IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1248 of 2011

Professor Tayyaba Zaman ---------- Plaintiff

Versus

Administrator DHA & others ---------- Defendants

1) For hearing of CMA No. 10481/2011.
2) For hearing of CMA No. 8747/2013.
3) For hearing of CMA No. 412/2014.
4) For hearing of CMA No. 6150/2014.
5) For examination of parties / settlement of issues.

Date of hearing: **05.10.2016.**

Date of judgment: **26.10.2016.**

Plaintiff: **Mr. Azizur Rehman Akhund Advocate.**

Defendants: **Mr. Ejaz Khattak Advocate.**

O R D E R on CMA's Listed at Serial No. 1 to 4

Muhammad Junaid Ghaffar, J. This is a Suit for Injunction and Damages including setting aside of order dated 2.8.2011 whereby, the plaintiff was removed from service by the defendants. Primarily it is the case of the plaintiff through listed applications that pending this Suit, the defendants be restrained from dispossessing it from the official accommodation and her children be allowed to study and attend the Educational Institutions of the defendants at the reduced rate(s) of fee being charged to her when she was in active employment prior to the order dated 2.8.2011, whereby she was removed from service. Along with instant Suit CMA No. 1048/2011 was filed and on 18.10.2011 ad-interim order was granted in terms of the prayer made in the said application. Subsequently, another CMA listed at serial No. 2 was filed again under Order 39 Rule 1 & 2 CPC and an Ex-parte ad-interim order dated 21.8.2013 was also passed on this application. Thereafter, the plaintiff filed another application listed at serial No. 3 under Section 151 CPC

whereby, the plaintiff prayed that the House Rent allowance at the rate of Rs. 5810/- per month and water charges at the rate of Rs. 300/- per month with effect from 3.8.2011 onwards be ordered to be settled from the settlement amount of plaintiff lying with the defendants. Notice was issued on this application however, no interim order has been passed. Subsequently, the defendants have filed CMA listed at serial No. 4 under Order 39 Rule (4) CPC with a request to recall the ad-interim orders operating in this matter. All these applications have been heard and are being decided through this order.

Precisely stated facts are that the plaintiff was appointed as a lecturer on 18.8.1992 in one of the educational institutions of the defendants and it appears to be an admitted position that her employment was to be governed by the Service Rules of the defendants. It is the case of the plaintiff that subsequently, she was promoted in BPS 18 in July 2000, whereas, in one of the ACRs of 2006 she was graded as Good, but surprisingly, on 26.8.2010 she was transferred to defendant No. 3 as a surplus teacher due to some financial problems at the Degree College for Men where she was working prior to such date. It is further stated that on 26.11.2010 due to illness she could not attend the college and was served with an explanation vide letter dated 29.11.2010 and after having failed to accept her explanation the defendant No. 4 with great prejudice allegedly served a warning to the plaintiff for violation of Service Rules, 2008. Subsequently, she was issued a Show Cause Notice dated 7.4.2011 on several counts, which was replied by the plaintiff and vide letter dated 2.8.2011 her services were dispensed with under Chapter III Rule 8(b)(i) of the Service Rules, 2008. The plaintiff thereafter filed an appeal against her removal from service before defendant No. 5, which as stated is still pending, and subsequently, instant Suit was filed on 18.10.2011 wherein certain interim orders have been passed.

Learned Counsel for the plaintiff has contended that the plaintiff ‘s case is to be governed by the 1992 Rules when she was employed and not by the 2008 Rules, whereas, even otherwise per learned Counsel the impugned order of removal from service is based on malafide and personal grudge of officers of defendants inasmuch as the plaintiff in her entire carrier of 19 years was always regarded as a good teacher and was also promoted in higher grades. He has further submitted that in recognition of her good services she was also allotted a plot in accordance

with service rules, and further, the plaintiff could not have been removed by exercising Rule 8(b)(i) of Chapter III of the 2008 Rules, but the plaintiff's case more appropriately falls under Chapter IV of the said Rules, which require conducting an inquiry before issuing a Show Cause Notice and proceeding any further. He has further submitted that since the plaintiff was enjoying official accommodation as well as concession for her children in respect of educational fee, the applications listed at serial No. 1 and 2 were filed on which interim orders were passed and pending final adjudication of this Suit such orders be confirmed on the same terms and conditions.

On the other hand, learned Counsel for the defendants has contended that instant Suit is not maintainable inasmuch as the plaintiff stands relieved from her service and after passing of the impugned order on 2.8.2011, the plaintiff had approached the defendants on 17.8.2011 with a request to grant her extension to live in the official accommodation as she was unable to arrange a suitable accommodation in the month of Ramzan and on such application, on humanitarian grounds, an extension of three months was granted to her. However, when two weeks were left in vacating the said premises, she filed instant Suit without even disclosing such fact to the Court and obtained ad-interim orders by misleading the Court. He has further contended that the entire premise on the basis of which interim orders were obtained is misconceived inasmuch as the plaintiff was never removed on charges of misconduct; but being a surplus employee and was to be governed under Rule 8 of Chapter III of the Service Rules, 2008. Per learned Counsel since admittedly the plaintiff is no more an employee of the defendants, she is not entitled to retain the accommodation or any reduction in educational fee of her children, whereas, the plaintiff till date has not made any application or for that matter any other effort, to have the impugned order suspended. In support of his contention he has relied upon the case of *Qazi Inamul Haq v. Heavy Foundry and Forge Engineering (Pvt) Ltd. and another (1989 S C M R 1855), S. Y. Construction Company v. Government of Sindh and 5 others (1990 A L D (Karachi) 857), Marghub Sidduqi v. Hamid Ahmad Khan and 2 others (1974 S C M R 519), Salahuddin Khan and 3 others (P L D 1973 Peshawar 95)* and *Oil and Gas Development Corporation v. Lt. Col. Shujauddin Ahmed (P L D 1970 Karachi 332).*

I have heard both the learned Counsel and perused the record. Though this matter has been fixed along with Suit No. 417 of 2014 and other connected mattes at the joint request made before the Court on 26.9.2016, however, perusal of the other connected Suits reflects that in those matters a specific objection has been raised by the Court viz.a.viz. the maintainability of the Suits, whereas, in this matter apparently the Court has not raised any such objection and therefore, this Suit is being dealt with accordingly by deciding the listed applications. Notwithstanding, in the instant Suit the plaintiff has also claimed damages, resultantly even otherwise the Suit cannot be dismissed summarily on the ground of maintainability as the plaintiff has the right to lead evidence to justify and prove her claim.

Insofar as the facts are concerned to avoid repetition, it may be observed that apparently the plaintiff was an employee of the defendants and as per her employment letter dated 27.8.1992 it was to be governed by the service rules of the defendants. It may also further be noted that the service rules are non-statutory, and therefore, the case is to be governed by the principle of Master and Servant. However, for the present purposes, it is only the aforesaid applications which are being dealt with wherein, there is no prayer on behalf of the plaintiff for seeking any suspension of the impugned order dated 2.8.2011, whereby, the plaintiff was removed from service. The plaintiff's case as is relevant for disposal of listed applications is not on the merits of the impugned order, as the plaintiff through these applications is not seeking any suspension of the impugned order, whereas, it is also pertinent to observe that this is a Suit only for injunction and damages, whereas, no declaratory relief is being sought as apparently the plaintiff had filed this Suit after her dismissal from service and pending appeal before defendant No. 5. By means of applications listed at serial No. 1 the plaintiff has made the following prayer:-

> "It is respectfully prayed that in view of the facts and grounds narrated in the accompanying affidavit this Hon'ble Court may be graciously pleased to restrain the defendants, their servants and assigns from removing the plaintiff from her accommodation at Plot No. GC-2, 14th Street, Khayaban-e-Ghalib, Phase VIII, Karachi. Furthermore, it is also prayed that the defendants may also be restrained from curtailing the subsidy on the plaintiff's children school fee. This application has been made in the best interest of justice."

On this application on 18.10.2011 an ad interim order was passed by granting the prayer in the said application, which continues till date. The cumulative effect of the order is that the defendants were restrained from dispossessing the plaintiff from the official accommodation, and further restrained from curtailing the subsidy on the plaintiff's children school fee. It further appears that thereafter, the defendants issued a notice dated 26.6.2013 whereby, certain rent and other payments were demanded from the plaintiff and on 30.7.2013 the application for contempt bearing CMA No. 8226/2013 was filed on behalf of the plaintiff, seeking a restraining order against the defendants from claiming any such amount. However, on that very date this Court dismissed such application by observing that the ad-interim order passed earlier was only to the effect of possession and children school fee, and therefore, no alleged violation was committed by the defendants. It further appears that thereafter on 21.8.2013 another application listed at serial No.2 (CMA No. 8747/2013) was placed before the Court in chambers and again an Ex-parte order was passed by asking the defendants not to take any coercive action in terms of their notice for payment of rent and other recoverable amount. Now the only question before this Court through listed application(s) is that whether, an employee who stands removed from service can retain possession of the official accommodation and can also claim the benefits available to a regular employee in service including that of the reduction in educational fee of his / her children. The answer to this question appears to be simple that no such benefits can be availed by an employee in the given situation. It is of utmost importance to note that the plaintiff appears to have admitted her removal from service and has filed this Suit for injunction and damages only. None of the applications have been filed on behalf of the plaintiff seeking suspension of the order dated 2.8.2011 whereby, she was removed from service. It further appears that after such removal from service, she made an application dated 17.8.2011 to the director education of defendants for seeking extension in retaining the official accommodation on personal grounds (Annexure D-32 to Written Statement: pg: 339) whereas, admittedly this has not been disclosed in the entire plaint. Once the plaintiff has accepted the removal from service and has not made any attempt for seeking suspension of such order of removal, and has filed instant Suit for Injunction and Damages along with a prayer to

set aside the order of removal, it is surprising to observe that she still wants to retain the official accommodation and for one reason or the other she has been able to obtain interim orders which again for one reason or the other are still continuing in this matter. It is needless to observe that even otherwise the official accommodation granted to an employee is not a matter of right. The employment letter of the plaintiff very clearly reflects that she is being paid house rent allowance and therefore, any official accommodation cannot be claimed as a matter of right under these circumstances. It is only subject to availability and in terms of accommodation policy of the employer that such accommodation can be granted to an employee in lieu of the house rent allowance, which in such situations is to be deducted from the salary. It is also important to observe that even otherwise in service matters after termination the only appropriate remedy is a Suit for damages and ordinarily no reinstatement is to be made. A five member bench of The Hon'ble Supreme Court in the case of **Messrs Malik and Haq and another v. Muhammad Shamsul Islam Chowdhry** (**PLD 1961 SC 531**) has been pleased to observe as under:

> This appeal should succeed for the simple reason that in the absence of any statutory provision protecting the servant it is not possible in law to grant to him a decree against an unwilling master that he is still his servant. A servant cannot be forced upon his master. The master is always entitled to say that he is prepared to pay damages for breach of contract of service but will not accept the services of the servant. A contract for personal service as will appear from section 21(b) of the Specific Relief Act cannot be specifically enforced. But it is not even necessary to invoke section 21(b) for such a contract is unenforceable on account of section 21(a) wherein it is provided that a contract for the non-performance of which compensation in money is adequate relief cannot be specifically enforced. In a case where there is a contract between a master and a servant the master agreeing to pay the salary and the servant agreeing to render personal service it is obvious that money compensation is full relief, for all that the servant was entitled to under the contract was his salary. A breach of contract can give rise to only two reliefs: damage or specific performance. It specific performance be barred the only relief available is damages. When a master, in breach of his contract, refused to employ the servant the only right that survives to the servant is the right to damages and a decree for damages is the only decree that can be granted to him.
>
> .....On his side, respondent No.1 undertook to render personal service, but this personal service was the duty of respondent No.1 under the contract and no this right, and Messrs Malik and Haq were not by this contract bound to have their account kept by respondent No.1. If it be contended on behalf of the respondent that the decree does not at all grant to respondent No.1 any right to act as accountant and that the only effect of the decree is to establish the right of the respondent to a recurring salary of Rs.200, the relief is one which cannot be granted under section 42 of the Specific Relief Act. That section cannot be availed of merely to establish a pecuniary relationship between the parties. If a plaintiff is entitled to money from the defendant he cannot claim a declaration as to his being so entitled. He must sue for money. In any case, the only right that survived to respondent No.1 on account of breach of contract was the right to sue for damages.

Similar view has been taken by the Hon'ble Supreme Court in the case of **The Lahore Central Co-operative Bank Ltd., v Pir Saifullah Shah** [**PLD 1959 SC(Pak) 210**].

In the case of **United Bank Limited v. Ahsan Akhtar** (**1998 SCMR 68**) the Hon'ble Supreme Court has been pleased to observe that '***..relationship between a Corporation and its employees was that of master and servant and that the remedy for wrongful termination of service of an employee was a suit for damages and not relief of reinstatement'***. This is a settled proposition of law and perhaps it is for this reason the plaintiff never made an attempt to seek any suspension of the impugned order dated 2.8.2011 or of reinstatement pending this Suit. On the other hand, insofar as the ground raised on behalf of the plaintiff while obtaining the ad-interim orders to the effect that the case of the plaintiff is to be governed by Chapter IV of the Service Rules, 2008 instead of Chapter III is concerned, it would suffice to observe that the same also appears to be misconceived as it has been categorically stated by the defendants in their counter affidavit and written statement, that the plaintiff was never removed on the ground of Misconduct, and therefore, Chapter IV of the Service Rules, 2008 would not be apply. In fact the plaintiff's case is more appropriately covered under Chapter III Rule 8(b) which provides that a teaching staff employed in the defendants organization can be removed from service on the grounds stipulated therein. It is needless to observe that the plaintiff while seeking employment had agreed to abide by the service rules of the defendants, whether be it the 1992 Rules or the 2008 Rules subsequently enacted by the defendants.

In view of hereinabove facts and circumstances of this case, the plaintiff has miserably failed to make out any prima facie case as apparently the plaintiff has filed instant Suit only for injunction and damages, whereas, neither the balance of convenience lies in her favour to continuously retain the accommodation and seek reduction in tuition fee after her removal from service, nor the question of irreparable loss arises in this matter as admittedly this is a Suit for damages as well. Therefore, the three ingredients for granting an injunction are lacking in favour of the plaintiff. Result of the above discussion is that applications listed at serial No. 1, 2 & 3 are dismissed. Insofar as application listed at

serial No. 4 is concerned, in view of the order passed at serial No. 1, 2 & 3 this has become infructuous and is accordingly dismissed as infructuous.

5) Parties to file issues on the next date.

J U D G E

ARSHAD/