

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 2285 of 2015

Ghazi Anwar Kerio

Versus

Sui Southern Gas Co. Ltd. Karachi & others

Date	Order with signature of Judge
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1. For hearing of CMA No. 15490/2015
2. For hearing of CMA No. 15491/2015

Date of Hearing: 19.02.2016

Plaintiff: Through Mr. S. Shafqat Ali Shah Masoomi
Advocate

Defendants No.1 to 3: Through Mr. Asim Iqbal along with Mr.
Farmnullah, Advocates

Muhammad Shafi Siddiqui, J.- Plaintiff in this suit has impugned the show-cause notice dated 09.9.2015 and the dismissal order dated 14.10.2015 passed in consequence of reply to show cause notice.

Brief facts of the case are that the plaintiff was appointed as Engineering Assistant in Grade-I in the year 1979 and was promoted and at the time of dismissal he was working as Deputy General Manager SSGC. The ground which lead to issuance of the show cause notice is a complaint/allegation levelled in the FIR registered against high officials of SSGC. The plaintiff alleged that on account of the lodging of such FIR under section 395/109 of PPC against the senior management of the company, with ulterior motives the show cause notice was issued. However the reasoning assigned in the show cause notice were that in terms of the final report submitted by the Investigation Officer, the matter was disposed of in "C" class by the Judicial Magistrate No.VI, Malir Karachi. However the Magistrate after considering the final investigation report dated 01.9.2015 passed the order dated 03.9.2015 under "C" class being false. The plaintiff was as such asked to explain

and give reasons of the aforesaid dishonest acts which have caused disturbance in the peaceful working and environment of the company and that it amounted to misconduct under the Executive Staff Service Rules of the company.

Counsel for the plaintiff submitted that the notice was replied by the plaintiff on 12.9.2015 that in case the management has already decided to award punishment of dismissal prior to submission of reply, it would amount putting the cart before the horse. It was further replied that the show cause notice could have been applied to other individuals including Arsallan Iqbal and Dr. Munawar Hayat to whom the NAB has declared fake degree holder and the officers of SSGC owning CNG Stations and causing UFG etc. he further argued that there are no rules under Executive Service Rules to prosecute the plaintiff. The plaintiff in addition has also replied that on account of the cruelty management has transferred his wife to HSE department, Azad Building. He submitted that in pursuance of such reply the dismissal order was issued by incompetent authority and forwarded by the General Manager HR on 04.10.2015. He submitted that the subject dismissal order has now impugned by the plaintiff in these proceedings.

It is the case of the plaintiff that he has been personally victimized on account of raising voice against corruption as he could not tolerate corruption under any circumstances. The plaintiff has relied upon the Executive Service Rules and submitted that there is no provision for prosecuting the Executive Officers hence the show cause notice is without jurisdiction and lawful authority. He has relied upon the judgment passed in JM No.40/88.

On the other hand learned Counsel for the defendant submitted that there was relationship of master and servant between the plaintiff and the defendant and as such the plaintiff cannot maintain this suit for

declaration and permanent injunction. Learned Counsel submitted that at most plaintiff can file a suit for damages for which the defendant would have no objection. He submitted that the plaintiff was causing disturbance in smooth functioning of the affairs and the management on account of such activities resorted to such dismissal after issuance of show cause notice. Learned Counsel submitted that the enquiry and investigation was dispensed with in view of unsatisfactory reply which in fact is an admission of the allegations raised therein.

Heard the learned Counsel and perused the material available on record.

Dealing first with the preliminary objection of maintainability of the suit, the Hon'ble Supreme Court in the latest judgment of PIA in the case of Syed Suleman Alam Rizvi while relying on celebrated judgment of Tanveer-ur-Rahman (PLD 2010 SC 676), Abdul Wahab (2013 SCMR 1383), Pakistan Defence Officers Housing Authority (2013 SCMR 1707) and Syed Nazir Gilani (2014 SCMR 982) held that the private respondents/ employees if so advised may file suit for redressal of their grievance before the appropriate forum. Plaintiff being aggrieved of such dismissal has no other forum except to file a suit which he has done. Now to what extent he is entitled to this depends upon the fact and circumstances and merit of each case. Consequently since the plaintiff has filed suit for redressal of his grievance, I do not agree with the contention of the learned Counsel for the defendant that the suit as framed and filed is not maintainable.

Dealing with the injunction application the facts of the case are that in view of unsatisfactory reply in relation to a show cause notice, the service of plaintiff was terminated. In this regard the reply of the plaintiff that culminated into the impugned decision is very essential. The plaintiff instead of submitting a categorical/parawise reply as to the allegations has raised additional questions for high officials. The

allegations mentioned in the show cause are serious in nature as an FIR has been lodged against the senior management of the company which ended under "C" class. The plaintiff may have preferred an appeal against the said decision rendering the FIR as "C" class but the allegations raised in show cause notice have not been replied satisfactorily. The management after finding the reply unsatisfactory also provided an opportunity at the request of the plaintiff on 15.9.2015 which in fact is a personal hearing given to him however he has not satisfied the competent authority and it appears that no cogent evidence was produced before the competent authority as to the allegations raised in the FIR. I would not like to comment much about the evidence that was required to be produced in support of the aforesaid FIR however only to the extent that a personal hearing was given and the competent authority was not convinced with the reply made by the plaintiff in support of the allegations, the competent authority was pleased to dismiss him from service of the company w.e.f October, 2015. It has also been argued that he has only few months left in his service whereafter reaching the age of superannuation he would have retired. I would consider this aspect as well for considering this application relating to the suspension of the dismissal order.

The plaintiff has already been terminated and it seems that by allowing this application effectively the plaintiff would be granted main relief as he has prayed in the suit.

In the case of Anwar Hussain (PLD 1984 SC 194) the Hon'ble Supreme Court held that even in cases not covered by the statutory rules of service, the master is bound to follow the procedure provided under the rules. It seems that by issuing a show cause notice and providing an opportunity of personal hearing such situation was taken over and the plaintiff was provided an opportunity. In the case of SSGC reported in 1998 PLC (CS) 346 it is observed by this Court that the statutory

corporation do not have status of Government Department or Organization therefore, employees thereof do not possess statutory guarantees and safeguard available to a civil servant. It is further observed that the rules of service framed by the corporation themselves do not have statutory status and breach of such rules do not give right to an employee to maintain action for reinstatement. While dealing with an identical situation in relation to the situation prevailing at the time of filing of the suit, this Court in the case of Syed Ali Imam Rizvi reported in 2002 YLR 394 has held that Court while granting interlocutory relief would maintain situation as it was prevailing at the time of institution of the proceedings and would not create a new situation.

While dealing with the issue of master and servant the Hon'ble Supreme Court in the case of Chamber of Commerce v. Ali Ahmed Qureshi reported in 2001 SCMR 1733 has held that in a case of personal service contract, the arbitrary dismissal of service cannot be impugned to enforce the terms of the contract but in the event of arbitrary dismissal or in unwarranted dismissal of the employment, the employee is always entitled to sue for damages and it was further observed that in such situation an employee is legally entitled to claim wages, allowances and other benefits.

Similarly in the case of United Bank Limited and Habib Bank Limited reported in 1998 SCMR 68 and 1998 SCMR 60 the Hon'ble Supreme Court in relation to a wrongful termination observed that the remedy under the relationship of master and servant for wrongful termination was a suit for damages and not a relief for reinstatement. In the case of Muhammad Umer Malik v. Muslim Commercial Bank (!995 SCMR 453) the Hon'ble Supreme Court has held that the employer and employee were thus governed by a relationship of master and servant, relief of reinstatement in service in such a situation was not visualized in such relationship. In the case of Tanveer-ur-Rahman reported in PLD

2010 SC 676 it is held by the Hon'ble Supreme Court that if any adverse action is taken by an employer in violation of statutory rules, only then such action would be amenable in constitutional petition but if such violation has no backing then principle of master and servant would be applicable and as such employee has to seek remedy before the Court of competent jurisdiction.

Learned Counsel for the plaintiff has cited number of orders but the facts and circumstances of the referred cases are different and distinct. Some of the referred orders are only ad-interim orders that too passed on different footings and circumstances. The plaintiff has approached this Court when he was already terminated and while granting the relief of the nature as claimed would amount to granting a decree as this is the main relief sought by the plaintiff. As admitted, the plaintiff is at the verge of retirement and hence the relief of the nature as to the reinstatement at this interlocutory stage as such would create a different situation. The listed application thus is dismissed with the above observation.

The plaintiff however deserved that the instant suit filed by him be disposed of expeditiously since he was already at the verge of retirement when he was terminated and as such since he is contesting for his service benefits, dues that he was /is entitled for. I direct the defendant to file written statement at the earliest so that the issues be framed and evidence be recorded through commission.

Judge