

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No.50 of 2018

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Appellant : Pakistan Defence Officers Housing
Authority
through Mr. Maseem Iqbal, Advocate.

Versus

Respondent No.1 : Altaf Hussain. (Nemo).

Date of hearing : **07.02.2020**

Date of Decision : **21.02.2020**

JUDGEMENT

NAZAR AKBAR, J. The appellant through this IInd Appeal has challenged the judgment dated **13.02.2018** passed by the XIIth Additional District Judge, South Karachi in Civil Appeal No.42 of 2016, whereby, the appeal filed by the appellant was partly allowed as the judgment dated **28.01.2016** passed by the IVth Senior Civil Judge, South Karachi decreeing civil suit No.177/2013 filed by the Respondent was modified.

2. Brief facts of the case are that the Respondent/Plaintiff filed civil suit No.177/2013 against the appellant/defendant for declaration and recovery of damages of **Rs.50,000/-** stating therein that he has joined the appellant/Defence Officers Housing Authority (DHA) as Supervisor on **13.10.1993** in BPS-6 in vigilance Branch and his service was confirmed on **24.04.1994**. It was further averred that on **18.01.2012** he suddenly received dismissal letter without any reason and notice. It was against Law/Rules and Regulations, therefore, he submitted various

applications to the Administrator of the appellant as well as Corps Commanders including Chief of Army Staff but he did not receive any response. It was further averred that the dismissal letter caused heavy loss and damages and it defamed the name and reputation of the respondent / plaintiff. He also suffered mental agony on being jobless, therefore, he filed civil suit for declaration and recovery of damages of **Rs.50,000/-**.

3. After notice/summon, the appellant/defendant filed written statement wherein they denied the contents of plaint. They contended that the Respondent/Plaintiff joined DHA as supervisor with effect from **02.10.1993** in BPS-6 and was confirmed on **24.04.1994** but it is clarified that there is no permanent employee as per Service Rules and after the confirmation, the employee becomes regular employee.

4. The trial Court from pleading of the parties has framed the following issues:-

1. *Whether the suit is maintainable in the eyes of law?*
2. *Whether plaintiff is permanent employee of DHA?*
3. *Whether the plaintiff is entitled for relief of damages as per prayer clause?*
4. *What should the decree be?*

The trial Court after recording evidence and hearing the parties decreed the suit of the Respondent as prayed by judgment dated **28.01.2016**. Against the said judgment, the appellant preferred Civil Appeal No.42/2016 before the appellate Court which was partly allowed by judgment dated **13.02.2018** and the judgment of the trial Court was modified to the extent that the Respondent/

Plaintiff is only entitled for a decree of damages of **Rs.25,00,000/-**. The appellant has challenged the said judgment of appellate Court here in this IInd Appeal.

5. I have heard learned counsel for the appellant and perused the record as well as written arguments filed by the learned counsel for the appellant.

6. Learned counsel for the appellant while challenging the concurrent findings in this IInd Appeal was required to show that the impugned decision was contrary to law and/or the Appellate Court has failed to determine some material issue of law or there was substantial error in the procedure provided in CPC. The appellant in written argument have not referred to any irregularities required to be examined by this Court in terms of **Section 100 of CPC**. It has come on the record very categorically that the respondent has served for more than 18 years in the establishment of appellant and one fine morning by a letter dated **18.01.2012** he was dismissed from the service with one month salary. The respondent made his best efforts to persuade the appellant not to discriminate him and treat him in accordance with law applicable in the establishment of the appellant. The respondent has also informed the appellant that he was not contract employee and his service is governed by statutory rules, therefore, after failing to get the reasonable reply by the appellant, he had no option but to file suit for damages. It is now settled law that if the service of an employee has been terminated without following the procedure provided within the establishment or it is in violation of natural justice such termination has always been

found illegal and in consequence of illegal termination the remedy with the aggrieved person is to claim damages.

7. The appellant has filed written statement and after framing of issues even they have cross examined the respondent. The respondent in support of his claim has produced as many as 18 documents including his confirmation letter dated 24.4.1994 as Ex.P/4 letter / representations and even Employment Policy and Procedure as Ex.P/17. The appellant could not shake the evidence produced by the respondent to the effect that he has been regular employee of appellant and he has served eighteen years three months and sixteen days when he was suddenly removed from the service in lieu of one month pay by illegally and unlawfully invoking **Chapter III, Para 8b(1)** of the Pakistan Defense Housing Authority Service Rules (The DHA Service Rules). In rebuttal to the evidence of respondent despite several opportunities given to the appellant, they did not lead their evidence. The burden on the appellant was to satisfy the Court that they have applied all rules of service fairly in dealing with the removal of the respondent from the service in terms of service rules governing the service of the respondent, who has served them for 18 years. The case of the respondent was that he was Regular Employee and the said rule was not relevant for removing him from the service. Admittedly this rule is only applicable in the case of an employee who is working with appellant on contract basis. It has been admitted by the appellant in their written statement that the respondent was regular employee. Even otherwise an employee who has served for 18 years is not supposed to be contractual employee for such a long period. An attempt has been made by the appellant to suggest

that respondent was removed after show cause notice but neither such notice was filed with written statement nor in evidence. It is not even mention in the impugned dismissal letter. The most fatal thing for the appellant is that they have removed the respondent by invoking the provisions of DHA Service Rules, Chapter III, **Para 8b(1)** as discussed by the learned Appellate Court. This rule has already been declared by the Supreme Court as ultra vires in the case of *Pakistan Defence Officers Housing Authority ..Vs.. Itrat Sajjad Khan and others (2017 SCMR 2010)*. The appellate Court has even quoted relevant finding of the Supreme Court. In the written argument, learned counsel for the appellant has not even referred to the case law followed by the Appellate Court.

8. In view of the above termination has rightly been found by the trial Court as illegal, mala fide and unlawful. In such eventuality the Court was left with no option but to grant damages to the respondent. The trial Court has granted damages as prayed. However, it has been reduced by 50% by the Appellate Court i.e. to the extent of **Rs.25,00,000/-** and Appellate Court was having the powers to reexamine the evidence and modify findings of the trial Court. This Court in terms of **Section 100 of CPC** while seized of IInd Appeal is not supposed to reexamine the evidence to come to a different decision on the same fact and interfere in the findings of the two Courts below with its own reasoning. The Second Appellate Court can only look into legal lacuna alone in the impugned orders and in the instant appeal learned counsel for the appellant has not raised any law point.

9. In view of the above facts and discussion no case is made out for interference in the impugned judgments. Therefore, instant Appeal is dismissed.

JUDGE

Karachi
Dated:21.02.2020

SM / Ayaz Gul