

IN THE HIGH COURT OF SINDH AT KARACHI
SUIT NO. 524 of 2015

Plaintiff : Mst. Rani,
through: Mr. Muhammad Ali Lakhani Advocate.

Defendants : Pakistan International Airline Corporation
through Mr.Aamir Malik, Advocate for
defendant No.1.

Date of hearing: 10.12.2016.

Date of announcement: 09.02.2016

ORDER

SALAHUDDIN PANHWAR, J: Before deciding the interlocutory applications judicial propriety demands to examine and decide the question of maintainability of instant suit first, as seriously agitated by defendant's counsel.

2. Precisely, the facts are that plaintiff has filed suit for *Declaration & Permanent Injunction*, contending therein that the plaintiff, prior to her dismissal from service, was serving with defendant no.1 in capacity of a member of the *Cabin Crew*. She was served with *letter of explanation* dated 28.5.2013 whereby calling for a clarification as to a certain allegation of *shoplifting* ; she submitted a *response* but PIAC proceeded to issue a *show cause notice* dated 11.7.2013 alongwith statement of allegations to which she (plaintiff) submitted *response* dated 14.6.2013. The *authority*, however, not accepted the response of the plaintiff and served her with a notice of enquiry dated 18.7.2014 whereby calling upon the plaintiff to *partake* and participate to which she responded through letter dated 25.7.2013. It is further case of the plaintiff that by conducting a *sham* inquiry the defendant no.2 proceeded to conclude the inquiry and submitted enquiry report dated 28.8.2013 for approval wherein recommending that '*We are of*

the opinion that a lenient view may be taken against her at this time'.

However, PIAC proceeded to issue a *Letter dated 24.9.2013* whereby dismissing the plaintiff from her services with PIAC. The plaintiff while claiming and alleging her dismissal as against certain *fundamental rights*; violation of law and to have been passed by an incompetent person.

In said back ground, the plaintiff prayed as:

- A. "Letter' dated 24.9.2013 bearing 'LAOO' No.CF.092013087/SP-1902/1984 is illegal, *malafide*, has been issued in the absence of lawful authority and /or jurisdiction, and without the judicious application of mind, and *ultra vires* of Articles 4, 9 and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, as also Section 24-A of the General Clauses Act and the Pakistan International Airline Corporation Employees (Service & Discipline) Regulations of 1985;
- B. In furtherance thereof, declare that the 'Letter' dated 24.9.2013 bearing LAOO' No.CF-092013087/SP-1902/1984, does not tantamount to a unilateral repudiation of the plaintiff's contract of service with the defendant No.1;
- C. As a result of 'I' and 'ii', declare that all proceedings culminating in the issuance of 'Letter' dated 24.9.2013 bearing 'LAOO' No.CF-09201087/SP-1902/1984, are illegal, non-judicious, and *ultra vires* the law;
- D. Declare that the 'Review' dated 02.12.2013 filed by the plaintiff as against the 'Letter' dated 24.9.2013 bearing 'LAOO' No.CF-092013087/SP-1902/1984, by virtue of having remained un-responded to for a reasonable period of time, stands accepted by the efflux thereof;
- E. Without prejudice to the relief (s) as prayed for herein above, and strictly as an alternative, grant a Mandatory Injunction directing the Defendant No.1 to conduct a fresh inquiry as against the Plaintiff whilst ensuring that it acts within the parameters and dispositions of law;
- F. For the purpose of 'v' , constitute a transparent and independent 'Inquiry Committee' clothed with the powers as supplied to a body so constituted under and through the Pakistan International Airline Corporation Employees (Service & Discipline) Regulations of 1985;

G. Pending adjudication of the cause agitated herein, grant a Permanent Injunction restraining the defendants, and/or any other person (s) acting under them, through them, and/or on their behalf from causing any hindrances and/or interruptions in the plaintiff's discharge of her duties as a member of the Cabin Crew. Resultantly, suspend the operation of the 'Letter' dated 24.9.2013 bearing LAOO' No.CF-092013087/Sp-1902/1984;

H. Grant any other relief (s) as may be deemed appropriate, necessary and/or just in the given circumstances of the case

3. At the outset learned counsel for plaintiff while addressing the issue of maintainability has argued that the suit of the plaintiff is very much maintainable as there has been violation of fundamental rights and even violation of the law is involved; though the status of plaintiff and defendant is one of '*master & servant*' but this alone would not be sufficient to disentitle the plaintiff to maintain the suit. Reliance was placed on the case laws, reported as PLD 2010 SC 676; 2009 PLC (CS) 28 ; 1997 CLC 1936; 2007 PLC (CS) 1046; 2000 PLC (CS) 796; 2004 CLC 1029; PLD 2012 SC 312; 2015 SCMR 1188; 1989 SCMR 353; 2004 SCMR 1820 and PLD 2001 SC 553.

4. In contra, learned counsel for defendant *inter alia* argued that no question of *public importance* is involved nor *any violation of law* is there because she (plaintiff) was provided proper opportunity including a right of hearing hence *exceptions* of law is not available for the plaintiff to maintain the suit; she not only admitted theft but rendered written apology; Suit is barred under Industrial Relations Act 2013 so also Section 21 of Specific Relief Act. Reliance was placed on the case laws reported as PLD 1971 Lah. 748; PLD 1992 K 190, PLD 1992 SC 531 and PLD 2010 SC 676.

5. I have heard the respective sides and have carefully examined the available record. The status of the defendant to be a *Corporation* having

no *statutory rules* is not disputed *rather* is admitted one. Thus, relationship between the present plaintiff (an employee of corporation) and defendant (corporation) could be nothing but that of '*master and servant*'. Though, no reference is required for a well-established *principle of law* however the reference to the case of '*PIA Corporation v Suleman Alam Rizvi (2015 SCMR 1545)*' is made hereunder:-

8. There is a plethora of judgments to the effect that no petition lies in the matters *pertaining to the terms and conditions of service of employees of a Corporation, where such terms and conditions are not governed by statutory rules.* It is an admitted position that the terms and conditions of the employees of the appellant Corporation are not governed by statutory Rules, *and is now well settled that the relationship between the appellant Corporation and its employees is that of a 'master and servant'.* The case of *Hameed Akhtar Niazi (supra)* is of no avail to the private respondents, as the same, as discussed above, pertains to the matters relating to the civil servants, whereby the relationship and terms and conditions of service are governed by Civil Servants Act and such relationship is not that of master and servant. The private respondents remained indolent in the matter and approached the Federal Service Tribunal only after the Tribunal's judgment dated 28.2.2004, being relied upon by them for seeking benefits, was passed by the Federal Service Tribunal. There proceedings before the Tribunal abated as noted above, and *thus the only course left to the said respondents was to file a suit for redressal of their grievance."*

(Underlining is supplied for emphasis).

The *relationship of master & servant* is always created by two where one (the servant) agrees to work under *control and authority* of the other (the master) against certain agreed (*agreed by both master & servant*) charges (terms). At this juncture, let's take a little help by referring to Black's Law Dictionary (Ninth Edition) wherein the term '*master & servant*' has been defined as:

'The relation between two persons, one of whom (the master) has authority over the other (the servant), with the power to direct the time, manner, and place of the services. This relationship is similar to that of principal and agent, but that terminology applies to employments in which the employee has some direction, while the servant is almost completely under the control of the master.

Since, creation of such relationship is an outcome of 'consents' of two for a lawful object hence this relationship in my view cannot be termed to be against any of the injunctions of *Islam* particularly when it (relationship) is not for an *unlawful object* or it (relationship) does not infringe the *Fundamental Rights* . Needless to mention that to work under somebody at certain place and for certain period cannot *in any way* be termed as a denial to *fundamental rights* unless it falls within meaning of 'slavery, forced labour, cruel nature or incompatible with human dignity'(those defined and protected by Article 11 of Constitution) else no one shall be entitled to engage any person for working at his house, shop, factory e.t.c. Thus, the term '*master & servant*' makes it clear that one (master), *no doubt*, shall have control and authority over other (servant) **to direct the time, manner, and place of the services** hence it should not cause any confusion that such authority or power shall cause any prejudice to *fundamental rights* of servants, hence unreported case of **Sadiq Amin Rahman v. Pakistan International Airlines Corporation & others** is on distinguishable facts and circumstances. Accordingly, this *relation* cannot be interpreted so as to compel an *employer* to continue such *relation* in the events:

- i) *where employer does not want employment (services) of servant anymore;*
- ii) *where employee is no more fruitful for the employer;*
- iii) *the purpose for which services were required is no more existing;*

6. Worth to keep in mind that the above principle shall equally apply and nor it can be interpreted so as to compel one (servant) to continue such relationship against his wishes else the *outcome* would amount to compel two to continue a relationship against their *consents* or *purpose of such relationship* which, *in no logical and legal sense*, can be stamped because this shall, *in my view*, would change the term '*master & servant*' into '*depriving two of their liberty (consent)*'. The term '*slavery*' is defined by Black's Law Dictionary *Ninth Edition* as:

*'A situation in which one person has absolute power over the life, fortune, and **liberty of another**'.*

This has been the back-ground and object which made the honourable Apex Court to conclude that in the event of a **wrongful termination** the servant would not be entitled to seek *reinstatement* but a suit for *damages*.

In case of UBL v Ahsan Akhtar (1998 SCMR 68)

*"10.....The facts of the instant case warrant interference by this Court at this stage. It had been consistently held by this Court *inter alia* in the cases referred to hereinabove in para. 8(i) to (viii) that relationship between a Corporation and its employees was that of master and servant and that the remedy for wrongful termination of service of an employee was a suit for damages and not relief for reinstatement."*

In another case of Pakistan International Airline Corpn. V. Tanwee-ur-Rehman (2010 PLD SC 676), it has been held as:

18.....Therefore, question for consideration would be as to whether in absence of any breach of statutory provision, the employees of appellant-corporation can maintain an action for reinstatement etc this Court when faced with the same question in the case of Principal Cadet College Kohat and another v. Mohammad Shoab Qureshi (PLD 1984 SC 170), held that "where the conditions of service of an employee of a statutory body are governed by statutory rules, any action prejudicial taken against him in

derogation or in violation of the said rules can be set aside by a writ petition; however, where his terms and conditions are not governed by statutory rules but only by regulations, instructions or directions, which the institution or body, in which he is employed, has issued for its internal use, any violation thereof will not, normally, be enforced through a writ petition". Likewise, in *Raziuddin v. Chairman PIAC* (PLD 1992 SC 531), this Court has held that 'the legal position obtaining in Pakistan as to the status of employees of the Corporation seems to be that the relationship between Corporation and its employees is that of Master and Servant and that **in case of wrongful dismissal of an employee of the Corporation, the remedy, is to claim damages and not the remedy of reinstatement;** however, this rule is subject to a qualification, namely, if the relationship between a Corporation and its employees is regulated by statutory provisions and if there is any breach of such provisions, an employee of such a Corporation may maintain an action for reinstatement'. It was further held that ' the PIAC has the regulations which have been framed by the Board of Directors of the PIAC, pursuant to the power contained in section 30 of the Act; however, there is nothing on record to indicate that the above regulations have been framed with the previous sanction of the Central Government or that they were gazetted and laid before the National Assembly in terms of section 31 of the Act; **in this view of the matter, the Regulations cannot be treated as statutory rules of the nature which would bring the case of the PIAC within the above qualification as to entitle the employees of the PIAC to claim relief of reinstatement on the ground of breach of the statutory provisions**'. The above view has been reiterated in *Habib Bank Ltd. v Syed Zia-ul-Hassan Kazmi* (1998 SCMR 60) and *Pakistan Red Crescent Society v Nazir Gillani* (PLD 2005 SC 806). In the last mentioned pronouncement, it has been held that 'an employee of a Corporation in the absence of violation of law or any statutory rule could not press into service the Constitutional jurisdiction or civil jurisdiction for seeking relief of reinstatement in service; his remedy against wrongful dismissal or termination is to claim damages'.

(Underlining is provided for emphasis)

7. I have also sailed through the judgments, *referred* by the plaintiff's side and I do agree with the conclusion that the term '*master & servant*' shall not cloth the *master* to act *whimsically, capriciously or in*

violation of principle of natural justice or well settled norms of law and justice because the term 'master' does empower him/her to direct time, manner and place of the services only but in no way allows him to control life or those rights, known as fundamental rights or falling within meaning of natural justice. It is pertinent to mention here that if such right is created by a prescribed procedure even for internal affairs of the Corporation itself yet termination/removal thereof shall also require the certain procedure which, however, shall not include a right to claim reinstatement.

In the case of Corruption in Hajj Arrangements in 2010 (PLD 2011 SC 963) it is held that:

“20. The judiciary including the High Courts and the Supreme Court is bound to protect and preserve the Constitution as well as to enforce fundamental rights conferred by the Constitution either individually or collectively, in exercise of the jurisdiction conferred upon it either under Article 199 or 184(3) of the Constitution.”

The case laws, referred by the counsel for the plaintiff, do speak about exceptions but there is no clear and contrary view to the determined question that *'in matters of master & servant the jurisdiction lies with Civil Court'*. On the other hand, *latest* view of the Honourable Supreme Court of Pakistan on this question, in case of Tanweer-ur-Rehman (2010 PLD SC 676) & that of Suleman Alam Rizvi (2015 SCMR 545), leaves me with no exception but to follow the same within meaning of Article 189 of the Constitution which reads as:-

'189. Decisions of Supreme Court binding on other Courts. – Any decision of the Supreme Court shall, to the extent that it decides a question of law, or is

based upon, or enunciates a principle of law, be binding on all other Courts in Pakistan.'

In the case of *Mirza Shaukat Baig v. Shahid Jamil* (PLD 2005 SC 530) it is

held that:

30.that the judgments of this Court being apex Court are binding upon the learned High Court in the view of the provisions as enumerated in Article 189 of the Constitution of Islamic Republic of Pakistan which, inter alia, provides that any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or initiate a principle of law shall be binding on all other Courts in Pakistan and the learned Lahore High Court is no exception to it. It is well-entrenched legal proposition that "the ultimate responsibility of interpreting the law of the land is that of the Supreme Court. Therefore any decision of the Supreme Court shall to the extent that it decides a question of law or is based upon or enunciates a principle of law is binding on all other Courts in Pakistan. A decision in Suo moto Shariat review petition followed by Supreme Court would be binding on all other Courts in Pakistan. Law declared by Supreme Court becomes the law of the land and is binding not only on all Courts in Pakistan but also on all functionaries of the Government.' (PLD 1971 SC 324, PLD 1985 SC 228. It is worth mentioning here that "where a judgment of Supreme Court has become effective as from a specified date, it would be binding not only on High Courts and Courts subordinate to it but also on all other Courts of Pakistan from that date. Therefore, High Court rightly preferred Supreme Court decision over decision of Full Bench of High Court. The decision of Supreme Court cannot be ignored on the ground that certain grounds were not argued before Supreme Court.' (PLD 1987 Lah.71, 1981 SCMR 520, PLD 1973 Lah. 1). 'Apart from the Constitutional obligation imposed upon the Courts even th4e propriety demands that the Courts must follow such a law without any hesitation. Unless the law so declared is altered or overruled by the Supreme Court itself, the High Court has no option but to follow it. "PLD 1975 Lah.65, PLD 1964 Peshawar 250).

(Underlining is supplied for emphases).

8. The conclusion from above discussion, leaves me with no other conclusion but to say that instant suit, *confined to declaratory decree & Mandatory relief* alone, is not sustainable before this Court.

9. Though, the above discussion leaves nothing to discuss the merits of the case anymore. However, the pleadings of the plaintiff itself would show that *prima facie* no violation of law is there because she (plaintiff) was served with explanation; followed by show cause; inquiry; even final show cause and an opportunity of *personal hearing*.

10. In result of the above discussion, the plaint of the plaintiff is hereby rejected being not maintainable before this Court. However, this shall not prejudice the rights of the plaintiff to seek *damages* if law permits and she *legally* establishes.

sajid

JUDGE