

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

**H.C.A No.142 of 2015 & 180 of 2017**

**Present:-**

**Mr. Justice Muhammad Iqbal Kalhoro**

**Mr. Justice Adnan-ul-Karim Memon**

**1. H.C.A. No. 142 of 2015**

Pakistan Defence Housing Authority ..... Appellant

V E R S U S

Malik Muhammad Asghar ..... Respondent

**2. H.C.A. No. 180 of 2017**

Pakistan Defence Officers Housing Authority ..... Appellant

V E R S U S

Malik Muhammad Asghar ..... Respondent

Appellants : Through Mr. Malik Naeem Iqbal, Advocate along  
with Mr. Muhammad Saleem, Advocate.

Respondents : Through Mr. Muhammad Ali Lakhani, Advocate  
alongwith Mr. Rehman Aziz Malik, Advocate.

**Date of hearings:** 11.04.2017, 13.4.2017, 21.4.2017 and  
26.4.2017, 11.05.2017 and 24.05.2017.

**J U D G M E N T**

**ADNAN-UL-KARIM MEMON,J:** The above captioned High Court Appeals are being disposed of through this common judgment because both pertain to identical points of law and facts.

In High Court Appeal bearing No. 180/2017 the Appellant has impugned Order dated 23.2.2017 and prayed for dismissal of

C.M.A. No. 13976/2016 and in High Court Appeal bearing No. 142/2015 Order dated 10.4.2015 is impugned besides prayer for dismissal of CMA 4854/2012.

2. Brief facts of above said Appeals are that Appellant appointed the Respondent as Assistant Law Officer in BPS-16 on 25.3.2003 and subsequently confirmed him on 20.4.2004. But, the status of Respondent's said employment continued to be contractual in nature. Subsequently, Appellant through Office Order dated 3.06.2011 dispensed with the service of the Respondent under Chapter III, Para 8 (b) of Service Rules 2008 read with para 2 (a) of the contract agreement on the ground that his services were no longer required. Thereafter, the Respondent preferred Departmental Appeal but to no avail. Hence, the Respondent instituted Suit bearing No. 511/2012 before learned Single Bench (O.S) of this Court praying for declaration, injunction and recovery of damages/compensation along with an interlocutory application under Order 39 Rule 1&2 C.P.C. bearing CMA No. 4854/2012 which was disposed of vide Order dated 10.4.2015 (Impugned Order in HCA No. 142 of 2015). In the said Suit after summons of this Court the Appellant filed written statement along with counter affidavit to CMA No. 4854/2012 against which the Respondent filed affidavit in rejoinder. On 10.4.2015 while hearing CMA No. 4854/12 the learned Single Judge of this Court disposed of the said CMA vide impugned Order dated 10.04.2015 with directions to the Appellant that it may issue show cause notice to the Respondent as required under the law with a reasonable opportunity to the Respondent to explain his position. And, that the entire process should not take more than six weeks. The Appellant being aggrieved by the said Order filed High Court Appeal No. 142 of 2015 wherein the learned Division Bench of this Court vide Order dated 24.11.2015 restrained the initiation of contempt proceedings in relation to Order dated 10.4.2015. Thereafter, the Respondent filed CMA No. 14243/2015 under Section 94 of CPC, 1908 claiming salaries and other benefits along with another CMA No. 14244/2015 under Article 204 of the Constitution seeking enforcement of Order dated 10.4.2015. Notices were issued on the said two CMAs and Appellant filed

counter affidavits. On 8.12.2015, the Learned Single Judge of this Court called report on the status of compliance/implementation of Order dated 10.4.2015 with further directions that in case of non-compliance show cause notice be issued to the (concerned) officer. On 17.12.2015, the learned Single Judge modified his order dated 8.12.2015 and restrained the office from calling any report pertaining to compliance of Order dated 10.4.2015. Subsequently, the learned Single Judge of this Court passed Order dated 25.4.2016 on CMA bearing No.14243/2015 under Section 94 CPC directing the Appellant that salary and other due amount shall be paid to the Respondent within a period of 15 days. The Appellant prayed for review of said Order dated 24.04.2016 by filing Review Application under Section 114 read with Order XLVII read with Section 94 CPC, 1908 bearing C. M. A. No. 7904/2016. On 7.9.2016, said Review Application (CMA No. 7904/2016) was dismissed with direction to the Respondent to submit proof with regard to non-payment of salaries as well as entitlement. The Respondent sought enforcement of respective Orders dated 10.04.2015 and 25.04.2016 by filing C. M. A. bearing No. 13976/2016 under Section 36 CPC, 1908 read with Order XXI Rule XXXII C. P. C. Appellant filed counter affidavit against said CMA and the matter was heard on 23.2.2017. Learned Single Judge of this Court directed the Appellant to pay salary and benefits to the Respondent within 20 days and in case of failure the Nazir of this Court was directed to adopt certain coercive measures. Being aggrieved by the said order, the appellant has preferred High Court Appeal No.180/2017.

3. Mr. Naeem Iqbal, learned counsel for the Appellants contended that learned Single Judge of this Court wrongly restored the service of the Respondent with full back benefits because the Respondent was a contractual employee of the Appellant and his service was dispensed with in accordance with terms of the contract; that learned Single Judge had no jurisdiction to pass such order and the assumption of same is illegal; that learned Single Judge failed to appreciate the legal and factual position of the case while passing the impugned Order dated 10.4.2015; that learned Single Judge while allowing the injunction application of the Respondent actually allowed the main prayer of the Suit

without framing of issues and recording evidence which has caused grave prejudice to the Appellant; that learned Single Judge failed to appreciate and apply the real import and effect of injunctive orders passed by learned Division Bench of this Court whereby initiation of contempt proceedings were restrained against the Appellant with respect to implementation/compliance of Order dated 10.4.2015. Therefore, the Order dated 10.4.2015 stood suspended and no relief either auxiliary or arising out of Order dated 10.4.2015 could be granted; that neither the Respondent submitted any proof with regard to any pending salary nor he has brought anything on record to show that the Respondent was entitled to salaries; that the learned Single Judge has passed the impugned order on presumption and assumptions; in fact the learned Single Judge has passed an order the effect of which has rendered High Court Appeal No. 142 of 2015 infructuous. Learned counsel for the Appellant has relied upon the case of Abdul Razaq Vs. Muhammad Yousuf (1984 CLC 1673), Muhammad Aslam Vs. Member Board of Revenue and others (PLD 980 SC 45), Nooruddin and others vs. Abdul Wahid (2000 SCMR 91), Fazal Mehdi Vs. Allah Ditta (PLD 2007 S.C. 343), Ameer Umer and others Vs. Additional District Judge, Dera Ghazi Khan and others (2010 SCMR 780), Rehmat Ali Vs. Additional District Judge, Multan and others (1999 SCMR 900), Mansab Ali Vs. Amir and others (PLD 1971 SC 124), Muhammad Iqbal Vs. Muhammad Ahmed Ramzani and others (2014 CLC 1392), M/s. Malik and Haq and others Vs. Muhammad Shamsul Islam Choudhry and others (PLD1961 SC 531), Gulf Steamship Co. Limited Vs. Dilwash Baluch [PLD 1962 (W.P.) Karachi 899], Pakistan Refugee and Rehabilitation Finance Corporation, Lahore and others (PLD 1966 Lahore 442), A. George Vs. Pakistan International Airlines Corporation (PLD 1971 Lahore 748), Muhammad Aslam Vs. National Shipping Corporation, Karachi through its Chairman and others (PLD 1979 Karachi 426), Muhammad Yousuf Shah Vs. Pakistan International Airlines Corporation (PLD 1981 SC 224), Agha Shafiq Ahmed Khan Vs. Pakistan International Airlines and others [1994 PLC (C.S) 877], M/s Sui Southern Gas Company Limited Vs. Sardar Ali Chohan [1998 PLC (C.S) 346], Aurangzeb Vs. M/s Gul Bano and Dr. Burjor Ankalseria [2001 PLC (C.S.) 875], ABN Amro Bank Vs. Wasim Dar

(2004 PLC 69), City School Education Society and others Vs. Mrs Talat Yazdani (2004 PLC 282), Presbyterian Medical Board and others Vs. Dr. Nalson Azeem (2007 MLD 666) and Ghulam Nabi Shah Vs. Pakistan International Airlines Corporation and others [2013 PLC (C.S) 768].

4. Mr. Muhammad Ali Lakhani, learned counsel for the Respondent has contended that both Appeals are not maintainable because the Appellant filed Review Application (CMA No. 7904/2016) against Order dated 25.4.2016 which was dismissed vide Order dated 7.9.2016 and against said order no Appeal was preferred by the Appellant. Per learned counsel, however, the Respondent filed CMA bearing No. 13976/2016 under Section 36 C. P. C. read with Order XXI Rule XXXII C. P. C. for enforcement of Orders dated 10.4.2015 and 25.4.2016 respectively. And, the learned Single Judge passed Order dated 23.2.2017 with observation that the termination of the Respondent was malafide. Learned counsel next contended that the Respondent was regular employee of Appellant and his service was terminated without assigning any reason or issuing any show cause notice and for providing any opportunity of personal hearing. He next added that no reason was assigned in the Termination Letter, which is in violation of Article 10-A of the Constitution. He next contended that Respondent was entitled to allotment of plot on completion of three years' service which has been denied in an arbitrary manner by the Appellant. Per learned counsel the Appellant is a statutory body and cannot violate the basic principle of natural justice. He next contended that rule of master and servant is inapplicable in case of Respondent; the Appellant filed High Court Appeal No. 142 of 2015 against the consent order therefore the same is not maintainable; that the learned Single Judge has rightly passed the impugned Order and the Appellants are avoiding to implement the above said Orders; that Appellant has neither reinstated the Respondent in service nor granted benefits to him. Learned counsel concluded the arguments by stating that both the Appeals may be dismissed with cost, and placed reliance upon the case of Muhammad Aslam v. Member Board of Revenue and others (PLD 1980 SC 45), Ghazanfar Ali and other v. Cherat Cement Company and other (1990 MLD 1696), Sajjad Hussain v. Mussarat Hussain

Shah (1989 SCMR 1826), Siraj-ud-Din v. Muhammad Yousuf and others (1982 SCMR 539), Abdul Wahab and others v. Habib Ali and others (PLD 1969 Lahore 365), Wazir Hussain Shah and others v. Ali Shah and others (PLD 2011 SC AJ&K 25), Chief Commissioner Inland Revenue Multan v. Muhammad Bilal and others (2012 PLC CS 112) and un-reported case of Chandra Prakash Shahi v. The State of U.P and others (Supreme Court of India).

5. We have considered the submissions of learned counsel for both the parties and perused the material available on record as well as the case law cited at the bar. Perusal of record clearly reflects that real controversy in the present proceedings is as follows:

- (a) Whether the learned Single Judge (O.S) of this Court had jurisdiction to reinstate the service of the Respondent in the Appellant Authority while exercising powers under the Code of Civil Procedure, 1908?
- (b) Whether the rule of master and servant is applicable to the present case?

6. A perusal of plaint of Suit No. 511/2012 shows that Respondent/Plaintiff has prayed as below:

- “A) Declare that (i) impugned letter/order dated 23.6.2011 is illegal, without lawful authority, without assigning any reason, based on mala fide intention having been issued to deprive the plaintiff on his lawful rights and benefits and to punish him when he was complying the Court order dated 30.5.2011 and violative of the fundamental rights, the DHA Service, 2008 and the principle of natural justice and Section 24-A of General Clauses Act thus not binding on plaintiff and as such liable to be set aside, annulled, revoked, cancelled, (ii) the plaintiff was a regular employee of the defendant all documents to show that the employment was contractual are asham and (iii) the plaintiff is to be treated as a equally/at par with other regular employees and the rules of allotment of plot to also apply to the plaintiff;
- B) Cancel the impugned letter/order dated 3.6.2011 and subsequently the plaintiff deemed to be in service of defendant and be entitled to continue his service for 15 years till 27th March 2018.

- C) Grant mandatory injunction by setting aside, revoking annulling, cancelling the impugned termination letter dated 3.6.2011 and by directing the defendant for restoration of service of the plaintiff with all back benefits including staff plot in DHA and he is entitled to serve up to 15 years in the defendant Authority and receive all applicable benefits and privileges in relation thereto as he was enjoying on 2.6.2011 with subsequent increments;
- D) Direct the defendant to allot a plot to the plaintiff admeasuring 300 Sq. Yds in DHA as allotted to number of officers of the DHA in 2010 and 2011 to ex-services employees /as well as civilian;
- E) Without prejudice to the above and in the alternative, the defendant may be directed to pay sum of Rs.3,76,32,904/= (Rupees Three Crore Seventy Six Lac Thirty Two Thousand Nine Hundred and Four) only to the plaintiff on account of plaintiff monthly salary and other benefits till his date of retirement i.e. 27th March, 2018 and on account of damages and compensation with interest at the rate of 16 % from the date of institution of this suit till actual payment is made;
- F) Costs of suit; AND
- G) Any other relief(s) which this Hon'ble Court may deem fit and proper under the circumstances of the case may also be granted."

7. We have also perused impugned Order dated 10.4.2015 (available at page 113 of HCA 180 of 2017 file) vide which the learned Single Judge of this Court disposed of Application under Order 39, Rule 1 and 2 C. P. C. read with Section 151 C. P. C. bearing CMA No. 4854/2012 with consent of both the parties. For ready reference the said Order is reproduced as follows:

- "1) *Learned counsels appearing for both the parties concede that insofar as the termination letter is concerned no reasons are assigned therein hence it cannot be termed to be a speaking order. Hence, they agree that the DHA/defendant may issue show-cause notice to the plaintiff, as required under the law, and a reasonable opportunity may be given to explain his position. Entire process would not take more than six weeks. Accordingly, let such show cause notice be issued to the plaintiff who would then, without seeking any adjournment in a shortest possible time, file appropriate reply, if he deem it proper, and shall appear before the defendant on the date of hearing as fixed by them. It would be appreciated if a speaking and well-reasoned order is passed in support of whatever*

*decision the defendant would take. This is a de novo exercise and would be completed within six weeks positively.  
The application is above terms stands disposed of.”*

8. The above referred order of the learned Single Judge shows that while disposing of injunction application, main prayer in suit of the Respondent is allowed without framing of issues and recording evidence.

9. We have also gone through the Appointment Order dated 26.3.2003 of the Respondent which shows that appointment was made on contract basis with certain terms and conditions. Clause 2 a (1) of the terms and conditions of service is that service of the Respondent can be terminated at any time without assigning any reason by giving a notice for a period not less than 30 days or payment, in lieu of notice period, of a sum equivalent to pay of 30 days or for the period by which the notice falls short of 30 days, such notice shall not however, be required in case of termination of service on disciplinary grounds.

10. We have also noted that there are disputed questions of facts involved in the present proceedings as mentioned in Paragraph No.5 supra, which requires evidence. Secondly, the learned Single Judge (O.S) while disposing off interlocutory application bearing C.M.A. No. 4854/2012 allowed the main prayer of the Suit No. 511 of 2012 vide impugned Order dated 10.04.2015 and adjourned the Suit for examination of parties and settlement of issues. Here the question arises as to what is left for the court to decide when the main prayer of the plaintiff is allowed, therefore, in our view the said order is not sustainable.

11. We are of the view that law demands provision of equal opportunity to litigants to prove their respective case through evidence and the same cannot be circumvented by disposal of entire suit through an interlocutory application and then claim of its enforcement through miscellaneous application.

12. The case law cited by the learned counsel for the Respondent is distinguishable from the facts and circumstances of the present case.



13. In the light of facts, circumstances and relevant law, the respective Orders dated 10.04.2015 and 23.02.2017 impugned in HCA No.142/2015 and HCA No.180/2017 respectively are set-aside and the matter is remanded back to the learned Single Judge sitting on original side (O.S) to decide Suit bearing No. 511 of 2012 on merits in accordance with the procedure laid down in Civil Procedure Code.

14. Both High Court Appeals stand allowed in the above terms and pending application(s) are disposed of accordingly.

JUDGE

JUDGE