

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1232 of 2006

[Rizwan Rasool Jan Qureshi v. Pakistan International Airlines]

None present for the Plaintiff.

Mr. Munawar Juna, Advocate, holds brief on behalf of
Mr. Khalid Javed, Advocate for Defendant.

Date of hearing : 18.02.2019

Date of Judgment : 18.02.2019

JUDGMENT

Muhammad Faisal Kamal Alam, J: The Plaintiff has brought this action at law against the Defendant, *inter alia*, for damages in the sum of Rs.10,000,000/- (*Rupees One Crore Only*), with the following prayer clause_

“It is, therefore, prayed on behalf of the Plaintiff above named that this Hon’ble Court may be pleased to pass a Decree and Judgment as under: -

1. *Pass a Judgment and Decree in favour of Plaintiff against the Defendant in the sum of Rs.1 crore by way of damages as mentioned hereinabove;*
2. *Mark-up / compensation for value payment / devaluation of rupees at the rate of 18% from the date of institution of this suit the realization;*
3. *Costs of the suit;*
4. *Any other relief(s) which this Hon’ble Court may deem fit and proper under the circumstances of the case.”*

2. The grievance of the Plaintiff is that he was appointed as Administrative Officer on merits after taking into consideration the

qualification, special assessments test and experience; subsequently offer letter dated 23.01.1996 was issued for the post of Administrative Officer in Group-VI in the Defendant-Pakistan International Airline Corporation (PIA), for a period of one year, which was extendable. He averred that on 12.12.1996, the Administration Manager issued Termination Order without assigning any valid reasons against which the Plaintiff filed a Constitutional Petition No.D-2373 of 1996, which was allowed in his favour vide Judgment dated 13.05.1997. He further submits the Federal Service Tribunal Islamabad vide its order dated 12.06.2003 has allowed the Appeal and set-aside the impugned order of termination issued to the Plaintiff and directed the Defendant to reinstate the Plaintiff to his previous post on the same terms and conditions. He further pleaded that wrongful dismissal from service is against the law and principle of natural justice and as such the Defendant was not empowered to terminate the service of the Plaintiff under the Rules once he was confirmed. Further averred that since the Hon'ble Supreme Court of Pakistan on 27.06.2006 partially declared the Section 2-A of the Service Tribunal Act (1973) to be *ultra vires* of certain provisions of the Constitution, thus, the above decision of the Federal Services Tribunal in favour of Plaintiff could not be enforced. He further submits that due to the arbitrary decision and wrongful dismissal of Plaintiff from service, latter has not only incurred huge monetary losses in terms of pay, allowances and other service benefits attached to the said post but also caused considerable mental torture, loss of reputation and humiliation in the eyes of relatives, hence the Plaintiff is entitled for damages and compensation for such injuries, which are as follows_

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| 1. | For the loss of career and suffer on account of wrongful dismissal. | Rs.30,00,000/- |
| 2. | Mental torture, agony, pain and emotional distress. | Rs.30,00,000/- |
| 3. | Damages to reputation. | Rs.40,00,000/- |

3. After service of summons, the Defendant-Pakistan International Airlines Corporation contested the matter and filed its Written Statement and disputed the claim of Plaintiff. It is contended that Plaintiff's appointment (in Defendant), as an Administrative Officer in PG-VI, was violative of Service Rules. It is averred that his (Plaintiff) educational qualification is B.A.2nd Division, whereas, the prescribed qualification for employment in the Defendant Corporation in PG-V is a Master's Degree in 2nd Division, hence he was not eligible for induction and or retention as an Administrative Officer in PG-VI. While disputing the stance of Plaintiff, it is stated that though the Federal Service Tribunal heard the arguments in the Service Appeal on 04.05.2002 but announced the Judgment on 12.06.2003, whereby, the Plaintiff was reinstated in the service of the Defendant Corporation, but, without extending back benefits to him, for the intervening period, viz. the period from the date of termination from service upto the date of said Judgment was not allowed by the Tribunal by placing its reliance on a Judgment of the Hon'ble Supreme Court of Pakistan. The Defendant raised the issue of maintainability of present *lis* also, while controverting the claim for award of damages as pleaded by Plaintiff.

4. From the pleadings of the parties, following Issues were framed by the Court_

“1). Whether the suit is maintainable?

2. Whether the Plaintiff was appointed on merits after qualifying the special assessment test in accordance with the Rules and Regulation of the Defendant?

3. Whether the services of Plaintiff's were terminated illegally by the Defendant?

4. Whether the Defendant is empowered under the rules to terminate the service of a confirm employee? If so, its effect.

5. ***Whether the Plaintiff is entitled for the damages as claimed?
If so to what amount / extent.***

6. ***What should the Decree be?"***

5. After giving ample opportunity to the parties to appoint a Commissioner for recording the evidence, in order to expedite the matter, the Court finally on 23.11.2009 came to the conclusion that evidence will be recorded in the Court. On 19.11.2018, in the interest of justice, intimation notice was issued to the Plaintiff and his counsel. On the said date, that is, 19.11.2018, the Plaintiff was not present but only Defendant's counsel was in attendance. As per the Bailiff's Report, the Advocate's Office of the Plaintiff did receive the notice; but despite that they have failed to appear in the matter. Finally, on 04.02.2019, the matter was again adjourned enabling the Plaintiff to lead the evidence, as no one was present on behalf of Plaintiff and only Defendant Advocate was in attendance. On the above date, the case was adjourned merely in the interest of justice, but with a note of caution that on the next date of hearing, in failing to lead the evidence, the case will be decided accordingly.

6. The Plaintiff's side has not pursued the matter diligently nor has come forward to lead the evidence, *inter alia*, at least Plaintiff could have examined himself, but he did not. It appears that the Plaintiff has lost interest in the matter. Unnecessarily a case for want of evidence should not be kept pending if the conduct of the parties does not seem to be *bona fide*, as in the present case, in view of the above discussion.

7. It is an established Rule that pleadings themselves cannot be considered as evidence unless the Plaintiff or Defendant, as the case may be, enters the witness Box and lead the evidence in support of his / her claim or defence. In the present case, despite providing ample opportunities, the Plaintiff has not come forward to testify and discharge the onus to proof. The reported decision

of the Hon'ble Supreme Court handed down in the case of *Rana Tanveer Khan v. Naseer Khan*-2015 SCMR page-1401, is relevant. Since Plaintiff has failed to prove the allegations against the Defendant, thus the former (Plaintiff) is not entitled to any relief.

8. Consequently, this suit is dismissed, with no order as to costs.

JUDGE

Dated 18.02.2019

M.Javid.PA