

## IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Const. Petition No.D-1497 of 2023

Present*Mr. Justice Muhammad Iqbal Kalhoro**Mr. Justice Arbab Ali Hakro*

Petitioner : M/s Pakistan Chemical & Energy Sector,  
Through, Mr. Muhammad Hamayoun,  
Advocate

Respondents No.1 -17: Rab Nawaz and others, through  
Mr. Jamshed Ahmed Faiz, Advocate

Respondent No.18 : Through Mr. Ahmed Ali Shahani,  
Assistant Advocate General

Date of hearing : 26.03.2024

Date of Decision : 02.05.2024

JUDGMENT

ARBAB ALI HAKRO, J. In this petition, pursuant to Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner, herein the employer, has impugned the Judgment rendered on the 20<sup>th</sup> of September, 2023, by the Sindh Labour Appellate Tribunal (hereafter referred to as “**the Appellate Tribunal**”). The impugned judgment allowed the appeals of the Respondents, the employees in this matter, thereby overturning the common Judgment dated the 08<sup>th</sup> of June, 2023, which was rendered by Sindh Labour Court No.7 Sukkur concerning Grievance Applications Nos. 4 to 20 of 2022.

2. The facts of the case, as presented in this petition, are that respondents No.1 to 17, who are employees of the petitioner, submitted their grievance applications. In these applications, they

stated that they have been serving as permanent employees in the roles of Gardeners, Watchmen, Cleaners, and Sweepers in the petitioner's establishment since 2011. Their services were officially confirmed as permanent employees on July 1, 2019. However, the petitioner issued a subsequent notice dated September 30, 2022, informing the respondents that their services were no longer required. This decision was taken following a resolution by the Board of Directors of the petitioner's company to abolish the policy of permanent employment yearly.

3. In their written statement, the petitioner, the employer, acknowledged the employment of respondents No.1 to 17. These employees were initially hired on a contract basis and were confirmed as permanent employees on July 1, 2019. The petitioner further alleges that the respondents engaged in an illegal strike, prompting the Board of Directors to abolish the policy of permanent employment. The employees were instructed to secure a new employment contract every year if they wished to continue their service. However, the respondents did not heed this directive and failed to obtain a fresh contract of employment on a yearly basis. The petitioner asserts that they deposited the respondents' dues in their bank accounts. As of March 30, 2022, the respondents ceased to be petitioner's employees. Consequently, the grievance notice issued on October 13, 2022, and the grievance application filed on November 25, 2022, were deemed time-barred. The petitioner also contends that labour laws do not apply to their college establishment, as it operates on a non-profit basis.

4. At the very outset, learned counsel representing the petitioner, contended that learned Appellate tribunal has erroneously passed the impugned Judgment in a hasty manner without appreciating the factual as well as legal aspect of the case; that petitioner/employer has rightly terminated services of the Respondents as they were engaged to blackmail the petitioner/employer for their regularization;

that grievance petitions were also time-barred as per Section 2(ix) of SIRA, 2013, aggrieved worker has to submit grievance petition within a period of three months but they failed to do so; that Respondents No.1 to 17 despite being employed in Technical Training College, Daharki, they arrayed petitioner which is merely a Company, who never employed the Respondents, hence order of their reinstatement with back benefits through impugned Judgment is illegal, unlawful and unwarranted under the law; that impugned Judgment is a consequence of misreading and non-reading of evidence, hence the same is liable to be set-aside. In support of his contention, he placed reliance on the cases reported as **1992 SCMR 505**, **1992 SCMR 227** and **PLD 1978 Karachi 649**.

5. Learned counsel representing respondents No.1 to 17 submits that the learned Appellate Tribunal has rightly passed the impugned Judgment by reinstating the Respondents with back benefits; that the services of the Respondents were terminated without any written order in writing or fulfilling codal formalities; that no notice was served upon them nor it was produced before the Tribunal; that the services of the Respondents fall within the ambit of Section 2(1)(b) of the Sindh Terms of Employment (Standing Orders) Act, 2015; besides petitioner had also got registered the Respondents with EOBI; that Standing Order 16(3) of STESOA provides that "the services of a worker shall not be terminated, nor shall a worker be removed, retrenched, discharged or dismissed from service, except by an order in writing, which shall explicitly state the reason for the action taken. In the end, learned counsel submits that the instant petition may be dismissed as it seems to be meritless.

6. Learned AAG, while adopting the arguments advanced by learned counsel for the Respondents, submits that the learned Appellate Court has rightly passed the impugned Judgment as the Respondents were terminated from their services without passing an

order in writing or fulfilling codal formalities. Hence, this petition is misconceived and liable to be dismissed.

7. We have heard Learned Counsel for the Petitioner, respondents and Assistant Advocate General and have perused the record with their assistance and taken guidance from case law submitted by them.

8. The Petitioner's primary argument is centred on the procedural irregularity in the service of the grievance notice. The petitioner asserts that the respondents, who are employees, failed to serve the grievance notice on their direct employer, the Technical Training College, Dharki. Instead, they filed a Grievance Application against M/S Pakistan Chemical & Energy Sector Development Company through its Executive Director. According to the petitioner, this is a misdirection as the respondents were not employed by the company but by the Technical Training College, Dharki. However, upon examination of the records, it is revealed that the Technical Training College, Daharki, is an entity belonging to M/S Pakistan Chemical & Energy Sector Development Company. Furthermore, the respondents were appointed by the CEO of the company, not by the Principal of the college. This complicates the matter as it blurs the line between the company and the college in terms of employment relationships. Moreover, the grievance notice annexed with the petition is addressed to the company's Chief Executive Officer and the Executive Director/Vice Principal of the Technical Training College, Daharki. This suggests that the respondents did notify the relevant parties about their grievances. Therefore, the petitioner's argument about the misdirection of the Grievance Application may not hold as much weight as initially thought.

9. The Petitioner's argument revolves around the claim that their company, registered under the Companies Act 2017, is not a commercial establishment but a non-profit association to impart education, skills, and knowledge. This claim is specifically in reference

to the Technical Training College Daharki. However, there are several points of contention: The Petitioner has not provided any documentary evidence to substantiate their claim of being a non-profitable association. The copies of the Memorandum of Association and Article of Association do not explicitly state that the company is a non-profitable association.

10. The Petitioner's witness admitted that they charge a fee of Rs.3,500/—per month from the students, who were 339 at the time. This indicates a significant revenue stream. Additionally, fines are imposed on students who fail to pay the fee on time, further suggesting a profit-oriented operation.

11. The definition of Commercial Establishment, as per Section 2(1)(b) of the Sindh Terms of Employment (Standing Orders) Act, 2015, a "commercial establishment" includes a wide range of entities, including schools, colleges, private educational institutions, and others that run on a commercial and profit basis. The government can also declare other establishments as commercial establishments through a notification in the official Gazette. Given these points, the petitioner's contention that their establishment, i.e., the Technical Training College, is not a commercial establishment and is a non-profitable association appears to be misconceived. The evidence contradicts this claim, and the legal definition of a commercial establishment under the Sindh Terms of Employment (Standing Orders) Act, 2015 could potentially encompass the Technical Training College. Therefore, the petitioner's argument is of no avail in this context.

12. The Petitioner's company issued a notice on 30.9.2022 through the Vice Principal of the college, stating that the respondents/employees are no longer in their service. The reason given was that the Board of Directors had abolished the policy of Permanent employment, and the employees had failed to comply with the

company's directive to obtain a fresh contract of employment on a yearly basis. According to Standing Order 16(3) of the Sindh Terms of Employment (Standing Orders) Act, 2015, the services of a worker cannot be terminated, nor can a worker be removed, retrenched, discharged, or dismissed from service, except by an order in writing which explicitly states the reason for the action taken. The notice issued by the petitioner's company does not meet these criteria. It does not expressly state the reason for the termination of the services of the respondents/ employees. Instead, it refers to the abolition of the permanent employment policy and the failure of the employees to obtain a fresh contract of employment on a yearly basis. Suppose the notice does not meet the criteria set out in Standing Order 16(3) of the Sindh Terms of Employment (Standing Orders) Act, 2015. In that case, it cannot be treated as an order terminating the services of the respondents/ employees. The quintessential purpose, objective, and underlying intent of Section 16(3) of the Sindh Terms of Employment (Standing Orders) Act, 2015, is to enshrine the principles of equity and transparency in the termination proceedings of employees within the industrial and commercial sectors of Sindh. This statutory provision stipulates that:

- *Any termination or adverse action against a worker must be done through a written order.*
- *The written order must clearly state the reasons for such action.*
- *If a worker feels that the termination or any other adverse action is unjust, he has the right to seek redress under the Sindh Industrial Relations Act, 2013.*

This legislative mandate is meticulously crafted to shield workers from whimsical and unjust terminations, mandating

employers to proffer substantial and persuasive reasons for the cessation of employment and to adhere to the sacrosanct principles of procedural fairness. It further bestows upon workers a definitive legal avenue to challenge decisions they deem to be inequitable. This aligns seamlessly with the Act's broader aspirations to meticulously govern the regulation of industrial and commercial employment while concurrently safeguarding the rights of workers. The records reflect that the termination of services of Respondents Nos.1 to 17 transpired devoid of any explicated justification, a termination deemed illicit by the Labour Appellate Tribunal due to the absence of any articulated reasons. The legal landscape is unequivocal that the services of a permanent employee may only be terminated with the articulation of explicit reasons. This doctrine is crystallized by the Supreme Court of Pakistan, particularly in the case of *Khalid Mehmood v. State Life Insurance Corporation Of Pakistan et al. (2018 SCMR 376)*, which stands as a bulwark for this legal principle. The Supreme Court of Pakistan further elaborated the principle in case of The Chairman Agriculture Policy Institute, Ministry Of National Food Security And Research, Government Of Pakistan, Islamabad and another v. Zulqarnain Ali and another (2022 SCMR 636) by observing that: *"The termination of service by a verbal order is alien to the labour and service laws of this country and also against the principle of good governance which is a process of gauging whether the Government, its departments/ institutions and authorities are conducting their affairs lawfully and performing their duties honestly, conscientiously and transparently including their process of decision making in accordance with rules and regulations. The verbal termination order was illegal hence the learned Tribunal rightly set aside the termination order with the directions to the petitioners to reinstate the respondent No.1 in service with back benefits and also dealt with the intervening period aptly. The verbal termination order is otherwise against the principle of natural justice which turn of phrase was originated from the Roman word 'Jus Naturale', which means principles and moralities of natural law, justice, equity, and good conscience that, is fervently and exuberantly founded in the judicial conscience. 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. This principle does not lay down any differentiation or inequality between a quasi-judicial function and or an administrative function/action for applying evenly and uniformly to secure justice and prevent miscarriage of justice”.*

13. In light of the aforementioned circumstances, we concur with the perspective that the Appellate Tribunal has meticulously examined the issues at hand. The Tribunal has rendered affirmative findings, having thoroughly evaluated the evidence presented. It has considered all facets of the case and subsequently delivered an explanatory Judgment. Given this comprehensive analysis, we find no basis for re-evaluating the evidence. Consequently, we uphold the impugned Judgment dated 20.9.2023.

14. Upon meticulous examination of the antecedent rationales, we discern no trace of illegality, infirmity, or substantial irregularity within the impugned Judgment dated 20.9.2023 that would necessitate the intervention of Court; consequently, the instant petition, being devoid of substantive merit, is hereby **dismissed**.

JUDGE

Faisal Mumtaz/PS

JUDGE