

IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 1959 / 2018

Plaintiff: Riffat Humayun through Mr. S. Ali Ahmed Zaidi Advocate.

Defendants: Pakistan Television Corporation Limited & Others through Muhammad Asghar Malik Advocate.

For hearing of CMA No. 11866/2018.

Date of hearing: 21.01.2020.
Date of Order: 21.01.2020.

ORDER

Muhammad Junaid Ghaffar, J. Counsel for Defendant has at the very outset, raised objection regarding maintainability of this Suit and has referred to Judgment dated 2.4.2018 passed in C.P. No. D-1068/2016 filed by the present Petitioner, and has read out Para 18 thereof, and submits that instant Suit has been filed without any cause of action, whereas, the controversy regarding recovery of the amount from the Petitioner for the disputed period of service already stands decided through the said Judgment, whereas, the Civil Petition for Leave to Appeal filed by the Plaintiff also stands dismissed vide order dated 19.7.2018. He has further prayed that instant Suit in these circumstances, is not maintainable, whereas, there is no cause of action presently available to the Plaintiff.

2. Counsel for the Plaintiff has been confronted with this aspect of the matter and put to notice as to maintainability of this Suit and even an option to withdraw the same and let Para 18 of the Judgment as above, be implemented and acted upon by Defendant No. 1, to which he

has not conceded to, and has sought decision on this objection of maintainability on merits. According to him, the said Judgment in question passed by the learned Division Bench has not appreciated the order of the Hon'ble Supreme Court passed in Civil Petition No. 45-K of 2015 dated 24.2.2015 as referred to in Para 17 of the Judgment passed by the learned Division Bench, and therefore, this Court has the jurisdiction to adjudicate upon the dispute in question. He has also referred to Letter dated 5.5.2018 written to Defendant No.1 by the Plaintiff and the reply dated 11.6.2018 and submits that this is a fresh cause of action, whereas, the reply of Defendant No.1 is not in conformity with law and with the decision of the Hon'ble Supreme Court as above. According to him the amount cannot be recovered by the Defendants as the service of the Plaintiff continued in the light of an ad-interim order and the principle of *locus poenitentiae* applies and in support he has relied upon the case reported as ***Government of the Punjab Education Department v Muhammad Imran*** (2019 SCMR 643). He has therefore, prayed that the Suit is not only maintainable; but the Plaintiff is entitled for the relief claimed thereof.

3. I have heard both the learned Counsel and perused the record as well. It appears that the Plaintiff stood retired w.e.f. 24.4.2016 pursuant to order dated 10.7.2015 from the service of Defendant No.1 having attained the age of superannuation as per the record of Defendant No.1 and the Plaintiff being aggrieved, filed C.P. No. D-1068/2016 and through ad-interim order dated 20.04.2016, Respondents were directed to maintain status quo. The said Petition was then dismissed vide judgment dated 2.4.2018 and the relevant observations while dismissing the Plaintiff's Petition are contained in Paragraphs 16 to 20 which reads as under: -

“16. Reverting to the plea raised by the learned counsel for the Petitioner that the principle of locus poenitentiae would apply in this case, we are of the considered opinion that the principle of locus poenitentiae would not apply in this case because the Petitioner has retired from her service on 24.4.2016 as per her actual date of birth i.e. 25.04.1956 and not 07.03.1960 and her date of birth was not altered by the Respondent No.1 and she remained in service till today as she was not forced by the Respondent-PTV to work for them but the Petitioner continued to receive salary from the Respondent No.1 who paid her. Perusal of record explicitly shows that there are service [serious] allegations against the Petitioner that she was paid the remuneration/salary by the Respondent-PTV due to the order passed by this Court on 20.4.2016, which was obtained through misrepresentation of facts. Since the disputed questions of facts are involved in the present matter, therefore, the same cannot be entertained in a Writ Petition by invoking Constitutional Jurisdiction of this Court.

17. We are fortified on this issue by the case law decided by the Hon’ble Supreme Court in the case of the Engineer in Chief Branch and another Vs. Jalaluddin (PLD 1992 SC 207) and unreported case of Rauf Akhtar Farooqi Vs. Province of Sindh (Civil Petition No. 45-K 2015) wherein it has been held at para 3 & 4 as follows:-

“3. We are also of the considered view that recovery of the salaries and or other perks from the date of his retirement i.e. 25.10.12 till 03.01.2015 when he relinquished charge are not sustainable. In the first place his date of birth was altered in 1992 by the Competent Authority and secondly a suit was filed by the petitioner before the learned High Court seeking alteration of his date of birth in which interim order were operative and on the basis of such orders, he continued in the office till he relinquished his charge by virtue of impugned judgment, which otherwise, does not direct such an action.”

18. In the light of above dicta laid down by the Hon’ble Supreme Court, it is for the Respondent-PTV to decide the issue whether Respondent No.1 intends to recover the amounts from the Petitioner [point] for the disputed period of service, which she has received from the Respondent-PTV after 24.4.2016.

19. Thus in the light of the facts of the law mentioned above, we do not see any illegality, infirmity or material irregularity in the Impugned Order dated 10.07.2015 passed by the Respondent-PTV. The case law cited by the learned counsel for the Petitioner are distinguishable from the facts and circumstances of the case.

20. The order dated 10.07.2015 passed by the Respondent-PTV thus is found to be just and proper. The instant Constitution Petition stands dismissed along with the pending application(s).”

4. The said Judgment was impugned by the Plaintiff through Civil Petition No.637-K/2018 which stands dismissed vide order dated 19.7.2018. As to the present case and the cause of action accrued as contended it appears that the Plaintiff had written letter dated 5.5.2018 to Defendant No.1 making various claims and vide letter dated

11.6.2018 her application with a request to consider the period of carrying on service even after retirement pursuant to passing of ad-interim orders as part of her service was regretted. Nowhere in the said letter there is any mention by Defendant No.1 of any proceedings of recovery of dues which may have been initiated. It further appears that such exercise of writing the letter by the Plaintiff and the response thereof is dated much prior to the decision dated 19.7.2018 passed by the Hon'ble Supreme Court on her Civil Petition for Leave to Appeal. If the Plaintiff was aggrieved by the Judgment of the learned Division Bench on merits and in respect of the observations as contained in Para 18 thereof, including the reply of Defendant No.1 through their letter dated 11.6.2018, the appropriate remedy in respect of the same had been already availed by way of Civil Petition for Leave to Appeal and the said CPLA stands dismissed. Resultantly, the grievance of the Plaintiff, if any, already stands settled and decided up to the level of the Hon'ble Supreme Court including the question regarding recovery of dues earned by her for the disputed period of service in question which she had received after 24.4.2016 (date of passing of interim order) till final Judgment of her Petition.

5. It may be noted that Section 11 CPC in Explanation V very clearly provides that any relief claimed in the plaint which is not expressly granted by the decree shall for the purposes of this section be deemed to have been refused and in this matter when the Petition was filed by the Plaintiff prayer clause "c" in that petition in my view covered the present issue as raised in this Suit and reads as under: -

"c) To direct the respondents not to take any illegal action against the petitioner including retirement before 06.03.2020, which is her date of superannuation."

6. The Plaintiff, in her petition, had not only challenged her retirement due to purported change of date of birth by impugning the order dated 10.7.2015, whereby, she was to retire with effect from 24.4.29016; but had also sought a relief in respect of any action against her including retirement before 06.03.2020 which is the date of her superannuation according to her stance. The learned Division Bench has not only dismissed the Petition on merits; but has also passed an order regarding recovery of dues, if any, and the said order stands upheld by the Hon'ble Supreme Court in CPLA filed by the Plaintiff and has now attained finality. It is not open to any exception or interpretation in any manner, more so, before this Single Bench on the Original Side. The only available remedy, at the most, was through a review petition before the Hon'ble Supreme Court, which admittedly has not been availed. Therefore, in my view, there was no occasion for the Plaintiff to have filed instant Suit in respect of a cause of action dated 11.6.2018 which is much prior in date to the Judgment passed by the Hon'ble Supreme Court in CPLA filed by the Plaintiff and for these reasons, the learned Counsel for the Plaintiff was given an option to withdraw the Suit and let the proceedings be continued as per directions of the learned Division Bench; however, he has agitated the matter on merits and in my view the conduct of the Plaintiff amounts to sheer wastage of the Court's precious time in respect of an issue which stands decided up to the level of the Hon'ble Supreme Court in her own case, and therefore, these proceedings are wholly unwarranted in the peculiar facts and circumstances of the case.

7. Insofar as reliance on orders of the Hon'ble Supreme Court in C.P. No. 45-K/2015 (*Rauf Akhtar Farooqui v Province of Sindh*) is concerned, firstly, the learned Division Bench has considered the same and its effect

thereof. Therefore, this Single Bench cannot take a contrary view without any lawful justification; and secondly, such aspect of the matter was also open / available before the Hon'ble Supreme Court in CPLA of the Plaintiff and could have been agitated and may have been agitated; hence, on this account also, this Court cannot go any further to give its findings on merits of the same that the said order would be applicable in favor of the Plaintiff or not. Notwithstanding this, even otherwise, the said order of the Hon'ble Supreme Court appears to be a consent order and was apparently passed as the Appellant's Counsel had, at the very outset, requested the Court to allow withdrawal of the Appeal on merits; but subject to giving up of claim of recovery of dues by the Respondents therein. The concession was given on behalf of the Province by the Advocate General and the said order was passed; hence, the same would not apply in the facts and circumstances of the present case. Lastly, the Hon'ble Supreme Court in the case reported as ***Muhammad Saleem V. National Industrial Relations Commission and others (2019 SCMR 142)*** cited by the learned Counsel for the Defendants has been pleased to observe in identical facts that a person cannot be allowed to retain the benefit of his own wrong and cannot seek protection behind the order of the Court. In that case the Petitioner in the garb of the ad-interim orders continued to work and when later on his case was decided it was found that date of retirement as determined by their Respondents was correct and during the currency of ad-interim order the salary released was ordered to be adjusted from the salary paid during the intervening period. However, the Hon'ble Supreme Court came to the conclusion that such adjustment of the salary was correct in law.

8. As to the case law relied upon by the learned Counsel for the Plaintiff in respect of *locus poenitentiae* is concerned, it may be observed that this is not a case wherein some orders have been passed by an appropriate departmental authority which now stands recalled and during the interregnum any benefits have been accorded to the Plaintiff. It is a case wherein, the Plaintiff had come to the Court with her own interpretation in respect of her retirement date and the age of superannuation and had obtained an ad-interim order which continued till the final decision of the petition. The said interim order merges into the final judgment; hence, the benefit of the same during pendency of the petition cannot be asked for that it has resulted in accrual of some benefits or salary and the same cannot be recovered. This argument is in fact fallacious.

9. The Hon'ble Supreme Court in the case of ***Secretary Revenue Division, Islamabad v Iftikhar Ahmed Tabassam*** (PLD 2019 SC 563) had the occasion to deal with effect of an interim order of the Court when the final appeal stands dismissed as withdrawn. Brief background was that respondent No.1 filed Miscellaneous Petition No.569/2006 in Appeal No.952(L)CS of 2004 before the Federal Service Tribunal ("Tribunal") on 10.07.2006 before his retirement on 09.10.2006 praying that he be allowed to retain the official accommodation after his retirement. Interim relief was granted to respondent No.1 on 10.07.2006 but the main appeal came up for hearing on 06.01.2010 i.e., after three and a half years, when the appeal was withdrawn by respondent No.1 while the Tribunal observed in the said order that as respondent No.1 has retained official accommodation on the basis of a stay order he was not liable to pay any penal rent and was only liable to pay normal rent

under the Rules. Subsequently, respondent No.3 vide letter dated 24.01.2010 demanded respondent No.1 to pay accrued standard rent in the sum of Rs.626,551/- as per rule 25(4)(b) of the Rules. Respondent No.1 once again approached the Tribunal against demand raised through letter 24.01.2010 by making an application in an appeal which stood already withdrawn on 06.01.2010, complaining that inspite of earlier direction of the Tribunal he has been charged rent under rule 25(4)(b) of the Rules. The Tribunal while disposing of the application of respondent No.1 vide impugned order dated 27.03.2010 reiterated that the occupation of the official accommodation by respondent No.1 was due to the judicial order passed by the Tribunal and, therefore, respondent No.1 was not liable to pay the said amount. The said order was impugned before the Hon'ble Supreme Court and the following order was passed;

6. We have heard the learned counsel for the parties and have gone through the record of the case. As per Rules 15(2) and 25(4)(b) of the Rules, respondent No.1 could have retained official accommodation after his retirement only for a period of six months and thereafter he was liable to pay standard rent for the remaining period. ***The stay order granted by the Tribunal is insignificant in the instant case as appeal was not decided on merits and was finally withdrawn by respondent No.1, resulting in the withdrawal of the stay order, as if it never existed.*** After the withdrawal of the appeal respondent No.1 had no justification not to pay the penal rent in accordance with the Rules. The entertainment of application filed by respondent No.1 by the Tribunal in an appeal which was no more pending before the Tribunal in itself amounts to abuse of the process. The legal position under the Rules is absolutely clear and there is no factual dispute regarding retention of official accommodation by respondent No.1.

10. In view of hereinabove facts and circumstances of this case, instant Suit appears to be hit by Res-judi-Cata and so also is a case of no cause of action for invoking the jurisdiction of this Court. The controversy regarding any alleged recovery of salary during the above period stands decided in the manner as noted in the judgment of the learned Division Bench as above, and duly affirmed by the Hon'ble

Supreme Court, and in terms of section 11 CPC, cannot be adjudicated one again and that too by this Court. Accordingly, while exercising powers under Order 7 Rule 11 CPC, the plaint in this matter is hereby rejected. Before parting I may observe that this appears to be a fit case for imposition of heavy cost on the Plaintiff; however, considering the fact that she is now retired and facing recovery of excess earned salary, I have thought it fit not to impose any cost; but the Plaintiff is warned to be careful in future.

11. Plaint is hereby rejected under Order 7 Rule 11 CPC.

J U D G E

ARSHAD/