IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1031 of 2010

[Rasheed Ahmed ……v……Pakistan Telecommunication Limited & another]

Dates of Hearing	:	08.10.2021, 21.10.2021 & 10.11.2021
Plaintiff	:	M/s. M.M. Aqil Awan, Danish Rashid Khan & Ghulam Akbar Lashari, Advocates.
Defendants	:	Mr. Faisal Mahmood Ghani, Advocate.

JUDGMENT

Zulfiqar Ahmad Khan, J:-This lawsuit seeks declaration, permanent injunction and damages.

2. Brief facts of the case as emerge from the plaint are that the plaintiff was appointed as Assistant Divisional Engineer (BS-17) in Pakistan Telecommunication Company Limited (“**PTCL**”) on 31.08.1996, who per learned counsel on account of his dedication and performance of work, was promoted as Division Engineer (BS-18) vide Notification dated 08.11.2002, thereafter his services were handed over to Works & Service Department, Government of Sindh. It is stated in the plaint that on 10.02.2009 a charge sheet was issued to the plaintiff by the defendant No.2 which was replied by the plaintiff vide letter dated 04.03.2009. Plaintiff asserted that the enquiry proceedings were completed within a day by the inquiry committee and the inquiry report was transmitted to the plaintiff on 20.05.2009 with a show cause notice threatening imposition of major penalty of dismissal from service. Nonetheless, the plaintiff sent a reply of the said show cause notice on 08.07.2009 which was not taken into

consideration by the inquiry committee and the plaintiff was issued a fresh charge sheet on the same subject on 10.12.2009 which was also replied by the plaintiff on 17.12.2009. Plaintiff further stated in the plaint that he was called by the inquiry officer on 20.02.2010 whereafter, the inquiry report was supplied to the plaintiff alongwith another show cause notice which was also replied by him on 12.04.2010. It is further alleged by the plaintiff that neither the charge sheet was read over to the plaintiff nor he was given an opportunity to lead his defence and the defendant No.2 having provided a hasty opportunity of personal hearing on 27.05.2010 removed the plaintiff from service on the same day in a haphazard manner. Plaintiff further alleges in the plaint that since he was unlawfully removed from service by incompetent authority, therefore, he is entitled to be reinstated in service with back benefits as well as claimed the damages and beseeched as under:-

> "1). That this Hon'ble Court would be pleased to declare that impugned order of removal from service dated 27.05.2010 is void ab initio and quash the same and reinstate the plaintiff in service with full back benefits.
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> 2). That in alternate this Hon'ble Court would be pleased to grant decree of damages in favour of plaintiff to the tune of Rs.25,105,197/- (Rupees Two Crore Fifty-one Lac Five Thousand One Hundred and Ninety-seven only) and Defendants be directed to pay the same on the usual bank rate interest from the date of filing of the suit till the actual amount is paid to the plaintiff .
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> 3). That this Hon'ble Court would be pleased to grant permanent injunction against the Defendants restraining them to implement the impunged order from removal from serviced dated 27.05.2010 through themselves, their subordinates, their attorneys, their assignees or any other

person claiming through them and suspend the same and pas the decree to that effect.

4). Cost of suit be borne by the Defendants.

3. The Defendants contested the matter by filing their stance in the shape of written statement. Defendant in operating part whereof raised objections that the suit was not maintainable on the ground that the relief sought pertained to terms and conditions of service, therefore, barred by Section 21 of Specific Relief Act, 1877. It is stated that the Defendant No.1 is a company existing under the Companies Ordinance, 1984, having no statutory rules of service, therefore, the declaratory relief cannot be granted as the principle of "master and servant" would apply. The defendants further claimed that plaintiff was guilty of misconduct and corruption, thereafter, was fired from the service following the principle of natural justice having undertaken departmental inquiry, nonetheless, the defendants met the assertions made in the plaint as well as prayer entreated through instant suit with sheer denial.

4. The record insinuates that on 21.04.2016, issues were framed and with mutual consent of the parties, Mr. Kabeeruddin, Advocate was appointed Commissioner for recording evidence. The issues settled by this court are as under:-

"1. Whether the suit is maintainable?

2. Whether the plaintiff was malafidely and unlawfully removed from service, if yes, whether the plaintiff is entitled to the remedy of reinstatement with full benefits or to the remedy of damages, if any?

3. Whether the plaintiff was given fair opportunity to defend the charges during enquiry proceedings and

whether the principle of natural justice was followed by the defendants and whether charges of misconduct was proved?

4. Whether the authority imposing the penalty of removal from service had the lawful jurisdiction/ authority to impose the same?

5. What should the decree be?"

5. At the onset, Mr. M.M. Aqil Awan, Advocate appeared on behalf of plaintiff and introduced on the record that the reason of termination from service of a regular employee was to substitute him with contract employee in order to avoid payment of pensionary benefits. His next stance was that the plaintiff was permanent employee of the defendants and the committee constituted for conducting the inquiry was illegal as the committee members were contract employees of the defendant company. He vociferously argued that the plaintiff was exonerated from all the charges leveled against him, thereafter, the defendant hatched a conspiracy to fire the plaintiff and resultantly issued another charge sheet which the defendants were not competent to issue. Learned Senior Counsel also stated that when the defendants surreptitiously completed the inquiry based on second charge sheet, neither proper procedure was followed nor principle of natural justice was adhered to, and a glance at the inquiry conducted by the defendants shows that the defendants were bent upon to terminate the services of the plaintiff. Learned counsel further contended that professedly the PTCL Service Regulations, 1996 are statutory. Learned counsel additionally addressed that the defendant's witness in cross-examination went on to admit that signatures on all documents are not those of any competent authority, therefore, it can safely be held that plaintiff

was not terminated by any competent authority. Subsequent to the above submissions, learned counsel sought to eschew the grounds / prayer of reinstatement in service with back benefits and sought the Court's deliberation exclusively upon a question of damages and beseeched that since the plaintiff was unlawfully terminated from service, damages entreated in the plaint may kindly be decreed.

6. In contra, Mr. Faisal Mehmood Ghani, learned counsel presented the case of the defendants. According to him, plaintiff was involved in malpractice which surfaced during his employment and subsequently a committee was constituted to probe the same. He mainly contented that workers/staff of the management of any company involved in malpractices lead the establishment into downtrodden by corruption, and corrupt practices have to be dealt with iron hands. He next contends that the plaintiff is a corrupt person and notorious for his malpractices, the corruption and corrupt practice of the plaintiff surfaced when an inquiry was held, and having followed proper procedure as laid down in the Rules, as well as having been provided an opportunity of personal hearing, the plaintiff was removed from the service. Thrust of the arguments of learned counsel for the defendant is that the reinstatement cannot be allowed in a suit and an employee who is guilty of financial malpractices should not be retained in any establishment. While summing up his submissions, learned counsel for the defendants introduced on record that lump sum damages cannot be claimed in a case.

7. Heard the arguments and examined the evidence. Issue No.1 correlates with the maintainability of the suit. The relationship of

plaintiff and defendant No.1 of master and servant has been admitted by the defendants in their written statement. The defendant establishment also had no statutory rules of service which could have been invoked by the plaintiff for the redressal of his grievance by filing a constitution petition seeking appropriate relief.

8. It is an established position that accrual of "cause of action" and that a "suit is barred by law" are two distinct attributes and characteristics. It is not necessarily meant that nonexistence of cause of action concomitantly means that the suit is also barred by law. The expression "cause of action" means a bundle of facts which if traversed, a suitor claiming relief was required to prove for obtaining judgment. Nevertheless, it does not mean that even if one such fact, a constituent of cause of action was in existence, the claim could succeed. It is a well understood position now that not only a party seeking relief is to have a cause of action with regards the transaction or the alleged act having been done, but also at the time of the institution of the claim. A suitor is required to show that not only a right had been infringed in a manner to entitle him to a relief, but also that when he approached the court the right to seek relief was also in existence.

9. An austere look to the substratum of the above deliberation, unequivocally demonstrates and confirms that the plaintiff can file a civil suit in the present form for alleviation of his grievances, therefore, the **Issue No.1 is answered in affirmative**.

10. In my considerate view, the Issue Nos. 2, 3 & 4 are inextricably linked based upon similar evidence of the plaintiff and defendants,

therefore, it would be advantageous to discuss the same simultaneously, in same breath.

11. The plaintiff so as to substantiate his claim introduced on record a number of documents at the time of his examination in chief. Exh. X-4, Exh. X-5, Exh. X-6 (available in evidence file) are the documents having vital significance to decide the controversy under discussion. Exh. X-4 (available at page 65 of the evidence file) connotes as charge sheet issued by the defendant establishment to the plaintiff on account of commission of certain alleged irregularities, whereas, Exh. X-5 (available at page 69 of the evidence file) is a reply given by the plaintiff in deference of the charge sheet (Exh. X-4) while Exh. X-6 (available at page 79 of the evidence file) is a Enquiry Report conducted by the defendant establishment.

12. The plaintiff is not only named in the charge sheet but has been assigned specific role of misconduct and corruption. It is alleged by the defendants that the plaintiff verified duplicate invoices of contractors which resulted into double payments to the contractors. It is gleaned from the appraisal of the evidence file that the plaintiff contested the enquiry by filing defencive reply in deference of the charge sheet. In his reply, the plaintiff went on to reply the charges with sheer denial. It would be advantageous to have a cursory glance over the reply submitted by the plaintiff. For the ease of reference, the respective constituents of the reply of plaintiff are delineated hereunder:-

> "…1). Work orders for only two contractors i.e. M/s Zaman brothers & M/s Zas Engineers of dated 2-04-2007 were issued by me where third one, on serial

number (III), voucher number 433 & 433 amounting to Rs.292,928/- & Rs.261,419/- respectively payments made to M/s Anum Communication relates to New Karachi Maintenance Division but it is surprising to see, that has also been added to my part.

2). The original payments invoices of dated 18-04-2007 of above first two contractors after the completion of works, were sent in quadruplicates to the concern DDO in due time as per existing procedure of that time.

3) Neither any intimation for payments received nor any objection from DDO rose. It is clarified that contractors always receive their payments directly from the office of DDO in the shape of cross cheques under clear receipt from them etc.

4) The payments of above were effected on 31-01-2008 as mentioned in the charge sheet. Regarding the payment of same amount on the duplicate copies of the same invoices is very astonishing for me. There nothing on record or any record provided to me, which could prove that the same duplicate invoices were sent by my office. No any duplicate or photocopies of the original invoices were never sent to DDO for payments.

5) As per rule payments on "Duplicate" invoices or on photo copies of the invoices are prohibited. Let for time being it is assumed that it was sent from my office why the DDO concern did not return back the same without any action according to the rule. Why these were not objected and why it was not reconfirmed.

6) From where the funds and ceilings again just one month were made available without checking. On the original invoices the payments were made after a lapse of 7 month where on Duplicate in for the same work and same invoices just within one month. From where the funds and ceiling for the same work were made available.

7) Since always the payment invoices were sent in quadruplicates to DDO, it was very easy in the office of DDO to make duplicate copy of the same and then photocopies of the said duplicate copy…"

13. What I perceived and sensed from the tenor and sagacity of the reply submitted by the plaintiff in his defence is that he replied to the allegations contained in the charge sheet, however, Exh. X-6 (available at page No.79 of the evidence file) explicates that inquiry was conducted by the committee and after a thorough inquiry, the plaintiff was exonerated from the charges leveled against him. The Enquiry Committee in its report went on to hold that the committee could not find any evidence to prove the involvement of plaintiff in double payment to contractors as per charge sheet issued to him. It would be advantageous to reproduce the respective constituent of the Enquiry Report which is reproduced hereunder:-

> "….8.3. **The committee dould not find any evidence to prove the involvement of Mr. Rasheed A. Jumani in double payment to contractors as per charge sheet issued to him**. However during scrutiny of record of payments processed by Mr. Jumani the committee observed serious lapses as detailed in para 7.9 to 7.13 above for single handedly processing/certifying all stages for payment without involveing any other sub ordinate field officer intentionally. In personal hearing he could not justify his actions. Hence committee recommends that a fresh charge sheet/show cause may be issued to him…."
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> [Emphasis added]

14. It is evident from the above excerpt that the charges leveled against the plaintiff by the defendant establishment were not proved by the Inquiry Committee which is evident from the Enquiry Report which was supplied to the plaintiff by the defendants and the same has also been exhibited in evidence as Exh. X-6. A glance over the record shows that a second charge sheet was issued to the plaintiff by the defendants on the same allegation which was also replied by the plaintiff. Exh. X-7 (available in evidence file at page 95) is the

second charge sheet, while Exh. X-8 (available in evidence file at page 97) is the defencive reply submitted by the plaintiff in deference of the second charge sheet. The reply to the second charge sheet was comprehensively made by the plaintiff in which he went on to state that allegations are based on mis-representation and vehemently as well as vociferously denied the same and have already been put to rest.

15. The plaintiff in his examination in chief exhibited on record Pakistan Telecommunication Company Limited Service Regulations, 1996 (Exh. X-17 available at page 131 of the evidence file) and from the very beginning challenged the constitution of the Inquiry Committee. Learned counsel during the course of arguments introduced on record the said Regulations ("**Regulations, 1996**") and contended that the Inquiry Committee constituted by the defendants was not legally competent to probe into the allegations, therefore, the conclusion of the Inquiry Committee based on second charge sheet was illegal, unlawful, unauthorized and void *ab initio*. Examination of Regulation 7.1 reveals that authority in respect of officers of Grade 17, 18 & 19 is the "Chairman" and only Chairman is the competent person to issue show cause/charge sheet. In order to reach to a just and right conclusion of the issues under discussion, it would be convenient to reproduce the respective paragraphs of Regulations, 1996 which reads as follows:-

> "…7.01. Authority:- For purposes of regulations in this chapter the officers specified n columns 3 of the table below are designated as the "authority" in respect of the employees specified in column 2 of the table:

S.No.	Description of employees	Authority
a)	Employees in basis pay scale 20 and above	Prime Minister
b)	Employees in basis pay scales 17, 18 and 19	Chairman
..	……	….

7.02. Authorised Officer:- For purposes of regulations in this chapter, the authorized officer shall be an officer authorized by the authority to perform functions of an authorized officer under these regulations and if no officer is so authorised, the authority.

7.06. Procedure for disciplinary action: (1) The authorised Officer shall decide whether in the light of facts of the case or the interests of justice an inquiry should be conducted through an Inquiry Officer or Inquiry Committee. If he so decides, the procedure indicated in regulation 7.08 shall apply.

(2) If the authorised officer decides that it is not necessary to have an inquiry conducted through an Inquiry Officer or Inquiry Committee, he shall:

a) by order in writing, inform the accused of the action proposed to be taken in regard to him and the grounds of action; and

b) given him a reasonable opportunity of showing cause against that action:

Provided that no such opportunity shall be given where the authority is satisfied that in the interest of security of Pakistan or any part thereof it is not expedient to give such opportunity….”

16. It is gleaned from the appraisal of the foregoing that paragraph 7.1 of Regulations, 1996 explicates that authority in respect of officers of serving in BS-17 to 19 is the Chairman and the Chairman of the defendant No.1 is the only competent authority for conducting inquiry and probe into the allegations. Admittedly, the plaintiff was an officer serving in BS-18. A cursory glance on the

foregoing further reveals that paragraph 7.2 of the Regulations determines authorized officer, whereas, para 7.6 provides that authorized officer is to decide whether inquiry should be conducted or not, while paragraph 7.8 of the Regulations, 1996 prescribes a procedure for conducting such an inquiry proceedings, but it is evident that these Regulations have been blatantly violated. The defendants' witness was put to the test of lengthy cross examination wherein he admitted certain suggestions. The admission of the defendants' witness is delineated as follows:-

> "…**I see Ex-X/19, notification dated 27.10.2010 and say that signature is not of competent authority, but it is signature of communicating authority**. **I see record presented alongwith plaintiff's evidence and say that all the documents do not bear signature of competent authority**. Vol. says all the documents are signed by the communicating officer on behalf of competent authority. I am not sure, if any document, bearing signature of competent authority has been produced. I say that any letter of authority, might have been executed in favour of communicating officer, who signed the documents of disciplinary proceedings but it is not in my knowledge. **I say that I have not filed any document for authorization in favour of communicating officers. I say as per service regulation 1996 the GM (Business) is not the competent authority.**
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> [Emphasis added]

17. Admittedly, the charge sheet/show cause notice was issued by the representative of the defendant No.1, who was not legally competent to issue the same. It is judicially settled that the "lack of jurisdiction" is to be taken as lack of power or authority to act in a particular manner or to give a particular kind of relief, whereas, "abuse of process" is the intentional use of legal process for an improper purpose incompatible with the lawful function of the

process by someone with ulterior motive. In its broadest sense, "abuse of process" is defined as misuse or perversion of regularly issued legal process for a purpose not justified by the nature of the process. Abuse of process is infact held to be a tort comprised of two elements: (1) an ulterior purpose and (2) a willful act in the use of process not proper in the regular conduct of the proceeding.

18. Reverting to the merits of the case, it has been admitted by the defendants' witness that the documents which have been exhibited by the plaintiff during his evidence do not bear signature of the competent authority, therefore, it would be suffice to conclude that services of the plaintiff was terminated by the inquiry committee without any legal authority or legislative competency. It is also evident from the record that the First Enquiry Report conducted by the defendant No.1 exonerated the plaintiff from charges leveled against him, therefore, no charge of misconduct remained against him unless there was something to addon, re-opening a close legal event attracts double jeopardy. Since the learned counsel for the plaintiff sought to eschew the prayer of reinstatement in service with back benefits and sought the Court's deliberation exclusively upon a question of damages, **therefore, the issues under discussion are answered as redundant except the issue of payment of damages**.

19. After having come to the conclusion that the Plaintiff's termination was illegal and unlawful, the plaintiff definitely is needed to be compensated and he is unquestionably entitled for the award of damages. Damages are always divided into two categories. First being Special damages, which are to be specifically pleaded and

proved, which are what the plaintiff has claimed regarding loss of earning and out of pocket expenses and such damages are generally capable of exact calculation. Second kind of damages are general damages which in law are implied upon happening of certain event and so also in case of a favorable decision for a party. These may not be specifically pleaded and may or may not be capable of exact proof strictly. It may be observed that insofar as claim and award of general damages is concerned, though it may not have been specifically pleaded and proved, but any shortcoming or deficiency in the plaint or in the evidence will not come in the way of the Court to grant any such damages once the plaintiff is entitled for such a relief. It cannot be said that plaintiff must not have sustained injury and suffered any economic loss on account of his wrongful dismissal from the service. In the given facts, I am of the view that though the plaintiff has not been able to prove his claim of special damages specifically, but is found to be entitled to claim damages on account of agony, physical stress, loss of reputation as well as social persecution which cannot be corrected through monetary compensation but at least he is entitled for such compensation, and it cannot be said that since this is not going to restore his position as it should have been, if he had not been dismissed, he is not entitled at all for any compensation in the form of damages. The Hon'ble Supreme Court in the case of Abdul Majeed Khan v. Tawseen Abdul Haleem and others [2012 PLC (C.S.) 574], after a detailed examination of various local and international case law, in the additional note of the then Chief Justice (Iftikhar Muhammad Chaudhry. J.), has been pleased to observe as follows:-

> "….3. At this stage, it is to be noted that there are two types of damages namely; 'special damages' and 'general damages'. The term 'general damages' refers to the special character, condition or circumstances which accrue from the immediate, direct and approximate result of the wrong complained of. Similarly, the term `special damages' is defined as the actual but not necessarily the result of injury complained of. It follows as a natural and approximate consequence in a particular case, by reason of special circumstances or condition. It is settled that in an action for personal injuries, the general damages are governed by the rule of thumb whereas the special damages are required to be specifically pleaded and proved. In the case of British Transport Commission v. Gourley [(1956) AC 185] it has been held that special damages have to be specially pleaded and proved. This consists of out-of pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. The general damages are those which the law implies even if not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future. The basic principle so far as loss of earnings and out-of-pocket expenses are concerned is that the injured person should be placed in the same financial position, so far as can be done by an award of money, as he would have been had the accident not happened…"

20. Similar view has been expressed in the case of Qazi Dost Muhammad v Malik Dost Muhammad (1997 CLC 546), Islamic Republic of Pakistan v. Sh. Nawab Din (2003 CLC 991), Azizullah Sheikh v. Standard Chartered Bank Ltd., (2009 SCMR 276), Mrs. Alia Tareen v. Amanullah Khan (PLD 2009 SC 99). The next question which arises is that though the plaintiff's dismissal has been held to be illegal but at the same time he wants to drop the prayer of reinstatement, then what is the quantum of damages which in the given circumstances would suffice. In this regard it may be observed that there appears to be no hard and fast rule for determination of such quantum of

damages. A learned Division Bench of this Court in the case of National Bank of Pakistan v. Ghulam Muhammad Sagarwala (PLD 1988 Karachi 489) has been pleased to hold that in case of wrongful dismissal of an employee on the ground of misconduct, the measure of damages may include an amount to compensate him for the injury caused to him by attributing misconduct. A learned Single Judge of this Court in the case of Mehboob Rabbani v. Habib Bank Limited [2006 PLC (C.S.) 272] while dealing with more or less similar situation was pleased to grant damages to the tune of Rs.5.0 Million by observing the following:-

> "….Since I have held that the dismissal of the plaintiff from service was wrong, he is entitled to recover damages from the defendants. The plaintiff can claim special damages (pecuniary damages) and general damages non-pecuniary damages). However, the plaintiff has only demanded general damages (non-pecuniary damages). In an action of personal injury the damages are always divided into two main parts, First, there is what is referred to as special damage which, has to be specially pleaded and proved. This consists of loss of earning and out of pocket expenses and is generally capable of substantially exact calculation. Secondly there is general damage which in law implies and is not specially pleaded and cannot be capable of exact proof. This includes compensation for pain and suffering. What is claimed in the present case is the general damages which cannot be specifically proved and any shortcoming in the plaint or in the evidence would not come in the way of the Court awarding damages. There is no hard and fast rule to calculate the quantum of compensation, as well as there is also no yardstick to measure the sufferings. The plaintiff has claimed damages on account of huge present and future economic loss and on account of undergoing irreversible phase of perpetual mental agony, physical stress and strain, social persecution, pangs of miseries and no likelihood of getting suitable job. The plaintiff no doubt must have sustained pecuniary loss on account of wrongful dismissal in the shape of earnings but no evidence was led in this regard.

> The plaint is silent in this regard. The plaintiff has also not led any evidence to prove the huge present and future economic loss. The plaintiff's dismissal from service was wrongful as the same was in violation of principles of natural justice. The plaintiff in the circumstances was entitled to damages for mental agony, physical stress and social persecution. This type of damages fell in the category of general damages for assessment of which no definite method is available. For computing/assessing damages consideration should be given to education, status in life, age and the position enjoyed during employment and his earnings while in employment of a person to whom injury has been caused. The plaintiff underwent harassment of unlawful dismissal during prime time of his life. The plaintiff was an officer of bank posted at New York and has enjoyed good reputation and social status and all of a sudden due to wrongful dismissal he lost everything. It is not believable that the wrongful dismissal has not caused any harm to plaintiff. The plaintiff is entitled to the general damages. The contention of the defendant that the dismissal was right and the plaintiff is not entitled to any damages is misconceived. Now the question is that what will be the quantum of damages for which the plaintiff is entitled under the circumstances of the case. There is no hard and fast rule for grant of damages and there is also no yardstick to measure the damages caused to a person and then to determine the compensation. This is the crucial point in this case. The amount though assessed must not appear to be punitive in nature or exemplary.
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> Applying the principles of the above case that compensation can be granted where a wrong has been done to a party and the damages flow from that wrong the plaintiff is entitled to a fair compensation to be assessed by the Court. The criteria is that while granting the H compensation the conscience of the Court should be satisfied that the damages awarded would if not completely, satisfactorily compensate the aggrieved party. I therefore, hold that plaintiff is entitled to the damages in the sum of Rs.50,00,000,…"

21. The Honorable Supreme Court in the case of Sufi Muhammad Ishaque v. Metropolitan Corporation Lahore (PLD 1996 SC 737) while

discussing the award of compensation on account of mental torture and injuries has been pleased to hold as under:-

> "…5. Previously jurists and Judges were reluctant to grant claim for damages for mental shock and torture, but now it is well-settled that a person, who suffers mental torture and nervous shock, is entitled to recover damages. In Hinz v. Berry (1970) 2 QB 40, Lord Denning observed: "It' has been settled that damages can be given for nervous shock caused by the sight of an accident, at any rate to a close relative. Damages are, however, recoverable for nervous shock, or to-put it in medical terms, for any recognizable psychiatric illness caused by -the breach of duty by the defendant". In awarding damages for nervous shock and mental torture, or "psychiatric illness" or "Psychosomatic illness", which are the terms currently used the Court should be vigilant to see that the claim is not fanciful or remote and in fact it fairly or naturally results from the wrongful act, of the defendant. Therefore, in order to claim damages for mental or nervous shock and suffering or psychiatric illness, a party must prove wrongful act done by the defendant and that due to such act he has suffered mental shock and torture, which may, at times also result in physical injuries, but not in all cases.....
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> 8. 'Once it is determined that a person who suffers mental shock and injury is entitled to compensation on the principles stated above, the difficult question arises what should be the amount of damages for such loss caused by wrongful act of a party. There can be no yardstick or definite principle for assessing damages in such cases. The damages are meant to compensate a party who suffers an injury. It may be bodily injury loss of reputation, business and also mental shock and suffering. So far nervous shock is concerned, it depends upon the evidence produced to prove the nature, extent- and magnitude of such suffering, but even on that basis usually it becomes difficult to assess a fair compensation and in those circumstances it is the discretion of the Judge who may, on, facts of the case and considering how far the society would deem it to be a fair sum, determines the amount to be awarded to a person who has suffered such a damage. The conscience of the Court should be satisfied that the damages Awarded would, if not completely, satisfactorily compensate the aggrieved party….."

22. Again in the case of Gohar Ali and another v. Hoechst Pakistan Limited [2009 PLC (C.S.) 464] while following the aforesaid case of Sufi Muhammad Ishaque (Supra) the Hon'ble Supreme Court has been pleased to observe as follows;

> "….10. Adverting to the question of compensation it may be observed that the effect of the application of the master and servant rule is that an employee of a corporation in the absence of violation of law or any statutory rule cannot press into service constitutional jurisdiction or civil jurisdiction for seeking relief of reinstatement in service, his remedy for wrongful dismissal is to claim damages. It was held by this Court in Sufi Muhammad Ishaque v. The Metropolitan Corporation, Lahore through Mayor PLD 1996 SC 737 that there can be no yardstick or definite principle for assessing damages in such cases. The damages are meant to compensate a party who suffers an injury. It may be bodily injury loss of reputation, business and also mental shock and suffering. So far nervous shock is concerned, it depends upon the evidence produced to prove the nature, extent and magnitude of such suffering, but even on that basis usually it becomes difficult to assess a fair compensation and in those circumstances it is the discretion of the Judge who may, on facts of the case and considering how far the society would deem it to be a fair sum, determines the amount to be awarded to a person who has suffered such a damage. The conscience of the Court should be satisfied that the damages awarded would, if not completely, satisfactorily compensate the aggrieved party…."

23. Above discussion and facts of the case reexamined with the applicable law and regulations leads me to the conclusion that it would be appropriate and meet the ends of justice and equity that Plaintiff be declared to be entitled for some appropriate compensation payable by the Defendant Company. Accordingly, after having considered the quantum of salary which the plaintiff was earning, his future economic loss which he suffered due to his

wrongful dismissal (including pension prospects, gratuity, medical and other service benefits available to such employees), I am of the view that it would be fair if plaintiff is paid an amount of Rs. 25,105,197 (rupees two crore fifty one lac five thousand one hundred and ninety seven only) in lieu thereof as damages / compensation with simple mark-up at the rate of 6% per anum from the date of decree till its realization. The issue of damages is thus answered accordingly.

24. So far as issue No.5 is concerned, in view of rationale and discussion contained hereinabove, the plaintiff's suit is decreed in the above terms.

JUDGE

Karachi:
Dated:20.07.2022

Aadil Arab