

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT**  
**KARACHI**

Suit No.174 of 2012

DATE	ORDER WITH SIGNATURE OF JUDGE
<b>Plaintiff:</b>	<b>Through Mr. Shakeel Ahmed, Advocate.</b>
<b>Defendants:</b>	<b>Through Mr. Faisal Mehmood Ghani, Advocate along with Hammad Khalid, Director (Peoples Services), alleged contemnor.</b>

1. For hearing of CMA No. 1439/2012.
2. For hearing of CMA No.12515/12.

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**Date of Hearing: 15.08.2018**

**Date of Order: 15.08.2018.**

**ORDER**

**Muhammad Junaid Ghaffar J.** CMA No.1439/2012 at serial No.1 is an application under Order 39 Rule 1 & 2 CPC, whereby, the Plaintiff has sought a restraining order in respect of Show Cause Notice dated 06.02.2012 and enquiry proceedings fixed on 16.02.2012, whereas, on 15.02.2012 an Order was passed directing the Defendants to continue with the enquiry but no final order shall be passed. Today, learned Counsel for the Defendants submits that insofar as the enquiry in question is concerned, till date even after completion of the proceedings, no final orders has been passed. However, the plaintiff has been terminated along with 107 other employees on another charge; hence, this application has otherwise become infructuous. Accordingly, in view of such position, and for the below mentioned reasons in dismissing CMA 12515/2012 listed at serial No.2, this application

has served its purpose and is accordingly dismissed as infructuous.

Whereas, CMA No.12515/2012 is an application for contempt of Order dated 15.02.2012, whereby, the Defendants were restrained from passing any final order. Learned Counsel for the Plaintiff submits that notwithstanding this restraining order, the Defendants have terminated the services of the Plaintiff vide Order dated 02.11.2012, therefore, they have committed violation and contempt of the Orders of the Court, hence appropriate proceedings of contempt be initiated. He further submits that earlier CMA No.4282/2012 was filed and vide Order dated 05.11.2012, the same was permitted to be withdrawn due to change of circumstances and accordingly after withdrawing the same, listed application has been filed. He prays for grant of this application.

On the other hand, learned Counsel for Defendants submits that no contempt has been committed of Order in question as the Plaintiff has not been terminated pursuant to the Show Cause Notice and Enquiry Proceedings in question and for that no final order has been passed. He further submits that Order of termination dated 2.11.2012 was not only passed in respect of the Plaintiff; but 107 other employees, and this was based on a fresh cause of action, i.e. low performance and performance below expectations, which is reviewed periodically, as per company policy and employment agreement; therefore, no contempt has been committed. He further submits that the Plaintiff has even filed an amendment to the Plaint pursuant to this termination, hence the application be dismissed, whereas,

even otherwise the Suit is not maintainable as observed by the Court in one of its orders.

I have heard both the learned Counsel and perused the record. Insofar as Order dated 15.02.2012 is concerned, this was passed in respect of the cause of action accrued to the Plaintiff and as stated in the Plaint at the time of filing of instant Suit and the Stay application. At the relevant time, the Plaintiff was issued a Charge Sheet/Show Cause Notice dated 06.02.2012 in respect of which enquiry was being conducted and was fixed on 16.02.2012. The Order of the Court is to the effect that the Defendant may continue with the enquiry proceedings pending against the Plaintiff but no final order shall be passed against him, whereas, the Order of termination dated 02.11.2012 reveals that Letter dated 22.03.2012, was addressed to the Plaintiff through which he was informed that his performance has been rated below expectations and he was advised to focus on the job assigned and to improve his performance. Admittedly, this Letter dated 22.03.2012 was issued subsequently, after passing of order dated 15.02.2012 and though it was in field, but no restraining order was passed by the Court in respect of such Letter dated 22.3.2012. In fact the earlier contempt application filed on the behalf of the plaintiff was withdrawn, without any orders in respect of letter dated 22.3.2012. In these circumstances, the Defendants were not restrained from passing any order while reviewing the performance of the Plaintiff as well as other employees as per procedure in vogue. This was a separate cause of action and has even been impugned through an amendment application which is pending. In the circumstances, the Letter

dated 02.11.2012, whereby, the services of the Plaintiff have been terminated for poor performance does not amount to contempt or violation of Order dated 15.02.2012, and has no nexus with the interim order of the Court.

In view of such position, this application (CMA No.12515/2012) also fails and was dismissed by means of a short Order today during Court hours along with application at Serial No.1 (CMA 1439/2012) and these are the reasons thereof.

J U D G E

Ayaz P.S.