

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.2034 of 2017

Plaintiff : Muhammad Sajjad, through
Mr. Zamir Ahmed Ghumro, Advocate.

Defendant : Federation of Pakistan, through
No.1. Mr. Irfan Ahmed Memon, DAG.

Defendants : Pakistan Civil Aviation authority and
No.2 & 3. Chief Human Resource, C.A.A., through
Mr. Shah Nawaz Memon, Advocate.

Date of hearing : 16.02.2021
Date of order : 17.03.2021

ORDER

ZAFAR AHMED RAJPUT, J:- The issue of maintainability is involved in this suit in view of the order, dated 12.07.2019, whereby this Court has observed, as under:

“It appears that through instant suit the plaintiff, who was appointed as General Manager Civil by the defendant No.2/Pakistan Civil Aviation Authority for a project on the contract basis, seeks extension of his contract. No such right of extension of contract exists in the law; hence, prima facie the plaint is liable to be rejected. Learned counsel for the plaintiff is directed to satisfy the Court on the point of maintainability of the instant suit.”

2. The plaintiff has filed this suit for declaration, permanent and mandatory injunction, alleging therein that in pursuance of an advertisement published in various newspapers, he applied for the contract based post of General Manager Civil for New Gwadar International Airport. It is further alleged that after completing all the prerequisites, vide letter dated 19.09.2012, the plaintiff was appointed for the said post for one year (extendable) by the defendant No.3 (Chief

Human Resource Pakistan Civil Aviation Authority); whereafter, the plaintiff submitted letter of acceptance on 25.09.2012 and joining report on 27.09.2012. It is further alleged that based on the criterion given in the advertisement i.e. performance and duration of the project, the employment contract of the plaintiff was extended from time to time; during this period, due to framing of new regulations in the year 2014, the plaintiff's post was re-designated as Additional Director/Project Manager and lastly he was given extension only for three months with effect from 27.09.2017, vide letter dated 08.09.2017. It is the case of the plaintiff that the proposal of extension for three months is contrary to the terms set out in the advertisement issued at the time of appointment of the plaintiff. It is also case of the plaintiff that since he has five years of valuable experience of working in the project, the proceeding to make fresh recruitment is absolutely unnecessary and cannot be termed as a reasonable, rational, fair and just exercise by the defendants. It is also case of the plaintiff that his non-extension in the employment contract till completion of the project is illegal, mala fide, unconstitutional, contrary to the principles of natural justice and in violation of the conditions given in the advertisement, whereby he was inducted; hence, the plaintiff has maintained instant suit, inter alia, with the following prayers:-

- a) Declare that failure of the defendants to give extension to the plaintiff till completion of project in accordance with the terms set out in the advertisement published at the time of recruitment is illegal, mala fide, unreasonable, discriminatory, arbitrary, unjust, unfair and in violation of principles of equity and fairness;
- b) To grant mandatory injunction directing the defendants to extend the contractual employment of the plaintiff till completion of the project as set out in the advertisement published at the time of initial appointment of plaintiff;

- c) Permanently restrain the defendants, their officers, agents, attorneys, assignees and/or any person acting on their behalf from relieving the plaintiff from his present appointment before completion of NGIA project.

3. Learned counsel for the plaintiff while arguing the matter on the point of maintainability of the suit has referred to the case of Ghulam Rabbani vs. State Bank of Pakistan & another (2020 PLC (CS) 483) and has contended that the principle of “master and servant” may be case for consideration in respect of employees working with private organizations; but at least this principle must not be taken into consideration in respect of Government Organization/ departments; rather they have to be dealt with on case to case basis. He has further contended that Civil Aviation Authority has no statutory rules; however, it is predominantly controlled by the Federal Government; therefore, the rule of master and servant, whereby an employer can engage in hire and fire policy, will not strictly apply on the Civil Aviation Authority. He has also referred to the case of Sadiq Amin Rahman vs. P.I.A. & others (2016 PLC 335) and has contended that a statutory corporation or the corporation/company in which government has substantial shareholding lacks service rules, it does not mean that they are above the law and they can do anything on their own whims and pleasure but they should follow the principle of good governance and maintain transparency and fair mindedness in their affairs. He while referring case of Dr. Wisal Mehmood vs. Govt. of Pakistan & others (2018 PLC (CS) Note 180) has added that under the project policy, plaintiff shall continue to hold the post on which he is serving at present till the life of project, and since in the matter in hand the plaintiff has been deprived from his right to be appointed till the life of the project, the instant suit is maintainable in law.

4. On the other hand, learned counsel for the defendants No.2 & 3 has maintained that since the defendants have non-statutory rules of service, the applicable relationship between the plaintiff and defendant is that of master and servant and; therefore, the plaintiff cannot maintain instant suit for extension of his service period under contract; hence, the instant suit is not maintainable as the plaintiff has no legal right and character to hold the position of Additional Director/Project Manager beyond the contractual period which has already expired. He has added that the plaintiff has no cause of action to maintain this suit for declaration and injunction. He has also maintained that advertisement does not confer any vested right in favour of plaintiff to continue his present post till the completion of the project. He while referring the case of Pakistan Airline Pilots Association and others vs. Pakistan International Airline and others (2019 SCMR 278) and Lieutenant Colonel Saeed Ahmed Awan vs. Fauji Foundation Trust (2019 YLR 305) has also maintained that declaration sought by the plaintiff cannot be granted under Section 42 of the Specific Relief Act, 1877 (“the Act”). He has also referred to case of Mohsin Arif and others vs. Secretary to Government of Punjab and others (2019 PLC (CS) 77) and Khadim Hussain vs. Government of Baluchistan Education Department (Colleges Section) Quetta, through Secretary and others (2018 PLC (CS) 417) and has maintained that extension is not the right of the plaintiff.

5. The learned DAG while adopting the arguments of learned counsel for the defendants No.2 & 3 has prayed for rejection of the plaint under Order VII rule 11 C.P.C.

6. Heard the learned counsel for the parties and perused the material available on record.

7. It is an admitted position that the plaintiff was initially appointed as General Manager Civil for New Gwadar International Airport on contract basis for a period of one year (extendable) subject to clause 14 of the letter of appointment, dated 19.9.2012 (*Annexure B/1 at page 21 of the memo of plaint*), which provides that *the appointment during the period of contract shall be liable to termination on thirty days' notice on either side or immediate termination on payment of basic pay in lieu thereof, without assigning any reason whatsoever*. Term No.2 also provides that if the terms and conditions of the appointment are acceptable to plaintiff he should sent written confirmation by registered post to defendant No.3, and it was, thereafter, the plaintiff submitted his letter of acceptance of appointment (*Annexure B/2 at page 25 of the memo of plaint*) by confirming the acceptance of offer of appointment; hence, it is an admitted position that the appointment of the plaintiff was on contract basis, the terms whereof were acknowledged and accepted by him.

8. The perusal of the advertisement and appointment letter of the plaintiff reflects that his appointment was for a period of one year or for extended period on the option of the appointing authority and the same does not contain any provision for continuation/extension of the plaintiff's appointment till the completion of the project for which he was appointed. Moreover, as per terms and condition enunciated in the appointment letter, the appointment/ contract is revocable.

9. In view of the above, the defendants/CAA are well within their right to dispense with the service of the plaintiff after the expiry of his contract or during the period of contract on thirty days' notice or immediate termination on payment of basic pay in lieu thereof, without assigning any reason whatsoever. It is now well-established principal of law that a contractual employee has no fundamental/acquired vested

right to remain in the contractual post or to seek an extension and/or regularization of the contractual service. It is also a settled law that courts ordinarily refrain from interfering in the policy making domain of the executive unless it is proven that it has infringed the fundamental rights of the citizens of Pakistan, which is not the case of plaintiff. Suffice it to say that after accepting the terms and conditions of his appointment, the plaintiff is precluded under the law to claim extension of his contractual service till the completion of project and the law does not recognize any such right of the plaintiff/contract employ. In this regard, I am fortified with the case of *Pakistan Airline Pilots Association (supra)*.

10. For the foregoing facts and reasons, I have found the instant suit barred under Section 42 of the Act. Accordingly, the plaint in the suit is rejected under Order VII, rule 11 (d), C.P.C.

JUDGE