

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2298 of 2016**Agha Abdu Munaim ----- Plaintiff****Versus****Sindh Industrial Trading Estate
and others ----- Defendants****For hearing of CMA No. 15238/2016.****Date of hearing: 28.11.2016.****Plaintiff: Through Mr. Mohsin Shahwani Advocate.****Defendants Through Mr. Pervaiz A. Memon Advocate.****ORDER**

Muhammad Junaid Ghaffar, J. Through instant Suit the Plaintiff seeks a Declaration that Office Orders dated 21.10.2016 and 25.10.2016 are illegal, malafide and discriminatory, whereby, the Plaintiff has been transferred from the post of Estate Engineer, SITE, Kotri, to Estate Engineer, SITE, Karachi, and by giving the additional charge to another officer, as Estate Engineer, SITE, Kotri. Through listed application the Plaintiff seeks suspension of the said orders pending final disposal of this Suit.

2. Learned Counsel for the Plaintiff has contended that the Plaintiff was appointed as Assistant Engineer in BPS-17 on 6.7.1995 and thereafter, was promoted to BPS-18 on 4.9.2003 and suddenly on 23.2.2016 the Defendant No. 6 who is a Grade 14 officer was posted in place of the Plaintiff who was then working as Estate Engineer Site,

Kotri. Per learned Counsel as per seniority list dated 6.11.2015 the Plaintiff was No. 2 in the list, whereas, the Defendant No. 6 was appointed in 2005 and was a Grade 14 officer. Learned Counsel submits that the Plaintiff being disappointed with the Transfer Order dated 23.2.2016 approached through letters, the Hon'ble Chief Justice of Pakistan, and High Court of Sindh, Secretary, Services and General Administration Department and the Management of Defendants, whereafter, the Plaintiff was issued a personal hearing and Defendant No. 3 who is the Secretary of Defendant No. 1, recommended that in the given facts the grievance of the Plaintiff was based on logical and realistic grounds and thereafter, with the approval of the competent authority, the Plaintiff was once again posted as Estate Engineer, SITE, Kotri and Defendant No. 6 was transferred back to his respective Grade. Per learned Counsel the Defendants No. 2 to 5 were not happy with the transfer of the Plaintiff and were causing hindrance in the smooth working and once again vide Office Order dated 1.9.2016 the Defendant No. 6 was posted as Incharge Water Supply Site, Kotri, Phase 1 and 2, with further directions to report directly to the Chief Engineer instead of the Plaintiff and was also issued a Show Cause Notice on the same date i.e. 1.9.2016, which was immediately replied. Learned Counsel submits that thereafter, the impugned Office Order(s) dated 21.10.2016 and 25.10.2016 have been issued whereby, once again the Plaintiff has been unnecessarily transferred and additional charge of his assignment has been given to an Officer who is posted in Site, Nooriabad. Learned Counsel has contended that as per Rules of Defendant No. 1 for making transfers, there has to be a six Members Committee and has referred to Articles 4(1)(5), 2(b),(h) and 6(3) of the SITE Company Employees (Service Structure Articles, 2013) by further contending that while carrying out such transfers, no approval was taken from the Board of

Governors or the Selection Committee and the Chief Engineer (Defendant No. 4) is not the competent authority to effect such transfers. Learned Counsel has further contended that Defendants in flagrant violation of the directions of the Hon'ble Supreme Court in respect of Out of Turn promotions, formed a Committee and under the garb of forming such Committee, the Plaintiff as well as other honest Officers have been victimized; hence, impugned orders are liable to be suspended forthwith. In support of his contentions he has relied upon *Director General Health Services, NWFP Peshawar and others V. Dr. Nizakat Iqbal Karim and another (2000 SCMR 67)* and *Province of Sindh and others V. Ghulam Fareed and others (2015 PLC (C.S) 151)*.

3. On the other hand, learned Counsel for all the Defendants submits that now Show Cause Notice has been issued, whereas, instant Suit is not maintainable as it is a Public Limited Company and the relationship is to be governed by the principles of Master and Servant, hence, the Plaintiff is not entitled for any relief. In support learned Counsel has relied upon *The Trustees of the Port of Karachi V. Muhammad Ismail (1985 MLD 262)* and *Muhammad Yousuf Shah V. Pakistan International Airlines Corporation (PLD 1981 SC 224)*.

4. I have heard both the learned Counsel and perused the record. Before proceeding further, first I would like to take note of the fact that in this matter there are six Defendants and Defendants No. 2 to 5 are the Managing Director, Secretary, Chief Engineer and Chief Administration Officer of Defendant No. 1, who all are the Officers against whom the Plaintiff has pressed his grievance, whereas, Defendant No. 6 has been sued as an individual who is an Officer of Grade-14 and time and again has been posted on a position for which apparently he does not seem to be entitled. But surprisingly, all the Defendants have engaged the same Counsel, whereas, the response /

counter affidavit in this matter has been filed by Defendant No. 6 on his behalf and so also on behalf of Defendants No. 1 to 5. This to me appears to be very surprising as to how could the officials i.e. Defendants No. 1 to 5 have chosen to be represented through Defendant No. 6 before this Court against whom there are serious allegations and reluctantly, I may observe that all the Defendants appear to be in hands in gloves and collusion in so far as instant proceedings are concerned. This is a case of gross negligence and misuse of authority and discretion vested in these defendants by virtue of their office, which office is of sacred trust. In no manner they are authorized to abdicate their right of defence as officials of Defendant No. 1, into the hands of Defendant No. 6, who is a Defendant in his own name and capacity against whom serious allegations have been attributed. As could be seen the precise case of the Plaintiff is that Defendant No. 6 who is allegedly a relative of Defendant No. 4, (being Brother in Law) is being favoured by the official Defendants and by appointing Defendant No. 6 as their authorized person and to file affidavit before the Court, the Defendants No. 2 to 5 have made mockery of their office. This alone is an act, which entitles the Plaintiff to the relief being claimed through listed application at least to the extent of his stance that they are in collusion with each other. The Defendant No. 1 is a concern which is supposed to be the Manager of the biggest Industrial Estate in the entire Country, and the attitude of Defendants No. 2 to 5 in contesting this matter, leaves serious doubts about their integrity, competence and nonresponsive attitude towards the Court in defending such serious allegations. It is high time that the Ministry of Industries, Government of Sindh, take note of this attitude and conduct, and initiate necessary measures, by taking cognizance so as to at least avoid it in future. Accordingly Office is directed to send

copy of this order to the Chief Secretary, Government of Sindh, and Secretary, Ministry of Industries, Government of Sindh for appropriate action on their part.

5. Insofar as the objection to the effect that the relationship in this matter is to be governed under the principle of Master and Servant is concerned, it has to be understood that there is a marked difference insofar as employment with a Government and/or a Statutory Corporation (hereinafter referred to as "Corporation") and a private organization. There may be a situation that an employee of a Corporation can be aggrieved of the conduct and the manner in which his employment has been or is being regulated and or terminated. The element of governance should be there as after all a Corporation working under the control of the Government has an element of public duty to perform and must act within the mandate of its rules be it statutory or otherwise. However, an employee of a private concern cannot be imposed upon his employer by taking shelter in the garb of case law (though very little) which has been developed in respect of Corporation(s), whereby, it has been held that management of a Corporation cannot exercise powers at their own discretion in contravention or infringement of fundamental rights envisioned under the Constitution and that there is no concept of unfettered discretion in public law, whereas, all public power is in the nature of trust and is to be exercised reasonably, honestly, fairly and justly. **(See *Federation of Pakistan v. Muhammad Aslam*-1986 SCMR 916, *Shahid Mahmood v. Karachi Electric Supply Corporation Ltd*-1997 CLC 1936 & *Sadiq Amin Rahman v. Pakistan International Airlines Corporation*-2016 PLC (CS) 335).** Accordingly the objection raised by the learned Counsel for the defendants is hereby overruled.

6. Coming to the merits of this case, though in matters of transfer and postings specially in a Government owned organization, there is no privilege or vested right of an employee; neither there is a permanent lien in this regard, however, notwithstanding this, the Government owned organizations are required to act strictly in accordance with the Rules and Regulations and so also are required to abide by the pronouncements of the High Court and the Hon'ble Supreme Court in such matters. When the facts of this case are examined, it appears that the first transfer was affected through Office order dated 23.2.2016 issued by Defendant No. 3 which reads as under:-

“S. I. T. E. Ltd.
I.O.C.

No. SITE/1130

Dated: 23-02-2016

OFFICE ORDER

With the approval of the Managing Director, Mr. Imran Khan Sahito, Sub-Engineer, SITE, Ltd. Karachi, is hereby transferred and posted at SITE Kotri, Phase-I with immediate effect and until further orders. He will look after the work of Incharge SITE Kotri.

Sd/-
SECRETARY
23.2.”

7. Perusal of the aforesaid order reflects that Defendant No. 6 being a Sub-Engineer, SITE, Limited, Karachi, was transferred and posted at Site, Kotri Phase-I to look after the work as Incharge Site, Kotri. Office Order dated 6.11.2015 (Page 95) reflects that he was an officer of Grade-14 and could not have been posted as Incharge Site, Kotri. It further appears that when the Plaintiff agitated against such action taken by the Defendants, the Defendant No. 3 granted a personal hearing to the Plaintiff, and after going through his representation, he came to the following conclusion as reflected from the note sheet available at (Page 107) which reads as under:-

“Plaintiff attended the office of undersigned personally on 25.3.2016, the arguments made by him and facts narrated by him during his personal appearance were based on logical and realistic grounds. He legally justified his case. His case presented through his application is hereby strongly recommended and submitted for approval.”

8. Pursuant to such observations and recommendation of Defendant No. 3, the Plaintiff was once again transferred back as Estate Engineer, SITE, Kotri, viz. Defendant No. 6 who stood transferred and thereafter, it appears that the Plaintiff was subjected to queries and was also issued a Show Cause Notice on 1.9.2016 which reads as under:-

“S.I.T.E LIMITED

I.O.C.

No. SITE/6062

Dated: 01-09-2016

Mr. Agha Abdul Munaim,
Estate Engineer,
SITE Limited,
Kotri.

Subject: SHOW CAUSE NOTICE

The Managing Director has taken notice in particular and noticed in general that the electricity bills of the water pumping stations are processed in an unserious mode which are not paid within due date that results the substantial amount of late payment surcharge. This act leads to the negligence in performing the official responsible and tantamount to the major penalty due to the financial loss suffered by the organization. The Managing Director in pursuance of the powers conferred upon him under SITE Service rules has directed to issue show cause to you due to your irresponsible attitude. SITE Limited is suffering heavy monetary loss as well as awkward position created when the electricity is persistently disconnected due to nonpayment of electric bills within due date.

2. Further you initiated the case of allotment of Residential Plot for yourself as well as for other staff members knowing facts that land in SITE employees housing was not available, but you recommended the cases for allotment concealing the facts, it was also noticed that after allotment, the residential plots were earmarked within the premises of office and staff colony of SITE Limited which comes under the misconduct and submittal of wrong information, which attract the major penalty to be imposed on you.

3. You are therefore called upon to show cause within a week that why this negligence was committed on your part and why the disciplinary action may not be taken against you. You are also required to submit the detail of late payment surcharge along with paid copies of electric bills for last 12 months as well as detail of plots earmarking.

Sd/-
CHIEF ENGINEER”

9. Perusal of the aforesaid Show Cause Notice reflects that same has been issued by Defendant No. 4 against whom there are allegations that he being relative of Defendant No. 6, is in collusion with him, and therefore, discriminatory treatment is being meted out to the Plaintiff. As discussed hereinabove, this Defendant No. 4 has chosen to be represented by Defendant No. 6 and has therefore, foregone his right to defence in his individual capacity. Moreover, perusal of the Show Cause Notice as above reflects that nothing has been stated as to under what provision or Rules and Regulations the same has been issued, and what in fact, is the precise allegation against the Plaintiff. Nonetheless, the same has been replied and before any order could be passed the two impugned orders have been issued, whereby, the Plaintiff has once again been transferred and his assignment is given to an officer on additional charge. Such conduct on the part of the Defendants appear to be based on malafides and discriminatory, inasmuch as the Plaintiff is being frequently transferred to and from SITE Ltd. Kotri, and there appears to be no plausible explanation and or justification insofar as Defendants No. 2 to 5 are concerned, as unfortunately they have chosen to defend themselves through Defendant No. 6. It further appears that the precise allegation in the Show Cause Notice was to the effect that electricity bills of Water Pumping Station were processed in unserious mode and were not paid within due dates which resulted in substantial amount of late payment charges, and consequent losses. I am surprised as to how an allegation can be justified without there being any details of the bills paid late, and accrual of late payment charges without any disclosure to that effect in the Show Cause Notice as reproduced hereinabove. Nothing has been stated that, though funds were arranged, but due to negligence the Plaintiff failed to deposit bills within time. There is nothing in the counter affidavit of the Defendants, even

otherwise, so as to justify the frequent transfer of the Plaintiff. Though it is easy to allege malafides, but difficult to prove at the trial stage, however, this Court in the given facts cannot be divested of its inherent powers to take note of the conduct of Government departments functionaries. The element of malafides can be inferred from the conduct of such Government functionaries which is clearly reflective in this matter. After all the Courts need to secure ends of justice and employees of defendant No.1 cannot be left at the will and desire of defendant No.2 to 5, who in the present case have apparently acted beyond the mandate of law. The order(s) passed in this matter appear to be without any rhyme or reason and or justification, coupled with the fact that the answering defendants have abdicated their right to contest such allegations of the plaintiff. In the circumstances, it appears that the Plaintiff has made out a prima facie case and balance of convenience also lies in his favour, whereas, irreparable loss would be caused if the injunction is refused.

10. In view of such position, by means of a short order dated 28.11.2016, listed application was allowed by suspending impugned Orders (i) No.7216 dated 21-10-2016 (ii) No.7236 dated 25-10-2016, passed by Defendant No.4/Chief Engineer SITE. Above are the reasons thereof.

J U D G E

ARSHAD/