

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

H.C.A. No.333 of 2015

Date	Order with signature of Judge
-------------	--------------------------------------

Present

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Abdul Ghani Soomro

Ahmed Nawaz Jagirani Appellant

Versus

Sindh Industrial Trading Estate Ltd..... Respondent

09.09.2016

M/s. Malik Naeem Iqbal and Faizan Memon Advocates for the Appellant.

Mr.Samiullah Soomro, Advocate for the Respondent.

Muhammad Ali Mazhar-J: This appeal has been brought to challenge an order passed by the learned Single Judge of this court in Civil Suit No.2127 of 2015 on 20.11.2015 by dint of which the plaint was rejected.

2.The brief facts of the case are that the appellant filed the suit against the respondent for declaration, injunction and damages with the following prayers:-

“(a) Declare that the office order dated 05.11.2015 illegally demoting the plaintiff is without lawful authority, void ab initio, of no legal effect and a nullity in the eyes of the law;

(b) Declare that the plaintiff was validly promoted from BS-19 to BS-20 on regular basis;

- (c) Permanently restrain the defendant, its officer, agents or any of its instrumentalities, from demoting the plaintiff from BS-20 or from withholding any benefits accruing to him by virtue of his grade;
- (d) Permanently restrain the defendant from appointing any person on the posts held by the plaintiff as of 05.11.2015;
- (e) Grant damages of Rs.50 million against the defendant for wrongful demotions along with such further sums as may be determined at the time of hearing/disposal”.

3. The learned counsel for the appellant argued that impugned order shows complete departure from the well settled proposition of law. The learned Single Judge erred while holding that the appellant is a civil servant. The court miserably failed to differentiate between the phrases “Service of Pakistan”, “Public Servant” “Civil Servant” and “the employees of state owned Companies/Corporations”. The appellant was declared civil servant under some misconception of law. Mere control of the government could not bring a company within the sphere of functions in relation to the affairs of Federation/Province and its status cannot be changed. No forum is provided to the employees of the government controlled corporations except a remedy to file a civil suit as admittedly the relationship between the employer and employee is of master and servant. Learned Single Judge committed a serious irregularity while holding that the jurisdiction of the court was barred under Article 212 of the Constitution of Pakistan, 1973. The Civil Servant Act, 1973 has no application over the case of the appellant who is an employee of a state owned company. He further argued that for rejecting the plaint only the contents of the plaint are to be looked into. The appellant had also claimed the damages besides other allowable relief(s) but the plaint was wrongly rejected by holding that the appellant had no cause of action and suit is barred by law. The Respondent establishment has no statutory rules of

service hence they are not amenable to the writ jurisdiction nor their employees are civil servant. The appellant was left with no other remedy except to file a civil suit including the claim of damages against the wrong done to him.

4. The respondent filed the comments in which they have almost admitted contents of various paragraphs incorporated in the memo of appeal. The learned counsel for the respondent straightforwardly admitted that the relationship of appellant and respondent is of master and servant. The respondent has no statutory rules of service nor their employees are civil servant. He did not support the impugned order predominantly the findings that the employees of respondent are civil servants. The respondent with their reply also attached a copy of corrigendum dated 2.6.2016, which reads as under:-

“CORRIGENDUM

In partial modification of this office order No.10580, dated 05.11.2015, the name of Mr. Ahmed Nawaz Jagirani, appearing at Sr. No.1, is hereby omitted and he is restored to his previous position as Deputy Managing Director (BS-20), S.I.T.E Limited, as it is evident from the office record that his case does not fall in the category of Out of Turn Promotion.

Sd/-
(GHULAM MUJTABA JOYO)
MANAGING DIRECTOR ”

5. Heard the arguments. The accrual of cause of action or the suit is barred by law are two distinct attributes and characteristics. It is not necessarily meant that nonexistence of cause of action concomitantly means that the suit is also barred by law. The court has to catch sight of both the component discretely as envisaged under Order 7 Rule 11 C.P.C. The expression cause of action means a bundle of facts which if traversed, a suitor claiming relief was required to prove for obtaining judgment. Nevertheless, it does not mean that even if

one such fact, a constituent of cause of action was in existence the claim could succeed. The totality of facts must co-exist and if anything was wanting the claim would be incompetent. A part was included in whole but whole could never be equated to the part. It is also well understood that not only the party seeking relief should have a cause of action when the transaction or the alleged act was done but also at the time of the institution of the claim. A suitor was required to show that not only a right had been infringed in a manner to entitle him to a relief but also that when he approached the court the right to seek relief was in existence. Cause of action means every fact which would be necessary for plaintiff to prove and it has no relation to the defence that may be setup nor does it depend upon the character of the relief prayed. No doubt still born suit should be buried at its inception to save the time of court on a fruitless litigation but for the purposes of rejection of plaint, the material other than contents of the plaint may also be looked into. The averments contained in the plaint are presumed to be correct for the purposes of application under Order VII, Rule 11 CPC. Lack of proof or weakness of proof in the circumstances of case cannot furnish any justification for coming to the conclusion that there is no cause of action shown in the plaint. Reference can be made to the orders passed by one of us (**Muhammad Ali Mazhar-J**) in the case of **Badal & another v. Mansoor Ahmed Awan & others (SBLR 2010 Sindh 1680)** and **Mst.Bano alias Gul Bano & others v. Begum Dilshad Alam and others. (2011 CLC 88)**.

6. It is an admitted position that respondent (SITE) has no statutory rules of service but it is a Company limited by Guarantee which is clearly reflecting from its Memorandum and Articles of Association. (available at page-35 of the court file). The learned counsel for the respondent fairly conceded to that the SITE has no statutory rules of service nor their employees are civil servants. The relationship between the employer and

employees is of master and servant. He further argued that a corrigendum has been issued according to which the appellant has been restored to his previous position as Deputy Managing Director, SITE.

7. A scant view to the averments of the plaint unequivocally demonstrate that the appellant invoked the jurisdiction of this court in a civil suit for challenging his demotion order being without lawful authority and he also sought declaration that he was validly promoted from BS-19 to BS-20 on regular basis. He also prayed for injunctive relief against the respondent not to demote him from BS-20 or withholding any benefits. In addition thereto, the appellant had also prayed for damages in the sum of Rs.50 million against his wrongful demotion. At this moment, we cannot dispense with a significant element that the appellant was not a dismissed, terminated or retired employee but being in job, he considered some actions against him unlawful or some injustice was allegedly done to him therefore, he preferred to file the suit to save his promotion and question his demotion. It is well settled exposition of law that for the rejection of plaint, only the averments made in the plaint are to be looked into. We have no demur to hold that the plaint amply demonstrates the cause of action and relief claimed by the appellant including damages cannot be considered barred by law.

8. Being aggrieved against some unlawful actions, the civil servants after completing departmental formalities may move to the Services Tribunal likewise, a person who is covered under the definition of workman, he may move to labour court and or NIRC as the case may be to seek redress of his grievance but a person employed in such an organization which has no statutory rules of service or even in a statutory organization or institution having no statutory rules of service, he may file the suit for his redress as obviously his relationship with his employer may be classified and categorized as of master and

servant. Reference may be given to the case of **Sadiq Amin Rehman versus PIAC (2016 PLC 335)** authored by one of us (Muhammad Ali Mazhar-J) in which the niceties and exactitudes of relationship of master and servant have been discussed in detail. In our considerate outlook, the impugned order is primarily rudiment by two judgments that is to say **PLD 1975 Karachi 128** which was affirmed by the apex court in its judgment reported in **PLD 1985 SC 97**. The courts held that government may discharge its functions through a corporation but corporation may still in substance operate as a department of Government. The apex court against the judgment of this court granted leave to appeal to examine whether profits of a company were to be regarded as income of Provincial Government and thus exempt from tax under provisions of Constitution. In nutshell the aforesaid controversy was only confined to the issue of exemption from Federal Taxation in which the point of view of respondent (SITE) was approved but both the judgments referred to above did not declare that employees of SITE Limited are Civil Servants so that they may invoke the jurisdiction of Services Tribunal to safeguard and protect the infringement and transgression of their terms and conditions of service. At this juncture, we would like to annotate that if the view expressed in the impugned order is endorsed then the employees of PIA and other Government owned organizations incorporated under the Companies Ordinance may also be regarded as civil servants which in our considered viewpoint would not be correct exposition and elucidation of law and this will also create multiplicity of proceedings.

9. As a result of above discussion, the impugned order is set aside and this is a fit case to remand the matter back to its original position. Since the appellant has been restored to his previous position as Deputy Managing Director (BS-20) in view of the corrigendum dated 2.6.2016, therefore, both the learned counsel agreed that this High Court appeal may be disposed of

in terms of aforesaid corrigendum and for the reason that the controversy has been resolved between the parties congenially thus no useful purpose would be served to proceed the suit on merits before the learned single judge. The appeal is disposed of along with pending applications accordingly.

Judge

Judge