

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
EXECUTION No. 8 / 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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Decree Holder: **Tariq Hussain Mahesar through Mr. Shoa-un-Nabi along with Mr. Muhammad Ehsan Advocates.**

Judgment Debtors: **Pakistan State Oil through Mr. Javed Asghar Awan Advocate.**

For hearing of Execution Application

Date of Hearing: **08.02.2018.**

Date of Order: **15.02.2018.**

This Execution Application arises out of Judgment dated 25.11.2016 and Decree dated 21.12.2016 passed in Suit No. 2027/2016. It appears that the Decree Holder was aggrieved by a termination letter dated 07.09.2016 issued by the Judgment Debtor No. 2 and after passing of the Judgment and Decree, it is the case of the Decree Holder that entire benefits as decreed have not been paid hence this Execution Application.

2. Learned Counsel for the Decree Holder has contended that 3 Issues were settled by the learned trial Court out of which Issue No. 2 was answered in the affirmative, whereby, it was held that Decree Holder is entitled for service benefits as required under the law on account of length of service. Per learned Counsel only provident fund has been paid, which in fact was contributed by the Decree Holder himself, whereas, other retirement benefits including gratuity, pension, medical benefits etc. have been denied. According to the learned

Counsel, the Judgment and Decree has attained finality as no Appeal has been preferred therefore, this Execution Application be allowed. Learned Counsel has relied upon Appointment Letter dated 20.10.1988 and Clause 14 thereof which according to the learned Counsel deals with termination of an employee and provides that such termination entitles the employee full benefits as per Company policy.

3. On the other hand, Learned Counsel for the Judgment Debtors has contended that this is a case of termination due to misconduct and in the Suit the Plaintiff had not pressed the issue regarding his challenge to the termination with a further statement that he does not want any reinstatement and therefore, this Execution Application is misconceived as the Decree Holder has been paid of with his entire provident fund including the share contributed by Judgment Debtors. Per learned Counsel, insofar as gratuity is concerned, that only matures on death of an employee, whereas, other retirement benefits being claimed are only available when employee is honorably retired. However, in this case he has been terminated and therefore, there is no question of any retirement benefits. Learned Counsel has referred to various Rules and Company Policy placed on record and has contended that the Judgment Debtor has complied with the Decree in question by paying the lawful benefits and for this reason no appeal was filed. He has prayed for dismissal of the Execution Application.

4. I have heard both the learned Counsel and perused the record. In the Suit following issues were settled:-

- “1) Whether the termination letter dated 07.09.2016 was lawful and issued after compliance of legal requirements?
- 2) Whether the Plaintiff is entitled for service benefits after termination?

3) What should the decree be?"

5. The issues were answered as follows as per reasoning contained in the Judgment:-

"Issue No. 1 _____ Plaintiff conceded on account of having no intention to be reinstated.

Issue No. 2 _____ Affirmative.

Issue No. 2 _____ Suit decreed. "

6. On perusal of the Judgment it appears that the operative part is contained in Para 17 which reads as under:-

"17. The cumulative effect of the facts and circumstances of the case and the gravity of the allegation, I deem it appropriate to dispose of this suit along with pending applications with the observation that since the Plaintiff's service was terminated vide impugned Termination Letter 07.09.2016 and that he has no intention to be reinstated, he is entitled for service benefits as required under the law on account of the length of service."

7. The learned trial Court in view of the desire of the Plaintiff that he has no intention to be reinstated has come to the conclusion that he is entitled for service benefits as required under the law on account of the length of service. Therefore, the moot question before the Executing Court is only to the extent of the entitlement of service benefits upon termination as required under the law. The Counsel for the Decree Holder has referred to Clause 14 of the Service Contract dated 20.10.1988 dealing with the termination which reads as under:-

"TERMINATION

Your service can be terminated by the Company without assigning any reason whatsoever, on one month's written notice of termination of your service or on one month's gross salary in lieu thereof together with full benefits as per your entitlement. Likewise you can also terminate your service by giving the company one month's written notice of resignation from service or payment of

one month's gross salary in lieu thereof. For the purpose of this clause the expression "gross salary" shall be the same as defined in the accompanying Gratuity Scheme."

8. Perusal of the aforesaid Clause reflects that this in fact deals with a simplicitor termination without assigning any reason whatsoever, and while doing so the company is required to pay one month's gross salary in lieu thereof together with full benefits as per entitlement. Similarly, it also provides for an employee to terminate his service contract by giving one month's written notice of resignation or payment of one month's gross salary in lieu thereof, whereas, in this matter the Plaintiff was terminated not under this clause but because of misconduct after carrying out a proper inquiry and providing an opportunity to the Decree Holder. The termination letter specifically refers to Clause 3.1.7, 3.1.9, 3.4.1 and 3.7.1 of the Companies Business Principles and Ethics Policy whereas, the service were terminated with immediate effect. This clearly reflects that the termination was not simplicitor by making payment of one month salary but was done as a punishment. Such termination was not under clause 14 *ibid*, as in that case the Decree Holder would not even have been in any position to challenge the same through a Civil Suit. The Decree Holder was terminated from service on account of termination as "*punishment*" and was not compulsorily retired, whereas, *dismissal* and *termination* are often used interchangeably. In fact the Decree Holder's termination can be termed as "*for cause termination*" i.e. for certain acts which he committed during employment against the policy and interest of the employer. For reasons best known to the Decree Holder, he has himself not pressed issue No.1 in this context, nor any request was made or granted to convert the termination into compulsory retirement, as is normally done in such cases when reinstatement is not being pressed. The conduct of

the Decree Holder has put himself in such a situation for which he has to blame himself and none else. This being a cause termination, he was given ample opportunity to contest the show cause as well as inquiry as provided in the rules, and he being unsuccessful impugned the same through the Suit and at the final stage he withdrew from his prayer for reinstatement and accepted the termination for cause.

It further appears that insofar as the Company Policy and Rules regarding the service of retirement benefits are concerned, the payment of gratuity is to be made only on death, voluntary, premature or compulsory retirement. Similarly, under the Human Resource Manual, Chapter 20 Page 26 it has been provided that pension is payable either on formal retirement or on early retirement. Whereas, the medical benefits are provided in Chapter 5 Page 1 of the Human Resource Manual and in Clause 31.3 it is also provided that such medical facility is for those employees who have served the Company for at least 20 continuous years and have retired. All these relevant clauses have been referred to by the learned Counsel for the Judgment Debtors and these have not been denied on behalf of the Decree Holder. It is to be appreciated that there are no statutory service rules of the Judgment Debtor whereas; the Decree itself provides that the Decree Holder is entitled to service benefits as per law. I have not been assisted by the learned Counsel for the Decree Holder that any such law or service rules other than what has been placed on record is applicable to the case of Decree Holder, whereas, the learned Counsel solely relied upon Clause 14 of the Service Contract as reproduced herein above. However, as already stated the said clause do not apply in the instant case for grant of any service benefits as admittedly the Decree Holder's service

has not been terminated simplicitor with notice pay but for reasons duly assigned in the inquiry report and findings thereon.

9. It may also be relevant to observe that if the contention of the learned Counsel for the Decree Holder is supposed to be true and correct then perhaps, there was no question of termination of the Decree Holder but he could have been simplicitor compulsory retired or asked to resign by himself. The intention appears to be on the part of the Judgment Debtor to terminate the service so that he is not entitled for all retirement benefits but only provident fund.

10. In view of hereinabove facts and circumstances of this case, I am of the view that the Judgment and Decree stands satisfied totally after payment of the provident fund which has not been disputed before me whereas, the Decree Holder is not entitled for any other benefits and claim through this Execution Application. Accordingly, the same is dismissed.

Dated: 15.02.2018

J U D G E

ARSHAD/