

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1307 of 2018

DATE ORDER WITH SIGNATURE OF JUDGE

Plaintiff: **MR. Jehanzeb Anwar Through
Mr. Nabeel Kolachi, Advocate.**

Defendant No.1: **Pakistan Defence Officers Housing
Authority, Karachi, Through
M/s. Malik Naeem Iqbal, Muhammad
Saleem Khaskheli & Muhammad Nasir,
Advocates.**

For hearing of CMA No. 9556/2018.

Date of hearing: **20.11.2018**

Date of Order: **20.11.2018**

ORDER

Muhammad Junaid Ghaffar J. This is a Suit for Declaration and Permanent Injunction and through listed application, the Plaintiff seeks suspension of Show Cause Notice dated 19.06.2018 issued by Defendant No.1 till final decision of the Suit and further restraining the Defendant No.1 from holding any enquiry or passing of any orders.

2. Precise facts, as stated, are that Plaintiff is an employee of Defendant No.1 and after completion of the probation of one year, his services were confirmed through Office Note dated 15.06.2011. As per the terms of the Contract he has been appointed for a period of 20 years, which could be extended for a further period of a maximum of 10 years. On 16.03.2017, a Show Cause Notice was issued through Additional Director (Estate) in respect of allegations regarding some money obtained by the Plaintiff from a Licensee of a Nursery on the ground that the said money was not deposited in the

account of Defendant No.1. Such Show Cause Notice was replied, and thereafter various correspondence was exchanged, which is not relevant for the present purposes, but finally on 13.12.2017, the Plaintiffs services were terminated under the Service Rules Chapter-III Para-8(b)(1), which was impugned through C.P No.8909/2017, whereafter, a Statement was filed by Defendant No.1 withdrawing the said Order of termination and subsequently the Petition was disposed of on 22.05.2018, with certain directions. Thereafter on 14.06.2018 and 19.06.2018 fresh Show Cause Notices were issued, which were replied, but through instant Suit, the same have also been impugned. On 25.06.2018, while issuing notice, the Defendants were restrained from passing any final orders pursuant to the said Show Cause Notices.

3. Learned Counsel for the Plaintiff submits that the impugned Show Cause Notice is nothing but an attempt to fill in a procedural lapse on the part of Defendant No.1, inasmuch after disposal of the Petition in favour of the Plaintiff, no further proceedings can take place in violation of law and the order passed in the petition. Per learned Counsel in the first round an enquiry was conducted and no adverse inference was drawn against the Plaintiff; whereas, the Defendants have already made up their mind to terminate the Plaintiff's services; hence no useful purpose would be served by responding to the impugned Show Cause Notice. According to him, no further proceedings are supposed to take place; whereas, time and again the Plaintiff has been subjected to discriminatory treatment and has already been penalized for no fault on his part. He submits that the Defendants are not following a proper procedure as per Service Rules and all such proceedings are based on a preconceived notion as the Defendants have already held the

Plaintiff as guilty. He submits as to the objections regarding maintainability of the Suit and the relief being sought, this case is not a case of Master and Servant as Defendant No.1 is a public authority having Non-Statutory Service Rules, and is therefore, required to act strictly in accordance with law. In support of his contention he has relied upon the cases reported as ***Al Qera Atiq V. Federation of Pakistan through Secretary Aviation and 19 others (2015 C L C (C.S.) 363)***, ***Sui Southern Gas Company Limited V. Engr. Naraindas and others (P L D 2001 SC 555)***, ***Sadiq Amin Rahman V. Pakistan International Airlines Corporation through Managing Director and 3 others (2016 P L C 335)***, ***Nighat Yasmin V. Pakistan International Airlines Corporation, Karachi and another (2004 S C M R 1820)***, ***Muhammad Azram V. National Institute of Health and others (2015 P L C (C.S.) 537)***, ***Muhammad Khaliq V. Board of Intermediate and Secondary Education, Faisalabad and another (2000 P L C (C.S.) 1373)***, ***Pakistan Defence Officers Housing Authority V. Mrs. Itrat Sajjad Khan and others (2017 S C M R 2010)***.

4. On the other hand, learned Counsel for Defendants submits that at the very outset, instant Suit as well as the Relief being sought is not maintainable, inasmuch as it is only a Show Cause Notice, which has been impugned and interim orders have been obtained. He further submits that a very limited scope is now available to an employee of Defendant No.1 for approaching this Court, which is, if an action is not in accordance with law or lacks jurisdiction. Whereas, in this matter, neither the jurisdiction has been challenged nor the Defendants have acted in violation of law. Per learned Counsel the Service rules of Defendant No.1 are non-statutory,

whereas, the employment is contractual and is of a fixed tenure; hence it cannot be equated with a permanent employment, therefore, the Suit is liable to be dismissed and as a consequence thereof no injunction can be granted. He has referred to Chapters II & III of the Service rules of D.H.A., and submits that there is no statutory protection available to the Plaintiff; whereas, all requirements of law, including the principles of natural justice, have been completely followed. In support of his contention he has relied upon the cases reported as ***Muhammad Yousaf Khan V. Habib Bank Limited through President and others (2004 S C M R 149)***, ***Syed Liaqat Shah V. Vice Chancellor, University of Engineering and Technology, Peshawar and others (2018 S C M R 1661)*** and ***Khalid Mahmood Ch. And others V. Government of the Punjab through Secretary, Livestock and Dairy Development (2002 S C M R 805)*** and ***Pakistan Defence Officers Housing Authority v Mrs. Itrat Sajjad Khan (2017 SCMR 2010)***

5. I have heard both the learned Counsel and perused the record. The facts have been briefly stated hereinabove in that the Plaintiff was earlier issued a Show Cause Notice and after its reply a termination letter was issued on 13.12.2017, by exercising powers under Service Rules Chapter-III Para 8(b)(1). This was impugned through CP No.8909/2017, on the ground that this Rule has been held to be ultra vires by the Hon'ble Supreme Court in the case of ***Pakistan Defence Officers Housing Authority (Supra)***. Subsequently, Defendant No.1 withdrew the order of termination and the petition was disposed of with certain directions and observations. Insofar as the objection of Defendant's Counsel regarding maintainability of the Suit is concerned, presently, it is not to be adjudicated for the purposes of deciding the injunction

application. Moreover, the parameters laid down by the Hon'ble Supreme Court in the ***Pakistan Defence Officers Housing Authority (Supra)***, are wide enough to observe that DHA being a public functionary, is bound to act in accordance with law being a Statutory Body established under Pakistan Defence Officers Housing Authority Ordinance, 1980, and this Court cannot draw an exception to such findings of the Hon'ble Supreme Court. The argument that such observations are only related to exercise of Constitutional jurisdiction and not by this Court while hearing a Civil Suit under Section 9 of the Civil Procedure Code, is baseless and misconceived. This Court is a Court of plenary jurisdiction, whereas, recently in the case reported as ***Searle IV Solutions (Pvt) Limited v Federation of Pakistan (2018 SCMR 1444)***, the Hon'ble Supreme Court has gone to the extent of holding that this Court being a High Court is a creation of Constitution and is therefore, a Constitutional Court, while exercising the Civil Jurisdiction. It is otherwise settled law that any act of a public authority, if it is without jurisdiction or is tainted with mala fides, can be challenged and impugned before this Court under its civil jurisdiction in terms of Section 9 CPC. Lastly, even if a writ petition is not maintainable, will the employee remain remediless, if there is some grievance and he cannot invoke the Constitutional jurisdiction, nor according to him, the departmental remedy is adequate. Certainly not. At least he cannot be non-suited on this ground, as he can always come with a claim of damages, which can even be entertained through amendment of pleadings. Hence, this objection being not tenable in law is hereby repelled.

6. Having said that, and in response to the extensive arguments raised on behalf of the Plaintiff as well as Defendants, regarding the

relationship of the Plaintiff and Defendant No.1, being that of a Master and Servant or not, for the present purposes, in my view due to peculiarity of the facts of this case as a result of earlier proceedings, again this is not relevant while dealing with the injunction application, which again has a very restricted scope vis-à-vis the order dated 22.05.2018 passed in C.P No.8909/2017. Before proceeding further it would be advantageous to refer to the relevant part of the said Order, which reads as under:-

“We, therefore, dispose of this petition without touching the merits and indulging into the other aspects of the matter by directing the respondents to initiate disciplinary proceedings against the petitioner, if deemed necessary, strictly in accordance with law, after providing him opportunity of hearing, without forming any prior observation or reaching to any conclusion prior to taking any disciplinary action against the petitioner, which should be initiated strictly in accordance with law and on the basis of the material produced by the petitioner and after granting him an opportunity of being heard.

With the observations made hereinabove the instant petition stands disposed of alongwith the listed application.”

7. The above observations of the learned Division Bench clearly provides that the Defendants were directed to initiate disciplinary proceedings against the Plaintiff, if deemed necessary, strictly in accordance with law after providing him opportunity of hearing and without forming any prior observation or reaching to any conclusion prior to taking any disciplinary action, which should only be initiated strictly in accordance with law and on the basis of the material produced by the Plaintiff and after granting him an opportunity of being heard. Now after passing of this order it is merely a Show Cause Notice, which has been issued and this appears to be strictly in terms of the above order as initiation of disciplinary proceedings starts from a proper Show Cause Notice. The Show Cause Notice has not drawn any adverse inference from the previous proceedings; nor it has made reference to any such

enquiry, or a view taken thereof. In the circumstances, the Show Cause Notice appears to be in consonance with the directions of the learned Division Bench, and therefore, I am of the view that the Plaintiff has approached this Court prematurely by seeking restraining orders against the Defendants from passing any final orders. Insofar as the contention of the learned Counsel for the Plaintiff that Defendants are proceeding with a preconceived mind, despite the fact that earlier enquiry is purportedly in favour of the Plaintiff is concerned, the same cannot be considered at this stage of proceedings. It needs to be appreciated that the outcome of all earlier proceedings were very much part of the record in the Constitution Petition of the Plaintiff, and after withdrawal of the termination letter, the same was not simplicitor withdrawn by the Plaintiff; but an order in the nature of directions has been passed. If any such proceedings or inquiry was available in favor of the Plaintiff, the learned Division Bench has taken enough care of the same as is reflected from the conclusive part of the said order reproduced hereinabove. The petition has been disposed of with certain directions to the Defendants including initiating disciplinary proceedings and till date it is only a Show Cause Notice, which has been issued, hence the allegation of the Plaintiff appears to be apprehensive in nature. It is settled law that mere issuance of a Show Cause Notice is not per-se an adverse order, more so when it has been issued pursuant to directions for initiating disciplinary proceedings in accordance with law. To this no exception can be drawn, whereas, the Plaintiff himself was also never aggrieved with such directions. The stance which has now been taken as to conclusion of the proceedings on the basis of an earlier inquiry ought to have been agitated at the time of disposal of the petition,

and reliance on the same should have been placed. This was not done, and now after issuance of a Show Cause Notice, the Plaintiff has rushed to this Court seeking shelter under the earlier inquiry. This does not seem to be justifiable, at least for grant of an injunction. The Defendants have already been directed to act in accordance with law, and therefore, no case is made out to exercise any discretion in favor of the Plaintiff.

8. In view of hereinabove facts and circumstances of this case, listed application was dismissed by means of a short order on 20.11.2018 and these the reason thereof. However, it is needless to mention that Defendants must act strictly in accordance with law and as directed by the learned Division Bench in the Order dated 22.05.2018, which has been reproduced hereinabove.

Judge