

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1166 of 2007

[Mansoor ul Haque Solangiv.....Federation of Pakistan & others]

Dates of Hearing : 03.09.2021, 06.09.2021, 07.09.2021,
21.09.2021, 23.09.2021, 28.09.2021

Date of Decision : 08.03.2022

Plaintiff : Plaintiff present in person alongwith
Mr. Imtiaz Mansoor Solangi, Advocate.

Defendants : Mr. Ali Ahmed Tariq, Advocate for the
defendant No.2 alongwith Mr. Samil
Malik Khan, Advocate and Mr. Naeem
Iqbal, Manager (Law), PACL.

Mr. Ghulam Mohiuddin, Assistant
Attorney General.

Nemo for other defendants.

JUDGMENT

Zulfiqar Ahmad Khan, J:-This suit has been filed by the plaintiff for recovery and damages.

2. The concise grievances of the plaintiff as depicted in the plaint are that the plaintiff was initially appointed as “Stock Verifier” in the West Pakistan Industrial Development Corporation. He was confirmed in January, 1971, promoted as Assistant Manager in February, 1974 and Deputy Manager in June, 1980. While working as Officer Incharge of a sub-office of Harnai Woollen Mills Ltd., a company under PIDC Management, he applied for the post of Senior Manager/Deputy General Manager on 16-12-1985 in Pakistan Automobile Corporation Limited (PACO). Plaintiff was interviewed and ultimately his services were requisitioned from PIDC for appointment and posting as Senior Manager with PACO. In due course, he was transferred from PIDC and posted as Senior Manager Marketing and Sales, in the Trailer

Development Corporation Limited, a company under the control of PACO, where he joined as such on 30-6-1986. PIDC vide letter dated 23-6-1986 terminated the plaintiff's lien by stating that the same will be maintained by PACO, and not by PIDC which proposal was accepted by PACO. Plaintiff had taken over the charge on 30-6-1986. The matter did not end here, because the PIDC laid down certain conditions in the plaintiff's appointment letter treating him as a new entrant in service, thereafter, PACO transferred him to Naya Daur Motors (Pvt.) Limited, who terminated his service vide order, dated 26-9-1995.

3. The case in hand has a chequered story, the plaintiff feeling aggrieved, filed a constitutional petition before a learned Division Bench of this Court but with the passage of time, the said petition was withdrawn by him on the ground that the plaintiff being a civil servant has to redress his grievances by filing an appeal before the Federal service Tribunal per Section 2-A of Service Tribunals Act, 1973. The plaintiff thus filed a Service Appeal No.773-K of 1998 before learned Federal Service Tribunal, Islamabad, which was allowed vide order dated 06.10.2000, nonetheless, the defendant No.2 impugned the order of the learned Tribunal before the Apex Court by filing Civil Appeal No. 34 of 2001 which was partly allowed to the extent of disallowing back benefits while the findings of the learned Tribunal in respect of reinstatement of the plaintiff in service of defendant No.2 was up held. For the ease of reference, portion of the said judgment of the apex court which is also reported in 2004 SCMR 1315 (Pakistan Automobile Corporation Limited v. Mansoor ul Haque) is reproduced as under:-

“....10. The record also shows that before the Tribunal nobody appeared on behalf of the Federal Government, and in this matter interpretation of the Constitution is not involved as required under Order XXVII-A of the Code of Civil Procedure, therefore, notice to the Attorney-General in our considered opinion, is not necessary. The Tribunal, after examining, analyzing and going through the record rightly allowed the appeal of respondent No. 1.

11. So far as the back-benefits awarded by the Tribunal are concerned, the same are not supported by documentary evidence to the he did not work effect that when respondent No.1 was out of service, anywhere to gain financial benefits.

12. For the facts, circumstances and reasons stated hereinabove, this appeal is partly allowed by disallowing the back-benefits as awarded by the Tribunal, but the reinstatement of respondent No. 1 in service shall remain intact. The parties are left to bear their own costs....”

[underline added for emphasis]

4. Thereafter, on 10.01.2005 the plaintiff resumed his duties, however, akin to plaintiff, he was not assigned proper assignment and made a victim of discrimination while the juniors of the plaintiff were promoted and finally, the defendant No.2 provided certain service benefits to the plaintiff, which according to the plaintiff, were not akin to his position. The plaintiff has alleged in his pleadings that due to the discriminative acts of the defendants, he suffered tremendously and faced serious ailments and lost reputation in the society, hence he filed this suit.

3. The Defendants contested the matter by filing written statements. Defendants in their written statement raised objections that the suit was not maintainable on the ground that the relief sought pertains to a past and closed transaction and the back

benefits which are being claimed by the plaintiff are in utter violation of the of the verdict rendered by the Apex court.

4. Record shows that on 27.03.2014, issues were framed and with mutual consent of the parties, Mr. Ikram Siddiqui learned Senior Advocate of this court was appointed Commissioner for recording evidence. The issues settled by this court are as under:-

- “1. Whether the plaintiff is entitled for all back benefit? If yes, its effect?
2. Whether the plaintiff has suffered any damages as claimed in the suit or any part thereof? If yes, on what account, to what extent and which of the defendants is liable to pay?
3. Whether any of the defendants had acted illegally or otherwise, in bad faith and as alleged has/have not allowed the plaintiff to resume his duties?
4. Whether the plaintiff is entitled for the reliefs as claimed?
5. What should the decree be?”

5. Upon scanning the record & proceedings, it unfurls that an indulgence was sought by the plaintiff through CMA No.7268/2016 that he wants to withdraw his claim to the extent of Rs.1,61,42,294/- pertaining to the salaries and allowances and retirement benefits and the said CMA was allowed vide order dated 28.06.2016 and the plaintiff was directed to file amended plaint. In deference to the said order, the plaintiff filed amended plaint with the following prayers:-

“a. To direct that the plaintiff is in continued employment of the defendants w.e.f. 15.10.1970 with all the substantive right as to retirement benefits and consequential relief as to payment of double gratuity and provident fund including interest and markup and the amount of investment earned thereon.

b. To direct that the plaintiff is entitled and eligible to be treated as Deputy Manager in Grade E-5 w.e.f 30.06.1986 with total salary and allowances as of fundamental rights with mesne profits upto date. In that he is liable to get the entire arrears of salary and allowances and perquisites, which were denied to him w.e.f. 30.06.1986 in pursuance of the impugned ex parte order dated 03.04.1990 passed by the defendant No.1 and set aside by the learned Service Tribunal on 05.10.2000 and merged into the judgment of apex court on 06.05.2004.

c. To direct the defendants to pay the plaintiff all the back benefits in the light of his application dated 18.01.2005 to pay the plaintiff all the back benefits in the light of his application dated 18.01.2005 duly supported by affidavit.

d. To direct that the plaintiff is entitled to three proforma promotions in terms of his No.1 seniority as Deputy General Manager in the establishment of the defendant No.2 and as ordered by the defendant No.1 in the year 1992 and having been already acted upon assuming legal shape and his service is liable to be transferred at any place under the defendant No.1, Government of Pakistan. In that he is entitled to get the entire salary and allowances withy mesne profits upto date attached and admissible to the post of MD under the defendants in pursuance of the Service Tribunal and merged into the Supreme Court order.

e. To direct the defendants to pay to the plaintiff 22% markup on his already accrued salary and allowances and other retirement benefits upto 21.12.2006 and onwards till the final satisfaction of his claim.

f. To direct that the plaintiff is also entitled to the payment of Golden Hand shake Scheme which was introduced and acted upon by the defendant No.2 by giving the said benefits to its employees alongwith the benefit to the said retired employees to continue in their service and had invested amount of Golden Hand Shake or Voluntarily Separation Scheme in the investment schemes.

g. To direct that the plaintiff is entitled to receive four motor cars on depreciated cost; awards, loans and other benefits, which were given to the other employees, placed in identical situation in the establishment of the defendant No.2.

h. To direct the defendants to pay to plaintiff the damages and the compensation amount to the tune of Rs.1000 Millions, inter alia rupees one thousand million with mesne profit till final satisfaction of the claim.

i. Any other relief/reliefs which might be considered appropriate by this Hon'ble Court in the circumstances of the case.”

6. Plaintiff in person with the assistance of his counsel Mr. Imtiaz Mansoor Solangi, Advocate argued the matter at great length. During the course of arguments, plaintiff had read out many material documents to support the assertions made in the plaint, however, he drew the attention of the Court to order dated 28.06.2016 wherein he sought to eschew the grounds/prayer of back benefits and sought the Court's deliberation exclusively upon a question of damages and beseeched that since the lien of the plaintiff was unlawfully terminated, damages entreated in the plaint may kindly be decreed.

7. In contra, Mr. Ali Ahmed Tariq, learned counsel presented the case of the defendant No.2. According to him, plaintiff had no cause of action for filing this suit for the reason he stated that the wrongful termination is sine qua non for maintaining the right of employee to claim damages otherwise he would have no cause of action. He next stated that the plaintiff was reinstated in service and retired upon attaining the age of superannuation and his claim for damages against his wrongful termination is unlawful, and even otherwise a wrongful dismissal would not entitle one to claim damages from employer under head of “loss to reputation”. He unequivocally contended that onus of proof for damages lies on the shoulder of plaintiff and without discharging such onus damages cannot be granted

straightaway as well as a fixed amount of damages cannot be granted, until and unless, the quantum of loss actually suffered is proved through sufficient evidence. He further argued that the claim of the plaintiff cannot be allowed on the ground that plaintiff failed to establish his claim of damages through concrete and cogent documentary evidence, therefore, the lis in hand may be dismissed with cost to be borne by the plaintiff. While summing up his arguments, learned counsel relied upon the precedents reported as 2019 PLC (C.S.) 999, 2012 PLC (C.S.) 574, 1990 SCMR 1321 and PLD 1996 S.C. 737.

8. Heard the arguments and perused the evidence. **Issue No.1** germane to back benefits claimed by the plaintiff. In order to substantiate the claim of back benefits, the plaintiff introduced on record a number of documents alongwith his examination-in-chief. A glance on record shows that the instant lis was fixed for hearing on 15.08.2018 when learned counsel for the plaintiff sought to eschew the grounds/prayer of back benefits and sought the Court's deliberation exclusively upon the question of damages. For the ease of reference the excerpt of the order dated 15.08.2018 is reproduced hereunder:-

“15.08.2018

Mr. Mansoorul Haq, Advocate for Plaintiff.

Mr. Ali Ahmed Tariq, Advocate for Defendant No.2.

.....

Plaintiff files statement which is taken on record. Learned counsel for plaintiff contends that the other proceedings between the parties is in respect of his actual outstanding that were withheld and the same is nothing to do in these proceedings which are for damages only as the plaintiff had already given up the other reliefs in this case. Learned counsel for plaintiff further

contends that the issues in this matter were framed on 27.03.2014 wherein the Issue No.1 for the fore-given reason does not stand any more whereas rest of issues are liable to be considered by this Court. Learned counsel for the plaintiff relies upon the written synopsis. Learned counsel for defendant No.2 requires time in order to file written synopsis. At his request matter is adjourned to 30.08.2018.”

[emphasis added]

9. Upon appraisal of record and proceedings of the lis in hand, it is gleaned further that the plaintiff entreated the court at the time of hearing of this matter on 26.02.2021 to decide the matter purely on the question of quantum of damages leaving the other issues. It is thus considered useful to reproduce the respective constituent of the order dated 26.02.2021 which reads as follows:-

“26.02.2021

Plaintiff in person.

Mr. Ehsan Tariq, Advocate for defendant No.2.

Mr. Ghulam Mohiuddin, Asst. Attorney General.

Plaintiff who is himself an advocate as well as learned counsel present agree that after the subsequent events as present in the matter now the only question left to be considered by this Court is limited to quantum of damage, if any, available to the plaintiff. Let learned counsels point out the said element and the material in this respect on the next date of hearing.”

[emphasis added]

10. An austere look to the substratum of the above deliberation, unequivocally demonstrates and confirms that learned counsel for the plaintiff and the plaintiff himself sought to eschew the grounds/ prayer of back benefits and sought the Court's deliberation exclusively upon a question of damages, therefore, the issue No.1 is answered as redundant except the issue of payment of damages.

11. In my considerate view, the **Issue Nos. 2, 3 & 4** are inextricably linked based upon similar evidence of the plaintiff and defendants, therefore, it would be advantageous to discuss the same simultaneously, in the same breath.

12. The plaintiff so as to substantiate his claim of damages as well as notions and assertions made in the substratum of plaint, introduced on record number of documents at the time of his examination in chief. Exh. P/2 to Exh. P/2/36 (available in evidence file from page 93 to 165) are the documents having vital significance to decide the controversy under discussion. Exh. P/2 to Exh. P/2/36 (available in evidence file from page 93 to 165) are medical prescriptions, Surgery Form issued by Al-Ibrahim Eye Hospital, Green Double Frequency YAG Laser Card and other related documents and other ancillaries prescriptions issued by different hospitals such as Al-Noor Eye Hospital, Manzoor Eye Clinic, PNS Shifa Naval Hospital, Hashmanis Hospital and Aga Khan University Hospital. Having produced these documents in examination-in-chief, the plaintiff was put to the test of lengthy cross-examination by the defendants' counsel. Learned counsel for the defendants during cross-examination exercised his all professional abilities to shake the confidence of plaintiff that he is not entitled for any damages but the plaintiff stood tall in respect of his such claim. It also unfurls upon glancing on the evidence of the plaintiff that the learned counsel for the defendant tried his best to impeach the credit of the plaintiff but failed to do so. The learned commissioner having recorded the evidence of the plaintiff referred the matter to the court vide his report dated 11.11.2014 which was taken on record and vide order

dated 23.12.2014 the matter was directed to be fixed for final arguments, however, as the time went by, a CMA No. 1694 of 2015 was moved beseeching and aspiring therein that order dated 23.12.2014 be recalled and matter be decided after recording evidence of all contesting parties, thereafter, in the interest justice, equity and good conscience, CMA No. 1694 of 2014 was allowed and the matter was again referred to the learned Commissioner for recording evidence vide order dated 11.11.2015. The learned commissioner vide his report dated 16.03.2016 referred the matter to the court reporting that the defendants' counsel failed to complete his cross-examination and upon happening of an untoward situation and using contemptuous language against each other, the defendants' counsel did not complete his cross-examination hence he referred the matter to the court.

13. As discussed in the preceding paragraphs that the plaintiff introduced on record plethora of medical documents in support of his claim of damages. Akin to plaintiff, owing to the unlawful termination of lien by the defendants, he remained jobless till reinstatement by the order of the learned Federal Service Tribunal as well as Apex court and in the intervening period he did not serve any department, government or semi government due to the said unlawful act of the defendants, more particularly defendant No.2. He suffered loss of health, loss of valuable time, mental torture, mental agony/shock, extreme physical pain and financial loss. It is fact that mental shock, agony and torture imply a state of mind. Such state of mind can be proved only by a positive assertion of one who experiences the same. (Ref 1996 CLC 627). It is also a fact that the

plaintiff's lien was terminated by the defendant No.2 unlawfully which was proved by the verdict of the learned Service Tribunal as well as dictum rendered by the apex court which is reported as 2004 SCMR 1315 (Pakistan Automobile Corporation Limited v. Mansoor ul Haque), therefore, by suffering mental torture and agony at the hands of defendants, the plaintiff claimed damages through the instant lis.

14. It is common knowledge that damages can be classified into two types such as "general damages" and "special damages". The difference between general damages and special damages is that the former is initially quantified by the person making the claim, while the latter is assessed by the court. The Oxford Advanced Learners Dictionary explains the word "special" as meaning "not ordinary or usual" and also "different from what is normal". However, in law the phrase "special damages" is used to refer to an amount that is claimed because of a breach or wrongful act of another where such an amount can be quantified.

15. Reverting to the facts of the case at hand, the plaintiff during his examination-in-chief also introduced on record the verdict rendered by the learned Federal Service Tribunal in Appeal No. 773(K) of 1998 and dictum of apex court which now has been reported as 2004 SCMR 1308 (available at page No. 369 to 399 of the evidence file) wherein the alleged termination of lien of the plaintiff was declared as void and unlawful. It is considered useful to reproduce the respective constituent of the said Judgment hereunder

so as to reach at right and just conclusion of the issues under discussion:-

Excerpt from the judgment of Federal Service Tribunal, Islamabad

“12. Pursuant to the aforesaid discussion and the hard facts available on the file and the illegal and maltreatment meted out to the appellant by Respondents Nos. 2 and 3, we are constrained to accept this appeal with costs with a direction to Respondent No.2 that the appellant shall be reinstated in service with all back benefits as early as possible but, in no case, later than four months.”

Relevant excerpts from 2004 SCMR 1308 (Pakistan Automobile Corporation Limited v. Mansoor ul Haque)

“7.....Respondent No.1 was a permanent employee of the appellant. The record shows that his lien was kept intact with Pakistan Automobile Corporation, and the same could never be terminated in view of the case-law cited by Syed Shahanshah Hussain learned Advocate Supreme Court for respondent No. 1. In strict sense though he may not be a civil servant but the Constitution ordains that persons placed in the same position shall be treated equally and there should be no discrimination, therefore contention of the learned counsel for the appellant that the Tribunal had no jurisdiction and the respondent was not a civil servant is misconceived and not accepted.

8. Now we briefly discuss the case-law for learned counsel for the parties. In Mohsin Ali Hasani's case (supra) this Court accepted the review with the following observations:--

"Government servant on deputation---Lien and emoluments Government servant on deputation from Provincial Government to Federal Government would retain a lien on the permanent post in his parent office till he was confirmed in the borrowing Government---Such civil servant pending his confirmation in the Federal Government was entitled to the pay which he would have received had he remained in his parent office in the Province as per relevant Fundamental Rules and rules applicable to

deputationists---Civil servant was, thus, granted the same emoluments which he would have drawn under the Provincial Government with effect from specified date in specified grade "

In the case of Province of Punjab (supra) this Court observed as under:--

"... this is highly deplorable and shameful condition which cannot be appreciated. After termination of his lien in the parent department how his services could have been repatriated that too without proper opportunity of hearing as certain vested rights had accrued in favour of the respondent after permanent absorption on the direction of competent authority The repatriation of respondent could not be directed in an arbitrary and capricious manner as no such unfettered powers have been conferred upon the Chief Secretary to pass such orders which are not in accordance with the relevant provisions of law and rules made thereunder. After a lapse of more than a decade the validity of initial appointment and subsequent absorption cannot be questioned save in accordance with law."

In Mazhar Ali's case (supra) cited by learned counsel for respondent No. 1, this Court held as under:--

".... Lien of permanent civil servant could not be terminated even with his consent; same, could, however, be terminated only where he was confirmed against some other permanent post"

In Sajjad Hussain v. Governor of the Punjab (supra) this Court has been pleased to observe as under:--

"Lien---Civil servant on deputation, who had never been absorbed permanently in the borrowing department would continue to be on deputation and his lien could not be terminated in his parent department."

16. It is gleaned from the appraisal of the foregoing that the plaintiff's lien was unlawfully terminated by the defendant No.2

owing to which he has claimed having suffered loss of health, loss of valuable time, mental torture, mental agony/shock, extreme physical pain and financial loss.

17. A minute perusal of the Record & Proceedings it further unfurls that the plaintiff has supported his claim by filing a Statement in which he has described the agonies faced by him at the hands of defendants, thus, it would be useful to reproduce the said Statement of claim which reads as under:-

STATEMENT OF CLAIM

1. Damages for loss of reputation, impugning character, prestige in the eyes of general public, friends, known circles as well as colleagues of the workplace.	Rs. 50 million
2. Damages for severe mental anguish, inconvenience and misery.	Rs. 75 million
3. Damages for nervous shock, emotional distress, psychological trauma and torture on account of leveling of unfounded charges and for its onward communication in a calculated manner as stated hereinabove.	Rs. 75 million
4. Damages for development of feeling of humiliation and complex on account of wrongful act of the defendants.	Rs.75 million
5. Damages for restricted movement and assumption of isolated life due to unwarranted attitude of the defendants hereby affecting his personality.	Rs. 50 million
6. Damages for prospective loss in his professional career/ service career on account of unfounded assertions and due to lack of efficiency in discharge of duties owing to psychological trauma and mental disturbance which is constant in nature.	Rs. 100 million
7. Past and prospective damages for disturbance of comfortable, peaceful and social life.	Rs. 100 million
8. Damages of punitive or of an exemplary nature on account of	Rs. 100 million

highly scandalous and malicious remarks.	
9. Expenditures incurred on account of successfully defending the proceedings and gathering the evidence and pursuing the matter and prospective legal expenses.	Rs. 1 million
10. Damages for loss of past and prospective comforts and pleasure owing to great hardship, troubles faced by the plaintiff throughout the period mentioned hereinabove.	Rs. 100 million
11. Damages for permanent and persistent tension to the plaintiff whereby impeding peaceful working.	Rs. 100 million
12. Damages on account of injured feelings as well as losses suffered by the plaintiff on account of loss of career of the children who otherwise could have achieved better prospects in future had the defendants not acted in such a malafide manner.	Rs. 49 million
13. Damages suffered by the plaintiff in selling his properties/assets at a throw-away price which otherwise could have fetched more than a sum of Rs. 10.5 million and hence on average and in a round figure turned out to be.	Rs. 20 million
14. Damages on account of adverse impact on health of the plaintiff of the actionable wrong of the defendants resulting into frustration and depression of chronic kind.	Rs. 25 million
15. Exemplary, punitive and aggravated damages for grossly reckless conduct of the defendant.	Rs. 80 million.
Total	Rs. 1000 million

18. What I perceived and sensed from the tenor and sagacity of the statement of claim mentioned in the preceding paragraph that the plaintiff claimed a fixed amount of damages in lieu of his suffering which he suffered owing to the contemptuous act of the defendants jointly and severally. It is settled exposition of law that, the 'onus of Proof' for damages lies on the shoulder of claimant/plaintiff and without discharging such 'Onus of Proof' damages, of course, cannot

be granted straightaway more particularly even a fixed amount of damages cannot be granted, until and unless, the quantum of loss[es] or damages, actually suffered is proved through sufficient evidence. The Damages no doubt firstly have to be pleaded and thereafter to be proved by leading reliable, trustworthy and cogent evidence as well as damages cannot be awarded on such expectation or on hearsay evidence, but in these circumstances judgment of the Hon'ble Supreme Court in the case of Sufi Muhammad Ishaque v. The Metropolitan Corporation Lahore (PLD 1996 S.C 737) becomes exceptionally relevant where it was held that *"...the damages for mental torture, nervous shock etc, fall in the category of general damages for which no standard or method of proof can be laid down with precision. The claim of such nature is difficult to estimate. The Courts, therefore, in assessing such damages employ a guess work which can only meet the test of a reasonable assessment by a man of ordinary prudence...."*

19. After having come to the conclusion that the termination of lien of the plaintiff by the defendant No.2 was illegal and unlawful, the plaintiff definitely needs to be compensated and is entitled for award of damages. Even otherwise, in applying the principle of Master or Servant, which for various reasons is still applicable in this case as there being no Statutory Rules of Service in Defendant No.2, the only remedy for the plaintiff is damages. Special damages are what the plaintiff has claimed as discussed above regarding loss of earning and out of pocket expenses which are generally capable of exact calculation, whilst general damages which in law are implied on happening of certain event and so also in case of a favorable

decision for a party, these may not be specifically pleaded and may or may not be capable of exact proof strictly. It may be observed that insofar as claim and award of general damages is concerned, though it may not have been specifically pleaded and proved, but any shortcoming or deficiency in the plaint or in the evidence will not come in the way of the Court to grant such damages once the plaintiff is entitled for a relief in such matters. It cannot be said that plaintiff had not sustained any injury or had not suffered any economic loss, on account of wrongful termination of lien. In the given facts, I am of the view that though the plaintiff has not been able to prove his claim of special damages specifically, but is found to be entitled to claim damages on account of agony, physical stress, loss of reputation as well as social persecution as per the judgment of Sufi Muhammad (*supra*). The Hon'ble Supreme Court (by a decision of 2 to 1) in the case of Abdul Majeed Khan v. Tawseen Abdul Haleem and others [2012 PLC (C.S.) 574], after a thorough examination of various local and international case law in the additional note of the then Chief Justice (Iftikhar Muhammad Chaudhry. J.) has been pleased to observe as follows, which is relevant for the present controversy;

“....3. At this stage, it is to be noted that there are two types of damages namely; 'special damages' and 'general damages'. The term 'general damages' refers to the special character, condition or circumstances which accrue from the immediate, direct and approximate result of the wrong complained of. Similarly, the term 'special damages' is defined as the actual but not necessarily the result of injury complained of. It follows as a natural and approximate consequence in a particular case, by reason of special circumstances or condition. It is settled that in an action for personal injuries, the general damages are governed by the rule of thumb whereas the

special damages are required to be specifically pleaded and proved. In the case of *British Transport Commission v. Gourley* [(1956) AC 185] it has been held that special damages have to be specially pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. The general damages are those which the law implies even if not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future. The basic principle so far as loss of earnings and out-of-pocket expenses are concerned is that the injured person should be placed in the same financial position, so far as can be done by an award of money, as he would have been had the accident not happened...”

20. Similar view has been expressed in the case of *Qazi Dost Muhammad v Malik Dost Muhammad* (1997 CLC 546), *Islamic Republic of Pakistan v. Sh. Nawab Din* (2003 CLC 991), *Azizullah Sheikh v. Standard Chartered Bank Ltd.*, (2009 SCMR 276), *Mrs. Alia Tareen v. Amanullah Khan* (PLD 2009 SC 99). The next question which arises is that though the plaintiff’s dismissal has been held to be illegal but at the same time he wants to eschew the prayers of reinstatement, then what is the quantum of damages which in the given facts would suffice. In this regard it may be observed that there appears to be no hard and fast rule for determination of such quantum of damages. A learned Division Bench of this Court in the case of *National Bank of Pakistan v. Ghulam Muhammad Sagarwala* (PLD 1988 Karachi 489) has been pleased to hold that in case of wrongful dismissal of an employee, the measure of damages may include an amount to compensate him for the injury caused to him. A learned Single Judge of this Court in the case of *Mehboob Rabbani v. Habib Bank Limited* [2006 PLC (C.S.) 272] while dealing with more or less similar situation

was pleased to grant damages to the tune of Rs.5.0 Million by observing as follows:-

“....Since I have held that the dismissal of the plaintiff from service was wrong, he is entitled to recover damages from the defendants. The plaintiff can claim special damages (pecuniary damages) and general damages non-pecuniary damages). However, the plaintiff has only demanded general damages (non-pecuniary damages). In an action of personal injury the damages are always divided into two main parts, First, there is what is referred to as special damage which, has to be specially pleaded and proved. This consists of loss of earning and out of pocket expenses and is generally capable of substantially exact calculation. Secondly there is general damage which in law implies and is not specially pleaded and cannot be capable of exact proof. This includes compensation for pain and suffering. What is claimed in the present case is the general damages which cannot be specifically proved and any shortcoming in the plaint or in the evidence would not come in the way of the Court awarding damages. There is no hard and fast rule to calculate the quantum of compensation, as well as there is also no yardstick to measure the sufferings. The plaintiff has claimed damages on account of huge present and future economic loss and on account of undergoing irreversible phase of perpetual mental agony, physical stress and strain, social persecution, pangs of miseries and no likelihood of getting suitable job. The plaintiff no doubt must have sustained pecuniary loss on account of wrongful dismissal in the shape of earnings but no evidence was led in this regard. The plaint is silent in this regard. The plaintiff has also not led any evidence to prove the huge present and future economic loss. The plaintiff's dismissal from service was wrongful as the same was in violation of principles of natural justice. The plaintiff in the circumstances was entitled to damages for mental agony, physical stress and social persecution. This type of damages fell in the category of general damages for assessment of which no definite method is available. For computing/assessing damages consideration should be given to education, status in life, age and the position enjoyed during employment and his earnings while in employment of a person to whom injury has been caused. The plaintiff underwent

harassment of unlawful dismissal during prime time of his life. The plaintiff was an officer of bank posted at New York and has enjoyed good reputation and social status and all of a sudden due to wrongful dismissal he lost everything. It is not believable that the wrongful dismissal has not caused any harm to plaintiff. The plaintiff is entitled to the general damages. The contention of the defendant that the dismissal was right and the plaintiff is not entitled to any damages is misconceived. Now the question is that what will be the quantum of damages for which the plaintiff is entitled under the circumstances of the case. There is no hard and fast rule for grant of damages and there is also no yardstick to measure the damages caused to a person and then to determine the compensation. This is the crucial point in this case. The amount though assessed must not appear to be punitive in nature or exemplary.

Applying the principles of the above case that compensation can be granted where a wrong has been done to a party and the damages flow from that wrong the plaintiff is entitled to a fair compensation to be assessed by the Court. The criteria is that while granting the H compensation the conscience of the Court should be satisfied that the damages awarded would if not completely, satisfactorily compensate the aggrieved party. I therefore, hold that plaintiff is entitled to the damages in the sum of Rs.50,00,000,..."

21. Again in the case of Gohar Ali and another v. Hoechst Pakistan Limited [2009 PLC (C.S.) 464] while following the aforesaid case of Sufi Muhammad Ishaque (Supra) the Hon'ble Supreme Court has been pleased to observe as follows;

"...10. Adverting to the question of compensation it may be observed that the effect of the application of the master and servant rule is that an employee of a corporation in the absence of violation of law or any statutory rule cannot press into service constitutional jurisdiction or civil jurisdiction for seeking relief of reinstatement in service, his remedy for wrongful dismissal is to claim damages. It was held by this Court in Sufi Muhammad Ishaque v. The Metropolitan Corporation, Lahore through Mayor PLD 1996 SC

737 that there can be no yardstick or definite principle for assessing damages in such cases. The damages are meant to compensate a party who suffers an injury. It may be bodily injury loss of reputation, business and also mental shock and suffering. So far nervous shock is concerned, it depends upon the evidence produced to prove the nature, extent and magnitude of such suffering, but even on that basis usually it becomes difficult to assess a fair compensation and in those circumstances it is the discretion of the Judge who may, on facts of the case and considering how far the society would deem it to be a fair sum, determines the amount to be awarded to a person who has suffered such a damage. The conscience of the Court should be satisfied that the damages awarded would, if not completely, satisfactorily compensate the aggrieved party....”

22. Therefore, I am of the view that it would be appropriate and in the interest of justice and equity that Plaintiff is entitled for damages that be paid by the Defendants jointly and severally, therefore, **Issue Nos. 2 to 4** are answered accordingly by placing reliance on the judgment of the Hon’ble Supreme Court Sufi Muhammad Ishaque (*supra*) where the Hon’ble Supreme Court has left it to the discretion of a Judge to calculate reasonable sum of damages. The Hon’ble Supreme Court in the above mentioned case held that once it is determined that a person who suffers mental shock and injury is entitled to compensation on the principles narrated in the above mentioned judgment, the difficult question arises what should be the amount of damages for such loss caused by wrongful act of a party as there can be no yardstick or definite principle for assessing damages in such cases, however, gave directions that the damages are meant to compensate a party who suffers an injury which may be bodily injury loss of reputation, business and also mental shock and suffering. So far nervous shock

was concerned, Hon'ble Supreme Court held that it would depend upon the evidence produced to prove the nature, extent and magnitude of such suffering, but even on that basis usually it becomes difficult to assess a fair compensation and in these circumstances, it was hence left to the discretion of the Judge who may on facts of the case and considering, how the society would deem it to be a fair sum to be awarded to the persons who have suffered such a damage. The Hon'ble Supreme Court left it to the conscience of the Court being sole Judge to be satisfied that the damages awarded would, if not completely at least satisfactorily compensate the aggrieved party. In the case at hand the evidence of the plaintiff has almost gone unchallenged, but it was not of such great strength that he may be entitled to the entire claim of Rs. 1000 million. Considering the facts and circumstances of the case and also the mental and nervous shock, the plaintiff would have received and suffered due to illegal termination of the lien depriving him of his means of livelihood making the plaintiff's case for damages stronger. In these circumstances, in my humble view, considering the injury of the plaintiff and the time he spent in litigating the case before various forums which has taken greater part of his life, I think it would be fair and just that in the light of evidence which the plaintiff has brought on record, damages should be assessed at Rs.255 million in the circumstances of the case.

23. So far as issue No.5 is concerned, the forgoing discussion justifies that the decree should be apportioned in the following manner

(i) The Defendants jointly and severally are liable to pay a sum of Rs. 255 million (Rupees two hundred and fifty five million only) to the Plaintiff,

(ii) The above mentioned decretal amount shall carry a component of 10% [ten percent] mark-up from the date of decision in the suit till realization of the amount. However, parties are left to bear their own costs.

JUDGE

Karachi:
Dated:08.03.2022

Aadil Arab