

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Jawad Akbar Sarwana.

IInd Appeal No. 424 of 2024

Appellant: Kamal Ahmed,
Through Mr. Agha Zafar Ahmed
and Mr. Adnan Ahmed Zafar,
Advocate

IInd Appeal No. 425 of 2024

Appellant: Syed Ali Zafar through his
Attorney Kamal Ahmed,
Through Mr. Agha Zafar Ahmed
and Mr. Adnan Ahmed Zafar,
Advocate

v.

Respondents: Federation of Pakistan through
Secretary, Ministry of Maritime
Affairs, and two others through Mr.
Khaleeq Ahmed, DAG a/w
M.Haroon Khan, Assistant
Director

Date of hearing: 23.01.2025

Date of Judgment: 23.01.2025

Date of Reasons: 11.02.2025

COMMON JUDGMENT

JAWAD AKBAR SARWANA, J. These two IInd Appeals Nos.424/2024 and 425/2024 arise from similar set of facts concerning two employees namely Kamal Ahmed and Syed Ali Zafar, respectively, who served as Engineer & Ship Surveyor (“E&SS”), Mercantile Marine Department (“MMD”) under the Ministry of Ports and Shipping on a contract basis for a period of two years and until further orders. By way of background

after the two Appellants/Plaintiffs were released by the Respondents/Defendants, the two were allegedly not paid their salaries. Consequently, both sued their Government employer-the Respondents/Defendants. However, their former employers filed an Application for rejection of the Plaint which was allowed on the grounds that the two Appellants/Plaintiffs-employees should seek their remedy from the services tribunal and not the civil court. The two Appellants/Plaintiffs-employees impugned the trial Court's Order but their appeal filed against the said order of the trial court was dismissed, and hence the two IInd appeals, which I will decide by this Common Judgment.

2. Counsel for the Appellants/Plaintiffs contended that the Respondents/Defendants in paragraph-4 of their Application for rejection of plaint filed under Order 7 Rule 11 CPC, acknowledged that it was an admitted fact that the Plaintiffs/Appellants were contract employees and the contract had expired. This meant that the Appellants/Plaintiffs were admittedly civil servants and Article 212 of the 1973 Constitution was not in play in the dispute between the parties. Yet this admission was ignored by the trial court. Additionally, Counsel invited this Court to the Respondent's Order dated 14.10.2022 passed by the Respondent and read out loud particularly excerpts from paragraphs 3 and 5, which are reproduced as follows:

“ . . .the contract period of petitioners had already expired on 24.01.2019 thus they are no more on the contractual obligation and it does not come under the mandate of PLC. Thus the case may be sent to Competent Authority, Prime Minister for consideration. The summary placed before the Prime Minister was not approved at the end of the Prime Minister.

4. During the course of the hearing the Petitioner failed to produce the detail of his claim as enumerated in the prayer clause of the Petition. As such, no documentary evidence is available on record to show that the authority ever compelled the Petitioner or co-Petitioner for the department.

5. Therefore, in the light of the above-stated facts, documents available on record and discussion with the Petitioner, I, Salman Raza, as Principal Officer, Mercantile Marine Department, hereby

regret the claim of the Petitioners Mr. Kamal Ahmed and Mr. Ali Zafar. Both the Petitioners had performed the tasks in the department of MMI) on pro-bono/voluntary basis in anticipation that their contract will be extended.”

3. Appellants/Plaintiffs Counsel argued that based on the above documentary evidence - an admitted position - the employees had rendered services to the Respondents and that they were entitled to be compensated for such services rendered. The Appellants/Plaintiffs would have eventually led evidence to prove their case. The claims ought not to have been rejected at the preliminary stage by the trial court as it was Appellants/Plaintiffs case to prove. Further, as Respondents/Defendants consistently took the position that the two employees were hired on contract basis and rendered services for almost 2 years plus on pro-bono basis, then Article 212 of the 1973 Constitution could not be triggered as a defence. Consequently, the plaints could not be rejected.

4. Learned DAG submits that these are two IInd Appeals and that the Appellants/Plaintiffs contentions have been declined by the two forums below. Hence these IInd Appeals are liable to be dismissed on this score too.

5. Heard Counsel and perused the record. It is a trite proposition of law that for a claim filed before the Civil Court, the burden to prove lies upon the Plaintiff. In this matter too, the Appellants/Plaintiffs had alleged compensation for services rendered for which they would have led evidence in support of their claims. Even the Defendants/Respondents had consistently acknowledged in the documents available on record that the Appellants/Plaintiffs were not “civil servant” and had rendered services on pro-bono basis. These facts were also available before the trial Court and in Appeal. Yet both the lower forums avoided addressing the same. Accordingly, I do not find any ground for rejection of the plaint at the preliminary stage of the trial for the above reasons. It is the

Appellants/Plaintiffs claims that Article 212 of the 1973 Constitution is not triggered in the case of contractual employees. This is also a mixed question of fact and law which the Appellants/Plaintiffs have to demonstrate before the trial court in order to succeed in their claim. The plaintiffs in the two suits could not be dismissed summarily. The Respondents/Defendants even acknowledged that the two Appellants/Plaintiffs rendered service on pro-bono basis for more than 2 years plus and surely the claimants have to prove that they were bound to be compensated in the facts and circumstances of the case. The question for determination was well within the jurisdiction of the Civil Court and even otherwise under the principle of Kompetenz-Kompetenz, the Civil Court has the powers to determine this question regarding the status of the two employees-Appellants/Plaintiffs and this determination cannot be made without giving opportunity to the Appellants/Plaintiffs to lead evidence.

6. For these reasons, the two titled IInd Appeals are allowed by this Common Judgment and the impugned Orders are set aside. The two suits, Suit No.32/2023 by Kamal Ahmed and Suit No.33/2023 filed by Syed Ali Zafar, both suits filed in the Court of Senior Civil Judge-III Karachi (West) are restored to their original position as on 14.11.2023. The learned Judge of the trial Court is directed to proceed with the two suits from the same stage at which they stood on the date of the rejection of the Plaints by the trial Court.

JUDGE