

**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Suit No. 168 / 2018**

**Plaintiffs:** **Muhammad Bilal & others through  
Mr. Javed Asghar Awan Advocate.**

**Defendants:** **Ayesha Chowdhry & others through  
Mr. Taha Alizai Advocate.**

- 1) For hearing of CMA No. 16349/2018.**
- 2) For hearing of CMA No. 1954/2018.**
- 3) For hearing of CMA No. 1744/2018.**

**Date of hearing:** **07.08.2018.**  
**Date of order:** **17.08.2018.**

**ORDER**

**Muhammad Junaid Ghaffar, J.** CMA No. 16349/2018 at Serial No.1 is an application under Order 39 Rule 1 & 2 CPC seeking a restraining order against the Defendants from proceeding further for termination and or dismissal of the Plaintiffs pursuant to impugned Show Cause Notice(s) dated 15.09.2017 & 17.11.2017

Precisely, the facts as stated through this Suit for Declaration, Cancellation, Permanent Injunction and Damages are that Plaintiffs are working in the Information Technology Department of M/s Pakistan Petroleum Limited ("**Company**") and were issued Show Cause Notice(s) dated 15.09.2017 with the allegation that they were involved in leakage of confidential information while working in the I. T. Department of the company. They replied such Show Cause Notice(s) and a domestic inquiry was conducted which found them guilty, and thereafter, they have been issued second Show Cause Notice(s) dated 17.11.2017 to explain as to why a final action may not be taken against them. Such second Show Cause Notice(s) have been impugned through this Suit and vide order dated 28.11.2017 the Company was restrained from passing any final order against the Plaintiffs pursuant to the second Show Cause Notice(s).

Learned Counsel for the Plaintiffs has contended that at the very outset the inquiry has not been conducted in accordance with law as

the Plaintiffs have not been provided any opportunity to cross examine the witnesses; that the Company failed to bring in the complaint in the manner as required for conducting a domestic inquiry; that the Plaintiffs were never given any opportunity to put in their defence; that the findings are perverse and not based on any reasoning; that the inquiry officers have failed to appreciate the fact that no information was leaked by the Plaintiffs, whereas, the same was accessible to all employees; hence, according to the learned Counsel the second Show Cause Notice(s) which are based on the said inquiry cannot be sustained and the listed application be allowed as prayed. In support he has relied upon ***Muhammad Afzal Vs. Regional Police Officer, Bahawalpur and others (2012 PLC (C.S) 728), M.C.B. Bank Limited, Karachi Vs. Abdul Waheed Abro and others (2016 SCMR 108), Muslim Commercial Bank Ltd, through Attorney Vs. Abdul Waheed Abro (2015 PLC 259).***

On the other hand, learned Counsel for Company has contended that there are no statutory rules governing the relationship of the Company and the employees; hence, the rule of Master and Servant would be applicable; that the employees admittedly had signed a contract of employment which even otherwise, provides a simplicitor termination with 90 days' notice; therefore, no inquiry was to be conducted, but nonetheless, while providing a fair opportunity, the Company did not opt for a simplicitor termination, and gave an opportunity to all the Plaintiffs to go through the inquiry procedure and prove their innocence; that full opportunity was provided to all the Plaintiffs who not only participated in the inquiry, but also cross-examined the witnesses on various occasions, therefore, the objection is misconceived; that all due process was followed, whereas, in terms of the service rules a second Show Cause Notice was issued, which has been impugned and a restraining order has been obtained, hence, they have come to the Court prematurely; that there may be a possibility that the authorized officer may not dismiss or terminate them from service; hence, the grievance has been pre-empted; that otherwise, in a relationship of Master and Servant even if they are terminated, the only remedy is by way of damages and not reinstatement; that while hearing injunction application this Court cannot deeply appreciate the inquiry report(s) which are otherwise domestic in nature, and it is not mandatory to follow the procedure adopted in judicial proceedings; that

due to passing of impugned orders tremendous loss has been caused to the Company as even under suspension, they are drawing salaries; hence, the listed application be dismissed. In support he has relied upon ***Raja IVIZ Mehmood and another Vs. Federation of Pakistan through Secretary M/o Information Technology and Telecommunication and others (2018 SCMR 162), Dr. Amir Bux and others Vs. The Federation of Pakistan and others (2018 PLC (C.S.) 398), Khadim Hussain Vs. Government of Balochistan Education Department (Colleges Section), Quetta through Secretary and another (2018 PLC (C.S.) 417, Muslim Commercial Bank Ltd. I.I. Chundrigar Road, Karachi and another Vs. Muhammad Shafi (2002 PLC 124), Gohar Ali and another Vs. Messrs Hoechst Pakistan Limited (2009 PLC (C.S) 464), Aurangzeb Vs. Messrs Gool Bano Dr. Burjor Ankalseria and others (2001 SCMR 909), The Chairman, East Pakistan Industrial Development Corporation, Dacca, and another Vs. Rustom Ali and another (PLD 1966 Supreme Court 848), Karnaphylly Paper Mills Ltd. Vs. Karnaphylly Paper Mills Workers' Union and others (PLD 1961 Supreme Court 329), Messrs Malik and Haq and another Vs. Muhammad Shamsul Islam Chowdhury and two others (PLD 1961 Supreme Court 531), United Bank Limited and others Vs. Ahsan Akhtar and others (1998 SCMR 68) and Anwar Hussain Vs. The Agricultural Development Bank of Pakistan and others (1992 SCMR 1112).***

I have heard both the learned Counsel and perused the record. It appears that Plaintiffs No.1 & 2 are working in the I. T. Department, whereas, the Plaintiff No. 3 works as an Engineer Maintenance in the Sui Purification Branch Balochistan. First Show Cause Notice dated 15.09.2017 issued to Plaintiff No.1 states that the Company has sufficient proof and grounds that he is accountable for facilitating Plaintiff No.2 in resetting of password of another user Mr. Yasir Hamza without knowledge of supervisor and even without permission of Mr. Yasir Hamza. It has been further alleged that he is involved in unethical practice of resetting the I. T. password, whereas, being working in the I. T. Department, he is required to be the custodian of and uphold all I. T. policies; however, contrary to the Company rules he aided and abetted with Plaintiff No.2 in breach of this policy and therefore, all these acts are in violation of code of conduct under Clause 5, 26 and 27 and so

also End User Acceptable Use Policy, sub clauses 5.9.11. Similarly, insofar as Plaintiff No.2 is concerned, in the Show Cause Notice it has been alleged that upon investigation of the log of his personal computer, official emails and interview with him and several other colleagues, the Company has got proof and grounds to believe that he is involved in resetting of password to gain access to H.R. related sensitive and confidential information without knowledge of Mr. Yasir Hamza and so also involved in forwarding the above information to his email inbox which amounts to stealing of the confidential information. It has been further alleged that once this incident was reported, he thereafter, deleted the messages sent into his email inbox. Similarly, it has been alleged against Plaintiff No.3 that he accessed H. R. sensitive and confidential information from the folder of Mr. Yasir Hamza and copied information on to his own PC Hard Drive and personal USB Drive, which constitutes stealing of information. It has been further alleged that he obtained confidential H.R. data including the last 3 years' rating and related Field staff personal information which under the job assignment he was not authorized to access.

On the basis of these Show Cause Notices and the replies filed by the Plaintiffs, domestic inquiries in respect of these three Plaintiffs were conducted separately and the reports of these inquiries have been placed on record through counter affidavit of the Company. The precise and main ground of attack on behalf of the plaintiffs is that such inquiry is illegal, malafide and without due course of law, and is not in consonance with law and rules of the company. However, perusal of the inquiry report(s) placed on record do not support such contention, rather depicts otherwise. The inquiry report in respect of Plaintiff No.1 clearly reflects that ample opportunity was provided to defend, and he was also asked if he has anything to add in his defence to which he responded, "***I only acted in good faith and my intention was not wrong. I was duped by Basit. I did not stand to gain anything from this.***" He has further stated that, "***This case of procedural violation may be dealt with sympathetically and on humanitarian considerations.***" It is clear that in fact Plaintiff No.1 has taken a stance that he was incited and cheated by Plaintiff No.2. However, surprisingly, both these plaintiffs (rather all of them) have come before this Court together with a similar and identical stance, which on the face of it does not seem to be comprehensible. Nonetheless, it is not

discernable from bare reading of the inquiry report of plaintiff No.1 that any injustice in the proceedings has been committed.

Similarly, perusal of inquiry report of Plaintiff No.2, reflects that ample opportunity was again provided to this Plaintiff, whereas, he failed to produce any witness during inquiry proceedings. To a pertinent question that he wants to add anything in his defence he responded, ***“I would like to reiterate that I did not have any bad intention. I did not share the confidential information any further with anyone. My past service record is proof that there have been no complaints against me.”***

Insofar as the Plaintiff No. 3 is concerned, the inquiry report reflects that even a witness was produced by this Plaintiff in his defence and further reflects that even questions were asked by this Plaintiff from the witness of the Company.

All in all the inquiry reports in question do not justify the stance of the plaintiff's that they were not given any chance to rebut the allegations or were deprived from leading any evidence.

Since this is only an injunction application before me which is to be decided, therefore, I am not inclined to fully appreciate the inquiry report in detail on merits, lest it may prejudice the case of the Plaintiffs. If any final and conclusive findings are recorded at this stage, it may have effect on the final outcome of the Suit or even before the authorized officer(s) who has to pass a final order pursuant to the second Show Cause Notice.

It is also a matter of record that disciplinary procedure of the Company placed on record which is dated 18.10.2010 and has not been disputed, clearly provides a complete mechanism in this regard and it would be pertinent to refer to Para “i”, “j” and “k” of this procedure which reads as under:-

- “i. After reviewing the findings of the enquiry officer / committee and consulting HR Department, a second show cause notice will be issued to the officer by the Authorized Manager, requiring him / her to explain, within stipulated time (usually seven calendar days), as to why the proposed punishment / action should not be taken against him / her. The grounds of action must be specified in the notice.
- j. After reviewing the explanation to second show cause notice following actions will be taken:
  - (i) For staff in JG 3 to 11, HR will submit recommendations about the punishment or otherwise to MD for approval.

- (ii) For staff in JG 12 and above, the Managing Director will submit recommendations about the punishment or otherwise to the Board for approval.
- k. Finally the written order as per approved punishment will be issued to the delinquent officer. The appointing and dismissing authority shall be the same.”

Perusal of the aforesaid provision reflects that after an inquiry has been completed for staff of grade J-3 to J-11, the HR Department will submit recommendations about the punishment or otherwise to the Managing Director for approval, and for staff in JG 12 and above, the Managing Director will submit recommendations about the punishment or otherwise to the Board for approval. It further provides that thereafter, finally a written order as per approved punishment will be issued to the delinquent officer, whereas, the appointing and dismissing authority shall be the same. Insofar as the present case is concerned, I am of the view that the Plaintiffs have come to the Court prematurely by impugning the second Show Cause Notice to which they have failed to submit a reply and a final order is still awaited to be passed by the competent authority. It is not that any final / adverse order has been passed against them. They have been further provided an opportunity to respond to the second Show Cause Notice and it appears that by preempting an adverse order, they have come to the Court and obtained a restraining order. In my view and on perusal of the inquiry report I am not convinced that they have not been provided proper opportunity of participating in the inquiry proceedings. If that was the case, then the Plaintiffs instead of participating in the inquiry, ought to have come to the Court seeking some orders for conduct of the inquiry in a fair and transparent manner as alleged. As noted earlier, the reports of the inquiry clearly reflects that ample opportunity has been provided and the Plaintiffs have not been able to lead their defence despite several chances. In these circumstances, I am of the view that this is not a case wherein, this Court may exercise any discretion in favour of the Plaintiff's as the only ground urged on their behalf is regarding alleged misconduct in the inquiry proceedings, which is not justified or made out from the record otherwise.

Having said that, it is also a settled proposition of law, that in domestic inquiries, the Courts are reluctant to interfere, whereas, they

are not supposed to substitute such finding of facts, except in rare circumstances, (which are lacking for the present moment). There isn't any patent illegality on the face of it and therefore, at this injunctive stage, it would not be proper and just to interfere and to disband or prorogue the proceedings. In the case reported as ***Hotel Intercontinental, Karachi v Vth Sind Labour Court (PLD 1976 Karachi 301)***, it has been observed as follows;

In the instant case I find that sufficient opportunity was given to the second respondents to contest their case and therefore there was no scope left for the Labour Court, who decidedly enjoyed limited jurisdiction to examine the correctness of the procedure adopted by the enquiry officer. A perusal of the record shows that a thorough enquiry was made by the enquiry officer who finally came to the conclusion that strike was illegal as it was resorted to without observing the procedure laid down in section 26(1) and (3) of Industrial Relations Ordinance, 1969. The Labour Court was legally debarred from examining the validity of the domestic enquiry unless there was any patent irregularity apparent on the face of record. In this case, however, no plausible reasons have been shown by the learned Labour Court to justify interference with the results of the enquiry and give a finding that the charges of illegal strike, taking out of procession, abusing the officers and manhandling a photographer against the 2<sup>nd</sup> respondents were baseless. (Emphasis supplied)

Similarly in the case reported as ***United Distributors Ltd., v Zahid Hussain Khan & 2 others (PLD 1976 Karachi 376)*** a learned Division Bench of this Court has been pleased to hold that decision arrived at in a domestic inquiry must not be upset in absence of plausible reasons justifying interference. The relevant observations are as under;

11.....He argued that Court could interfere as did in this case when it came to the conclusion that the enquiry has been made with mala fide intention and has been made improperly. This argument is not available because respondent failed to produce any evidence with regard to mala fide on the part of the Petitioner. Next while going through the record of the case we do not see any force in the arguments advanced by the learned counsel Mr.; Obaidur Rahman because admittedly respondent No. 1 had participated in the domestic enquiry held by the Petitioner on 25-10-1972 in spite of his previous objections. During the enquiry, statements of Mr. Ilyas Baig, Personnel Officer, Mr. Shahideen, Departmental Manager and Mr. Tahir Khalig as well as Mr. S. M. Aminuddin, Accountant, were recorded and respondent No. 1 in fact cross-examined some of them with regard to allegations. Not only this, the domestic enquiry does show that respondent No. 1 allowed himself to be examined at great length, and he was cross-examined by Mr. Ilyas

Baig wherein he has admitted that he has written all these cash memos. When he was asked by the Enquiry Officer had he anything else to say in his defence, he replied; "I have already given my statement and have nothing to add or produce." Each page of the enquiry report is signed by respondent No. 1 as well as the enquiry officer and this fact has not been denied by him. Thereafter findings reached by the Enquiry Officer, was submitted to the Chairman of the petitioner who has passed the dismissal order on 27-10-1972 according to the report of the enquiry officer after perusing the proceeding of the domestic enquiry as well as the final report. It is therefore too late in the day on the part of the respondent No. 1 to say that principles of natural justice were violated and he was not given any opportunity of being heard by the petitioner. His learned counsel when questioned as to why in spite of previous objections, the respondent No. 1 had participated in the domestic enquiry and as to why he went to the length of giving his own statements and cross-examined the witnesses? The counsel did not make any worthwhile and satisfactory answer. It is not the case of the respondent No. 1 that he was an illiterate person or that he was compelled to participate in the proceedings or the domestic enquiry. He was a responsible and educated officer as he was drawing salary of Rs. 600 per month and he has signed each and every page of the enquiry proceedings, therefore, it cannot be said that there was any compulsion or duress on the part of the Petitioner obliging respondent No. 1 to participate in the proceeding to which he had earlier objected. Therefore, we are of the opinion that he voluntarily submitted to the domestic enquiry. This fact is further supported by Annex. "L" dated 30-11-72 submitted by the respondent No. 1 to the petitioner, wherein amongst others he has stated:

14. In view of the facts and circumstances of this case, we are of the opinion that both the Courts below have not applied their mind to the legal and factual aspects of this case, particularly they could not sit as a Court of appeal on the decision of the domestic enquiry and no plausible reason has been shown in the impugned orders justifying interference with order passed by the Enquiry Officer. The respondent was given full opportunity throughout to represent his side of the case and produce witnesses. He participated in the proceedings, got himself examined and cross-examined some of the witnesses and did not produce any witness in defence as is borne out by the record, therefore, it cannot be said as he has been submitted on his behalf that he was not given any opportunity to defend himself. (Emphasis supplied)

In view of hereinabove discussion, I am of the view that the Plaintiffs have failed to make out a prima facie case nor balance of convenience lies in their favour, whereas, it is the Company which is suffering irreparable loss due to interim orders restraining them from passing a final order pursuant to the second Show Cause Notice(s)



therefore, the application is hereby dismissed. However, once a final order is passed and if the plaintiffs are aggrieved, they are at liberty to seek any further remedy in accordance with law, whereas, the observations hereinabove are tentative in nature, and shall not have any effect on the final outcome of the proceedings, either before the company or this Court.

2 & 3)       Adjourned.

Dated: 17.08.2018

**J U D G E**

ARSHAD/