

**HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

**C.P No. S- 11 of 2024**

[M/s. Big Birds Poultry Breeders (Pvt.) Ltd  
Vs.  
Mukhtiar Ali Samo and another]

**C.P No. S- 13 of 2024**

[M/s. Big Birds Poultry Breeders (Pvt.) Ltd  
Vs.  
Muhammad Aleem Mushtaque and another]

Mr. Riazuddin Qureshi, Advocate, for the Petitioner, in both Petitions.  
Mr. Ghulam Murtaza Shaikh, Advocate, for the Respondent No.1, in both  
Petitions.

Date of hearing & Order : 29.04.2024

**OR D E R**

**YOUSUF ALI SAYEED, J. -** Through these Petitions presented on 08.01.2024, the Petitioner seeks to impugn the Orders made by the Court of Commissioner for Workers' Compensation & Authority under Sindh Payment of Wages Act, 2015 on 18.08.2023 in respect of Applications Nos. 102 and 103 of 2023 preferred by the private Respondents under S.15(2)(3) of that Act, whereby the statutory forum awarded the sums claimed by the private respondents from the Petitioner in respect of their services along with one time compensation. In an endeavour to address the delay an Application under Section 5 of the Limitation Act has been moved in each Petition, seeking condonation in that regard.

2. As it transpires, the impugned Orders are appealable under S.30 of the Act, which provides a period of sixty days for an aggrieved party to avail such a remedy, with the Section itself conferring ample power upon the appellate authority to condone any delay if it is satisfied that cogent grounds exist in that regard.

3. However, rather than availing that remedy, the Petitioner has resorted to the Constitutional jurisdiction of this Court, that too after a period of almost four months, whilst seeking to justify such an approach by raising the plea that the Orders have been obtained through fraud and misrepresentation and have also been made without jurisdiction as, per the Petitioners, the private Respondents did not qualify to claim such relief.

4. Needless to say, all such grounds ought to have been raised before the appellate forum, and statutory remedy cannot be bypassed through recourse to the Constitutional jurisdiction of this Court, as held by the Supreme Court in the case reported as Syed Match Company Limited through Managing Director v. Authority under Payment of Wages Act and others PLD 2003 SC 395

"8. These are not the cases of lack of complete jurisdiction nor could be termed as mala fide. First appeal is a continuation of suit/application and factual controversy can only be resolved after sifting the evidence brought on record. It is not the discretion of a party to ignore the provisions of appeal and file Constitutional petition instead. Even, if it is assumed for the sake of arguments that the claim of the respondents was on higher side, yet, for this reason alone it could not be asserted that the respondent No.1 had no jurisdiction in the matter. In various cases, this Court has discouraged the tendency to bypass the remedy provided under the relevant statute and to press into service Constitutional jurisdiction of High Court. It is, however, true that in certain cases resort to Constitutional jurisdiction of High Court instead of availing remedy provided under the statute, may be just, but no such material is available on record for ignoring the remedy provided under section 17 of the Act.

10. We are of the view that in order to nullify the effect of section 17(1) (a) of the Act, the jurisdiction of High Court was invoked and it was mala fide. The amount, determined by the respondent No. 1 as wages, was never deposited by the petitioners. Accordingly, we set aside the above quoted observations of High Court and leave it to the appropriate forum/Appellate Authority to decide the issue of limitation on merits having taken into consideration all the circumstances of these case. In fact, High Court had no justification to pre-empt the decision of the First Appellate Court on the point of limitation."

5. Under the circumstances, the Petitions are found to be misconceived and stand dismissed accordingly, along with the pending miscellaneous applications.

JUDGE