

Writ Petition No.24414 of 2010

Messrs SNGPL                      VERSUS                      M. NAEEM and 2 others

**16.11.2010**      Ms. Sumera Fazil Khan Advocate for  
Petitioner

The respondent No.1 is employed as a Fitter Supervisor in the petitioner company and he was dismissed from his service vide order dated 22-5-1998 on the allegation of unauthorizedly installing a sui gas meter at Asghar Ali Bakery, near Ice Factory Muslim Gunj, Thana Road, Kamonkey, District Gujranwala. The respondent No.1 assailed the order of his dismissal by preferring an appeal before the Federal Service Tribunal which appeal was accepted and he was reinstated into service with all back-benefits. The petitioner company preferred CPLA No.3238/L/2003 before the honourable Supreme Court of Pakistan against the judgment of the Federal Service Tribunal. During the pendency of the matter before the honourable Supreme Court of Pakistan, the judgment reported as Muhammad Mubeen-us-Salam and others v. Federation of Pakistan through Secretary, Ministry of Defence and others (PLD 2006 SC 602) was pronounced on 27-6-2006. The effect of the said judgment upon respondent No.1 was that his appeal as instituted before the Federal Service Tribunal was held to have been abated as

he did not fall within the purview of a "Civil Servant". A period of 90 days was allowed to all the affected litigants including the petitioner for seeking their respective redress of grievances from the competent authority.

2. The respondent No.1 then instituted a grievance petition before the Punjab Labour Court No.1 Lahore after serving a grievance notice upon the petitioner assailing the dismissal order. It was the case of the respondent No.1 that he had neither installed the alleged Sui gas meter connection at the premises mentioned in the charge sheet nor was he allowed to participate in the inquiry proceedings by the Inquiry Officer. It was also pleaded by the respondent No.1 that the witnesses who deposed against him in the inquiry proceedings had not implicated him in the installation of the alleged meter. The grievance petition was contested by the petitioner. The main objection raised by the petitioner-company in their reply was that the provisions of Industrial Relations Ordinance, 2002 read with West Pakistan (Standing Order) Ordinance, 1968 were not applicable to the respondent No.1; therefore, his petition before the Punjab Labour Court was incompetent and was liable to be dismissed.

3. The parties produced their respective evidence and the Punjab Labour Court vide judgment dated 16-6-2008 accepted the grievance petition of the respondent No.1 and set aside his dismissal order as passed by the petitioner. The learned Punjab Labour Court No.1, Lahore came to the

conclusion that the charge against the respondent No.1 was not proved during the inquiry proceedings. The petitioner company preferred Labour Appeal No.152 of 2008 before this Court, which subsequently was remitted to the Punjab Labour Appellate Tribunal Lahore and was dismissed on merits vide judgment dated 18-11-2009 by upholding the judgment of the Punjab Labour Court No.1, Lahore. Both the judgments passed by the two forums below are assailed through the instant writ petition.

4. The main contention raised by the learned counsel appearing for the petitioner is that the respondent No.1 was not a worker and workman as he was employed in a supervisory capacity and his petition before the Punjab Labour Court, Lahore was misconceived and incompetent and that this question of law has not been duly attended to by the two forums below. It was also argued that the charges of unauthorized and illegal installation of Sui gas meter were also proved against respondent No.1 and on merits as well, his petition is liable to be dismissed. While elaborating the arguments, the learned counsel for the petitioner contended that in the written statement, a specific objection was raised by the petitioner in preliminary objection No.5 that the provisions of Industrial Relation Ordinance, 2002 read with Standing Orders Ordinance, 1968 are not applicable to the respondent No.1.

5. I have considered the arguments of the learned counsel for the petitioner.

6. The term "worker and workman" has been defined in section 2(xxx) of the Industrial Relations Ordinance 2002 in the following words:---

*"worker" and "workman" means any and all persons not falling within the definition of employer who is employed in an establishment or industry for remuneration or reward either directly or through a contractor, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Ordinance in relation to an industrial dispute includes a person who has been dismissed, discharged, retrenched, laid-off or otherwise removed from employment in connection with or as a consequence of that dispute or whose dismissal, discharge, retrenchment, lay-off or removal has led to that dispute but does not include any person who is employed mainly in a managerial or administrative capacity."*

The term "employer" is also defined in clause (x) of section 2 of the Ordinance in the following manner: ---

*"employer" in relation to an establishment means any person or body of person, whether incorporated or not, who or which employs workmen in an establishment under a contract of employment and includes:-*

- (a) an heir, successor or assign, as the case may be, of such person or body as aforesaid;*
- (b) any person responsible for the direction, administration, management and control of the establishment;*
- (c) the authority, in relation to an establishment or group of establishments run by or under the authority of any department of the Federal Government or a Provincial Government appointed in this behalf or, where no authority is appointed, the head of the department;*
- (d) the office-bearer, in relation to an establishment run by or on behalf of a local authority, appointed in this behalf, or where no officer is so appointed, the chief executive office-bearer of that authority;*
- (e) the proprietor, in relation to any other establishment, of such establishment and every director, manager, secretary, agent or office-bearer or person concerned with the management of the affairs thereof;*
- (f) a contractor or an establishment of a contractor who or which undertakes to procure the labour or services of workmen for use by another person or in another*

*establishment for any purpose whatsoever and for payment in any form and on any basis whatsoever; and (g) office-bearers of a department or Division of the Federal or Provincial or local authority who belong to the managerial, secretarial or directional cadre or categories of supervisors or agents and those who have been notified for this purpose in the official Gazette;"*

7. The petitioner company has not produced any evidence before the Punjab Labour Court to prove the employment of the respondent No.1 mainly in a managerial or administrative capacity. It has not been established through any order or substance that the respondent No.1 had any powers to hire and fire any of the employees of the petitioner company or to make any administrative decisions. Merely because the duties which were entrusted to the respondent No.1 were referred to or described with the nomenclature as meter supervisor does not ipso facto put the petitioner out of the concept of a "worker and workman". None of the attributes of an "employer" as defined in clause (x) of Section 2 of the Industrial Relations Ordinance, 2002 were conferred upon the respondent No.1. The Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 also defines the "workman" in section 2 clause (i) in the following manner:-

*"workman" means any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or clerical [work] for hire or reward."*

*In this context, the judgment of the honourable Supreme Court of Pakistan reported as Mustekhum Cement Limited through Managing Director v. Abdul Rashid and others (1998 SCMR 644) is relevant and paragraph No.13 of the reported judgment is reproduced as under:--*

*"As to the question whether a person is or is not a workman, it is now well-established that the same would*

*depend not upon his designation but on the nature of duties mainly performed by him. The nature of duties mainly performed by the respondent, reference to which was earlier made in this judgment, indicates that, he had been assigned the work of maintaining accounts and distribution of different kinds of edibles to the other workers while sitting at a counter. The respondent also used to sell articles and maintain a record thereof. Although, other persons were also working under him, but admittedly, he did not exercise any power of hire or fire over them. He could not even recommend grant of leave to them. Such duties, therefore, clearly fell within the ambit of 'manual' or 'clerical' work. No doubt, the respondent was designated as Manager, nevertheless the nature of his duties indicate that he belonged to the category of workers defined as 'workman' in clause (i) of section 2 of the Standing Orders Ordinance."*

8. The duties of the respondent No.1 were of manual in nature. He was entrusted with the responsibilities of installing the Sui gas meters on the premises for which, the Sui gas connections are sanctioned by the petitioner company. It was a manual and a skilled job which the respondent No.1 was performing in the course of his employment. The learned Punjab Labour Court in paragraph No.13 of its judgment dated 16-6-2008 dealt with this question specifically in the following manner:---

*"The next question to be discussed is whether the petitioner falls within the definition of workman or not. The petitioner in his statement as P.W.1 has explained the nature of duties performed by him by saying that as Fitter Supervisor he used to install gas meters in the field with manual work and in cross-examination he stated that for said work one Helper and one Driver along with material used to be provided to him. Further stated that no person was subordinate to him. This piece of statement conveys a sense of manual kind of duty. In the petition also he has categorically stated that he had been performing manual and technical duty. It is not the case of the respondents that the petitioner was employed in any managerial or*

*administrative capacity in the light of definition provided in section 2 (xxx) of the Industrial Relations Ordinance, 2002. Respondents' evidence is not solid enough to controvert the contention of the petitioner or to establish his status otherwise, which could take him out of the ambit of workman."*

9. After going through the findings recorded by the Punjab Labour Court No.1 read in the light of the definition of "worker and workman" as defined in the Industrial Relations Ordinance, 2002 and Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, it is proved on the record that the respondent No.1 was a "worker and workman" and the provisions of Industrial Relations Ordinance, 2002 are fully applicable to the case of respondent No.1 and his grievance petition was rightly entertained by the Punjab Labour Court No.1 which has the jurisdiction in the matter to redress the grievance raised before it by the respondent No.1. The contention of the learned counsel for the petitioner that the provisions of Industrial Relations Ordinance, 2002 are not applicable to the case of the petitioner as he did not fall within the definition of "worker and workman" are not at all entertainable and are rejected.

10. In so far as the merits of the case are concerned, the learned Punjab Labour Court held that the charges against the respondent No.1 were not at all proved during the inquiry proceedings, therefore, his dismissal order was untenable. It will be advantageous to reproduce para 15 and 16 of the judgment dated 16-6-2008 passed by the

Punjab Labour Court No.1 Lahore which are as follows: ---

*"Only two witnesses were produced by the management/ department during the inquiry. A careful examination of their statements leads us to conclude that none of them did implicate the petitioner. There is no direct, independent and reliable evidence against him to prove unauthorized installation of Sui gas meter at Asghar Ali Bakery, Kamonkey. Statement of petitioner that he was on two days' leave prior to 17-4-1996 and his application Exh.R.1 addressed to the Head Office that on the said date he had come late in the office and by that time the team had left for work, goes unchallenged and unshaken in cross-examination. RW-2, who had visited the site, had disconnected the gas supply and removed the meter has not stated anything regarding petitioner's involvement in the installation of meter at site.*

*There is thus no evidence against the petitioner to find him guilty of the charge. The entire inquiry report seems to have been made merely on speculation. Learned counsel for respondents has submitted that the inquiry was done by the Inquiry Committee in accordance with law and rules, the petitioner was given opportunity of cross-examination also, thus the Court is not competent to go beyond the inquiry or to set aside the same. I am not in agreement with this argument, because in order to find out the correctness and authenticity of the inquiry report, under section 46 (4) of the Industrial Relations Ordinance, 2002, this Court is bound to go into detail of all the facts of the case and pass just and proper order in the circumstances of the case and look-into the material produced before the Inquiry Officer/Committee to weigh whether or not from such material/evidence, charge stood established against the petitioner or not. The evidence produced in the inquiry was not at all sufficient to hold the petitioner guilty and in these circumstances this Court is having jurisdiction to set aside the said report being against record and facts and being conjectural."*

11. This finding of fact recorded by the learned Punjab Labour Court No.1 is in accordance with the evidence and was upheld by the learned appellate Court of Punjab Appellate Tribunal, Lahore. No misreading or non-reading of any material evidence has been pointed out by the

learned counsel for the petitioner in the matter. The finding of facts recorded by the two forums below do not call for any interference by this Court in exercise of the jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. I am not persuaded to hold that the judgments passed by the two forums below are illegal or without lawful authority.

12. For all what has been stated above, the instant writ petition having no force is, therefore, dismissed.

***(NASIR SAEED SHEIK)***  
***Judge***