

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 151 of 2023

[Sui Southern Gas Company Ltdv.....Syed Abbas Raza & another]

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HCA No. 163 of 2023

[Syed Abbas Razav..... Sui Southern Gas Company Ltd & others]

Present

Mr. Justice Irfan Saadat Khan.

Mr. Justice Zulfiqar Ahmad Khan.

Dates of Hearing : 17.08.2023, 31.08.2023 &
05.10.2023

Appellants through : Mr. Faisal Mahmood Ghani,
Advocate for appellant in HCA
No.151 of 2023 and for respondent
No.2 to 4 in HCA No.163 of 2023.

Respondents through : Mr. Khawaja Shams ul Islam,
Advocate for appellant in HCA
No.163 of 2023 and for respondent
No.1 in HCA No.151 of 2023 a/w
M/s. Imran Taj, Syed Imtiaz Shah
and Muhammad Usman Ahmed,
Advocates.

J U D G M E N T

Zulfiqar Ahmad Khan, J:- These High Court Appeals arise out of an order passed by the learned Single Judge in Suit No.1432 of 2022 dated 17.03.2023 and due to commonality of facts, both these appeals were heard together and being disposed of through this common judgment.

2. Briefly stated the facts of the case are that Sui Southern Gas Company Ltd., (hereinafter referred to as “the company”) is engaged in transmission and distribution of natural gas in the province of Sindh and Balochistan, with its head office in Karachi. That the company

placed an advertisement in 2008 calling for the appointments in its Land & Estate Management Department in Grade-VI. Syed Abbas Raza (hereinafter after referred to as Respondent No.1), applied for the said post and after fulfilling all legal and codal formalities he was selected for the above referred post, vide appointment letter dated 03.4.2008. Upon satisfactory performance and earning of Performance Evaluation Reports in his favour, he was confirmed on the said posts, vide order dated 02.06.2009 by the competent authority. Subsequently, w.e.f. 04.10.2013 he was promoted as D.G.M. (L&EM) in Grade VII. Since the Respondent No.1 was about to retire w.e.f. 11.3.2022 after attaining superannuation age, the company as per its policy, through Senior General Manager HR sent a letter to the DGM (LS) as well as to the Respondent No.1 dated 03.9.2021, with regard to availing of leave encashment, grant of Gratuity Option and settlement of other issues to be considered prior to the retirement of the Respondent No.1. The Respondent No.1 was advised through the said letter to proceed on Leave Preparatory to Retirement ("LPR"). Since the Respondent No.1 was to retire on 11.3.2022 and had 17 balance leaves to his credit, he applied for availing LPRs, which application was also approved. However, to the utter surprise of the Respondent No.1 he received a show cause notice dated 15.2.2022 mentioning therein that since he has misused his official vehicles and has appointed some persons as ghost employees, therefore, he should explain as to why disciplinary action may not be initiated against him. The company gave him three days for furnishing his reply. However, without waiting for his reply, the company placed him under suspension on 16.2.2022. On 17.02.2022

the Respondent No.1 appeared before the Deputy General Manager H.R. and applied for half-day leave, which was granted and thereafter the Respondent No.1 vide letter dated 20.2.2022 furnished a comprehensive reply in his defense to the show-cause notice issued to him.

3. Since the Respondent No.1 was of the view that the Management / Competent Authority would not consider his reply, he filed a Constitution Petition bearing No.D-1062/2022 (hereinafter referred to as the petition) in this Court on 21.2.2022. On 22.02.2022 the Court was pleased to observe that “No coercive action shall be taken against the petitioner”. Thereafter, the company (which was Respondent in the above referred petition) filed its reply. Apropos the show cause notice dated 15.2.2022, the Respondent No.1 attended the enquiry proceedings and was exonerated on the issue of misusing the official cars, however on the aspect of appointing ghost employees the matter was reserved. In the meantime, another show-cause notice dated 28.2.2022 was served upon him on the ground that he was absent from his duties since 18.2.2022 without any intimation and he was directed to furnish his reply within 3 days again. On 04.3.2022, the company served a charge sheet upon him based on the second show-cause notice. The Respondent No.1 furnished a reply of the said show cause notice stating that his leaves were duly been approved from 18.2.2022 to 09.3.2022 by the DGM (LS). The company after granting opportunity of hearing concluded the inquiry on 09.3.2022 and found him guilty of remaining absent from the duty w.e.f 18.2.2022 till 09.3.2022 and thereafter dismissed him from the service w.e.f. 10.3.2022 just a day before his

retirement, retirement benefits of the petitioner were also withheld by the company.

4. Since the petition bearing CP No.D-1062/2022 was pending here, a request was made on behalf of the Respondent No.1, being petitioner in the matter, that his service and retirement benefits may be granted. The company was directed by the Bench vide order dated 27.04.2022 to furnish comments in this regard, whereafter vide order dated 26.05.2022 the Division Bench in the petition directed the Managing Director of the Company to appear in person alongwith the inquiry report. Vide order dated 29.8.2022 the petition was disposed of with the directions that since the petition is not maintainable, the petitioner should avail the legal remedy as available to him under the law.

5. It was then the suit bearing No.1432/2022 was filed alongwith an application under Order XXXIX Rule 1 & 2 CPC bearing CMA No.14052/2022. The learned Single Judge took up the matter on 08.3.2023 and thereafter vide order dated 17.3.2023 allowed the injunction application, however, directed the company to deposit the entire pensionary benefits of the Respondent No.1 (Plaintiff in the suit) within two weeks from 17.3.2023 with the Nazir of the Court. It is against the said order, the company has filed the present HCA bearing No.151 of 2023, with the request to set aside the impugned order, whereas appeal bearing HCA No.163 of 2023 is filed by the Respondent No.1, on the ground that the learned Single Judge was not justified in directing that the pensionary and other benefits be

deposited with the Nazir of this Court, rather should have been given to him.

6. Mr. Faisal Mahmood Ghani, has appeared on behalf of the Appellant in HCA No.151/2023, who is also the counsel for the Respondents No.2, 3 & 4 in HCA No.163/2023. He, while elaborating the matter, explained that Respondent No.1 was serving in the appellant company as Deputy General Manager (Land & Estate Management) and disciplinary action in accordance with law was taken against him due to his unauthorized absence from the service/duty. He stated that the service of Respondent No.1 was terminated after extending opportunity of hearing to him and by following the due process of law, as mentioned under Sui Southern Gas Company Ltd., Executive Staff Service Rules. He stated that upon a closer look of the order of the learned Single Judge, it would reveal that while granting ad-interim injunction in a way whole suit has been decided in favour of the Respondent No.1, which the learned Single Judge was not legally justified to do. The learned counsel then invited our attention to the prayer clause of the plaint of the suit No.1432/2022.

7. The learned counsel also invited our attention to the Service Rules of SSGC and stated that Respondent No.1 was given opportunity, by way of inquiry proceedings, to prove his innocence and to provide reasons for remaining unauthorizedly absent from the service. The learned counsel stated that though the Respondent No.1 participated in the enquiry proceedings but having been satisfied that the Respondent No.1 had remained absent from the service unauthorizedly, he was terminated from the service after fulfilling all

the legal and codal formalities. Learned counsel, invited our attention to various correspondences which took place between company and the Respondent No.1 including the enquiry report, enquiry proceedings and relevant provision of the rules and the regulations in support of his contention. He stated that legal and lawful action was taken against the Respondent No.1, with regard to his termination, and that he was provided ample opportunity to clarify his position with regard to unauthorized absence. According to Mr. Ghani in the present circumstances, the Respondent No.1 at best could claim compensation from the company which is to be decided after recording of evidence, examination of the witnesses and taking into consideration other relevant factors. According to the learned counsel the Respondent No.1 is not even entitled to compensation which is not the subject matter of this appeal, hence he stated that he will not divulge in this matter at this juncture and would make his submissions in the pending suit.

8. Learned counsel further explained that the company is maintaining a proper disciplinary policy for its employees and no employee is authorized or entitled to disobey or to disregard the said policy. He states that the action was taken against the Respondent No.1 as per the said disciplinary policy. Learned counsel, in this regard, read out some key provisions of the disciplinary policy to substantiate his argument.

9. Learned counsel next stated that the relation between the company and the Respondent No.1 was that of master and servant, therefore, in his view no declaratory relief could be granted by the learned Single Judge to the Respondent No.1. Learned counsel next

stated that as per Clause 118 of the Disciplinary Policy of the company, if the Respondent No.1 was aggrieved of any action of the company, he could, at best, avail departmental remedy within a period of 30 days of the action taken against him, hence in his view the filing of the suit per-se was illegal, which aspect has also not been considered by the learned Single Judge. He therefore stated that in view of the circumstances, stated above the appeal filed by him may be allowed by vacating the injunction application allowed by the learned Single Judge and parties may be directed to proceed with the matter in the suit on the issue of compensation only.

10. Khawaja Shams-ul-Islam, Advocate has appeared for Respondent No.1 in HCA No.151 of 2023 and as counsel for the Appellant in HCA No.163/2023.

11. At the very outset, he stated that the Respondent No.1 is not claiming reinstatement in the service as he is fully aware of the fact that he stood retired from service on 11.03.2022. He, however, stated that the manner in which action has been taken against the Respondent No.1 speak volumes about the mala fides of the company to the extent that he was terminated one day prior to his retirement, which shows bad faith and malafides of the company including that of Appellant No.2, who according to him has developed inimical terms with the Respondent No.1 for no reason. He stated that all these aspects have elaborately been discussed by the learned Single Judge in the impugned order. He stated that the Respondent has served the company for almost 15 years with unblemished record and on the basis of unfounded facts, personal grudge and intellectual dishonesty disciplinary proceedings were initiated against him. He stated that

from the perusal of the disciplinary action taken against Respondent No.1, it would reveal that even company was not sure that whether the said action was legal or not as per the relevant rules and regulations.

12. He stated that the first show cause notice was issued on the ground that he has misused his official vehicle and has hired some ghost employees. The aspect of misusing official car subsequently was dropped as nothing in this regard was found against the Respondent No.1, however, so far as hiring of ghost employee is concerned, till date no action on this issue has been taken against him.

13. In so far as the aspect of unauthorized leaves are concerned, the learned counsel invited our attention to the approval of the leaves given by the DGM (LS) to him to show that no unauthorized leave was ever availed by the Respondent No.1 as firstly he was sent on LPR by the management as per the company's policy and then was granted leave as per rules and regulations by the competent authority. He therefore, stated that the case built-up against the Respondent No.1 with regard to unauthorized leaves was mala fide, incorrect, illegal and uncalled for. He submitted that since a harsh step was taken against the Respondent No.1, which does not have any legal backing, therefore, the learned Single Judge after looking to the facts and circumstances of the case was justified in granting relief in the instant matter at the preliminary stage till the matter is decided after full fledged trial.

14. Learned counsel further stated that the suit now would only proceed after framing of issues and taking of evidence with regard to the claim of damages by the Respondent No.1, which requires detailed deliberation and examination of the facts and in such circumstances, in his view the learned Single Judge was quite justified in tentatively observing that the plaintiff in the suit i.e. Respondent No.1 has a prima facie case and the injunction application was rightly allowed. He finally submitted that under these facts the instant appeal, filed by the corporation, may be dismissed by imposing cost upon it.

15. While arguing the appeal bearing HCA No.163/2023 the learned counsel stated that when the learned Single Judge came to the tentative conclusion while granting injunction application that the action of the corporation in terminating the Respondent No.1, prima facie was against the law, there was no justification available to direct the company to deposit pensionary and other benefits of the Respondent No.1 with the Nazir of this Court as after withholding of these emoluments, the Respondent No.1 had suffered badly due to non-availability of the funds to support himself and his family. He therefore, in the circumstances, prayed that let the suit proceed on the aspect of compensation/damages claimed by the Respondent No.1, however his retirement and pensionary benefits, which are his fundamental rights, may be released / granted to him by giving appropriate directions to the Nazir of this Court in this regard.

16. Mr. Faisal Mahmood Ghani, while giving rebuttal stated that when the Respondent No.1 was rightly terminated from the service after finding him guilty of unauthorized leaves, there cannot be any

question of granting pensionary and other benefits to him and therefore, urged that the appeal filed by the Respondent No.1 bearing HCA No.163/2023 may be dismissed with cost while the appeal bearing HCA No.151 of 2023 filed by the corporation may be allowed by setting aside the order of the learned Single Judge.

17. We have heard both the learned counsel at considerable length and have also perused the record, the relevant rules and regulations. It would be prudent to initiate this deliberation by examining the impugned order and the necessary constituent of the impugned order is delineated hereunder:-

“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”.

18. Upon scanning the record & proceedings made so available, it unfurls that the SSGCL initiated two inquiry proceedings against the employee. First amongst those was initiated on the ground of using the official vehicles as well as appointing ghost employees which proceedings were declared in favour of the Appellant/employee and he was exonerated from the charge. The second inquiry proceedings was initiated on the ground of remaining absent from the duties from 18.02.2022 on the basis of which he was dismissed from the service one day before his retirement.

19. It is an admitted fact that the employee was retiring from his service on 10.03.2022 upon attaining the age of superannuation and the employer issued an intimation notice to the employee for his upcoming retirement vide letter dated 03.09.2021 and on 03.09.2021 SR General Manager sent a letter to D.G.M-I (L&EM Head Office) as well as to the employee regarding leave preparatory to retirement and per Executive Staff Services Rules, Executives are required to avail their balance earned leave prior to retirement. The employee was to retire from 11.03.2022 and was accumulating his 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 the employee to proceed on leave preparatory to

retirement and informed him about the program. It would be conducive to reproduce the constituent of the said letter (available at page 313 of the Court file of HCA No.163 of 2023) hereunder:-

“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 nonavailability 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).”

20. On 28.02.2022, Mr. Faisal (an employee of the SSGCL) 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 employee that he continuously remained absent from duty since 18.02.2022 till date without intimation/permission of HR department. The employee was directed to submit a written explanation within three days. On 15.03.2022, he submitted reply of showcause notice to SGM (HR) through 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) (employee of SSGCL) from 21.02.2022 to 04.03.2022.

21. On 29.08.2022 the appellant/employee 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 bearing C.P. No.D-1062/2022 filed by the appellant/employee.

22. SSGCL 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 that fall into the following categories:

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

23. The appellant/employee was alleged to have been guilty of misconduct as per rules 115.3.21, which pertains to "Absence without approved leave for more than ten working days". 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. Under the Rules following 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."*

24. It is gleaned from appraisal of the foregoing that a host of possible disciplinary actions were possible and if allegation against the appellant/employee was that he was absent from duty, then at most, a letter of warning may have been issued as in his entire career as per the information given by the appellant/employee, and same was not rebutted by SSGCL/employer, he remained punctual, but the department has taken a harsh view and awarded 9th level of punishment “dismissal from the service” without considering that after seven days viz on 10th march 2022 the employee was going to be retired. If it is considered to be true that the employee remained absent from his duties, but this aspect would be against the stance of the employer on the ground that the employee was granted leave which was approved by Mr. Faisal Khan, DGMI(LS) from 21.02.2022 till 04.03.2022, (available at page 333 of HCA No.163/2023), therefore, question of remaining absent from the duties does not arise at all. Furthermore, the appellant intimated through an email (available at page 341 of HCA No.163/2023) to his employer that he has to attend the inquiry proceedings initiated by the employer itself on 04.03.2022 and 07.03.2022, therefore, the appellant/employee intimated in advance regarding his absences, and this stance was also taken by him in this reply submitted against the show cause notice, but unfortunately for the reasons best known to his employer, the same was not considered and that the appellant/employee was removed from his services just one day before his retirement, which malafidely kept the employee away from retirement benefits, which are held to be property of the employee/appellant.

25. The appellant/employee filed HCA No.163 of 2023 and in the prayer clause has sought for the pensionary benefits which were directed to be deposited with the Nazir of this Court whereas the employer in its HCA No.151/2023 has impugned order passed by the learned Single Judge. It is well settled now that employers have no right to withhold or postpone the pensionary benefits. The concept of pension is in conformity and in consonance with the concept of social justice and is an essential feature of law and equity. Courts have held that pension is neither bounty nor a matter of grace nor depending upon the sweet will of the employer as it creates a vested right. Courts have also ruled that pension cannot be termed as an ex-gratia payment instead it is a payment for the past service rendered, hence parcel of the conditions of service and pension cannot be equated with a dole. Thus we are of the considered view that the pension or commutation thereof cannot be withheld/postponed or remain out of reach of the employee/appellant who had served the SSGCL/employer over the years satisfactorily.

26. Reverting to the another limb of arguments of learned counsel for the SSGCL/employer to the effect that the relation between the appellant/employee and the SSGCL is that of master and servant, therefore, the impugned order passed by the learned single Judge cannot be sustained. 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 relationship¹. In the given circumstances, a learned Division Bench of this Court in supra case where employees of

¹ Per Justice Sabihuddin & Justice Gulzar Ahmed in the case of Faisal Akram v. Secretary Production & others (2007 PLC (C.S.) 647)

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 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.

27. This Court has already held 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 papers², 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 England*³ 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 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.

² <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1495&context=jbl>

³ 18th-Century master-servant relation as described in Sir William Blackstone’s 1759 treatise *Commentaries on the Laws of England*.

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 etc⁴.

28. In view hereof, we reach to a conclusive finding that the HCA No.151/2023 filed by the SSGCL/employer be dismissed, whereas, HCA No.163/2023 filed by the employee be allowed and the

⁴ 2007 PLC (C.S.) 647 (*Faisal Akram v. Secretary Production & others*)

impugned order be modified to the extent that the pensionary benefits be handed out to the appellant/employee forthwith instead of lying with the Nazir of this Court, and we order accordingly.

29. Before parting with this judgment, we would like to state that the respondent No.2 Mr. Imran Maniar, Managing Director of SSGC should have a more professional attitude towards his subordinates as one must not feel that the former has shown some unreasonableness while dealing with his/her matter or was in any manner biased.

JUDGE

ACTING CHIEF JUSTICE

Karachi
Dated:30.10.2023

Aadil Arab