

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.553 of 2014

Plaintiff: Khalil Mughal  
through Mr. Muhammad Ali Lakhani  
Advocate.

Defendant Pakistan International Airline Corporation  
through Mr. Zeeshan Khan Sherwani,  
Advocate.

Date of hearing: 12.1.2016.

Date of order: 09. 02.2016

ORDER

SALAHUDDIN PANHWAR]- Through instant application [CMA No. 6192 of 2014] under Order VII r 11 CPC, Defendant seeks rejection of plaint.

2. Plaintiff has invoked civil jurisdiction of this Court by filing captioned suit and has prayed that:

- i. Declare that the "Emails" dated 17.03.2014 and 21.03.2014, and "Release" dated 03.02.2014, bearing Reference No. Rise/Ams/KM/01, are illegal, unlawful, arbitrary, issued with *mala fide* intent, and *ultra vires* (a) "Chapter 40" of the Personnel Policies Manual; (b) Subsection 2 of Section 5 of the PIAC Act of 1956; (c) "Circular 16/2013" dated 30.04.2013; (d) "M-1" dated 24.12.2013; (e) Articles 2-A of the General Clauses Act;
- ii. In furtherance thereof, declare that the Plaintiff is entitled, through a vested right and the recurring legitimate expectation, to continue to hold office as "Manager Benelux" in terms as prescribed under "M-1" dated 24.12.2013;

- iii. In support of "i" and "ii" herein above, declare that the Plaintiff's term as "Manager Benelux" stands extended in perpetuity, and till the meeting of the contingency, as prescribed for under and through "M-1" dated 24.12.2013;
- iv. Declare that the "Letter" dated 30.08.2013 bearing "LAOO No. MK-08-2013/161" stands annulled, canceled, superseded and modified in terms of "M-1" dated 24.12.2013;
- v. Grant a Permanent Injunction restraining the Defendant, and/or any other person (s) acting under it, through it, and/or on its behalf, from causing any hindrances, and/or interfering with the plaintiff's discharge of duties as "Manager Benelux" at Amsterdam in any manner whatsoever. In furtherance thereof, suspend the operation of the "Emails" dated 17-03-2014 and 21-03-2014 and "Release" dated 03.02.2014, bearing Reference No. Rise/Ams/KM/01;
- vi. Grant any other relief(s) as may be deemed permissible given the facts and circumstances of the case.
- vii. Grant costs of the proceedings.

3. As per plaintiff he is a "Manager Benelux" i.e. Manager for a group of three countries situated in the European Union and presently he is discharging his duties on station established by defendant at Amsterdam (Netherlands); defendant posted plaintiff for three years on that station but meanwhile plaintiff was called back; that act of defendant is arbitrary, perverse and against the law of equity; foreign transfer/posting falls within the chapter 40 of Personal Policies Manual (PPM) which is a compilation of all prevalent policies within PIAC and an employee shall normally be allowed foreign posting for a period of three years extendable by one year due to operational considerations and performance; that plaintiff was initially transferred to take charge of his posting in 2009,

subsequently he assumed the charge in 2010; before issuance of release order dated 03.02.2014 no notice was issued to the plaintiff, hence plaintiff has been deprived from his legal rights.

4. Defendant in its written statement raised the objections that the suit is not maintainable; that the dictum as laid down by the Hon'ble Supreme Court of Pakistan in the case of Syed Mehmood Akhter Naqvi vs. Federation of Pakistan, reported as PLD 2013 SC 195, (commonly known as Anita Turab Case) is not applicable in the present case as the plaintiff has already completed his tenure of three years and was transferred back to Pakistan by the defendant vide letters dated 14.05.2013 and 30.08.2013; and, that concealment of some facts has been made by the plaintiff, which renders the suit liable to be dismissed. However, denying the contents of most of the paragraphs of the plaint, the defendant submitted that posting in Benelux at Amsterdam as Country/Area Manager stands abolished on the basis of rationalization of defendant's manpower at foreign stations due to financial constraints; that this is not the case of termination of service after abolition of a post, but the same is a case of transfer of the plaintiff to an equivalent post after abolition of a post the plaintiff was performing duty; that the Transfer Order dated 29<sup>th</sup> September, 2009 under which the plaintiff was transferred to perform as Manager Benelux, also contains that plaintiff's posting will be for a normal period of three years, provided always that the Management shall have absolute powers to call the plaintiff back and/or transfer the plaintiff at any other place at any time without assigning any reason or ground whatsoever notwithstanding the period of plaintiff's posting mentioned above; that by

accepting the said term, the plaintiff cannot approbate or reprobate and such the principles of estoppels are also attracted towards the plaintiff; that in the instant case there has been no violation of any policy as alleged by the plaintiff and when the post of Manager Benelux, PIA-Amsterdam, stands abolished, no operational condition exists for maintenance of the said office; that M-1 dated 24-12-2013 is recommendations while reversion is an administrative order to be followed by the defendant in letter and spirit under the principles of Master and Servant and the Email dated 17-03-2014 has no nexus with M-1; that Release Order took birth on 3<sup>rd</sup> April, 2014, whereas 3<sup>rd</sup> February 2014 mentioned as date of issue is a typographical mistake; that there exists no cause of action and the plaintiff is not entitled for the reliefs claimed.

5. Learned counsel for the defendant, *inter alia*, argued that instant suit falls within the scope of master and servant; plaintiff was posted in Amsterdam for three years, meanwhile the defendant closed its office at Amsterdam and called him back but plaintiff filed instant suit whereby ad-interim injunction was granted, simultaneously, he filed petition before District Court in Amsterdam for salary and closure of defendant account, such petition was allowed on the basis of ad-interim injunction granted by this Court, pursuance to that defendant has received letter that bank accounts of defendant in Amsterdam has been seized. He further contends that since defendant has closed its office, therefore, plaintiff cannot take a plea for continuation of his job on same salary when such office is not functional. He relied upon case laws reported as 2015 SCMR 1545, 2013 SCMR 1383, PLD 2010 SC. 676, PLD 1992 SC 531, PLD 1981 SC 224,

SBLR 2007 Sindh 495, PLD 2006 SC 602, PLD 1961 SC 531, 1971 SCMR 152, PLD 1971 Lahore 748, PLD 2005 SC 806, 2013 PLC (CS 768 Sindh High Court, 2015 PLC (C.S)1412, 1998 SCMR 68, 1997 SCMR 1508, 1984 PLC 1342, 2000 PLC (SC) 11, 1996 SCMR 654, 2002 CLD 120.

6. Counsel for the plaintiff contends that instant application is under Order VII Rule 11 CPC and Court has to consider the plaint as admitted; suit is very much maintainable in view of Tanveer-ur-Rehman Case and Anita Turab Ali Case decided by apex Court as well he has placed copy of recent judgment of this Court passed in Civil Suit No. 822 of 2015 wherein it is observed that interim relief can be granted in suits which are falling within the scope of Master and Servant. He relied upon case laws reported as PLD 2012 SC 132, PLD 2010 SC 676, 1989 SCMR 353, 2004 SCMR 1820, PLD 1989 KARACHI 404, PLD 1969 SC 14, PLD 2001 SC 176, PLD 2001 SC 555, 2001 SCMR 934, SBLR 2007 Sindh 495, PLD 1994 SC 72, 2000 PLC (CS) 796, SBLR 2006 Sindh 1368 and 2004 CLC 1029.

7. I have heard the respective sides and have gone through the available material including the case law *referred* by either side.

8. In the instant matter status of the defendant is that of a *Corporation* which, having no *statutory rules*. Thus, relationship between the present plaintiff (an employee of corporation) and defendant (corporation) could be nothing but that of '*master and servant*'.

9. Since, the term '*master & servant*' makes it clear that one (master), shall have control and authority over other (servant) **to direct the time,**

manner, and place of the services but it shall not allow him (*master*) to have an *absolute control* over the life of other (*servant*). There is much difference between the terms '*servant*' and '*slave*'. The term '*servant*' & '*slavery*' are defined by Black's Law Dictionary *Ninth Edition* as:

**'servant.**---A person who is employed by another to do work under the control and directions of the employer.'

**'slave.**---'A situation in which one person has absolute power over the life, fortune, and **liberty of another**'.

The plain definitions of above two terms *prima facie* leaves nothing to mingle these two terms with each other nor one could be used as *synonym* for other, hence in my view, unless one gives respective meanings to above terms no confusion shall raise. In other words, it would result in '*exploitation*' which even is not permissible by the unreported case of **Sadiq Amin Rahman v. Pakistan International Airlines Corporation & others**, referred by the counsel for the plaintiff. The operative part whereof is referred hereunder:

"18. The learned counsel for the defendants forcefully argued that in the relation of master and servant, ....., the rights of employees and all agreements are also protected. Under Article 3 of our Constitution it is responsibility of the State to ensure the elimination of all forms of exploitation and the gradual fulfillment of fundamental principle from each according to the ability to each according to his work and under Article 11 there is no concept of slavery which is non-existent and forbidden and no law permits or facilitates its introduction into Pakistan and in any form while under Article 37 (Principles of Policy) it is the responsibility of the State to ensure equitable and just rights between employer and employees and provide for all citizens, within the available resources of the country facilities of work and adequate livelihood with reasonable rest and leisure and now under Article 10-A of the Constitution, right to fair trial and due process is also a fundamental right of great magnitude."

The underlined portion shall make it clear that it also classifies the persons as per *ability or work*; the above while referring to Article 37 (*Principles of Policy*) speaks about *equitable and just* rights between **employer and employee** which, *in my view* , and even within spirit of case of 'Pakcom (supra) shall not mean to treat the employee as employer.

10. From another angle, if it is believed *for a moment* that employer shall have no right to decide :

*'to continue working or otherwise;*

*'to continue assessing profitability of his / her business;*

*' to continue assessing his/her capacity in increasing or decreasing manpower as per business;*

*' to continue taking decision in closing or expanding his / her place of business;*

then, *in my view*, it shall be a complete denial to *fundamental rights* , guaranteed to one within meaning of Articles 18 of the Constitution which insists as:

**“Article-18.Freedom of trade, business or profession.—** Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and **to conduct any lawful trade or business:**

Provided that nothing in this Article shall prevent:-

- a) the regulation of any trade or profession by a licensing system; or
- b) the regulation of trade, commerce, or industry , in the interest of free competition therein; or
- c) the carrying on, by the Federal government, or a Provincial Government, **or by a Corporation controlled by any such Government**, or any trade, business,

industry or service, **to the exclusion, complete or partial, of other persons.**

11. While continuing, let's have a look at the meaning of term 'regulation' with reference to Black's Law Dictionary

*"Regulation.---The act of regulating; a rule of order prescribed for **management or government**; a regulating principle; a precept. **Rule of order prescribed by superior or competent authority relation to action of those under its control.** Regulation is rule or order having force of law issued by executive authority of government'.*

Thus, now I can surely say that if a person (*in matter of his family/house*), a corporation (*in matter of its business affairs*), and a Government (*over its subjects*) is precluded from framing / making certain regulation then concept of such control / authority shall fall to earth *for sure*. Viewing things from this *side* even does not change to the conclusion that '*a contract shall not be forced to be completed when either:*

- i) object / purpose thereof came to an end; or
- ii) either of parties is not interested for continuity thereof;

hence, the party *aggrieved* from wrongful termination shall have the right of damages.

12. I have examined the case laws, submitted by the counsel for the plaintiff which does not help the plaintiff's plea regarding jurisdiction of this Court to grant the relief in nature whereof shall amount to deprive the 'master/employer' from its right to regulate its business.



13. In the case of *Muhammad Yasin v Federation of Pakistan* (PLD 2012 SC 132), it was matter of appointment of Chairman OGRA which *in this case* was considered as '*a matter of public importance, having a direct linkage with fundamental rights of the people of Pakistan*'. The instant matter *however* not qualifying the one of *public importance* nor posting of plaintiff has any linkage *direct or indirect* with fundamental rights of people of Pakistan hence is not applicable.

In the case of *Pakistan International Airline Cop. &Ors v. Tanwee-ur-Rehman* (PLD 2010 SC 676), the principle of *master & servant* was affirmed as is evident from para-19 of judgment which reads as:

*'19. However, this question needs no further discussion in view of the fact that we are not of the opinion that if a corporation is discharging its functions in connection with the affairs of the Federation, the aggrieved person can approach the High Court by invoking its constitutional jurisdiction, as observed hereinabove. But as for as the cases of employees, regarding their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the **statutory rules, only then** such action should be amenable to the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the Court of competent jurisdiction.'*

*(underlining is supplied for emphasis).*

In the case of *Nighat Yasmin v Pakistan International Airlines Corp. Karachi & Others* (2004 SCMR 1820), the reinstatement was ordered by honourable Supreme Court while finding it to have been passed by *incompetent person* , while holding that:

*'7. Even otherwise such arrangement, if at all any, being not consistent with the **Regulations** framed by the respondent – Corporation for its day to day management and administration would not deprive an employee of his right otherwise secured and guaranteed by law as well as the departmental **rules and regulations** . . . . . **Regulations are not statutory in nature yet once these have been framed by the Board of Directors of the Corporation these are binding for all intents and purposes** on the respondent-Corporation who cannot **arbitrarily deviate** from such instructions and **unilaterally violate** the regulations which are in the nature of a **contract, binding on the parties.***

From, above it is also manifest that none of the parties to a *contract* can *unilaterally* violate the regulations. This principle *equally* applies to an employee that he / she cannot *unilaterally* decide his / her place of working which *otherwise* is always the prerogative of *employer*. Even otherwise, in this judgment the *Civil Court* has been shown to have jurisdiction to entertain a matter of *Master & Servant* where prayer is for *reinstatement* hence is not applicable.

The case of Sharaf Faridi v. Fed. of Islamic Repub. Of Pak. (PLD 989 Karachi 404) is referred by counsel for the plaintiff to insist point that '*Long standing practices acquire state of law*' to which I also have no exception but would add that a practice shall not take the place of *law* if one is available there nor an *illegal practice or continuity thereof* can be an exception to action of law.

Further, in the case of Shahid Mahmood v. Karachi Electric Supply Corporation Ltd. (1997 CLC 1936), the suit of an employee of corporation was held to be maintainable for *injunction relief* but in matter of actions,

taken against to be malafide, arbitrary, unfair and unreasonable so it appears from para-14 of the said judgment which reads as:

*'.... The plaintiff has nowhere complained that any particular provisions of the terms of his contract of employment contained in the appointment letter have been violated. He has only asserted that the action taken against him is mala fide, arbitrary, unfair and unreasonable. He has further complained that he was entitled to an opportunity of showing cause before the impugned action could be taken. In view of weighty pronouncement of the Supreme Court in the above two cases, I am quite clear in my mind that he has only sought enforcement of obligation arising from law. These obligations exist independently of the terms of the contract and can be enforced notwithstanding the fact that the nature of his employment was contractual.*

In the same judgment it was categorically held that:

*'9... A suit would be barred only when the plaintiff seeks specific performance of his contract of employment.'*

*'16... Nevertheless Mr. Ansari has argued that re-organization and restructuring of its establishment or effecting other measures, with the object of curtailing expenses is the privilege of every employer and the Courts have no jurisdiction to sit in judgment over such policy matters. Prima facie there is force in Mr. Ansari's contention and I am of the view that the Corporation is entitled to take any bonafide measure for cutting down its expenditure and exercise any of the several available options and normally Courts of law would not interfere in its discretion unless it could be shown to be perverse or malafide.*

14. Since, through instant suit the plaintiff has been seeking a relief of depriving the defendant (corporation) from taking bonafide measure i.e to close its station (place of business) hence this case law even supports contention of defendant (corporation). The other case laws, referred by the counsel for the plaintiff, are not strengthening the case of plaintiff in view of the following case laws:-

**UBL v Ahsan Akhtar (1998 SCMR 68)**

“10.....The facts of the instant case warrant interference by this Court at this stage. It had been consistently held by this Court *inter alia* in the cases referred to hereinabove in para. 8(i) to (viii) that relationship between a Corporation and its employees was that of master and servant and that the remedy for wrongful termination of service of an employee was a suit for damages and not relief for reinstatement.”

**(Underlining is provided for emphasis)**

In another case of Pakistan International Airline Corpn. V. Tanwee-ur-Rehman (2010 PLD SC 676), it has been held as:

18.....Therefore, question for consideration would be as to whether in absence of any breach of statutory provision, the employees of appellant-corporation can maintain an action for reinstatement etc this Court when faced with the same question in the case of Principal Cadet College Kohat and another v. Mohammad Shoab Qureshi (PLD 1984 SC 170), held that “where the conditions of service of an employee of a statutory body are governed by statutory rules, any action prejudicial taken against him in derogation or in violation of the said rules can be set aside by a writ petition; however, where his terms and conditions are not governed by statutory rules but only by regulations, instructions or directions, which the institution or body, in which he is employed, has issued for its internal use, any violation thereof will not, normally, be enforced through a writ petition”. Likewise, in Raziuddin v. Chairman PIAC (PLD 1992 SC 531), this Court has held that ‘the legal position obtaining in Pakistan as to the status of employees of the Corporation seems to be that the relationship between Corporation and its employees is that of Master and Servant and that **in case of wrongful dismissal of an employee of the Corporation, the remedy, is to claim damages and not the remedy of reinstatement;** however, this rule is subject to a qualification, namely, if the relationship between a Corporation and its employees is regulated by statutory provisions and if there is any breach of such provisions, an employee of such a Corporation may maintain an action for reinstatement’. It was further held that ‘ the PIAC has the regulations which have been framed by the Board of Directors of the PIAC, pursuant to the power contained in section 30 of the Act; however, there is nothing on record to indicate that the above regulations have been framed with

the previous sanction of the Central Government or that they were gazetted and laid before the National Assembly in terms of section 31 of the Act; **in this view of the matter, the Regulations cannot be treated as statutory rules of the nature which would bring the case of the PIAC within the above qualification as to entitle the employees of the PIAC to claim relief of reinstatement on the ground of breach of the statutory provisions**'. The above view has been reiterated in *Habib Bank Ltd. v Syed Zia-ul-Hassan Kazmi* (1998 SCMR 60) and *Pakistan Red Crescent Society v Nazir Gillani* (PLD 2005 SC 806). In the last mentioned pronouncement, it has been held that '*an employee of a Corporation in the absence of violation of law or any statutory rule could not press into service the Constitutional jurisdiction or civil jurisdiction for seeking relief of reinstatement in service; his remedy against wrongful dismissal or termination is to claim damages*'.

(Underlining is provided for emphasis)

**In case of Federation of Pakistan V Muhammad Azam Chattha  
[2013 SCMR 120]**

15. In *Halsbury's Law of England* (3<sup>rd</sup> Ed.) Vol. 11, p.244 Para 44, it is stated that the measure of damages for wrongful dismissal, is the loss thereby incurred, and that would, subject to the duty of the plaintiff to mitigate, normally be the wages due and payable for the agreed period of service. In the case of *Federation of Pakistan v. Ali Ahmed Qureshi* (2001 SCMR 1733) it has been held that in view of the doctrine of master and servant, the contract of service cannot be specifically enforced, however, in the event of arbitrary dismissal or unwarranted termination of employment, an employee is entitled to sue for damages equal to wages, allowances and other benefits, which would have been otherwise due and payable under the contract of employment. In the case of *Pakistan Red Crescent society and another v. Syed Nazir Gillani* (PLD 2005 SC 806) it has been held that an employee of a corporation, in the absence of violation of law or any statutory rule, cannot press into service the Constitutional or civil jurisdiction for seeking relief of reinstatement in service and can only claim damages against his wrongful dismissal or termination. While holding so, reference has been made to the cases of *Mrs. M.N. Arshad v. Mrs. Naeema Khan* (PLD 1990 SC 62); *Messrs Malik and Haq v. Muhammad Shamsul Islam Chowdhury* (PLD 1961 SC 531).....

(Underlining is provided for emphasis).

15. This has been the back-ground and object which made the honourable Apex Court to conclude that in the event of a **wrongful termination** the servant would not be entitled to seek *reinstatement* but a suit for *damages*. The above view *in no way* leaves an *employee without a* remedy because the law does provide remedy for claiming damages in the even of *wrongful termination* hence the principle of '*there is a remedy for every wrong*' stands satisfied. Thus, now I can safely conclude that this *relation* cannot be interpreted so as to compel an *employer* to continue such *relation* in the events:

- i) *where employer does not want employment (services) of servant any more;*
- ii) *where employee is no more fruitful for the employer;*
- iii) *the purpose for which services were required is no more existing;*

Worth to keep in mind that the above principle shall equally apply and it cannot be interpreted so as to compel one (servant) to continue such relationship against his wishes else the *outcome*; it would amount to compel to continue a relationship against their *consents* or *purpose of such relationship* which, *in no logical and legal sense*, can be stamped because this shall, *in my view*, would change the term '*master & servant*' into '*depriving two of their liberty (consent)*'. Thus, no suit seeking a *declaration* regarding an action of employer shall be maintainable the effect whereof *directly or indirectly* amounts to *reinstatement* or depriving the *authority (employer)* from taking bonafide measure for cutting down its expenditure and exercise of any of the several available options or where the employee attempts to take an *undue advantage* with reference to *contractual relation*.

16. In view of above discussion, now I proceed to examine the case of the plaintiff whereby the plaintiff has challenged the authority of the defendant (corporation) in asking its *employee* to work at employer's wish and for such purpose the plaintiff has referred to Chapter 40 which reads as:

*'a) Tenure of foreign posting shall **normally** be for a period of three years, extendable by one year due to operational consideration and performance. All cases of extension in tenure of foreign posting shall be submitted by concerned departments to Managing Director/Chairman, PIA for consideration and approval.'*

The term *normally* itself is sufficient to indicate that it is speaking about normal affairs but in the instant matter the calling back of the plaintiff is the result of closing of **operation at the Amsterdam station** hence it was never a **normal** situation which could justify denial or resistance by an *employee* to his *employer* because this shall mean a denial to Article 18 of the Constitution of Pakistan 1973, besides right of an employer to transfer and post its employee which an employee *even a civil servant* cannot defy as this falls within meaning of '*transfer & posting*' which is *domain* of competent authority particularly when the same is *prima facie* not malafide.

Further, the plaintiff himself admits in his pleading that *station* was established by the defendant (corporation) hence how an employee can *permanently* deprive its employer to close what (station) which was established by the employer not for purpose of *posting the plaintiff* but for its (defendant's) own (*business*) benefits. From this angle the suit of the *plaintiff* was always not maintainable because the plaintiff was in *active* knowledge that even his suit shall not be a sole reason for defendant

(corporation) to change decision of closing one of its foreign stations. It is also a matter of record that the station, where the plaintiff was ordered to work by defendant, is not functional yet the plaintiff has got seized account of defendant and has withdrawn EURO 50,000/- at Amsterdam i.e to say that he (plaintiff) has obtained such amount without performing any duty/service to the defendant (corporation) though the law is clear that *'none can claim charges (salary) without performing required service/labour'*. Not only this, but the plaintiff is claiming continuity of employment without any service to its employer but also enjoying privileges which were attached for an employee at *functional station*, hence such plea of the plaintiff was/is never maintainable but the reliefs, sought *prima facie* are not sustainable because same shall amount in causing interference in independent and bonafide decision of the defendant (corporation) in curtailing its expenditure by close of *Station @ Amsterdam* which being an *entirely* independent decision of *Corporation* cannot be called in question in civil suit. Thus, suit of the plaintiff is hereby rejected under Order VII Rule 11 CPC.

SAJID

JUDGE