

Judgment Sheet
LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No. 2842 of 2017/RWP.

Ghulam Mustafa.
Versus
Punjab Labour Appellate Tribunal, Lahore etc.

JUDGMENT

Date of hearing: 16.11.2023.

Petitioner by: Raja Muhammad Riaz Satti, Advocate.

Respondents by: Malik Amjad Ali, Additional Advocate General.

Shujaat Ali Khan, J:- Succinctly, the facts, as spelt out in this petition, are that the Labour Officer (Factories-IV), Rawalpindi, filed report/reference bearing No.LOF/RWP/NKN/578, dated 15.06.2016, before Punjab Labour Court No.VI, Rawalpindi (**the Labour Court**) relating to non-payment of bonus to the workers by M/s UDL Distribution (Pvt.) Ltd. (hereinafter to be referred as the **petitioner-concern**) at the end of the financial year, in terms of the Industrial and Commercial Employment (Standing Order)

Ordinance, 1968 (**the Ordinance, 1968**). Upon service of notice, in addition to filing reply to the report/reference, the petitioner-concern filed an application under section 54(i) of the Industrial Relations Act, 2012 (**the Act, 2012**) before the Labour Court, for return of the challan submitted by the Labour Officer which was dismissed *vide* order, dated 06.06.2017, against which the petitioner-concern filed revision petition before the Punjab Labour Appellate Tribunal, Lahore (**PLAT**) but without any success as the same was dismissed by PLAT *vide* judgment, dated 11.09.2017; hence this petition.

2. Learned counsel for the petitioner-concern submits that since the petitioner-concern is a trans-provincial establishment, jurisdiction of the Labour Court is ousted. Adds that while rendering the impugned decisions both the fora below failed to appreciate that the Labour Court assumed jurisdiction in violation of section 54 of the Act, 2012, thus, the impugned orders are not tenable. Further adds that observation of the Labour Court that in case matter is referred to the National Industrial Relations Commission (**the Commission**) it would be burdened unnecessarily, is ridiculous as jurisdiction of a forum cannot be taken away merely on the ground that filing of proceedings before it would burden it unnecessarily. Argues that since employees of the petitioner-concern are registered with

Punjab Employees Social Security Institution (PESSI) as well as Employees' Old-Age Benefits Institution (EOBI), no action could be recommended against it on account of non-payment of bonus to its employees at the end of the financial year. Further argues that an Inspector appointed under section 29 of the Factories Act, 1934 or the Act, 2012, enjoys similar powers in terms of section 30 of the Act, 2012 thus the Labour Officer could not approach the Labour Court while pressing section 7 of the Ordinance, 1968. Relies on Muhammad Shabbir and another v. Quaid-e-Azam University through Vice-Chancellor, Islamabad and others (2022 PLC 82) and Messrs Independent Newspapers Corporation (Pvt.) Ltd through Authorized Attorney and another v. Province of Punjab through Director General-Directorate General of Labour Welfare, Labour and Human Resource Department, Government of Punjab and 2 others (2023 PLC 177).

3. While defending the impugned decisions, learned Law Officer submits that since the provisions of the Ordinance, 1968 have been saved under all the amending labour laws and in case of violation of any provision of the Ordinance, 1968, the Labour Court has exclusive jurisdiction to impose fine upon the violator or to award punishment, thus, no illegality has been committed by the *fora* below while rendering the impugned decisions. Adds

that when violation relates to a provincial law, the same is triable by a forum established under the said law irrespective of the fact that as to whether violator is a trans-provincial establishment or not.

4. While exercising his right of rebuttal, learned counsel for the petitioner-concern submits that since Supreme Court of Pakistan has held in unequivocal words that Labour Court cannot take cognizance of a matter relating to a trans-provincial establishment, Labour Court misdirected itself while taking cognizance of the report/reference filed by the Labour Officer in utter violation of the law laid down in the case of Pakistan Telecommunication Company Ltd. v. Member NIRC and others (2014 SCMR 535) despite the fact that the same has binding force upon it in terms of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973.

5. I have heard learned counsel for the parties at considerable length and have also gone through the documents, annexed with this petition, as well as the case-law, cited at the bar.

6. It is admitted position that the report/reference has been filed by the Labour Officer entailing allegation of non-payment of bonus to the workers by the petitioner-concern at the end of the financial year in terms of Standing Order No.10-C of the

Ordinance, 1968. Indisputably, powers of the Inspectors of Mines appointed under Section 4 of the Mines Act, 1923 and those of the Inspectors appointed under Section 10 of the Factories Act, 1934 and such others persons, not being conciliators appointed under the Industrial Relations Ordinance, 1969 have been encapsulated under Standing Order No.6 of the Ordinance 1968, which for convenience of reference is reproduced here-in-below: -

“6. Inspectors.— (1) The Inspectors of Mines appointed under section 4 of the Mines Act, 1923 (IV of 1923), the Inspectors appointed under section 10 of the Factories Act, 1934 (XXV of 1934), and such other persons, not being conciliators appointed under the Industrial Relations Ordinance, 1969 (XXVIII of 1969), as Government may, by notification in the official Gazette, appoint, shall be the Inspector for the purposes of this Ordinance within the local limits assigned to each.

(2) An Inspector may at all reasonable hours enter on any premises and make such examination of any register or document relating to the maintenance or enforcement of the Standing Orders and take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for carrying out the purposes of this Ordinance.

(3) Every Inspector shall be deemed to be a public servant within the meaning of the Pakistan Penal Code (XLV of 1860).”

Further Standing Order No.7 deals with penalties and procedure for prosecution against an employer which violates Standing Order No.6, which is reproduced here-in-below: -

“7. Penalties and procedure.— (1) An employer who modifies the Standing Orders as applicable to his

industrial or commercial establishment, otherwise than in accordance with section 4, shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day after the first day during which the offence continues.

(2) An employer who does any act in contravention of the Standing Orders as applicable to his industrial or commercial establishment shall be punishable with fine which may extend to one hundred rupees, and in the case of a continuing offence, with a further fine which may extend to twenty-five rupees for every day after the first day during which the offence continues.

(3) Whoever contravenes any of the provisions of this Ordinance, shall, if no other penalty is elsewhere provided by or under this Ordinance for such contravention, be punishable with fine which may extend to one hundred rupees.

(4) Whoever, having been convicted of any offence punishable under sub-section (1), (2) or (3), again commits such offence shall, on conviction, be liable to double the punishment prescribed for such offence under the aforesaid sub-sections.

(5) No prosecution for an offence punishable under this Ordinance shall be instituted except by, or with the previous permission in writing of the Inspector.

(6) No Court other than a Labour Court established under the Industrial Relations Ordinance, 1969 (XXIII of 1969), shall try any offence under this Ordinance.” (emphasis provided)

According to Standing Order No.7(6), no Court other than a Labour Court has the jurisdiction to try an offence under the provisions of the Ordinance, 1968, meaning thereby that if any violation of Standing Order has been established on the part of

the employer or the worker, the forum is to be determined according to the recitals of the Standing Orders.

7. Even otherwise Standing Order No.7(6) of the Ordinance, 1968 has been couched in negative language barring jurisdiction of any other forum except the Labour Court to deal with the matters relating to violation of Standing Order No.6 and allied matters, thus, it has to be given effect by adopting its plain language. The Hon'ble Supreme Court of Pakistan in the case reported as Allied Bank of Pakistan Limited v. Khalid Farooq (1991 SCMR 599) while dealing with the effect of the provisions couched in negative language has inter alia held as under: -

“If the requirements of a statute which prescribes the manner in which something is to be done or expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that though the requirements are in all cases absolute, and neglect to attend to them will invalidate the whole proceedings.”

The above view was reiterated by the apex Court of the country in the case of Chaudhry Shujat Hussain v. The State (1995 SCMR 1249) in the following terms: -

*“8.*****At this stage I may clarify that there is a misconception which is some time expressed that if an act is provided to be done in a manner it should be done in that particular manner otherwise it will be illegal. This cannot be general rule for applying such provisions of law. There may be cases where directions contained in an enactment are directory and not prohibitory. But where the language used is in negative or mandatory term for*

performance of a particular act, only then it can be said that any act done or an order passed in breach of such negative or mandatory language will be illegal.....” (emphasis provided).

8. Taking up the plea of learned counsel, representing the petitioner-concern that since the petitioner-concern is a trans-provincial establishment, jurisdiction of the Labour Court is ousted, I am of the view that functions of the Commission have been embodied in Section 54 of the Act 2012, which for convenience of reference is reproduced here-in-below: -

“54. Functions of the Commission.—The following shall be the functions of the Commission, namely—

(a) to adjudicate and determine an industrial dispute in the Islamabad Capital Territory and trans-provincial to which a trade union or a federation of such trade unions is a party and which is not confined to matters of purely local nature and any other industrial dispute which is, in the opinion of the Government, of national importance and is referred to it by that Government;

(b) to register trade unions and industry-wise trade unions of an establishment or group of establishments in the Islamabad Capital Territory and trans-provincial, and federations of such trade unions;

(c) to determine the collective bargaining agents amongst trade unions and industry-wise trade unions in the Islamabad Capital Territory and trans-provincial and federations of such trade unions;

(d) to try offences punishable under—

(i) Section 67 other than sub-sections (1) and (6) thereof; and

(ii) any other section, in so far as they relate to employers or workers in relation to a trade union or

an industry-wise trade union in the Islamabad Capital Territory and trans-provincial, and a federation of such trade unions, or officers of such union or federation;

(e) to deal with cases of unfair labour practices specified in Sections 31 and 32 on the part of employers, workers, trade unions of either of them or persons acting on behalf of any of them, whether committed individually or collectively, in the manner laid down under Section 33 or sub-section (9) Section 33 or in such other way as may be prescribed, and to take, in such manner as may be prescribed by regulations under Section 66, measures calculated to prevent an employer or workman from committing an unfair labour practice;

(f) to advise the Government, trade unions and industry-wise trade unions in the Islamabad Capital Territory and trans-provincial, and federations in respect to the education of workers in the essentials of trade unionism, including education in respect of their right and obligations, and to secure the provision of facilities required thereof, and to apportion the cost thereof between the Government, trade unions and federations of such trade unions, and the employers, in such manner as may be considered equitable by the Commission, subject to the approval of the Government;

(g) to take measures calculated to prevent an employer or workman from committing an unfair labour practice in such manner as may be determined by regulations;

(h) to deal with cases of individual grievance in the manners prescribed in Section 33.

(i) to exercise exclusive jurisdiction over the establishment or group of establishments situated in the Islamabad Capital Territory and trans-provincial; and

(j) such other powers and functions as the Government may, by notification in the official Gazette, assign to it from time to time.

According to the afore-quoted provision, the Commission has jurisdiction *inter-alia* to adjudicate upon the cases of unfair

labour practices specified under Section 31 and 32 of the Act, 2012. Sections 31 deals with unfair labour practices on the part of the employer, which is re-casted herein below: -

“31. Unfair labour practices on the part of employers.—

(1) No employer or trade union of employers and no person acting on behalf of either shall—

(a) impose any condition in a contract of employment seeking to restrain the right of a person who is a party to such contract to join a trade union or continue his membership of a trade union;

(b) refuse to employ or refuse to continue to employ any person on the ground that such person is, or is not a member or officer of a trade union;

(c) discriminate against any person in regard to any employment, promotion, condition of employment or working condition on the ground that such person is, or is not, a member or officer of a trade union;

(d) dismiss, discharge, remove from employment or transfer or threaten to dismiss, discharge or remove from employment or transfer a workman or injure or threaten to injure him in respect of his employment by reason that the workman:

(i) is or proposes to become, or seeks to persuade any other person to become, a member or officer of a trade union; or

(ii) participates in the promotion, formation or activities of a trade union;

(e) induce any person to refrain from becoming, or to cease to be a member or officer of a trade union, by conferring or

offering to confer any advantage on, or by procuring or offering to procure any advantage for such person or any other person; Page 26 of 51

(f) compel or attempt to compel any officer of the collective bargaining agent to arrive at a settlement by using intimidation, coercion, pressure, threat, confinement to a place, physical injury, disconnection of water, power and telephone facilities and such other methods;

(g) interfere with or in any way influence the balloting for the determination of the Collective Bargaining Agent;

(h) recruit any new workman during the period of a notice of strike under Section 41 or during the currency of a strike which is not illegal except where the Conciliator having been satisfied that complete cessation of work is likely to cause serious damage to the machinery or installation, has permitted temporary employment of a limited number of workmen in the section where the damage is likely to occur;

(i) close down the whole of the establishment in contravention of Standing Order 11- A of the industrial and Commercial Employment (Standing Orders) Act, 1968 (W.P. Ord. VI of 1968); or

(j) Commence, continue, instigate or incite others to take part in or expend or supply money or otherwise act in furtherance or support of, an illegal lockout.

(2) Nothing in sub-section (1) shall be deemed to preclude an employer from requiring that a person upon his appointment or promotion to managerial position shall cease to be, and shall be disqualified from being, a member or officer of a trade union of workmen."

As far as section 32 of the Act, 2012 is concerned, same deals with unfair labour practice on the part of the workmen. Conjunctive reading of Sections 31 and 32, renders it crystal clear that no-where the Commission has been empowered to take up any matter arising out of non-payment of bonus by the employer to an employee. It is well established by now that jurisdiction of a forum to take cognizance of a matter can be decided on the basis of parent statute and if any power has not been vested in it, same cannot be allowed to be assumed at the whims of a party.

9. During the course of arguments, learned counsel, representing the petitioner-concern, has put much emphasis on the fact that the Inspectors, referred to by learned Law Officer, in relation to Standing Order No.6 of the Ordinance, 1968, have also been empowered under Section 29 of the Act, 2012, hence, while dealing with an issue relating to a trans-provincial establishment, they are bound to act according to the provisions of the Act, 2012, thus, the Labour Officer could not file report/reference before the Labour Court rather he was supposed to file the same before the Commission. With a view to appreciate the said plea, I have gone through the provisions of Sections 29 and 30 of the Act, 2012, which are reproduced herein below: -

“29. Inspector.— The inspectors appointed under Section 10 of the Factories Act, 1934 (XXV of 1934), and such other persons, not being Conciliators appointed under this Act, as the Government may, by notification in the official Gazette appoint, shall be inspectors for ensuring compliance with the provisions of this Act within the local limits assigned to each.

30. Functions of the Inspector.—

(1) The inspector may—

(a) at all reasonable hours enter any premises and make such examination of any register and document relating to the provisions of Section 27 and Section 28 and Page 25 of 51 take on the spot or otherwise such evidence of any person, and exercise such other powers of inspection, as he may deem necessary for discharging his duty;

(b) call for such information from the management as he may deem necessary for the discharge of his functions and the management shall provide the information called for within such period as may be specified by him; and

(c) make a report in writing to the Registrar having jurisdiction of any offence punishable under this Act.

(2) Every Inspector shall be deemed to be a public servant within the meaning of Section 21 of the Pakistan Penal Code. 1860 (XLV of 1860).”

According to Section 30(1)(a), reproduced above, the Inspector has been empowered to make a report in writing to the Registrar having jurisdiction of any offence punishable under the provisions of the Act, 2012 in relation to violation of Sections 27 and 28 of the Act, 2012. A joint reading of Sections 27 and 28 makes it abundantly clear that the same in no manner deal with

payment of bonus by the employer at the end of financial year, thus, the plea of the petitioner-concern that the Inspectors appointed under the Act, 2012 have the same powers as those appointed under Standing Order No.6 of the Ordinance, 1968 cannot be given any weightage.

10. It is important to observe over here that with a view to give effect to the provisions of the Act, 2012, the Commission with prior approval of the Federal Government has framed National Industrial Relations Commission (Procedure and Functions) Regulations, 2016 (**the Regulations, 2016**). According to Regulation No. 63 of the Regulations, 2016, the Chairman of the Commission has been empowered to make Standing Orders for general superintendence of affairs of the Commission in terms of Section 54(i) of the Act, 2012. Learned counsel for the petitioner-concern has not been able to convince this Court that if the Ordinance, 1968 had no independent entity as to why the Chairman was empowered to make Standing Orders while exercising powers under Section 54(i) of the Act, 2012. The said fact also lends support to the plea of learned Law Officer that violation of Standing Order No.6 of the Ordinance, 1968 is not covered under the Act, 2012, thus the said issue is to be taken up in accordance with Standing Order No.7 of the Ordinance, 1968.

11. Admittedly, the report/reference filed by the Labour Officer is *sub-judice* before the Labour Court and it is still to be seen as to whether any violation, as alleged by the Labour Officer, is made out or not, thus, any findings given by this Court in relation to the merits of the case would prejudice the case of either side, thus the respective contentions of the parties touching merits of the case are being left unattended for their decision by the forum of competent jurisdiction.

12. Now coming to the case-law, referred by learned counsel, representing the petitioner-concern, I am of the view that the same is inapplicable to the facts and circumstances of the present case inasmuch as in the case of Muhammad Shabbir and another (*Supra*) matter related to compulsory retirement of the petitioner which is not the position in case in hand as the said case was covered under Section 33 of the Act, 2012 whereas the payment of bonus by the employer to an employee at the end of a fiscal year having not been covered under the said provision is to be governed under the general law i.e., the Ordinance, 1968. Likewise, in the case of Pakistan Telecommunication Company Ltd. (*Supra*) matter related to the validity of an order passed by the NIRC regarding withdrawal of contempt petition from Labour Court No.IV, Faisalabad, which is not the position in case in hand. Similarly, in the case of Messrs Independent

Newspapers Corporation (Pvt.) Ltd through Authorized Attorney and another (*Supra*) this Court held that any matter relating to registration of a trade union in a trans-provincial establishment would be taken care of by the Registrar of Trade Union established under the Act, 2012 and not by the Registrar acting under the Punjab Industrial Relations Act, 2010 whereas in the instant matter, the jurisdiction has been blessed by the legislature upon the Labour Court through Standing Order No.7(6) of the Ordinance, 1968.

13. Even otherwise, concurrent findings recorded by the courts below cannot be upset in Constitutional jurisdiction until and unless they are proved to be perverse or result of some arbitrariness which is not the position in the case in hand. Reliance in this regard can safely be placed on the case of Farhat Jabeen v. Muhammad Safdar and others (2011 SCMR 1073).

14. For what has been discussed above, I see no force in this petition which is accordingly **dismissed**. No order as to costs.

Judge

Approved for Reporting.

Judge