

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT)

C.R. No.408/2019

National Highway Authority through its Chairman
versus
Irshad Ahmad

Petitioner by: Mr. Iftikhar Ahmad Bajwa, Advocate.

Respondent by: Raja Mazhar Ali, Advocate.

Date of Decision: 21.01.2021.

MOHSIN AKHTAR KAYANI, J: Through the instant Civil Revision petition, the petitioner has called in question the judgment and decree dated 17.03.2018, passed by the learned Civil Judge 1st Class, Islamabad, whereby suit filed by respondent / defendant was partially decreed. The has also assailed the judgment and decree dated 17.04.2019, passed by learned Additional District Judge, Islamabad, whereby the judgment and decree, passed by the learned trial Court, was upheld and appeal filed by the petitioner was dismissed.

2. Succinctly, Irshad Ahmad (***Respondent***) had been appointed in National Highway Authority (***NHA / Petitioner***) as Deputy Director (Admin), initially on contract basis for two years on 01.02.2007. On expiry of the contract period on 31.01.2009, the respondent was directed by the NHA to continue with his work as the process of extension in his contract for another two years has been initiated, however no salary was released in favour of respondent after elapse of the first contract period, which compelled the respondent to file a suit for recovery of Rs.2,319,873/- on account of unpaid salaries and other perks. The suit was partially decreed

vide impugned judgment and decree, dated 17.03.2018, while the petitioner feeling aggrieved thereof preferred an appeal, which was dismissed vide impugned judgment and decree, dated 17.04.2019. Hence, instant civil revision petition.

3. Learned counsel for appellant NHA contends that the respondent was appointed on contract basis for two years and on expiry of such period, issuance of a separate termination letter was not required; that the onus was on the respondent to prove that he had worked beyond the contract period, as such, he did not discharge such onus through any cogent evidence, even otherwise, both the Courts below have not appreciated the facts and circumstances of the case in accordance with law, rather resorted to passing of the impugned judgments in a slipshod manner, which are required to be set-aside.

4. Conversely, learned counsel for respondent while taking shelter of the impugned judgment and decree passed by the learned trial Court contends that the NHA directed the respondent to keep rendering the services as the process of extension in his contract period is underway, as such, the learned trial Court has rightly appreciated the facts and circumstances of the case in a proper manner and partially decreed the suit filed by the respondent, per se, the first Appellate Court while dismissing the appeal preferred by the petitioner has rightly observed that the petitioner has failed to point out any illegality in the decree awarded by the learned trial Court.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner NHA is mainly aggrieved with the concurrent findings of the learned Trial Court as well

as of the learned first Appellate Court, passed vide impugned judgments and decrees, dated 17.03.2018 and 17.04.2019, respectively, whereby the suit filed by the respondent Irshad Ahmad for recovery of Rs.2,319,873/- along with interest at prevalent bank rate has partially been decreed to the extent of salaries w.e.f. 08.08.2009 to 21.02.2010 along with other benefits under the employment contract.

7. The primary stance of the NHA, as highlighted by representative of NHA i.e. DW-1 Abid Hussain Turi, is that the respondent was appointed as Deputy Director (Admin) on contract basis for two years on 01.02.2007, as referred in Exh.D2, and after expiry of his contract in the year 2009, the matter was referred to Executive Board of NHA in 179th Meeting, but the contract was not extended for the PERs "Being Not Good" as referred in the Minutes of Meeting (Exh.D3). Feeling aggrieved thereof, the respondent filed a writ petition in the Hon'ble Lahore High Court, Rawalpindi Bench, which was disposed of on 18.04.2009 (Exh.D4), whereafter the case of respondent was placed again in 179th Executive Board Meeting for review, but again the contract period was not extended, though complete dues of services had been paid to the respondent.

8. During the course of cross examination, DW-1 Abid Hussain Turi has acknowledged that the order dated 10.12.2009, passed in W.P. No.3520/2009, has also been exhibited as Exh.P25, whereby it was ordered to release the service benefits, including salaries, within the period of one week. He also conceded that the salaries were released up to 08.08.2009. He also acknowledged that respondent assailed the office order dated 18.12.2009 before the Hon'ble High Court through W.P. No.86/2010, whereby the Hon'ble High Court has suspended the order passed by the

NHA authorities, as referred in Exh.P26. He also acknowledged that 179th Executive Board Meeting has authorized the Chairman NHA to afford personal hearing to the respondent. He also acknowledged that by virtue of order, dated 12.01.2010, passed in W.P. No.86/2010, the NHA has been restrained to take any adverse action against the respondent. There is no denial that in 189th Executive Board Meeting, dated 24.04.2010 (Exh.D22), the case of respondent for extension has been placed before the Executive Board. DW-1 had been confronted with regard to dispatch / transmission of letter dated 29.07.2010 (Exh.D27) to the he respondent, who had not produced any record to substantiate their plea. He also acknowledged that by virtue of W.P. No.3520/2009, the entire dues of salaries and other amounts have been released on the order of the Court. DW-1 also acknowledged that:

یہ درست ہے کہ مدعی کو عرصہ 08-08-2009 سے 17-08-2010 کے درمیانی عرصے کی ملازمت کے واجبات
نہ دیے گئے۔

9. While considering the above admitted facts on record, it can be ascertained that factums relating to the respondent's appointment, his legal actions and payment of salaries on the direction of the Court have been acknowledged, as such, the matter was referred to the Executive Board of NHA for extension in the contract period of respondent, but the period was not extended, which compelled the respondent to challenge the said order of NHA before the Hon'ble High Court, as a result whereof, it was directed that till final decision of the Executive Board the respondent shall be deemed to be considered on job, though his claim for release of

salaries along with other perks and privileges was partially decreed to the extent of four months only.

10. I have confronted learned counsel for petitioner to demonstrate from record as to whether they have taken the stance before the Hon'ble High Court in the proceedings initiated by the respondent that since the respondent was not performing his duties diligently, therefore, his salaries were stopped, as such, learned counsel for petitioner answered in negative, hence, there is nothing in favour of the petitioner to consider their plea that respondent was not entitled for the salaries granted by the learned Trial Court as the NHA had not taken such plea before the Hon'ble High Court at the relevant time.

11. The respondent has discharged his onus to prove his claim in terms of Qanun-e-Shahadat Order, 1984 and as such, there is no illegality or irregularity committed by the learned Trial Court or by the learned first Appellate Court while passing the impugned judgments and decrees as both the Courts below have rightly appreciated the evidence and findings recorded on Issue No.1, which could not be interfered with at this stage in any manner.

12. It is trite law that when question of facts has been concurred by both the Courts below, the High Court in revisional jurisdiction is not competent to undertake its own appraisal of evidence in the face of concurrent findings of both the Courts below, in absence of any jurisdictional error or material irregularity, as such, the revisional powers under Section 115 CPC are primarily meant for correcting errors made by the subordinate courts in exercise of their jurisdiction. Reliance is placed upon 2004 CLC 1409 Peshawar (Rehmatullah Khan v. Mughal Shah).

Similarly, it is also settled position of law that findings on question of fact or law, however, erroneous the same may be, recorded by any court of competent jurisdiction, cannot be interfered with by the High Court in its revisional jurisdiction under Section 115 CPC. Reliance is placed upon 2010 SCMR 817 (Moulvi Muhammad Azeem v. Alhaj Mehmood Khan Bangash, etc.), 2010 SCMR 5 (Muhammad Idrees v. Muhammad Pervaiz, etc.) and 2011 SCMR 758 (Hazara, etc. v. Muhammad Yar, etc.).

13. By virtue of the above referred case law and the appreciation recorded by both the Courts below in the impugned judgments, neither any illegality has been observed therein nor has been pointed out by the petitioner in any manner, rather a factual ground has been raised, which was not taken earlier in the first round before the constitutional court, hence, raising of such plea at this stage is not permissible.

14. In view of above, the instant Civil Revision petition is misconceived and same is hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.