

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**SUIT No. 900 / 2018**

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DATE

ORDER WITH SIGNATURE OF JUDGE

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- 1) For hearing of CMA No. 6645/2018.
- 2) For hearing of CMA No. 6646/2018.

**13.09.2018.**

Ms. Fareeda Mangrio Advocate for Plaintiff.  
Mr. Jam Asif Mehmood Advocate for Defendants.

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Through these two applications, the Plaintiff seeks suspension of Termination Letter dated 8.2.2018 issued by Defendant No.1 and consequently restoration of his employment and so also payment of salary and dues allegedly withheld by Defendant No.1, pending final adjudication of the Suit.

Learned Counsel for the Plaintiff submits that initially Plaintiff was employed with Defendant No.1 on the basis of a contract dated 20.10.2018 and thereafter, was appointed as a regular employee on 21.4.2010 and was confirmed in service on 29.10.2010. According to the learned Counsel plaintiff has been working as a Senior Executive Engineer to the complete satisfaction of the Defendant No.1. She submits that various assignments and projects have been done by the Plaintiff on behalf of the Defendant No.1 and in support she has referred to various letters of appreciation and certificates issued by various organizations and acknowledgements by Defendant No.1. According to her lastly the Plaintiff was posted at Islamabad Airport construction Site and suddenly was terminated through Letter dated 8.2.2018 and notwithstanding this letter, still continued to perform and attend training workshops. Per learned Counsel thereafter, he was once

again approached by an officer of Defendant No.1 for re-employment and therefore, by such conduct the letter of termination stands withdrawn; hence, the Plaintiff is entitled to be reinstated in service. She has further submitted that the reasons assigned in the termination letter are not correct as the post on which the Plaintiff was working is very much available and is being offered to others; therefore, Plaintiff is entitled for an injunctive relief. As to the claim regarding salary and dues she submits that since a promise has been made for re-employment, the Plaintiff has not taken up any other job and is therefore, entitled for salary from February onwards till he is reinstated. She has relied upon ***Muhammad Jan V. Nasim Gul General Manager Shaheen Airport Services, Peshawar (2006 P L C 444)***.

On the other hand, learned Counsel for Defendant submits that insofar as the claim of dues is concerned, Defendant No.1 never objected to or refused; rather it is the Plaintiff who has not come forward to receive his dues and instead has filed this Suit. Learned Counsel has referred to Para 8 of written statement to support such contention that Defendant has always been willing to pay the agreed dues. As to the termination learned Counsel has relied upon appointment letter dated 21.4.2010 and clause 8 thereof, which provides that Plaintiff's services will be subject to termination at any time by either side with six weeks' notice or on payment of six weeks' salary, therefore, no case for an injunction is made out, whereas, the relationship between the plaintiff and defendant No.1 is of Master and Servant and no employee can be thrust upon the company by the Court. He has also read out various correspondence as well as emails wherein, the Plaintiff had agreed for early separation package offered by the Defendant and submits that subsequently he has resiled from his

commitment and has filed this Suit, whereas, he is involved in violating the code of conduct and confidentiality of documents; hence, not entitled for any relief. Per learned Counsel the Defendants tried their best to accommodate the Plaintiff in some other assignment in their company or even outside, but have not been able to find a suitable job and such gesture has not been appreciated, whereas, the Defendants are being dragged before the Court.

I have heard both the learned Counsel and perused the record. Instant Suit has been filed for Declaration, Permanent and Mandatory Injunction, wherein, besides Defendant No.1 Company, the officials have also been arrayed as Defendants. The claim of the Plaintiff is that he is still in continuous service as Senior Executive Engineer inasmuch as his termination Letter dated 8.2.2018 stands withdrawn once an offer was made by the Chief Financial Officer and was duly accepted by the Plaintiff, therefore, the termination letter is illegal, unlawful, void, ab-initio and stands withdrawn. It is of utmost importance to note that the relationship between Plaintiff and Defendant No. 1 is governed by the rule of Master and Servant as Defendant No. 1 is a private organization. Admittedly Defendant No.1 is a private company and is not governed by any statutory or even non-statutory rules of service and relationship. It is only the employment terms and conditions which are to be looked into by this Court. Para 8 of the Appointment Letter dated 21.4.2010 which is an admitted document provides as under:-

“8. During the probationary period your services will be subject to termination at any time by either side. After confirmation your services will be subject to termination on six weeks' notice or on payment of six weeks' salary in lieu of notice period on either side. However, should you resign while assigned to any specific project at site or office, Management reserves the right not to accept your resignation in exigency of work. As such your resignation will not be accepted till the clearance of all liabilities including clearly handing over of completed assignments.”

The above agreed terms, read with the confirmation of service provides that service of the Plaintiff will be subject to termination at any time after confirmation subject to six weeks' notice or on payment of six weeks' salary in lieu of notice period, whereas, the Defendant No. 1 has already shown its willingness to pay all necessary dues as are agreed upon and for which the plaintiff is found to be entitled. On the basis of the employment terms which have been placed on record by the Plaintiff himself, it appears that the Defendants have acted strictly in accordance with the terms of employment which were admitted and acknowledged by the Plaintiff at the time of joining such employment and now it is not the prerogative of the Plaintiff to plead against such terms and conditions. It is settled proposition of law that an employee in a private organization cannot be imposed or thrust upon his employer and the relationship is to be governed by the rule of Master and Servant.

Insofar as a Private Corporation or Company is concerned, it is a settled proposition of law that a servant cannot be forced upon his Master. The Master can always refuse to continue with the employment of any of his employee and may come forward to pay compensation for breach of contract of services and can always say that the employee would not be re-engaged in services. Even otherwise in terms of Section 21(b) of the Specific Relief Act, 1877, a contract for personal services cannot be specifically enforced. Whereas, a breach of contract in these circumstances can give rise to only two relief(s) i.e. Specific Performance and Damages and if Specific Performance is barred in law, then the only relief(s) available are damages. Once the Master allegedly in breach of his contract refuses to employ the services, the only right which survives for the employee is the right to damages and nothing else. No

relief or decree as sought can be passed, (in absence of any contract for such relief), against the unwilling master that plaintiff is still its employee. Any consideration in support of such plea, will demonstrate the impossibility of its grant. Plaintiff's service with defendant No.1 is under a contract and not as a right. He has only one remedy and that is to sue for money. Reliance in this case may be placed on the case reported as **PLD 1961 SC 531 (Messrs Malik and Haq and another v. Muhammad Shamsul Islam Chowdhury and two others)**, wherein a large bench (5 Members) of the Hon'ble Supreme Court has been pleased to hold 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. If 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.”

Similar view has been expressed by the Hon'ble Supreme Court in the case of ***Marghub Siddiqui V. Hamid Ahmad Khan and 2 others* (1974 S C M R 519)** while dealing with a more or less similar situation and has been pleased to hold as under:-

“Secondly it appears to us that none of the Courts have noticed that although *ad interim* injunctions are granted under Order XXIX, rule 1 of the Code of Civil Procedure the principles, which govern the grant of injunctions, contained in the Specific Relief Act have also to be kept in view. Under section 56, clause (f), one of the principles is that an injunction cannot be granted to prevent the breach of a contract the performance of which cannot specifically be enforced. Now it is well settled that contracts for personal service are not contracts which can be specifically enforced. The granting of an injunction, therefore, in a service matter, like the present one, is opposed to the principles governing the grant of such injunctions, for, by such an injunction the Courts

really foist an employee upon an unwilling employer. Such an order for injunction made in disregard of these not only sound judicial principles but even statutory prohibitions cannot, in our view, be regarded as having been made in the proper exercise of the discretion of the Court.”

As to the claim of salary, it is not conceivable as to how such request has been made when admittedly the plaintiff was never re-employed and merely a purported offer to re-engage has been construed as to giving an employment and consequently payment of salary. This is absurd and entirely misconceived appreciation of law on the part of the plaintiff which cannot be entertained by the Court.

In view of hereinabove facts and circumstances of the case, I am of the view that no relief for injunction can be granted to the Plaintiff in this matter as the Plaintiff was in the employment of a private organization and the Contract of Employment specifically provided that the same can be terminated with due notice of six weeks, whereas, pursuant to such Termination, Defendant No.1 has taken care of the Emoluments, which were required to be paid in such a situation and therefore the plaintiff has failed to make out any prima facie case for indulgence, whereas, neither balance of convenience lies in his favor nor any irreparable loss would be caused to him as adequate compensation as agreed by him has been offered. Accordingly, both listed applications were dismissed by means of a short order on 13.9.2018 and these are the reasons thereof.

**J U D G E**

ARSHAD/