**SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Gulzar Ahmed
Mr. Justice Maqbool Baqar
Mr. Justice Faisal Arab
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sajjad Ali Shah

**C.As.No.1076 to 1089/2019**

*[Against the judgment dated 20.02.2018, passed by the High Court of Balochistan, Quetta in W.Ps.No.288-292, 296-297 of 2012 ]*

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| ***Martin Dow Marker Ltd., Quetta.*** | *(in CAs No.1076-1082)* |
| ***Asadullah Khan.*** | *(in CA No.1083)* |
| ***Naeem Khan.*** | *(in CA No.1084)* |
| ***Muhammad Shamrez Khan.*** | *(in CA No.1085)* |
| ***Noor ur Rehman.*** | *(in CA No.1086)* |
| ***Rizwan Ali Bukhari.*** | *(in CA No.1087)* |
| ***Muhammad Aslam.*** | *(in CA No.1088)* |
| ***Banaras Khan.*** | *(in CA No.1089)* |
| | *…Appellant (s)* |
| ***Versus*** | |
| ***Asadullah Khan & others.*** | *(in CA No.1076)* |
| ***Muhammad Aslam & others.*** | *(in CA No.1077)* |
| ***Banaras Khan & others.*** | *(in CA No.1078)* |
| ***Noor ur Rehman & others.*** | *(in CA No.1079)* |
| ***Muhammad Shamrez & others.*** | *(in CA No.1080)* |
| ***Rizwan Ali Bukhari & others.*** | *(in CA No.1081)* |
| ***Naeem Khan & others.*** | *(in CA No.1082)* |
| ***Merck (Private Ltd.), Quetta & others.*** | *(in CAs No.1083-1089)* |
| | *…Respondent(s)* |

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| For the Appellant (s) (in CAs No.1076-1082) and For the Respondent (s) (in CAs No.1083-1089) | **:** | Mr. Shahid Anwar Bajwa, ASC<br>Mr. Habib ur Rehman, Head of Admn, Martin Dow. |
| For the Respondent (s) (in CAs No.1076-1082) and For the Appellant (s) (in CAs No.1083-1089) | **:** | Mr. Muhammad Sajid Khan, ASC<br>Mr. Ayaz Khan Swati, Addl.A.G. Balochistan |
| Date of Hearing | **:** | 05.12.2019 |

**J U D G M E N T**

**GULZAR AHMED, J. —** The private respondents in C.As.1076 to 1082 of 2019 and appellants in C.As.1083 to 1089 of

2019 **(the respondents)** were employed by the Martin Dow Marker Limited/appellant-company in C.As.1076 to 1082 of 2019 and Merck Private Ltd. (whose operations were acquired by Martin Dow Marker Limited)/respondent-company in C.As.1083 to 1089 of 2019 **(the appellant)**. Some of the respondents were employed directly as officers and others were promoted as officers. Vide letter dated 22.05.2009, the services of all the respondents were terminated on the ground that their services were no longer required by the appellant-company. The respondents challenged the termination orders by filing grievance petitions before the Labour Court. Such grievance petitions were allowed by the Labour Court vide judgment dated 29.06.2011 with the direction to the appellant to reinstate the respondents in service with full back benefits. The appellant filed appeals before the Labour Appellate Tribunal, which were dismissed vide judgment dated 17.04.2012. Thereafter, the appellant filed Constitution Petitions before the High Court of Balochistan at Quetta. The High Court, through the impugned judgment dated 20.02.2018, disposed of these petitions, maintaining the relief of reinstatement in service of the respondents as granted by the Labour Court and upheld by the Labour Appellate Tribunal but disallowed back benefits to the respondents. The appellant as well as the respondents have challenged the said judgment of the High Court by filing separate appeals before this Court.

2. Learned counsel for the appellant has contended that the respondents were not workmen but were appointed or

promoted as officers. He states that they were being paid the salaries of officers and that the work assigned to them was also that of officers. Additionally, the respondents were not members of the workers' union and those who were promoted as officers, had their names removed from the membership of the workers' union. He has contended that all the forums below, have in this regard misread the evidence on the record and have based their findings merely on oral assertions made by the respondents and not on any written material. He has further contended, that the respondents' conduct throughout the proceedings has been aimed at keeping the appellant entangled in the litigation without demonstrating their *bona fides* to work as employees, and that this is well reflected by the fact that they are using the Court and its proceedings as a tool for their enrichment without doing any work whatsoever for the appellant. He has referred to a letter dated 26.02.2018, issued by the appellant to each of the respondents where all the respondents were reinstated in service and asked to report for duty, however, none of the respondents replied to such letter nor reported for duty uptill now, rather oral objection of the respondents heard by the appellant was that they should be reinstated as officers and not as workmen, despite the fact that they were offered salary of officers, similar to the one they were drawing at the time of their termination or rather more than that. Learned counsel has further contended that the respondents have conducted themselves in such a manner, where their very approach appears to be not *bona fide,* rather it appears that they are pursuing these cases with unclean hands, and hence, equity

does not entitle them to any relief; more so, the relief of reinstatement granted to the respondents by the forums below ought to be refused to them.

3. On the other hand, learned counsel appearing for the respondents has contended that so far as the question, as to whether the respondents were workmen or not, is concerned, the same has been established before the Labour Court through evidence and the Labour Court has accepted such position of the respondents and declared them to be workmen. Such finding of the Labour Court was upheld by the Labour Appellate Tribunal, so also by the High Court and now at this stage, such concurrent finding of the three forums below cannot be interfered with by this Court.

4. Learned counsel for the respondents was confronted with the letter dated 26.02.2018, sent by the appellant, whereby the respondents were reinstated in service, he admitted that such letter was issued by the appellant to all the respondents but the respondents did not accept the same for the reason that they were being reinstated as workmen and not as officers, which was the job they were undertaking at the time of their termination.

5. We have considered the submissions of the learned counsel for the parties and have also gone through the record of the case.

6. The question about respondents being workmen or not need not detain us for long for the reason that such question has

already been considered by the Labour Court so also by the Labour Appellate Tribunal and there is concurrent finding of fact that the respondents are workmen and such concurrent finding has also been upheld by the High Court by the impugned judgment. For displacing such concurrent finding of fact, upheld by the High Court exercising writ jurisdiction under Article 199 of the Constitution, learned counsel for the appellant was required to show and establish misreading of evidence and wrongful exercise of jurisdiction by the forums below in holding that the respondents were workmen. Incidentally, no evidence from record was shown to us, which may lend support to the submissions of the learned counsel for the appellant that the respondents were not workmen. Thus, we are not persuaded to disturb the finding of the forums below on this question.

7. As regards further submission of the learned counsel for the appellant that the respondents were issued letter dated 26.02.2018 by the appellant by which the respondents were reinstated in service by the appellant but none of the respondents have reported for duty uptill now needs some serious consideration.

8. After having succeeded in the three forums below, the respondents were issued respective letter of reinstatement in service dated 26.02.2018 by the appellant, a copy whereof is available at page 191 of the record of Civil Appeal No.1076 of 2019. The learned counsel for the respondents admitted issuance of this letter of reinstatement to all the respondents and also admitted

that pursuant to this letter none of the respondents have joined duty with the appellant. Learned counsel for the respondents was asked to give reasons as to why the respondents have not complied with the order of reinstatement contained in the letter dated 26.02.2018, he stated that the respondents were employed as officers, however, by this letter of reinstatement they were not given employment as officers but that of a workman. Learned counsel for the respondents was also asked whether any of the remunerations and dues were reduced by the appellant by this letter of reinstatement dated 26.02.2018, his reply was in negative. This scenario, before this Court, obviously, created a serious issue regarding the *bona fide* of the respondents. The very *bona fide* of the respondents in pursuing their remedies before the Courts of law seeking their reinstatement in service of the appellant, becomes doubtful, in that, the contention of the learned counsel for the appellant that the respondents are pursuing these cases only for obtaining monetary benefits and have no intention, desire or will, to work as workmen in the establishment of the appellant, seems convincing, more so, when it was not seriously disputed by learned counsel for the respondents.

9. This development before us, led us to take a step back and ponder on the very *bona fide* of the respondents in pursuing these cases before the Courts of law, for that, through letter dated 26.02.2018, they were reinstated but admittedly till date, none of them have joined duty with the appellant. We have asked the learned counsel for the respondents to show that any written

communication by the respondents to the appellant in response to the letter of reinstatement dated 26.02.2018 was made, he replied in the negative, meaning thereby that the respondents have not objected to the letter of reinstatement. Non objection to the letter of reinstatement and also non reporting for duty reflect gravely on the part of the respondents.

10. We may note that the appellant in the letter of reinstatement has given two days' time to the respondents to join duty, failing which they will be marked absent and appropriate action will be taken. It is obvious that neither the respondents reported for duty nor action was taken by the appellant. We have tried to balance this very aspect of the matter and have resolved the same by reasoning that the respondents had no reason or justification at all nor any was shown to us for their none reporting for duty on their reinstatement in service by letter dated 26.02.2018.

11. On the other hand, there being three judgments of the forums below in favour of the respondents on the point of reinstatement and appellant having filed these appeals, which being pending, the appellant in deference did not take action against the respondents for the none reporting for duty, rather placed the copy of letter of reinstatement on record of their appeals and left the matter to be dealt with by this Court, which in our view, was the fair and correct conduct of the appellant. Further, if the appellant had taken action against the respondents, multiple

litigation would have arisen and there would be no end to the dispute.

12. There is no denial of the fact that under Standing Order 15 of the Schedule to the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, non-obeying of a reasonable order of the employer by the employee and remaining absent from duty for more than 10 days constitute misconduct on the part of an employee, the penalty for which includes dismissal from service. Here in this case, the respondents have not obeyed the order of reinstatement of their employer, the appellant, and have also remained absent from duty for more than one year and nine months and the respondents have given no reason whatsoever for not complying with the letter of reinstatement in service dated 26.02.2018, except an oral assertion that they were offered reinstatement as workmen and not as officers. This assertion, on the part of the respondents itself is contradictory, for that, they have themselves approached the Labour Court claiming to be workmen and the Labour Court and the Labour Appellate Tribunal having given concurrent finding of fact that the respondents were workmen and such concurrent finding of fact having being upheld by the High Court vide the impugned judgment, it was altogether unbecoming on the part of the respondents to claim their reinstatement as officers and such desire of the respondents, by no means, can be considered to be a reasonable one. This Court under Article 187(1) of the Constitution has the power to issue such directions, orders or decrees, as may be necessary for doing

complete justice and in doing so, the Court is also empowered to look at the changed circumstances of the case as it has appeared before it and also to mould relief as is just and proper for meeting the ends of justice. Reference in this regard is made to the case of *Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan and 9 others* [PLD 2017 SC 265]; *Muhammad Zahid v. Dr. Muhammad Ali* [PLD 2014 SC 488]; *DOSSANI Travels (Pvt) Ltd. & others v. M/s Travels Shop (Pvt) Ltd. & others* [PLD 2014 SC 1]; *Mst. Amatul Begum v. Muhammad Ibrahim Shaikh* [2004 SCMR 1934]; and *Imam Bakhsh & 2 others v. Allah Wasaya & 2 others* [2002 SCMR 1985].

13. We may note that in exercising the jurisdiction to do complete justice and to issue directions, orders or decrees, as may be necessary, this Court is not bound by any procedural technicality when a glaring fact is very much established on the record and even stand admitted. Reference in this regard is made to the case of *Muhammad Shafi v. Muhammad Hussain* [2001 SCMR 827]; *Gul Usman & 2 others v. Mst. Ahmero & 11 others* [2000 SCMR 866]; and *S.A.M. Wahidi v. Federation of Pakistan through Secretary Finance & others* [1999 SCMR 1904].

14. This Court does not wish to go on the premise that the respondents have committed misconduct of non-obedience of reasonable order of their employer or have remained absent from duty for more than ten days, in terms of Standing Order 15 *ibid*, but takes a simplistic view of the matter, as has unfolded before it that of respondents own making, showing no regard to the orders

of the three forums below, which they have obtained on their own grievance petitions, by which they were reinstated in service and such reinstatement was granted by the appellant. Thus, it appears that the respondents themselves abandoned the relief they had obtained from the forums below. Nothing was shown to us by the learned counsel for the respondents that the findings of the High Court, not allowing the back benefits to the respondents, could be found to be suffering from any misreading of the record or wrongful exercise of jurisdiction.

15. In this view of the matter, the appeals filed by the respondents *(Civil Appeals No.1083 to 1089 of 2019)*, are dismissed.

16. So far as the appeals filed by the appellant are concerned, the same have been filed challenging the impugned judgment, whereby the respondents have been granted reinstatement in service only. It is already observed above that the respondents have themselves abandoned the relief of reinstatement in service granted to them as is established from the fact that as back as on 26.02.2018, they were given letter of reinstatement in service by the appellant, which reinstatement in service was not accepted by the respondents as they remained absent from duty. During the course of hearing before the Court, the learned counsel for the respondents did not at all mention that the respondents are willing and prepared to report for duty and work in the establishment of the appellant. Thus, where the respondents themselves are not willing and prepared to work in the

establishment of the appellant and this conduct of the respondents is apparently, based upon the fact that they are not going to get any monetary benefit pursuant to the impugned judgment and also the letter of reinstatement, for that, the impugned judgment has not allowed back benefits to them and such also stands refused by this Court. The respondents seem to be content and satisfied with their current situation, whatever it may be. In this view of the matter, the only conclusion which could be arrived at is none other than that of allowing the appeals filed by the appellant. Consequently, the appeals filed by the appellant *(Civil Appeals No.* 1076 to 1082 *of 2019)* are allowed and the impugned judgment dated 20.02.2018 passed by the learned Division Bench of the High Court allowing the reinstatement in service of the respondents is set aside. No order as to costs.

**JUDGE**

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Larger Bench-II
ISLAMABAD
05.12.2019
Approved for reporting.
Rabbani*/