

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 58 of 2014

Present

Mr. Justice Muhammad Jaffer Raza

Aamir Haider Butt Plaintiff.

Versus

M/s. Engage Human Resources & another..... Defendants.

Syed Ali Ahmed Zaidi, Advocate for the Plaintiff
a/w Mr. Mujtaba Shehzad Thaim Advocate.

None for the Defendants.

Dates of Hearing: 12.02.2025 and 24.02.2025

Date of announcement: 24.02.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: The Plaintiff has filed the instant suit for declaration, compensation, recovery and damages with the following prayers:

“PRAYERS.

The Plaintiff therefore prays for a decree jointly and/or severally against the Defendants in the following terms

- i. A money decree in the sum of Rs.2 crores for mental torture and harassment against the Defendants jointly and/or severally.
- ii. A money decree in the sum of Rs.2 crores against the Defendants, jointly and/or severally for the damage/defamation caused to the Plaintiff's reputation in his social circles and contacts due to reasons stated herein above.
- iii. Without prejudice to 'vi' herein below, a money decree in the sum of Rs. 1,000,000/-against the Defendant No.1 as amount earned through commissions.
- iv. A money decree in the sum of Rs.2 crores against the Defendants jointly and/or severally for misrepresentation

and fraud upon the Plaintiff which led to his loss of opportunity etc,

- v. A money decree in the sum of Rs.623,182/- against the Defendant No.1 for unpaid salary and notice period as well as fuel charges and cellular phone charges etc,
- vi. Without prejudice to 'iii' herein above, a decree for accounts for the period of the Plaintiff's employment along with details of client's dealt with by the Defendants, and revenue generated,
- vii. A decree for attachment of the assets, offices and all other movable and/or immovable assets of the Defendants.
- viii. Any other relief which this Hon'ble Court may deem fit and proper under the circumstances of this case.
- ix. Cost of the proceedings."

2. It is contended by learned counsel for the Plaintiff that the Plaintiff was engaged by the Defendant No.1 as Relationship Manager vide contract of employment dated 09.01.2012 (**'Employment Contract'**) and job description of the Plaintiff under the said contract can be summarised as follows:

- i. helping in creating innovative solution and services,
- ii. building exceptional client relation,
- iii. helping build the internal capabilities to deliver solution,
- iv. delivering on customer and internal commitments.

3. It is stated by learned counsel for the Plaintiff that the Plaintiff was to participate in a number of different projects and consulting assignments and with special task/s assigned on business development and client relationship management while coordinating the external PR in addition to branding activities of the Defendant No.1.

4. The contract further stipulated salary of Rs.75,000/- per month. The Plaintiff was assured a sales commission of 10% of net revenue on achieving his targeted amount, at the discretion of the Defendant No.2. Further it was contended by learned counsel, that the Plaintiff was assured that his petrol and mobile phone bills will be at actual usage, in addition to the terms of the

Employment Contract. The said terms, according to learned counsel were read into the Employment Contract. As per the contract, it was contended by the learned counsel, the Plaintiff would be given a laptop, car and a mobile of his own choice within six months of his employment and his salary would be enhanced to Rs.200,000/- per month.

5. It is contended by the learned counsel that the Plaintiff joined Defendant No.1 as he wanted to establish both himself and Defendant No.1. It was further argued that the Defendants offered the Plaintiff the employment realizing his utility and the Plaintiff was instrumental in promoting the business of Defendant No.1. However, during the course of his employment he discovered that the representations made to him were false. The Defendant, according to the learned counsel for the Plaintiff, systematically forged and fabricated the amount of what was due to the Plaintiff and avoided to fulfill their contractual obligations under the Employment Contract. In this regard, according to the Plaintiff, Defendants were deliberately avoiding payments owed to the Plaintiff. The Plaintiff having no option resigned from his job on 21.03.2013 and at this time sought for his dues to be cleared and also sent a legal notice dated 13.05.2013, seeking compensation and damages. It has specifically been alleged by learned counsel for the Plaintiff that the Defendant No.2 was primarily responsible for denial of the outstanding amounts of the Plaintiff and the Defendant No.2 in collusion with Defendant No.1 played fraud upon the Plaintiff. In view of the above the Plaintiff has sought compensation and/or damages as under: -

Sr. No.	Dues	Amount
a	Salary and notice period pay	Rs.435,577/-
b	Fuel charges	Rs.137,261/-
c	Mobile charges	Rs. 50,344/-
d	Mental torture and harassment	Rs.20,000,000/-
e	Misappropriation and fraud	Rs.20,000,000/-
f	Approximately commission	Rs.1,000,000/-
g	Damage/defamation caused to Plaintiff's reputation in his circles and social contacts	Rs.20,000,000/-
	Total	Rs.61,623,182/-

6. Summons of the suit were served on the Defendants and after the service Defendant No.2 engaged a counsel who filed Vakalatnama on 22.04.2014 and thereafter failed to file written statement despite having been given opportunities on various dates i.e. 20.02.2014, 17.04.2014, 26.08.2014 and 18.11.2014. The conduct of the Defendants did not go unnoticed and subsequently the Defendant No.2 was debarred on 17.02.2015 by the Additional Registrar (OS). Thereafter this Court vide order dated 14.11.2016 ordered to proceed ex-parte against Defendant No.1.

7. Thereafter the Plaintiff filed his affidavit-in-ex-parte proof and produced the same as Exhibit PW/1/1 and has also produced the following documents:

Sr. No.	Name of document	Exhibit No.	Page No. of evidence file
1	Employment contract dated 09.01.2012	PW/1/2	19-21
2	Original e-mail dated 07.12.2013	PW/1/3	23-31
3	Another e-mail dated 12.12.2013	PW/1/4	33
4	Copy of letter dated 21.03.2013	PW/1/5	35
5	Copy of legal notice dated 13.05.2013	PW/1/6	37-43
6	Copy of four (04) courier receipt	PW/1/6-A to PW/1/6-D	45-51
7	Copy of e-mail dated 14.05.2013	PW/1/7	53-55
8	Copy of e-mail dated 15.05.2013	PW/1/8	57-63
9	Copy of courier receipt	PW/1/9	65
10	Copy of notice under Order XII Rule 8 CPC dated 28.03.2017	PW/1/9-A	67-69
11	Copy of courier receipt	PW/1/9-B	71
12	Copy of notice under Order XII Rule 8 CPC dated 28.03.2017	PW/1/9-C	73-75

8. At this stage the learned counsel for the Plaintiff was specifically asked regarding the resignation of the Plaintiff and how he is entitled for the relief sought in light of above resignation. In this regard learned counsel has contended that his resignation shall be construed as “wrongful termination” and the same principles will be equally applicable to the case. The Plaintiff relied upon the proposition that once an employment contract has been breached by the employer, a subsequent resignation by the Plaintiff is immaterial and not a bar to claim damages. To substantiate such argument, the Plaintiff relied on a judgment

of this Court reported in **Rafiq Ahmed v. Messrs Joint Venture, Basrah Airport International Airport and another¹** in which it was held that: -

“Keeping aside this controversy. The main question that arises Is whether the plaintiff has broken the contract or the breach has B occurred on account of the conduct of the Defendant which has been followed by this letter. If this writing is carefully read and analyzed it reveals that the breach had already occurred before this was executed. In other words this so-called resignation was procured by the Defendants after violating the original contract of employment of the plaintiff by pressing him to do a job other than the one and inferior in status to the job for which he was employed carrying a salary at least 30 per cent less than the salary he had agreed to accept under the original agreement/contract. It is evident that the Defendant had already broken the contract and as such the refusal of the plaintiff to work, call it a resignation or refusal cannot be said to be unjustified.”

9. At this juncture the learned counsel also invited my attention to the doctrine of “*Constructive Dismissal*”. Though there is no case law which enunciates such doctrine in Pakistan's jurisprudence, however, the same is available in other commonwealth jurisdictions. The Plaintiff cited the case of **Western Excavations v. Colin John Sharp of the Court of Appeal of England and Wales²** to expound on the said proposition. The Court of Appeal held as under: -

“So, whereas at common law an employer could dismiss a man on a month's notice or a month's wages in lieu, nowadays an employer cannot dismiss a man even on good notice, except at the risk of having to pay him a large sum should the Industrial Tribunal find that the dismissal was unfair.

These provisions are not confined to cases where the employer himself dismisses the man. They also apply to cases where the man leaves of his own choice-if he can show that it was due to the way the employer treated him. In other words, compensation is payable, not only for the actual dismissal, but also for 'constructive dismissal'.” (Emphasis added)

10. During the course of my own research I have stumbled upon the case of **Ms. X versus Registrar General, High Court of Madhya Pradesh and another³** decided by the Supreme Court of India. In the said judgment the court recognised the principle expounded in **Western Excavations** (supra) and allowed

¹ PLD 1987 Karachi 552

² [1978] ICR 221

³ Writ Petition (Civil) No. 1137 of 2018

the writ petition filed by the employee, thereby quashing the acceptance of resignation. The employee in this case was an Additional Sessions Judge who claimed to have been sexually harassed by her senior. Upon complaint, her transfer orders were issued and she sought time to comply with the same, for the reason that her daughter was undergoing her examinations. Her plea was rejected and as a result she resigned from service.

11. Considering the dearth of reported judgements on the concept above I examined the development of law in this respect in Canada. As a result, I stumbled upon the case of ***Farber Vs. Royal Trust Co.***⁴ decided by the Supreme Court of Canada, in which an objective test was laid down for determination of *constructive dismissal*. It was held in paragraphs number 24 and 26 as under: -

“24. Where an employer decides unilaterally to make substantial changes to the essential terms of an employee’s contract of employment and the employee does not agree to the changes and leaves his or her job, the employee has not resigned, but has been dismissed. Since the employer has not formally dismissed the employee, this is referred to as “constructive dismissal”. By unilaterally seeking to make substantial changes to the essential terms of the employment contract, the employer is ceasing to meet its obligations and is therefore terminating the contract. The employee can then treat the contract as resiliated for breach and can leave. In such circumstances, the employee is entitled to compensation in lieu of notice and, where appropriate, damages.

26. To reach the conclusion that an employee has been constructively dismissed, the court must therefore determine whether the unilateral changes imposed by the employer substantially altered the essential terms of the employee’s contract of employment. For this purpose, the judge must ask whether, at the time the offer was made, a reasonable person in the same situation as the employee would have felt that the essential terms of the employment contract were being substantially changed. The fact that the employee may have been prepared to accept some of the changes is not conclusive, because there might be other reasons for the employee’s willingness to accept less than what he or she was entitled to have.” (Emphasis added)

12. The Supreme Court of Canada followed the same principle in the case of ***Potter Vs. New Brunswick Legal Aid Services Commission***⁵ where the court held as under: -

⁴ Case No. 24885 Decided On: 27.03.1997

⁵ Case No.35422 Decided On: 06.03.2015

“[31] The burden rests on the employee to establish that he or she has been constructively dismissed. If the employee is successful, he or she is then entitled to damages in lieu of reasonable notice of termination. In Farber, the Court surveyed both the common law and the civil law jurisprudence in this regard. The solutions adopted and principles applied in the two legal systems are very similar. In both, the purpose of the inquiry is to determine whether the employer’s act evinced an intention no longer to be bound by the contract.

[33] However, an employer’s conduct will also constitute constructive dismissal if it more generally shows that the employer intended not to be bound by the contract. In applying Farber, courts have held that an employee can be found to have been constructively dismissed without identifying a specific term that was breached if the employer’s treatment of the employee made continued employment intolerable:”

13. At this juncture, I would like to acknowledge that I was oblivious with the doctrine of constructive dismissal and it is only with the able assistance of the learned counsel that I have familiarised myself with the same. **To put it simply, the doctrine is essentially applicable in cases in which the employee is not terminated or dismissed, but circumstances are created by the employer which make the resignation unavoidable and inevitable.** The test in this regard can be broken down as follows:

- a) A breach of contract on part of the employer;
- b) Resignation in response to the breach; and
- c) Employee had to demonstrate that he had no option but to resign and terminate the contract.

14. Applying the test laid down above and the dicta laid down in the case of **Rafiq Ahmed** (supra) I hold that the Plaintiff had no option but to resign from the employment of Defendant No.1. The Defendants, withheld the amount owed to the Plaintiff, leaving the Plaintiff no option but to tender his resignation. The correspondence between the parties is reflective of the fact that the Defendants did not abide by their express and implied contractual obligations and therefore the resignation of the Plaintiff cannot disentitle him for the relief sought. Moreover, there is no alternate version is advanced by the Defendants and the plea

of the Plaintiff has gone un rebutted, hence admitted⁶. Therefore, I hold that the Plaintiff is entitled to the sums mentioned in clause (a), (b), (c) and (f) of the table in paragraph number 5 above.

15. Thereafter, a specific question was put to the learned counsel regarding the power of this court to grant damages and the yardstick to be employed for the said purpose. Learned counsel in reply has stated that the grant of damages is the discretion of the Court and it is the conscience of the Court which will determine the quantum. Lastly, it was submitted by the learned counsel, that the considerations are non-exhaustive. The Court ought to take into account the education of the Plaintiff, status in life, age and position enjoyed during employment. In this regard the learned counsel relied upon Section 73 of the Contract Act, 1872. The same is reproduced below:-

“Compensation for loss or damage caused by breach of contract

73. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.”

16. The learned counsel further relied upon the following judgements, relevant extracts of the same are reproduced below: -

a) Habib Bank Limited versus Mehboob Rabbani.⁷

“It would have been difficult for the Respondent to be employed again owing to the fact that a dismissal from service on his record would have had the effect of either barring him from further employment or making it considerably more difficult for the Respondent to be employed again. That blot on his service permanently marked the Respondent for the rest of his life and was only washed away when the Respondent passed away. Once the Respondent had proved that he had been wrongfully dismissed from service, the onus shifted on the Appellants to prove that the damages claimed by the Respondent were either too remote or did not arise out of the breach of contract. In the absence of anything to the contrary, the Respondent was entitled

⁶ 2014 MLD 750, 2023 CLC 176, PLD 2013 Sindh 513.

⁷ 2023 SCMR 1189

to such damages that in the opinion of the Court considering the facts and circumstances of the case arose directly out of the breach of contract as well as all damages claimed for wrongful dismissal from service.

We find ourselves in agreement with the yardstick used by the High Court in determining the quantum of damages by the High Court which has been found to be just, fair and duly supported by settled principles of law on the subject. The discretion exercised by the High Court in this regard has not been found by us either perverse or arbitrary.”

b) Sufi Muhammad Ishaque versus The Metropolitan Corporation

Lahore through mayor.⁸

“Once it is determined that a person who suffers mental shock and injury is entitled to compensation on the principles stated above, the difficult question arises what should be the amount of damages for such loss caused by wrongful act of a party. 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, 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.”

c) Abdul Majeed Khan versus Tawseen Abdul Haleem and others⁹

“The general damages are those which the law implies even if not specifically 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.”

d) Razak Latif and another versus ACE Securities (Pvt.) Limited through Chief Executive¹⁰.

⁸ PLD 1996 SC 737. Cited with approval in Gohar Ali and another versus Messers Hoechst Pakistan Limited reported at 2009 PLC (CS) 464.

⁹ 2012 PLC (CS) 574

¹⁰ 2021 CLD 794

“Special damages can only be awarded when the Plaintiffs prove the same by leading positive evidence, which has not been done in the present case..... It is a settled principle that the quantum of general damages can be determined by the Court by looking at the facts of the case.”

17. The Plaintiff in the instant suit has sought general damages cumulatively to the tune of Rs.60,000,000 (Rupees Sixty million only) under heading (d), (e) and (g) in the chart in paragraph number 5 above. The Plaintiff has entered the witness box and reiterated the stance taken in his pleadings. He has specifically stated in his affidavit in ex-parte proof that due to the acts and omissions of the Defendants he suffered mental torture, harassment and damage to his reputation. The same, as has been mentioned above, has gone unrebutted. However, this court even in ex-parte proceedings has to examine the claim of the Plaintiff and the same cannot be decreed as prayed without application of judicial mind. The absence of the Defendants does not in any way lower the Plaintiff's burden to proof his case. In ex-parte cases the court is saddled with the additional burden of ensuring that the Plaintiff's version of events is atleast prima-facie true and fathomable.¹¹

18. I find the claim of Rs.60,000,000 (Rupees Sixty million only) as general damages to be exorbitant and largely inflated. The Plaintiff has already been granted the sums under heading (a), (b), (c) and (f) of the table in paragraph number 5 above. In addition to the above I am inclined to grant general damages to the tune of Rs. 5,000,000 (Rupees Five million only) to the Plaintiff and jointly and severally against the Defendants. The instant suit is decreed as under: -

Sr. No.	Dues	Amount
a	Salary and notice period pay	Rs.435,577/-
b	Fuel charges	Rs.137,261/-
c	Mobile charges	Rs. 50,344/-
d	Approximately commission	Rs.1,000,000/-
e	General damages	Rs. 5,000,000/-
	Total	Rs.6,623,182/-

The above are the reasons of short order dated 24.02.2025 whereby the suit of the Plaintiff was partially decreed. Office to prepare decree in the above terms.

J U D G E

¹¹ PLD 2021 SC 564, 2023 SCMR 1118, PLD 2020 Islamabad 361 and 2007 CLC 288.