

2016 P L C 360

[Lahore High Court (Multan Bench)]

Before Atir Mahmood, J

**TECHNICAL EDUCATION AND VOCATIONAL TRAINING AUTHORITY
through Chief Operating Officer and another**

Versus

Hafiz NASEER and 2 others

Writ Petitions Nos.1385, 1386, 1387, 1388 of 2014 and 15903 of 2012,
decided on 23rd December, 2015.

(a) Punjab Industrial Relations Act (XIX of 2010)---

---Ss. 44, 1(3) & 2(ix)---Grievance petition---Regularisation of services---
Technical Education and Vocation Training Authority whether
commercial or industrial organization---Employees filed grievance
petition that they were appointed against permanent and vacant posts
and were entitled for regularization---Grievance petition was accepted
concurrently---Validity---Some manufacturing of blue pottery was done
by the department but mere manufacturing with no profit or commercial
purpose did not make it a commercial or industrial organization---
Department could not be considered as profit making entities, industrial
establishment or commercial organization rather might be termed as
charitable organization/establishment as it was imparting technical
education and vocational training without any cost---Employees of the
department did not fall within the definition of "workmen" or "worker"---
Labour Court had no jurisdiction to deal with the grievances of the
employees---Grievance petition filed by the employees was liable to be
dismissed on this score alone---Employees were employed on daily wages
for specified period for specified projects till their services were
required---Mere payment of fixed monthly salary did not ipso facto
declare a payee as "permanent employee"---Daily wage employee had no
right to claim regularization of service---Daily worker could neither be
considered a permanent employee nor he could be a member of any
labour union---Impugned judgments were set aside and grievance
petition was dismissed---Constitutional petition was allowed in
circumstances. [A](#), [B](#), [C](#), [D](#) & [F](#)

Trustees of the Port of Karachi v. Muhammad Saleem 1994 SCMR 2213; K.G. Old, Principal, Christian Technical Training Centre, Gujranwala v. Presiding Officer, Punjab Labour Court, Northern Zone and 6 others PLD 1976 Lah. 1097 and Sh. Ahmad Sadiq v. Chief Settlement Commissioner and others PLD 1974 SC 368 ref.

Managing Director, Sui Southern Gas Company Ltd. Karachi v. Ghulam Abbas and others PLD 2003 SC 724; Ikram Bari and 524 others v. National Bank of Pakistan through President and another 2005 SCMR 100; Tehsil Municipal Administration, Rahimyar Khan and others v. Hanif Masih and others 2008 SCMR 1058; Izhar Ahmed Khan and others v. Punjab Labour Appellate Tribunal Lahore etc. 1999 SCMR 2557; Karachi Chamber of Commerce and Industry, Karachi v. Sindh Labour Court No.5, Karachi and others 2012 PLC 251 and Lahore Development Authority through D.G. Lahore and another v. Abdul Shafique and others PLD 2000 SC 207 distinguished.

Board of Governors Aitchison College, Lahore v. Punjab Labour Appellate Tribunal and others 2001 PLC 589 rel.

(b) Industrial dispute---

---Daily wage employee---Scope---Daily wage employee had no right to claim regularization of his service. [D](#)

(c) Constitution of Pakistan---

---Art. 199---Constitutional jurisdiction of High Court---Scope---Where there was illegality, irregularity, jurisdictional defect, misreading or non-reading of evidence then High Court could interfere in concurrent findings to undo the wrong. [E](#)

Mehr Muhammad Iqbal for Petitioners.

Ch. Saleem Akhtar Warraich for Respondents.

Date of hearing: 8th December, 2015.

JUDGMENT

ATIR MAHMOOD, J.--- Through this single judgment, I intend to dispose of Writ Petitions Nos.1385/2014, 1386/2014, 1387/2014, 1388/2014 and 15903/2012 as common questions of law and fact are involved therein.

2. Brief facts of the case are that the respondents filed grievance petitions against the petitioners alleging therein that they were employed by Project Director, TEVTA, Multan in Institute of Blue Pottery Development, Multan; that they asserted that their appointments were made against permanent and vacant posts; that their salaries were increased from time to time; that they have been performing their duties continuously to the entire satisfaction without any complaint since date of their initial appointments but their services have not been regularized by the respondents with mala fide intention despite the facts that the petitioners requested for the same time and again and that a number of posts of Workers, Helpers, Naib Qasids, Sweepers and Malis etc. were available in TEVTA Multan; that more than 100 workers were employed in TEVTA; that CBA union is also working in this institution; that labour laws are applicable on the workers of respondent institution and the labour court has jurisdiction to deal with the matter. The respondents prayed that their services be regularized.

3. The petitioners contested these grievance petitions mainly on the ground that the labour court has no jurisdiction to adjudicate upon the matter as the TEVTA is running under the control of Punjab Government to provide technical education to the people and it is not a commercial establishment.

4. After recording evidence and hearing both sides, learned Punjab Labour Court, Multan accepted the grievance petitions vide judgment dated 18.01.2011. Feeling aggrieved, the petitioners filed appeal which was dismissed by Punjab Labour Appellate Tribunal, Multan vide judgment dated 04.07.2002. Hence the instant writ petitions have been instituted.

5. Learned counsel for the petitioners inter alia contends that the petitioner department, i.e. TEVTA is neither a commercial nor industrial organization rather it runs under the control of Punjab Government with the aim to impart technical education and training to the residents of the Province, particularly to the poor; that the labour court had no jurisdiction to adjudicate upon the matter; that the respondents were employed on daily wage basis and they were not permanent employees of TEVTA; that even the respondents are not in service since January, 2015 as they themselves have left the department after getting all their dues; that the impugned judgments are against law, therefore, the instant writ petitions be allowed, the impugned judgments be set aside and the grievance petitions filed by the respondents be dismissed. He has relied upon the law laid down in cases reported as Trustees of the Port of Karachi v. Muhammad Saleem (1994 SCMR 2213), K.G. Old, Principal, Christian Technical Training Centre, Gujranwala v. Presiding Officer,

Punjab Labour Court, Northern Zone and 6 others (PLD 1976 Lahore 1097), Sh. Ahmad Sadiq v. Chief Settlement Commissioner and others (PLD 1974 SC 368) and Board of Governors Aitchison College, Lahore v. Punjab Labour Appellate Tribunal and others (2001 PLC 589).

6. On the other hand, learned counsel for the respondents has vehemently opposed these writ petitions. He avers that the TEVTA though is imparting technical education but it also manufactures different items; that there are more than 100 workers in TEVTA; that the labour laws fully apply upon the petitioner department and the labour court had jurisdiction to adjudicate upon and decide grievance petitions of the respondents; that the respondents were employed on permanent basis and they were paid salaries on monthly basis and not on daily basis; that they have been working in TEVTA satisfactorily without any complaint but later on, they were expelled from TEVTA and were not allowed to enter in the department; that assertion of learned counsel for the petitioners that the respondents have themselves left the service is against the facts and not true; that the impugned judgments are in accordance with law: that there are concurrent findings against the petitioners which cannot be interfered with as learned counsel for the petitioners has not been able to point out any illegality therein. Learned counsel for the respondents has averred that the instant writ petitions being without any merit are liable to be dismissed. He has placed reliance on the law laid down in cases reported as Managing Director, Sui Southern Gas Company Ltd. Karachi v. Ghulam Abbas and others (PLD 2003 SC 724), Ikram Bari and 524 others v. National Bank of Pakistan through President and another (2005 SCMR 100), Tehsil Municipal Administration, Rahimyar Khan and others v. Hanif Masih and others (2008 SCMR 1058), Izhar Ahmed Khan etc. v. Punjab Labour Appellate Tribunal Lahore etc. 1999 SCMR 2557; Karachi Chamber of Commerce and Industry, Karachi v. Sindh Labour Court No.5, Karachi and others (2012 PLC 251), Lahore Development Authority through D.G. Lahore and another v. Abdul Shafique and others (PLD 2000 SC 207).

7. Arguments heard. Record perused.

8. The moot points in this case is as to whether the petitioner department, i.e. Institute of Blue Pottery Development, Multan, is an industrial or commercial organization or not and as to whether the labour court had jurisdiction to decide the grievance petitions filed by the respondents.

9. The respondents in all the writ petitions in hand filed grievance petitions under Industrial Relations Act claiming themselves to be the workers of the Petitioner Department. Subsection (3) of Section 1 of the

Punjab Industrial Relations Act, 2010 is relevant in this case which is reproduced hereunder:

"1(3) It shall apply to all persons employed in any establishment or industry, but shall not apply to any person employed--

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h) in an establishment or institution providing education or emergency services excluding those run on commercial basis."

The term 'establishment' has been defined in Section 2(ix) of the Act *ibid* which reads as under:

"establishment" means any office, firm, factory, society, undertaking, company, shop, premises or enterprise in the Punjab, which employs workmen directly or through a contractor for the purpose of carrying on any business or industry and includes all its departments and branches, whether situated in the same place or in different places having a common balance sheet and except in section 25 includes a collective bargaining unit, if any, constituted in any establishment or group of establishment."

Undeniably, Petitioner No.1, i.e. Technical Education and Vocation Training Authority is a institution which has been established for imparting technical education and vocational training as it is manifested from its name. This is funded by the Punjab Government. The department provides technical education and vocational training to the students to make them useful citizens by equipping them with some kind of art and make them capable of earning their livelihood. Petitioner No.2, i.e. Institution of Blue Pottery Development is a project of petitioner No.1 which is headed by a Project Director. The designation of head of the institution, i.e. Project Director, is reflective of the fact that this institution is just a project of petitioner No.1 and the posts created

therefor are Project based only. Petitioners are providing education and training to its students free of cost rather the students are offered stipends ranging from Rs.1500/- to Rs.3000/- per month depending upon the disciplines in which they have been enrolled. The petitioners have established workshops to impart on-hand technical education and ensure job opportunities to its students. [There is no denial to the fact that some manufacturing of blue pottery is done by petitioner department in such workshops but mere manufacturing with no profit or commercial purpose, particularly to train the students as such workshops are necessary for on-hand training purposes, does not make the petitioner department a commercial or industrial organization rather other aspects of manufacturing includes training of the students. In this view of the matter, petitioners Nos.1 and 2 by no stretch of imagination can be considered as profit making entities, industrial establishments or commercial organizations rather they may be termed as charitable organizations/ establishments as they are serving the community by imparting technical education and vocational training to them without any cost but with stipends to attract the people to get technical education. In view of clause (h) of Subsection (3) of Section 1 read with Section 2(ix) of the Punjab Industrial Relations Act, 2010, the petitioners do not fall within the definition of the workmen or worker, therefore, neither they can approach the labour court nor the labour court had any jurisdiction to deal with their grievances. As such, the grievance petitions filed by the respondents were liable to be dismissed on this score alone. Reliance is placed on the ratio decidendi laid down by the apex court in case reported as Board of Governors Aitchison College, Lahore v. Punjab Labour Appellate Tribunal and others (2001 PLC 589) wherein it has been held that:]A

"... it may be noted that said institution was engaged in offering technical education in the field of woodwork; sheetmetal welding, electrician etc., and it had its own workshop but despite of that it was held that it is an educational institution and training establishment and if it is maintaining an industrial unit (workshop) rendering services on payment, advertising its products, it is as an incidence of vocational education and of training programme designed to ensure job opportunities to the trainees. Therefore, what is incidental to the main purpose cannot detract in any manner, from its being an educational institution. Applying this test on the facts in hand we feel no difficulty in concluding that appellant's organization is neither an industry nor it falls within the definition of industrial establishment, therefore, its employees cannot be considered to be worker or workman either under I.R.O. or Ordinance."

10. [Another aspect of the matter is that the petitioners were employed on daily wage basis. Learned counsel for the respondents have emphasized on the point that the petitioners were permanent employees in the petitioner department. I have gone through the applications of the grievance petitioners filed by them for their appointment. For example, grievance petitioner Hafiz Naseer Ahmed filed application for appointment as daily paid worker wherein he himself states that:]B

Following order was passed in the application of said Naseer Ahmed:

"Allowed as daily paid worker purely on temporary basis @ Rs.4000/- Rupees four thousand only per month w.e.f. 09.06.2008 upto 30.06.2008."

Perusal of above makes it crystal clear that Naseer Ahmed himself asked for appointment against post of daily paid worker and the order was passed by the petitioner department accordingly. Almost same is the situation with other grievance petitioners. Learned counsel for the respondents have taken stance that since the respondents were enjoying fixed monthly salaries, they were permanent employees. In my considered view, [mere payment of fixed monthly salary to an employee does not ipso facto declare a payee as permanent employee. If it is so, then every contract employee who is undisputedly paid fixed monthly salary]C will be deemed to be the permanent employee which in fact is not true. [The respondents might have been paid monthly salaries but their salaries could be calculated according to the days they served in the relevant month. The respondents were employed on daily wage basis for specified periods for specified projects and no daily wage employee has any right to claim regularization of his service merely on the ground that since he has worked as a daily worker, his services be regularized. The employments of the respondents were project based and till the time, their services were required, these were utilized whereafter they were relieved from their services as the project did not require so.]D The argument of learned counsel for the petitioner that since the respondents were being paid monthly salaries, they were permanent employees is without any force, which is accordingly repelled.

11. The contention of learned counsel for the respondents that concurrent findings are immune from interference by this Court in its constitutional jurisdiction is without any force as it is well-settled now that where there is [gross illegality, irregularity, jurisdictional defect, misreading or non-reading of evidence, this Court can interfere in the concurrent findings to undo the wrong.]E The contention of learned counsel for the respondents is accordingly discarded. The law relied upon by learned counsel for the respondents is also not helpful to the respondents as it is distinguishable on facts.

12. [In short, the respondents applied for their appointment on daily wage basis and they were accordingly appointed for specified periods for specified projects. A daily worker can neither be considered a permanent employee nor he can be a member of any labour union. The respondents were employed in a workshop under the petitioners which was meant for imparting on-hand technical education to the students. Though this workshop manufactured some potteries but it was just an incidence and the workshop can be considered a mere ancillary to the main purpose of education and this does not give status of an 'industry' to such workshops, as such, the respondents having no status of worker or workman as defined in the Industrial Relations Act or Ordinance have no locus standi to approach labor court for redressal of their grievances. Both the learned courts below have erred in law while assuming their jurisdiction in the matter. Resultantly, all these writ petitions are allowed, the impugned judgments are set aside and the grievance petitions of the respondents in all the writ petitions in hand are dismissed.]F

ZC/T-9/L Petition allowed.

