

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present**

Justice Muhammad Ali Mazhar  
Justice Syed Hasan Azhar Rizvi  
Justice Aqeel Ahmed Abbasi

**CPLA. No. 451-K of 2023**

On appeal against the Judgment,  
dated 31.01.2023 passed by the  
High Court of Sindh, Karachi in  
Const.P.No.D-1134/2022

M/s Trio Industries (Pvt) Limited *...Petitioner(s)*

**Versus**

Babu Sher & others *...Respondent(s)*

For the Petitioner : Muhammad Iqbal Chaudhry,  
ASC/AOR

For the Respondent(s) : Mr. Fazal Mannan Bacha, AHC  
with R-1 (Babu Sher)

Mr. Sibtain Mehmood, Addl. A.G.  
Sindh (on Court's call)

Date of Hearing : 02.06.2025

**Muhammad Ali Mazhar, J. –** This Civil Petition for leave to appeal is directed against the judgment dated 31.01.2023, passed by the learned Division Bench of the High Court of Sindh, Karachi, in C.P. No.D-1134/2022.

2. The transitory facts of the case are that the petitioner was engaged in the business of printing of ceramic tiles on finished products manufactured by other ceramic tiles production companies. Due to the advancement of technology, the process of printing tiles has become an integral part of the manufacturing process, hence the petitioner's enterprise was no more a viable venture. On 02.03.2017, the petitioner applied to the Government of Sindh under Standing Order 15 of the Sindh Terms of Employment (Standing Orders) Act 2015 ("2015 Act") for permission to close down the factory. However, during the closure process, the respondent Nos.1 to 12 filed their Grievance Petition No.1 of 2016 before the Labour Court and alleged that due to trade union activities, the petitioner has

decided to remove them from service. However, on 27.02.2016 (according to Page No.84 of the paper book), the petitioner filed a statement that they shall not terminate the services of the respondents without due process of law. In the intervening period, a few more grievance petitions were filed by the employees with some other grievances. The Sindh Labour Court No.3, Karachi, dismissed the grievance petitions. Being aggrieved, the respondents No.1 to 12 filed appeals under Section 48 (3) of the Sindh Industrial Relations Act, 2013 ("SIRA") and prayed for setting aside the order passed by the Sindh Labour Court. The Sindh Labour Appellate Tribunal, Karachi, partly allowed the appeals, and instead of reinstatement, the petitioner/respondent was directed to deposit the stipulated amount of compensation within one month in lieu of reinstatement. The petitioner filed a Constitution Petition in the High Court of Sindh and prayed for setting aside the order passed by the learned Sindh Labour Appellate Tribunal and maintaining the order of the Sindh Labour Court, but the High Court dismissed the Constitution Petition *vide* the impugned Order.

3. The learned counsel for the petitioner argued that the Joint Director, Labour, represents the Government and the application for closing down the establishment was rightly submitted to him, as he was the proper authority for submission of such application, but the learned High Court failed to appreciate this fact. It was further argued that the learned Labour Court had passed a well-reasoned order which was not properly considered by the High Court. Moreover, the High Court also failed to appreciate that the Sindh Labour Appellate Tribunal had no lawful authority to grant compensation to the respondent in lieu of reinstatement. It was further contended that the calculation of compensation directed to be paid to the respondents was without any lawful justification and based on the misconceived notion that the petitioner's company was not legally closed, while, as a matter of fact, the petitioner had conveyed the proper information to the Labour Department of the Sindh Government, and hence, intimation or notice to the Chief Secretary, Sindh, was not required.

4. The learned counsel for the private respondents argued that the entire exercise undertaken for the closure of establishment was a sham and was done in violation of law. No proper application was moved to the Government of Sindh for seeking their approval in the closure of the establishment; an application for closure of the factory was only dispatched to the Labour Department, West Division, Karachi, which was the wrong method. He further argued that the employees were deprived of their lawful dues, hence the learned Labour Appellate Tribunal rightly passed the order of payment.

5. Mr. Sibtain Mehmood, learned Additional Advocate General, Sindh ("AAG") is representing the Sindh Labour Appellate Tribunal. He is of the view that the application for closure of the establishment should have been moved to the Sindh Cabinet, as the Cabinet is the competent authority in terms of the dicta laid down by the Supreme Court in the case of Mustafa Impex (**PLD 2016 SC 808**). He further argued that the Joint Director, Labour, had no authority or jurisdiction to allow or disallow the application for closing down any establishment under the 2015 Act.

6. Heard the arguments. After the 18<sup>th</sup> Constitutional Amendment, passed for ensuring autonomy of the provinces in certain fields of legislations, the Provincial Assembly of Sindh, for regulating industrial and commercial employment in the Province of Sindh, and the matters connected therewith or ancillary thereto, promulgated the 2015 Act. By virtue of Section 14 of the 2015 Act, the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, was repealed to the extent of its application in the Province of Sindh. However, "workmen," as defined under the repealed Ordinance, is deemed to be a "worker" in the 2015 Act. Moreover, any document referring to the repealed Ordinance shall be construed as referring to the provisions of the 2015 Act. The tenor of Section 2 (g) (definitions clause) of the 2015 Act also specifies that the term "Government" means the Government of the Sindh.

7. The petitioner avowed that the establishment was to be closed down upon the submission of a proper application under Standing Order 15 of the 2015 Act, and since no response was received on their application by the Sindh Government within 15 days, they closed down the whole establishment on their own. Obviously, when the entire establishment was allegedly closed down, there was no possibility of reinstating the employees in service. Therefore, the learned Tribunal passed the order for the payment of some compensation, mindful to the long tenure of service of the respondents and to safeguard and protect their full and final settlement dues according to the tenure of their service. One more important aspect that cannot be lost sight of is that under Standing Order 15 of the 2015 Act, an application for closing down the establishment was to be moved to the Government of Sindh. We called upon the learned counsel for the petitioner to show us the application so moved for closing down the establishment. The learned counsel directed us to page 77 of the paper book which is an application dated 02.03.2017, addressed to the Secretary, Labour Department, and not to the Government of Sindh, which is the proper channel for that accords such permission under the provisions of Standing Order 15 of the 2015 Act.

8. In order to thrash out the controversy, the tenet of Standing Order 15 of the 2015 Act is to be attended to in order to distillate the controversy. Therefore, for ease of convenience, Standing Order 15 is reproduced as under:-

15. (1) Notwithstanding anything contained in Standing Order 15, no employer shall terminate the employment of more than fifty percent of the workers or close down the whole of the establishment without prior permission of the Government in this behalf, except in the event of fire, catastrophe, stoppage of power supply, epidemics or civil commotion:

(2) If the application for permission to close down is not decided within fifteen days of its submission then the same shall be deemed to have been granted. Appeal against decision shall be preferred before the Labour Court within thirty days of the order.  
**[Emphasis supplied]**

Explanation.- 'Close down' in this clause includes lay-off of worker beyond fourteen days where such

lay-off results in closure of an establishment but does not include lock-out declared, commenced or continued in accordance with the provisions of the Sindh Industrial Relations Act, 2013.

9. If we delve into the intricacies of Standing Order 11-A of the repealed Ordinance, for the purpose of differentiation/comparison, the closedown of the establishment could not be achieved without prior permission of the Labour Court, except in the event of fire, catastrophe, stoppage of power supply, epidemics, or civil commotion.

10. The bone of contention in this case is whether any application for closing down the establishment was filed for approval of the Government of Sindh; whether the application moved to the Secretary, Labour Department, can be construed as an application under Standing Order 15 of the 2015 Act; and, whether any jurisdiction or authority is vested in or conferred to the Secretary, Labour Department, to entertain and approve such application even within or after the fifteen days' time accorded for approval in the 2015 Act. Had the application been moved through the Chief Secretary, Government of Sindh, for consideration by the Government/Sindh Cabinet, the situation would have been much different, with the rider that if the application for permission to close down was not decided within fifteen days of its submission, the said application could be deemed to have been granted/allowed and appeal against such decision could have been filed within thirty days of the order.

11. The impugned judgment of the learned Labour Appellate Tribunal demonstrates that, initially, the petitioner (respondent before the High Court) took the plea that all the legal dues of the employees have been paid, but when they were called upon to submit details, they informed the learned Tribunal that no legal dues were paid except one month's notice pay, for which also, no documentary evidence was submitted, and even the workers denied to have received any one month notice pay. The learned Tribunal correctly held that the application for closing down was not submitted to the Government, therefore it cannot be deemed to have

been granted upon the expiry of fifteen days. The learned High Court has also expressed distinctly that the petitioner company had not legally closed down the establishment, hence the learned Tribunal rightly directed the petitioner's company to deposit the amount due as payment to the workers within one month, in view of the length of their service, instead of reinstating them in service, which was not possible. In addition, the learned High Court also held that the award of compensation has not resulted in a miscarriage of justice in any manner so as to justifiably call for any interference under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, because in principle, the discretion rests with the Tribunal or the Court to grant compensation to a workman, in lieu of reinstatement, and the exercise of such discretion by the Court or the Tribunal is necessary to maintain peace and harmony in industrial relations between employer and employees.

12. Consistent with Sections 34 (7), read with Section 47 (3) of the SIRA, the Labour Court as well as the Appellate Tribunal are both empowered and have jurisdiction to pass such orders as may be just and proper in the circumstances of the case. In our view, such comprehensive powers are vested in them to deal with different exigencies and decide cases on their own peculiar facts and circumstances, and if on the basis of hyper technicalities, an attempt is made to squeeze the broad and expanded powers and jurisdiction conferred to the Labour Court and its appellate forum, then it will be tantamount to making them incapable of dispensing cases of the labour class with justice and will also circumvent the soul and spirit of law. Since, in the case at hand, due to certain reasons, the petitioner had already closed down the whole establishment unlawfully, therefore, the reinstatement of employees in a closed down establishment was otherwise not possible, and had reinstatement been ordered, it could have no positive effect except being an academic exercise without any implementation or execution. Therefore, in order to secure the lawful service dues in such peculiar set of circumstances, the best devise was to grant reasonable

compensation to the workmen for their wrongful removal from service.

13. Under the 2015 Act, the jurisdiction to decide cases is vested in the Government of Sindh, rather than Labour Court. While exercising similar powers, the Labour Court, under Standing Order 11-A of the Industrial and Commercial Employment (Standing Orders), had to examine the whole case for a proper assessment on whether the request of closing down is *bona fide* or *mala fide*, and even while construing it as *bona fide*, the Labour Court used to shield, protect, and ensure the payment of full and final settlement dues of workers/employees before according permission to close down the whole establishment. Now, in the 2015 Act, the power of the Labour Court is switched over to the Government of Sindh, which is a serious business and cannot be allowed summarily or in a slipshod manner without going into details and ensuring the payment of full and final dues to the employees. The petitioner filed the application before a wrong forum, and after lapse of fifteen days, presumed that their application, by fiction of law is allowed, which was a completely wrong understanding of the law by the petitioner. Had they approached and filed an application through the proper channel, which could be the office of the Chief Secretary, Sindh, with the request to place it before the provincial cabinet for approval, and if such application was then moved to the Government of Sindh through the Chief Secretary, there was a possibility that the Chief Minister could have placed such application before the Sindh Cabinet for consideration in view of the dictum laid down by this Court in the case of Mustafa Impex (PLD 2016 Supreme Court 808), wherein this Court held that the Cabinet, being the supreme body of the executive, with a high constitutional status, could not and ought not to be treated as a mere rubber stamp for decision making by the Prime Minister. Our Constitution envisaged a parliamentary form of Government which was based on decision making by the Cabinet. To turn the Cabinet into a rubber stamp in pursuit of decision making by the Prime Minister to the exclusion of his Cabinet would violate the letter and spirit of

the Constitution, as it would reduce a cabinet form of government into a prime ministerial one which was a concept alien to the Constitution.

14. A legal right or entitlement cannot ascend from an illegal act, laxity, or inadvertence. The legal maxim "*nullus commodum capere potest de injuria sua propria*" delineates that no man can take advantage of his own wrong. If a person sets up a strategy to thwart the legal rights of others, he cannot be allowed to take benefit of his wrong. At the same time, we cannot ignore, in contrast, another legal maxim "*ignorantia juris non excusat*", which describes that ignorance of the law is no excuse and nobody can get away from being held accountable for being in violation of the law by merely pleading that he was unaware of the consequences. Reason is the soul of the law. Statutes should be interpreted in a way that they are made practicable and courts should avoid such construction of law that may defeat the explicit intention of the lawmakers or may lessen the impact of a statute or its provision to vainness. Here, again, the legal maxim "*ut res magis valet quam pereat*" is quite pertinent which demotes that it is better for a thing to have effect than to be made void. The legislature's intention can be deduced from the language of the statute or its provision which cannot be diverged while interpreting it, for the simple reason that the main object before a court is to get to the bottom of the legislature's intention for enacting the law.

15. In line with Section 3 of the 2015 Act, the conditions of the employment of workers and other incidental matters in every industrial or commercial establishment are to be subject to the other provisions of this Act and to be regulated in accordance with the Standing Orders, while under Standing Order 23 of the same Act, the employer of the industrial and commercial establishment is personally responsible for the proper and faithful observance of the Standing Orders. In unison, the violation of Standing Orders has been made punishable under Section 7 of the 2015 Act, with the rider that no prosecution for an offence punishable under this Act shall be instituted except by the Inspector



and no court other than the Labour Court established under the SIRA shall try an offence under this Act. However, Section 13 of the 2015 Act provides the residuary powers of the Government for removal of difficulties which elucidates that if any difficulty arises in giving effect to any provisions of this Act, the Government may, by notification in the official Gazette, make such order, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty.

16. In fact, the aforesaid background and framework of residuary powers of the Government refers to their legislative authority over matters which are neither specifically listed nor assigned to any particular level of government. Here, what we comprehend is that there must be some well-structured procedure and mechanism to deal with and decide the applications submitted to the Government of Sindh for closing down the establishment in terms of Standing Order 15 of the 2015 Act. No doubt, the powers are given to the Government, but there is no procedure to decide such application except providing the outer limit of 15 days; that, too, is in favour of the employer, to presume that his application is allowed if it was not decided or responded to within fifteen days. Therefore, a clean slate is accorded to the employer to immediately shut down the whole business/establishment without checking whether the action is *bona fide* or *mala fide* or, while doing so, if the full and final accrued dues of employees have been settled or not. On the contrary, while assuming jurisdiction to accord permission, it is the responsibility of the Government to ensure that the close down is *bona fide* and permission is granted after ensuring the payment of dues to the employees. Apparently, this cumbersome exercise cannot be done by the Government itself as it involves microscopic details, therefore, there is a need to enact a fool-proof procedure to deal with, examine, and decide such applications after hearing the employer and employees/their representative/Trade Union/CBA, and then render a speaking order so that an aggrieved person may file an appeal in the Labour Court in terms of Standing Order 15 of the 2015 Act. In this regard, we feel that some necessary

amendments in the 2015 Act or some rules or Standard Operating Procedures (SOPs) are required to be enacted in the best interest of workers, to save them from unlawful removal from service in case of *mala fide* attempts/schemes, and also from deprivation of their lawful dues in case *bona fide* of employer is proved. Moreover, if a well-structured procedure, as proposed, is laid down, it will also be beneficial for the employer who will be protected from protracted litigation in different courts.

17. In view of the above, we do not find any illegality or perversity in the concurrent findings recorded by the Sindh Labour Appellate Tribunal as well as the High Court of Sindh. The Civil Petition is dismissed and leave is refused. Office is directed to transmit a copy of this judgment to the Advocate General, Sindh, and the Secretary, Law & Parliamentary Affairs, Government of Sindh, for inviting attention to paragraph 16 of this judgment for necessary action at their end.

Judge

Judge

Judge

Karachi  
02.06.2025  
Khalid  
Approved for reporting