IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. 406 of 2023

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

[Pakistan Petroleum Limited V. Ayesha Chowdhry & others]

Date of hearing	:	27.02.2025
Date of decision	:	27.02.2025
Appellant	:	Through Mr. Khalid Javed Khan, Advocate.
Respondent	:	Through M/s. Ravi R. Pinjani and Hamza H. Hidayatullah, Advocates.

JUDGMENT

Muhammad Osman Ali Hadi, J: The Appellant has filed the instant appeal against Order dated 01.11.2023 passed in Suit No. 54 of 2020 (**"the Impugned Order"**), vide which the learned Single Judge confirmed injunction applications (i.e. CMAs No. 248, 249 & 10916 of 2020 filed by Respondent No. 1), *inter alia*, restraining the Appellant from continuing an enquiry against Respondent No.1, whilst also dismissing an application under Order XXXIX Rule 4 r/w Section 151 CPC (CMA No. 14330/2020) filed by the Appellant. By virtue of the Impugned Order, the Appellant were also directed to pay Respondent No. 1 discovery bonus amounts and were further restrained from altering her assignment of work. The Appellant being aggrieved from the aforesaid Impugned Order has filed the instant Appeal, the succinct facts of which are as follow:

2. The Appellant is a public listed company, involved in oil and gas exploration throughout Pakistan. The Respondent No.1 was employed (at the time of institution of the Suit) in the position as Senior Manager (Human Resources) at the Appellant.

3. Respondent No. 1 was issued a Charge-Sheet dated 13.12.2019 (**"Charge Sheet"**), containing certain allegations against her, which included circulating false information regarding various discrepancies and fraud being committed in the Appellant. It was alleged that she forwarded such material on WhatsApp messages as well as on the Prime Minister Portal (**"PMP"**). On the same day she was

relieved of her prevalent duties and was re-assigned as Officer on Special Duty ("OSD") through issuance of a Redesignation Letter by the Appellate.

4. Respondent No.1 replied to the Charge Sheet by letter dated 20.12.2019, but the same was found by the Appellant to be unsatisfactory, pursuant to which the Appellant sent her an Enquiry Notice dated 03.01.2020 (**"Enquiry Notice"**), requiring her to appear before the Appellant's Enquiry Committee, as per the company code of conduct.

5. The Respondent No.1 replied to the Enquiry Notice vide letter dated 10.01.2020, against which she raised various objections to the Charge Sheet and Enquiry. She soon after, filed Suit No.54/2020 before the High Court of Sindh at Karachi, challenging *inter alia* the Charge Sheet & Enquiry Notice, and obtained *interim* order dated 13.01.2020, which suspended the Charge Sheet & Redesignation Letter, and halted the enquiry against her. She also filed applications seeking payment of discovery bonus, and sought further injunctive orders preventing the Appellant from altering her posting / employment with the Appellant, which orders were also granted by the Single Judge.

6. Subsequently, Respondent No. 1's applications were heard and the injunctions were confirmed in her favour vide the Impugned Order, pursuant to which the instant Appeal was filed by the Appellant.

7. Learned Counsel for the Appellant commenced arguments. He first contended that the Appellant has a complete right to conduct an enquiry, to extrapolate whether any misconduct / delinquency has been undertaken by any of its employees (which includes Respondent No.1), as any misconduct could be seriously detrimental to the Appellant. He submitted the said Suit and injunction applications were not sustainable in law, and that no employee can be forced upon an employer. He further averred that the Appellant is not governed by statutory rules, hence principles of master and servant would apply, and the Respondent No. 1 cannot be thrust upon the Appellant in employment. He stated under law the Appellant cannot be restrained from conducting an enquiry. He expanded his submission by undertaking that the enquiry was being done in a proper and lawful manner, and Respondent No. 1 was afforded all due process.

8. Counsel for the Appellant lastly contended that all rules / statutes and governance of public sector companies would be properly followed, and that all neutrality and fairness would be given to Respondent No. 1, after which the Appellant could decide how to proceed further, if at all. He asserted that other

employees were also issued charge-sheets on similar grounds, and after the enquiry was conducted some were exonerated from any wrong doing, so there remains no valid reason for the Respondent No. 1 to allege bias. He submitted the same may even be possible for Respondent No.1, but the enquiry first needs to be concluded. He stated the injunction orders have blocked the enquiry for over four (4) years. He concluded by submitting that for the last several years, after obtaining an injunction in the Suit, the Respondent No.1 has been receiving all salary and bonuses / benefits. To support his above contentions, he relied upon caselaw being 2019 CLC (CS 975 HCA 195/2019, 2007 PLC (CS 341 + 890 + 934) and 2022 SCMR 92.

9. Next learned Counsel for Respondent No.1 addressed the Court. His primary contention was that Respondent No.1 is immune from any enquiry, as he stated that the Charge Sheet (at Page 55 of the File) was issued pursuant to allegations made against Respondent No.1 by the Appellant, whereby she was accused of circulating a message captioned "COMPLETE CHAOS IN PAKISTAN PETROLEUM (NEEDS IMMEDIATE INTERVENTION OF THE PRIME MINISTER)", through WhatsApp and on the Prime Ministers Portal (**"PMP"**). He stated Respondent No. 1 is protected under sub rule 2 (s) of Rule 7 of the Public Sector Companies (Corporate Governance) Rules 2013 (**"CGR 2013"**), (at Page 407 of the File) and sub rule 6 (o) of Rule 21 of the said Rules (which Counsel submits were issued under section 508 of the Companies Act, 2017), which provides cover for whistleblowers, which as per learned Counsel would be applicable if Respondent No. 1 had provided the information on the Prime Minister's Portal. He next stated it was the responsibility for public sector companies to provide a proper function and mechanism to support whistleblowers. To support this contention he referred to Clauses 5 (at pg. 423 & 425 of the File) & 7 (at pg. 429) of CGR 2013, which learned Counsel asserted made it mandatory to establish a whistle blowing policy and protection.

10. Learned Counsel for Respondent No.1 premised the gist of his arguments on the assertion that <u>if</u> Respondent No.1 indeed was a whistle blower, she would be protected under law. Without conceding Respondent No. 1 to actually be a whistle blower, he averred that even if there was information put forward by Respondent No. 1 against the Appellant (including against its Senior Management) on the Prime Minister Portal, then it would be illegal to conduct an enquiry as she would be protected under immunity afforded to whistle blowers. He further submitted that she was part of a victimization campaign by the Appellant. He placed reliance on 2007 SBLR 409, 2009 SCMR 956 @ 971, 2013 SCMR 1707 @ 1741 + 1748, 1995 SCMR 650 @ Para 8-A +9.

11. Learned Counsel for the Appellant then issued a brief rebuttal countering Respondent No.1's contentions. Counsel for the Appellant retorted there was no blanket policy for stopping an enquiry. He submitted the Appellant had established a proper whistle blowing policy (at pg. 395 of the File) in accordance with good governance. He further submitted that Respondent No.1 never invoked the whistle blowing policy established by the Appellant, which was always available to any and all employees having any legitimate *bona fide* complaints or grievances. Learned Counsel for the Appellant concluded by stating that neither law nor facts support the Impugned Order, and injunctive relief could not have been granted at this stage. As such, he submitted this Appeal should be allowed. He reassured that no undue action will be taken against Respondent No.1, and that all proper due process and law would be followed.

12. We have heard all the learned Counsels, after which we find as under:

13. The crux of this disparity stems from Respondent No.1's grievance of being issued a Charge Sheet dated 13.12.2019 by the Appellant, which alleged her involvement in a smear campaign against the Appellant (i.e. her employer). She was further charged with breaching confidentiality of the Appellant, and that her (alleged) actions of misconduct went against the Appellants' code of conduct. Respondent No. 1 responded to the Charge Sheet vide letter dated 20.12.2019, after which she was issued Enquiry Notice dated 03.01.2020. She then replied to Enquiry Notice vide letter dated 10.01.2020 (pg. 77 of the File) in which she objected to two persons sitting on the Enquiry Committee created by the Appellant, claiming she would not get a fair hearing. She also requested the Appellant to provide her with various documents so she could prepare a proper response / defense accordingly. It is pertinent to note that in the last para of her letter (at pg. 81) she requested to reconstruct a fair and impartial Enquiry Committee, and had never objected to the process itself, nor had she claimed immunity under any whistleblowing policy.

14. Respondent No. 1 then went further and filed a Civil Suit (Suit No. 54 of 2020), before the High Court of Sindh, seeking, *inter alia*, an injunction against the said Charge Sheet and Inquiry Notice, and also alternatively seeking a direction to constitute an un-bias inquiry. In the said Suit, Respondent No. 1 filed three applications under order XXXIX Rules 1 & 2 CPC 1908 (CMA Nos. 248, 249 & 10916 of 2020) for various interim relief(s), which were all granted *ad-interim*, and eventually attained finality through the Impugned Order.

15. We find the arguments put forth by Respondent No.1 do not hold any legal merit and Impugned Order has erred under law for the following reasons:

16. The first point we observed is that Respondent No.1 never sought any protection of being of whistle blower in any of the prayer clause(s) of her Suit (available at Page 105-107 of the File). Furthermore, a perusal of her injunction application (CMA No.248/2020) along with her affidavit (Page No.158 of the File), in Para Nos. 4 and 7, she specifically admits to raising concerns about Respondent No.3 i.e. the Managing Director of the Appellant, with the (then) Charman of Appellant, in front of seven (7) other person present. The same is stated in Para 9 of her Plaint (at pg. 91). This in itself demonstrates Respondent No. 1 has openly discussed negative issues pertaining to the Appellant (and its senior management), and hence it is absurd for Respondent No. 1 to now claim immunity under a whistle blowing program. Furthermore, a perusal of Para 8 of Respondent No. 1's Plaint clearly states that she was not the author nor involved in the complaints made on the PM's Portal, so we fail to see any relevance of whistleblowing. If Respondent No. 1 is clearly denying sending any (mis)information to the PM's Portal, how can she simultaneously claim immunity as a whistleblower which is (allegedly) specifically reserved for whistleblowers who contact the PM's Portal? This position taken by Respondent No. 1 is self-contradictory.

17. Moreover, even if this line or argument forwarded by Respondent No. 1 was to be considered, the onus would be on the persons operating the Portal to whom the proverbial whistle was blown, to safeguard anonymity of the whistle blower. It would certainly not lie on an employer who has received third-hand information about allegations against an employee.

18. We find this entire line of argument taken by learned Counsel for Respondent No. 1 an attempt to create a smokescreen, deflecting from the substance of the matter at hand. Moreover, a perusal of CMA No. 248/2020 filed by Respondent No. 1 in the Suit, vide which the Enquiry Notice / Charge Sheet were suspended, also does not hold any mention of whistleblowing.

19. When we directly asked learned Counsel for Respondent No.1 whether she (i.e. Respondent No.1) was a whistle blower and sought cover accordingly, the learned Counsel for Respondent No.1 was unable to furnish a direct response. He instead pleaded that if Respondent No. 1 was a whistle blower she would not be obliged to disclose the same.

20. We then further confronted Counsel for Respondent No.1 by stating that a person cannot sit on the fence when attempting to invoke cover as a whistle blower in such instance, after which we again asked a direct question as to whether Respondent No.1 was claiming to be a whistle blower or not? learned Counsel again evaded any clear response, but simply reiterated the stance that *if* she was a whistle blower, then immunity against her inquiry would apply.

21. We fail to understand this line of argument put forth by Respondent No.1, who herself has admitted she is not a whistle blower (*supra*). Furthermore, she has admitted her grievance against the Appellant was aired before eight other persons (including the then Chairman of the Appellant) at a meeting, which would clearly establish there is no element of anonymity or *whistleblowing* left. Moreover, if Respondent No. 1's argument was accepted, this would create complete chaos when companies wanted to investigate into misappropriations or wrongdoings. If Respondent No. 1's logic was to be adopted, then anytime an inquiry was to be conducted against an employee, all the employee would have to do is claim to be a whistle blower and seek immunity on such basis, thereby halting any inquiry / investigation into wrongdoing. The matter would (as per Respondent No. 1) end there, and no final outcome would ever be able to be reached. We find this argument to be unfathomable and baseless, for which Respondent No. 1 has not provided any legal backing. With utmost respect, we find the Impugned Order has erred in their finding (relevant paras 19 & 20) in this regard, and we hold the issue of whistleblower immunity has absolutely no applicability in the circumstances.

22. Even a perusal of the Public Interest Disclosure Act, 2017, which came back into effect, after lapse of Whistleblower Protection and Vigilance Commission Ordinance 2019, provides a mechanism for whistleblowing by reporting any wrongdoing to the head of the organization, which establishes that even under public law an initial inquiry shall be conducted by the concerned organization itself. It would be preposterous to hold that an inter-organizational inquiry could not be conducted against employees who are suspected of committing serious wrongdoings, as this would open the door for potential criminalities, which goes directly against the purposes for good corporate governance.

23. We next confronted learned Counsel for Respondent No.1 about applicability of the master and servant principle to the matter-at-hand, especially considering the Appellant is governed under the Companies Act 2017 (**"CA 2017"**), Public Listed Companies Corporate Governance Rules 2013 (**"CGR 2017"**) and Listed Companies (Code of Corporate Governance) Regulations 2019 (**"Regulations 2019"**). The Appellants employees are not employed through any

statutory rules of service, but by virtue of contract. Counsel for Respondent No. 1 opposed this suggestion and has primarily kept to the same line of argument about immunity from inquiry / action on the basis of whistleblowing policies. It is trite law that no employee (servant) can be forced upon an unwilling employer (master), for which we first refer to the Supreme Court case of *Muhammad Umer Malik v MCB*[1], which held that a company incorporated under company law not being governed by statutory rules for terms & conditions of service (e.g. the Appellant), would fall within the confinement principles of master & servant. Such an employee could not seek a declaratory decree for forcing an unwilling employer to keep their employment, nor could an injunction in this regard be granted. We refer to the case of *Ms. Serwat Azim*[2] (also cited by learned Counsel for the Appellant) in which a similar situation was discussed, and the Court held the employee (in that case) had received and responded to a charge sheet, which was an employer's prerogative to give, and could not be stopped vide an injunction order. We perused the caselaw cited by Respondent No. 1 (cited above) and find that it primarily relates to service matters (under statutory rules) and the applicability of writ jurisdiction, and as such it offers no assistance here to Respondent No. 1. Accordingly, we find the Impugned Order (reference to Para 16) has also erred in this regard by incorrectly holding the principles of master & servant were not attracted to the case-at-hand.

24. Furthermore, a contract of service in any event cannot be specifically enforced, as per section 21 (a + b) of the Specific Relief Act 1877 (**"SRA"**), which would also then invoke section 56 (f) SRA 1877, under which an injunction itself cannot be granted. This would deem the main Suit No. 54 of 2020 itself to be on legally weak footing, and such injunctive orders we find would not be tenable in the given circumstances. We are fortified by law and precedent as under:

Specific Relief Act 1877:

> **21. Contracts not specifically enforceable.** The following contracts cannot be specifically, enforced:-
>
> (a) a contract for the non-performance of which compensation in money is an adequate relief;
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> (b) a contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or violation of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;
>
> (g) a contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;

[1] 1995 SCMR 453
[2] 2019 PLC (CS) 975

> **56. Injunction when refused.** An injunction cannot be granted:-
> (f) to prevent the breach of a contract the performance of which would not be specifically enforced;

In the case of *Marghub Siddiqi v Hamid Ahmad Khan & Ors*[3] the Apex Court held:

> *"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 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 Saadullah Khan v Al Baraka Bank[4] a learned Judge of this Court (whilst also citing *Marghub Siddiqi case* supra) held:

> *"I have heard both the learned Counsel and perused the record. Insofar as the merits of the case and the allegations leveled against the Plaintiff are concerned, at the very outset, I may observe that since it is a matter of inquiry and procedure which is being conducted by the Defendant bank, hence, any comments or observations as to the conduct of the Plaintiff in transferrin of funds from the account of deceased father to another account may have effect on such proceedings, therefore, I have restrained myself from recording any finding on this issue. I have only confined myself as to whether the injunctive relief being sought could be granted to the Plaintiff in view of the fact that the Defendant Bank is a private organization and not a public functionary. It is not in dispute that Plaintiff entered into a service contract with the Defendant and was employed since 2011. The Plaintiff has not placed on record the service contract and other minute details; however, the same have been brought on record by the Defendant including the Standard Operating Procedure (Disciplinary) issued by the Human Resources Department of Defendant. Clause 3 thereof deals with the said procedure and provides a complete mechanism to be followed. In Clause 3.1.22, it has been provided that the investigation report as well as the inquiry report shall be a confidential documents which shall not be shared with the accused employee. Though the Plaintiff may have a case that such a clause is confiscatory in nature; however, this is not under challenge before this Court, whereas, it appears to be an admitted fact that Plaintiff has entered into a contract and is bound by the terms and conditions of the contract including the inquiry procedure adopted the Defendant Bank. Insofar as the objection that the principle of master and servant will not apply and it is even not applicable in United Kingdom as of now, from where it originated, it would suffice to observe that such contention is not appropriate and is rather misconceived. Merely, for the use of the word master and servant does not ipso facto makes the relationship as that in effect of a master as against a servant or slave. It has now only a notional classification of the relationship which can in the alternative be more appropriately termed as relationship of an employer with his employee. On the basis the employment terms which have been placed on record by the Defendant, it appears that the Defendants have acted strictly in accordance with*

[3] 1974 SCMR 519
[4] 2019 PLC (CS) 940

the terms of employment which were admitted and acknowledged by the Plaintiff at the time of joining such employment and now it is not the prerogative of the Plaintiff to plead against such terms and conditions. The inquiry procedure can be kept confidential as the said terms and at this injunctive stage, this Court cannot go beyond that.

In essence the Plaintiff through these two applications is seeking enforcement of his service contract, and that too beyond the agreed terms and conditions. It is settled law that insofar as a Private Corporation or Company is concerned, a servant cannot be forced upon his Master. The Master can always refuse to continue with the employment of any of his employee and may come forward to pay compensation for breach of contract of services and can always say that the employee and may come forward to pay compensation for breach of contract of services and can always say that the employee would not be reengaged in services. Even otherwise in terms of section 21(b) of the Specific Relief Act, 1877, a contract for personal services cannot be specifically enforced. Whereas, a breach of contract in these circumstances can give rise to only two relief(s) i.e. Specific Performance and Damages and if Specified Performance is barred in law, then the only relief(s) available are damages. Once the Master allegedly in breach of his contract refuses to employee the services, the only right which survives for the employee is the right to damages and nothing else. No relief or decree as sought can be passed, (in absence of any contract for such relief), against the unwilling master that Plaintiff is still its employee. Any consideration in support of such plea, will demonstrate the impossibility of its grant. Plaintiffs service with defendant No.1 is under a contract and not as a right. He has only one remedy and that is to sue for money. Reliance in this case may be placed on the case reported as PLD 1961 SC 531."

In *Muslim Commercial Bank v Muhd. Shafi*[5] it was held:

"14. Admittedly the applicant was employed with the Muslim Commercial Bank Ltd.; which is a Banking Company, registered under the Companies Ordinance (Now Act; 1984) and is not a statutory organization. The employment of the officers of the Bank is contractual in nature.

15. It is act established principle of law that a declaration under section 42 of the Specific Relief Act is not available to contractual employment inasmuch as damages would be an adequate remedy for illegal or unlawful termination of the services by the employer. It is because of this reason that an employee of a private organization does not possess any legal character/status as envisaged by section 42 of the Specific Relief Act. It is also an established principle that illegality in dismissing/terminating the services of a private employee is of no consequence and would not provide a dismissed employee the right to seek reinstatement in service. In support of the above contentions reliance can be placed on R.T.H. Janjua v. National Shipping Corporation, PLD 1974 SC 146 and Anwar Hussain v. Agricultural Development Bank of Pakistan, and others PLD 1984 SC 194. This view has further been affirmed by the Hon'ble Supreme Court in Aurangzeb v. Messrs Gool Bano Dr. Burjer Ankalseria and others reported in 2001 SCMR 909.

16.From the above it is clear that the respondent has no legal character/status to establish his entitlement to seek a prayer of declaration under section 42 of the Specific Relief Act."

In *Muhd Aslam Khan v Int. Industries Ltd.*[6] the learned Judge held:

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[5] 2002 PLC 124

> *"5. The contention raised on behalf of the applicant/worker, at the moment, could not be appreciated. It will be for the applicant to prove that the charge-sheet issued to him and subsequent proceedings were initiated with ulterior motives. Indeed, it will require recording of evidence. However, at this juncture it can be said with certainty that initiating disciplinary proceedings against a worker on account misconduct is a legal right of the employer. An employer cannot be restrained from exercising his rights unless extraordinary exceptional circumstances are place before the Court. In the present circumstances, restraining the employer from initiating disciplinary action against his employee will tantamount to pre-empting his decision which cannot be the scheme of the law as it may give rise to anarchy"*

25. If the Respondent No. 1 has any grievance about being removed from her employment, a suit for damages would be the legally accurate remedy, and not through a declaratory suit for reinstatement along with prayers for permanent injunction against removal. It is relevant to also note Respondent No. 1 herself requested reconstitution of the Appellant's Enquiry Committee (at pg. 81), hence acknowledging acceptance of the process and the Appellant's authority to conduct an enquiry. Her subsequent plea taken in the Civil Suit and this Appeal are contrary to her own previous position, which creates a doubt on the authenticity of her intentions for filing the Suit and obtaining injunctive orders.

26. We do not find any legal justification in granting of injunctions in the matter, nor do we feel the Appellant can be curtailed from carrying out an enquiry against Respondent No. 1 under law.

27. For reasons above-stated, we find the Impugned Order to be contrary to established principles of law, and as such it is set-aside. For purposes of clarification, all the injunction applications (i.e. CMA Nos. 248, 249 & 10916 of 2020) filed by Respondent No. 1 in Suit No. 54 of 2020 from which the Impugned Order arose, stand dismissed. Accordingly, this Appeal is allowed.

The above are our reasons for short order dated 27.02.2025.

JUDGE

JUDGE

M. Khan

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[6] 2007 PLC 350