ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-68 of 2025

[M/s Marva Exports V. Farman Khan and another]

Date	Order with signature of Judge(s)

Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and Order: 01.04.2026

Mr. Dilawar Khan, Advocate for the Petitioner.
Nemo for the private respondent.
Mr. Ali Safdar Depar, A.A.G.
Mr. Faheem Hussain, DPG.

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O R D E R

Adnan-ul-Karim Memon, J. – Petitioner M/s Marva Exports has filed these Constitution Petitions under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeking following relief:-

1. *To set aside the impugned judgment passed by the learned Respondent No.2;*
2. *Uphold the judgment of learned trial court.*
3. *Grant costs in favor of the Petitioner for having to defend against this baseless and frivolous case;*

2. The Respondent No.1 filed an application under Section 34 of the Sindh Industrial Relations Act, 2013 before the Sindh Labour Court No. II, Karachi, claiming that he had been working as a flat-lock machine operator with the petitioner for the last four years and was wrongfully terminated from service without any reason or written order. He further alleged that the petitioner company failed to comply with labour laws and did not provide employment documents or register workers with EOBI and SESSI. However, the petitioner company denied the employment relationship and submitted that the respondent was never their employee and had failed to produce any documentary proof to establish such relationship. After recording evidence of both parties, the learned Labour Court dismissed the application on the ground that the respondent failed to prove the employer-employee relationship. Being aggrieved, the respondent filed an appeal before the Sindh Labour Appellate Tribunal. The learned Tribunal observed that, due to prolonged litigation and strained relations between the parties, reinstatement of the respondent was neither practical nor appropriate, particularly in a small private establishment. It was held that forcing an unwilling employer to take back

an employee would not be conducive, especially when the position may already have been filled. In these circumstances, considering the length of service, duration of litigation, and prevailing economic conditions, the Tribunal awarded compensation instead of reinstatement. Consequently, an amount of Rs. 250,000/- was granted to the respondent as full and final settlement of all dues, including gratuity and leave encashment, with a direction to the petitioner to deposit the same within 30 days. Petitioner being aggrieved by and dissatisfied with the aforesaid reasoning of the Sindh Labour Appellate Tribunal filed the present constitution petition. For conveniences sake an excerpt of the judgment is reproduced as under:_

> ***"I have reviewed the arguments and examined the record in light of the submissions made before me. The respondents' assertion that the appellant was not heir employee and, therefore, they did not respond to his grievance notice, is of anal able. The respondents cannot evade their statutory duty to reply to the grievance notice because the appellant was not their employee. Had the appellant not been a worker of the respondents, they would not have avoided spending to the grievance notice and would have denied the employment relationship at the first available opportunity, especially considering he had been making complaints to the labour department. The respondents' failure to reply to the appellant's grievance notice further supports the appellant's assertion that he was their worker and they had wrongfully terminated his employment. In circumstances where there is a duty to speak, silence can be regarded as an admission***
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> ***9. The respondents failed to present any evidence to counter the appellant's claim that they did not comply with labour laws, did not provide employment documents to their workers, failed to register them with SESSI and EOBI, and deprived him of his legal rights, including gratuity, leave, bonuses, overtime Bay, etc. They did not submit any copy of an appointment letter to demonstrate that they provided such letters to their workers. Additionally, they did not produce any documents indicating that they made contributions to SESSI and EOBI for their employees.***
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> ***10. In these circumstances, where the respondents were not providing employment documents to their workers, the burden of proof shifted to them after the appellant testified that he was a worker of the respondents. They ailed to provide any records, including the register of workers, register of wages and register of attendance, which they are legally required to maintain. Under Article 129(g) of the Qanun-e-Shahadat, 1984, it will be presumed that me records contained evidence unfavorable to the respondents. Consequently, the findings and judgment of the labour court are unsustainable and are hereby set aside It is determined that the appellant was a permanent worker the respondents and that they had wrongfully terminated his service Regarding an appropriate order, Section 34(7), in conjunction with Sections 45(4)(g) and 48(3) of the SIRA, empowers the Labour Court and this Tribunal to "pass such orders as may be just and proper in the circumstances", which includes both reinstatement and the award of compensation in place of reinstatement.***
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> ***12. in the case of Azeem Weaving Vs. Muhammad Arshad (2021 PLC 124). the Honorable High Court of Sindh held that granting compensation instead of reinstatement is permissible under Section 45(4)(g) of the SIRA.***
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> ***13. In this case, the appellant's period of service has proven unproductive. Due of six years of total service, the parties have been involved in litigation for years. Given the strained relations between the parties, reinstating the appellant would not be productive or viable and it would not be appropriate to impose an unwanted worker on a reluctant private employer, particularly in a comparatively small establishment. The respondents also cannot be expected to keep the position vacant for more than 1% years. Additionally, reinstating he appellant may cause inconvenience to any worker who may have taken his Therefore, it is just and proper to award reasonable compensation to the appellant instead of reinstating him. Considering all circumstances, including the length of the appellant's service, the duration of the litigation, and the prevailing conditions of unemployment and inflation in the country, a reasonable amount of 2s.250,000/- is awarded to the appellant as compensation, serving as full and final payment of all his legal dues, including gratuity and leave encashment, for severing the employment relationship with the respondents. The respondents are directed to deposit the amount of Rs 250,000/ in this Tribunal within 30 days for payment to the appellant. The appeal is disposed of accordingly."***

3. Since the respondent No.1 is not in attendance despite of repeated notices, however we have gone through the pleadings of the respondents before the Sindh Labour Appellate Tribunal, the learned counsel for the private respondent submitted that the respondent had worked with the petitioner for four years and the petitioner deliberately failed to issue employment documents to their workers. He further submitted that the petitioner did not file a proper point-by-point reply to the grievance notice and failed to respond to the grievance notice despite receiving it, which amounted to an admission. He also contended that the respondents failed to produce employment records, registers of wages, attendance and EOBI/SESSI record, which they were legally bound to maintain; therefore, adverse inference was to be drawn against them under Article 129(g) of the Qanun-e-Shahadat Order, 1984. He relied upon case law to submit that compensation could be awarded instead of reinstatement.

4. On the other hand, learned counsel for the petitioner supported the judgment of the Labour Court and argued that the respondent failed to produce any evidence such as appointment letter, pay slip, attendance record or witness to prove the employment relationship, therefore the Labour Court had rightly dismissed the application. He now submits that this petition be allowed and the judgment rendered by the Sindh Labour Appellate Tribunal be set aside.

5. We have heard the learned counsel for the petitioner and perused the record with his assistance.

6. From a careful appraisal of the record, we have noticed that the impugned judgment passed by the learned Sindh Labour Appellate Tribunal suffers from patent legal infirmities, misreading and non-reading of material evidence, and an erroneous application of settled principles governing employer/employee relationship and burden of proof.

7. At the outset, it is an admitted position that the Respondent No.1 failed to produce any cogent, reliable, or documentary evidence to establish the existence of an employer/employee relationship with the petitioner. It is a settled principle of law that the burden to prove such relationship squarely lies upon the person asserting it. In the absence of primary evidence such as appointment letter, wage slips, attendance record, co-worker testimony, or any independent corroboration, the claim could not have been legally sustained.

8. The learned trial Court, after proper appreciation of evidence, rightly dismissed the claim on merits. However, the learned Tribunal fell into grave error by reversing these findings without any lawful justification and by improperly shifting the burden of proof upon the petitioner, which is contrary to settled law.

9. It is well established that adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984 cannot be invoked unless the initial burden of proof has been discharged by the claimant. It is well settled that mere assertion of employment is insufficient without proof; the principles of law clarifies that adverse inference cannot substitute proof of a foundational fact; the Supreme Court reiterated that the burden of establishing employment rests upon the claimant. Furthermore, the learned Tribunal's finding that non-reply to the grievance notice amounts to admission is legally unsustainable. Silence, by itself, cannot be treated as conclusive proof of an employment relationship, particularly when the very status of the claimant as a "worker" is disputed. Such reasoning is contrary to the settled principle that admission must be clear, unequivocal, and conscious, and cannot be inferred merely from omission. The Tribunal also failed to appreciate material contradictions in the respondent's own case, including inconsistent statements regarding the date of termination and admissions made during cross-examination regarding EOBI and SESSI registration. These inconsistencies go to the root of the matter and render the claim unreliable.

10. Moreover, the award of compensation in the absence of proof of employment is wholly without jurisdiction. Compensation under the Sindh Industrial Relations Act, 2013 presupposes the existence of a lawful employer/employee relationship, which, in the present case, remained unproved. Thus, the impugned order is coram non judice and liable to be set aside.

11. It is a settled principle that appellate forums cannot substitute findings of fact without demonstrating perversity or illegality in the trial court's judgment. The findings of fact recorded by a competent court cannot be disturbed unless shown to be arbitrary or perverse; interference in well-reasoned findings is unwarranted.

12. In view of the above, the impugned judgment is not sustainable in law, as it is based on conjectures, improper presumptions, and misapplication of legal principles. The same has resulted in grave miscarriage of justice and warrants interference by this Court in exercise of its constitutional jurisdiction under Article 199 of the Constitution.

13. Accordingly, it is concluded that the impugned judgment dated 17.12.2024 passed by the learned Sindh Labour Appellate Tribunal is set aside, and the well-reasoned judgment of the learned Labour Court is restored.

JUDGE

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