IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Shahid Bilal Hassan

Civil Petitions No.2697 and 2698-L of 2016
Appeal against the order dated 23.06.2016 passed by the Lahore High Court, Lahore in WPs.No.21263/2016 & 21265/2016

Town Administration and another — (In both cases) ...Petitioners

Versus

Mohammad Khalid and others — (In C.P.2697-L/2016)
Muhammad Iqbal Javed and others — (In C.P.2698-L/2016)
...Respondents

For the Petitioners: Mr. Muhammad Amjad Pervaiz, ASC

For the Respondent No.1 (In both petitions): Syed Kamil Pervaiz, ASC

Date of Hearing: 28.06.2024

JUDGMENT

Muhammad Ali Mazhar, J:- These Civil Petitions for leave to appeal are directed against the order dated 23.06.2016, passed by the Lahore High Court, Lahore, in WP.Nos.21263 and 21265/2016 whereby the writ petitions filed by the petitioners were dismissed.

2. The short and snappy facts of the case are as under: -

I) Civil Petition No.2697-L/2016: The respondent No.1 (Muhammad Khalid) was appointed as Helper Electrician on 01-07-2007 in Town Administration Chak Jhumra. He continuously performed his duties for three years and, several times, made requests to the department for regularization of his services but the employer treated him as temporary employee and dismissed his service through an oral order on 03.04.2010. He served a grievance notice but no reply was communicated, hence he filed a grievance petition under Section 33 of the Punjab Industrial Relations Act, 2010. The grievance petition was accepted with the directions to the employer to reinstate the respondent employee as regular employee with back benefits. The present

petitioners assailed the judgment of Labour Court in the Punjab Labour Appellate Tribunal with an application for condonation of delay, but the appeal was dismissed on the ground of limitation, then the petitioners challenged the order in the writ petition which has also been dismissed *vide* impugned Order dated 23.06.2016.

II) Civil Petition No.2698-L/2016: The respondent No.1 (Muhammad Iqbal Javed) was appointed as Driver Disposal Works on 22.06.2005 on temporary basis in Town Municipal Administration Chak Jhumra, thereafter he was appointed as Naib Qasid *vide* order dated 22.08.2005. He performed his duties continuously for a period of six years. He was terminated from service on 01.03.2011; thereafter, he served a grievance notice and filed the grievance petition under Section 33 of the Punjab Industrial Relations Act, 2010, for his reinstatement and regularization. The grievance petition was accepted with the directions to the employer to reinstate him with back benefits from the date of termination. Against such decision, the petitioners filed an appeal before the Punjab Labour Appellate Tribunal with an application for condonation of delay, but the appeal was dismissed. The petitioners filed the writ petition in the High Court which was also dismissed *vide* impugned order.

3. The learned counsel for the petitioners argued that the learned Labour Court wrongly allowed the Grievance Petition of respondent employees without taking into consideration that both were performing their duties on the basis of temporary engagements. It was further contended that there was no proof on the record that the respondent employees remained jobless, hence there was no question of awarding back benefits on their reinstatement. It was further contended that the learned Labour Appellate Tribunal failed to consider the grounds raised for condonation of delay and dismissed both the appeals for being barred by time and the learned High Court committed the same error while dismissing the writ petitions on this sole ground. It was further averred that both the said respondents were performing their duties as daily wagers on the basis of temporary engagements; hence, despite their long length of service rendered to the petitioners, they could not claim permanency in job and after the termination of their temporary engagement, they had no right to invoke jurisdiction of the Labour Court for redressal of their alleged grievance.

4. The learned counsel for the respondent No.1 in both civil petitions, supported the impugned order and further argued that the learned Labour Court passed the order after considering all relevant facts and evidence adduced by the parties. He further argued that both the said respondents served the petitioners for a long period of time, hence they had attained the status of permanent workers and rightly approached

the Labour Court for redressal of their grievances. It was further contended that the respondents No.1 in both petitions were hired on jobs which were permanent in nature and despite serving for a long time, their services were terminated without any lawful justification. He further averred that the appeal before the learned Appellate Tribunal was time barred and no plausible reason was shown for condonation of delay, hence the application for condonation of delay was rightly dismissed and the order was rightly maintained by the learned High Court *vide* impugned orders.

5. Heard the arguments. According to Section 2 (xv) (Definitions Clause) of the Punjab Industrial Relations Act, 2010 ("**PIRA**"), "industrial dispute" means any dispute or difference between employees and employers or between employers and workmen or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or the conditions of work of any person, and is not in respect of the enforcement of such right guaranteed or accrued to him by or under any law other than the Act, or any award or settlement for the time being in force. In order to adjudicate and determine any individual grievance petition filed by the worker under Section 33 of the PIRA in respect of any right guaranteed or secured to him by or under any law or any award or settlement, the Labour Court is obligated to go into all the facts of the case and pass such orders as may be just and proper in the circumstances of the case, and subject to the decision of the Tribunal, if a decision of the Labour Court is not given effect within seven days or within the period specified in the decision, serious consequences of punishment and fine are already provided in the same Section for noncompliance. In order to lay down the procedure to be followed, the PIRA, under Section 45, provides that for the purpose of adjudicating and determining any "industrial dispute", the Labour Court is to be deemed to be a Civil Court and shall have the same powers as are vested in such Court under the Code of Civil Procedure, 1908, including the powers of (a) enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents and material objects; and (c) issuing commissions for the examination of witnesses or documents.

6. In line with the Punjab Industrial & Commercial Employment (Standing Orders) (Amendment) Act, 2012 (XXI of 2012), after the

eighteenth amendment in the Constitution, the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 ("**Ordinance 1968**") was adopted to be applied to the whole of the province of Punjab. Section 2 (g) (Definitions Clause) of the Ordinance 1968 defines "Standing Orders" as the orders contained in the Schedule, read with such modifications, if any, as may be made in pursuance of the provisions of Section 4 wherein certain modifications are allowed by means of a collective agreement and not otherwise, with the further rider that no such agreement shall have the effect of taking away or diminishing any right or benefit available to the workmen under the provisions of the Schedule. Standing Order 1, provided in the Schedule of the Ordinance 1968, defines the classification of workers. For the ease of convenience, Standing Order 1 is reproduced as under:

> **1. Classification of workmen**.– (a) Workmen shall be classified as–
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> 1. permanent,
> 2. probationers,
> 3. *badlis,*
> 4. temporary,
> 5. apprentices,
> 6. contract worker.
>
> (b) A "permanent workman" is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment, including breaks due to sickness, accident, leave, lockout, strike (not being an illegal lock-out or strike) or involuntary closure of the establishment and includes a badli who has been employed for a continues period of three months or for one hundred and eighty three days during any period of twelve consecutive months *(emphasis applied)*;
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> (c) A "probationer" is a workman who is provisionally employed to fill a permanent vacancy in a post and has not completed three months service therein. If a permanent employee is employed as a probationer in a higher post he may, at any time during the probationary period of three months, be reverted to his old permanent post.
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> (d) A "*badli*" is a workman who is appointed in the post of a permanent workman or probationer, who is temporarily absent.
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> (e) A "temporary workman" is a workman who has been engaged for work which is of an essentially temporary nature likely to be finished within a period not exceeding nine months. *(emphasis applied)*
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> (f) An "apprentice" is a person who is an apprentice within the meaning of the Apprenticeship Ordinance, 1962 (LVI of 1962).

> (g) A “contract worker” means a workman who works on contract basis for a specific period of remuneration to be calculated on piece rate basis.

7. The procedure of simpliciter termination of employment is provided under Standing Order 12 of the Ordinance 1968, whereas cases of misconduct are dealt with under Standing Order 15 of the Ordinance 1968. The services of a workman can be terminated on one month's notice or with the payment of one month's wages calculated on the basis of average wages earned by the workman during the last three months in lieu of notice. Though it is provided that no temporary workman, whether monthly-rated, weekly-rated, daily-rated or piece-rated, and no probationer or *badli*, shall be entitled to any notice if his services are terminated by the employer, nor shall any such workman be required to give any notice or pay any wages in lieu thereof to the employer if he leaves employment of his own accord; but at the same time, in the same Standing Order, the services of a workman neither can be terminated, nor a workman can be removed, retrenched, discharged or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken so that an aggrieved workman may invoke Section 33 of the PIRA for redressal of his individual grievance. It is further provided that services of permanent or temporary workmen shall not be terminated on the ground of misconduct otherwise than in the manner prescribed in Standing Order 15.

8. The order of the Labour Court depicts that respondent Muhammad Khalid appeared as PW-1 and deposed that he was appointed on 01.07.2007 and his services were terminated by an oral order dated 03.04.2010. Neither any charge sheet was issued to him nor was an inquiry conducted. He pleaded that after performing his services satisfactorily for more than nine months, he attained the status of a permanent workman. He was being paid his salary from the Punjab Bank, Branch Chak Jhumra, and he also produced Account Statements in his evidence. The petitioner’s witness, in his cross-examination, admitted that the salary was being paid through bank and he also admitted the tenure of service as deposed by the respondent and that the department terminated him by an oral order dated 03.04.2010. Whereas the respondent Muhammad Iqbal Javed appeared as PW-1 in his case and deposed that he was appointed on 22.06.2005 against a permanent post and performed his duties for a period of six years; but

when he went to perform his duty on 01.03.2011, his services were terminated by an oral order. He also produced copies of orders dated 22.06.2005, 22.08.2005 & 18.10.2008, and copies of his pay slips and attendance register in his evidence. The witness of the petitioner, in his cross-examination, admitted that the respondent employee was being paid his salary through bank and he also performed his duties till 01.03.2011. After a careful scrutiny of the evidence produced by the parties, oral as well as documentary, the learned Labour Court observed that the respondent employees were being appointed for 83 days again and again and they performed their duties for more than nine months against permanent posts, therefore, the grievance petitions were allowed. The petitioners failed to challenge the order of the learned Labour Court before the Punjab Labour Appellate Tribunal within the specified period of limitation; hence, along with the memo of appeals, applications for condonation of delay were also filed with the grounds that the decision under challenge was made on 28.01.2016 without any intimation to the applicant and when the respondent employees insisted for reinstatement, the officials applied for the certified copy of the same on 21.03.2016 which was supplied on the same day. Necessary advice and permission was sought to file the titled appeal, and without wasting any time after engaging the counsel, the titled appeal was prepared and filed. The learned Appellate Tribunal found both the appeals barred by 1 month and 2 days, therefore, applications were dismissed and as a consequence, the main appeals were also dismissed. Finally, the petitioners filed writ petitions in the Lahore High Court and the basic thrust of the arguments, as reflected from paragraph 3 of the impugned order of the petitioner's counsel before the High Court, was that time was required to fulfill all formalities and there was no willful negligence, with the further statement that any inadvertence on their part can be dealt with through departmental action. The learned High Court observed that the petitioners failed to explain the delay from 28.01.2016 to 21.03.2016, hence the writ petitions were dismissed by the High Court.

9. To begin with, we would like to take up the crucial issue of oral termination of service. The letter of appointment and the letter of termination both have much significance in service matters. The terms and conditions of appointment are extremely imperative for regimenting the employment, including the job description, whereas the termination

letter expounds explicit reasons for sacking the relationship of employer and employee. Keeping in line with the same code of belief, the Standing Order 2-A of the Ordinance 1968 commands that every workman at the time of his appointment, transfer, or promotion, shall be provided with an order in writing, showing the terms and conditions of his service, and in juxtaposition, Standing Order 12 of the Ordinance 1968 commands that the services of a workman neither can be terminated, nor a workman can be removed, retrenched, discharged or dismissed from service, except by an order in writing which shall explicitly state the reason for the action taken.

10. In the case of Chairman Agriculture Policy Institute, Ministry of National Food Security & Research, Government of Pakistan Vs. Zulqarnain Ali (**2022 SCMR 636 = 2021 SCP 357**), authored by one of us, it was held that there is no provision under the Labour Laws or the Service Laws permitting the employer to terminate the services verbally without a written order containing the explicit reasons or cause of termination, even in the case of termination simpliciter. For disciplinary proceedings on account of misconduct, obviously a separate procedure is laid down which accentuates the issuance of show cause notice, holding inquiry unless dispensed with by the competent authority considering all attending circumstances of the case and after personal hearing, appropriate action may be taken in accordance with the law. The termination of service by a verbal order is alien to the labour and service laws of this country and also against the principle of good governance which is a process of gauging whether the Government, its departments/institutions, and authorities, are conducting their affairs lawfully and performing their duties honestly, conscientiously and transparently including in their process of decision-making in accordance with rules and regulations. It was further held that a verbal termination order is otherwise against the principle of natural justice, which turn of phrase was originated from the Roman term '*Jus Naturale*', which means principles and moralities of natural law, justice, equity, and good conscience, which are fervently and exuberantly founded in the judicial conscience. It is an elementary rule of law that before taking any adverse action, the affected party must be given a fair opportunity to respond and defend the action. This principle does not lay down any differentiation or inequality between a quasi-judicial function and an administrative function/action. It applies evenly and

uniformly to secure justice and, in turn, prevent the miscarriage of justice. Before taking any punitive or adverse action, putting an end to the services of any employee/workman or civil servant, the precept of fairness and reasonableness commands that an evenhanded opportunity to put forth the defence should be afforded.

11. The record reflects that both the respondent employees were performing their duties continuously and the length of their service, notwithstanding the fact that the petitioners were calling it temporary or on daily wages basis, exceed much more than the provided nine months' period and both were performing the job against a post of permanent nature. In fact, no plea was taken that the services were terminated due to the completion of a task or temporary project, or due to the abolition of such a post or work, or both positions became surplus because their assigned job no longer existed in the department to carry on in the future. To continue such arrangement for such a long time is nothing but a circumvention of labour laws and misuse of the category of temporary workman defined in the Standing Order 1 of the Ordinance 1968, wherein the employer is only permitted to engage workmen for the work which is of an essentially temporary nature likely to be finished within a period not exceeding nine months; but here, it is proved beyond any shadow of doubt that the respondent employees performed their duties much beyond the period of nine months against the permanent posts, hence they were unlawfully terminated under the garb of so-called daily wages engagement and rightly reinstated by the learned Labour Court.

12. In the case of Muhammad Yaqoob Vs. The Punjab Labour Court No. 1 and 5 others **(1990 SCMR 1539)**, this Court in clear terms has held that a permanent workman has been defined in the Standing Orders Ordinance by reference to the nature of the work on which he has been engaged or employed. If the work is not of a permanent nature, then howsoever long may be his employment, he cannot be taken to be a permanent workman. While in the case of Executive Engineer, Central Civil Division Pak. P.W.D. Quetta Vs. Abdul Aziz and others **(PLD 1996 SC 610)**, this Court observed that the ratio of Muhammad Yaqoob (*supra*) seems to be that the period of employment is not the sole determining factor on the question as to whether a workman is a permanent workman or not but the nature of the work will be the main factor for deciding the above question. It was held that if the nature of

work for which a person is employed is of a permanent nature, then he may become permanent upon the expiry of the period of nine months mentioned in terms of clause (b) of paragraph 1 of the Schedule to the Ordinance 1968, provided that he is covered by the definition of the term "worker" given in section 2 (i) thereof. But if the work is not of permanent nature and is not likely to last for more than nine months, then he is not covered by the above provision. This Court further observed that once it was proved that the respondents, without any interruption, remained employees between a period from two years to seven years, the burden of proof was on the appellant-department to have shown that the respondents were employed for the works which were not of permanent nature and which could not have lasted for more than nine months. Whereas, in the case of Government of Punjab and others Vs. Punjab Appellate Tribunal, Lahore and others **(2002 SCMR 878)**, this Court observed that the basic question for consideration is whether the private respondents became permanent workmen by efflux of time. There is a concurrent finding of fact by the Labour Court as well as the Labour Appellate Tribunal of exclusive jurisdiction that the private respondents continued in service for more than 90 days in the posts against which they were initially employed, which were permanent in nature. It was further held that the learned Judge in Chambers was right in upholding the findings recorded by the Labour Court as well as the Labour Appellate Tribunal that on expiry of the 90 days' period the private respondents assumed the status of permanent workmen not liable to be terminated without conforming with the provisions of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance No. IV of 1968.

13. So far as the effect of time barred appeals before the learned Punjab Appellate Tribunal is concerned, the answer is built-in and ingrained in the judgment again authored by one of us in the case of Regional Police Officer, Dera Ghazi Khan Region Vs. Riaz Hussain Bukhari **(2024 SCMR 1021)**, in which it was held that while considering the grounds for condonation of delay, whether rational or irrational, no extraordinary clemency or compassion and/or preferential treatment may be accorded to the Government department, autonomous bodies or private sector/organizations, rather their case should be dealt with uniformly and in the same manner as cases of ordinary litigants and citizens. No doubt the law favours adjudication on merits, but

simultaneously one should not close their eyes or oversee another aspect of great consequence, namely that the law helps the vigilant and not the indolent. The judgment also quotes a Latin maxim "*Leges vigilantibus non dormientibus subserviunt" or "Vigilantibus Non Dormientibus Jura Subveniunt"* which articulates that the law aids and assists those who are vigilant but not those who are sleeping or slumbering. Delay in invoking a lawful remedy by a person or entity who was sleeping over their rights may be denied. The doctrine of equality before law demands that all litigants, including the State, are accorded the same treatment and the law is administered in an even-handed manner. It was further held that the astuteness of the law of limitation does not confer a right but impinges incapacitation after the lapse of the period allowed for enforcing some existing legal rights and it foresees the culmination of claims which have decayed by efflux of time. Under Section 3 of the Limitation Act, 1908, it is the inherent duty of the Court to delve into the question of limitation, regardless of whether it is raised or not. Carelessness, intentional or obvious sluggishness, or dearth of *bona fide* is no reason for condonation of delay.

14. In the wake of the above discussion, we do not find any illegality or perversity in the impugned order passed by the learned High Court. The Civil Petitions are dismissed and leave is refused.

Judge

Judge

Islamabad
28.06.2024
Khalid
Approved for reporting