

IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 419 / 2019

Plaintiff: **Ms. Serwat Azam through Mr. S. Ali Ahmed Tariq Advocate.**

Defendants: **Sindh Bank & others through Mr. Faisal Mehmood Ghani Advocate.**

For hearing of CMA No. 3305/2019.

Date of hearing: **23.04.2019.**

Date of order: **23.04.2019.**

ORDER

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration, Injunction and Recovery, whereas, through listed application under Section 94 CPC, the Plaintiff seeks a restraining order against the Defendants from proceeding further against the Plaintiff pursuant to a charge sheet, suspension order, notice of inquiry and a supplementary charge sheet.

2. Learned Counsel for the Plaintiff submits that Plaintiff was appointed on 30.05.2014 in Defendant No.1 ("Bank") and was thereafter, confirmed in service and continuously was being granted enhanced remuneration and promotion for her good performance. Per learned Counsel, the Plaintiff is aggrieved by charge sheet dated 1.1.2019 which has been issued without any Show Cause Notice and without providing the documents referred to in the charge sheet and as mentioned in Para 9 of the plaint. He submits that reply has been filed; but the Defendants are bent upon to proceed with the inquiry, and it is apprehended that an adverse order would be passed without following due process and affording appropriate opportunity to the Plaintiff to respond to the allegations. He has prayed that the Defendants be restrained from

proceeding further, and be further directed to first provide the documents as mentioned in Para 9 of the plaint.

3. On the other hand Learned Counsel for Defendants has raised a preliminary objection to the effect that an application under Section 94 CPC could only be filed as supplemental proceedings, whereas, there is no injunction application independently filed by the Plaintiff. Per learned Counsel, a proper charge sheet as well as a supplementary charge sheet has been issued which states the entire set of allegations and is in fact a Show Cause Notice by itself; hence, the objection to this effect is unwarranted. He has further argued that the Plaintiff by filing instant Suit has avoided to join the inquiry and the departmental proceedings, whereas, the Defendants out of respect to the Court, and without there being any restraining order, have not yet finally proceeded against the Plaintiff. Per learned Counsel, there are serious allegations against the Plaintiff pursuant to certain inquiry by FIA and State Bank of Pakistan against fake accounts operated by OMNI Group in which the Hon'ble Supreme Court had also taken certain *suo-moto* notice, whereas, the allegations are of serious nature, and therefore, the Plaintiff's name has also been placed in Exit Control List by the Ministry of Interior. According to him, the matter is still under inquiry and proceedings are pending before the Bank; hence, no case for an injunction is made out and the Plaintiff has approached this Court prematurely. Per learned Counsel, the arguments that Plaintiff has not been provided the H. R. Policy is also misconceived as at the time of employment all employees are provided the H. R. Policy, whereas, this objection is an afterthought to delay the proceedings. According to him, the Bank is proceeding in accordance with the policy and the relationship between the Plaintiff and the Defendant Bank is not

subject to intervention by this Court through an injunctive relief, being that of a master and servant. In support he has relied upon the cases reported as ***Pakistan International Airlines Corporation and 5 others V. Muhammad Izharul Ahsan Qureshi (P L D 1979 Karachi 640), Messrs Volkervam (Pakistan) Ltd. and others V. Syed Hamid Hussain (1988 M L D 2067), Muslim Commercial Bank Ltd. I. I. Chundrigar Road, Karachi and another V. Muhammad Shafi (2002 P L C 124) and Province of West Pakistan and another V. Malik Asghar Khan (1971 S C M R 569).***

4. I have heard both the learned Counsel and perused the record. Through listed application the Plaintiff seeks a restraining order against the Defendants from proceedings further on the basis of a charge sheet as well as a supplementary charge sheet. Insofar as merits of the allegations and the response of the plaintiff is concerned, it may be observed that it would not be appropriate for this Court to delve upon the same at this stage of the proceedings lest it may prejudice the case of any of the parties. However, it may be observed that even otherwise, Courts are always reluctant to interfere in matters pertaining to relationship of Master and Servant and that too, at the stage of inquiry and departmental proceedings. There is a plethora of case law to this effect, whereas, at the present moment the Plaintiff has only been asked to respond to the charge sheet and appear before the inquiry committee as per the inquiry letter dated 22.1.2019 which states that to give a fair chance to defend, the Plaintiff may come forward and defend the case and may also lead her own evidence. For the present purposes, in fact there appears to be no justifiable cause to invoke the jurisdiction of this Court, whereas, an attempt has been made to make out a case by demanding certain irrelevant documents as stated in Para 9 of the

plaint. This on the face of it, appears to be an afterthought and an attempt to delay the proceedings initiated against the Plaintiff. Indeed and as already observed, that it is not appropriate for this Court to dilate upon the merits of the case, as it may prejudice the Plaintiff's case in the inquiry; however, it appears that through the charge sheet as well as the supplementary charge sheet, the Plaintiff has been confronted with allegations of serious nature which emanate from the operating procedures of a Bank, and the Plaintiff who was working as a Branch Manager, is required to have knowledge about the Bank's Regulations as well as directions of the State Bank of Pakistan, more specifically, the well-known operating procedure, "know your customer" (KYC). The charge is more in relation to this aspect of the opening of the accounts and for that, there appears to be no justification for the Plaintiff not to respond. The argument that the Plaintiff is not in possession of various documents is also misconceived inasmuch as the Plaintiff has to first approach the inquiry committee and then ask for the documents, and if the inquiry committee, feels that such documents have relevance and are being considered by them for proceeding further against the Plaintiff, then they are required to provide the same and not otherwise. The Defendants have also stated that they will act according to the procedure as provided in the H. R. Policy. In the counter affidavit the Defendants also placed on record Clause 15 of the H. R. Policy which deals with *Discipline*. Insofar as demand of letter of SBP dated 18.12.2018 is concerned, the same has been provided, whereas, the attached annexures contain some secret and confidential information which is not related to the Plaintiff; hence it has not been provided. It further appears that the Plaintiff has already given her detailed response to the charge sheet, responding to each and every allegation

and this otherwise does not require providing any other document which may enable her to respond. She has already filed her response in detail, whereas, the requisite documents, if any, have already been provided to the Plaintiff and therefore, no further case is even otherwise, made out.

5. Insofar as the present case is concerned, I am of the view that Plaintiff has come to the Court prematurely by impugning the Charge Sheet to which she has already filed a reply and inquiry is pending which she is avoiding to attend on one pretext or the other. It is not that any final / adverse order has been passed against her. She has been provided an opportunity to respond to the allegations / Charge Sheet(s) including cross examine the relevant persons as stated in letter dated 22.2.2019 (Annexure-R/8) and it appears that by preempting an adverse order, she has come to the Court and seeks a restraining order. On perusal of the record I am not convinced that she is not being provided proper opportunity of contesting the allegations as mentioned in the charge sheet(s). In fact it appears to be case wherein she on the facts and circumstances of the case and her defence, is sensing an adverse order, and has therefore, filed instant Suit with the listed application to thwart such proceedings. As noted earlier, the record placed before the Court clearly reflects that ample opportunity has been provided and the Plaintiff instead of defending the case on merits has raised irrelevant and frivolous objections. In these circumstances, I am of the view that this is not a case wherein, this Court may exercise any discretion in favour of the Plaintiff as the only ground urged on her behalf is regarding alleged misconduct in the inquiry proceedings, which is not justified or made out from the record otherwise.

6. Having said so, it is also a settled proposition of law, that in domestic inquiries, the Courts are reluctant to interfere, whereas, they are not supposed to substitute such finding of facts, except in rare circumstances, (which are lacking for the present moment). There isn't any patent illegality on the face of it and therefore, at this injunctive stage, it would not be proper and just to interfere and to disband or prorogue the proceedings. In the case reported as ***Hotel Intercontinental, Karachi v Vth Sind Labour Court (PLD 1976 Karachi 301)***, it has been observed as follows;

In the instant case I find that sufficient opportunity was given to the second respondents to contest their case and therefore there was no scope left for the Labour Court, who decidedly enjoyed limited jurisdiction to examine the correctness of the procedure adopted by the enquiry officer. A perusal of the record shows that a thorough enquiry was made by the enquiry officer who finally came to the conclusion that strike was illegal as it was resorted to without observing the procedure laid down in section 26(1) and (3) of Industrial Relations Ordinance, 1969. The Labour Court was legally debarred from examining the validity of the domestic enquiry unless there was any patent irregularity apparent on the face of record. In this case, however, no plausible reasons have been shown by the learned Labour Court to justify interference with the results of the enquiry and give a finding that the charges of illegal strike, taking out of procession, abusing the officers and manhandling a photographer against the 2nd respondents were baseless. (Emphasis supplied)

7. Similarly in the case reported as ***United Distributors Ltd., v Zahid Hussain Khan & 2 others (PLD 1976 Karachi 376)*** a learned Division Bench of this Court has been pleased to hold that decision arrived at in a domestic inquiry must not be upset in absence of plausible reasons justifying interference. The relevant observations are as under;

11.....He argued that Court could interfere as did in this case when it came to the conclusion that the enquiry has been made with mala fide intention and has been made improperly. This argument is not available because respondent failed to produce any evidence with regard to mala fide on the part of the Petitioner. Next while going through the record of the case we do not see any force in the arguments advanced by the

learned counsel Mr.; Obaidur Rahman because admittedly respondent No. 1 had participated in the domestic enquiry held by the Petitioner on 25-10-1972 in spite of his previous objections. During the enquiry, statements of Mr. Ilyas Baig, Personnel Officer, Mr. Shahideen, Departmental Manager and Mr. Tahir Khalig as well as Mr. S. M. Aminuddin, Accountant, were recorded and respondent No. 1 in fact cross-examined some of them with regard to allegations. Not only this, the domestic enquiry does show that respondent No. 1 allowed himself to be examined at great length, and he was cross-examined by Mr. Ilyas Baig wherein he has admitted that he has written all these cash memos. When he was asked by the Enquiry Officer had he anything else to say in his defence, he replied; "I have already given my statement and have nothing to add or produce." Each page of the enquiry report is signed by respondent No. 1 as well as the enquiry officer and this fact has not been denied by him. Thereafter findings reached by the Enquiry Officer, was submitted to the Chairman of the petitioner who has passed the dismissal order on 27-10-1972 according to the report of the enquiry officer after perusing the proceeding of the domestic enquiry as well as the final report. It is therefore too late in the day on the part of the respondent No. 1 to say that principles of natural justice were violated and he was not given any opportunity of being heard by the petitioner. His learned counsel when questioned as to why in spite of previous objections, the respondent No. 1 had participated in the domestic enquiry and as to why he went to the length of giving his own statements and cross-examined the witnesses? The counsel did not make any worthwhile and satisfactory answer. It is not the case of the respondent No. 1 that he was an illiterate person or that he was compelled to participate in the proceedings or the domestic enquiry. He was a responsible and educated officer as he was drawing salary of Rs. 600 per month and he has signed each and every page of the enquiry proceedings, therefore, it cannot be said that there was any compulsion or duress on the part of the Petitioner obliging respondent No. 1 to participate in the proceeding to which he had earlier objected. Therefore, we are of the opinion that he voluntarily submitted to the domestic enquiry. This fact is further supported by Annex. "L" dated 30-11-72 submitted by the respondent No. 1 to the petitioner, wherein amongst others he has stated:

14. In view of the facts and circumstances of this case, we are of the opinion that both the Courts below have not applied their mind to the legal and factual aspects of this case, particularly they could not sit as a Court of appeal on the decision of the domestic enquiry and no plausible reason has been shown in the impugned orders justifying interference with order passed by the Enquiry Officer. The respondent was given full opportunity throughout to represent his side of the case and produce witnesses. He participated in the proceedings, got himself examined and cross-examined some of the witnesses and did not produce any witness in defence as is borne out by the record, therefore, it cannot be said as he has been submitted on his behalf that he was not given any opportunity to defend himself. (Emphasis supplied)

8. In view of hereinabove discussion, I am of the view that the Plaintiff has failed to make out a prima facie case nor balance of convenience lies in her favour, whereas, it is the Bank which is going to suffer irreparable loss if any injunctive orders are passed. Accordingly, through a short order in the earlier part of the day, listed application was dismissed and above are the reasons thereof.

J U D G E

ARSHAD/