JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

Writ Petition No. 2308 of 2023

The Marubeni Corporation Islamabad Liaison Office

VERSUS

Muhammad Saeed and others

PETITIONER BY:	Mr. Hassan Idrees Mufti, Advocates
RESPONDENTS BY:	Mr. Basit Mehmood Abbasi, Advocate for respondent No.1 Mr. Shakir Javed, Advocate for respondent No.3.
DATE OF HEARING:	09.09.2026

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AYYAZ SHAUKAT, J:- Through the instant petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has assailed the order dated 04.04.2023 passed by respondent No.2, the Assistant Commissioner (City), Islamabad, functioning as the Authority under the Payment of Wages Act, 1936 **(the "Act of 1936")**. By the said order, the application of respondent No.1 under section 15 of the Act of 1936 was allowed and the petitioner was directed to pay gratuity to him in the sum of Rs.500,000/-. The petitioner contends that the Authority lacked jurisdiction over it and seeks that the order be set aside.

2. The material facts are, for the most part, borne out by the petitioner's own documents. Respondent No.1 was engaged as a driver by the Railway & Transport Project Office of Marubeni Corporation at Islamabad on 14.06.1994. By letter dated 26.08.2004, the project office intimated to him that it had completed the execution of its contracts and that the Tokyo Head Office had decided to close it on 30.09.2004. His employment was terminated upon one month's notice. By letter dated 29.09.2004, a full and

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final settlement of Rs.91,321/- was effected. The settlement comprised a retirement allowance for ten years and four months of service calculated at one month's pay for each year, a bonus and leave encashment.

3. In October 2004, respondent No.1 was engaged by the petitioner, once again as a driver. He remained in its service until May 2022. The last of the agreements under which he served was the Service Agreement signed on 28.12.2021. The said agreement was to take effect on 01.01.2022 and to terminate on 30.06.2022. It stipulated a monthly service fee of Rs.43,190/-. It required respondent No.1 to keep his driving documents valid, to keep the vehicle of the company clean and well maintained, and to follow the traffic rules. By letter dated 24.05.2022, the petitioner intimated to him that the agreement would not be renewed upon its expiry, his services being no longer required by the company.

4. On 06.06.2022, respondent No.1 addressed a letter to the General Manager of the Corporation wherein he stated that he had served the corporation from 1994 to 2004 and thereafter on contract from 2004 to 2022, that he had no savings, and that he had not been given any pension. He solicited some benefit in recognition of his services. Having received no favourable response, he filed an application under section 15 of the Act of 1936 before respondent No.2, claiming Rs.500,000/- in lieu of gratuity. He averred, among other things, that he was a permanent worker of the respondent (the petitioner herein) and was entitled to all the benefits available under the law, and that his pay had risen from Rs.18,000/- to Rs.43,000/- per month. He also sought a direction to the Employees' Old-Age Benefits Institution **(the "EOBI")** to issue him a monthly pension.

5. The petitioner resisted the application by filing a written reply, wherein two preliminary objections were raised. The first was that, being a

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liaison office, it did not fall within the purview of section 1(4) read with section 2(i) of the Act of 1936, since it was not a factory, industrial or commercial establishment. The second was that it had been permitted by the Board of Investment to function as a liaison office and was prohibited from undertaking commercial or industrial activities. On merits, it pleaded that respondent No.1 had been employed as a driver specifically on a contractual basis, that he was never regularized, that no gratuity was payable to him under the contract or any law, and that all his dues had been settled.

6. By the impugned order, the Authority noted that the period of employment of respondent No.1 from October 2004 to 24.05.2022 had not been denied by the petitioner in its written statement. The Authority observed as under:

> *"It's an established principle of law that admitted facts needs [sic] not to be proved, hence the length of service of the petitioner with the respondent stands proved, Now, while coming towards the status of the employment of the petitioner, whether permanent or on contract, this preposition [sic] is very established through various judgements of the Apex courts that where an employee continuously work for more than nine months, his status as permanent employee stand clear after expiry of nine month continuous work."*

7. The Authority then placed reliance on Standing Order 12(6) of the Schedule to the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 (**the "Ordinance of 1968"),** and computed the gratuity at Rs.774,000/- (Rs.43,000 × 18). The relief was, however, confined to the amount claimed, and payment of Rs.500,000/- was directed. The EOBI was deleted from the array of respondents, no cause of action having accrued against it.

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8. Learned counsel for the petitioner submitted that the petitioner is a liaison office established with the permission of the Government solely to render assistance to its parent corporation in Japan. It was urged that, being confined by its permissions to liaison services, the petitioner is neither an industrial nor a commercial establishment within the meaning of section 1(4) read with section 2(i) of the Act of 1936, and the Authority had no jurisdiction over it. Reliance was placed on ***Developments in Literacy v. Assistant Commissioner (City)/Authority under Payment of Wages Act, ICT, Islamabad*** **(2020 PLC 164)**, and it was submitted that the burden lay upon respondent No.1 to establish the contrary, which he did not discharge by any documentary or oral evidence.

9. Learned counsel next contended that respondent No.1 was a contract driver whose engagement ended with the expiry of his agreement. No gratuity was payable to him under the agreement, nor under any law. Reliance was placed on **Getz Pharma (Pvt.) Ltd., Karachi v. Muhammad Nafees and others** **(2022 PLC 33)** for the proposition that the gratuity recoverable under section 15 of the Act of 1936 must be payable under a law made by a competent legislature, and not under a contract. It was further submitted that respondent No.1 never pleaded before the Authority that he was a workman; that no evidence was led; and that the order was non-speaking, the earlier service had been settled in 2004, ex gratia payments had been made since 2011, and the letter dated 06.06.2022 was a mere plea for sympathy.

10. At the preliminary hearing on 08.08.2023, this Court observed that the question raised required consideration and notice was accordingly issued to the respondents.

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11. Learned counsel for respondent No.1 controverted these submissions and adopted his written arguments. It was submitted that section 15 of the Act of 1936 does not confine its remedy to a permanent worker. Respondent No.1 performed purely manual and operational duties as a driver and served the petitioner for about seventeen years and seven months. **Getz Pharma** and ***M/s Global Pharmaceutical (Pvt.) Ltd. v. Assistant Commissioner Rural, ICT*** **(2025 PLC 204)**, he argued, concerned employees in managerial, sales and administrative positions and are, therefore, distinguishable.

12. Respondent No.3/EOBI filed para-wise comments. The EOBI defended the impugned order as just, proper and well-reasoned. It prayed for dismissal of the petition.

13. I have heard learned counsel for the parties at length and have carefully examined the record, the written submissions filed on behalf of the parties and the applicable law.

14. The controversy lies within a narrow compass, since the facts are in all material respects undisputed. It is common ground that respondent No.1 served the petitioner as a driver from October 2004 until his engagement came to an end upon the expiry of his last agreement, of which the petitioner intimated to him by its letter dated 24.05.2022; that his last monthly wage was Rs.43,190/-; that his services were not terminated for misconduct; and that he was paid no gratuity. The controversy relates to the legal consequences of those facts. Maintainability and the objection to jurisdiction are taken up first, since if the latter succeeds nothing else survives; the remaining objections follow in turn.

15. The statutory scheme governing these matters merits notice at the outset, and I shall begin with the Act of 1936. Section 1(4), in the form in

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which it now stands, applies the Act to the payment of wages to persons employed in any factory, industrial or commercial establishment, and to persons employed otherwise than in a factory upon any railway. Section 2(i) does not furnish a definition of its own for the expression "commercial establishment". It adopts by reference the definition contained in section 2(b) of the Ordinance of 1968. The two enactments are, therefore, joined at the very point upon which the petitioner's objection rests. As held by the august Supreme Court in ***Aurangzaib v. Medipak (Pvt.) Ltd. and others*** **(2018 SCMR 2027)**, a person who invokes the Act must show that he was a person employed in a factory or in an industrial or commercial establishment. It was, however, also clarified in that judgment that a claimant who seeks only wages under the Act need not establish that he is a "workman", whereas a claim founded upon a right conferred by the Ordinance of 1968 itself, such as gratuity under Standing Order 12(6), obliges the claimant to satisfy the definition of "workman" contained in that Ordinance.

16. Section 15 provides the machinery for the enforcement of such claims. Sub-section (1), in the form material for present purposes, reads as under:

> *"15. ... (1) ... the authority to hear and decide ... all claims arising out of deductions from the wages, or delay in the payment of wages, or non-payment of dues relating to provident fund or gratuity payable under any law, of persons employed or paid in that area."*

17. Section 17 provides for an appeal to the Labour Court against a direction made under sub-section (3) or (4) of section 15.

18. The Ordinance of 1968 supplies the substantive entitlement. Section 2(b) defines "commercial establishment" in the following terms:

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> *"(b) "commercial establishment" 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, ..., a unit of a joint stock company ...;"*

19. Section 2(i) defines "workman" to mean any person employed in any industrial or commercial establishment to do any skilled or unskilled, manual or clerical work for hire or reward. Section 3 requires that, in every industrial or commercial establishment, the conditions of employment of workmen shall be regulated in accordance with the Standing Orders contained in the Schedule. Section 4 permits the Standing Orders to be modified by means of a collective agreement and not otherwise, and the proviso thereto stipulates that no such agreement shall have the effect of taking away or diminishing any right or benefit available to the workmen under the Schedule.

20. Standing Order 1 classifies workmen into permanent, probationers, badlis, temporary, apprentices and contract workers. Clauses (b) and (e) thereof define the permanent and the temporary workman, respectively:

> *"(b) A "permanent workman" is a workman who has been engaged on work of permanent nature likely to last more than nine months and has satisfactorily completed a probationary period of three months in the same or another occupation in the industrial or commercial establishment ...*
>
> *(e) A "temporary workman" is a workman who has been engaged for work which is of an essentially temporary nature* likely to be finished within a period not exceeding nine months."

21. Clause (g), added in the year 2006, defines a contract worker as a workman who works on contract basis for a specific period, his remuneration being calculated on piece rate basis. Standing Order 12(6), upon which the claim of respondent No.1 rests, provides as under:

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"(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 Industrial Relations Ordinance, 1969 (XXIII of 1969), 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."

22. Three propositions emerge from the statutory scheme outlined above. The first is that the Authority may entertain a claim for gratuity only if two conditions are satisfied: the claimant must be a person employed in a factory or an industrial or commercial establishment, and the gratuity claimed must be payable under a law. The second is that the Ordinance of 1968 supplies both the definition upon which the first condition turns and the law upon which the second rests. The third is that the gratuity under Standing Order 12(6) is payable "in addition to" any benefit available under the terms of employment, and the Ordinance prohibits even a collective agreement from diminishing it. An individual contract of service stands on no higher footing than a collective agreement.

23. The question of maintainability is taken up first. Section 17 of the Act of 1936 provides an appeal to the Labour Court. In **Developments in Literacy** (supra), however, this Court noted that no Labour Court had been constituted for the Islamabad Capital Territory and that the National

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Industrial Relations Commission is not an appellate forum against orders passed under the Act of 1936. It was held as under:

> *"Even if it is assumed that the Islamabad Capital Territory would be included within the meaning of a province, it is nonetheless an admitted position that till date, no Labour Court has been constituted for the Islamabad Capital Territory. Since there is no forum before which the petitioner could have preferred an appeal against the impugned order dated 13.09.2018, I hold that the instant petition is maintainable."*

24. The Court also affirmed the earlier order passed in ***Airblue Ltd. v. Authority under Payment of Wages Act and others*** **(Writ Petition No.3671 of 2015)**, where it had been observed that there is no Labour Court at Islamabad and that nothing in the Industrial Relations Act, 2012 makes the Commission an appellate authority against orders of the Authority under the Act of 1936. No material has been brought on record to show that this position had changed when the present petition was filed. The bare objection of respondent No.3 that the petition is not maintainable fails to identify any alternative forum. The petition is, therefore, maintainable, and I now proceed to examine it on merits.

25. A challenge to jurisdiction must be decided in priority to every other question in the petition, for if it succeeds the merits do not arise. The duty to examine it does not depend upon the diligence of the parties. It rests upon the forum itself, and it arises whenever the doubt appears, howsoever late the stage. That is the rule laid down by the august Supreme Court in ***Town Committee, Gakhar Mandi v. Authority under the Payment of Wages Act, Gujranwala*** **(PLD 2002 SC 452)**, a case decided under the very statute presently under consideration.

26. The consequence of a breach of that duty is equally well settled. An adjudication by a forum lacking jurisdiction is a nullity in the eye of law, as

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was held in S***.M. Waseem Ashraf v. Federation of Pakistan*** **(2013 SCMR 338)**. Consent cannot supply a jurisdiction which the statute withholds, and silence cannot take away one which the statute confers.

27. This brings me to the principal objection, namely that a liaison office stands outside the ambit of the Act of 1936. The ratio of **Developments in Literacy** is not in doubt, and I respectfully follow it. The Authority has jurisdiction only in respect of matters to which the Act has been made applicable by section 1(4), and the question whether an employer is a commercial establishment must be answered by reference to section 2(b) of the Ordinance of 1968, and not by importing a definition from some other statute. The method adopted by the learned Judge was to take each limb of the definition in turn and examine whether the employer satisfied it.

28. The petitioner in that case was a society registered under the Societies Registration Act, 1860. Its Memorandum of Association restricted it to charitable and educational objects on a non-profit basis. The Authority, on its part, had founded its jurisdiction upon the definition of commercial establishment in the Employees' Cost of Living (Relief) Act, 1973, which expressly includes a registered society, in lieu of the definition adopted by the Act of 1936. It was on those facts that the order of the Authority was set aside. The question, therefore, is what answer the same method yields when applied to the petitioner herein.

29. The answer is to be found in the petitioner's own documents. The petitioner is not a juristic person distinct from Marubeni Corporation; it is merely an office of that corporation. The permission letter of 14.09.1971 is addressed to "M/s. Marubeni-Iida Co., Ltd.", and its subject is "Registration of foreign firms engaged in business in Pakistan". The letter of 15.01.1986 permits the establishment of a "Branch Liaison Office" at Islamabad. The

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renewal letter of 24.09.2021 is addressed to the General Manager of "M/S Marubeni Corporation" and renews the permission to operate its liaison offices at Karachi, Lahore and Islamabad. The Service Agreement describes the petitioner as "the Company" and is executed on its behalf by the General Manager for Pakistan.

30. The legislature has also addressed the status of such an office. Section 2(1)(35) of the Companies Act, 2017 defines a foreign company in the following terms:

> *"foreign company means any company or body corporate incorporated outside Pakistan which: (a) has a place of business or liaison office in Pakistan whether by itself or through an agent, physically or through electronic mode; or (b) conducts any business activity in Pakistan in any other manner as may be specified."*

31. A liaison office is, therefore, recognised in law as one of the forms in which a foreign company may be present in Pakistan. It is not an entity of a different kind. It is the company itself, operating through one of its establishments. When the definition in section 2(b) of the Ordinance of 1968 is applied to such an office, two of its limbs are immediately attracted. The first is "a unit of a joint stock company". The permission of 1971 describes the corporation, under its former name, as a limited company, and it has never been suggested that it is anything other than a company limited by shares. Its Islamabad office is accordingly a unit thereof. The second is "a clerical department of ... any industrial or commercial undertaking". The office performs coordination, correspondence, administrative and accounting functions for a trading corporation whose business is carried on elsewhere. Either limb suffices. Neither limb was available in Developments in Literacy, where the employer was not a company at all and was not engaged in any undertaking of a commercial character.

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32. The restriction on which the petitioner relies does not alter this conclusion. Condition (i) of the permission of 1971 provides that "The Liaison Offices will confine their activities exclusively to liaison services in Pakistan and will not undertake any other commercial or industrial activities." The word "other" is significant. The condition does not treat liaison services as something outside the sphere of commerce. It treats them as a limited form of commercial activity and prohibits the office from engaging in any other form. The remaining conditions are likewise conditions pertaining to foreign investment and exchange control. They regulate what the office may do in Pakistan. They do not change what the office is.

33. Nor does the definition in section 2(b) ask whether the establishment itself earns revenue in Pakistan. A clerical department of a factory earns nothing by itself, yet it is expressly included. The definition has regard to the character of the undertaking of which the establishment forms part. A liaison office of a foreign trading corporation exists for no purpose other than to advance the business of that corporation. To hold that it falls outside the Ordinance of 1968 would place the local employees of every foreign liaison office beyond the protection of the Standing Orders, merely because their employer has chosen to be present in Pakistan in a restricted form. Labour legislation of this nature is remedial and beneficial in character, and it is a settled canon of construction that its provisions are to be interpreted liberally so as to advance, rather than defeat, the object for which they were enacted. The text of section 2(b) does not support that result, and nothing in the scheme of the Ordinance requires it.

34. The objection cannot be dismissed as frivolous, but a restricted form of presence does not alter what an establishment is. Section 2(b) asks what an establishment is, not what it may do.

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35. Learned counsel laid considerable emphasis on the burden of proof. It is unnecessary to resolve in the abstract where the onus lies. The question of onus loses its significance where the material facts are on record. Here the facts which answer the jurisdictional question emerge from the petitioner's own pleadings and annexures. No evidence was required to prove what the petitioner had itself placed before the Authority.

36. It is true that the impugned order records the jurisdictional objection but does not return a specific finding thereon. Such an omission is not commendable. An authority exercising statutory power is required under section 24A of the General Clauses Act, 1897 to furnish reasons, and, upon the principle recalled above from **Town Committee, Gakhar Mandi**, an objection going to jurisdiction called for a specific answer at that very stage. The omission, however, does not vitiate the order in the present case. The objection raises a question of law on undisputed documents. This Court is as well placed as the Authority to answer it, and did so itself in **Developments in Literacy**. A remand would serve no purpose other than to prolong a claim for gratuity by a driver whose service ended more than four years ago. The constitutional jurisdiction is discretionary, and this Court is not bound to set aside an order which has done substantial justice between the parties: ***Nawab Syed Raunaq Ali v. Chief Settlement Commissioner and others*** **(PLD 1973 SC 236)**. I, therefore, hold that the petitioner is a commercial establishment within the meaning of section 2(i) of the Act of 1936 read with section 2(b) of the Ordinance of 1968, and that the Authority had jurisdiction to entertain the application.

37. Adverting to the next contention, it was urged that respondent No.1 never claimed to be a workman and that, on the authority of **Getz Pharma**, his claim was bound to fail. It is, therefore, necessary to examine what their lordships decided in that case. The claimants there were a Senior Sales

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Manager and a National Sales Manager. Their lordships reiterated the consistent view that a salesman is not a workman, and applied the test of whether the duties predominantly involve manual or clerical work.

38. With regard to the pleadings and the burden of proof, their lordships observed in paragraphs 17 and 18 of the judgment that the employee must plead that he is a workman, and that where the employer disputes and denies the plea the burden of leading positive evidence lies on the employee. Applying these principles, together with the predominant-duties test, the contention of the petitioner cannot be sustained.

39. As regards the plea, paragraph 4 of the application of respondent No.1 states that he "was a permanent worker of the respondent and he was entitled [sic] all the benefits available under the law". The plea may not have been drafted with precision, but it was undoubtedly taken. The assertion in paragraph 9 of the petition that he pleaded only that he was employed by the petitioner is belied by the record.

40. As regards the nature of his duties, there was never any dispute. The petitioner itself pleaded that respondent No.1 was employed as a driver. The petitioner's own Service Agreement delineates his duties. He was to keep his driving documents valid, keep the vehicle of the company clean and well maintained, follow the traffic rules and be punctual. He had no authority to hire, to dismiss, to supervise or to decide. Driving and maintaining a vehicle is skilled manual work. It is the very kind of work which the definition in section 2(i) of the Ordinance of 1968 contemplates. It bears no resemblance to the managerial and sales functions examined in **Getz Pharma**, or to the managerial and administrative posts which, as stated by learned counsel for respondent No.1, were under consideration in **Global Pharmaceutical**.

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41. The line which the superior courts have drawn in this field has invariably been one of function rather than title. The test was authoritatively formulated by the Supreme Court in ***Pakistan Tobacco Company Ltd. v. Pakistan Tobacco Company Employees' Union and others*** **(PLD 1961 SC 403)**, namely, that the status of a workman depends upon whether the work which the employee is engaged to do is manual or clerical in nature, and not upon the designation conferred upon him by the employer. In ***Habib Bank Ltd. v. Gulzar Khan*** **(2019 SCMR 946)** a bank manager in Officer Grade-II was held not to be a workman. On the other side of the line, in ***Tehsil Municipal Administration v. Muhammad Amir*** **(2009 SCMR 1161)** a tube-well operator was held to be a workman, and in ***Qaisar v. Muhammad Shafaqat Sharif*** **(2012 SCMR 743)** a production supervisor was likewise held to be one. The question has consistently been treated as a mixed question of law and fact, to be answered upon the duties actually performed in each case, and in ***Soneri Bank Ltd. v. Federation of Pakistan*** **(2016 SCMR 2168)** the status of a workman was described as a jurisdictional fact. It was held as far back as 1959 in ***British India Engineering Works v. Akhtar Hussain Khan and others*** **(PLD 1959 W.P 403)** that a contract employee may equally be a workman. A driver who keeps and drives the vehicle of his employer stands on the same side of that line as the tube-well operator, and at the furthest remove from the bank manager.

42. The Service Agreement contains a further telling feature. Clause 10(1) enumerates the acts and omissions to be treated as misconduct, including striking work and go-slow. The list corresponds, item for item, to the catalogue of misconduct in Standing Order 15(3) of the Schedule to the Ordinance of 1968. Concepts such as go-slow and striking work have meaning only in relation to workmen. The petitioner framed the terms of

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engagement of respondent No.1 on the template of the Standing Orders. It cannot now be heard to say that he stood outside them.

43. The Hon'ble Federal Constitutional Court has recently examined the classification of workmen under the Ordinance of 1968, in an appeal arising from a judgment of this Court. In ***Pakistan Telecommunication Company Ltd. v. Abdul Ghafoor and others*** **(C.P.L.A. No.4444 of 2023)**, the private respondent had been engaged as a Telephone Operator in 1992, allegedly on a temporary basis. Their lordships held as under:

> *"In view of the foregoing statutory framework, it may safely be concluded that the legal character of a workman is to be determined not merely by the nomenclature or designation assigned by the employer, but rather by the actual nature, continuity, and duration of the employment. Where the duties performed are of a regular, continuous, and permanent nature, and the workman remains engaged beyond the prescribed statutory period, the scheme of the law envisages and recognizes his classification as a permanent workman."*

44. The nomenclature used by the petitioner, whether "Driver on Contract" in the receipt of June 2022 or "service fee" in the agreement, does not, therefore, govern the matter. The matter is governed by the actual nature of the work performed. I hold that respondent No.1 was a workman within the meaning of section 2(i) of the Ordinance of 1968, that he pleaded as much before the Authority, and that the petitioner never disputed the facts on which that status depends.

45. I now advert to the contention that respondent No.1, being a contract employee who was never regularized, had no entitlement to gratuity. The classification in Standing Order 1 furnishes a complete answer to this contention. A contract worker, within clause (g), is one whose remuneration is calculated on a piece rate basis. Respondent No.1 was paid

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a fixed monthly service fee. Whatever label the petitioner attached to his engagement, he was not a contract worker in the statutory sense. Nor was he a temporary workman within clause (e), for that clause is confined to work of an essentially temporary nature likely to be finished within a period not exceeding nine months. Driving the vehicle of an office which has functioned in Pakistan for decades is not such work. Respondent No.1 performed it continuously for more than seventeen and a half years under a succession of fixed-term agreements, each renewed upon the expiry of the last.

46. In **Abdul Ghafoor** (supra), their lordships observed that such prolonged, uninterrupted and continuous engagement is wholly inconsistent with the concept of temporary employment contemplated under Standing Order 1(e). With regard to the notion of regularization, it was held as under:

> *"Therefore, we are of the view that once a worker satisfies the statutory criteria for classification as a permanent workman, such status does not flow from a subsequent order of a court or tribunal; rather, it arises directly by operation of law. Any declaration made by a court, tribunal or commission in this regard is merely declaratory in nature and serves only to recognize a legal status that has already been acquired by the workman under the law."*

47. The same principle has been applied by the High Court of Sindh under the corresponding provincial enactment. In ***M/s Fishermen's Cooperative Society v. Sindh Labour Appellate Tribunal and others*** **(2026 SHC KHI 126)**, where the establishment had engaged drivers, security men, loaders and other staff, the learned Division Bench held that employees who had worked there for more than eleven years had attained the status of permanent workers.

48. The judgment of the Hon'ble Federal Constitutional Court is binding upon this Court. The contention that respondent No.1 was "never

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regularized" is, therefore, misconceived. The view taken by the Authority, that continuous engagement beyond nine months upon work of a permanent nature confers permanent status, is in accord with the law. Having reached this conclusion, it is unnecessary to decide whether a workman other than a permanent workman may claim gratuity under Standing Order 12(6), which in express terms employs the general expression "a workman".

49. I now turn to the reliance placed upon paragraph 19 of **Getz Pharma**, which reads as under:

> *"The word payable under any law, in our view, could not be anything else than the law as made by the competent legislative authority and will not stretch to the dues of Gratuity and Provident Fund payable under the contract. ..."*

50. This passage does not advance the case of the petitioner; on the contrary, it answers it. Respondent No.1 did not claim gratuity under his contract. He claimed it under Standing Order 12(6), which forms part of the Ordinance of 1968 and is law made by the competent legislature. His gratuity is, therefore, "payable under any law" in the precise sense in which their lordships used that expression. The absence of a gratuity clause in his agreement is immaterial, for the source of the entitlement is the statute and not the contract.

51. It is regrettable to observe that ground 5 of the petition reproduces this passage with the words "unless they are written in the contract" added at its end, underlined as if they were part of the judgment. Those words do not occur in the judgment. They also invert its meaning. Counsel owe a duty to the Court to reproduce judgments of the superior courts with fidelity. I say no more.

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52. The Service Agreement also contains clause 11, under which, after the expiry of the contractual period, respondent No.1 was to have no grievance of any nature against the company and was to file no case against it in any court of law. Such a stipulation cannot defeat or extinguish a statutory entitlement. Section 28 of the Contract Act, 1872 renders void any agreement which absolutely restricts a party from enforcing his rights by the usual legal proceedings.

53. Clause 11 is, therefore, void to that extent. In any event, the proviso to section 4 of the Ordinance of 1968 prohibits even a collective agreement from taking away or diminishing any right available to workmen under the Schedule. An individual agreement, drafted by the employer and signed by a driver, cannot achieve what a collective agreement is statutorily prohibited from doing.

54. The next contention is that the Authority decided the claim without recording evidence. Section 15(3) of the Act of 1936 requires the Authority to hear the parties and to make such further inquiry "(if any) as may be necessary". Section 18 confers the powers of a Civil Court for the purpose of taking evidence where evidence is required. Neither provision mandates the recording of oral evidence in respect of facts which are not in dispute. Article 113 of the Qanun-e-Shahadat Order, 1984 embodies the governing principle that facts admitted need not be proved.

55. Every fact on which the claim rested stood admitted. The period of employment was admitted in the written reply. The designation and duties of respondent No.1 stand established by the petitioner's own agreement. The cause of separation appears from the petitioner's letter of 24.05.2022, which records that his services were no longer required, and not that he had committed any misconduct. The petitioner did not seek leave to lead

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evidence. It filed its documents and its written arguments and invited a decision. Under **Getz Pharma**, the burden of leading positive evidence arises where the employer disputes and denies the plea of the employee. In the present case, the petitioner disputed only the legal consequence of admitted facts. A contention of law requires argument, not evidence.

56. For the same reasons, the order cannot be described as non-speaking. It is, undoubtedly, brief. It nevertheless records the objections of the petitioner, identifies the admitted facts, states the principle on which permanent status was held to have accrued, identifies the provision under which gratuity became payable and sets out the computation. The reasons may be stated economically, but they are stated.

57. It now remains to deal with the subsidiary objections. The first pertains to the full and final settlement of 2004. That settlement related to the earlier employment of respondent No.1 with the Railway & Transport Project Office, which ended on 30.09.2004. The Authority computed gratuity only from October 2004, and the period from 1994 to 2004 formed no part of its award. The objection is, therefore, misconceived.

58. The second pertains to the payments said to have been made since 2011, ex gratia, equal to one month's service charges each year, and the "bonus" shown in the receipt of June 2022. A payment made ex gratia is, by definition, not made in discharge of a legal liability. A yearly payment during service is not the gratuity which Standing Order 12(6) makes payable upon the resignation or termination of a workman. The Standing Order states the circumstances in which gratuity is displaced, namely where the employer has established a provident fund of the kind described in its proviso, or an approved pension fund of the kind described in the further proviso. The petitioner has never pleaded the existence of either. The old-

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age grant which respondent No.1 received from the EOBI in 2018 stands on the same footing. It is a benefit under a different statute and is not a provident fund established by the employer.

59. The third pertains to the letter of 06.06.2022. An appeal for sympathy by a driver at the end of his service is not a waiver of a statutory right. In ***Independent Newspapers Corporation (Pvt.) Ltd. v. Chairman, Fourth Wage Board and Implementation Tribunal for Newspaper Employees*** **(1993 SCMR 1533),** the august Supreme Court held that there is no estoppel against law. The same principle applies with equal force to the present case.

60. The computation of the gratuity may now be adverted to. Respondent No.1 served the petitioner from October 2004 until 2022. Whether the period is reckoned up to 24.05.2022, as the Authority did, or up to 30.06.2022, when the last agreement expired, it exceeds seventeen years and six months. Under Standing Order 12(6), a part of a year in excess of six months is counted as a completed year. He was, therefore, entitled to thirty days' wages for each of eighteen years. Calculated on the wages admissible to him in the last month of service, namely Rs.43,190/-, the gratuity amounts to Rs.777,420/-. The Authority computed it at Rs.774,000/- and confined the relief to the Rs.500,000/- claimed. The amount awarded is thus well within the statutory measure. The petitioner has suffered no prejudice by reason of the computation, and respondent No.1 has not challenged it.

61. A few observations are warranted on the limits of the jurisdiction invoked by the petitioner. The constitutional jurisdiction of this Court is not a substitute for an appeal. In ***M. Hamad Hassan v. Mst. Isma Bukhari and 2 others*** **(Civil Petition No.1418 of 2023),** the august Supreme

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Court traced the development of the law from ***Muhammad Hussain Munir v. Sikandar*** **(PLD 1974 SC 139)** and ***Utility Stores Corporation of Pakistan Limited v. Punjab Labour Appellate Tribunal*** **(PLD 1987 SC 447)**, and reproduced with approval the following passage from ***Mst. Tayyeba Ambareen and another v. Shafqat Ali Kiyani and another*** **(2023 SCMR 246)**:

> *"In constitutional jurisdiction when the findings are based on misreading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. ..."*

62. Their lordships concluded that interference is permissible only on limited grounds, as an exception and not as the rule. Measured against that standard, the petitioner has failed to make out any ground for interference. The Authority had jurisdiction. It proceeded on admitted facts. It applied the correct statutory provision and did not misread any material on record. Its conclusion accords with the law as declared by the Hon'ble Federal Constitutional Court and the august Supreme Court. Where this Court has examined the matter afresh, as on the question of jurisdiction, it has reached the same conclusion as the Authority.

63. One last matter deserves notice before parting with this judgment. The Authorities under the Act of 1936 in the Islamabad Capital Territory exercise a jurisdiction from which no appeal presently lies, and their orders are open to challenge only before this Court. It is therefore all the more necessary that objections going to jurisdiction be answered by a specific and reasoned finding, as section 24A of the General Clauses Act, 1897 requires. The absence of such a finding in the present case has not affected the result, but it has contributed to litigation which has kept a former driver from a modest statutory benefit for over three years. No question

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concerning contributions under the Employees' Old-Age Benefits Act, 1976 has been decided here. That subject lies within the competence of the Institution under its own statute.

64. For the foregoing reasons, this petition is **dismissed** and the order dated 04.04.2023 passed by respondent No.2 is **upheld**. The petitioner shall pay the sum of Rs.500,000/- to respondent No.1, failing which respondent No.2 may proceed to recover the same in accordance with the Act of 1936. Any interim order operating in the field stands recalled, and the pending miscellaneous applications stand disposed of. There shall be no order as to costs.

65. Let a copy of this judgment be transmitted to the Chief Commissioner, Islamabad Capital Territory, for circulation among the officers notified as Authorities under the Payment of Wages Act, 1936.

(AYYAZ SHAUKAT)
JUDGE

Announced in open court on **06.10.2026**.

JUDGE

Approved for reporting.

Saeed.

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