

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 58 of 2016

Muhammad Shafqat

Versus

The Aga Khan Hospital &
Medical College Foundation & others

Date of hearing: 07.11.2017

Appellant: Through Dr. Rana Khan Advocate

Respondents: Through Mr. Qadir H. Sayeed

J U D G M E N T

Muhammad Shafi Siddiqui, J.- The applicant has challenged the judgment and decree of the appellate Court passed in Civil Appeal No.195/2015.

1. Brief facts are that the appellant filed suit No.431/2012 for declaration, arrears, damages and permanent injunction. He claimed to have been appointed by respondent vide appointment letter dated 13.7.1988 as “Phlebotomist”. He was terminated vide letter dated 19.12.2011. The evidence of the parties were recorded in response to the issues framed by the trial Court. Following issues were framed:

- “1. Whether the suit is maintainable?
2. Whether plaintiff was illegally terminated by the defendants from service vide order dated 19.12.2007?
3. Whether plaintiff is entitled for his reinstatement in services with defendants with all back benefits?
4. Whether the plaintiff is entitled for salaries of remaining period of the services till his services of 25 year, being terminated pre-mature?
5. Whether plaintiff is entitled for damages? If yes to what extent?
6. Whether the plaintiff is entitled for any other relief?

7. What should the decree be?"

2. The trial Court decreed the suit of the petitioner only to the extent of reinstatement and he was reinstated with the back benefits. In terms of issues No.4 & 5 it was held by the trial Court that since he has been reinstated as being terminated pre-mature, the plaintiff is not entitled for any damages and both issues were answered in negative. Aggrieved of the judgment of trial Court, respondent preferred an appeal on the ground that there was only a relationship of master and servant between the appellant and respondent No.1 and hence under no stretch of imagination the appellant could be reinstated and foisted upon his master. The appeal was allowed and the suit of the appellant was dismissed. Appellant being aggrieved of the decision of the appellate Court, whereby the findings of the trial Court were reversed, filed this 11nd appeal.

3. It is the case of the appellant that no prior show cause notice of one month was served upon him. Counsel for the appellant submits that since findings of the trial Court were reversed as to the reinstatement of the appellant, the claim of damages ought to have considered by the appellate Court, at least. Learned Counsel for the appellant while relying on the terms of the termination letter submits that there is no allegation against the appellant at all yet his services were terminated without any lawful or justified reason. In the alternate she submits that in case the appellant is not entitled for reinstatement, Court may award compensation on account of his unlawful termination. Learned Counsel for the appellant has relied upon the cases of Zakir Rashid Khan vs. Chairman Pakistan International Airlines Corporation & others (2015 PLC 1461), Trustees of the Port of Karachi vs. Muhammad Saleem (1994 SCMR 2213), Almas Ahmad Fiaz vs. Secretary Government of the Punjab Housing and Physical Planning Development Lahore & another (2006

SCMR 783) and Pakistan Telecommunication Company Limited & others vs. Yasmeen Tabassum & others (2014 PLC 176).

4. On the other hand Mr. Qadir H. Sayeed learned Counsel appearing for the respondents submits that there is relationship of master and servant between the appellant and respondent and hence according to the terms of contract available at page 69 the respondent was justified in terminating the service of the appellant in lieu of one month's salary. He submits that since it was the case of lawful termination, therefore there is no question of any damages which was rightly ignored by the appellate Court.

5. I have heard the learned Counsels and have perused the material available on record.

6. At the first instance, I would like to decide the controversy as to whether the appellant is entitled to be reinstated. The appellant was appointed as "Phlebotomist" and the terms and conditions were incorporated in his letter of appointment dated 13.7.1988. The appellant has agreed to a termination clause whereby he is entitled to one month's prior notice which is equivalent to a salary of a month in case no prior notice is issued. Under no stretch of imagination such notice is mandatory in case a salary of one month is being paid in advance. The prerogative to terminate service is purely rests upon the master who determines the fate of his employee at his sole desire and wishes. There are no statutory obligations on the employer which are to be followed strictly.

7. The termination letter does not contain any derogatory or defamatory remarks on the basis of which the appellant could be aggrieved of. It is also to be kept in mind that he was not dismissed but terminated from service. It is only stated that the services of appellant were no longer required and an advance salary of one month was paid at the time of issuance of termination letter. The case of the appellant

should have come to an end on issuance of this termination letter and payment of one month's salary however the appellant insisted that his entitlement for damages ought to have been considered. In this 11nd appeal as the scope is limited, I have dragged myself scrutinize the evidence to consider the case of damages of the appellant on the basis of material that is available on record, however it provides no clue, as to on what account the damages are being claiming. Cross examination starts from page-369 and a part of it is available at page 387. The respondents' servant was cross examined to the extent of his authority and to the extent of entitlement of one month's notice before appellant could be terminated. However there is not an iota of evidence as to how the plaintiff is entitled for damages in respect of termination notice which was issued according with the terms of employment agreed by the appellant.

8. No employ can coerce his master for continuation of his employment as long as he himself wishes to continue. A legitimate expectation of a notice fulfilled by payment of a month's salary and that is only the wisdom behind this one month notice before termination. In the case of *Aurangzeb vs. Messrs Gool Bano Dr. Brjor Ankalseria & others* (2001 SCMR 909) the petitioner was employee of a charitable trust who was reverted to a lower post which order of reversion was assailed in civil suit which was dismissed by the trial Court and the appeal was also dismissed by the High Court, the Hon'ble Supreme Court held that the orders are neither arbitrary nor in violation of certain principle of law.

9. In the case of *Habib Bank Ltd vs. Rana Muhammad Ashiq Khan* (2010 PLC (C.S) 93 learned single Judge observed that the suit insofar as the reinstatement is concerned, was not competent as reinstatement order cannot be passed on the basis of relationship of master and servant.

10. In the case of Anwar Hussain vs. Agricultural Development Bank of Pakistan (PLD 1984 SC 194), the Hon'ble Supreme Court has observed that:

“--- Employee of statutory corporation-Dismisal or termination from service-Relationship of employment result of a contract freely entered by parties-Principle of master and servant applicable-Such principle not applicable if some law or statutory rule intervenes and places fetters upon freedom of parties in matter of terms of contract-Corporation set up by statute but Government not reserving itself powers to regulate condition of service of employee under Corporation and statute itself not prescribing any condition but leaving matter entirely in discretion of corporation who is given power to frame rules and regulation in that regard so that employee is left with no protection under statute itself-Corporation, held, sole arbiter in matter of prescribing terms and conditions of its employee and competent to deal with them in accordance with terms and conditions so prescribed-Employee of such Corporation, held further, could not claim to be person possessed of any legal character within meaning of S.42, Specific Relief Act, 1877 and in case of his wrongful dismissal from or termination of service, principle of master and servant will fully apply and he can only claim damages but not-reinstatement to his post.-[Master and servant].

If the relationship is the result of a contract freely entered into by the contracting parties then the principle of master and servant will apply. The principle, however, will not apply if some law or statutory rule intervenes and places fetters upon the freedom of the parties in the matter of the terms of the contract. It is on this principle that a civil servant for whom there are constitutional safeguards, is not governed by the principle of master and servant, for he is possessed of a legal character for the enforcement of which he can bring an action. Even where the employee is not a civil servant but there are statutory safeguards governing his relationship with the employer and placing restrictions on the freedom of the parties to

act, the general law of master and servant will not apply. In such cases the employer would be bound to follow the procedure provided for in the statute or the statutory rules before terminating the service of the employee and in the absence of conformity to such procedure, the termination of service would not be clothed with validity and the employee will be entitled to an action for his reinstatement.---"

11. In the case of Liaquat Ali Channa vs. Federation of Pakistan & others (1998 PLC (C.S) 727) this Court has observed that where terms and conditions of service were regulated under concept of master and servant, only remedy available to the servant against wrongful termination, was to claim damages.

12. In the case of Muhammad Mumtaz vs. Federation of Pakistan (1988 CLC 1965), it is observed that where service of a person was terminated in terms of employment either contained in agreement or regulation framed by the employer there was no violation of principle of natural justice. Where, however an employee was dismissed from service on the ground of misconduct, he would be entitled to be heard.

13. In view of the above facts and circumstances and view of evidence available on record no indulgence is required, hence this IInd appeal was dismissed by a short order dated 07.11.2017. Above are the reasons for the same.

Judge