

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Justice Zafar Ahmed Rajput,
Justice Amjad Ali Bohio.

High Court Appeal No. 364 of 2023

[Zaheer Uddin Memon v. Security Papers Limited & another]

Appellant : Zaheer Uddin Memon, through
Mr. Imtiaz Ali Shah, advocate

Respondents 1& 2 : Security Papers Limited & another,
through Mr. Abdul Ahad Nadeem,
Advocate a/w Yasir Ali Qureshi,
Company Secretary.

High Court Appeal No. 365 of 2023

[Muhammad Imran Awan v. Security Papers Limited & another]

Appellant : Muhammad Imran Awan through
Mr. Imtiaz Ali Shah, advocate

Respondents 1& 2 : Security Papers Limited & another,
through Mr. Abdul Ahad Nadeem,
Advocate a/w Yasir Ali Qureshi,
Company Secretary.

Date of hearing : =====
23.10.2023

Date of order : 23.10.2023
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ORDER

AMJAD ALI BOHIO, J. By this common order, we intend to dispose of both the listed H.C.As. as, being arisen out of a common impugned order, the same have been heard by us together.

2. These Intra High Court Appeals are directed against the joint order, dated 09.10.2023, whereby the learned Single Judge of this Court disposed of C.M.A No. 12692/2023 (*under Order XXXIX, Rule 4 C.P.C.*) and dismissed C.M.As No. 11601/ 2023 (*under section 55 of the Specific Relief Act and Order XXXIX, Rule 1 & 2 read with section 151, C.P.C.*), 10608/2023 (*under Order XXXIX, Rule 1 & 2 read with section 94 & 151, C.P.C.*) and 8460/2023 (*under Order XXXIX, Rule 1 & 2 read with section 94, C.P.C. and section 55 of the Specific Relief Act*), filed in Suit No.

814/2023 by the plaintiff *Zaheer Uddin Memon*/appellant in H.C.A. No. 364 of 2023/ **and** disposed of C.M.A No. 12693/2023 (*under Order XXXIX, Rule 4 C.P.C.*) and dismissed C.M.As No. 11604/2023 (*under section 55 of the Specific Relief Act and Order XXXIX, Rule 1 & 2 read with section 151, C.P.C.*), 10614/2023 (*under Order XXXIX, Rule 1 & 2 read with section 94 & 151, C.P.C.*) and C.M.A. No. 8463/2023 (*under Order XXXIX, Rule 1 & 2 read with section 94, C.P.C. and section 55 of the Specific Relief Act*), filed in Suit No. 815/2023 by the plaintiff *Muhammad Imran Awan*/appellant in H.C.A. No. 365 of 2023.

3. Brief facts of the case of appellant Zaheer Uddin Memon are that he filed Civil Suit No. 814/2023, alleging therein that, on 25.07.1999, he was initially appointed as a Corporate Officer in Grade-IV in the Security Papers Limited ("**SPL**")/the respondent No. 1 and was serving as Senior Manager (Stores) when he was suspended vide Suspension Order dated 12.05.2023. It was claim of the appellant that he served the SPL faithfully for the last 24 years without committing any misconduct or violating the rules. It was the case of the appellant that the inquiry proceedings conducted against him were contrary to the SPL (Conduct & Discipline) Rules. He while asserting in paragraph 41 of his plaint that the relationship between him and the SPL is that of Master and Servant, filed the said suit for declaration, direction, injunction and recovery of amount and damages.

4. Appellant Muhammad Imran Awan filed Civil Suit No. 815/2023, alleging therein that he was initially appointed as Deputy General Manager (Operations) in Grade-OG-II in SPL and later on he was promoted to the post of General Manager OG-I (Production & Mould). He was suspended on the basis of an anonymous complaint vide Suspension Order, dated 12.05.2023, which order he claims to have been passed in violation of the SPL (Conduct & Discipline) Rules. Hence, he filed the said suit claiming that he served in SPL faithfully

for the last 17 years without any misconduct or violation of the established rules and the inquiry proceedings conducted against him were in violation of the SPL (Conduct & Discipline) Rules. He also asserted in paragraph 38 of his plaint that the relationship between him and the SPL/respondent No.1 is that of Master and Servant and filed the said suit for declaration, direction, injunction and recovery of amount and damages.

5. The appellants in their respective suits filed C.M.As referred to in paragraph 2 (*supra*) for interim/interlocutory relief(s), which were disposed of/dismitted by the learned Single Judge of this Court vide impugned order.

6. Learned counsel for the appellants has mainly contended that the impugned order being contrary to facts on record and relevant law is not sustainable; hence it is liable to be set aside; that the appellants were suspended in violation of SPL (Conduct & Discipline) Rules of the respondent No.1, and despite ad interim injunctive orders passed on 29.05.2023 and 26.07.2023 in said civil suits by the learned Single Judge, the respondents proceeded to issue a charge sheet, showing disregard for the lawful orders of the Court; that the appellants' termination from service was without proper reasons and infringing upon their rights under the rules; that the due process was not followed for termination of appellants' service and such termination is unjust and arbitrary. In support of his contention, learned counsel has relied upon the cases of *Pakistan International Airlines Corporation (PIAC) through Chairman and others v. Nasir Jamal Malik and others* (**2001 SCMR 934**), *Zakir Rashid Khan v. Chairman, Pakistan International Airlines Corporation through Ministry of Defence and 3 others* (**2015 PLC 1461**), *Sadiq Amin Rahman v. Pakistan International Airlines Corporation through Managing Director and 3 others* (**2016 PLC 335**), *Civil Aviation Authority v. Noor Muhammad* (**PLD 1988 Karachi**

401), *Ahmad Latif, Chief Operating Officer and 2 others v. The Cane Commissioner and 6 others* (**2022 YLR 773**) and *Muhammad Ashraf Tiwana and others v. Pakistan and others* (**2013 SCMR 1159**).

7. Learned counsel for the respondents in a coherent argument has defended their actions, citing specific circumstances and legal precedents to justify their stance. The key points made by him include that the respondents' actions were taken within the domain of their management and in accordance with the rules and regulations of the respondent No.1. The complaints against the appellants were rooted in their engagement with specific suppliers responsible for providing essential materials to the respondent No. 1. The defective supplies led to significant financial losses to the respondent No.1, justifying the internal investigation. The Whistle-Blowing Committee found that the appellants had conflict of interest in their dealings with the suppliers, leading to the issuance of suspension orders as an interim measure. Such action was taken to mitigate further losses to the respondent No.1. He has maintained that the Trial Court's ad interim injunctive order was specific for preventing the implementation of the suspension orders, not the termination orders; therefore, the termination of the appellants' employment did not violate the Court's directive, allowing the internal inquiry to proceed uninterrupted. He while supporting the impugned order has asserted that the nature of the relationship between the parties is that of Master and Servant, as there are no Statutory Rules of service of the respondent No.1. He has maintained that the appellants/Servants, cannot compel the respondents/Master, to retain their employment, and such position of the appellants and the respondents were considered by the learned Single Judge while passing the impugned order. In support of his arguments, the learned counsel has relied on the cases of *Allah Dino Khaskheli v. Zakir Mehmood and 3 others* (**2019 PLC (C.S.) 999**), *Sanjay Kumar v. Siemens*

Pakistan Engineering Company Ltd., through Director and 4 others (2020 PLC (C.S.) 80) and *Marghub Siddiqui v. Hamid Ahmad Khan and 2 others (1974 SCMR 519)*.

8. We have considered the arguments made by the learned counsels for both parties; scanned the material available on records with their assistance and examined the case-law cited before us.

9. It is an admitted position that the appellants Zaheer Uddin Memon and Muhammad Imran Awan were appointed in SPL through appointment/offer letters, dated 03.08.1999 & 27.07.2007 respectively, and as per terms thereof, their services could be terminated with one month's notice or payment in lieu thereof. It is also an admitted position that the SPL/respondent No.1 has no statutory rules of service; hence, the relationship between the appellants and SPL was that of "Master and Servant".

10. According to Halsbury's Laws of England, Vol. XXV, p. 446, para. 872: "the relationship of master and servant is expressed by a contract of service, express or implied, between the master and servant. A contract of service is one in which a person undertakes to serve another and to obey his reasonable orders within the scope of the duty undertaken. Whether or not a particular contract is a contract of service, is a question of fact depending upon the terms of the engagement, the method of remuneration, and the power of controlling and dismissing the worker although none of these factors is by itself conclusive." On the same question, it has been commented in American Jurisprudence (Vol. 35 at pages 445 and 446) as follows:

"In law, the term "master and servant" indicates the relationship which exists when one person who employs another to do certain work exercises the right of control over the performance of the work to the extent of prescribing the manner in which it is to be executed."

11. In such situations where the relationship of the employer and employee is termed as “Master and Servant”, the only recourse for the employee in case of wrongful dismissal from his service is to seek damages, which could be granted to him if he proves that his termination was not genuine, bona fide, or constituted unfair treatment. Similarly, in the instant case, both the appellants had willingly accepted the terms and conditions outlined in their employment contracts. These terms explicitly granted the respondents the authority to terminate their services upon one month's notice or provide a consolidated salary in lieu thereof. Hence, the sole recourse accessible to the appellants in the event of a breach of contract is to file a suit seeking damages or monetary compensation. Honorable Supreme Court of Pakistan in the case of Marghub Siddiqui (*supra*) has observed that:-

"Secondly it appears to us that none of the Courts have noticed that although ad interim injunctions are granted under Order XXIX, Rule 1 of the Code of Civil Procedure the principles, which govern the grant of injunctions, contained in the Specific Relief Act have also to be kept in view. Under section 56, clause (f), one of the principles is that an injunction cannot be granted to prevent the breach of a contract the performance of which cannot specifically be enforced. Now it is well settled that contracts for personal service are not contracts which can be specifically enforced. The granting of an injunction, therefore, in a service matter, like the present one, is opposed to the principles governing the grant of such injunctions, for; by such an injunction the Courts really foist an employee upon an unwilling employer. Such an order for injunction made in disregard of these not only sound judicial principles but even statutory prohibitions cannot, in our view, be regarded as having been made in the proper exercise of the discretion of the Court".

In the case of Allah Dino (*supra*), it has been observed that “since no statutory rules governing terms and conditions of service had been

framed, therefore, the relationship between the Appellant the Respondent-Bank was governed by the relationship of "Master and Servant" and in such a situation the relief of reinstatement in service was not envisaged for such relationship nor the same could be granted under the Code of Civil Procedure by the learned Single Judge sitting on the Original Side". In case of Pakistan Refugee and Rehabilitation Finance Corporation, Lahore and another v. Syed Karamat Hussain [PLD 1966 (W.P.) Lahore 442], it was held "in cases of illegal termination of service of employees of a corporation, they will be regulated by rule of master and servant and remedy would lie in a suit for damages for wrongful dismissal and not for declaration and injunction under section 42 of the Specific Relief Act, 1877". We are also fortified with the case-law of ANB-Amro Bank v. Wasim Dar (2004 PLC 69) wherein it has been held that "there are no fetters or checks upon the rights of a master to terminate the services of his servant according to his own evaluation, decision and wisdom. Even if the termination is in violation of the contract, such action shall not be annulled by the Court, thus compelling the master to keep intact the serve of his employee. Likewise, a servant cannot be forced to serve his master when he is not willing to do so. However, in the cases where the employer terminates the services of his employee, in violation of the contract, the only remedy available to the aggrieved servant shall be to sue his master for damages on account of wrongful termination. Resultantly in view of above stated legal position, the key question calling for determination in this case is whether the termination is wrongful or not".

12. In the instant case, the appellants in prayer clauses 'F' to 'H', of their respective suits have sought alternate reliefs of retirement benefits and damages in the event they do not succeed in obtaining the declaration and injunction. It may be observed that for grant of an injunctive order, it is imperative for the appellants not only to

establish a prima facie case but also to demonstrate that the balance of convenience favors them and that they would suffer irreparable injury or loss. However, under section 56 (i) of the Specific Relief Act, 1877, an injunction cannot be granted when equally efficacious relief can be obtained by the plaintiff. In the instant case, upon a balance of a convenience, damages sought by the appellants would be an adequate relief/remedy.

13. For the foregoing facts and reasons, we conclude that the impugned order passed by the learned Single Judge in Suit Nos. 814/2023 and 815/2023 does not suffer from any irregularity or illegality warranting any interference of this court under its appellate jurisdiction; hence, these appeals being devoid of merit are dismissed, accordingly, with no order as to costs.

14. These are the reasons for our short order announced on 23.10.2023.

HANIF

JUDGE
JUDGE