

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.527 of 2022

[Muhammad Ubaid Khursheedv.....Pakistan International Airlines & others]

CMA No. 5821/2022

Dates of Hearing : 30.06.2022
Plaintiff through : Mr. Zafar Ahmed Taimori, Advocate.
Defendants through : Agha Zafar Ahmed, Advocate for defendant No.1/PIA.

ORDER

Zulfiqar Ahmad Khan, J:- The grievance posted through the instant application by the plaintiff is that the defendant No.1/PIA has violated promotion criteria to the extent that whilst ten eligible candidates ought to have been short listed while making selection for the post of Deputy Chief Engineer, but the defendant changed this ratio from ten candidates for one post to three candidates eliminating the plaintiff and other six aspirants from the race. Having done so, the defendant No.1 promoted the defendant No.5 who allegedly was not even a fit and proper person to be promoted to the said post, the plaintiff through instant CMA made under Order XXXIX Rules 1 & 2 C.P.C has thus sought the following prayer:-

“this Hon’ble Court be pleased to suspend the operation of promotion Board/Management meeting dated 09.03.2022 and the defendants or anybody acting on their behalf from victimizing, humiliating, discriminating or terminating or otherwise altering the terms and conditions of plaintiff to his disadvantage, furthermore, restrain the defendant No.5 to occupy the office or functions as Deputy Chief Engineer Furnishing till disposal of this suit.”

2. Learned counsel for the plaintiff contends that plaintiff was appointed as Technician in Engineering Department of defendant

No.1 through appointment letter issued on 16.01.2004, however, as the time went by, the PIA management having seen the hardwork and honesty of the plaintiff confirmed him vide letter dated 29.08.2008 and placed him in the services of Aircraft Engineering on 02.04.2010. He further contends that the plaintiff left no stone unturned to satisfy his superiors and was awarded certificates of appreciations owing to which he was permanently absorbed in PIA. He further contended that under the criteria for the promotion of Deputy Chief Engineer, a mechanism was laid down through Admin Order No.03/2018 issued on 01.06.2018 in terms of which it was desired that merit list of eligible candidates in the ratio of 1:10 shall be prepared according to the promotion criteria. He states that the said ratio of 1:10 was malafidely reduced into 1:3 by the PIA management just to accommodate the blue eyed individuals and to frustrate fair play. He further contends that the defendant No.5 has been promoted vide order dated 14.03.2022 for the post of Deputy Chief Engineer without the preparation of any such a merit list, ignoring the deserving candidates standing in the queue and that the defendant No.5 is not even from the cadre out of which the candidates ought to be selected for this position as the defendant No.5 belonged to Line Maintenance instead of Engineering Department, therefore, serious illegality has been committed by the said defendant. Lastly, he prayed for the grant of application in hand.

3. In opposition to the submissions made supra, learned counsel for the defendant No.1 contended that plaintiff is claiming promotion which is not his vested right. He next contended that the relationship

between the defendant No.1 and the plaintiff is that of Master and Servant and that the plaintiff cannot seek declaration or injunction against the defendant No.1. He further contended that no illegality is committed by PIA in promoting the defendant No.5 and that the said defendant was promoted in terms of Admin Order No.4/2022 according to which only three candidates were entitled to be called for the vacant post. While concluding his submissions, he submits that PIA management has been conducting its businesses according to the rules and established practice and has never committed any illegality whilst promoting his employees.

4. Heard the argument and perused the record. Learned counsel for the defendant No.1 at the outset argued that relationship between the defendant No.1 and the plaintiff is that of Master and Servant and that the plaintiff cannot seek declaration or injunction against the defendant No.1. Before discussing the merits of the application in hand, it would be thus pertinent to answer these contentions of the learned counsel for the defendant No.1.

5. Research shows that the concept of master and servant emanates as part of common law that globally forms part of “work law” construed to be the contract/centered position of laws interfering with, otherwise a free labour market. A philosophical foundation of the laws regulating labour and employment (i.e. work laws) is best understood as a set of constraints on freedom of contract in labor markets which primarily affect decisions whether to enter a given employment relationship, and bargaining over compensation and benefits. The distinction between labour law and

work law is that work law is more centered on employment where labour law is specifically codified aimed to protect interest of labours. It is also distinguished as it refers to laws regulating non-unioned hired workers usually. Work law also included matters pertaining to occupational safety, health and discrimination law as well as laws regulating employee benefits. Once slavery was abolished late 19th century, “Freedom of Contract” movement initiative was taken as an optimistic projection of the future associating “status” with serfdom and slavery and “contract” with liberty and individual choice. Movement from “status to contract” is detailed at length in Maine’s papers¹, who wrote largely on this subject. At the same time when slavery was about to be abolished, Sir William Black Stone in his 1759 wrote Commentary on the Laws of England² which distinguished master and servant relationship viz-a-viz “freedom of contract”, William Black Stone distinguished between a slave and a gentleman. With regard to master and servant, William Black Stone explains that earlier the master of a household was not only incharge of his wife, children, servant and other inferiors but also responsible for torts committed by them. He expounded that master’s responsibility in this regard extended to any business, the servant or other members of his household might transact in accordance with orders or in case in which the master do not explicitly order or authorize the transaction, but third parties might reasonably believe that the servants were acting at the master’s behest. The master accordingly was quite generally held responsible for the acts of all those who were part of his mastership and acting

¹ <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1495&context=jbl>

² 18th-Century master-servant relation as described in Sir William Blackstone’s 1759 treatise Commentaries on the Laws of England.

under his charge. As in William Black Stone's time one has the legal right to sell oneself to another as a servant, so long as the agreement did not purport to give the servant power over his life and liberty. Such an agreement thus gave a master, property interests in the servant *per se*. Black Stone states that the master's interest were purely property interests no less in the "service of this domestics" so that he was justified in assaulting a third person in order to defend his servants, thereby protecting the property interest in the servant acquired upon hiring and by giving him wages and accordingly it was servant's duty to protect his master in the event of danger by accepting wages. It was well understood that the servant always remained lower in social status than that of the master. Luckily these rules have not been preserved and followed in modern work law but some (more reasonable) influences of the master/servant relation remained in the field. The modern "master" no longer has a cause of action against another master who hires away his servant, modern work law also does not provide for the general duty on the part of the employee to obey each and every order of the master, unless it is within certain limits, however, not to act against the employer's interests while he is still in his employment. Modern master/servant relationship by definition is now a broad "right of control" over the servant/ employee. In today's world, it is an acceptable norm that a "boss" cannot issue unreasonable order to a worker, for example right to indulge in sexual harassment or racially discriminatory put-downs, requiring engineers or other professionals to clean toilets or paint fences etc.

6. The relationship of Master and Servant does not mean that in each and every case, the recourse should be made only for the claim of damages. In my view, there are two genres of lawsuits encompassing the relationship of master and servant. One scenario emanates from the claim of dismissed or terminated employee who approach Courts for reinstatement or in alternate, seek award of damages /compensation against his wrongful dismissal/termination in which proceedings the master may choose to plead that he is prepared to pay damages for the breach of contract of service, but does not wish to continue with the services of the servant. The other genre in the same relationship are the cases where an employee, though in service and performing his duties satisfactorily, is denied promotion, salary, wages or is harassed or maltreated, etc. and approaches the Courts. In latter cases, I have no reluctance to hold that all such employees who are neither covered under the definition of “workers or workmen” so that they may approach labour courts or NIRC nor they are “civil servants” to move to Services Tribunal nor they can file Constitution Petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973 in the High Court due to lack and nonexistence of statutory rules of service, the only remedy left with them is to file a civil suit for satisfaction of their claims accrued during service including damages for the loss sustained due to nonpayment or refusal/denial of such service benefits or alleged illegal treatment by the employer. If an employee is forced to seek damages alone on each and every illegality and unfairness, this would not only shred apart the fabric knitted by Article 10-A of our Constitution where fair trial and due process of

law is guaranteed as a fundamental right, but there shall also be a complete turmoil and chaos across-the-board in which situation, the employee during service till his superannuation would be continuously litigating only for the claim of damages which would be nothing less than exploitation and would render this relationship to that of a master and slave, rather than master and servant. Laws exist to protect the fundamental human rights of the members of society and to ensure that they do not have to protect rights through their own bodily actions. These views spring from the case of *Shariq ul Haq & others v. Pakistan International Airlines Corporation Limited & others (2018 P L C (C.S.) 975)* and it would be advantageous to highlight the relevant excerpts herein below:-

“Master and servant.

Relationship of master and servant does not mean that in each and every case, recourse should be made only for claim of damages.”

“Specific Relief Act (I of 1877)

Suit for declaration, injunction and damages. Interim injunction, grant of. Master and servant. relationship. Plaintiffs were pilots who were employees of Pakistan International Airline Corporation. Grievance of plaintiffs was that Corporation had not followed Memorandum of Understanding (MoU) between Corporation and their representative association with regards to procedure of promotion. Plea raised by Corporation was that relationship between the parties was that of master and servant and plaintiffs could only sue for damages but could not seek declaration. Two genres of lawsuits encompassing relationship of master and servant existed. One scenario could lead to claim of dismissed or terminated employee who approached court of law for reinstatement or in alternate, award of damages/compensation against his wrongful dismissal/termination in which proceedings, master could say that he was prepared to pay damages for breach of contract of service but would not accept services of servant. Other genres in same relationship was

the case where an employee though in service and performing his duty satisfactorily but he was denied salary/wages and some other benefits payable to him during service. In such distinct and discreet class of cases, all such employees who were neither covered under definition of 'workers' or 'workmen' so that they could approach Labour Courts or NIRC, nor they were civil servants to move Service Tribunal nor they could file Constitutional petition under Art.199 of the Constitution, due to lack and non-existence of statutory rules of service, so only remedy was left with such employees was to file civil suit for satisfaction of their claims accrued to them during service including damages for loss sustained due to non-payment or refusal/denial of such service benefits by employer without any lawful justification.”

7. It needs to be emphasized that the concept of master and servant contract pre-supposes voluntariness on the part of the parties and cannot under any circumstances be treated as a master and slave relationship³. In the given circumstances, a learned Division Bench of this Court in supra case where employees of Pakistan Steel Mills approached this Court in a writ petition held that:-

4. Indeed, when the respondents contend that there are no statutory rules whose protection the petitioners could claim it would obviously follow that their employment therein would be treated as contractual and essential features of such contract is that damages is only remedy available to a party aggrieved by breach of the terms of the contract. Admittedly, the damages likely to be sustained by a premature termination on the part of the employee had been duly quantified in monetary terms, i.e. a maximum of Rs.50,000. Therefore, under no circumstances, could the respondents place any fetters upon an employee's decision to terminate the contract but could only claim damages for its breach.

5. It needs to be emphasized that the concept of master and servant contract pre-supposes voluntariness on the part of the parties and cannot under any circumstances be treated as a

³ Per Justice Sabihuddin & Justice Gulzar Ahmed in the case of Faisal Akram v. Secretary Production & others (2007 PLC (C.S.) 647)

master and slave relationship. Article 11 of the Constitution of Pakistan forbids forced labour and compulsory service can be required only by law for a public purpose. The moment the respondents contend that employment in the Corporation is not regulated by any law the imposition of fetters would be violative of the fundamental rights guaranteed by Article 11 for the enforcement whereof this. Court can issue directions to any person or authority including any Government. The fundamental right of the petitioners to enter upon any lawful professional occupation also appears to have 'been infringed. For all these reasons, we would allow these petitions as prayed.

8. Reverting to the application in hand, plaintiff in his pleadings introduced on record that the defendant No.5 has been promoted to the post of Deputy Chief Engineer in Aircraft Engineering, but he was not a fit and proper person for the said post reasoning that he recently join the Engineering Department from the Line Maintenance Department solely aimed to accommodate the defendant No.5. Promotion on the basis of “*Sifarish*”, favoritism or nepotism or with abrupt transfer from one department to another department while reducing qualification and fairplay seeming to accommodate blue eyed ones, always create chaos. It has been considered view of the Hon’ble Superior Courts that wrong promotion of blue eyed on nepotism and favoritism leads to turmoil in the service structure. Merit should be the only and sole criteria in promotion and selection process and promotion process should be reasonable, transparent and only competent persons should be promoted to a technical post to serve, rather than incompetent and unskilled persons⁴. Learned counsel for the defendant No.1 was unable to satisfy that under what circumstances the eligible candidates’ ratio of 1:10 was reduced into

⁴ Muhammad Jibran Nasir v. Federation of Pakistan (2021 PLC (C.S.) 179) & Muhammad Saleem Shaikh & others v. Province of Sindh & others (2020 PLC (C.S.) 1156)

1:3 and what stops PIAC to reduce it to 1:1 (or to 1:½) which at the face of it, appears to be highly manipulated, infested with malafide, aimed to deter fairness, fair play and honesty, propelling that only handpicked individuals be selected for a post. Such criteria can thus not stand the test of reasonableness and could not be enforced unless there are emergencies or *force majeure* situations, which definitely are not posed hereunto.

9. In the given circumstances, the CMA No.5821 of 2022 is granted as prayed.

JUDGE

Aadil Arab