

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.1274 of 2023

Dr. Babar Ahmed
Versus
Institution of Business Administration & others

Date	Order with signature of Judge
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For hearing of CMA 11053/23

Date of hearing: 10.10.2023

Mr. Taha Alizai for plaintiff.
Mr. Mohamed Vawda for defendants No.2 and 3.

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Muhammad Shafi Siddiqui, J.- Plaintiff was appointed as Assistant Professor in Social Sciences & Liberal Arts Department, Faculty of Business Administration, for a year, vide appointment letter dated 13.09.2013, with some “inbuilt employment terms and conditions” agreed by the plaintiff. The probation period was successfully completed and based on the terms of original offer, the contractual year commenced. The contract was renewed in August, 2014, again highlighting the notice of termination, with the difference that this time it could be on three-month notice in writing or salary in lieu thereof, which plaintiff agreed. Impugned in this suit is a conclusion/termination letter of contractual period, which letter is dated 24.07.2023 on account of “non-performance” with immediate effect and through instant application plaintiff seeks its suspension, as an interim order in respect thereof, which would yield to his restoration in service.

Plaintiff submitted that the employer, being a public university, is required to follow the rules and regulations of Institute of Business Administration Karachi, which requires formal grievance procedure for

disciplinary action and dismissal procedure. It is argued that none of the procedure, as highlighted, was followed and the termination was given effect by Director HR instead of Board of Governors. It is plaintiff's case that relationship between employee and employer in the instant case is above master and servant because of public university, and hence the normal rule of such relationship cannot be applied.

Mr. M. Vawda, learned counsel appearing for defendants No.2 and 3, however submitted that to the extent of injunctive relief that concerns with the termination could not be granted though, as claimed, even suit is not maintainable. He submitted that the performance of plaintiff was constantly deteriorating, as adjudged, and such unsatisfactory work/ performance, neglect of duty and lack of due diligence along with plaintiff's low CALCOM rating, would call for no other response from employer as the offence falls under definition of Code of Violation/ Misconduct, as described in Category 'B' of Annexure 'A' of the Rules & Regulations with title "Grievance Handling & Managing Code of Conduct Violations" and that could only lead to the termination, in terms of clause 5.2 of the Rules & Regulations with title "Separation Policy for Teaching & Non-Teaching Employees". He added that even claim of damages is not sustainable as the action was taken in terms of Code of Violation/Misconduct.

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

Though the debate is inconsequential as far as performance based action is concerned, as this Court is not to evaluate the performance based progress, however, for the sake of convenience the assessment of the Institute of Business Administration as far as performance of the plaintiff is concerned is self-explanatory. The record disclosed plaintiff's CALCOM rating, which shows that out of 5 for the academic year 2015-

2018 it was at lower rate of 2, while for the academic years 2019-2021 it was at a rate of 1 and in consequence whereof plaintiff was not offered any course for the years 2021-2022 and was advised to focus solely on his research work. He however failed to deliver his research based work as well.

Notwithstanding the contractual terms, which disclosed the termination understanding, even the rules and regulations, as relied upon by plaintiff (attached as Annexure P/27) do not support his (plaintiff's) case. Annexure 'A' to these Rules & Regulations is a suggested list of Code of Violation/Misconduct. Although this list is not exhaustive but Category 'B' of this list includes:

- a. ...
- ...
- f. Neglect of duty and/or lack of due care and/or diligence in the performance of duties;
- g. Unsatisfactory work performance or failure to maintain reasonable standards of performance and production;
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Plaintiff's case falls under aforesaid points of category 'B' and in terms of procedure for disciplinary action, as required in terms of the Rules and Regulations relied upon the plaintiff, "instant dismissal" is one of the suggested way to take disciplinary action, which was taken vide impugned order. In a way it was not an "instant dismissal". Plaintiff was watched for a number of years and then he was suggested to focus on research work and he failed in both the attempts. The Rules & Regulations provide a step-wise warning procedure, which appears to have already been taken accordingly, though not required.

Even the second level approval is also available i.e. the approval of the Board of Governor of Institute of Business Administration. The institution however otherwise reserved the right and absolute power to dismiss an employee under a contract with immediate effect. In the

circumstances a gross violation is apparent in terms of the Code of Conduct of Institute of Business Administration.

It is nothing but a relationship of master and servant and even if the employer is a public university, it would not yield any benefit to the plaintiff as the contractual terms are apparent which calls for such action.

In view of the above plaintiff has not been able to make out a prima facie case for injunction, as prayed, and the balance of inconvenience is also not in his favour. Furthermore, as far as irreparable loss is concerned, indeed it is the students who matter in the instant case as quality education is prime and foremost hallmark of a reputed educational institute. At this stage when defendant has questioned the competence of plaintiff on the basis of material, unless otherwise refuted by the plaintiff in evidence, irreparable loss, if any to the plaintiff, cannot be adjudged in his favour whereas it may as far as the future of students is concerned and the reputation of IBA itself.

Thus in view of facts and circumstances and on account of relationship of master and servant the injunction of the nature, as claimed, cannot be granted and the employee cannot be forced upon his employer. Consequently the application merits no consideration and is accordingly dismissed.

Dated:

J U D G E