Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.28022 of 2023

Packages Limited
Versus
Punjab Labour Appellate Tribunal & another

JUDGMENT

Date of hearing: 30.09.2024.

Petitioner by: Barrister Rafay Altaf, Advocate.

Respondent No.2 by: Ch. Imran Younas Goraya, Advocate.

Shujaat Ali Khan, J: - Shorn of unnecessary details, the facts forming factual canvass of this petition are that while serving as Operator with the petitioner-company, disciplinary proceedings were initiated against Muhammad Iqbal (respondent No.2) on the basis of a complaint, referred by the Production Engineer, BUCP-Conversion, Packages Limited, pursuant to Show Cause Notice/Suspension Order, dated 05.11.2015. Upon conclusion of inquiry proceedings, respondent No.2 was dismissed from service *vide* Letter of Dismissal, dated 08.12.2015, issued by the Industrial

Relations/Factory Manager, Packages Limited. Being aggrieved of his dismissal from service, respondent No.2 after serving Grievance Notice upon the petitioner-company, filed Grievance Petition under Section 33 of the Punjab Industrial Relations Act, 2010 (hereinafter to be referred as **("PIRA 2010")** before the Punjab Labour Court No.2, Lahore **("the Labour Court")** which was dismissed *vide* judgment, dated 02.02.2022 against which respondent No.2 filed an appeal, which was accepted by the Punjab Labour Appellate Tribunal, Lahore **("PLAT")** through judgment, dated 15.03.2023; hence this petition.

2. The submissions made by learned counsel for the petitioner-company can be summed up in the words that though while filing of reply to the Grievance Petition the petitioner-company raised objection *qua* jurisdiction of the Labour Court on the premise that respondent No.2 being not a workman, neither the provisions of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 **("the Ordinance 1968")** nor those of PIRA, 2010 were attracted but both the labour *fora* below did not attend the said important limb of the matter; that PLAT omitted to note that while filing reply to the Show Cause Notice in addition to other defences, respondent No.2 also alleged victimization at the hand of the

employer but he did not incorporate the said fact either in the Grievance Notice or in the Grievance Petition, thus *mala-fide* on his part was floating on the surface; that despite availing three opportunities, respondent No.2 failed to hire services of a co-worker to facilitate him during inquiry, meaning thereby that allegations against him were established beyond any shadow of doubt; that respondent No.2 was employee of the petitioner-company but he wanted to nominate a person from Bullehay Shah Paper Mills though it was a sister-concern of the petitioner-company but it had nothing to do with the affairs of the petitioner-company, which fact also suggests that nobody from the petitioner-company was ready to support him; that respondent No.2 contented with his solitary assertion in his affidavit, submitted in evidence, that he was a workman which was not sufficient to establish said fact; that when the petitioner-company denied the status of respondent No.2 as workman, he was bound to establish that he falls within such category to maintain the proceedings before the *fora* below; that while rendering the impugned judgment, PLAT failed to appreciate that neither the Labour Court nor PLAT nor even this Court can substitute the findings of the Inquiry Committee; that when an employee is found guilty of misconduct, the authority to award punishment lies with the Competent

Authority but said fact escaped notice of PLAT; that a cursory survey of the appeal, filed by respondent No.2, before the PLAT shows that it has been couched as a service appeal, thus, the PLAT was not obliged to upset the findings of the Labour Court which were based on true appreciation of evidence; that the findings of the PLAT, being illusionary in nature, are not sustainable and that instead of designation the duties being performed by a person plays pivotal role towards determination of his status as a workman and respondent No.2 being Incharge of a Unit did not fall within the category of a workman.

3. Learned counsel, appearing on behalf of respondent No.2, while defending the impugned judgment, passed by the PLAT, states that in the basic complaint, the date and time of alleged misconduct on the part of respondent No.2 has not been mentioned, thus the same could not be used as triggering point for initiation of disciplinary proceedings against respondent No.2; that as a matter of fact, respondent No.2 alongwith other workers were summoned by the Production Engineer to know their complaints and uplifting all the productions and during said meeting, many others alongwith respondent No.2 highlighted certain problems, being faced by them in relation to uplifting the production but initiation of disciplinary

proceedings against respondent No.2 alone stands proof of the fact that he was not only discriminated but was also made scapegoat for no fault on his part; that when PW-1 and PW-2 admitted that respondent No.2 had been performing duties of box making, his status as workman was admitted by the witnesses, produced by the petitioner-company; that the judgments, referred by the petitioner-company in the body of the petition reported as *Muslim Commercial Bank Ltd. through General Attorney and another v. Amir Hussain and another* (1996 SCMR 464) and *Crescent Jute Products Ltd. Jaranwala v. Muhammad Yaqub etc.* (**PLD 1978 SC 207**) go against the petitioner-company; that Sections 33(7) and 47(3) of PIRA, 2010 empower the Labour Court as well as the PLAT to decide a matter comprehensively, thus, no illegality has been committed by the PLAT while reversing the findings of the Labour Court; that *bonafide* of respondent No.2 is evident from the fact that he not only claimed himself to be a workman in the Grievance Notice but also in the Grievance Petition, thus, the onus heavily lied on the petitioner-company to establish otherwise but when it failed to do so, no material illegality has been committed by the *fora* below while treating respondent No.2 as a workman; that not only in the reply, submitted by the petitioner-company to the Grievance Petition, it was admitted

that respondent No.2 was workman but also initiation of proceedings against him under the provisions of the Ordinance, 1968 and ultimate passing of penultimate order under the said enactment speaks volumes about the fact that respondent No.2 was rightly treated as a workman; that Standing Order 15 of the Ordinance, 1968 only applies to a workman and in case the explanation being given by learned counsel for the petitioner-company is accepted as correct, the proceedings conducted against respondent No.2 would become *void ab-initio*; that issuance of the suspension order of respondent No.2 under the provisions of the Ordinance 1968 also stands proof of the fact that he was a workman; that when respondent No.2 not only alleged victimization at the hands of the employer in the Grievance Notice but also in the Grievance Petition, the plea of learned counsel for the petitioner-company that he omitted the allegation of victimization in the said documents goes against the record; that closure of rights of respondent No.2 to appoint a person as co-worker; to cross-examine the PWs and to make statement on a single date, speaks volumes about undue haste on the part of the Inquiry Officer; that at the most, the Inquiry Officer could close the right of respondent No.2 to cross-examine or to appoint any person as a co-worker but he could not deprive respondent No.2 of his right to make statement in

support of his case; that during evidence, the witnesses produced by the petitioner-company, were confronted with the question as to whether respondent No.2 was ever proceeded against during his service spreading over 23 years, the witnesses showed their inability to answer the said query; that the recitals of the dismissal order are not complied with the provisions of the Ordinance 1968 and that since the PLAT has given details reasons in support of its decision, the same is immune from interference by this Court in exercise of its constitutional jurisdiction. Relies on *The Postmaster General, Sindh Province, Karachi and others v. Syed Farhan* **(2022 SCMR 1154)**, *Khalid Mehmood v. State Life Insurance Corporation of Pakistan and others* **(2018 SCMR 376)**, *Crescent Jute Products Ltd., Jaranwala v. Muhammad Yaqub etc.* **(PLD 1978 SC 207)**, *Bashir Ahmed v. Government of Sindh through Secretary, Home Department and 3 others* **(2003 PLC (C.S.) 1249)** and *Muhammad Naeem v. General Tyre and Rubber Company of Pakistan and another* **(2020 PLC 108)**.

4. While exercising his right of rebuttal, learned counsel for the petitioner-company submits that since respondent No.2 has not alleged victimization in the Grievance Notice or in the Grievance Petition, the arguments advanced by his learned

counsel are aimed to mislead this Hon'ble Court, thus, the said fact goes against him. Adds that when respondent No.2 did not clarify as to how he was a workman, his solitary assertion and that too in his affidavit, submitted in evidence, could be treated as sufficient proof of his status as workman. In support of his contentions, learned counsel has relied upon the cases reported as *Messrs Pak Telecom Mobile Limited v. Muhammad Atif Bilal and 2 others* **(2024 SCMR 719)**, *National Bank of Pakistan and another v. Anwar Shah and others* **(2015 SCMR 434)**, *Muslim Commercial Bank Ltd. and others v. Muhammad Shahid Mumtaz and another* **(2011 SCMR 1475)**, *National Bank of Pakistan v. Punjab Labour Court No.5, Faisalabad and 2 others* **(1993 SCMR 672)**, *General Manager, Hotel Intercontinental, Lahore and another v. Bashir A. Malik and others* **(PLD 1986 SC 103)**, *Ejaz Ahmad Butt v. Habib Bank Ltd and others* **(1986 SCMR 1262)**, *United Bank Limited and 5 others v. Raja Ghulam Hussain and 4 others* **(1999 PLC 106)** and *Pakistan Tobacco Co. Ltd. v. Channa Khan and others* **(1980 PLC 981)**.

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. Firstly taking up the objection raised by learned counsel for the petitioner-company that since respondent No.2 was Branch Incharge he did not fall within the definition of workman, I have noted that there is no cavil with the fact that the duties, being performed by a person, are determining factor to adjudge as to whether he/she is a workman or not. Undeniably, disciplinary proceedings were initiated against respondent No.2 for alleged violation of Standing Order No.15(3)(a) & (h) of the Ordinance, 1968, which fact can be exemplified from the following portion from the Inquiry Report: -

> *"The above mentioned acts constitute misconduct in terms of 15-3(a) and 15-3(h) of the Industrial & Commercial Employment (Standing Orders) Ordinance, 1968.*
> *15-3(a) willful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior.*
> *15-3(h) Riotous and disorderly behavior during working hours at the establishment or any act subversive of discipline."*

Further, Standing Order 15 starts with the words that a workman may be reprimanded or fined meaning thereby that the same is meant for a worker.

7. Admittedly, respondent No.2 filed Grievance Petition under section 33 of PIRA, 2010. Preamble of said enactment shows that the same has *inter-alia* been enacted to regulate relations between employers and workmen. Further, section 2(xxxi) of PIRA, 2010, deals with the definition of a worker or a workman, which for facility of reference is reproduced here-in-below:-

> *(xxxi) "worker" and "workman" mean a person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms of employment be express or implied, and, for the purpose of any proceedings under the Act in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off, or removal has led to that dispute but does not include any person who is employed mainly in managerial or administrative capacity."*

According to the afore-quoted definition, only those employees have been excluded from the category of workmen who have been appointed in an establishment in managerial or administrative capacity. Insofar as the case in hand is

concerned, the designation of respondent No.2 has been mentioned as Operator in the Show Cause Notice, thus, on the dint of his designation, neither he can be considered as manager or holder of any administrative post. Further, while filing reply to the Grievance Petition, the petitioner-company while replying to para-3(i) *inter-alia* averred as under:-

> *"(i) That the petitioner was employed as Operator in Packages Limited and by virtue of duties being performed by him, he falls within the definition of 'Workman' under the provisions of The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 as well as the Punjab Industrial Relations Act, 20101 and other labour laws."*

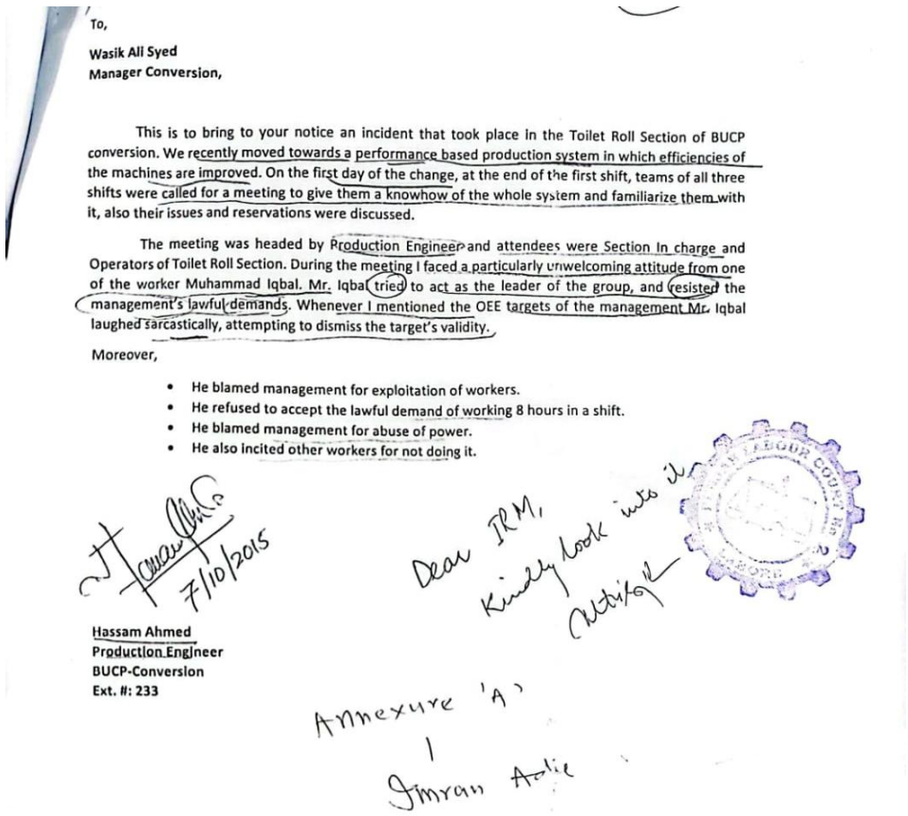
A cursory glance over the stance taken by the petitioner-company in its reply to the Grievance Petition renders it crystal clear that it admitted the status of respondent No.2 as a workman, thus, it cannot be allowed to change its stance before this Court irrespective of the fact as to whether it challenged the findings of the Labour Court whereby he was treated as workman.

8. While skimming the documents, appended with this petition, in particular statements of PW-1 and PW-2, I have noted that both the said witnesses stated in their examination-in-chief that respondent No.2 had been performing duties of

manual nature, thus the plea of learned counsel for the petitioner-company that respondent No.2 did not fall within the category of a workman, being contrary to the record, cannot be given any weightage.

9. At the cost of repetition, it is observed that right from inception of disciplinary proceedings upto issuance of dismissal letter of respondent No.2, the petitioner-company itself had been relying upon different provisions of the Ordinance 1968. Further, the punishments provided under Standing Order 15 of the Ordinance 1968 are only meant for a workman and if, as argued by learned counsel for the petitioner-company, the same was inapplicable to respondent No.2, perhaps, the entire proceedings conducted against him would stand nullified. An employer cannot be allowed to blow hot and cold in the same breath inasmuch as once the status of a person has been admitted as workman, the same cannot be allowed to be retracted without any change in the nature of his work.

10. Now reverting to the merits of the case, I have noted that admittedly the disciplinary proceedings were initiated against respondent No.2 on the basis of a complaint, as forwarded by the Production Engineer, BUCP-Conversion, Packages Limited, which for convenience of reference is imaged here-in-below:-



To,

Wasik Ali Syed
Manager Conversion,

This is to bring to your notice an incident that took place in the Toilet Roll Section of BUCP conversion. We recently moved towards a performance based production system in which efficiencies of the machines are improved. On the first day of the change, at the end of the first shift, teams of all three shifts were called for a meeting to give them a knowhow of the whole system and familiarize them with it, also their issues and reservations were discussed.

The meeting was headed by Production Engineer and attendees were Section In charge and Operators of Toilet Roll Section. During the meeting I faced a particularly unwelcoming attitude from one of the worker Muhammad Iqbal. Mr. Iqbal tried to act as the leader of the group, and resisted the management's lawful demands. Whenever I mentioned the OEE targets of the management Mr. Iqbal laughed sarcastically, attempting to dismiss the target's validity.

Moreover,

- He blamed management for exploitation of workers.
- He refused to accept the lawful demand of working 8 hours in a shift.
- He blamed management for abuse of power.
- He also incited other workers for not doing it.

7/10/2015

Hassam Ahmed
Production Engineer
BUCP-Conversion
Ext. #: 233

Dear IRM,
Kindly look into it
Annexure 'A'
Imran Aslie

From the afore-imaged complaint, one thing is clear that the meeting was called to impart know-how of the whole system to the workers and to discuss their issues and to find out possible resolutions. If the contents of the complaint under discussion, followed by the Show Cause Notice, are seen in the light of the aforesaid fact, there leaves no ambiguity that though respondent No.2 agitated certain issues but the same could not be treated as misconduct. According to Standing Order 15(3) of the Ordinance 1968, following acts and omissions can be treated as misconduct:-

> *"(a) wilful insubordination or disobedience, whether alone or in combination with others, to any lawful and reasonable order of a superior;*

(b) theft, fraud, or dishonesty in connection with the employer's business or property;

(c) wilful damage to or loss of employer's goods or property;

(d) taking or giving bribes or any illegal gratification;

(e) habitual absence without leave or absence without leave for more than ten days;

(f) habitual late attendance;

(g) habitual breach of any law applicable to the establishment;

(h) riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline;

(i) habitual negligence or neglect of work;

(j) frequent repetition of any act or omission referred to in clause (1);

(k) striking work or inciting others to strike in contravention of the provisions of any law, or rule having the force of law;

(l) go-slow."

If the allegations levelled against respondent No.2 are adjudged in the light of afore-quoted omissions/acts, in my humble opinion, none is attracted against him inasmuch as mere an attempt to play a leading role amongst the workers, while discussing issues, cannot be termed as any of the omissions/acts as enumerated above. Likewise, the sarcastically laughing also does not constitute an offence amounting to misconduct. Insofar as the allegation of resisting against the lawful demand of the

management is concerned, admittedly the Production Engineer, BUCP-Conversion, Packages Limited, interacted with respondent No.2 and others on his first day of joining the petitioner-company, thus, it cannot be believed that a person, who joined a day ago, was able to adjudge the conduct and output of a worker having 23 years of blotless service at his credit.

11. It is relevant to note that though allegations of willful disobedience, riotous and disorderly behaviour were levelled against respondent No.2 in the Show Cause Notice but the petitioner-company did not produce anything to prove the said fact inasmuch as, Hassam Ahmad, PW-1 and Syed Hassan Waqar, PW-2 did not utter a word about conduct of respondent No.2 during meeting constituting misconduct on his part.

12. A bird's eye view of the statements of the above witnesses shows that PW-1 was not happy over highlighting of different problems by respondent No.2, being faced by the workers. In my humble opinion, if the management was sincere, instead of lynching respondent No.2, it was supposed to give sympathetic consideration to the legitimate demands of the workers especially in relation to provision of machines to meet with the new targets of production but initiation of

disciplinary proceedings just on the basis that respondent No.2 critically discussed the suggestion of the management, *per-se* speaks volumes about *mala-fide* conduct of the management of the petitioner-company.

13. Undeniably, at the time of initiation of departmental proceedings, respondent No.2 had 23 years of service at his credit. During proceedings before the Labour Court, Syed Imran Adil, RW-1, was posed with specific question as to whether respondent No.2 was ever confronted with any disciplinary proceedings during his entire service, who instead of replying to the said query in a straight forward manner, showed his inability to respond said query without consulting the record.

14. While addressing the Court, learned counsel for the petitioner-company took specific plea that the findings of the Inquiry Officer/Committee cannot be substituted by any forum including this Court. I am in agreement with the learned counsel for the petitioner-company that in ordinary course the findings of the Inquiry Officer/Committee cannot be substituted but when the same are not based on true appraisal of the material on record the same cannot be considered sacrosanct rather in such eventuality no forum should feel shy to take care

of such omission or commission. As far as the case in hand is concerned, suffice it to observe that RW-1, during his cross-examination, admitted that upon completion of inquiry proceedings copy of the inquiry report was not given to respondent No.2. Further, the said witness also admitted that in his findings he used words "financial loss", however, in voluntary portion of said statement the said witness claimed that refusal to increase production amounts to financial loss. The said inconsistency on the part of the Inquiry Officer (RW-1) cannot be let unnoticed as claimed by learned counsel for the petitioner-company.

15. It has not been denied by the learned counsel for the petitioner-company that during his entire career spreading over 23 years, respondent No.2 was never confronted with any disciplinary proceedings. The said fact depicts that respondent No.2 had been performing his duties diligently and without any objection from his supervisory officers, thus, imposition of harsh penalty of dismissal from service is not justified when compared to the peculiar facts and circumstances of present case.

16. Though the entire case of the petitioner-company hinges upon the fact that respondent No.2 instigated other co-workers

to desist against the demands of the employer for increase in production but none of them was examined in the witness box which fact also weakens the case of the petitioner-company. Further, the witnesses produced by the petitioner-company failed to establish the said allegation. Moreover, PW-1, during inquiry proceedings, stated that he felt that respondent No.2 was instigating the other co-workers meaning thereby that the said witness was also not exact as to whether respondent No.2 was instigating the other participants or not.

17. During hearing, learned counsel for the petitioner-company vehemently urged that it is upto the competent authority to decide about the quantum of penalty to be imposed against an employee. In this regard, I do not agree with learned counsel for the petitioner-company for the reason that instead of choice of the competent authority it is requirement of law that penalty should commensurate with gravity of allegation. Reliance in this regard is placed on the cases reported as *The Postmaster General Sindh Province, Karachi and others v. Syed Farhan* (**2022 SCMR 1154**), *Secretary to Government of the Punjab, Food Department, Lahore and another* (**2007 PLC (C.S.) 692**) and *Government of Punjab v. Shahid Mehmood Butt* (**2006 SCMR 443**).

18. Admittedly, the findings of the fora below are at variance and in such eventuality preference is to be given to the verdict of the appellate forum until and unless the same is found to be perverse or arbitrary which is not the position in case in hand. Reliance in this regard is placed on the case reported as *Hakim-ud-Din through L.Rs and others v. Faiz Bakhsh and others* (**2007 SCMR 870**).

19. This Court has no sympathy with respondent No.2 but at the same time the action of the petitioner-company dismissing him from service cannot be validated especially when the same is based on the material which was insufficient to bring home the guilt against him. In my humble estimation, the objections of respondent No.2, against proposed increase in production without fixing the issues being faced by the workers in relation to provision of machines etc., were used against him as incriminating material which being alien to the provision of the Ordinance, 1968 cannot be approved.

20. It is matter of record that during meeting, many others, alongwith respondent No.2, voiced reservations against the policies of the petitioner-company but initiation of proceedings against respondent No.2 alone stands proof of the fact that he was discriminated which approach being violative of Article 25

of the Constitution of Islamic Republic of Pakistan, 1973 cannot be approved.

21. Now coming to the case-law, referred by learned counsel for the petitioner-company, I am of the view that the same stands distinguished from the fact that not only the petitioner-company admitted in its reply to the Grievance Petition that respondent No.2 was workman but also in the evidence RWs admitted that respondent No.2 had been performing duties of manual nature. Moreover, initiation of disciplinary proceedings under Standing Order No.15 and conclusion thereof under the said Standing Order also belies the claim of petitioner-company that respondent No.2 was not workman.

22. For what has been discussed above, I see no force in this petition which is hereby **dismissed** with no order as to costs.

Judge

Approved for reporting.

Judge

Jamil*