

IN THE HIGH COURT OF SINDH KARACHI

Suit No. 1432 of 2022

[Syed Abbas Raza v. Federation of Pakistan and others]

Plaintiff : Syed Abbas Raza through M/s. Khawaja Shams-ul-Islam and Imtiaz Ali Shah, Advocates.

Defendant No. 1 : Federation of Pakistan through Mr. Amir Zaib Khan, Assistant Attorney General for Pakistan.

Defendants No.2&3 : Sui Southern Gas Company Limited and another through Mr. Faisal Mahmood Ghani, Advocate.

Defendant No. 4 : Nemo.

Dates of Hearing : 08.03.2023

Date of Order : 17.03.2023

ORDER

AMJAD ALI SAHITO, J. – Through the listed application [CMA No.14052 of 2022], the plaintiff seeks suspension of the dismissal of the order dated 10.03.2022 bearing No.HR(E&D)/Exec.No.10184/57, issued by defendants No.2 and 3 so also prayed for retirement benefits amounting to Rs.16,325,044/-.

2. Learned counsel for the plaintiff submits that the plaintiff was appointed on 03.04.2008 as Chief Manager, Land & Estate Management Department in Grade-IV on the permanent executive cadre. Subsequently, he was confirmed in his job vide letter dated 02.06.2009. Learned counsel submits that the Plaintiff was promoted to Grade-VII as Deputy General Manager (L&EM) vide letter dated 10.04.2013; that on 03.09.2021 Senior General Manager (H.R) sent intimation notice to the plaintiff for his upcoming retirement; that on 03.09.2021, the Sr. General Manager (HR) informed the DGM-I (Legal Service) that according to the Executive Staff Service Rules, executives are required to avail their balance earned leave before retirement and the plaintiff is retiring from the company's service with effect from 11.03.2022 and will be accumulating earned leave of 71 days as on 31.12.2021 and 7 days

as on 10.03.2022; that the D.G.M-I (Legal Services) was advised to release the plaintiff to proceed on leave preparatory to retirement and informed him about his leave program.

3. Learned counsel further submits that vide letter dated 29.09.2021 written by the D.G.M-I (Legal Services) and informed to the plaintiff, wherein the H.R department advised the D.G.M-I (Legal Services) vide memo dated 03.09.2021 to relieve Mr. S. Abbas Raza (Plaintiff) to proceed on leave preparatory to retirement; that the D.G.M-I (Legal Services) on the leave application of Mr. S. Abbas Raza stated that they are facing non-availability of resources/replacement in view of current situation development after relieving of Senior Engineer and Manager and one D.M from L&EM pursuant to Supreme Court's judgment on Sacked Employed Act, 2010. He proposed that 60 days leave encashment may be allowed to the plaintiff, it has been recommended by DMD (LS) as per policy.

4. He further contended that the plaintiff was about to retire on 10.03.2022 and there was a balance of 07 days leave, so he applied for leave which was approved by one Muhammad Faisal Khan, DGM-I (LS) from 21.02.2022 to 04.03.2022. Suddenly, the plaintiff received a show-cause notice on 15.02.2022 on the ground that the Plaintiff has misused Official Cars and appointed ghost employees; that on the very next day i.e. 16.02.2022, the Plaintiff was suspended without assigning any reason; that on 20.02.2022, the plaintiff submitted a reply to show-cause notice dated 15.02.2022, the plaintiff was exonerated of misusing official cars. However, at the end of the inquiry, it was observed that "It is not possible to conclusively reach in allegation No.2". That on 28.02.2022, Mr. Muhammad Faisal Khan sent an email through his ID to the plaintiff and intimated to him that his leave has been cancelled; that on the very same day, a letter dated 28.02.2022 was issued to the plaintiff that the Plaintiff was continuously absent from his duty since 18.02.2022 till date without intimation /permission of HR department and the plaintiff was directed to submit a written explanation within 03 days.

5. Learned counsel for the plaintiff however contended that the plaintiff was attending inquiry for previous charges and he was

present before the Inquiry Officer on 02.03.2022, however, he was absent on 03.03.2022, but he sent intimation through email to the Company and was reached to attend the inquiry on 04.03.2022 thus he has attended the inquiry on 04.03.2022. Meanwhile, the plaintiff/petitioner filed a Constitutional Petition No.D-1062 of 2022 and on 22.02.2022 notices were issued to the defendants/respondents as well DAG for 22.03.2022, with a further direction that in the meantime, no coercive action shall be taken against the petitioner. On 27.04.2022, 26.05.2022 and 02.06.2022 learned counsel for the SSGC appeared and had not informed the court that the petitioner has been dismissed from his service vide letter dated 10.03.2022; that vide letter dated 29.08.2022, the petitioner was informed that SSGC had dismissed you from Company's service vide letter dated 10.03.2022 on the proven charge of unauthorized absence from duty which was not served to you due to restraining order dated 22.02.2022 passed by this court.

6. Learned counsel also referred to SSGC Disciplinary Rules wherein he has submitted that the defendants have awarded harsh punishment to the plaintiff as such he prayed that the order dated 10/03/2022 may be suspended and defendants may be directed to pay the retirement benefits to the plaintiff.

7. On the other hand, learned counsel appearing on behalf of defendants No.2 and 3 submits that after following due disciplinary process, the plaintiff was dismissed vide letter dated 10.03.2022. He further contended that at best if the plaintiff succeeded in proving his case of wrongful dismissal, he may be awarded damages after recording of evidence. In support of his contention, he has placed reliance on the case cases reported as *2018 SCMR 2027*, *2013 SCMR 238*, *2022 SCMR 1598*, *1998 SCMR 68*, *PLD 1984 Supreme Court 194*, *1995 SCMR 453*, *1971 SCMR 569*, *2017 PLC 176*.

8. He further contended that even otherwise no order by way of status-quo can be passed as in the case in hand as in the different cases, the Honorable Supreme Court of Pakistan has held that no such relief as prayed can be granted nor can the plaintiff seek reinstatement of service; that the plaintiff has proceeded in terms of SSGC Disciplinary Policy (***hereinafter referred as policy***); that no damages in Tort are recoverable in an action for wrongful

termination and exchange of damages is limited to unpaid notices as per conduct of the employments in any case quantum of damages limited to the notice period otherwise available in terms of the law of the payment/contract.

9. Learned counsel further argued that if the damages are recoverable, the damages cannot simply be claimed on the ground that the same are each claimed amount must be specifically pleaded and proved; that the application is not maintainable in law as the relief sought pertains to the terms and condition of services of employment and specific performance under such contract is barred under the provision of Section 21 of Specific Relief Act; that in terms of Section 56(F) of the Specific Relief Act, 1877 one of the principle is that an injunction cannot be granted to prevent breach of contract, the performance of which cannot specifically be enforced; that the defendant company exists under Company's Act, 2017, therefore, there are no statutory rules governing the employment in respect of employees of the defendant company; that in absence of statutory rules/regulations in response of employees of the defendants banking company to the common law of Master and Servant governed under the law of contract is applicable; that in the statutory law no declaratory relief can be allowed or granted; that the suit is not maintainable and the application may be rejected.

10. Learned DAG adopted the arguments advanced by learned counsel for defendants No.2 and 3.

11. I have heard the learned counsel for the respective parties and have perused the material available on record.

12. The case of the plaintiff is that he was initially appointed as Chief Manager, Land & Estate Management Department in Grade-IV on regular basis vide order dated 03.04.2008. Upon satisfactory performance and earning of Performance Evaluation Reports, his service was confirmed vide letter dated 02.06.2009 by the competent authority. The plaintiff was retiring from his service on 10.03.2022 due to attaining the age of superannuation, consequently, the defendants issued an intimation notice to the plaintiff for his upcoming retirement vide letter dated 03.09.2021 [*available at page-61 in the file*] and on 03.09.2021 SR General

Manager sent a letter to D.G.M-I (L&EM Head Office) and the plaintiff regarding leave preparatory to retirement which says that “according to Executive Staff Services Rules, Executives are required to avail their balance earned leave prior to retirement”.

13. The plaintiff retired from the company’s services with effect from 11.03.2022 and was accumulating the earned leave of 71 days as of 31.12.2021 and 7 days as on 10.03.2022 and D.G.M-I (L.S) advised to relieve the plaintiff to proceed on leave preparatory to retirement and informed him about his leave program. During arguments, learned counsel also produced a photocopy of a letter dated 29.09.2021 wherein in para-3, 4 & 5 it was written as under:

“3-4. HR Department had advised DGMI (LS) vide memo dated 3 September 2021 to relieve Mr. S. Abbas Raza to proceed on leave preparatory to retirement. However, DGMI (LS) on the leave application of Mr. S. Abbas Raza has stated that they are facing non-availability of resources / replacement in view of current situation development after relieving of Sr. Engineer and Manager and one DM from L&EM pursuant to Supreme Court’s judgment on Sacked Employees Act 2010. He has proposed that 60 days leave encashment may be allowed to Mr. S. Abbas Raza. This has also been recommended by DMD (CS) as per policy.”

5. Forgoing in view, it is hence, proposed that 60 days leave encashment @ 125% of gross salary at the time of his retirement may be allowed to Mr. S. Abbas Raza as recommended by DGMI (LS) / DMD (CS).”

14. On 28.02.2022, Mr. Faisal sent an email to the plaintiff and intimated that his leave has been cancelled and on the same day show-cause letter bearing No.HR(E&D)/Exec.No.10184/49 was issued to the plaintiff that “he continuously absent from duty since 18.02.2022 till date without intimation/permission of HR department”. The Plaintiff was directed to submit a written explanation within 03 days. On 15.03.2022, the plaintiff submitted his reply of show-cause notice to SGM (HR) through his email and courier service and informed him that he applied for leave as per entitlement and the same was approved by Mr. Faisal Khan DGM-I (LS) from 21.02.2022 to 04.03.2022.

15. The show cause notice which is made the basis of dismissal of the plaintiff speaks of his not attending the office since 18.02.2022 which was replied that he was on leave as per his entitlement and during his leave prior to retirement was appearing before the inquiry committee which fact was within the knowledge of the Management.

The plaintiff apprehending foul play approached the Hon'ble Court in C.P. D-1062 of 2022 challenging the show cause notice dated 15.02.2022 by which he was placed under suspension on one side the plaintiff was participating the inquiry before the inquiry officer on the charge that he has misused the Company's vehicle and misappropriated the contractor salaries. This Hon'ble D.B of this Court issued notice to the defendants who were respondents in said petition. The following interim orders were passed which are read as under:-

“22.02.2022:

- 1) Urgency granted.
- 2) Granted subject to all just exceptions.
- 3) Let notice be issued to the respondents as well as DAG for 22.03.2022. In the meantime, no coercive action shall be taken against the petitioner.

27.04.2022:

Parawise comments are filed on behalf of respondents No.2 and 3 which are taken on record. Counsel for the petitioner says that petitioner has already retired from service and his pensionary benefits are not being paid by the department. It is ordered that respondents No.2 and 3 shall submit specific comments as to why after retirement petitioner has been deprived of the pensionary benefits. To come up after three weeks. Interim order passed earlier to continue till the next date of hearing.

26.05.2022:

After hearing learned counsel for the parties, it is ordered that respondent No.3 shall appear before this Court along with inquiry report. Adjourned to 02.06.2022. interim order passed earlier to continue till the next date of hearing.

02.06.2022:

Respondent No.3 appeared but inquiry report is not submitted. It is very unfortunate that respondent No.3 is unable to answer the questions and queries raised by the Court. adjourned, to be fixed soon after summer vacations. Respondent No.3 shall be present before this Court on the next date. Interim order passed earlier to continue till the next date of hearing.”

16. The counsel for the SSGC was appearing did not inform the Hon'ble D.B of this Court the fate of the plaintiff and kept on seeking time. The petitioner also claims that he retired on

10.03.2022 and had not been paid the pecuniary benefits up to 02.06.2022. The petitioner did not know about his dismissal from service. However, in the intervening period on 10.03.2022, he was exonerated on the earlier charges.

17. On 29.08.2022 he was informed that charges of his unauthorized absence from duties have been proved and he was dismissed from service on 10.03.2022. The explanation has been given in the letter dated 29.08.2022 by the SSGC that the dismissal order was not communicated on account of the restraining order passed by the Hon'ble Court on the petition.

18. Sui Southern Gas Company Limited Executive Staff Rules No.115.0 Conduct and Performance Expectations provides that breach of SSGC standards of conduct or required performance may justify disciplinary action and tend to fall into the following categories:

- 115.1 Inadequate Performance*
- 115.2 Tardiness and Absenteeism*
- 115.3 Misconduct*

19. The plaintiff is alleged to have been guilty of misconduct as per rules 115.3.21, which says that "*Absence without approved leave for more than ten working days*".

20. Whereas Rule 116.2 provides that dismissal will not normally be an option in the event of a first breach of discipline unless the infraction is of a very serious nature. However, the Management has discretion regarding the stage of the procedure to initiate and the executive should not expect that all stages will be followed in order. Four disciplinary proceedings are available to SSGC.

- 1. Verbal Warning.*
- 2. Written Warning.*
- 3. Investigation.*
- 4. Disciplinary Action. In the disciplinarian action Rule-116.4, Stage-4 provides as under:
"116.4 Stage-4: Disciplinary Action. Should the findings of the inquiry exonerate the executive, no further action will be taken and may curtailed allowances will be reimbursed/readjusted as per entitlement. On the other hand, if the accused is held guilty of the charges as per the facts brought out during the investigation, the competent authority will decide on the type of disciplinary action to be taken. The following is a short list of possible disciplinary action:
a) Letter of warning.*

- b) *Withholding promotion for a year.*
- c) *Stoppage of salary increments.*
- d) *Forfeiture of pay of the period of unauthorized absence.*
- e) *Recovery of the loss sustained by the Company.*
- f) *Demotion.*
- g) *Compulsory retirement.*
- h) *Removal of termination from service.*
- i) *Dismissal.*
- j) *Anyone or combination of the punishment above.”*

21. From the above, it appears that nearly 10 possible disciplinary actions were written and if any allegation against the plaintiff was that he was absent from duty, then at the most, a letter of warning may be issued as in his entire career as per the information given by the plaintiff and same was not rebutted by learned counsel for defendants No.2 and 3 that the Plaintiff was punctual and was not called absent but the department has taken a harsh view and awarded 9th punishment “dismissal from the service” without considering that after seven days viz on 10th march 2022 he/plaintiff is going to be retired.

22. Learned counsel also submits that during the pendency of the constitution petition, the petitioner/plaintiff was stand retired as such if any disciplinary proceedings against him shall be abated and the Plaintiff has relied upon F.R & S.R, 54-A. It is appropriate to reproduce the F.R & S.R Section-1 54-A of fundamental rules.

“54-A. If a Government servant, who has been” suspended pending inquiry into his conduct attains the age of superannuation before the completion of inquiry, the disciplinary proceedings against him shall abate and such Government servant shall retire with full pensionary benefits and the period of suspension shall be treated as period spent on duty.”

23. It is well-settled that any type of disciplinary proceedings are not finalized before his retirement, such proceedings stand abated upon his retirement, including an inquiry, against an employee or public servant cannot continue after his retirement from service, and if the disciplinary proceedings are not finalized before his retirement, such proceedings stand abated upon his retirement. In this context, I may refer to Fundamental Rules 54-A which provides that on attaining the age of superannuation disciplinary proceedings, which have not been completed, are automatically abated and the civil servant is entitled to receive all pensionary benefits. In view of Fundamental Rules 54-A, the provisions and

effect whereof are mandatory because of the word “shall” used therein, the disciplinary proceedings initiated against the plaintiff should have been abated but the plaintiff malafidly with ulterior motives continued to the inquiry and dismissed the plaintiff from the company. The above view is fortified by the following pronouncements of the Supreme Court:

- A. *In Abdul Wali v. WAPDA through its Chairman and others, 2004 SCMR 678, Hon’ble Supreme Court was pleased to hold that as a general rule disciplinary proceedings cannot be taken against a civil servant for imposition of a major or minor penalty as contemplated by the E&D Rules after he has already retired from service eon attaining the age of superannuation.*
- B. *The above principle was reiterated by the Hon’ble Supreme Court in Syed Sajjad Haider Kazmi v. Director-General (S&GAD) WAPDA and another, 2007 SCMR 1643.*
- C. *In Deputy Director Food v. Akhtar Ali, 1997 SCMR 343, it was held by the Hon’ble Supreme Court that an officer superannuating during disciplinary proceedings ceases to be a civil servant and was rightly so excluded by Section 2(1)(b) of the Punjab Service Tribunals Act, 1974.*
- D. *In Muhammad Zaheer Khan v. Government of Pakistan through Secretary Establishment and others, 2010 PLC (C.S.) 559, it was held by the Hon’ble Supreme Court that the disciplinary proceedings against an employee must be completed before his date of retirement.*

24. The manner in which the action has been taken against the plaintiff by the SSGC prima facie suggests that it was tainted with malice. Whether a person who is retiring on 10th March could be denied his lawful availing the leave prior to retirement under the rules/policy framed by SSGC. The issue that needs to be answered in these proceedings is whether the dismissal of the plaintiff by SSGC on 10.03.2022 was lawful or was it ex-facie over reaches the powers conferred on the competent authority under the policy which provides that a retire officer is entitled to the leave of 67 days prior to his retirement as calculated by the HR department. At this interim stage, this Court cannot finally record the findings in the issue but at the same time, the SSGC has not disputed the letters which the plaintiff has produced during the hearing in regard to the policy of leave granting and approval of the leave by the competent authority. I am constrained to say that the conduct of the management with the plaintiff was prima facie inappropriate. It appears that the management wanted to dismiss the plaintiff before

he could retire to earn his pensionary benefits according to the policy. If the letter of the plaintiff dated 29.08.2022 is accepted to be correct then the stance taken by the SSGC that the plaintiff was not communicated his dismissal on 10.03.2022 would be again reflected dubious as the SSGC was in contempt as the restraining order was operating on 10.03.2022. However, I will not travel in the issues which are insignificant for the present proceedings. My understanding is that a person who is entitled for leave before retirement and such leave was approved and who was otherwise appearing before the inquiry committee facing charges could not be dismissed from services *inter-alia* on the ground that he was absent from the duty when his entitlement who avail the leave has not been denied. These are my tentative observations and for the aforesaid reason, I allow the injunction application by suspending the order dated 10.03.2022 passed by the SSGC/defendants and prima facie such order was violative of the policy which entitled the plaintiff for availing the leave before retirement. I am conscious of the fact that once the company dismissed an employee from service he can only claim compensation but in these special circumstances the issue before the Court is whether, in the given circumstances, the plaintiff can be dismissed from service which to my understanding prima facie was unwarranted. While allowing the injunction application I direct the SSGC/defendants to deposit the entire pensionary benefit of the plaintiff with Nazir of this Court within two weeks from today. The Nazir shall invest the same amount deposited by SSGC in any profitable scheme for the alternate benefit of the parties, which succeeding in these proceedings.

25. This application is allowed in the above terms.

JUDGE