

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-988 of 2022

[*Shumaila vs. M/s A.A Tracker*]

Petitioner	:	In person
Respondent No.1	:	Through Mr. Ahmed Khan Khaskheli, Assistant Advocate General
Respondent No.2	:	through Mr. Muhammad Adeel Aslam, Advocate
Date of Hearing	:	21.04.2026

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has challenged the Judgment dated 01.11.2022 passed by the learned Sindh Labour Court No.V, Karachi, in Appeal No.01 of 2022.

2. Succinctly, the Petitioner was employed by and joined Respondent No.2 company on 11.03.2022 as a Recovery Officer in the Customer Care Recovery Department, with a monthly salary of Rs. 25,000/- along with commission and incentives. After her resignation dated 25.06.2022, the Petitioner filed an Application No.93 of 2022 before the Commissioner for Workers Compensation and Authority South Division, Karachi, under Section 15 of the Sindh Payment of Wages Act, 2015, claiming her commissions and incentives for the months of March, April and May 2022, amounting to Rs. 66,666/- along with commission and ten times compensation.

3. Vide *ex parte* Order dated 23.08.2022 the application was decided in the petitioner's favour with the direction to the Respondent company to deposit Total amount of Rs.3,99,996/- [including the principal amount of Rs.66,666/-, along with five times compensation] within a period of 30 days.

4. The Respondent company assailed the said Order in Appeal No. 01 of 2022 before the Sindh Labour Court No. V, Karachi, which vide its Judgment dated 01.11.2022, accepted the appeal and set aside the order dated 23.08.2022, and remanded the matter back to the Authority for fresh decision on merits, after providing an opportunity of hearing to both parties. The Labour Court held that the record did not show that the Authority had itself issued notice or summons to the Respondent company for its appearance, but the Authority proceeded *ex parte* merely based upon a delivery report which was filed by the Petitioner herself, who was an interested party in the proceedings. The Labour Court further noted that the affidavit filed in *ex parte* proof by the Petitioner did not contain even a single sentence regarding the issuance of notice and its service upon the Respondent company. It was held that in the absence of proper service of notice upon the company, the matter could not have been proceeded *ex parte*, as it is a settled principle

of law that no one can be condemned unheard.

5. The Petitioner has now assailed the said appellate Order in the writ jurisdiction under Article 199 of the Constitution, on the premise that the impugned judgment has been passed on wrong assumptions and without properly considering the Order dated 23.08.2022, that summons was duly served on the Respondent.

6. Heard the petitioner in person, the learned counsel for Respondent No.2, and the learned Assistant Advocate General, and have also perused the record.

7. The core grievance of the Petitioner is that the learned Labour Court erred in setting aside the Authority's Order dated 23.08.2022 on the ground that the Respondent had not been properly served with notice. The Petitioner argues that the Authority had in fact issued summons and that these were duly served upon the Respondent company. Upon a careful examination of the record, it transpires that the learned Labour Court after requisitioning and perusing the record of the Authority, found that the Authority itself did not send any notice or summons to the Respondent company, which was its primary and non-delegable duty. Instead of performing its duty, the Authority relied solely upon the delivery report submitted by the Petitioner, who was herself the claimant/ interested party to the proceedings. The affidavit filed by the Petitioner in *ex parte* proof was also silent on the question of the issuance of summons and their service upon the Respondent. The record of the Authority, as examined by the learned Labour Court, did not disclose that the Authority had issued a notice or summons to the Respondent company. In these circumstances, the learned Labour Court rightly observed that the case could not have been proceeded *ex parte* against the Respondent, since the foundational requirement of proper notice, is rooted in the right to a fair hearing and the principle that no one can be condemned unheard, had not been satisfied.

8. It is also pertinent to note that the learned Labour Court did not dismiss the Petitioner's claim or deny her the relief she seeks. It merely set aside the *ex parte* order and directed the Authority to re-decide the matter on the merits after affording full opportunity to both parties.

9. I therefore agree with the line of reasoning adopted by the learned Labour Court. The right of hearing is a fundamental component of natural justice and is constitutionally protected under Article 10A of the Constitution, which guarantees the right to a fair trial and due process. Without being afforded any opportunity to contest the claim against it, a party is condemned and made liable to pay a substantial amount, such proceedings cannot be sustained. The order of the Authority dated 23.08.2022, having been passed in violation of this fundamental principle, was rightly set aside by the learned Labour Court. The remedy available to the Petitioner lies in pursuing her legitimate claims before the Authority on merits, in proceedings where both parties are given a fair and equal opportunity of hearing. The Labour Court examined the actual record of the Authority and found nothing to substantiate that the Authority had issued a summons through its own process. The presence of a TCS receipt alone, without corresponding entries in the official

record of the Authority, does not establish proper institutional service of court process. The Labour Court's finding on this point is based on a careful perusal of the record and cannot be said to be perverse or arbitrary. The judgment of the Labour Court, being a direction for a fair rehearing rather than a final denial of her claim, is a just and balanced order that advances the cause of due process rather than undermining it.

10. The last material aspect which also requires due consideration is that the Court File in this petition prominently reflects that while the instant petition was pending, certain interim directions were also issued by this Court against the Respondent company, in the following terms:

- i. On 12.01.2024, the CEO of Respondent No.2 company was called in person, in Court, on 15.01.2024 at 11:00 am;
- ii. On 15.01.2024, Respondent No.2 was directed to deposit the disputed amount of Rs.3,99,996/- within two days with the Nazir of the High Court;
- iii. On 17.01.2024, such an amount was deposited in compliance;
- iv. On 22.01.2024, Nazir was directed to release the said amount to the petitioner upon verification; and
- v. The Review Application [CMA1686/2024] was preferred by the Respondent No.2 against the above orders was fixed on 03.04.2025 when the matter was ordered 'Not to be fixed before me', but the same was dismissed on 21.07.2025.

11. Hence, practically speaking, the petitioner has already been paid her entire claim amount, before even this petition could be heard and allowed in her favour, or without even going through a contested hearing before the learned Authority. The petitioner is therefore more than fully paid in advance, not even with respect to her claim amount but also to the extent of multiple times compensation claims by her, and therefore no prejudice appears to have caused to the petitioner if the matter is heard and decided on merits by the Authority. Needless to mention that the amount of Rs.3,99,996/-, deposited by Respondent No.2 and released to the Petitioner in this petition was in consequence of some interlocutory orders as recorded above, and the same shall be strictly subject to the final outcome of the proceedings before the Authority.

12. In view of the foregoing discussion, the petitioner has not been able to point out any Jurisdictional error or illegality as to warrant interference by this Court in the exercise of its writ jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973. This petition is accordingly dismissed and the Judgment impugned is upheld. The Authority under the Sindh Payment of Wages Act, 2015, South Division, Karachi is directed to decide the matter strictly on merits after hearing and allowing complete opportunities to both the parties and decide the same within a period of 60 days from the date of receipt of this Order, and a Compliance Report be filed with the MIT of this Court. The petition stands dismissed in the above terms, along with pending applications.

J U D G E