

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.611/2013

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

Plaintiff : Haider Ali Baig,
Through Mr. Mehmood Habibullah, advocate.

Defendants : First Micro Finance Bank Limited and others,
Through Mr. Faisal Mehmood Ghani, advocate.

Date of hearing : 30.03.2015.

ORDER

Through instant application (CMA No.5888/2013), plaintiff seeks suspension of operation of letter dated 08.05.2013, (impugned) whereby plaintiff was transferred to Jacobabad Branch as Micro Finance Officer.

2. Precisely, relevant facts as set out in the plaint are that plaintiff was appointed as Branch Manager on 16.04.2002 under the Rules applicable to the staff of the bank and was posted as Branch Manager at Gilgit Nagar Baltistan. Plaintiff succeeded his probationary period, thereafter he was confirmed. Plaintiff rendered service at his best performance and during working such appreciation letters were issued to him by the employer from time to time. Thus, his salary was also increased and he was given organizational group OG-I. Thereafter in 2011 he was transferred to Garden Branch, Karachi, again he was transferred to Malir Branch. Due to some personal reasons, defendants No.2 and 3 were annoyed with plaintiff and without approval of defendant No.1 they transferred the plaintiff from Karachi to Jacobabad, also demoted the plaintiff

from Assistant Vice President to Micro Finance Officer. In the above background the plaintiff has prayed as under:—

- (i) to declare that transfer letter dated 08.05.2013 issued by defendant No.2 (defendant Bank) is illegal, unlawful, without lawful authority, having no legal substance, *void ab initio* and of no legal effect;
- (ii) to declare that the plaintiff is the Assistant Vice President of the defendants Bank and working on the capacity of Vice President in the defendants bank having the post and character of Vice President;
- (iii) to restrain the defendants bank permanently not to dismiss, terminate and dispense with the services of the plaintiff in any manner and not to transfer the services of plaintiff without due course of law and with his consent;
- (iv) Direct the defendant No.2 and 3 to pay the damages Rs.10,00,000/- each of defendants Rs.5,00,000/- to the plaintiff in the interest of justice.
- (v) Decree the suit in favour of the plaintiff.

3. In rebuttal defendants in their statement contended that plaintiff can not challenge the transfer order which is the sole domain of master, plaintiff was not promoted as AVP however his salary was increased and in similar grade he would be entitled to receive all benefits while working at Jacobabad, plaintiff is not entitled for any damages hence suit is liable to be dismissed.

4. Perusal of record, reveals that plaintiff was confirmed as regular employee by letter dated 25.10.2002, in the year 2005 he was appointed as Micro Finance Coordinator for Sindh based at Karachi from June 2005, he was also extended special allowance of Rs.13,544/- per month in addition, to his existing salary. It is further pleaded by the defendants that plaintiff was appointed as Micro

Finance Officer, depends upon the capacity of Branch, hence no prejudice is caused to the plaintiff.

5. Learned counsel for plaintiff argued that objections and written statement filed by defendant is not supported by resolution of company hence such pleadings cannot be considered, plaintiff has been deprived from his legitimate right under rules the impugned order is illegal, perverse and not maintainable.

6. It is argued that plaintiff can not claim posting on is own choice, pleadings have been filed by defendant, being responsible officer hence pleading being made partly has right to defend them as well as their department. In support of his arguments learned counsel for defendant has relied upon 1998 SCMR 68 (United Bank Limited and others vs. Ahsan Akhtar and others), 1997 SCMR 1508 (Islamic Republic of Pakistan through Secretary Establishment Division and others vs. Muhammad Zaman Khan and others), 1984 PLC 1342 (Allied Bank of Pakistan Ltd and others vs. Chairman, NIRC and others), 2000 PLC (SC) 11, 1996 SCMR 654 (Syed Imran Raza Zaidi vs. Government of Punjab and others).

7. Let it be reaffirmed that a party shall not be entitled for grant of injunction unless it establishes co-existence of **'prima facie case, balance of inconvenience and irreparable loss / injury'** which, *undoubtedly*, are settled ingredients for such purpose. The co-existence thereof has to be established through pleading, documents attached therewith and affidavit, so sworn in support of the injunction application.

8. The fact which seems to be undisputed is that relationship of present plaintiff with defendant (employer) is that of Master and Servant which stand *prima* taken by the plaintiff to avoid

declared authority (tribunal) to deal with all issues, arising out or from service. The relation of '**master & servant**' continues under the contract / agreement which either sides enter into, acknowledging the legality thereof couple with prescribed rules, if any, so referred in such contract / agreement.

Let me add that to have an employee work at choice and desire of the employer is the right of authority "**Master**" and to follow the same is the obligation of '**servant**' else it shall result in collapsing the relationship of '**Master & Servant**' which are necessary to run the affairs of an institution, so established by '**Master**' to be run by '**Servants**'. However, if there is established any malafide causing prejudice resulting into some damages to the '**servant**' he would have the right to claim damages but in no way he can seek an interim order from the Court which, *otherwise*, amounts to creating a situation for the employer (**Master**) to let the '**Servant**' to have control and command over financial affairs against the wishes of the '**Master**'. If this is allowed to hold the field it would result in giving a cause / right to every single '**Servant**' to approach the Court (s) to seek suspension of transfer order(s) and continuity of working against wishes of his employer '**Master**' which in my clear opinion cannot be stamped as it , *in all senses*, would amount to an undue advantage. To support my view point, I would like to refer here the case of '**ATCO Lab. (Pvt.) Ltd. V. PFIZER Ltd. & Ors**' (2002 CLD 120), wherein it is held that:

"It is also a settled principle of law that besides the above factors the Courts in the facts and circumstances of a case have to taken into consideration certain other factors such as whether the plaintiff has approached the Court with clean hands or not; whether the Court has been approached promptly or not; whether grant of an injunction will be against public interest / policy;

whether grant of an injunction to a party shall result into an undue advantage being given to him which would perpetuate injustice and whether a party approaching the Court for interim relief has concealed material facts and / or acted in a malafide manner. In case the answer of any of the questions is in the affirmative then the relief of an injunction being discretionary in nature can be declined.”

9. The record also shows that the plaintiff is employed and earned the status of **‘servant’** but this fact alone cannot be sufficient to deprive the defendant **‘Master’** from exercising its powers and jurisdiction for which the plaintiff himself has agreed while accepting the offer of the defendant **‘Master’**. The plaintiff has not been able to show how the transfer order is illegal when admittedly he honoured and complied with earlier orders of transfers hence I am of the view that **‘prima facie case’** and **‘balance of inconvenience’** are also not available with the plaintiff.

10. In view of above discussion, I am of the clear view that the plaintiff has failed to make out a case for grant of interim relief within meaning and scope of Order 39 R 1 & 2 CPC. In consequence to such failure of the plaintiff, the instant application is hereby dismissed.

Imran/PA

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