

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.3171/2017

Mohammad Shafiq

versus

Assistant Commissioner (City), Islamabad, etc.

Petitioner by: Raja Shiraz Ahmad Janjua, Advocate.

Respondent No.2 by: Mr. Jahangir Khan Jadoon, Advocate.

Date of Hearing: 27.06.2019.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner impugns order dated 12.01.2017 of the Assistant Commissioner (City)/respondent No.1, whereby petition under Section 15 of the Payment of Wages Act, 1936 filed by petitioner was dismissed.

2. Brief facts referred in the instant writ petition are that petitioner joined M/s Zims Security (Pvt.) Ltd./respondent No.2 as Security Guard on 01.01.2004 in Saudi Arabia Embassy on mutual agreement with Zims Security on salary of \$135, which later on increased to \$200 on 12.08.2008. After change of management of the company of respondent No.2, dispute pertaining to payment of increased salary arose between the petitioner and respondent No.2 and consequently the petitioner was restrained to file application under Section 15 of the Payment of Wages Act, 1936, which was dismissed by respondent No.1 vide impugned order dated 12.01.2017. Hence, the instant writ petition.

3. Learned counsel for petitioner contends that the learned Assistant Commissioner (City), Islamabad ignored the facts that petitioner was fired from service upon filing application under Section 15 of the Payment of Wages Act, 1936; that the learned Assistant Commissioner

(City), Islamabad from the very first day did not proceed with the matter seriously, rather its Reader was handling the matter as reflected from the order sheet; that the impugned order suffers from glaring irregularities and if the same is not set-aside, the petitioner will suffer an irreparable loss, therefore, the same may be set-aside.

4. Conversely, learned counsel for respondent No.2 contended that petitioner's attitude in performance of his duties was negligent, for which a show cause notice was also issued to him and eventually his services were terminated by the Saudi Embassy due to lapse in duty on 21.05.2008; that despite the said termination, respondent No.2 company also accommodated the petitioner against monthly salary of Rs.6,000/- with the consent of petitioner; that the petitioner filed application under Section 15 of the Payment of Wages Act, 1936 with malafide intention, which was validly dismissed by learned Assistant Commissioner (City), Islamabad, therefore, the instant writ petition is liable to be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that petitioner Muhammad Shafiq was employee of M/s Zims Security (Pvt.) Limited/ respondent No.2, who was initially appointed in the year 2004 against salary of US \$135 per month, however he has not appended any such proof, but the said fact was admitted by the other side during the proceedings. Petitioner filed application in terms of Section 15 of the Payment of Wages Act, 1936 with the claim that his salary of US \$200 for 72 months is pending alongwith interest on bank rate w.e.f. 12.08.2008.

7. As per record, petition under the Payment of Wages Act, 1936 was filed on 27.05.2013 and as per contents of petition actual salary of petitioner was US \$135 and his last drawn salary till 12.08.2008 was US \$200 per month. Respondent No.2 filed written reply to the said application and categorically denied the claim of petitioner with the plea that services of petitioner were not terminated, rather petitioner himself left the job when 08 show cause notices were issued to him, whereas nothing is due against the Company.

8. Payment of Wages Authority framed issues and recorded evidence, whereas during the course of evidence, petitioner appeared and submitted his affidavit before the Authority and reiterated his stance. During the cross-examination, petitioner did not submit any documentary evidence regarding his salary of US \$135 on record, however he acknowledged agreement referred as Ex.R/1-2 and undertaking including its terms. Petitioner also acknowledged his date of leaving the job as 21.07.2013.

9. Respondent No.2 also submitted its affidavit through Ijaz Ahmad Kiani, General Manager (North) and reiterated the stance that petitioner was given show cause notices for his absence from duty and in some show cause notices petitioner was allegedly charged with misconduct of sleeping during duty hours on the post. All the relevant show cause notices, including different warnings, were placed on record. Salary record was also produced by respondents' side, even office order dated 21.05.2008 confirms that petitioner was previously hired against US \$135 salary and when respondent No.2 was unable to pay such salary,

petitioner was rehired on contract @ Rs.6000/- per month. Said document was acknowledged by the petitioner during the cross examination. Petitioner has failed to render any explanation as to why he has not claimed his salary w.e.f. 2008 till 27.05.2013, when petition under the Payment of Wages Act, 1936 was filed. The delay referred on record requires plausible explanation which is lacking in this case. I have gone through section 15 of the Payment of Wages Act, 1936 which deals with the claim of wages, gratuity and provident fund, whereas in the present case, petitioner is claiming salary of 72 months and as such, it is a case of petitioner that he was not being paid for his employment w.e.f. 2008 till 2013, which is not believable.

10. The time barred claim has not been explained by the petitioner, whereas Section 15(2) of the Payment of Wages Act, 1936 provides 03 years time from the date on which deduction from the wages was made or from the date on which the payment of wages was due to be made, however such period can be extended when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period. However, no such application is available in this case, therefore, main application of the petitioner is apparently time barred. Similarly, in a case reported as 2019 PLC (CS) 541 Islamabad (Daily Khabrain and others vs. Iqbal Mustafa and others), the concept of limitation has been explained in the following manner.

"17. The case law, relied upon by the appellants, is also instructive. It has been consistently held by the august Apex Court that Limitation Act, 1908 is a procedural law. Reliance is placed on cases reported as 'S.M. Junaid v. President of Pakistan' (PLD 1981 Supreme Court 12) and 'The

Commissioner of Income Tax, Central Zone-B, Karachi v. M.S. Asbestos Cement Industries Limited, Karachi (1993 SCMR 1276). Likewise, in case reported as 'Allah Dino and another v. Muhammad Shah and others' (2001 SCMR 286), the august Apex Court observed that where the statute, governing the proceedings, did not prescribe period of limitation, the proceedings instituted therein, would be controlled by Limitation Act, 1908 as a whole.

18. *In light of referred decisions of the Hon'ble Supreme Court of Pakistan, since no period of limitation is prescribed, either under the Act or the Rules framed thereunder, Limitation Act, 1908, would be applicable. The Tribunal is not a Court but a quasi judicial forum for implementation of Wage Board Award. To leave the proceedings before the Tribunal, without applicability of law of limitation, would be unjust and inappropriate, as that would provide license for institution of state claims. It is settled law that the effect of law of limitation is to bar remedy but the right is not extinguished. The proceedings before the Tribunal are not in the nature of a suit but are instituted through application as is borne out from the examination of Rule 16 of the Rules and the residual article for applications would apply i.e. Article 181 of the 1st Schedule to the Limitation Act, 1908, where the period of limitation is three years from the date when the cause accrued.*

19. *As noted above, 7th Wage Board Award came into existence in October, 2001 hence was to be implemented from the said date. All the newspaper employees, working in the newspaper establishments, seek recovery of wages/salaries if the wages are not paid to them within three years when the same were due. However, where default is recurring i.e. every month or the period after which the salary was to be paid, would give rise to new cause of action hence period of limitation of three years would be there-from."*

Even otherwise, petitioner has acknowledged the terms on record and it is not his case that he was not paid the agreed amount @ Rs.6,000/- or Rs.8,000/- referred in terms of affidavit/undertaking.

11. I have gone through the impugned order of the Payment of Wages Authority, which has rightly been passed while considering the entire evidence on the basis of clear admission made by the petitioner in his cross examination. Petitioner has failed to prove the case before the Authority on merits, even otherwise, application is time barred, therefore, the instant writ petition is not made out, the same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYAN)
JUDGE

Announced in open Court on: 22 Aug 2019.

JUDGE

Khalid Z.