

## **IN THE HIGH COURT OF SINDH AT KARACHI**

High Court Appeal No. 108 of 2012

Appellants: Pakistan Telecommunication Company Limited and another through Mr. Ch. Atif Rafiq Advocate.

Respondents

No.1 to 50: Anjuman-e-Falah-o-Behbood and others Through Mr. Syed Masroor Ahmed Alvi Advocate.

Respondent No.26: through Syed Ansar Hussain Zaidi Advocate.

Respondent No.51:- through Mr. Iqbal Khurram Advocate.

Date of hearing: 12.09.2017,13.09.2017, 14.09.2017, 15.09.2017,18.09.2017,20.09.2017, 25.09.2017 and 04.10.2017.

### **JUDGMENT**

**ADNAN-UL-KARIMMEMON, J.** The Appellant-Company has filed the captioned Appeal through its General Manager as legal representative against impugned Order dated 16.07.2012 passed by learned Single Judge of this Court (original side) in Civil Suit No. 88 of 2011 whereby two applications are allowed that is, one under Order 39 Rule 1 and 2 CPC (CMA No. 593/2011) for restraining the Appellant-Company from threats and stopping of pension of the Respondents and another under Section 151 CPC (CMA No.595/2011) for release of pension to Respondents from July to September, 2009 and w.e.f. May 2010 till date as per

schedule annexed with the plaint so also future pension in the above referred Civil Suit.

2. Gist of the case is that on 13.01.2011, Respondent No. 1 to 50 filed Civil Suit No. 88 of 2011 before this Court (O.S) for Declaration, Injunction and Damages against Appellant-Company (PTCL). The Respondent No. 2 to 50 submitted two applications for interim relief(s) in pending Suit as discussed supra. The learned Single Judge, vide Order dated 16.07.2012, allowed both the Miscellaneous Applications for interim relief(s) with following directions to the Appellant-Company:

*“Accordingly, I hereby allow both the applications for interim relief PTCL shall, within a period of 10 days from today pay in full all arrears of pension to the Plaintiffs that have accumulated on account of its putative adjustments by way of rent or otherwise, and shall henceforth make payment in full of the pension due to each Plaintiff each month by or before the stipulated date, and if no date is so provided by the fifth day of the month. For present purposes, the pension payable for July, 2012 shall be deemed to be in arrears.”*

3. Appellants aggrieved by and dissatisfied with the above findings of learned Single Judge (O.S) filed the instant High Court Appeal with the following prayer:-

- “A. Set-aside the impugned Order dated 16.07.2012, passed on CMA No. 593/2011 and CMA No. 595/2011 in Suit No. 88/2011;
- B. Declare that the Appellants are entitled to deduct/adjust the rent from the pension of the Respondents; and
- C. Grant any other relief as this court may deem fit and appropriate.”

4. Brief facts of the case as set out in the pleadings of the parties are that Respondent No. 2 to 50 are retired/ex-employees of Appellant-Company who are living in their respective houses in Pakistan Post & Telegraph (P&T) Colony situated over 50-00 acres on the KMC land, which was allotted to Pakistan Post and Telegraph Department, Government of Pakistan by KMC in the year 1952 for rehabilitation of migrants from India with understanding that P&T Department shall pay an amount of Rs.3,61,660.00 as cost of the land (occupancy value) against which P&T Department paid an amount of Rs. 1,50,000/- and the remaining amount of Rs. 2,11,660.00 was payable within stipulated period. It has further been narrated that Government of Pakistan in the year 1952 or 1953 constructed houses on the said land. But, on failure of the P&T Department to make payment of remaining amount, KMC/Respondent No. 51 issued notices to P&T Department and PTCL Authorities at Karachi for vacation of the said land followed by resumption of the Said Land by KMC and grant of leases to occupants of houses (Respondents No. 2 to 50). In year 1991, Pakistan Postal Services Corporation and Appellants filed Suit No. 828/1991 for Declaration, Injunction and Specific Performance before this Court seeking declaration to the effect that the plaintiffs/appellants are in legal possession of lands in Suit; that Lease deeds executed by KMC in favour of defendants/Occupants/Respondents No 2 to 50 are void and of no legal effect. But, during pendency of said suit, Appellant-Company issued eviction notices to its ex-employees, who filed applications

for impleading them as party in the said suit The learned Single Judge of this Court vide detailed order dated 21.01.1998 allowed both applications by restraining Appellant-Company from evicting the newly joined defendants/Respondents from their respective quarters during pendency of suit. It has been alleged that in spite of restraining order dated 21.01.1998, the Appellant-Company has continuously been issuing eviction notices to the ex-employees. Therefore, Respondent No.1/ex-employees of Appellant-Company filed another Suit No. 1456/97 before this Court for declaration and injunction to the effect that the members of Respondent No.1 are in legal occupation of the quarters and land in question and impugned notices to the members of Respondent No.1/Anjuman Falah-e-Behboud; that the said suit was disposed of on 25.08.1999 when Advocate for Appellant-Company gave undertaking under instructions that the Appellant-Company shall not take any adverse action against the Respondents till decision on Suit No. 828/1991 pending before this Court. It has further been alleged that Appellant-Company with malafide intention issued Notices in the year 2010 for stoppage of pension of Respondents No. 02 to 50 for recovery of PTCL dues on account of rent for accommodation provided to them. In reply to the said Notices, Respondent No. 02 to 50 submitted registered lease documents of their respective houses; that on 18.01.2011, the Respondents No. 1 to 50 filed Suit No. 88/2011 before this Court along with application under Order 39, Rule 1& 2 CPC for stay with the assertion that Appellant-Company is not the owner of the subject property and their Suit bearing No. 828/1991 for

Declaration, Injunction and Specific Performance against (KMC) and others is pending adjudication. Respondent No. 1 to 50 have further asserted that Appellant-Company has no title documents of the subject property and Respondent No.51/KMC claims that they have already resumed the subject property through a Gazette Notification dated 26.01.2007 and declared suit land as Katchi Abadi and title of suit property is sub judice in Suit No. 828/1991; hence, the question of recovery of rent from Respondents No. 2 to 50 by withholding pension amount does not arise.

5. Mr. Atif Rafiq Chaudhary, learned counsel for Appellants contended that Respondents No. 2 to 50 were employees of Pakistan Telecommunication Communication Limited (PTCL) and have already obtained benefit under Voluntary Separation Scheme (VSS). Appellant-Company on 22.01.2008 offered Respondents to fill the prescribed Form wherein it was mentioned that VSS payout can be allowed after filling and submission of the said Form with original signatures by opting employees. Respondents No. 2 to 50 filled the requisite Forms and returned/submitted to the Appellants with unqualified consent which is part of VSS Scheme/Program/ Contract, which provides that recovery of other Government dues such as issue of pay, allowances or earned leave salary or admitted and obvious dues such as house rent, postal life insurance, outstanding motor car advances, housing scheme, travelling allowances or other advances would be recovered from the employees. Learned counsel for Appellants contended that learned Single Judge has failed to appreciate important documents

available on record as well as the fact that Respondents No. 2 to 50 are former employees of Appellant-Company and were given accommodations (subject premises) due to their employment with Pakistan Tele Communication Limited (PTCL). Learned counsel for Appellants has further contended that Respondents No. 2 to 50 agreed to vacate the subject premises hence, the Respondents are not entitled to release of pension. Learned counsel next contended that learned Single Judge has erred in passing the impugned Order without findings on the questions that is, whether the declaration and undertaking signed by the Respondents No. 2 to 50 form part of the contract under Voluntary Separation Scheme? And, whether the contract concluded after issuance of Letter dated 22.01.2008 is an absolute and unqualified acceptance? Having narrated as such, the Appellant hold that the learned Single Judge has erred in concluding that the declaration and undertaking are of no consequence so far as payment of pension benefits are concerned and directing the Appellant-Company to pay the arrears of the pension and monthly pension in terms of (VSS). The learned counsel for Appellant further added that the learned Single Judge has also failed to consider that the case before it relates to entitlement of Respondents No. 02 to 50 to the property and erred in holding that the Respondents No. 2 to 50 are not liable to vacate the said premises as they are lawful owners, which has prejudiced the case of Appellant-Company pending before this Court. Learned counsel further averred that learned Single Judge failed to appreciate that it is a settled principle of law that the intention of the parties is the prime and governing

principle while interpreting a contract; that learned Single Judge failed in its observations that there still exist certain conditions enumerated in the letter which were required to be fulfilled therefore, it cannot be considered to be unequivocal or unqualified acceptance and is liable to be set aside. The learned counsel for the Appellant-Company in support of his contentions relied upon the case of Raja Talat Mehmood Vs. Ismat Ehtisham-ul-Haq(1999 SCMR 2215), Attorney General for Pakistan Vs. Times Newspapers Ltd.(1994 SCMR 161), Peshora Singh and another Vs. State of Punjab (1994 SCMR 200), Mst. Amina Bibi Vs. Mudassar Aziz (PLD 2003 SC 430), Messrs Gear Hobbing LimitedVs. Commissioner of Income Tax and another (2003 PTD 739), Federation of Pakistan Vs I.A. Sherwani and others (2005 SCMR 292), The Government of NWFP through Secretary Vs. Muhammad Said Khan and another (PLD 1973 SC 514), Muhammad Asif Ikram and others Vs. General Manager PTCL and others (2009 PLC (C.S) 721), Islamic Republic of Pakistan through Secretary Vs. Muhammad Zaman (1997 SCMR 1508), United Bank Limited and others Vs. Ahsan Akhtar and others (1998 SCMR 68), Bin Yamin and 3 others Vs. Chaudhary Hakim and another(1996 SCMR 336) Kamran Butt Vs. Lt. Col. Syed Iftikhar Ahmed (PLD 1991 Karachi 417), Muhammad Shafi and 11 others Vs. Mubarik Ali and 8 others (2005 YLR 2871), Al-Huda Hotels and Tourism and others Vs. Paktel Limited and others (2002 CLD 218), State Bank of Pakistan Vs. Imtiaz Ali Khan(2012 SCMR 280).

6. Conversely, Syed Masroor Ahmed Alvi, learned Counsel for Respondents No. 1 to 50 has supported the impugned Order dated 16.07.2012 and argued that Telegraph and Tele Communication Colony premises under reference belongs to KMC, [now City District Government Karachi (CDGK)] and Respondents No. 2 to 50 have registered lease deeds in their favour and the Appellant-Company has no right or entitlement to claim any rent from them after allotments and stoppage of pension by the Appellant-Company is totally unwarranted, unlawful and violation of fundamental rights guaranteed under the Constitution of Islamic Republic of Pakistan, 1973. Learned Counsel while drawing our attention to synopsis filed on behalf of Respondents No. 1 to 50 gave brief history of the matter and argued that grounds taken in the synopsis may be considered for a just decision in the instant Appeal. Learned Counsel for Respondent No. 1 to 50 in support of his contention placed reliance on the following case law and argued that pension of the Respondents cannot be stopped under the law: Dr. Farooq Ahmad Khan Vs. Government of Punjab (PLJ 1996 Lahore 427), I.A. Sherwani Vs. Government of Pakistan and others (1991 SCMR 1041), Pakistan Muslim League and others Vs. Federation of Pakistan (PLD 2007 SC 642), Zaman Cement Company Vs. Central Board of Revenue and others (2002 SCMR 312), Abdul Rashid Vs. Water and Power Development Authority and others (2003 CLC 471), Ravi Glass Mills Ltd. Vs. I.C.I Pakistan Power gen Ltd. (2004 YLR 2503), Abdul Razzak Vs. Karachi Development Authority (1991 CLC 1591), Rasool Bukhsh and another Vs/ Muhammad Ramzan (2007 SCMR 85) and Messrs.



Sethi Straw Board Mills Vs. Punjab Labour court No.3 and others  
(PLD 1977 Lahore 71).

7. Syed Ansar Hussain Zaidi, learned counsel representing Respondent No.26 adopted the arguments of Mr. Masroor Alvi, learned Counsel for Respondent Nos. 1 to 25 and 27 to 50.

8. Mr. Iqbal Khurram, learned Counsel for Respondent No.51 contended that City Council, Karachi passed a' Resolution No. 1070 dated 31.03.1991, whereby due to default in payment by T&T Department, cancelled allotments of land under the land rules and started leasing out the same to the residents by granting them leasehold rights. Learned counsel further argued that contention that Respondent No.51 granted leases in favor of Respondents No. 2 to 50 in violation of status-quo order dated 06.08.1991 passed in Suit No. 828 of 1991 is totally incorrect and baseless on the ground that said status-quo order was never extended hence, the same became ineffective after six months under Order 39 Rule 2 (a) CPC. Learned counsel in support of his contention relied upon the following documents which were taken on record vide order dated 20.09.2017:-

- i) Letter No. OGI-46/44/52 dated 18.04.1952 issued by Municipal Commissioner, KMC to the Director General Pakistan Post and Telegraph Department Karachi for acknowledgement of cheque of Rs. 1,50,000/- as well as for payment of remaining cost of the land with better typed copy of the letter dated 18.04.1952.
- ii) Show Cause dated 14.10.1990 issued by the Director Land KMC to the General Manager Southern, Telecommunication Region Karachi for cancellation and resume of 30 acres land granted in 1948 as well as or resume of 20 acres land

encroached adjoining to 30 acres land near Race Course Gizri occupied un-authorized.

- iii) Notice dated 14.01.1991 issued by Director Land KMC to the General Manager Southern, Telecommunication Region Karachi and to the Post Master General.
- iv) KMC Resolution No. 1070 dated 31.03.1991 passed by the Council of KMC regarding cancellation of land granted by the KMC in the year 1948 to the P&T Department.
- v) Council Resolution No. 126 passed by the City District Government Karachi dated 19.01.2007.
- vi) Letter dated 20.01.2007 issued by the City Nazim, City District Government (Katchi Abadis) Government of Sindh for approval of Resolution No. 126 passed by City District Council on 19.01.2007.
- vii) Gazette Notification dated 26.1.2007 issued by the Sindh Katchi Abadis Authority for include the P&T Colony in Master List of Katchi Abadis.
- viii) Written statement filed by the KMC in Suit No. 88/2011 and suit No. 828/1991.

9. We have considered submissions of learned Counsel for the parties, perused the impugned order and material available on record, as well as case law cited at the bar.

10. Perusal of record clearly reflects that real controversy is related to release of pension to Respondents No. 2 to 50 which is stopped by the Appellant-Company and is directed to be released by learned Single Judge while allowing CMA No. 5932 and 595 of 2011 respectively. For ready reference, the operative part of said Order is reproduced as follows:-

*“33; To sum up the foregoing analysis and discussion in relation to both categories of plaintiffs, it is my view that the stoppage/adjustment of the plaintiffs’ pensions by PTCL was impermissible and unlawful, even on the basis of its own case. In view of this finding it is not necessary for me to consider the other aspects of the matter such as the validity or otherwise of the lease deeds, the alleged*

*violation (or otherwise) of any interim orders made in Suit No. 828/1991 etc. It is also not necessary for me to consider in any detail the case law relied upon by learned counsel for the plaintiffs and PTCL respectively, other than as has been examined herein above. It also necessarily follows in my view that the plaintiffs have made out a case for interim relief. They are entitled, unless anything to the contrary is shown to the payment of pension. It cannot be doubted that they must to a greater or lesser degree (depending on the specific circumstances of each) be suffering on account of nonpayment of pension. Such injury and suffering must be regarded as materially affecting their lives. In my view, all the ingredients for interim relief are in place in favour of the plaintiffs.*

*34. Before concluding, I may note that the forgoing observations are only for purposes for the present order and in the context of interim relief. The suit, when it goes to trial, will of course be decided strictly on the basis of the evidence as is actually led by the parties, uninfluenced by anything said herein.*

*35. Accordingly, I hereby allow both the applications for interim relief PTCL shall, within a period of 10 days from today pay in full all arrears of pension to the plaintiffs that have accumulated on account of its putative adjustments by way of rent or otherwise and shall henceforth make payment in full of the pension due to each plaintiff each month by or before the stipulated date, and if no date is so provided by the fifth day of the month. For present purposes, the pension payable for July, 2012 shall be deemed to be in arrears.”*

11. We have gone through miscellaneous applications filed by Respondent No. 2 to 50 for interim relief on the basis of apprehension that their pension will be stopped because they were served with alleged threatening notices by the Appellant-Company for recovery of dues on account of accommodation provided to them. The Respondents in VSS Scheme had voluntarily given an undertaking that if they did not vacate the subject premises, PTCL is entitled to cut their accommodation charges from their pension and for this reason PTCL had stopped the pension of Respondents No. 2 to 50.

12. There are certain claims and counter claims in the civil suit pending adjudication between the parties before this Court.

13. We are cognizant of the fact that 'pension' is not a bounty from the state (employer) to servant (employee) but, is based on the resolution that an employee serves the employer in best days of his ability and capacity therefore, during the former's disability, the latter compensates him for the services so rendered. Hence, stoppage of pension may cause sufferings, distress and other financial and ancillary problems to a retired employee.

14. We are of the tentative view that Respondents No. 2 to 50 have established a prima facie case against Appellant-Company sofar as CMA No. 593 and 595 of 2011 are concerned. Apparently balance of convenience lies in favor of Respondents No. 02 to 50 as stoppage of pension during pendency of Suit would be unjustified.

15. So far as property and other ancillary issues between the parties are concerned, the same are sub-judice before learned Single Judge. Therefore, we would not travel into merits of the case and confine our observations to the extent as stated supra.

16. Let the matter between the parties be decided by learned Single Judge after recording of evidence as to whether the Appellant-Company is entitled to deduct/adjust the rent from pension of Respondent No. 2 to 50 to recover dues or otherwise?

17. The above referred order of learned Single Judge explicitly reflects the correct application of Order 39, Rule 1 and 2 CPC and 151 CPC. The learned Single Judge while disposing of said injunction applications has rightly held that these observation are only to the extent of interim relief and the suit will be decided strictly on the basis of evidence of the parties. Hence, the Appellant is not prejudiced by grant of above said interim relief.

18. The case law cited and relied upon by the learned Counsel for the Appellant-Company is distinguishable on the facts and circumstances of the present case.

19. Having considered the plaint in juxtaposition with the subject appeal and arguments advanced by the learned Counsel for the parties at the bar, we concur with the view taken by the learned Single Judge in the impugned Order dated 16.07.2012 passed in Suit No. 88/2011, whereby interim relief has been granted to Respondents No. 1 to 50 as stated supra.

20. In view of what has been discussed above, we are of the view that, at this juncture, Appellants have failed to make out a case for our interference as leaned Single Judge has correctly assessed and appreciated the facts and law. Accordingly, this Appeal is dismissed along with pending application(s).

JUDGE

JUDGE