

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

Suit No. 2027 of 2016

Tariq Hussain Mahesar

Versus

Federation of Pakistan & others

BEFORE:

Mr. Muhammad Shafi Siddiqui, J

Date of Hearing:

08.11.2016

Plaintiff:

Through Mr. Abid S. Zuberi Advocate

Defendant:

Through Mr. Javed Asghar Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Plaintiff has filed this suit challenging the termination letter dated 07.9.2016 issued by defendant no.3 who is the Deputy General Manager, Human Resources, Pakistan State Oil.

2. The brief facts of the case are that the plaintiff remained in service with defendant No.2 for over 30 years. The controversy referred in the suit started when the explanation in terms of annexure P-1 dated 15.3.2016 was called in relation to a cheque dated 07.1.2016 issued by a contractor of the employer/defendant namely M/s. Envoy Facilitation Services amounting to Rs.100,000/-. In reply to the explanation the plaintiff wrote to the General Manager, Procurement & Services on 18.3.2016, explaining the reason of the cheque being received from one Mr. Salman Idrees of Envoy Facilitation Service. It is explained that it was return of the loan taken by Mr. Salman Idrees (employee of contractor) and since he was operating the account of the company/contractor he paid the amount out of the account of the company. In reply to such explanation the General Manager Procurement & Services observed that he was not convinced with the explanation however he has explained the position to CEOD & members during

telephonic conversation and therefore, the benefit of doubt was proposed to be given to the employee and for the reasons mentioned therein the recommendations of issuing an advisory warning letter to refrain the plaintiff from any financial transaction was suggested. Following the said recommendations it is claimed that the transfer order of the plaintiff was made on 28.3.2016 in terms of annexure P-6. It is claimed that the matter ended there however after lapse of about two months enquiry notice was initiated in respect of the same controversy and the enquiry proceedings started in June 2016. Vide enquiry notice dated 02.6.2016. The enquiry report was based upon statement of several witnesses who were called by the prosecutor. The evidence of witnesses such as (i) Tariq H. Mahesar, (ii) Sanaullah Khan Naib Qasid, (iii) Arif Haseeb and (iv) Salman Idrees were recorded . The enquiry report based on the evidence and breach of purported clauses 3.1.7, 3.1.9, 3.4.1 and 3.7.1 of the Companies Business Principles & Ethics Policy. The findings of the enquiry officer are as under:

“ Findings:-

1. *If it is believed that Mr. Salman Idrees borrowed money from accused against security of the cheque, claimed by him, the accused should not have accepted the cheque of M/s. Envoy Facilitation Services Pvt. Ltd. (The PSO Vendor) in the first instance.*
2. *When a cheque is given as security, it is understood that it will be encashed on default.*
3. *Even if the cheque (blank cheque) was accepted by the accused as a security, he should not have encashed the cheque, knowing the cheque is from the Company, which is PSO vendor.*
4. *It is also shrouded in mystery that a person who is in entire need of funds on January 7, 2016 returned the amount within a period of less than one month.*

Conclusion

Based on the proceedings and observation of the Enquiry and available evidence and information, it is concluded that Mr. Tariq H. Mahesar, the accused employee has done breach of the Clauses 3.1.7, 3.1.9, 3.4.1 and 3.7.1 of the Company's (PSO) Business Principles and Ethics Policy. Reproducing below the above mentioned clauses:-

- 3.1.7. *Any member of the PSO family having direct, indirect interest or family connections, with an external organization that has business dealings with PSO, without fully disclosing to the management of the company details of such connections and interest.*
- 3.1.9. *Any member of the PSO family performing any act or getting involved in any situation that potentially could conflict with the principles outlined herein.*
- 3.4.1. *A member of the PSO family shall not give or receive bribe in order to retain or bestow business or financial advantages. Obtaining any kind of personal financial benefits for having given business to outside agencies will constitute to bribery and is prohibited under the PSO policy.*
- 3.7.1. *A member of the PSO family's relationships and dealings with Government officials, external agencies, parties and individuals at all times should be such that PSO's integrity and its reputation shall not be damaged if details of the relationship or dealings were to become public knowledge."*

3. Counsel submits that in pursuance of such second round of enquiry all that was recommended is an action under relevant clause of the Companies Business Principles & Ethics Policy and the enquiry officer was not certain that the allegation against the plaintiff stands proved. There were certain questions as to the procedure involved in borrowing money from accused against security of cheque of the company. It is argued that the motive of obtaining such amount as bribe is missing and hence such penalty in the shape of termination is harsh.

4. On the other hand learned Counsel for the defendant submitted that this suit for declaration and injunction is not maintainable on account of the fact that the relation between the plaintiff and defendant is of a master and servant. He submitted that the purpose of issuing show cause notice is accomplished when the procedure after issuing notice of enquiry was followed by a procedure wherein the evidence of the witnesses including that of the plaintiff was recorded. Learned Counsel submitted that the plaintiff was well aware of the allegation which he has attempted to defend in the enquiry. He further submitted that the plaintiff is not being waxed twice as earlier the head of the Procurement & Service Department was not satisfied with the

reply of explanation as there was lot of grey areas hence subsequent notice of enquiry was followed and the necessity of issuing a show cause notice was dispensed with in view of the detailed enquiry conducted. Learned Counsel submitted that if at all the money was borrowed from the plaintiff by Salman Idrees it ought to be against the cheque of Salman Idrees and not of the company itself. He submitted that in terms of the referred clause of the Companies Business Principles & Ethics Policy he should not have a direct interest or connections with the external organization having business dealings with the Pakistan State Oil and that any member of the PSO family performing an act or getting involved in any situation that could potentially be in conflict with the principles outlined and that a member of PSO family shall not give or receive bribe in order to retain or bestow business for financial advantages and that the members of PSO family's relationship and dealings with the Government officials, external agencies, parties and individuals at all times should be such that PSO's integrity and reputation shall not be damaged if details of the relationship or dealings were to become publicly known. Learned Counsel has relied upon the cases of *Hanif Ali v. Registrar Cooperative Society Punjab, Lahore & another* reported in 1986 PLC 517 and the case of *Mrs. Anisa Rehman v. P.I.A.C & another* reported in 1994 SCMR 2232.

5. I have heard the learned Counsels and have perused the material available on record.

6. The plaintiff has agreed for the disposal of the suit on the basis of material available on record and arguments since questions of law are involved and more importantly since none of the documents as available on record was stated to be denied by any party. The burden to prove the questions and issues involved in the suit is on plaintiff who has categorically submitted that he would be willing to have disposal of the suit on the basis of record and on the basis of arguments in accordance

with law hence on 08.11.20-16 I have observed that the suit will be disposed of along with the pending applications which involved a question as to the issuance of termination letter dated 07.9.2016 impugned in these proceedings.

7. Since pure question of law is involved which relates to the letter dated 07.9.2016 issued by defendant No.3 hence there is no need of recording oral evidence of the parties. None of the documents relied upon either by the plaintiff or defendants are disputed hence following issues were framed for disposal of the suit.

1. Whether the termination letter dated 07.9.2016 was lawful and issued after compliance of legal requirements?
2. Whether the plaintiff is entitled for service benefits after termination?
3. What should the decree be?

8. My findings with reasons on the above issues are as follows:

REASONS

9. Proceedings commenced when explanation was called from the plaintiff on 15.3.2016 in relation to a cheque obtained by the plaintiff from one Salman Idrees who works for M/s. Envoy Facilitation Services, one of the contractor of PSO. The record shows that the explanation was provided however the matter was discussed with the CEOD members as there were lot of grey areas and elements of doubt about the intention of the plaintiff. By giving the benefit of doubt the plaintiff was transferred from subject department by the Managing Director & CEO on 28.3.2016. On 02.6.2016 yet another notice of enquiry was issued and on the subject issue of encashment of a cheque of Rs.100,000/- plaintiff has again given detailed explanation. According to the Prosecutor the plaintiff has encashed a cheque on 07.1.2016 for Rs.100,000/- drawn at Standard Chartered Bank of M/s. Envoy Facilitation Services through G.M

PNSPM Mr. Sanuallah Khan. Plaintiff in his statement and examination explained the reason of obtaining such cheque which was alleged to have been given to him as a security on account of the loan obtained by one Salman Idrees. The Prosecutor however was required to establish the motive and purpose of obtaining such cheque in view of the allegations raised. Plaintiff has categorically denied to have received such cheque on account of any such allegation. The contractor never stated to have succeeded in any contract and/or tender nor the plaintiff was stated to have any role in granting any such contract/tender. Mr. Salman Idrees has confirmed that he has received Rs.100,000/- loan from the plaintiff for his personal use. Salman Idrees however also explained that the cheque was of the account of M/s. Envoy Facilitation Services and that he had no permission as far as present cheque is concerned from the CEO Dr. Abdul Manan and that it was his mistake that he issued the company's cheque on account of which the plaintiff is facing problem. The evidence that has come on record lacks motive of obtaining such amount.

10. It may however be clarified that an option was given to the parties to provide a forum of appeal, however it is contended by defendant that they cannot provide an impartial forum to plaintiff since management headed by CEO had decided to issue termination letter.

11. Be that as it may, the conclusion that was drawn in the enquiry report is that the plaintiff breached the clauses 3.1.7, 3.1.9, 3.4.1 and 3.7.1 which are as under:-

“3.1.7. Any member of the PSO family having direct, indirect interest or family connections, with an external organization that has business dealings with PSO, without fully disclosing to the management of the company details of such connections and interest.

3.1.9. Any member of the PSO family performing any act or getting involved in any situation that potentially could conflict with the principles outlined herein.

- 3.4.1. *A member of the PSO family shall not give or receive bribe in order to retain or bestow business or financial advantages. Obtaining any kind of personal financial benefits for having given business to outside agencies will constitute to bribery and is prohibited under the PSO policy.*
- 3.7.1. *A member of the PSO family's relationships and dealings with Government officials, external agencies, parties and individuals at all times should be such that PSO's integrity and its reputation shall not be damaged if details of the relationship or dealings were to become public knowledge."*

12. Perusal of these clauses show that the plaintiff was restrained from having direct or indirect interest or connections with an external organization that has business dealing with the PSO and that any act of such member or any such involvement which could potentially be considered in clear conflict. The clause 3.4.1 further emphasises that a member of PSO family shall not give or receive bribe in order to retain or bestow business or financial advantages and that any account of personal financial benefits for having giving business to outsider will constitute bribery and that any such relationship with external agencies should be such that the PSO's integrity shall not be damaged.

13. The documents available on record as well as the evidence shows that the plaintiff was once waxed when he was transferred from the concerned department. A detail enquiry was then subsequently conducted and in view of such inquiry, a show cause notice is not required to be issued. The plaintiff was well aware of the allegations which were levelled against him and the purpose of issuing show cause notice is fulfilled in view of the reply/ explanation and the evidence which was recorded. The consequences of not adhering to the Business Principle and Ethics in all the clauses referred above is not provided. These clauses only restrain plaintiff from acting in a manner as suggested therein. The plaintiff was accused of having direct and indirect connections with the external organization which are sufficiently covered in terms of clause 3.1.7. and others However the motive and consequences of such breach are missing.

14. As to the contention of the learned Counsel for the defendant that the suit is not maintainable, I would observe that this question is dealt with by the Hon'ble Supreme Court in an unreported judgment passed in Civil Appeal Nos.185-K and 186-K of 2015 in the case of Muhammad Rafi and Sajid Iqbal v. Federation of Pakistan in relation to the service matter involving Civil Aviation Authority which was non-statutory body. Para-50 of the referred judgment provides that aggrieved person can invoke the constitutional jurisdiction of High Court if he is satisfied that the act of the authority is violative of the service regulations even if they are non-statutory. Some of the fundamental rights that being violated are that there is no remedy of appeal and denial of service benefits. The plaintiff was turned out and terminated by a public functionary without having a remedy of appeal.

15. The appointment of the plaintiff was made on 20.10.1988 which contains certain terms of termination as well as of dismissal.

16. The ultimate submission of the learned Counsel for the plaintiff was that he had no intention to be reinstated and that if at all the defendant in pursuance of such evidence and discretion has terminated him, it attracts the applicability clause-14 of the service contract. The impugned letter is a termination letter and in terms of the service contract such termination letter cannot withhold the service benefits. The termination letter is also silent as to forfeiture of gratuity and other benefits. He submits that if at all it is the intention of the defendant that the service of plaintiff is to be terminated then the service benefits on account of such termination be provided.

17. The cumulative effect of the facts and circumstances of the case and the gravity of the allegation, I deem it appropriate to dispose of this suit along with pending applications with the observation that since the plaintiff's service was terminated vide impugned termination letter

dated 07.9.2016 and that he has no intention to be reinstated, he is entitled for service benefits as required under the law on account of the length of service.

18. The issues are answered in the following manner in view of the above reasons.

Issue No.1 _____ Plaintiff conceded on account of having
no intention to be reinstated.

Issue No.2 _____ Affirmative

Issue No.3 _____ suit decreed

Suit is decreed in the above terms.

Judge