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JUDGMENT SHEET
L A H O R E H I G H C O U R T,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.2162 of 2022

All Workmen Employed by Dandot Cement Company Pvt. Ltd	**V/S**	*M/s. Dandot Cement Company Pvt. Ltd. and others*

J U D G M E N T

Date of hearing	**19.10.2022**
Petitioner(s) by	Agha Muhammad Ali Khan, ASC.
Respondent(s) by	Mr. Shahid Anwar Bajwa and Barrister Ahmad Pervaiz, ASC for the Respondent No.1/Dandot Cement Company. Malik Itaat Hussain Awan, Advocate for FBR. Mr. Muhammad Sajid Khan Tanoli, DAG with Abdul Basit Tanoli, Advocate. Mirza Asif Abbas, Assistant Advocate General.

"Every day in the Courts and Tribunals of this country, the names of people who brought cases in the past live on as shorthand for the legal rules and principles which their cases established. Their cases form the basis of the advice given to those whose cases are now before the Courts, or who need to be advised as to the basis on which their claim might fairly be settled, or who need to be advised that their case is hopeless.".

Lord Robert John Reed, President of the UK Supreme Court

JAWAD HASSAN, J. Through this writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the ***"Constitution"***), the Petitioner/All Workmen Employed by Dandot Cement Company Pvt. Ltd (the ***"Petitioner"***) has prayed as under:

> "*In view of the above stated facts and circumstances of the case, it is most humbly respectfully submitted that the instant writ Petition may kindly be allowed and the order dated 29.01.2021 and 25.03.2022, passed by*

learned Respondents No.2 and 3 respectively be set aside and the Respondent No.1 's Application under Section 11-A of Ordinance 1968 be dismissed.
Any other relief which this Honourable Court deem fit and proper may also kindly be awarded to the Petitioner."

I. CONTEXT

2. Brief facts of the case are that Respondent No.1/M/S. Dandot Cement Company Pvt. Ltd. (the ***"Respondent Company"***) filed petition under Standing Order 11-A of the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (the ***"Ordinance"***) mainly on the ground that its current manufacturing units urgently required comprehensive Balancing, Modernization and Replacement (***"BMR"***), which was vehemently contested by the *"Petitioner"*. But, the Respondent No.2/Punjab Labour Court, Rawalpindi (the ***"Labour Court"***) without framing of issues accepted the same vide order dated 29.01.2021 with the condition that after completion of the *"BMR"* no new workmen will be inducted by the *"Respondent Company"*. Feeling aggrieved thereof, the *"Petitioner"* filed an appeal before the Respondent No.3/Punjab Labour Appellate Tribunal, Rawalpindi (the ***"Tribunal"***) and same met with dismissal vide judgment dated 25.03.2022. Hence, this Petition.

II. PETITIONER'S SUBMISSION

3. Agha Muhammad Ali Khan, ASC *inter alia* submitted that the *"Respondent Company"* filed petition under Section 11-A of the *"Ordinance"* for closure of manufacturing unit of the factory and retrenchment of its employees just to defeat vested rights of the members of the *"Petitioner"*, who have been diligently performing their duties with it; that before filing of above stated petition, the rights of members of the *"Petitioner"* were not dealt with properly by the management of the *"Respondent Company"*; that before passing the impugned orders, the *"Labour Court"* and the *"Tribunal"* overlooked material aspects of the matter, which even otherwise have been passed in violation of the agreement reached at between the

parties before this court vide order dated 01.07.1996 passed in C.M. No.3082 of 1996 in Civil Original No.82 of 1995; that basic grievance of the members of the *"Petitioner"* is their retrenchment, who don't want closure of current units of the *"Respondent Company"*; that this Court in a number of judgments has made the industry running rather than its economic death. He relied on the judgments of this Court reported as "*SAUDI PAK INDUSTRIAL & AGRICULTURAL INVESTMENT COMPANY LTD Versus CHENAB LIMITED*" **(2020 CLD 339)** and "*THE ADDITIONAL REGISTRAR COMPANY Versus AL-QAIM SUGAR MILLS LTD.*" **(2021 CLD 931)**. The relevant part of the case *Saudi Pak Industrial supra* is reproduced hereunder:

> "*31. Similarly, it is apparent from the above cited case laws that winding up is the last thing that the court would do and not the first thing that the court would do having regard to its impact and consequences, including (a) closing down of a unit which produces some goods or provides some services; (b) loss of employment of numerous persons and resulting grave hardship to the members of families of such employees; (c) loss of revenue to the State by way of collection that the State could hope to make on account of customs or excise duties, sales tax, Income Tax, etc.. The effect of winding up must be considered -putting an end to the business or an industry or an entrepreneurship -and the court should not be too keen or too anxious to continue winding up of a company and must give weightage if there is any possibility of resurrecting the company."*

III. RESPONDENTS' SUBMISSIONS

4. Conversely, Mr. Shahid Anwar Bajwa, ASC has submitted that the *"Labour Court"* has rightly decided the petition under Standing Order 11-A of the *"Ordinance"* on the basis of commitments made by the *"Respondent Company"* as it desires closure of business/manufacturing/activities of establishment/factory due to recurring financial loss for numerous reasons especially for

comprehensive *"BMR"* of outdated plant suffering with economical, technical and environmental hazards. He further submitted that freedom of trade and ease of doing business is a fundamental right of every citizen including the *"Respondent Company"*, which is guaranteed under the *"Constitution"*. He relied on the judgment of this Court cited as "*M.C.R. (Pvt) Ltd, franchisee of Pizza Hut Versus MULTAN DEVELOPMENT AUTHORITY and others*" **(2021 CLD 639)**. The relevant part of the judgment is reproduced as under:

> *"28. Undoubtedly freedom of trade, business and commerce is a fundamental right guaranteed under Article 18 of the Constitution which states that every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business. One of the basic purposes behind provision of this fundamental right is certainly to advance culture of socio-economic progress and to protect and promote business and trade activities and, at the same time, to encourage simplification of the process of establishing and carrying out new business ventures throughout the country because activities of business and trade create opportunities for the masses around and provide job options, financial stability and progress in the area."*

5. Barrister Ahmed Pervaiz, ASC submitted that pursuant to the initial agreement, the members of the *"Petitioner"* have entered into some other agreements by novation of the parties. Further submitted that most of the renovation/re-installment work has been completed and hopefully the Respondent Company's establishment /manufacturing plant will start working in April, 2023. He added that as and when the work is started the members of the *"Petitioner"* reserve their right to be re-appointed as per their qualifications/skills on preferential basis.

6. Arguments heard. Record perused.

IV. DETERMINATION BY THE COURT

7. It is vehemently argued on behalf of the *"Petitioner"* that the *"Respondent Company"* is bound by terms & conditions of agreement

dated 19.05.1992 reached between the employees of the *"Respondent Company"* and M/S Chakwal Group of Companies (having then taken over management of the *"Respondent Company"*), which agreement had later been endorsed in proceedings of this Court vide order dated 01.07.1996 passed in C.M. No.3028 of 1996 in Civil Original No.82 of 1995. Agitation of the *"Petitioner"*, available record and arguments of adversaries give rise to the following moot points:

1. *Whether, whilst passing the impugned orders, both the Labour Court and the Appellate Tribunal were bound to weigh in Petitioner's favour the agreement dated 19.05.1992 and order dated 01.07.1996 passed in C.M. No.3082 of 1996 in Civil Original No.82 of 1995?*

2. *Whether the Petitioner availed remedies provided under the Act and the Rules?*

3. *Whether retrenchment of Petitioner's members in respondent company is not permissible in the eye of law?*

8. Issues listed above are being discussed and concluded here keeping in view relevant laws, attending circumstances of case in hand and precedents. Undoubtedly, state of affairs of sailing amongst the *"Petitioner"* and the "*Respondent Company*", their rights and liabilities and their interests guarded by law would be the prime considerations in relevant discussions. To set forth with discussions, first aspect in the series is the main, rather to say the sole bone of contention amongst parties in contest is the intent and aim for closure of the *"Respondent Company"*, which is elaborated here under.

Point No.1 (Closure of Establishment)

9. Agha Muhammad Ali Khan, ASC agitated hard on behalf of the *"Petitioner"* that an agreement was executed amongst parties way back on 19.05.1992, which agreement included stipulation that the *"Respondent Company"* would not force in closure of the establishment and the *"Respondent Company"* is bound to abide by said stipulation/terms and by no means is available with any right or

justification to step up for closure of the establishment. Learned counsel put much emphasis that agreement and order mentioned above are very much alive for being honored and abided under cover of Order XXIII, Rule 3 of The Code of Civil Procedure, 1908 (the ***"CPC"***).

10. Dilating upon Petitioner's contentions on basis of aforementioned agreement dated 19.05.1992 reached between the parties before this Court eventuating in order dated 01.07.1996, it shall be quite relevant to refer here that not only said agreement was entered into way back in year 1992 in the wake of different type and nature of issues and altogether in different financial and social circumstances prevailing then as well as involving a different investor/management of the *"Respondent Company"*. Describing status of even a consent decree, it is observed by the Hon'ble Supreme Court of Pakistan in a case titled "*PEER DIL and others Versus DAD MUHAMMAD"* (**2009 SCMR 1268**) that "*being a consent decree based on compromise between the parties can safely be equated to that of a contract, breach whereof would give rise to the fresh cause of action and a fresh suit can be filed by an aggrieved person for the redressal of his grievances.".* It is well settled that a consent decree or order is nothing but a contract between the parties with command of the Court is superadded to it as held in the case of "*ZAFAR AHMAD and 5 others Versus GOVERNMENT OF PAKISTAN through Secretary, Ministry of Production, Islamabad and 6 others"* (**1994 MLD 1612**). In addition thereto, it has been held in case titled "*RIAZ HUSSAIN Versus MAZARAY KHAN"* (**1988 CLC 1129**) reading that:

> *"5. .... Decree Exh.P.6 which is then mainstay of the case of the petitioner is merely a consent and a compromise decree and under the law it has no better legal status than agreement between the parties, but of course with authority of the Court superadded to it. ...".*

11. It has to be kept in mind that the agreement agitated by the *"Petitioner"* was settled involving the management later having skipped out of business handing over/transferring the control/administration to some other management, which management has later met with further successive replacements. Barrister Ahmad Pervaiz, ASC stated that it is to be kept in consideration as well that objects and purposes now allegedly necessitating closure of the *"Respondent Company"* did not exist at the time said agreement was allegedly struck amongst parties. All the documents/exhibits relied by the "Labour Court" shows that outdated, deteriorated and technology deficient status of manufacturing plants/units of the *"Respondent Company"* are the features for the bid of *"Respondent Company"* based for its closure therefore, outcome of existing status of the *"Respondent Company"* is definitely loss of sources, added costs, substandard and outdated product and environment challenges etc. All said outcomes cannot be allowed to fall in field as, in said course, not only the *"Respondent Company"*, but the *"Petitioner"* as well are bound to suffer ultimate negative impacts thereof.

12. As argued by Mr. Shahid Anwar Bajwa, ASC, one of causes of closure of establishment can be due to new production technologies, said cause is the result of common technological progress, rendering some activities superfluous. Mechanization is one of the examples for the production process that leads to displacement of workers. The cause of displacement, through technological progress, actually benefits society as a whole. For example, free trade benefits all members of society, as they can buy more products more cheaply than those that are domestically produced. Opening of trade adversely affects not only import-competing companies, but also workers employed in these plants that directly compete with the foreign firms. Often, a whole range of products will be predominantly imported, rendering many workers unemployed in the present occupations. It is therefore of no surprise that society as a whole tries to redistribute

some of the gain it achieves to those who are at a loss due to free trade.

13. In this particular case, prayer of the *"Respondent Company"* seeking permission for closure of it's manufacturing units was grounded on facts that the Respondent Company's manufacturing units urgently needed comprehensive balancing, modernization and replacement (BMR) required in order to make the manufacturing units more environment friendly and efficient. Proceedings eventuating in impugned orders have been aimed under umbrella of Standing Order No.11-A of the *"Ordinance"* reading as follows:

> "***11-A: CLOSURE OF ESTABLISHMENT:-***
>
> *Notwithstanding anything contained in Standing Order 11, no employer shall terminate the employment of more than fifty percent of the workmen or close down the whole of the establishment without prior permission of the Labour Court in this behalf, except in the event of fire, catastrophe, stoppage of power supply, epidemics or civil commotion.*
>
> *Explanation: 'Close down' in this Standing Order includes lay-off of workmen beyond fourteen days where such lay-off results in closure of an establishment but 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 [Punjab Industrial Relations Act 2010 (XIX of 2010)."*

14. It is unequivocal from reading of above said standing order that no employer shall terminate the employment of more than fifty percent of the workmen or close down the whole of the establishment but subject to certain limitations and for closure of establishment, the parties have to approach the Labour Court. Now this Court will examine the judicial review of the orders passed by the *"Labour Court"* and the *"Tribunal"* whether they have rightly decided the application of the *"Respondent Company"* under Standing Order 11-A of the *"Ordinance"*. It evinces from the perusal of order dated

21.01.2021 that it was rightly passed by the *"Labour Court"* after hearing the parties at length, considering the evidence of Petitioner and production of PW-1 to PW-6 with Ex.P1 to Ex.P17 and that of the *"Respondents Company"* from RW-1 to RW-5 alongwith Ex.R-1 to Ex.R-139 and Mark-R-A to Mark R-X . Relevant portion thereof is reproduced as below:

> *"As per direction of the court, petitioner representative/General Manager Asad Ullah Butt submitted schedule of auction showing complete BMR which includes Source of Funds, Approval of Technical Design, Clearance Certificate of Environmental Authority, Human Resource Plan, Time limit of completion and Undertaking to give preferential right to retrenched employees duly approved by the Board of Director and signed by the Chief Executive of DCCL and in this regard statement of the petitioner Asad Ullah Butt G.M. DCCL has been recorded separately today, hence relying on the same the petition stands accepted accordingly subject to fulfillment of time bound BMR mentioned above. However, all retired and retrenchment employees are entitled for the dues/benefits of service permissible in the eyes of law/agreements if any and DCCL is bound to pay their liabilities at the time of termination of their services including already retrenched employees and in case of delay in their payments, all of them were entitled for compensation under Payment of Wages Act and aggrieved retrenched workmen/retired employees may approach for redressal of grievance at appropriate forum i.e. Authority of Payment of Wages Act Jhelum. However, after completion of BMR no new employees/workmen be inducted until and unless preference be given to all retrenchment workmen for reemployment and if any violation occurred, respondent or any aggrieved ex-employees are at liberty to initiate contempt proceedings before this Court against the DCCL".*

Rights of Administration of Establishment:

15. Certain rights of administration of establishment available with the *"Respondent Company"* are required to be kept in consideration in connection with closure of business of the *"Respondent Company" viz a viz* entrenchment of employees. It was reckoned in case titled *M/S Pakistan Syenthetics Limited Versus Waqar Ahmed, etc*. (**NLR 2010 Lahore 43**) by holding that "*it is an unfettered right of an employer to order his affairs for the proper running of his establishment as long as the same is in conformity with standing order 12 and Order 13 of The Standing Order.".* Identifying unavoidable circumstances, it was held in case titled *Salahuddin and 42 others Vs. Sindh Labour Appellate Tribunal and 2 others* (**2000 PLC 661 Karachi**) reading that:

> *"Seeking permission from Court as above is mandatory. Its object is primarily to safeguard the interest of workmen and also to ensure that without justification running establishments are not closed down. In the instant case due to changed circumstances at in of the respondent No.3 abruptly relapsed as such the establishment was closed down. Since, there was no mala fide and the order dated 23-1-1996 was not impugned, the petition is not maintainable."*

16. It was held in case titled *Managing Director, Lyallpur Cotton Mills, Faisalabad Versus Labour Appellate Tribunal (Punjab), Lahore and 2 others* (**1990 PLC 514 Lahore**) reading as follows:

> *"7. ... It is within the exclusive discretion of the employer to run the business in the manner he thinks more suitable and beneficial. The learned Tribunal overstepped its jurisdiction while basing its decision on this observation. The respondent was incumbent of the Weaving Department. Therefore, if the Department was closed the management was fully justified to say good-bye to him."*

17. It is held in case titled *Textile Corporation of Pakistan Ltd., Karachi Vs. Presiding Officer, Labour Court No. VI, Hayderabad (Sindh) and another* (**1982 PLC 22 Karachi**) reading as follows:

> *"The refusal of permit closure which, as already stated, is generally the right of the owner of the business or industry should not be based on suspicion or conjecture; and it is necessary to base such refusal on concrete instances mala-fides and not on surmises and conjectures .... It cannot be gain-said that a company has a general right in law to close down its business. In interest of better relations between that industry and the workers the legislature has made laws relating to industrial employment and under the Standing Orders Ordinance, 1968 has put the condition that no employer shall close down the whole of the Establishment without prior permission of the Labour Court. The evidence on record however about continued losses year by year, and despite change in management, cannot be overlooked as due to the same it was no longer feasible or profitable to continue operating the Mill. Under the circumstances, it is here by declared that the order dated 15th September, 1979 passed by the President Labour Court No. VI is contrary to law and of no legal effect and the petitioner is entitled to close down its Mills in accordance with law. The petition is allowed accordingly with no order to costs."*

18. It is held in case titled *Pakistan Tobacco Co. Ltd Vs. Punjab Industrial Appellate Tribunal, Lahore and 16 others* (**1976 PLC 911 Lahore**) reading as follows:

> *"7. The right of the employer, to re-organise is conceded but against this right the terms of settlement are pleaded. It should be obvious that for curtailing or limiting such a fundamental and plenary right of the employer very clear and unmistakable words would be necessary. The view of the industrial Court that the workers could object to such re-organization would, not appear to be correct. The view of the appellate Tribunal that the workmen could create difficulty for the employer may be somewhere nearer the truth."*

19. It is held in case titled *The Colony Textiles Mills Ltd., etc The Assistant Director Labour Welfare, (Conciliation), Lahore Region etc* (**1964 PLC 605**) reading as follows:

> *"No law can compel the petitioner to again start with it's publications against it's wishes on the same scale on which it was previously running".*

Point No.2 (Available Remedies)

20. In connection thereto other remedies available to the *"Petitioner"* in case of violation of past order of this Court based upon compromise of parties involved therein, Agha Muhammad Ali Khan, ASC was confronted with fact as to whether the *"Petitioner"* has ever initiated any proceedings in said regard, in particular any contempt petition, the answer on his behalf was "NO" with repeated argument that said agreement and earlier order are very much alive for being abided under cover of Order XXIII, Rule 3 of the "CPC".

Redressal of Grievance:

21. In relation to state of recourses available to *"Petitioner"*, it is to be enumerated here that the Standing Order No.12(3) of the *"Ordinance"* prescribes remedy for grievance of a workman, which reads as follows:

> ***"12 : TERMINATION OF EMPLOYMENT:***
>
> *(3). The services of a workman shall not be terminated, nor shall a workman be removed, retrenched, discharged or dismissed from service, except by an order in writing which, shall explicitly state the reason for the action taken. In case a workman is aggrieved by the termination of his services or removal, retrenchment, discharge or dismissal, he may take action in accordance with the provisions of Section 33 of the Punjab Industrial Relations Act 2010 (XIX of 2010) and thereupon the provisions of the said section shall apply as they apply to the redress of an individual grievance."*

22. Plain reading of the order ibid. the *"Petitioner"* was available with remedy under Section 33 of The Punjab Industrial Relations Act 2010 (Act XIX of 2010) reading as follows

> ***33: REDRESS OF INDIVIDUAL GRIEVANCES:–***
>
> *(1). A worker may bring his grievance in respect of any right guaranteed or secured to him by or under any law or any award or settlement to the notice of his employer in writing, either himself or through his shop steward or collective bargaining agent within three months of the day on which the cause of such grievance arises.*
> *(2). Where a worker brings his grievance to the notice of the employer, the employer shall, within fifteen days of the grievance being brought to his notice, communicate his decision in writing to the worker.*
> *(3). Where a worker brings his grievance to the notice of his employer through his shop steward or collective bargaining agent, the employer shall, within seven days of the grievance being brought to his notice, communicate his decision in writing to the shop steward or the collective bargaining agent.*
> *(4). If the employer fails to communicate a decision within the period specified in sub-section (2) or sub-section (3) or if the worker is dissatisfied with such decision, the worker or the shop steward may take the matter to the collective bargaining agent or the Labour Court.*
> *(5). The collective bargaining agent may take the matter to the Labour Court, and where the matter is taken to the Labour Court, it shall give a decision within ninety days from the date of the matter being brought before it as if such matter was an industrial dispute.*
> *(6). A worker may, within a period of sixty days from the date of the communication of the employers' decision or from the date of the expiry of the period mentioned in sub-section (2) or sub-section (3), take the matter to the Labour Court.*
> *(7). In adjudicating and determining a grievance under this section, the Labour Court shall go into all the facts of the case and pass such orders as may be just and proper in the circumstances of the case.*

> *(8). Subject to the decision of the Tribunal, if a decision under this section given by the Labour Court is not given effect to or complied with within seven days or within the period specified in the decision, shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred thousand rupees or with both.*
> *(9). A person shall not be prosecuted under sub-section (8) except on a complaint in writing by the workman if the decision in his favour is not implemented within the period specified in that sub-section.*
> *(10). For the purposes of this section, workers having common grievance arising out of a common cause of action may make a joint application to the Labour Court."*

23. Present management, according to the *"Petitioner"*, took over ownership and management of the *"Respondent Company"* in May, 2019. Agha Muhammad Ali Khan, ASC when confronted as to whether any grievance petition under Section 33 of the *"Ordinance"* was moved on behalf of the *"Petitioner"* with regard to intents of the *"Respondent Company"*, if contrary to agreement reached between the parties before this Court eventuating in order dated 01.07.1996, answer again was "NO". Dealing with alike matter, held in case titled "*SALAMAT ALI Versus FOUJI SUGAR MILLS SANGLA HILL, DISTRICT SHEIKHOPURA through it's General Manager and 3 others"* (**PLJ 2005 Lahore 1250**) wherein the Court held that:

> *"7. ... The appellants had the remedy for the redressal for their grievance by invoking the provisions of section 46 of the Industrial Relations Ordinance, 2002. The appellant had the remedy to serve upon the employee notice under section 46, but no notice in writing, was served by the appellants to the employer or to it's agent within the stipulated period of one month from the date of grievance. The appellants remained silent and have not agitated the matter within one month as provided under law. ..."* .

24. Further, held in case titled "*NAZEER AHMAD and another Versus PRESIDING OFFICER and 5 others* (**1986 PLC 1052 Karachi**) reading that:

> *"12. ... Standing Order 11-A does not provide for giving of notice to the individual workmen concerned or even the C.B.A., therefore, the object behind joining the C.B.A. as party to the proceedings before the Labour Court appears to be to enable the Labour Court to ascertain true facts so that nothing is concealed there from and not that it may espouse the cause of individual workers. No doubt, the employer has sought permission from the Labour Court to terminate the employment of all the workmen working in the establishment, but when such permission is granted and as a consequence thereof, the employment of the petitioners is terminated, the petitioners have an appropriate remedy in the form of section 25-A of the I.R.O. if they feel aggrieved by the termination of their employment…."*.

25. Needless to reiterate here that the *"Petitioner"* fell in sleep and slumber not adopting legal recourses structured for the *"Petitioner"* for redressal of now agitated grievance.

Point No.3 (Retrenchment)

26. The last moot point pertains question of retrenchment, dealt with under Standing Orders No.12 to 14 of the Ordinance reading as follows

> "***12. TERMINATION OF EMPLOYMENT:***
>
> *(1). For terminating employment of a permanent workman, for any reason other than misconduct, one month's notice shall be given either by the employer or the workman. One month's wages calculated on the basis of average earned by the workman during the last three months shall be paid in lieu of notice.*
> *(2) . 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.

(3). The services of a workman shall not be terminated, nor shall a workman be removed, retrenched, discharged or dismissed from service, except by an order in writing which, shall explicitly state the reason for the action taken. In case a workman is aggrieved by the termination of his services or removal, retrenchment, discharge or dismissal, he may take action in accordance with the provisions of Section 33 of the Punjab Industrial Relations Act 2010 (XIX of 2010) and thereupon the provisions of the said section shall apply as they apply to the redress of an individual grievance.

(4). Where the services of any workman are terminated, the wages earned by him and other dues, including payment for unavailed leave as defined in Clause (1) of Standing Order 8 shall be paid before the expiry of the second working day from the day on which his services are terminated.

(5). The services of a permanent or temporary workman shall not be terminated on the ground of misconduct otherwise than in the manner prescribed in Standing Order 15.

(6). Where a workman resigns from service or his services are terminated by the employer, for any reason other than misconduct, he shall, in addition to any other benefit to which he may be entitled under this Ordinance or in accordance with the terms of his employment or any custom, usage or any settlement or an award of a Labour Court under the Punjab Industrial Relations Act 2010 (XIX of 2010), be paid gratuity equivalent to thirty days, wages, calculated on the basis of the wages admissible to him in the last month of service if he is a fixed-rated workman or the highest pay drawn by him during the last twelve months if he is a piece-rated workman, for every completed year of service or any part thereof in excess of six months:

Provided that, where the employer has established a provident fund to which the workman is a contributor and the contribution of the employer to which is not less than the contribution made by the workman, no such gratuity shall be payable for the period during which such provident fund has been in existence:

Provided further that if through collective bargaining the employer offers and contributes to an "Approved Pension Fund" as defined in the

Income Tax Ordinance, 2001 (XLIX of 2001), and where the contribution of the employer is not less than fifty per cent of the limit prescribed in the aforesaid Ordinance, and to which the workman is also a contributor for the remaining fifty per cent or less, no gratuity shall be payable for the period during which such contributions has been made.

(7). A workman shall be entitled to receive the amount standing to his credit in the provident fund, including the contributions of the employer to such fund, even if he resigns or is dismissed from service.

(8). Where a workman dies while in service of the employer, his dependent shall be paid gratuity in accordance with the provisions of clause (6):

Provided that no payment of gratuity in such case shall be made otherwise than by a deposit with the Commissioner, who shall proceed with the allocation of the deposit to the dependent of the deceased in accordance with the provisions of section 8 of the Workmen's Compensation Act, 1923 (VIII of 1923).

(9). If the employer fails to deposit the amount of the gratuity under clause (8) the dependent of the deceased may make an application to the Commissioner for the recovery of the amount thereof.

Explanation: "Commissioner" and "dependent" in this Standing Order shall have the same meanings as are respectively assigned to them in the Workmen's Compensation Act, 1923 (VIII of 1923).]

13. PROCEDURE FOR RETRENCHMENT:-

Where any workman is to be retrenched and he belongs to a particular category of workmen, the employer shall retrench the workman who is the last person employed in that category.

14. RE-EMPLOYMENT OF RETRENCHED WORKMEN:-

Where any number of workmen are retrenched and the employer proposes to take into his employ any person within a period of one year from the date of such retrenchment, he shall give an opportunity to the retrenched workmen belonging to the category

> *concerned, by sending a notice by registered post to their last known addresses to offer themselves for re-employment, and they shall have preference over other persons each having priority according to the length of his service under the employer:*
> *Provided that in the case of a seasonal factory within the meaning of section 4 of the Factories Act, 1934 (XXV of 1934), a workman who was retrenched in one season and reports for duty within ten days of the resumption of work in the factory in the immediately following season shall be given preference for employment by the employer:*
> *Provided further that in the case of such a seasonal factory, the employer may by sending notice by registered post to the last known address of a workman who was retrenched in one season require him to report on a day specified in the notice, not being earlier than ten days before resumption of work in such factory, and if such workman so reports he shall be given preference for employment and paid full wages from the day he reports."*

27. It is argued on behalf of the *"Petitioner"* that main application seeking permission for closure of manufacturing units of the Respondent Company was contested by the *"Petitioner"* without opposing sought improvements in manufacturing units, rather contest was put forth against alleged unwarranted retrenchment of the workers as against spirit and conditions of agreement dated 19.05.1992 endorsed by this court in order dated 01.07.1996.

28. However, it has been pointed out that the Labour Court has allowed application of the "Respondent Company" for purpose of undertaking comprehensive BMR with condition that after completion of same no new workmen will be inducted by the *"Respondent Company"* until and unless the retrenched workmen are not employed. Observed and held in case titled <u>*United bank limited through President Versus Shahmim Ahmed Khan and 41 others*</u> (**PLD 1999 Supreme Court 990**) reading as follows:

> *"8. ... In our view so long the action of retrenchment of employees by the Bank was not opposed to any statutory provisions or it came in conflict with any settled rule of law or it was held*

> *to be mala fide, it could not be objected to on the ground that the retrenchment could be avoided by some other alternative method by the Bank. …*
> *9. In view of the above-stated legal position, we are of the view that no exception could be taken to the retrenchment of the employees of the appellant Bank if such an action of the Bank was motivated by commercial considerations and for reasons to run the Bank on profitable lines. In our view such an action could only be brought under challenge by aggrieved employees if it could be f shown that the action was not based on commercial consideration on which the Bank was being run, but was motivated by some extraneous consideration. In that event, the respondents cannot have a grievance over their retrenchment which was on the principle 'last in first out' as contained in Standing Order No. 13 of the West Pakistan Industrial and Commercial Employment (Standing Orders) Ordinance, 1968. …… The termination of the services of respondents as a result of retrenchment carries no stigma. In fact, an employee terminated under the Retrenchment Scheme is eligible for future employment as and when such contingency arises. As the termination of respondents from service did not carry any stigma, in our view, in terms of rule 15 of the Rules, they were not entitled to any notice of hearing before termination of their employment. Apart front it, the reasons for termination of their services were set out in detail in the retrenchment scheme which was circulated to all the employees of the Bank in advance and, therefore, the respondents could not plead that they were not informed of the reasons for termination of their services.*
> *10. … The management in the Retrenchment Scheme allowed substantial benefit to the retrenched employees and, therefore, it cannot be said that the exercise of power by the management of Bank was opposed to the Islamic principles of Adal-o-Ahsan. ..".*

28. Again supporting retrenchment, held in case titled *M/S Parry and Co., Ltd., Versus P.C. Pal, Judge of The Second Industrial Tribunal, Calcutta and others* (**AIR 1970 Supreme Court 1334**) reading as follows:

> *"14. It is well established that it is within the managerial discretion of an employer to organize and arrange his business in the manner he considers best. So long as that is done bona-fide it is not competent of a tribunal to question its propriety. If a scheme for such reorganization results in surplusage of employee, no employer is expected to carry on burden of such economic dead-w and retrenchment has to be accepted as inevitable ...."*.

29. Again, observed and held in case *Pioneer Cables Ltd. Vs. Wali Muhammad* (**2007 TD (Labour) 33**) reading as follows:

> *"... It also reflect that number of workers was reduced from 170 to 70, which fact by itself is enough to prove that the workers in large number were unnecessary/surplus whereas amount spent towards improvement of the establishment and that too by obtaining loan from bank cannot convert the loss into profit nor it can be considered unnecessary expenditures, while increase of pay of the employees of company to meet the inflation cannot be termed as unnecessary expenditure; whereas undisputed annual final reports reflect that the company was suffering loss continuously for three years, before issuance of retrenchment order of 11 workers including applicant, besides number of other workers had left, reducing the number of workers from 170 to 70only. Having in view all the above factors the action of the company in the attending circumstances cannot be said to be for any reason but for reorganizing of the establishment because of the financial loss being suffered by the company and to improve its viability by removing the surplus unnecessary staff/workers."*.

30. However, it is held in case titled *Piparaich Sugar Mills Ltd. Vs. Piparaich Sugar Mills Mazdoor Union* (**AIR 1957 S.C 95**) reading as follows:

> *"14. .. retrenchment connotes in its ordinary acceptation that the business itself is being continued but that the portion of staff or the labour force is discharged as surpulsage and the termination of services of all the workmen as a*

> *result of the closure of the business cannot therefore be described as retrenchment."*

31. Record shows that on inspection of plant area of the Respondent Company, the Environment Protection Agency of Government of the Punjab once found gross deficiencies in the emissions from spots with respect to PEQS limits of Section 11 of Punjab Environment Protection Act, 1997 and, as such, manufacturing plant/factory of the *"Respondent Company"* was once ordered to be sealed on 04.09.2018 (Exh.P-4). Having been de-sealed once on undertaking of ex-management (Exh.P-5 to Exh.P-8), requisite measures were not adopted to meet with objects to curtail environmental issues and order sealing down manufacturing plant/factory of the Respondent Company had restored as well as production activity at spot was stopped on 01.09.2019. With regard to issues with department of Mines & Minerals, Provincial Cabinet vide letter dated 26.02.2018 declared the *"Respondent Company"* falling in negative area, it's manufacturing plant as obsolete with outdated machinery required to be upgraded within next 18 months on modern technology to mitigate environmental risks. Now the new management of the *"Respondent Company"* is in bid to uplift manufacturing plant for operational efficiency and to meet with international environmental standards. Schedule of complete BMR had been submitted in the Labour Court.

32. Importantly, rights & interests of the members of the *"Petitioner"* have been safeguarded in impugned order of the *"Labour Court"*, wherein all retired and retrenched employees are held entitled for the dues/benefits of services permissible in the eye of law/agreement, if any and the *"Respondent Company"* has been bound down to pay their liabilities at the time of termination of their services including already retrenched employees and in the case of delay in their payments, all of them have been held entitled for compensation under the Payment and Wages Act. Moreover, it has been held by the *"Labour Court"* that after completion of BMR no

new employee/workmen would be inducted until and unless preference is given to all retrenched workmen for reemployment and, in course of any violation on part of the *"Respondent Company"* in connection thereto, aggrieved ones have been set at liberty to initiate contempt proceedings before the *"Labour Court"*.

V. CONCLUSION

33. In view of above discussion and the law laid down in the judgments, referred to above, the impugned orders are judicious, well-reasoned and logical having been passed after taking into consideration every aspect of the case. This petition being without merit is accordingly dismissed.

(JAWAD HASSAN)
JUDGE

Announced in open Court on _____

APPROVED FOR REPORTING

JUDGE

U*sman**