4JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.1618 of 2020

Shahid Saleem
Versus
The Director Labour and another

Writ Petition No.1619 of 2020

Amir Karim Minhas
Versus
The Director Labour and another

Petitioner by:	M/s Bilal Ahmed Mashwani and Ijaz Ahmed, Advocates. (in both petitions)
Respondent No. 1 by:	Mr. Muhammad Asif Javed and Mr. Yasir Mehmood, State Counsels. (in both petitions)
Respondent No.2 by:	Mr. Saqib Shafiq, Advocate. (in both petitions)
Date of Hearing:	**26.06.2025.**

INAAM AMEEN MINHAS, J:- This single judgment shall decide the above titled writ petitions involving similar questions of law and facts.

2. In both the writ petitions, petitioners Shahid Saleem and Amir Karim Minhas have assailed the orders dated 25.11.2019 & 06.12.2019 **("Impugned Orders")**, passed by respondent No.1/Authority under Payment of Wages Act, 1936 **("the Authority")**, whereby the petitioners' petitions u/s 15 of the Payment of Wages Act, 1936 **("Act, 1936")** for grant of gratuity were dismissed solely on the ground that they hold managerial positions, therefore, not entitled for the payment of gratuity.

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3. Brief facts of W.P No.1618/2020 are that the petitioner was the employee of respondent No.2 company and served for 12 years w.e.f. August 2004 to 25.07.2016 having unblemished record of service. The petitioner resigned from his service on 25.07.2016 as a Production Incharge and at that time drawing the salary of Rs.120,000/- per month, prior to serving one month notice as per the rules and regulations. Since his resignation, the petitioner time and again approached respondent No.2 company and requested to pay his gratuity fund of Rs.1,700,000/-. Respondent No.2 company initially linger on the matter thereafter flatly refused to pay the amount. The petitioner also served legal notice dated 05.07.2019 to respondent No.2 company but to no avail, therefore, the petitioner filed petition u/s 15 of the Act, 1936, which was contested by respondent No.2 company. The Authority after hearing the arguments of the parties dismissed the petition vide impugned order dated 25.11.2019.

4. Brief facts of W.P No.1619/2020 are that the petitioner was employee of respondent No.2 company and served for 8 years w.e.f 01.11.2008 to 13.01.2017 having unblemished record of service. The petitioner resigned from his service on 25.07.2017 as a Manager Production and at that time drawing the salary of Rs.120,000/- per month prior to service one month notice as per the rules and regulations. Since his resignation, the petitioner time and again approached respondent No.2 company and requested to pay his gratuity fund of Rs.1,107,692/-. Respondent No.2 company initially linger on the matter and thereafter flatly refused to pay the amount. The petitioner also served legal notice to respondent No.2 company but to no avail, therefore, filed petition u/s 15 of the Act, 1936, which was contested by respondent No.2 company. The Authority after hearing the arguments of the parties dismissed the petition vide impugned order dated 06.12.2019.

5. The learned counsel for the petitioners contended that the Impugned Orders are against the facts of the cases and law on the subject; that the observation of the Authority that the petitioners are not

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entitled for gratuity being in supervisory role is result of misreading and non-reading of the record and law on the subject and that the Impugned Orders have been passed without applying judicial mind.

6. On the other hand, the learned counsel for respondent No.2 controverted the arguments of the learned counsel for the petitioners and contended that the Impugned Orders have been passed in accordance with law.

7. I have heard the arguments of the learned counsel for the parties and perused the record.

8. It is clear and undisputed fact that petitioner Shahid Saleem resigned from his service as Production Incharge, whereas petitioner Amir Karim Minhas resigned from his service as Production Manager. These positions are acknowledged by the petitioners themselves, leaving no room for doubt about their official designation at the time of their resignation. Section 1(4) of the Act, 1936 clearly states where and to whom the Act, 1936 applies. It specifies that the Act, 1936 governs the payment of wages to individuals employed in certain types of establishments, such as factories, railways, or those working under subcontractors. This Section sets the foundational scope of the law whereas Section 2(g) of the Act, 1936 provides additional clarity by describing the type of work such individuals must perform. It explains that the Act covers persons engaged directly or indirectly in skilled or unskilled, manual or clerical labour. This means that for someone to be protected under the Act, 1936, he must not only be employed in one of the specified establishments but must also be doing work that falls within the categories of manual or clerical labour, whether skilled or unskilled. These definitions are important because these ensure that only those who meet both criteria, place of employment and nature of work are entitled to claim benefits or protections under the Act, 1936. The positions on which the petitioners were working at the time to their resignation as Production Incharge and Production Manager typically entail a higher degree of autonomy, decision-making authority and strategic duties rather than manual or subordinate work. Therefore, the

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petitioners do not fall within the scope of Section 2(g) as such the Act, 1936 do not apply to them and they cannot seek relief under the Act, 1936. Sections 1(4) and 2(g) of the Act 1936 are reproduced here under for more clarity:-

> *"1(4) It applies to the payment of wages to persons employed in any factory, industrial establishment or commercial establishment and to persons employed otherwise than in a factory upon any railway by a railway ad-ministration or, either directly or through a sub-contractor, by a person fulfilling a contract with a railway administration.*
>
> *2(g) establishment of a contractor who, directly or indirectly, employs persons to do any skilled or unskilled, manual or clerical labour for hire or reward in connection with the execution of a contract to which he is a party, and includes the premises in which, or the site at which, any process connected with such execution is carried on."*

9. Although the Act, 1936 does not explicitly define the term "workman." Section 2(g) of the Act, 1936 refers to "a person employed in any industrial establishment" and further explains that such a person may be employed either directly or indirectly to perform skilled or unskilled, manual or clerical work for hire or reward but the definition of "workman" provided under Section 2(xxxiii) of the Industrial Relations Act, 2012 is more precise outlining the specific nature of duties and roles that qualify a person as a "workman", which is reproduced as under:-

> *"worker" and "workman" means person not falling within the definition of employer who is employed (including employment as a supervisor or as an apprentice) in an establishment or industry for hire or reward either directly or through a contractor whether the terms or employment are express or implied, and, for the purpose of any proceedings under this Act 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, layoff, or removal has led to that dispute <u>but does not include any person who is</u>*

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> *employed mainly in managerial or administrative capacity."*

10. When Section 2(g) of the Act, 1936 and Section 2(xxxiii) of the Industrial Relations Act, 2012 are read together, it becomes apparent that the phrase "person employed" under the Act, 1936 must be interpreted in light of the definition of "workman" under the Industrial Relations Act, 2012 meaning thereby only those who engage in manual, technical, or clerical labour as defined by law can claim protection or relief under the Act, 1936. Therefore, after a detailed analysis of the petitioners' job description and responsibilities, it is clear that the petitioners do not perform the kind of duties that would bring them within the definition of "workmen" under either statute. As a result, the petitioners do not qualify for the legal protections or remedies available under the Act, 1936. Reliance is placed upon ***Getz Pharma (Pvt.) Limited, Karachi vs. Muhammad Nafees and others***, **(2021 SCMR 1785)**, wherein it has been held that:-

> *"The work of salesman is in a wholly different category from manual work or clerical work, and I feel no hesitation in agreeing with the decision of the Tribunal upon this point, namely, that salesman do not fall within the definition of "workmen".*

11. Similarly, the apex Court in ***Habib Bank Limited vs. Gulzar Khan and others***, **(2019 SCMR 946)** held that:-

> *"The very evidence which the respondent recorded before the Labour Court, as read by us, did not refer to any function of the respondent that could be considered to be mainly of manual or clerical nature rather the functions which he performed and also stated in his evidence were of OG-II and Manager of the branch and those were mainly of managerial and supervisory nature and under no circumstances could they be considered to be that of a 'workman' more particularly, when the respondent in his evidence has stated that he was issuing drafts and Cheques, opening of accounts, closing of cash with signature of second officer, depositing of cash in strong room and locking the same are the those which need independent application of mind and making of decisions for that the defats and Cheques are not*

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> *issued in routine when they are also to be signed. Similarly, opening of bank accounts, depositing of cash in the strong room and locking the same are the functions which are mainly of the Manager and not that of a 'workman'.*

12. In view of the above discussion, the Impugned Orders have been passed in accordance with law, which do not call for any interference by this Court. The titled writ petitions bears no merits, therefore, the same stands **dismissed.**

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 27.06.2025

JUDGE

R.Anjam

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