

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Miscellaneous Appeal No. 08 of 2006

Date: Order with signature of Judge

For hearing of main case

22.09.2026

Mr. Ghulam Asghar Pathan, Advocate for the Appellant.
Mr. Zeeshan Ahmed, Advocate holds brief for Mr. Faisal Mahmood
Ghani, Advocate for the Respondent.

ORDER

SAMAN RAFAT IMTIAZ, J.- Through this Miscellaneous Appeal, filed under Section 64 of the Provincial Employees' Social Security Ordinance, 1965, the Appellants [M/s Sindh Employees Social Security Institution, Director SESSI, and Assistant Collector (Grade I), SESSI], have called in question the order dated 17.03.2006 passed by the learned Social Security Court No.1 at Karachi in Appeal No. 05/2005, whereby the appeal filed by the Respondent [M/s Beecham Pakistan (Pvt) Limited], was allowed and the decision dated 26.02.1998 passed by Appellant No.1 under Section 57 of the said Ordinance was set aside.

2. The facts, as stated in the memo of appeal, are that following the amendment of the Ordinance in 1993 enhancing the wage limit from Rs.1,500 to Rs.3,000 per month, the Respondent paid social security contributions for 53 employees until August 1996. Pursuant to a settlement dated 06.01.1994 with its Collective Bargaining Agent, the wages of the said employees were retrospectively increased above Rs.3,000 per month with effect from 01.09.1993. The Respondent sought exclusion of these employees from the social security scheme and, relying on letters issued by the Director SESSI, stopped payment of contributions from September 1996. The Appellants later demanded arrears of contributions amounting to Rs.1,00,170 for September 1996 to May 1997, which the Respondent refused to pay. The Respondent's complaint under Section 57 of the Ordinance was dismissed by Appellant No.1 on 26.02.1998 with directions to pay the arrears. The Respondent filed an appeal before the Social Security Court No. 2, which lacked territorial jurisdiction, and after its return on 22.09.2001, filed the appeal before Social Security Court No.1 along with an application for condonation of delay. The said Court admitted the appeal subject to legal objections but subsequently allowed Appeal No. 05/2005 vide impugned order dated 17.03.2006, setting aside the decision dated

26.02.1998. Aggrieved thereby, the appellants filed the instant appeal under Section 64 of the Ordinance seeking setting aside of the impugned order and restoration of the decision dated 26.02.1998.

3. The learned counsel for the Appellant submitted that the instant appeal arises from a complaint filed by the Respondent under Section 57 of the Social Security Ordinance, 1965 against the demand of social security contribution for the period from September 1996 to May 1997 raised by the Appellant No. 2. The demand was upheld by the Commissioner SESSI. However, on appeal, vide the impugned decision, the demand has been set aside. The learned counsel for the Appellant submitted that the impugned order is erroneous because it has entertained a time-barred appeal and also because the Social Security Court No. 1 called for the relevant record from the Respondent and concluded that the wages of the 53 employees in question had been enhanced beyond Rs. 3,000 per month during the relevant period without providing copies of such record to the Appellant.

4. The learned counsel for the Respondent is reported to be in Islamabad. Be that as it may, it was made clear on 21.01.2026 that in case the counsel fails to appear or to proceed with the matter on the next date, the matter shall be heard and decided with the assistance of the counsel present on that date and on the basis of material available on record without providing any further opportunity. Even before that, none was present for the Respondent and as a matter of indulgence, the matter was adjourned with caution on 15.01.2026.

5. Heard the learned counsel for the Appellant and perused the entire record with his assistance.

6. Admittedly, the appeal was filed by the Respondent within time albeit before the Sindh Social Security Court No. 2 at Karachi as opposed to Court No. 1. However, it has also not been denied that at the relevant time, the Sindh Social Security Court No. 1 was lying vacant. The impugned order notes that the Respondent had submitted that the appeal was filed within time before the Sindh Social Security Court No. 2 on the advice of the counsel that the said Court had been designated as the link Court. Thereafter, the Sindh Social Security Court No. 2 returned the file on 22.09.2001, and copy was provided on 26.09.2001, whereas the appeal was filed before the correct Court on the very next day, i.e., 27.09.2001. In such circumstances, at the very least, the time for which the Sindh Social Security Court No. 1 was lying vacant would have to be excluded. However, the learned counsel for the Appellant was unable to provide any date on which the vacancy in Social Security Court No. 1 was filled in. On the other

hand, the impugned order has found the appeal to be within time by observing that the Sindh Social Security Court No. 2 did not return the file till 22.09.2001.

7. I am in agreement with the impugned order as it is settled law that no man shall be prejudiced by the act of the Court. Initially appeal was filed within time before the wrong Court but the Court did not realize that it did not have jurisdiction till 22.09.2001 whereas the respondent did not commit any delay in filing appeal after return of file. Furthermore, the learned counsel for the Appellant has pointed out that it is admitted in the memo of appeal that the Respondent did file an application for transfer to Social Security Court No. 1, which however was turned down by the Government of Sindh on 18.09.2001.

8. In view of the foregoing, I am in agreement with the Social Security Court No. 1 that the delay, if any, ought to have been condoned and the appeal was within time. In so far as merits are concerned, it appears that the Social Security Court No. 1 was inclined to allow the Respondent's appeal by examining the record of the 53 employees in question, based on which it was concluded that out of 53, except for one, all were earning wages beyond 3,000 per month at the relevant time, i.e., September 1996 to May 1997, and admittedly, the minimum wages which fall within the SESSI Act was increased from 1,500 to 3,000 on 15.09.1993, but the impugned order does not reflect that such record was provided to the Appellant.

9. In view of the foregoing, the instant appeal is allowed and the matter is remanded to the Commissioner, who shall provide a copy of the record submitted by the Respondent before the Social Security Court No. 1 to the Appellants, and thereafter, the Commissioner will decide afresh after hearing both the sides.

J U D G E

Imran