

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. S – 326 of 2022

Present

Mr. Justice Muhammad Jaffer Raza

M/S Sind Lab (Private) Limited Petitioner.

Versus

Government of Sindh & others..... Respondents.

Syed Shayan Ahmed, Advocate for the Petitioner.

Mr. Muhammad Humayun, Advocate for Respondent No.4.

Mr. Ahmed Khan Khaskheli, Assistant Advocate General Sindh.

Dates of Hearing: 12.03.2025 and 21.03.2025.

Date of announcement: 14.04.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: The Petitioner through the instant Petition has impugned the order dated 10.03.2022 passed in case No.28/2014 by Respondent No.3 under the Sindh Payment of Wages Act, 2015 (**“Act of 2015”**).

Brief facts of the case are as follows:

2. The Respondent No.4 filed an application under Section 15 of the Payment of Wages Act, 1936 (**“Act of 1936”**) (for the purposes of present adjudication the Act of 2015 and Act of 1936 shall cumulatively be referred to as **“Acts”**) before the Respondent No.3 with following prayers:

“1. That the Appellant estimates the value of dues/claim sought by him as mentioned in the statement of claim for Rs.34,163,333/- which have been unlawfully withheld/stopped.

2. That in spite of repeated requests the above named Respondent establishment has unlawfully withheld/stopped the dues.

3. That the Appellant prays that direction may be issued under Sub-Section (3) of Section 15 of the Payment of Wages Act, 1936 for:

a) Payment of Applicant’s unlawfully withheld/stopped amount/dues as estimated by him in the statement of claims.

b) Compensation amount being ten times.

4. The Applicant certifies that the statement of facts and claim contained in the application are true and correct to the best of his knowledge and belief.

Prayed accordingly.”

3. Thereafter written statement was filed by the Petitioner contesting the same. Finally vide Impugned Order, the application of the Respondent No.4 was disposed of with a direction to the Petitioner to deposit Rs.17,450,834/-. The Petitioner aggrieved with the Impugned Order filed the instant petition.

4. Learned counsel for the Petitioner has argued that the Impugned Order is nullity in the eyes of law and the Respondent No.3 did not touch upon the relevant aspects of the case. He has further argued that the Respondent No.4 does not come within the purview of the above said Acts and Respondent No.3 has gone beyond its jurisdiction and allowed the application under Section 15 filed by the Respondent No.4. He has further argued that the decretal amount is excessive and Respondent No.4 is not entitled to the same. At this juncture the learned counsel made an attempt for this Court to look into the merits of the case, however, prior to the same the learned counsel was specifically asked as to how this petition is maintainable in light of the fact that remedy of filing an appeal under Section 17 of the Act of 2015 is available to the Petitioner. The learned counsel in this regard replied very candidly that filing of an appeal would inevitably render the Petitioner liable to deposit the decretal amount and considering that the Impugned Order is illegal and nullity in the eyes of law therefore the writ jurisdiction of this Court can be invoked. Learned counsel in this regard relied upon the following cases: -

- a) **Town Committee, Gakhar Mandi v. Authority Under the Payment of Wages Act Gujranwala and others¹.**
- b) **Muslimabad Cooperative Housing Society Limited v. Mrs. Siddiqa Faiz and others².**
- c) **Shershah Industries Limited v. Government of Sindh and others³.**

¹ PLD 2002 S.C. 452

² PLD 2008 S.C. 135

- d) *M/s Akhter Textile Industries Limited v. Sindh Labour Appellate Tribunal and others*⁴.
- e) *Farzand Raza Naqvi and others v. Muhammad Din and others*⁵.
- f) *Getz Pharma (Pvt.) Limited v. Muhammad Nafees and others*⁶.
- g) *Aurangzaib v. Medipak (Pvt.) Ltd*⁷.
- h) *Mst. Hayat Khatoon v. Allah Dino and another*⁸.
- i) *Mst. Baghul and others v. Deputy Commissioner Tharparkar and others*⁹.
- j) *Digital World Pakistan (Pvt.) Ltd. Through Chief Executive v. Samsung gulf Electronics FZE through Managing Director/Chief Executive Officer and another*¹⁰.
- k) *Shagufta Begum v. I.T.O.*¹¹.
- l) *Muhammad Afzal Khan v. Karachi Development Authority*¹².
- m) *Rice Export Corporation v. Karachi Metropolitan Corporation*¹³.
- n) *Dr. Akhtar Hassan Khan v. Federation of Pakistan*¹⁴.
- o) *Watan Party v. Federation of Pakistan reported*¹⁵.

5. Conversely learned counsel for Respondent No.4 argued that the instant writ petition is not maintainable as an efficacious remedy is available to the Petitioner and the same cannot be circumvented. He has further argued that first appeal is a continuation of the earlier proceedings and the Petitioner cannot pick and choose the forum in which he can impugn the order of Respondent No.3. It was further averred that the Petitioner in this respect has no discretion to ignore the mandatory provision of the appeal in the Acts above. The learned counsel has

³ PLD 1982 Kar. 653

⁴ PLC 2014 Kar. 319

⁵ 2004 SCMR 400

⁶ PLC 2022 SC 33

⁷ PLC 2019 SC 51

⁸ 1985 CLC 1343

⁹ 2004 CLD 1220

¹⁰ 2010 CLD 804

¹¹ PLD 1989 S.C. 360

¹² PLD 1984 Kar. 114

¹³ PLD 1990 Kar. 186

¹⁴ 2012 SCMR 455

¹⁵ PLD 2006 S.C. 697

no cavil to the proposition that the Petitioner even now can file an appeal before the Respondent No.3 and the same can be adjudicated on merits, subject to limitation. Lastly, learned counsel has argued that if the instant petition is allowed the same will open “floodgates” and the remedy of appeal under the Act, which is otherwise efficacious, will be rendered redundant.

6. Learned Assistant Advocate General Sindh has adopted the arguments of the learned counsel for the Respondent No.4 and further stated that the remedy of appeal available under the Act, is efficacious and the appellate forum is functional and therefore the instant petition ought to be dismissed. Learned A.A.G. also relied on the following judgments: -

- p) *Soneri Bank Ltd. V. Federation of Pakistan through Secretary, Law and others*¹⁶.
- q) *Syed Match Company Ltd., through Managing Director v. Authority under Payment of Wages Act and others*¹⁷.
- r) *Nawab Ahmed Khanzada v. Authority under Payment of Wages Act, 1934 and Commissioner Workmen’s Compensation for Hyderabad and 2 others*¹⁸.
- s) *Nazeer Ahmed Dhoon v. Government of Sindh and others*¹⁹.
- t) *Muhammad Aslam v. WAPDA through Chairman, WAPDA and 2 others*²⁰.

7. I have heard the learned counsels and examined the record. At this juncture it is important to highlight that I shall not delve into the merits of the Impugned Order and the factual controversy between the contesting parties. Only the maintainability of the petition is being adjudicated through the instant order.

8. The remedy of appeal under Section 17 of the Act of 2015 is clearly set out, which is reproduced as under: -

“Section 17: (1) An appeal against a direction made under sub-section (3) or sub-section (4) of section 15 may be preferred within

¹⁶ 2017 PLC 65

¹⁷ 2003 PLC 395 and 2003 SCMR 1493

¹⁸ 2013 PLC 402

¹⁹ 1999 PLC 373

²⁰ 2009 PLC 30

thirty days of the date on which the direction was made before the Labour Court constituted under the Industrial Relations Act, 2013 (Act XXIX of 2013), within whose jurisdiction the cause of action to which the appeal relates arose –

- (a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees: Provided that no appeal under this clause shall lie unless the memorandum of appeal is accompanied by a certificate of the authority to the effect that the appellant has deposited with the authority the amount payable under the direction appealed against; or*
- (b) by an employed person or, if he has died, by any of his heirs, if the total amount of wages claimed to have been withheld from the employed person or from the unpaid group to which he belonged exceeds fifty rupees; or*
- (c) by any person directed to pay a penalty under sub-section (4) of section 15;*
- (2) All appeals pending before any Court under this section immediately before the commencement of this Act, shall on such commencement, stand transferred to, and be disposed of by, the Labour Court within whose jurisdiction the cause of action to which the appeal relates arose.*
- (3) Save as provided in sub-section (1), any direction made under sub-section (3) or sub-section (4) of section 15 shall be final.*

9. I have specifically asked the learned A.A.G. as to whether the appellate forum as stipulated under the Act of 2015 is available and functional. To this query, he has replied in the affirmative. He has further stated, as noted above, that the Petitioner can seek remedy of appeal and impugn the Impugned Order before the appellate forum. I agree with the contentions of the learned counsel for Respondent No.4 and learned A.A.G. that the remedy of appeal is available to the Petitioner and it is not up to the Petitioner to choose to ignore the provision of appeal. In similar circumstances it was held by the Honourable Supreme Court in the case of **Syed Match Company Ltd.** (supra) as under: -

- “5. It appears that in order to avoid to deposit the amount as determined by the Authority, instead of filing appeals, the Company filed the petitions before High Court, which were dismissed by the common judgment, which has been impugned in these petitions.*
- 7. It is contended on behalf of the Company that learned High Court failed to appreciate the facts in their true perspective and reached wrong conclusion. It is urged that where there is complete lack of jurisdiction or order is passed by a Court/Authority exceeding is*

Jurisdiction or where the Impugned Order is unlawful, the writ could be entertained. Learned counsel also argued that gratuity is specifically excluded from the term "wages", as defined in section 2(ii) of the Act, therefore, the claim of gratuity could not be looked into by the respondent No. 1 and by doing so the respondent No.1 exceeded its jurisdiction, as such, said order could be impugned before High Court without preferring the appeal. Further, it is urged that these cases were ant of any deduction made from the wages, but at the most the same could be termed as cases of delay in payment of wages.

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. I 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. It is noted that Payment of Wages Act is primarily a beneficial legislation and has been enacted to provide relief to the workers, as such, it could not be construed otherwise. Such construction could not be placed upon its provisions, which directly or indirectly nullify the object of its legislation. Remedial statutes shall always be construed in a manner to advance the remedy, as provided in the statute H and not in a manner to defeat the legislative intendment. The Writ Petitions in these cases were filed in defeat the proviso (a) of sub-section (1) of section 17 of the Act quoted above.*
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.*"

10. The Honourable Supreme Court in the case of **Soneri Bank Ltd.** (supra) dispelled the tendency to file writ petitions and held as under: -

“As regards the question as to whether the respondent is a “workman” within the purview of the Ordinance; suffice it to say that this is a matter of jurisdictional fact and if the petitioner had lost his case on account that the respondent was found to be a “workman” such finding of fact should have been challenged in appeal and not in the constitutional jurisdiction of the High Court on the plea that the order of the authority determining such jurisdictional fact is a void determination.”

11. In similar circumstances a learned Divisional Bench of this court in the case of **Nawab Akhtar Khanzada** (supra) observed that the constitutional jurisdiction was invoked only to circumvent the requirement of deposit of amount under Section 17 of the Act of 2015. It was held as under: -

“10. Keeping in view hereinabove facts and circumstances of the instant case, we are of the opinion that instant petition, besides being devoid of any merits, has been filed with mala fide intention to circumvent the legal requirement of deposit of the amount in terms of Proviso to clause (a) subsection (1) of section 17 of the Payment of Wages Act, 1936, and to bypass and abandon the forum as provided under the statute. A party cannot be allowed to bypass or abandon the forum provided for the purposes of redressal of grievance under a statute without any lawful and reasonable excuse.”

12. The Lahore High Court in the case of **Town Committee, Chowinda versus Arrora Masih**²¹ dismissed a petition in similar circumstances holding as follows: -

“4. I have heard the learned counsel for the parties and gone through the record. I have already decided in similar case W.P.No.1470 of 1996 that the order passed by the Authority under the Payment of Wages Act, 1936 is appealable and said remedy having not been availed, the petition under Article 199 of the Constitution is not maintainable.”

13. Whilst I recognize the wide scope of Article 199 of the Constitution of Islamic Republic of Pakistan and also recognize that as a general rule a person would not be permitted to invoke the extraordinary Constitutional jurisdiction of the High Court under Article 199 of the Constitution, if an adequate remedy is available to him for redressal of his grievance. But then this is also equally true that such was not an inflexible rule of law not subject to any exception as was held in the case of **Town Committee, Gakhar Mandi** (supra). However, I do not find the instant petition to be a case in which extraordinary jurisdiction of this Court can be invoked and therefore do not wish to exercise the said discretion in favour of the Petitioner. The learned counsel for the Petitioner has failed to demonstrate

²¹ 2000 PLC 181

that the remedy of appeal is not efficacious. He has only reiterated the ground for depositing of decretal amount as a prerequisite for filing of the statutory appeal. That ground has already been dispelled in the judgments cited above and more particularly in the case of **Nawab Akhtar Khanzada** (supra). I am in this regard more inclined to follow the dicta laid down in the case of **Syed Match Company Ltd.** (supra).

14. Now I will turn to the cases referred to and relied upon by the learned counsel for the Petitioner and give reasons why the same are not applicable to the present petition.

- i. The case of **Mst. Hayat Khatoon** (supra) is a detailed deliberation on the West Pakistan Family Courts Act 1964 and distinct from the present petition.
- ii. In the case of **Mst. Baghul** (supra) a show cause notice was Impugned under Article 199 pertaining to West Pakistan Cooperative Societies and Cooperative Banks (Repayment of Loans) Ordinance (XIV of 1966).
- iii. **Digital World Pakistan** (supra) pretrained to the grant and confirmation of interim injunction. The said judgement does not delineate the issue in the present petition.
- iv. In the case of **Dr. Akhtar Hassan Khan** (supra) it has been laid down that the constitutional jurisdiction can be invoked in cases where the alternate remedy is not efficacious and expeditious. It has already been noted above that the alternate remedy in the present case is available and learned counsel for the Petitioner, as noted above, is unable to demonstrate that the same is not efficacious.
- v. The ratio in the cases of **Messrs Akhter Textile Industries Ltd.** (supra), **Muslimabad Cooperative Housing Society**

Ltd. (supra) and **Messrs Rice Export Corporation of Pakistan Ltd.** (supra) has already been recognized and appreciated above. However, in the facts of the present case I am not inclined to exercise discretion in favour of the Petitioner for the reasons mentioned above. Moreover, the case of **Messrs Akhter Textile Industries Ltd.** (supra) pertained to a revisional order passed by Sindh Labour Appellate Tribunal and in that respect is distinguishable.

- vi. In the case of **Shershah Industries Ltd.** (supra) laid down a detailed criteria of how discretion is to be exercised in case where alternate remedy has not been invoked. It was held as under: -

“8. A review of the case-law referred to hereinabove shows that in certain cases the superior Courts of our country did not allow the petitioners to invoke the writ jurisdiction on the ground of availability of an alternate remedy by way of appeal or otherwise, but on the other hand, in other cases, notwithstanding the pendency of an appeal or availability of an alternate remedy, the Courts did not hesitate to exercise such writ jurisdiction and in fact granted relief to the petitioners. It may be expressed as a generally accepted principle, however, that just because an alternate remedy by way of appeal or otherwise is available to a petitioner the High Courts will invariably decline to exercise their extraordinary constitutional jurisdiction. The mere availability of an alternate remedy does not debar the High Courts from exercising such jurisdiction. But, as observed by Dorab Patel, J., in Hassan Ali v. Muhammad Ahsan Baloch 1980 C L C 412, the question whether a writ should be entertained when an alternate remedy is available is always one within the discretion of the Court. In cases of total lack or absence of jurisdiction or authority, or apparent excess of jurisdiction, the Courts general would not hesitate much is entertaining a constitutional petition although an alternate remedy may well be available. In other cases, the Courts would generally direct the party to avail and exhaust the alternate remedies available first before entertaining the writ, if in the opinion of the Courts the alternate remedy is an adequate remedy.

9. Whether the alternate remedy available to the applicant who is seeking the constitutional remedy, is adequate or not depends on the special or particular circumstances of the individual case, and it is precisely for this reason that in one case the High Court may not entertain the petition under its constitutional jurisdiction and in another case the same may be entertained. In taking a decision

whether the alternate remedy in a given case is adequate or not to enable the High Court to take the further decision relating to entertaining the constitutional petition, the Court, in the background of the particular facts of the case before it, considers several factors. The question of speed and expense of the alternate remedy may be considered. Whether the alternate remedy is as effective or efficacious as the constitutional remedy is also a relevant factor. Whether, in the circumstances of the case, the alternate remedy or the writ would be the appropriate remedy can also be a pertinent consideration.

- vii. The case of **Muhammad Afzal Khan** (supra) pertained to Martial Law regulations and I cannot find a nexus between the said judgment and the present petition.
- viii. The case of **Shagufta Begum** (supra) was regarding assumption of jurisdiction under Section 65 of the Income Tax Ordinance 1979.
- ix. The cases of **Aurangzaib** (supra) and **Getz Pharma (pvt.) Limited** (supra) deliberate upon various clauses and definitions in the Acts. The instant judgment is squarely on maintainability therefore I do not consider it expedient to deliberate over the issues decided in the abovementioned cases.

15. In view of the forgoing reasons the instant petition is dismissed with no order as to costs. However, the Petitioner shall be at liberty to file an appeal under the above-mentioned Section at the appropriate forum and the time spent by the Petitioner in the instant petition shall be excluded for the purposes of computing limitation.

Nadeem Qureshi “PA”

J U D G E