

Judgment Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Muhammad Shafi Siddiqui, CJ
Mr. Justice Jawad Akbar Sarwana

High Court Appeal No.283 of 2022

Pakistan Telecommunication Company Limited & Another

v.

Rasheed Ahmed

Appellants : Pakistan Telecommunication
Nos.1 &2 Company Limited, through its
authorized officer; and, General
Manager (HRA), Pakistan
Telecommunication Company Limited
through Mr. Khalid Jawed Khan
Advocate.

Respondent : Rasheed Ahmed Jumani, through Dr.
Shahab Imam, Advocate.

Date of Hearing : 15.08.2024

Date of Judgment : 05.09.2024

J U D G M E N T

JAWAD AKBAR SARWANA J.: The Appellants, Pakistan Telecommunication Company Limited (“PTCL”) and another/Defendants, have filed this appeal against the Judgment dated 20.07.2022 and Decree dated 16.08.2022 passed by this Court exercising original civil jurisdiction (“the trial court”) in Suit No.1031/2010 filed by the Respondent/Plaintiff, Rasheed Ahmed Jumani (“RAJ”) against PTCL and Another.

2. The Counsel for PTCL contended that the company removed RAJ from service after compliance with all codal formalities;¹ however, the trial court, in its Judgment,² relied on an unamended Paragraph 7.01 of the Pakistan Telecommunication Limited Service Regulations, 1996 (“PTCL Service Regulations, 1996”), which paragraph was not in force when PTCL issued the show-cause notice/charge-sheet to RAJ.³ Before issuing the show-cause notice/charge-sheet, on 30.04.2009, the PTCL Board of Directors (“BoD”) passed a resolution in their 143rd meeting (“BoD Resolution dated 30.04.2009”) amending Paragraph 7.01 of the PTCL Service Regulations.⁴ Counsel argued that as of 30.04.2009, the General Manager (HRA-HQs) was competent to issue/communicate the show-cause notice/charge-sheet/final orders on behalf of the Authority regarding officers in Grade BPS-16 and above. Thus, the show-cause notice dated 20.05.2009 and the charge-sheet dated 10.12.2009 issued to RAJ by the General Manager (HRA) on behalf of PTCL was in accordance with law. He further contended that the trial court wrongly concluded that the show-cause notice dated 20.05.2009 and the charge-sheet dated 10.12.2009 were issued/communicated unauthorizedly and without jurisdiction. He argued that the trial court granted RAJ his entire claim for damages of Rs.25,105,197/- as sought against PTCL, along with markup at the rate of 6% p.a. from the date of decree till its realization based on purely legal grounds, and did not decide the remaining issues settled by the Court. Hence the impugned Judgment and Decree were liable to be set aside.

¹ It was an admitted position that RA was not a transferred employee of PT&T and that he was a contractual employee of PTCL whose service was governed by the Pakistan Telecommunication (Reorganization) Act, 1996 (“PTA, 1996”) and its regulations framed thereunder. See PTCL v. M. Samiullah, 2021 SCMR 998.

² Reference page 37 of the Appeal file, specifically page 11, paragraph 16 of the impugned Judgment.

³ Available on pages 117-141 of the Appeal file.

⁴ Available on page 143 of the Appeal file (Inter Office Memo referring to the BoD Resolution dated 30.04.2009 produced by PW-1 in his evidence marked as “Ex.-X-9” and “Ex.-X-16” available on pages 103 and 129 and Examination in Chief of PW-1 available on page 163 of the Evidence file).

3. The Counsel for RAJ contended that there was no illegality in the impugned Judgment and Decree as the disciplinary proceedings culminating in RAJ's removal from service of PTCL were correctly determined to be issued/communicated unauthorizedly and without jurisdiction. He argued that RAJ was posted as Senior Engineer (Ops) Airport Division, Karachi in BPS-18 (Grade-18) and, as per the PTCL Service Regulations, 1996, the authority in respect of officers of Grade-18 was the "Chairman" and only the Chairman was the competent person to issue show-cause/charge-sheet to RAJ and not the GM (HRA). He further argued that parties had led evidence before the trial court and that PTCL had not raised any cogent grounds in appeal to set aside the impugned Judgment and Decree.

4. We have heard Counsel, perused the record available in the Appeal, the pleadings at the trial side and the evidence file in Suit No.1031/2010. It is evident from the impugned Judgment that the trial court has based its decision on Paragraph 7.01 of the PTCL Service Regulations, 1996 as they stood before the amendment by the BoD Resolution dated 30.04.2009. Paragraph 7.01, stood amended by the BoD Resolution dated 30.04.2009. This fact was in RAJ's knowledge when the show-cause notice and charge-sheet dated 20.05.2009 and 10.12.2009, respectively, were issued by the GM (HRA).⁵ In his Reply dated 17.12.2009 to PTCL's charge-sheet dated 10.12.2009, RAJ argued that the GM (HRA) was not authorized to issue the show-cause/charge-sheet based on the BoD Resolution dated 30.04.2009 communicated by the GM (HRA) Inter-Office Noted dated 15.06.2009.⁶ RAJ's Preliminary Legal Objection, as set out in his Reply dated 17.12.2009, stated as follows:

"PRELIMINARY LEGAL OBJECTIONS"

- (a) It is an admitted fact and on record that the PTCL Board of Directors in its 143rd meeting held on 30th April 2009 the Authorities and Appellate

⁵ Show Cause Notice dated 20.05.2009 is available on page 173 of the Appeal file and Charge Sheet dated 10.12.2009 is available on page 175 of the Appeal file.

⁶ Available on page 177 of the Appeal file (Written Defence Reply dated 17.12.2009 marked by PW-1 in his evidence as "Ex.X-8" available on pages 97 and with PW-1's Examination in Chief available on page 163 of the Evidence file).

Authorities has been designated for the purpose of taking disciplinary action against the company employees in time with the PTCL service Regulations, 1996. The Boards approval has been endorsed vide memo No.S.25-9/2009 dated 15th June 2009 (copy attached As Annexure 'C') According to the aforesaid Memo/Notification the competent Authority in BPS-18 and BPS-19 was/is SEVP (HR) PTCL Headquarters, Islamabad. Therefore, the charge sheet/statement of Allegations under the said PTCL Board of Directors approval only the SEVP (HR) PTCL Headquarters Islamabad is competent Authority to issue the same under his own hand. The charge sheet/statement of Allegation issued on behalf of the competent Authority is incompetent and as such the same rendered as invalid since rule making authority did not authorize to any one else to act on behalf of authority. . . .”

5. The BoD Resolution dated 30.04.2009 clearly stated that the GM (HRA) could issue/communicate a show-cause/charge-sheet on behalf of the Authority. The material clause of the BoD Resolution read as follows:

“The General Manager (HRA-HQs) shall exercise to communicate charge sheets/show cause notices and final orders on behalf of authority, in respect of officers in B-16 & above of the Company.”

6. Based on a plain reading of the BoD Resolution above, the GM (HRA) could have issued RAJ the show-cause notice/charge-sheet on behalf of the Authority. However, the trial court did not address this point in its Judgment. While paragraph 14 of the impugned Judgment referred to RAJ’s Reply dated 17.12.2009 wherein he referred to the BoD Resolution dated 30.04.2009; and, in the cross-examination of PTCL’s witness, on 16.12.2019, the Commissioner for Recording Evidence also noted on the issues of the communicating officer who signed the documents of disciplinary proceedings that:

“Objection by Mr Vizarat Hussain Advocate, submits that, this point can be argued at the time of arguments as plaintiff had never disputed questions about authorization of communicating authority at any

*material time. Objection is left for the Hon'ble Court to decide at the time of arguments. . . .”;*⁷

yet the impugned Judgment did not discuss the implication of RAJ's cross-reference to the BoD Resolution, which amended paragraph 7.01 of the PTCL Service Regulation, 1996. Further, RAJ had himself produced twice (2 times) the photocopies of the same BoD Resolution amending paragraph 7.01, which was marked as Exhibits “X-9” and “X-16” and available at two places in the evidence file. However, the impugned judgment neither referred to the BoD Resolution dated 30.04.2009 nor apparently, the trial court took up the matter during final arguments as the BoD Resolution and its implication on the subject matter escaped the notice of the trial court, as left unaddressed in the impugned judgment. Instead, the trial court decided RAJ's claim on an unamended paragraph 7.01 of the PTCL Service Regulations, 1996. Consequently, the trial court reached an erroneous conclusion on the point of the authorization and jurisdiction of the GM (HRA) to issue and communicate a show cause notice and charge-sheet to RAJ.

7. The show-cause Notice dated 20.05.2009, the charge-sheet dated 10.12.2009 and the final order dated 27.05.2010 are all signed by the General Manager (HRA) slightly differently. The show-cause Notice dated 20.05.2009 and the charge-sheet dated 10.12.2009 are signed off by the “General Manager (HRA) on behalf of the Authority”. whereas the final order dated 27.05.2010 was signed off by “Javed Khan, General Manager (HRA)(Communicating Officer).” According to Paragraph 9 of the Written Statement filed by PTCL in Suit No.1031/2010 (available on page 343 of the Appeal file)(page 191 of Part-II of the said Suit file), both the show-cause notice and the charge-sheet were issued on the directions of the SEVP (HR) as per Office Note Para 22/N and 56/N, respectively. The Written Statement was also made an integral part of the Affidavit in support of Examination in Chief of DW-1 and filed as Annexure “R/4” to the

⁷ Available on page 187 of the evidence file of the cross-examination of DW-1 marked as “Ex-6”.

said Affidavit, although the Office Notes were not produced in evidence. RAJ did not rebut PTCL's defence by way of documentary evidence to the contrary. Given the preponderance of evidence on this matter we find in favor of PTCL to the extent that General Manager (HRA) under the BoD Resolution dated 30.04.2009 was competent to both issue and communicate the show-cause notice and the charge-sheet to RAJ.

8. During the course of arguments, the Appellant Counsel submitted a Statement dated 11.01.2024, attaching Circular dated 11.08.1998, which amended the PTCL Regulations, 1996, arguing that as per this Circular, the Authority for BS-18 was Member (Admin.), which in the present hierarchy was equivalent to SEVP. The said Circular was neither filed by the parties nor produced in evidence. As such, we are constrained from examining in appeal what was never introduced during trial.

9. Given the discussion herein, the trial court's opinion that the GM (HRA) unauthorizedly and without jurisdiction issued/communicated the show-cause notice dated 20.05.2009 and the charge-sheet dated 10.12.2009 under Paragraph 7.01 of the PTCL Service Regulations, 1996 is contrary to the evidence available on record. When the BoD passed a resolution dated 30.04.2009 amending Paragraph 7.01 of the PTCL Service Regulations, 1996, the said paragraph stood amended as of the same date, i.e. 30.04.2009. PTCL is/was a publicly listed company, and its board resolutions are also uploaded to the Pakistan Stock Exchange website. The Board Resolution comes into effect on the date of passing the resolution, not when it is communicated to the company's management. The date of the inter-office memo dated 15.06.2009 communicating the contents of the board resolution was irrelevant for the purpose of coming into force of the resolution, which became law on 30.04.2009 when the BoD resolved and passed the Resolution to amend paragraph 7.01 of the PTCL Service Regulations, 1996. Therefore, the GM (HRA) was duly authorized and competent to issue and communicate the show-

cause notice dated 20.05.2009 to RAJ and the charge-sheet dated 10.12.2009. As such the trial court misread the evidence on the point of authorization and jurisdiction of the GM (HRA) to issue and communicate the show-cause notice and charge-sheet.

10. As a consequence of the above, **the appeal is allowed and we set aside the impugned Judgment and Decree passed in Suit No.1031/2010 as discussed herein with direction to the trial court to decide the said Suit afresh** including, inter alia, all the issues settled by the trial court vide its Order dated 21.04.2016 based on the evidence recorded in the suit. It is clarified that the impugned Judgment and Decree in respect of Settled Issues Nos.2, 3, 4 and 5 are set-aside and will have to be decided afresh. The trial court decided only one subject, i.e., the competence of the officer (G.M. (HRA)) and awarded damages. There was no issue expressly settled on this subject. The subject was taken up as “inextricably linked” to Issues Nos.2, 3 and 4.⁸ Although paragraph 18 of the impugned Judgment mentioned “merits”; but the trial court held that “therefore the issues [settled] under discussion are answered as redundant except the issue of payment of damages”,⁹ and “after having come to the conclusion that the Plaintiff’s termination was illegal and unlawful,”, the trial court proceeded to award damages to RAJ.¹⁰ As far as the matter of authorization and jurisdiction of the GM (HRA) to issue and communicate the show-cause notice and charge-sheet to RAJ is concerned, this subject has been decided against RAJ as discussed above. The remaining settled issues (settled in broad and wide terms) on merit will need to be re-addressed by the trial court. Consequently, RAJ’s claim for damages being predicated on the subject matter which we have decided against RAJ in this appeal stand set-aside and, the ancillary

⁸ Paragraph 10 of the Impugned Judgment (page 6 of the Judgment) available on page 27 of the HCA.

⁹ Paragraph 18 of the Impugned Judgment (page 13 of the Judgment) available on page 41 of the HCA.

¹⁰ Paragraph 19 of the Impugned Judgment (page 13 of the Judgment) available on page 41 of the HCA.

Settled Issues Nos. 2, 3, 4 and 5 will have to be decided by the trial court afresh. This exercise should be completed within six (6) months.

11. It is clarified that the observations made herein are confined to providing a background for deciding this appeal on principally the sole subject decided by the trial court in the impugned judgment, i.e. competency of the officer. These observations are without prejudice to parties' claims and defences in Suit No.1031/2010 and Counsel submissions as recorded herein. These should not influence the learned Single Judge/trial court who will decide the suit afresh, including all the issues settled by the Court except for the subject of competency of the GM (HRA), which matter we have decided in this appeal.

12. The parties are left to bear their own costs.

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