

2023 PLC (C.S.) Note 45**[Sindh High Court]****Before Syed Hasan Azhar Rizvi, J****QASIM ZAHEER****Versus****FEDERATION OF PAKISTAN through Secretary, Ministry of Energy and 2 others**

Suit No.763 of 2020 and C.M.As. Nos.5487 and 5897 of 2020, decided on 4th December, 2020.

Civil Procedure Code (V of 1908)---

---O.VII, R.11 & O.XXXIX, Rr. 1 & 2---Specific Relief Act (I of 1877), Ss. 42 & 54---Suit for declaration and injunction---Rejection of plaint---Interim injunction, refusal of---"Master and servant" relationship---Termination from service---Services of plaintiff were terminated, who was an employee of State owned corporation---Plaintiff assailed his termination letter and sought interim relief against operation of termination letter---Defendant contended that suit was barred by law and liable to be rejected---Validity---Relief of injunction was discretionary and Court was not bound to grant it in every case---Such relief was not to be granted unless Court was satisfied as to its real need---Discretion was to be exercised in accordance with reasons and sound judicial principles---Court while dealing with application for grant of injunctions had to look and assess all circumstances obtaining suit and moreso to equitable relief---Discretion vested in Court of law had to be exercised judicially and equitably ensuring all times that justice was adequately applied and administered---Even if a corporation was performing functions in connection with affairs of Federation but had no statutory rules, its employees were governed by principle of "master and servant"---Remedy against wrongful dismissal or termination from service was to claim damages---Plaintiff did not claim damages and/or compensation with regard to his alleged claim of wrongful dismissal from service---Relief sought by plaintiff was barred by S.42 of Specific Relief Act, 1877---High Court declined to grant any relief to plaintiff as he had been terminated from service---Plaint was rejected in circumstances.

2020 PLC (C.S.) 483; 2009 PLC (C.S.) 753; 2017 SCMR 2010; 2013 SCMR 1159; PLD 1969 Dacca 948; PLD 1974 SC 146; PLD 1984 SC 194; PLD 1981 SC 224; 2000 CLC 1796; 2007 PLC (C.S.) 140; 1998 SCMR 68; 2002 YLR 3946; 2015 YLR 2141 and 2019 PLC (C.S.) 864 rel.

Malik Naim Iqbal Faizan Memon, Khurram Memon and Muhammad Nasir for Plaintiff.

Ayan Memon for Defendant No.2.

Date of hearing: 19th August, 2020.

ORDER

SYED HASAN AZHAR RIZVI, J.----C.M.A No.5487/2020 under Order XXXIX, Rules 1 and 2 read with Section 151, C.P.C., filed by the plaintiff, seeking suspension of the operation of the impugned termination order/letter dated 30.6.2020 while C.M.A. No.5897/2020 under Order VII, Rule 11, C.P.C. filed by the defendant No.2 seeking rejection of plaint. As there are common questions of law and facts, both the above applications are being disposed of through the instant consolidated order.

2. I have heard the arguments of learned counsel for the plaintiff and learned counsel for the defendant No.2 and perused the material available on record.

3. Malik Naim 104 learned counsel for the plaintiff has argued that after qualifying a rigorous process of selection, the plaintiff was offered the position of General Manager Lubricants and Chemicals (Group-1) vide letter dated 22.02.2016, which was accepted and the plaintiff was issued appointment letter dated 15.03.2016 containing terms and conditions of service. He has argued that the plaintiff was confirmed in service after successfully completing six months probationary period vide letter dated 16.09.2016. He has referred the three annual appraisals of the plaintiff, which shows that there was nothing adverse against him rather he was always rated as very good. He has urged that the plaintiff was issued a show cause notice on the charges negligence and violation of SOP's of the company in respect of an incident of oil spillage, which was replied by the plaintiff through a detailed reply whereby he denied to have any direct responsibility in respect of receipt of base oil as per SOP. He has also urged that the plaintiff was terminated not in pursuance of charges contained in show cause but on altogether different allegations contained in the impugned termination. letter. He has further urged that on 30.6.2020 the plaintiff was summoned by the Managing Director and he was forced to sign resignation letter or face termination, which was refused by the plaintiff, hence impugned termination letter issued purportedly for the reasons that plaintiff's performance is not satisfactory and the company has lost its trust in the capabilities of the plaintiff and his performance is causing negative inference on the functions of PSO. Besides, it was alleged that in recent investigations, performance of the Plaintiff's department and his own performance has become questionable and reflects a poor state of affairs.

4. Learned counsel for the plaintiff has contended that the plaintiff completely surprised and stunned, and as a first and immediate response to his sudden illegal termination wrote to the Board of Management vide his letter dated 2nd July, 2020 and when plaintiff having failed to find any response from higher authorities, he resorted to his legal remedy by way of filing the instant suit. He has also contended that one and the only ground agitated in this suit is that the impugned termination letter has been issued in sheer violation of principles of natural justice as the plaintiff has been terminated for reasons related to performance, efficiency and trust without confronting him any material in support of the purported reasons. It has the effect of depriving the plaintiff from his right to life as having this termination letter in hand, no one either in public or private sector would employ the plaintiff. He has contended that to adhere to the principles of natural justice is

legal obligation of every state owned entity and when found lacking such obligation can always be enforced through injunction.

5. Learned counsel for the plaintiff has urged that the defendants attacked the maintainability of suit by relying on principle of master and servant and took the plea that they have terminated the plaintiff simplicitor under clause 14 of the appointment letter with all admissible dues. He has further urged that the defendants further alleged that though the impugned termination letter has not been issued under clause 15, yet even under clause 15, the only obligation of the employer is to seek explanation from employee. It was further alleged that the plaintiff could not meet certain targets. In response to a very important and serious question agitated by the plaintiff that impugned termination letter has not been approved by the Board of Directors, who are the competent authority of the plaintiff, the defendants Nos.2 and 3 tried to mislead this Court by placing certain extracts on record to show that Managing Director is the competent authority. Me has submitted that the defendant No.2 also filed C.M.A. No.5897/2020 under Order VII, Rule 11, C.P.C. seeking rejection of plaint as according to them suit is not maintainable in view of sections 21(b), 21(d), 42 and 56(f) of Specific Relief Act, 1877.

6. Learned counsel for the plaintiff in response to the above submissions of the learned counsel for the defendant No.2 has argued that so far as the maintainability of suit in view of principle of master and servant is concerned, he at the very outset has placed reliance on the principle of law enunciated by the superior courts in the case reported as 2020 PLC (C.S.) 483. For advantageous, the relevant portion is reproduced below:-

"As to the objection regarding the principal of Master and Servant it may be observed, that without prejudice, it may be case for consideration in respect of employees working with private organizations; but at least this principle must not be taken into consideration in respect of Government Organization / departments; rather they have to be dealt with on case to case basis. As discussed hereinabove, State Bank has no statutory rules, whereas, it is predominantly controlled by the Government, therefore, the rule of master and servant, whereby, an employer can engage in hire and fire policy, will not strictly apply on State Bank. In fact even otherwise this concept of Master and Servant in the present day age, should be re-worded as relation between "an employer" and "employee". A learned Single Judge of this Court in the case reported as Sadiq Amin Rahman v. Pakistan International Airlines Corporation (2016 PLC 335) has dealt with the issue of Master and Servant and its applicability on Government owned Corporations including PIA and it has been observed as follow:

7. Learned counsel for the plaintiff has further urged that termination of an employee on the ground of misconduct or other performance related reasons without affording that employee an opportunity to respond those allegations is sheer violation of principles of natural justice. In support of his submission he placed reliance on the case reported in 2009 PLC (C.S.) 753, 2017 SCMR 2010 and 2013 SCMR 1159. Learned counsel for the plaintiff in response to the contention

that the plaintiff has been terminated simplicitor is also factually incorrect and mala fide inasmuch as clause 14 of appointment letter say that termination simplicitor could only be done without assigning any reasons, whereas, the impugned termination letter not only contains reasons but such reasons have serious consequence viz a viz future employment of the plaintiff. Even otherwise, when the appointing authority has options to terminate an employee simplicitor without assigning any reason or termination with reasons particularly when such reasons adversely affects the career of the employee, it is incumbent upon the appointing authority to afford an opportunity of showing cause and personal hearing to such employee. In support of his submission he placed reliance on the case reported in 1969 PLD Dacca 948.

8. In the end, learned counsel for the plaintiff has submitted that the plaintiff has more than 25 years' experience in the industry and has served as CEO and GM in various Public and Private Sector entities. He has further submitted that the plaintiff has unblemished service record throughout his professional life and commands respect amongst his contemporaries. Therefore, terminating the service of the plaintiff in the fashion it has been done, the entire professional career of the plaintiff has been ruined and he would not able to secure employment in future with the allegations like he has lost trust of the employer. He has submitted that for these obvious reasons, the impugned termination letter is arbitrary, capricious, malafide and in violation of principles of natural justice and is liable to be suspended forthwith. He has, therefore, prayed for grant of injunction application and dismissal of application under Order VII, Rule 11, C.P.C. being misconceived.

9. On the other hand, Mr. Ayan M. Memon, learned counsel for the defendant No.2, at the very outset, has argued that plaintiff has not governed by the statutory regulations and where there are no statutory rules, the principles of 'master and servant' Would be applicable and such employees would be entitled to seek remedy permissible before the Court of competent jurisdiction. He has contended that as per the contract of employment the plaintiff was appointed on probation for a period of 6 months whereas after 6 months the plaintiff's employment was to be confirmed. He has referred to Clause 14 of the terms and conditions which clearly provide that after confirmation employment contract can be terminated with one-month notice or one month salary in lieu thereof by either party. He has also referred to Clause 15 which deals with dismissal, however the said clause is not relevant as the plaintiff has been terminated and not dismissed. He has drawn attention of the Court towards the termination letter dated 30.06.2020 issued to the plaintiff whereby the contract of employment was terminated by defendant/PSO, which was challenged by the plaintiff by filing an appeal before the Chairman Board of Management on 02.07.2020 and also preferred appeal before Defendant No 1. He has contended that prior to the filing of the appeals the plaintiff was issued show cause notice dated 28.05.2020. He has submitted that at the time of termination the plaintiff was drawing a commercial salary package of over Rs.01 Million per month. He has also submitted that even though there is no provision of appeal before the Board of Management, the Defendant No 2's Chairman Board of Management responded to the Plaintiff's appeal and called him for personal hearing

however the plaintiff refused to appear on the ground that his case is pending before this Court.

10. Learned counsel for the defendant No.2 has urged that the instant suit is not maintainable as relief claimed through the instant suit is not available to the plaintiff. He has made reference to the prayer clause and has submitted that the plaintiff has sought declaration that the termination letter dated 30.06.2020 is illegal. It is submitted that such relief of declaration is barred by law and in particular barred by Section 42 of the Specific Relief Act. He has submitted that the plaintiff has further sought a permanent injunction restraining defendants/PSO from terminating the plaintiff whereas admittedly the plaintiff has already been terminated. As such, the prayer for injunctive relief has become infructuous. Learned counsel for the defendants Nos.2 and 3 has submitted that they have filed C.M.A. No. 5897/2020 under Order VII, Rule 11, C.P.C. seeking rejection of plaint as the relief sought in the instant suit cannot be granted in view of Section 42 of the Specific Relief Act. In support of his submissions, he placed reliance on the judgments in the cases of (PLD 1974 SC 146, PLD 1984 SC 194, PLD 1981 SC 224 and 2000 CLC 1796).

11. Besides, learned counsel for the defendant No.2 has relied upon the judgment reported in the case of [2007 PLS (C.S.) 140] which has been passed in relation to PSO employees whereby it had been held that relationship between PSO and employees such as the plaintiff is governed by the principle of Master and Servant and that only remedy available to the plaintiff for alleged wrongful termination is a suit for damages. Relevant portion of the said judgment is reproduced below:-

"Mr. Mujeeb Pirzada learned counsel has not been able to point out any statutory rule or provision of law which had been violated by respondent No.1 by terminating the petitioner's services. We may observe that this Court has consistently held that the relationship of corporation/ employer and its employee is that of master and servant to the absence of any statutory provision of rule."

"We are inclined to hold that in the absence of violation of any provision of law or statutory rule, no exception can be taken to the view found favor with the Tribunal as the petitioners will be entitled to receive one month's salary in lieu of notice plus other dues, if any, payable under the terms of the appointment or internal rules of the company."

12. Learned counsel for the defendant No.2 has also made reference to an unreported judgment in the case of Faiz Durrani v. Federation of Pakistan and others, wherein the Hon'ble Division Bench on the question of maintainability had observed as under:-

"As to the question of maintainability, it appears to be an admitted position that Respondent No.2 i.e Pakistan State Oil Company Limited has no statutory rules of service and the Apex Court in the case of Pakistan international Airlines Corporation v. Tanweer-ur-Rehman (SBLR 2010 Supreme Court 303) while dismissing the petitions on behalf of the employees, has held that

even if a corporation is performing functions in connection with the affairs of the Federation but has no statutory rules of service, its employees are governed by the principle of Master and Servant and therefore, their remedy against wrongful dismissal or termination from service is to claim damages."

13. Learned counsel for the defendant No.2 has also argued that relieving a contractual employee simplicitor does not mean that any wrongdoing committed by him cannot be enquired into: He has submitted that since the plaintiff has not prayed for relief of reinstatement or mandatory injunction for setting aside the termination letter in the main Prayer clause of the Suit the plaintiff could not pray for suspension of the same in his application for interim relief. Furthermore, grant of the plaintiff's injunction application wherein plaintiff has effectively sought reinstatement would amount to grant of final relief of declaration in the suit hence such relief is not available to the plaintiff. In support of his submissions, learned counsel for the defendant No.2 has relied upon the cases reported in 1998 SCMR 68 and 2002 YLR 3946.

14. Learned counsel for the defendant No.2 has further contended that the contract of employment of the Plaintiff is a "revocable contract" as such no injunction can be granted in view of Section 21(d) read with Section 56 of the Specific Relief Act, 1877. He has stated that Clause 14 allowed both the Plaintiff and the Defendant No 2 to unilaterally terminate the contract hence the contract in question is a revocable contract. As regards the power of the Managing Director to terminate the Plaintiff's employment, learned counsel for the defendant No.2 has submitted that the MD of PSO enjoys all powers of the Board of Directors as per Section 6(4) of the Marketing of Petroleum Products (Federal Control) Act, 1974 and furthermore, the Managing Director is the appointing authority he also has the power to terminate the employment as per Section 16 of the General Clauses Act. In support of his submissions, he has placed reliance upon the cases reported in 2015 YLR 2141 and 2019 PLC (C.S.) 864. In the end, he has submitted that the suit filed by the plaintiff is not maintainable in law as the relief claimed in the suit is barred and not available to the plaintiff hence it is prayed that the defendant No.2' application under Order VII, Rule 11, C.P.C. may be granted and the plaintiff's suit may be dismissed along with injunction application.

15. I have given due consideration to the arguments advanced by the learned counsel for the parties, material available on record and the case law cited at the bar.

16. The plaintiff has instituted the present suit for declaration and permanent injunction with the following prayers:-

- i) Declare that the impugned termination letter dated 30.06.2020 is illegal, malafide, unlawful, unconstitutional, arbitrary, discriminatory, without - Jurisdiction and in violation of principles of natural justice, equity and fairness and set aside the same forthwith.
- ii) Permanently restrain the defendants, their officer, agents, representatives or anybody acting on their behalf from taking any adverse action including

termination of the service of the Plaintiff on account of any allegation without following due process of law; and

- iii) Grant any other relief(s) which this Honorable Court may deem appropriate and proper in the circumstances of the case."

17. Along with the memo of plaint, plaintiff filed application under Order XXXIX, Rules 1 & 2, read with Section 151, C.P.C. seeking suspension of impugned order dated 30.06.2020 of termination of the plaintiff. The application is duly support by affidavit of the plaintiff. It appears from the record that plaintiff was employed as a contractual employee and the employment continued to remain contractual and the relationship between the plaintiff and defendant No.2 was governed by the Contract of Employment as reflected in the Appointment Letter dated 15.3.2016, which contained all the terms and conditions of employment and the Confirmation Letter dated 16.09.2016 which reiterated the one month termination clause. For advantageous Clause 14 which relates to termination is reproduced below:-

"14. TERMINATION SIMPLICITOR.

Except for termination of service during probationary period which is covered in clause 1 above, your service can be terminated by the Company without assigning any reasons whatsoever on one month's written notice of termination of your service or on one month's gross salary in lieu thereof together with full benefits as per your entitlements. Likewise you can also terminate your service by giving the Company one month's written notice of resignation from service or payment of one month's gross salary in lieu thereof. For the purpose of this clause the expression "Gross Salary" shall be the same as defined in the accompanying Gratuity "Scheme."

18. It is well settled proposition of law that relief of injunction is discretionary and Court is not bound to grant it in every case and it is not to be granted unless the court is satisfied as to its real need. The discretion is to be exercised in accordance with reasons and sound judicial principles. Court while dealing with application for grant of injunction has to look and to assess all the circumstances obtaining the suit and more so, to equitable relief. Discretion vested in a Court of law has to be exercised judicially and equitably ensuring all the times that justice is adequately applied and administered.

19. The defendant No.2 appointed the plaintiff as General Manager Lubricants and Chemical (Group-1) vide letter dated 22-2-2016 afer qualifying the plaintiff arduous process of selection started pursuant to an advertisement in print media initially on a probationary period of six months and later on plaintiff was regularized on 16.09.2016 on the same terms and conditions as mentioned in the letter dated 15.3.2016 and since then he was serving with the defendant No.2. The defendant No.2 issued annual evaluation reports/letters of the plaintiff, which show that there was nothing adverse against him rather he was always rated as very good. The last evaluation report was dated 28.01.2020 wherein the defendant No.2 has given remarks that 'your performance for the period July 01, 2018 to June 30, 2019 has been evaluated as "Good"; your basic salary has been revised from Rs.565,275

to Rs.638,761/-. It may be noted that neither the record shows that any warning letter or letter of caution indicating poor performance of the plaintiff during entire service with the defendant No.2 nor the counsel has pointed out any adverse thing against the plaintiff except show-cause notice and after that terminating the services of the plaintiff on 30.06.2020. For ready reference, the contents of termination letter are reproduced below:-

"Pakistan State Oil Company Limited ("PSO") being a public sector and managed company under the Marketing of Petroleum Products (Federal Control) Act, 1974 is cognizant of its responsibilities and as such the Management of PSO is focused on attracting and retaining best talent for the performance of its functions.

In this regard, it has been noted with concern that your performance of the assigned responsibilities by the company is not satisfactory and the company has lost its trust in your capabilities. Your performance is causing a negative inference on the functions of PSO which are of paramount importance and as such the management of PSO has decided to relieve you of you services.

Additionally, in view of the recent investigations undertaken by the company, the performance of your department and yourself has become questionable and reflects a poor state of affairs.

Considering the above, it has been decided to terminate your services with immediate effect. You are hereby directed to deposit the assets of PSO with Human Resources Department. Your entitlements upon termination are subject to the Policy of PSO which shall be processed upon deposit of the assets."

20. Admittedly, the plaintiff's relationship with defendant No.2/PSO was governed by the contract of employment as reflected in the appointment letter which contained all the terms and conditions of employment and the confirmation letter which reiterated the one month termination clause. The only difference between an employee on probation and confirmed employee of defendant No.2/PSO is that during probation an employee can be terminated without the one month notice period however after confirmation the employee is entitled to either one month notice period or one month salary in lieu thereof. Apart from this the nature of employment of a confirmed employee continues to remain contractual as the relationship is governed by the contract and not by any rules .or regulations whether statutory or otherwise. The relationship between the plaintiff and defendant No.2/ PSO was that of Master and Servant as the defendant No.2 is a company incorporated under the Companies Act, 2017. The appointment letter of the plaintiff contains a clause of termination simplicitor. It may be noticed that when the competent authority has option to terminate an employee simplicitor without assigning any reason, the authority could do so and save the career of the employee. In the case in hand till 28.01.2020 the performance of the plaintiff was rated very good and after few months all of sudden the authority terminated the service of the plaintiff on 30.6.2020 by rating that performance of the assigned responsibilities by the company is not satisfactory and the company has lost its trust in his capabilities

shows some smacks in issuing termination letter. Such remarks in the fashion it has been done by the defendant/PSO is not only spoil the entire professional career of the plaintiff but it also tantamount to snatch the bread as he would not be able to secure employment in future with the allegation like he has lost trust of the employer. However, I refrain to comment further upon it and direct the defendant No.2 to expunge the adverse remarks from the impugned termination letter. At the same time, it may be observed that the relationship between the plaintiff and defendant No.2 was of master and servant as the defendant No.2 is a company incorporated under the Companies Act, 2017 and there is no statute or statutory rules or regulations governing the terms and conditions of employment. As such, the defendant No.2 is fully competent to terminate the services of the plaintiff simplicitor and the only remedy available to the plaintiff to file a suit for damages/compensation. The case-laws cited by the learned counsel for the plaintiff are not applicable and are distinguishable from the facts involved in the case in hand.

21. As to the question of maintainability, it is to be noted that the plaintiff through the instant suit sought declaration that the termination letter dated 30.6.2020 is illegal and permanent injunction restraining the defendant/PSO from terminating the plaintiff. It appears to be an admitted position that defendant Pakistan State Oil Company has no statutory rules of service and the Apex Court in a number of cases has held that even if a corporation is performing functions in connection with the affairs of the Federation but has no statutory rules of service, its employees are governed by the principle of Master and Servant and therefore, their remedy against wrongful dismissal or termination from service is to claim damages. It may be observed that the plaintiff in the instant suit has not claimed damages and/or any compensation with regard to his alleged claim of wrongful dismissal from service. The relief sought through the instant suit is barred by Section 42 of the Specific Relief Act and admittedly the plaintiff has already been terminated from service. Therefore, there remains nothing in the instant suit except to backlog the burden of the cases.

22. For the foregoing reasons, application bearing C.M.A. No.5487/2020 is dismissed and application bearing C.M.A. No.5897/2020 is allowed. However, plaintiff is at liberty to avail remedy available under the law, if he so advised.

MH/Q-3/Sindh Order accordingly.

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