

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Suit No.1748/2014

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DATE                      ORDER WITH SIGNATURE OF JUDGE  
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1. For hearing of CMA No.12138/14
2. For examination of parties/settlement of issues

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13.5.2015

Mr. Abdul Salam Memon Advocate for plaintiff  
Mr. Faisal Mehmood Ghani Advocate for defendant  
.X.X.X.

1. This is an application under order 39 Rules 1 & 2 CPC. Brief facts of the case are that the plaintiff was dismissed from service in terms of dismissal order available at page 117. Previously plaintiff has filed a suit bearing No.1495/13 wherein plaintiff was directed to participate in the enquiry and the defendant was under obligation to conduct enquiry in accordance with law after giving opportunity of hearing to the plaintiff and then a speaking order is to be passed. Plaintiff was further directed to appear before the enquiry officer on 08.9.2014 at 11:00 a.m.

Learned Counsel for the plaintiff submits that the impugned dismissal order is in violation and spirit of the order referred above, as no reasons are assigned for his dismissal. Learned Counsel has further submitted that the enquiry was completed in one day and on 09.9.2014 the enquiry officer submitted its report to the competent authority who issued the impugned dismissal order dated 10.9.2014 hence the principle of justice has not been fulfilled. Learned Counsel submits that this is a case where interim relief in the shape of final decree can be passed as the principle of natural justice has been violated.

On the other hand learned Counsel for the defendant has relied upon the enquiry report available on record. Learned Counsel submits

that the plaintiff in pursuance of a letter issued to him directed to bring all his witnesses which is available at page 99. Learned Counsel submits that he appeared before the enquiry officer and he showed his satisfaction as he signed enquiry report which is available as annexure-R. Learned Counsel submits that he was asked by the enquiry officer as to whether he is willing to cross examine the management's witnesses to which he has replied "No". learned Counsel has taken me to the relevant part of the enquiry report and in particular last para where the accused was asked whether he wants to produce any witness to which he replied "No". Learned Counsel submits that the dismissal order is not to be read in isolation but with enquiry report which the plaintiff has concealed from this Court. Learned Counsel submits that since he has been dismissed from service therefore, such interim measures cannot be taken into consideration since it amounts to a relief claimed in the suit. Learned Counsel has relied upon the cases of Qazi Inamul Haq vs. Heavy Foundry and Forge Engineering (Pvt.) Ltd. (1989 SCMR 1855), Muhammad Umar Malik vs. The Muslim Commercial Bank Ltd. (1995 SCMR 453), Islamic Republic of Pakistan vs. Muhammad Zaman Khan & others (1997 SCMR 1508), Habib Bank Ltd & others vs. Syed Ziaul Hassan Kazmi ( 1998 SCMR 60), United Bank Limited & others vs. Ahsan Akhtar & others (1998 SCMR 68), Anwar Hussain vs. Agricultural Development Bank of Pakistan & others (PLD 1984 SC 194).

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

The first point that requires consideration while deciding the injunction application is that the plaintiff has sought suspension of a termination/dismissal order dated 10.9.2014 meaning thereby that in case such interim measures are taken, he would be reinstated to continue to serve the defendant as if no orders of termination are

passed and in fact it amounts passing of a decree in the suit. I am of the view that interim relief of such nature despite the fact that there are no such circumstances which warrants considering such application is not permissible. In addition to this it is significant to show that enquiry report which is available on record is self explanatory although the detail reasoning has not been assigned in the impugned dismissal order yet under the present circumstances and the nature of relief the plaintiff seeking through this interlocutory application, I am of the view that at this stage this enquiry report is to be read along with dismissal order wherein the plaintiff has not examined his witness and refused to cross examine the witnesses of the management hence in view of the above the application merits dismissal.

Judge