

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

W. P. No. 40697 / 2023

M/s Lahore Carpet Manufacturing Company

Versus

Muhammad Jamil & 03 others

JUDGMENT

Date of Hearing:	13.12.2023
Petitioner By:	Mr. Sheraz Mahmood, Advocate Mr. Mubashar Hussain, Advocate
Respondent No. 1 By:	Khawaja Omer Masood, Advocate

ABID HUSSAIN CHATTHA, J: This Judgment shall decide the titled and connected Writ Petition Nos. 40700, 40702, 40707, 40710 & 40713 of 2023 directed against separate impugned Judgments all dated 20.03.2023 passed by Punjab Labour Appellate Tribunal, Lahore (the “PLAT”) involving identical question of law and similar set of facts.

2. Precisely, the private Respondents arrayed as Respondent No. 1 in the titled and connected Petitions, hereinafter collectively referred to as (the “**Respondents**”), filed their respective claims before the “Authority” constituted under Section 15 of the Payment of Wages Act, 1936 (the “**Wages Act**”) against the Petitioner for recovery of their alleged deducted dues. The claims were contested by the Petitioner. After recording of evidence of the parties, the Authority partially allowed the claims of the Respondents vide separate orders all dated 28.02.2020. The parties preferred cross appeals under Section 17 of the Wages Act before the Punjab Labour Court No. 2, Lahore (the “**Labour Court**”) which were dismissed vide separate consolidated Judgments all dated 01.08.2022. Thereafter, the Respondents instituted

Revision Petition under Section 47(5) of the Punjab Industrial Relations Act, 2010 (the “**PIRA**”) before PLAT which were accepted vide impugned separate Judgments all dated 20.03.2023, whereby, the respective claims of the Respondents were enhanced. Hence, the titled and connected Petitions.

3. Learned counsel for the Petitioner submitted that the impugned Judgments are without jurisdiction, unlawful, void and *coram non judice* since no remedy of revision is provided under the Wages Act. He explained that after determination of claim by the Authority under Section 15 of the Wages Act followed by an Appeal under Section 17 thereof before the Labour Court, the Respondents could have only invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”) since the remedy of revision under Section 47(5) of PIRA was not available to the Respondents. He maintained that in case titled, “Habib Bank Ltd. through President and 2 others v. Authority under Payment of Wages Act and another” (**2016 PLC 61**), this Court held that the remedy of revision before PLAT against the order passed by the Labour Court is no more available after the repeal of the Industrial Relations Ordinance, 1969 (the “**Ordinance, 1969**”). Highlighting the difference between PIRA and repealed Ordinance, 1969, he argued that Section 38(3) of the Ordinance, 1969 conferred appellate jurisdiction upon PLAT constituted thereunder to confirm, set aside, vary or modify the award and could exercise all the powers conferred by the Ordinance, 1969 save as otherwise provided therein, however, in contrast, Section 47(3) of PIRA only confers a limited appellate power upon PLAT constituted thereunder to confirm, set aside, vary or modify the award, decision or sentence given or passed under Sections 33, 42 or 44 of PIRA and can exercise all powers conferred under PIRA save as otherwise provided therein. Hence, where the Labour Court decided an Appeal under Section 17 of the Wages Act, the revisional jurisdiction under Section 47(5) of PIRA was not available to PLAT as the same could only be exercised with reference to its appellate jurisdiction under Section 47(3) of PIRA. He further stressed that even

otherwise, the remedy of revision under Section 47(5) of PIRA is in the nature of *suo motu* power and cannot be invoked as of right by the aggrieved party. Further, the *suo motu* revisional jurisdiction of PLAT is against an ‘order’ passed by the Labour Court and not against ‘final judgment’ of the Labour Court. Reliance was also placed on an unreported Order dated 03.12.2020 passed in case titled, “Marhaba Laboratories (Pvt) Ltd. v. Punjab Labour Court No. 2, Lahore etc.” (**W. P. No. 21196 / 2016**).

4. Learned counsel for the Petitioner on merits submitted that the Respondents had received their respective due amounts by signing the ‘Final Settlement Form’ available on record but the same was ignored by PLAT while enhancing the respective claims of the Respondents. After accepting and receiving the final settlement amounts through their bank accounts, the Respondents were not entitled to enhanced amounts. Hence, the impugned Judgments of PLAT are not sustainable in the eyes of law.

5. Conversely, learned counsel for the Respondents contended that PLAT has revisional jurisdiction against any ‘order’ which includes ‘final order’ or ‘final judgment’ passed by the Labour Court under Section 17 of the Wages Act as held in cases titled, “Muhammad Hussain and others v. Islamic Republic of Pakistan through Chairman, Railway Board Lahore and others” (**PLD 1991 Supreme Court 385**) and order dated 18.05.2021 passed in case titled, “Jang Group of Newspapers Limited, etc. v. Presiding Officer, etc.” (**W. P. No. 10067 / 2017**). The Authority under the Wages Act partially decreed the respective claims of the Respondents by ignoring service certificates of the Respondents relying upon oral evidence of the Petitioner controverting service certificates and as such, only considered length of service of the Respondents as submitted by the Petitioner. However, PLAT duly considered documentary evidence tendered by the Respondents and rightly preferred it over oral evidence. The Authority failed to consider that the Respondents had never received their full and final settlement amounts, rather, had only received their partial payments which were categorically mentioned in their respective claims. The Authority and the Labour Court did

not resolve the points of controversy regarding claims of notice pay, gratuity, annual leaves, bonus and wage for the month of August, 2015 and as such, misread and non-read the evidence on record which was duly corrected by PLAT in exercise of its revisional jurisdiction. Hence, the titled and connected Petitions are liable to be dismissed.

6. The following points of determination arise from the rival arguments of learned counsels for the parties:-

- i) Whether PLAT has revisional jurisdiction under Section 47(5) of PIRA with respect to order of the Labour Court passed in Appeal under Section 17 of the Wages Act; and
- ii) Whether the impugned Judgments suffer from any illegality, infirmity or jurisdictional defect warranting interference in the constitutional jurisdiction of this Court.

7. The Wages Act is enacted to regulate the payment of wages to certain classes of persons employed in industry. Section 1(4) of the Wages Act contemplates that it applies to the payment of wages to persons employed in any factory, industrial or commercial establishment. Section 15 thereof empowers the Provincial Government to constitute the Authority to hear and decide all claims arising out of deductions from the wages or delay in payment of the wages or non-payment of dues relating to provident fund or gratuity payable under any law. Section 17(1) of the Wages Act provides remedy of appeal against a direction of the Authority under Section 15 thereof before the Labour Court constituted under the Ordinance, 1969 within whose jurisdiction, the cause of action to which the appeal relates arose, subject to restrictions contained therein. Section 17(1A) of the Wages Act stipulates that all appeals pending before any District Court under this Section immediately before the commencement of the Labour Laws (Amendment) Act, 1975 shall, on such commencement, stand transferred to, and be disposed of by, the Labour Court within whose jurisdiction the cause of action to which the appeal relates arose.

8. PIRA was promulgated with the objective to regulate formation of trade unions and trade union activities, relations between employers and workmen and the avoidance and settlement of any differences or disputes arising between them along with ancillary matters. Section 1(2) & (3) thereof provide that PIRA extends to the Province of Punjab and applies to all persons employed in any establishment or industry with certain exceptions listed therein which are not relevant for the purpose of present adjudication. Section 33(1) of PIRA relates to redressal of individual grievances and allows a worker to bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent within three months of the day on which the cause of such grievance arises. Other provisions of Section 33 of PIRA deal with different procedural stages of the grievance and Sub-Section 6 thereof, in the case of non-redressal of the grievance, confers the right upon the worker to invoke the jurisdiction of the Labour Court, which in turn, is established under Section 44 of PIRA by the Provincial Government. Section 44(4) of PIRA lists the disputes which the Labour Court is empowered to hear and adjudicate. Importantly, Clause (c) thereof empowers the Labour Court to try offences under PIRA and such other offences under any other law as the Government may, by notification in the official Gazette, specify in this behalf. Similarly, Clause (f) thereof postulates that the Labour Court shall exercise and perform such other powers and functions as are or may be conferred upon or assigned to it by or under PIRA or any other law. (Emphasis supplied). PLAT is established under Section 47 of PIRA. It bestows appellate and revisional powers upon PLAT. Section 47(3) of PIRA with respect to appellate powers, allows PLAT to confirm, set aside, vary or modify the award, decision or sentence given or passed under Sections 33, 42 or 44 of PIRA and states that PLAT shall exercise all the powers conferred by PIRA to the Court, save as otherwise provided. Sections 47(5) to (7) of PIRA confer revisional powers upon PLAT

which being relevant to the controversy in hand are reproduced for ready reference as under:-

- (5) *The Tribunal may, on its own motion at any time, call for the record of any case or proceedings under the Act in which a Labour Court within its jurisdiction has passed an order for the purpose of satisfying itself as to the correctness, legality, or propriety of such order, and may pass such order in relation thereto as it thinks fit.*
- (6) *No order under sub-section (5) shall be passed revising or modifying any order adversely affecting any person without giving such person a reasonable opportunity of being heard.*
- (7) *The Tribunal shall follow such procedure as may be prescribed.”*

9. The conjunctive reading of the afore-noted provisions of law under the Wages Act and PIRA make it manifestly evident that the scope, canvas and area of operation of PIRA is much wider, broader and general in comparison to the Wages Act. The latter is limited to due determination of wages to certain classes of persons employed in industrial or commercial establishment, whereas, the persons employed in any establishment or industry which are not specifically excluded from the application of PIRA in the Province of the Punjab can bring host of multifarious grievances with respect to any right guaranteed or secured to a worker by or under any law before the Labour Court. Once the claim of wages of a person is determined by the Authority under Section 15 of the Wages Act, the appeal is preferred before the Labour Court which has been made available under Section 17 of the Wages Act by reference to the Ordinance, 1969 which empowered the Provincial Governments under Sections 35 and 38 thereof, to constitute and establish the Labour Court and PLAT. The Ordinance, 1969 was repealed through the Industrial Relations Ordinance, 2002 which in turn was repealed by the Industrial Relations Act, 2008. After the devolution of further subjects to the Provinces under the Constitution (Eighteenth Amendment) Act, 2010, the Industrial Relations Act, 2008 was repealed and the Industrial Relations Act, 2012 was promulgated at the Federal level. In the Province of the Punjab, the Punjab Industrial Relations Ordinance, 2010 was promulgated which was

repealed by PIRA as successor law. Acknowledging the afore-noted transition, Section 79(1)(c) of PIRA with the title of ‘repeal and savings’ states that notwithstanding the repeal of Industrial Relations Act, 2008, every reference to the repealed Industrial Relations Act, 2008 shall be construed as reference to the Industrial Relations Act, 2008. It was only in this context that in the case of Habib Bank Limited (supra), while deciding an objection qua availability of remedy of revision before PLAT against orders passed by the Labour Court, it was observed that firstly, after repeal of Ordinance, 1969, the said remedy is no more available and secondly, the bank authorities being trans-provincial establishment could not approach PLAT as its jurisdiction was ousted in terms of Section 57(2)(b) of the Industrial Relations Act, 2012 which has further been elaborated by the Apex Court of the country in case titled, “Pakistan Telecommunication Company Ltd. v. Member, NIRC and others” (**2014 SCMR 535**). Hence, the said case relied upon by the Petitioner is based on distinguishing facts in which the question of remedy of revision under Section 47(5) of PIRA with respect to an appeal decided under Section 17 of the Wages Act was not directly in issue.

10. Conversely, the case of Muhammad Hussain (supra) is squarely relevant to the issue in hand. In the said case, the Authority accepted the grievance of the applicant. An appeal against it before the Labour Court by the other side was accepted, whereafter, Revision Petition was decided by PLAT. The order of PLAT was further assailed through constitutional Petition before this Court and eventually, the matter went to the Supreme Court. The precise question before the Supreme Court was as to whether PLAT was competent to revise an order passed by the Labour Court under the Wages Act. It was importantly held in Paragraph Nos. 9 & 10 as under:-

“9. It may be mentioned that before the amendment of the Payment of Wages Act by Ordinance XII of 1974, an appeal from the order of the Authority lay before the District Court.

There was some doubt whether an order made by the District Court in appeal was final by virtue of the provisions of subsection (2) of the same section and for that reason it fell outside the revisional jurisdiction of the High Court under section 115, Code of Civil Procedure. This doubt was resolved by this Court in the case of S.M. Rahman and Co. v. Motabar PLD 1981 SC 282 wherein it was held that the order made by the District Court was revisable by the High Court under section 115, Code of Civil Procedure. The Court observed:

"The argument that there is a finality attaching to the order of the Authority under section 15 of the Act subject only to the appellate jurisdiction of the District Court under section 17(c) of the Act, does not advance the case any further, as such finality only means that the order of the Authority can be challenged only by way of appeal to the District Court and not otherwise; but there is no such limitation in respect of the appellate order made by the District Court as ordinarily constituted, in which capacity it is subordinate to the High Court."

By the amendments made by Ordinance XII of 1974 the forum of appeal was changed from the District Court to the Labour Court. As will be noticed the amendment has revived the controversy whether the decision made by the Labour Court as appellate forum is to be treated as final and beyond the reach of the Labour Appellate Tribunal which ordinarily exercises appellate and revisional jurisdiction over its decisions under subsection (3a) of section 38, Industrial Relations Ordinance. In our opinion, the provisions of clause (d) of section 35(5), Industrial Relations Ordinance should put an end to the controversy. It will appear from this clause that the performance of functions under other laws is a part of the normal duties of a Labour Court. That being so, even when it exercises jurisdiction under other laws it does not act as a special forum outside the ambit of the Industrial Relations Ordinance, but, on the other hand, it is performing a function specifically provided for by the Ordinance. It is, therefore, difficult to subscribe to the view taken by the learned Single Judge in the Lahore High Court that the exercise of appellate jurisdiction by the Labour Court under the Payment of Wages Act is not a proceeding under the Ordinance. Consequently, the main premises upon which he has proceeded to hold against the competence of the Labour Appellate Tribunal to

exercise revisional jurisdiction is erroneous. His view that the Payment of Wages Act and Industrial Relations Ordinance envisage only two fora for the redress of the grievance of the workmen is founded only on an assumption without any firm basis. As noticed earlier, prior to the amendment of section 17, Payment of Wages Act, the appeal from the order of the Authority lay before the District Court. Despite the provisions of section 17(2) of the Act which clothed the order of the appellate Court with finality this Court, as pointed out above, in S.M. Rahman & Co., ibid, held that the said order was revisable under section 115, Code of Civil Procedure, by the High Court. The rules framed under the Payment of Wages Act for institution and disposal of appeal do not lay down any special procedure which may be regarded as indicative of the intention to constitute the Labour Court as a forum of a special nature.

10. For the reasons stated above we would hold that the order made by the Labour Appellate Tribunal in its revisional jurisdiction was within its competence and the High Court erred in declaring it to be without lawful authority and of no legal effect.”

11. The same view was taken by this Court in case of Jang Group of Newspapers Limited (supra). Therefore, there is no ambiguity that the Ordinance, 1969 as referred to in Section 17 of the Wages Act relates to PIRA as its successor law. Since the Labour Court constituted under Section 44 of PIRA is empowered to exercise and perform such other powers and functions as are or may be conferred upon or assigned to it by PIRA or any other law such as the Wages Act, therefore, the Labour Court exercises jurisdiction over disputes beyond the purview of PIRA. As such, the Labour Court under the command of Section 17 of the Wages Act is competent to hear appeals against the Authority constituted under Section 15 of the Wages Act. Similarly, PLAT constituted under Section 47 of PIRA exercises both appellate and revisional powers with respect to orders passed by the Labour Court subject to various provisions of PIRA. Section 47(5) of PIRA vests revisional power upon PLAT with respect to ‘any case or proceedings’ under PIRA regarding an ‘order’ which includes a ‘final order’ or ‘final judgment’ and may pass such order in relation thereto, as it thinks fit. As such, there is no cavil to the

proposition that PLAT is vested with revisional powers with respect to an order passed by the Labour Court and the same includes such orders which the Labour Court may pass under any other law to which its jurisdiction extends such as its orders passed in appeal under Section 17 of the Wages Act.

12. This leads to the next question regarding the nature of revisional jurisdiction of PLAT. Bare perusal of Sections 47(5), (6) & (7) of PIRA reveal that revisional jurisdiction of PLAT is inherently *suo motu*. However, where PLAT proceeds under its revisional jurisdiction, it is required to issue notice and hear the other side in the event of any adverse order against it and follow such procedure as may be ‘prescribed’. The Supreme Court in case titled, “Ghulam Qadir and others v. Sh. Abdul Wadood and others” (**PLD 2016 Supreme Court 712**) dilated upon two aspects of revisional jurisdiction with respect to Section 115 of the Code of Civil Procedure, 1908 (the “CPC”). It opined that one aspect of revisional jurisdiction is when the revisional Court itself takes cognizance of a matter while exercising its *suo motu* powers while the second aspect is when a person brings the matter to the notice of the revisional Court. This bifurcation is significant as in the first case, the matter is only between the revisional Court and the subordinate Court, whereas, in the second instance, it is essentially an adversarial litigation, although the Court is still acting in its supervisory jurisdiction. In case titled, “Khan Bahadur Khan v. Khan Malook Khan” (**PLD 2022 Supreme Court 482**), the Supreme Court further remarked that the Court in terms of Section 115 of the CPC in exercise of its *suo motu* jurisdiction can adjudicate a revision petition even after the period of limitation because exercise of revisional jurisdiction in any form is discretionary. As such, the Court can always exercise *suo motu* jurisdiction if the conditions for its exercise are satisfied because the Court cannot be robbed of its *suo motu* jurisdiction simply because the petition invoking such jurisdiction is filed beyond the period of limitation. In such an eventuality, the petition can validly be treated as an information laid before the Court even if it suffers from

procedural lapses or loopholes as revisional jurisdiction is inherently and pre-eminently corrective and supervisory. The Supreme Court in case titled, “Messrs Norwich Union Fire Insurance Society Limited v. Muhammad Javed Iqbal and another” (**1986 SCMR 1071**) precisely examined the revisional jurisdiction vested upon PLAT in terms of Section 38(3-a) of the Ordinance, 1969 which is *pari materia* to Sections 47(5)(6) & (7) of PIRA. It was importantly observed that no principle of law or any precedent was quoted to show that *suo motu* statutory power cannot be invoked by PLAT on the application of a party to proceedings before the Labour Court. As such, it was held that there would not be any bar on PLAT to exercise its revisional jurisdiction, if the requisite information comes before it from any source including an application made by any party. This is for the reason that revisional jurisdiction vested with PLAT is supervisory in nature in order to enable PLAT placed at the apex of hierarchy of Tribunals setup by the Ordinance, 1969 to examine the legality or propriety of proceedings taken or an order passed by the Labour Court.

13. Therefore, it follows from the above that there is no bar upon any party in laying the information before PLAT in the form of a Revision Petition not as a matter of right but in the discretion of PLAT which in turn may decide to assume revisional jurisdiction depending upon the facts and circumstances of each case warranting exercise or otherwise of revisional jurisdiction. Accordingly, if PLAT exercises its revisional powers, as it did in the titled and connected Petitions, PLAT is acting within its lawful revisional jurisdiction to examine the correctness, legality or propriety of any order passed by the Labour Court. Therefore, it is a fallacy to hold that PLAT does not have revisional power with respect to an order passed by the Labour Court in appeal preferred under Section 17 of the Wages Act.

14. The impugned Judgments of PLAT have been individually examined on the basis of evidence on record with reference to the respective claims of the Respondents. The Respondents were shown the door without assigning any reason. Primarily, the service period of the Respondents is in

dispute. PLAT in exercise of its revisional jurisdiction while scrutinizing the evidence on record, came to the conclusion that computerized service record of the Respondents was not produced by the Petitioner before the Authority; the computerized service certificates tendered by the Respondents are genuine as the same had not been disproved by the Petitioner; and accordingly, specific respective claims of the Respondents with respect to notice pay, gratuity, annual leaves, bonus and wage for the month of August, 2015 were independently and separately scrutinized to determine the amount due based upon length of service of the Respondents corresponding to their respective computerized service certificates. Consequently, the Respondents in the titled and connected Petitions No. 40700, 40702, 40707, 40710 & 40713 of 2023 were held entitled to receive Rs. 495,078; Rs. 75,016; Rs. 143,428; Rs. 171,164; Rs. 655,434; and Rs. 289,076, respectively. The mere signing of unilaterally prepared ‘Final Settlement Forms’ by the Respondents cannot be regarded as final settlements in the absence of their free consent. The Respondents promptly agitated their grievances and are still pursuing the same. As such, the mere receipt of partial amounts based upon calculations of the Petitioner does not place any bar upon the Respondents to invoke the law for redressal of their grievances. Hence, there is no illegality or infirmity or jurisdictional defect in the impugned Judgments.

15. In view of the above, the titled and connected Petitions are devoid of any merit and the same are **dismissed** with costs of Rs. 100,000/- each. The costs shall be paid by the Petitioner to the Respondents within 30 days from the date of this Judgment, failing which, the Respondents shall be entitled to recover the same through the Authority.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

Announced in open Court on **21.12.2023.**

Judge