

**JUDGMENT SHEET**

*IN THE PESHAWAR HIGH COURT  
ABBOTTABAD BENCH  
(Judicial Department)*

**L.C. R No. 06-A/2023**

*M/s Kips Academy.*

*(Petitioner/s)*

*VS*

*Zahid Mehmood & others.*

*(Respondents)*

*Present: Muhammad Asjad Pervez Abbasi, Advocate,  
for petitioner.*

*Mr. Jehangir Khan, Advocate, for  
respondents.*

**Date of hearing: 24.10.2024**

**JUDGMENT**

**MUHAMMAD IJAZ KHAN, J.-** Through the instant civil revision petition, petitioner has challenged the order & judgment of learned Presiding Officer Labour Court, Haripur dated 12.06.2023, whereby, the appeal of the present petitioner was dismissed and thereby maintained the order of The Authority established Under The Payment of Wages Act, 2013 Hazara Division at Haripur dated 09.02.2022, whereby, the claim application of the respondent /employee was allowed.

2. Precisely, the facts leading to the filing of the instant petition are that the respondent No.1/claimant was the employee of the petitioner's institute, however, later-on due to spread of covid-19 in the month of March, 2020 the petitioner closed the institute and when in the month of November, 2020 the applicant joined the academy the petitioner/institute ousted the respondent/claimant without any written order, and they refused to pay him his legal dues/service benefits, therefore, he filed a claim before the Worthy Authority established Under The Khyber Pakhtunkhwa Payment of Wages Act, 2013 (hereinafter is to be referred as The Act of 2013). The aforesaid claim was duly contested by the present petitioner then respondent and after hearing arguments, the Authority Under The Act of 2013 allowed the claim of respondent No. 1 vide one of the impugned order dated 09.02.2022, whereby, he was held as entitled for the outstanding legal dues as well as one time compensation equal to the outstanding amount. The aforesaid order & judgment was then challenged by the present petitioner before the learned Labour Court being an appellate Court under The Act of 2013, however,

the same was also dismissed vide the second impugned order dated 12.06.2023 and both these order have now been challenged by the petitioner before this Court through the instant revision petition.

3. Arguments of learned counsel for parties were heard in considerable detail and the record perused with their able assistance.

4. At the very outset, learned counsel for the petitioner states that he has challenged the impugned orders & judgments only on the question of jurisdiction of the Authority established Under The Payment of Wages Act, 2013 on the ground that since the petitioner is a trans-provincial establishment, therefore, The Authority established under The Act of 2013 does not have any jurisdiction to entertain the claim application, however, such objection of the learned counsel is not legally correct, which is to be determined and answered as under:-

5. After the 18<sup>th</sup> Constitutional amendment when the concurrent legislative list was deleted and as a result thereof several federal ministries including the labour ministry were

devolved upon to the provinces and thereafter every province enacted/promulgated their own labour laws whereof the province of Khyber Pakhtunkhwa also enacted an Act with the name of The Khyber Pakhtunkhwa Industrial Relations Act, 2010 (hereinafter is to be referred as The Act of 2010), however, after two years the federal government also promulgated an Act in the year of 2012 with the name of The Industrial Relations Act, 2012 (*hereinafter is to be referred as The Act of 2012*). In the said Act of 2012 the power and functions of the labour Court were entrusted to the National Industrial Relations Commission (NIRC) as under the prescribed grievance redressal mechanism the power to adjudicate and determine an industrial dispute between an establishment and the employee was conferred upon the NIRC and in the said Act the word “trans-establishment” was also introduced and defined which means an establishment or group of establishment, industries, having its branches in more than one province and thus under the mechanism as provided by The Act of 2012, a dispute between an employee and trans-establishment is to be adjudicated, determined and decided by the NIRC.

6. As against this, as stated hereinabove that after the 18<sup>th</sup> amendment the province of Khyber Pakhtunkhwa enacted an Act namely The Industrial Relations Act, 2010. Similarly, another Act namely The Khyber Pakhtunkhwa Payment of Wages Act, 2013 was also enacted. Under the said Act of 2013 an Authority was to be appointed under sub section 1 of section 15, whereas, under sub section 2 of section 15 if any due wages are refused to an employee or any deduction is made from the wages of such employee then he could file a claim before the said Authority and who shall pass an appropriate order there upon and that order of The Authority is appealable under section 17 of The Act of 2013 before the Labour Court. It is relevant to mention here that in The Industrial Relations Act, 2012, the jurisdiction of the Authority established under The Khyber Pakhtunkhwa Payment of Wages Act, 2013 has not been excluded. Similarly, in The Act of 2013 too there is no concept of trans-provincial establishment which obviously mean that the domain and functions of NIRC as established under the Act of 2012 and that of an Authority as established under The Act of 2013 are not in

conflict qua their sphere of jurisdiction rather they are independent forum duly accommodating the powers and functions of each other and thus even if there is a dispute between an employee and of trans-provincial establishment, and if any branch of such establishment is situated within the province of Khyber Pakhtunkhwa then an Authority established under The Act of 2013, shall have the jurisdiction to entertain a claim of the employee, therefore, the objection of the learned counsel for petitioners that in the instant controversy the NIRC has the jurisdiction has no legal substance.

7. It was also noted that though before this Court on one hand, the petitioner raised an objection of jurisdiction of the Authority established under The Khyber Pakhtunkhwa Payment of Wages Act, 2013, however, on the other when The Authority passed one of the impugned order dated 09.02.2022, the petitioner itself surrendered by filing an appeal before the Labour Court under Section 17 of The Khyber Pakhtunkhwa Payment of Wages Act, 2013, therefore, when the petitioner has neither raised such objection at the initial stage and when it has surrendered itself to the jurisdiction of

The Authority as well as appellate forum established under The Khyber Pakhtunkhwa Payment of Wages Act, 2013 then at this belated stage such objection of the petitioner could not be appreciated in its favour.

**8.** During the course of arguments, learned counsel for the petitioner made much emphasis on the judgments of Apex Court titled “*Messrs Sui Southern Gas Company Ltd and others vs. Federation of Pakistan and others*” reported as 2018 SCMR 802, “*Pakistan Telecommunication Company Ltd. vs. Member NIRC and others*” reported as 2024 SCMR 535 and “*Muslim Commercial Bank Limited vs. Muhammad Anwar Mandokhel & others*” reported as 2024 SCMR 298, however, all these judgments pertain to the controversy of jurisdiction of Labour Court & NIRC under The Industrial Relations Act, 2010 & The Industrial Relations Act, 2012 and there is not even a remote touch qua the jurisdiction of either of NIRC or The Authority in the matter of payment of wages of an employee of a trans-provincial establishment.

**9.** The objection qua the jurisdiction of The Authority under The Act of 2013 with respect to the trans-provincial establishment has already been set at rest by this Court in case<sup>1</sup>, whereby, after discussing various provisions of The Khyber Pakhtunkhwa Industrial Relations Act, 2010, The Industrial Relations Act, 2012 and The Act of 2013 has concluded that a person who is an employee in a trans-provincial establishment can approach to The Authority established under The Act of 2013. Similarly, it has also been held thereunder that the provisions of The Act of 2013 are applicable to all the factories, industries, and commercial establishment under the control of the federal government or provincial government which are situated in the territorial jurisdiction of the province of Khyber Pakhtunkhwa and it has specifically been concluded that the trans-provincial establishment has not been excluded from the palm & applicability of The Act of 2013.

**10.** Apart from the above, even otherwise, The Khyber Pakhtunkhwa Payment of Wages Act, 2013 has provided a complete mechanism for the redressal of grievances of an employee. Similarly,

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<sup>1</sup> Telenor Pakistan (Pvt.) Limited vs. Presiding Officer, Labour Court and 17 others (2019 PLC 240)



it has also specifically described the class of employees as well as the categories of the establishments to which the said Act of 2013 is to be applicable. In this regard the preamble of The Act of 2013 section 1 (3), section 2 (ii) and section 3 being relevant are reproduced below:

**Preamble**

*WHEREAS it is expedient to regulate the payment of wages to certain classes of persons employed in factories, industrial establishment and commercial establishment in the Province of the Khyber Pakhtunkhwa and for matters connected therewith or ancillary thereto;*

**1. Short title, extent, application and commencement. ---**

(1).....

(2).....

(3) *It shall apply to-*

(a) *persons employed in factories or industrial establishment or commercial establishment;*

(b) *the payment of wages to persons employed (otherwise than in a factory) upon any railway by a railway administration; and*

(c) *all persons employed directly or through a contractor, sub-contractor, headman, middleman;*

(d) *persons employed in the factories, industrial establishments or commercial establishments under the control of Federal Government, as the case may be, situated in the territorial jurisdiction of the province."*

**2. Definitions.---**In this Act, unless there is anything repugnant in the subject or context,-

(ii) “commercial establishment” for the purpose of this Act, means an establishment in which the business of advertising, commission or forwarding is conducted, or which is a commercial agency, and includes a clerical department of a factory or of any industrial or commercial undertaking, the office establishment of a person who for the purpose of fulfilling a contract with the owner of any commercial establishment or industrial establishment, employs worker, a unit of a joint stock company, an insurance company, a banking company or a bank, a broker’s office or stock exchange, a club, a hotel, a restaurant or an eating house, a cinema or theater, 1 [Deleted] private health centres, clinical laboratories, private security agencies, other establishment or class thereof which run on commercial and profit basis, and such other establishment or class thereof, as Government may, by notification in the official Gazette, declare to be a commercial establishment for the purposes of this Act;

**3. Responsibility for payment of wages.**---  
Every employer including a contractor, sub-contractor, headman, middleman or agent shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act:

Provided that, in the case of persons employed otherwise than by a contractor, sub-contractor, headman, middleman or agent,-

(a) in factory, the manager;

(b) in industrial establishment or commercial establishment, if there is a person responsible to the employer for the supervision and control of the

*industrial establishment or commercial establishment, as the case may be; and*

*(c) upon railways (otherwise than in factories, or industrial establishment or commercial establishment), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned,*

*the person so named, the person so responsible to the employer or the person so nominated, as the case maybe, shall be responsible for such payment.*

The combined reading of the aforesaid provisions of law would manifestly show that The said Act of 2013 is applicable to all those persons who are employees in the factories, industrial establishment and commercial establishment in the province of Khyber Pakhtunkhwa and since petitioner's educational institution which is a private limited company too, is situated in the province of Khyber Pakhtunkhwa and is carrying business of imparting education as against the fees paid to it by the students for which it has appointed/engaged many persons including the respondent/employee, therefore, his case is fully covered under The said Act of 2013.

**11.** Even, on merits of the case, it was noted that neither the employment of the respondent/employee with the petitioner's institution has been denied nor it is the case of petitioner that it has terminated the respondent/employee on any ground of misconduct and it has also been admitted by petitioner's witness namely Abdul Ghafoor, who appeared as RW-01 that respondent/employee was either not paid his legal dues or he was paid less dues/salaries then in such state of affairs the worthy Authority has rightly allowed his claim and the petitioner's appeal has rightly been rejected by the Labour Court.

**12.** In view of the above discussion, the objection of the learned counsel for the petitioner is not legally sustainable, therefore, the same is repelled and consequently the impugned orders of The Authority dated 09.02.2022 as well as of the Labour Court dated 12.06.2023 being in accordance with law are maintained and upheld and consequently this revision petition being bereft of any merits is dismissed.

Announced  
24.10.2024

***J U D G E***