the decretal amount, as directed, however, the request of the Petitioner-Company was not acceded to on the premise that the memorandum of appeal was not accompanied by the required certificate nor had the Petitioner-Company deposited the decretal amount before filing the appeal and the appeal was filed on 09.04.2015 however the amount was deposited on 29.05.2015 i.e. after 51 days of filing

the appeal and the certificate was produced on 13.08.2015. as per law it is the requirement that the memorandum of Appeal shall be accompanied by a certificate explicitly show that the amount is deposited within time, which is a mandatory provision and directory under Section 17(1)(a) of the Payment of Wages Act 1936, non-compliance whereof entails the dismissal of the appeal.

8. The record further reflects that the Appellate Court vide diary sheets dated 11.09.2015, 30.10.2015, 28.10.2015, 10.11.2015, and 07.12.2015 observed that except for one date i.e 28.10.2015 when the Manager of the Petitioner-Company appeared and the matter was adjourned finally after hearing the parties by SLC vide order dated 19.02.2020 dismissed the appeal of the Petitioner-Company being barred by time as the appeal was required to be filed within 30 days, however the Petitioner-Company challenged the order of Authority in Appeal before SLC on 09.04.2015 after 58 days, instead of 30 days as prescribed under Section 17(1) of the Payment of Wages Act 1936. The reasons assigned by the learned SLC were prevailed before SLAT which is prima facie cogent and needs no interference under Article 199 of the Constitution of the Republic of Pakistan 1973.

9. On the point of recovery of dues from the legal heirs of the deceased, according to Section 15 of the Payment of Wages Act, it is clear that the Authority appointed under the Act has jurisdiction 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. Sub-section (2) of Section 15, further provides that 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 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 authorized in writing to act on his behalf or any Inspector under this Act or of any heirs of an employed person who had died or

any other person acting with the permission of the Authority appointed under subsection (1) may apply to such authority for direction.

10. After carefully examining Section 15 of the Payment of Wages Act, it is clear in our mind that the legal heirs of the deceased have also the right even to apply for non-payment of dues relating to provident fund or gratuity payable to the deceased under any law. Therefore, the assertion of the learned Counsel for the Petitioner-Company that the legal heirs of the deceased were/are not entitled to retain the benefits of the deceased so deposited with the Payment of Wages Authority, was beyond the scope of Authority is not correct, due to the express provisions of Section 15 of the Payment of Wages Act, in which it is mentioned that any of the legal heirs have also right and authority to file an application under Section 15 of the aforesaid Act. Therefore the grounds raised by the learned counsel for the Petitioner-Company are not tenable.

11. The Supreme Court has held in the case of **Regional Operation Chief, National Bank of Pakistan vs Mst. Nusrat Perveen, 2021 SCMR 702** that the right to employment and to earn a living free from undue molestation is a property right affecting the estate of the person. Such right does not abate upon his death. Besides abatement of proceedings on the death of a servant, in a case, where the cause of action carries a survivable interest will unduly deprive the deceased servant, as well as, his legal heirs of their constitutional rights to livelihood, property, dignity and fair trial. Fundamental rights under the Constitution do not only protect and safeguard a citizen but extend beyond his life and protect and safeguard his survivable interests by being equally available to his legal heirs.

12. In view of the foregoing, we concluded that the learned SLC and SLAT have considered the case of the parties at length and reached the correct conclusion by non-suiting the Petitioner-Company, needs no interference by this Court under Article 199 of the Constitution of the Islamic Republic of

Pakistan, 1973. Consequently, this Petition is found to be not maintainable and is dismissed in limine along with pending applications.

13. These are the reasons for our short order dated 12.02.2024 whereby we dismissed this petition in limine.

.

JUDGE

JUDGE

Shafi