

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Civil Revision No.118 of 2016
Nayatel Pvt. Limited
Versus
Syed Waqas Gillani.

Date of Hearing: 19.02.2020.

Petitioner by: Mr. Babar Mumtaz, Advocate.

Respondent by: Syed Mujtaba Hiader Sherazi, learned ASC.

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant Civil Revision Petition, petitioner assails Judgment & Decree dated 18.12.2015 passed by learned Additional District Judge-V, Islamabad-West whereby appeal filed by respondent was allowed and the Judgment & Decree dated 01.07.2015 of the learned Civil Judge 1st Class, Islamabad-West was set aside.

2. Precisely, relevant facts for the disposal of instant civil revision petition are that petitioner filed a suit for recovery of Rs.145,000/- in terms of six months' salary as compensation. The latter contested the suit through written statement; the learned trial Court framed necessary issues and after recording of evidence, for and against, decreed the suit to the tune of Rs.160,000/-. The suit was filed for recovery of Rs.145,000/- while the learned Trial Court awarded Decree of Rs.160,000/-, beyond the claim of petitioner. Feeling aggrieved by the Judgment & Decree of the learned Trial Court, respondent filed appeal which was allowed vide Judgment & Decree, impugned herein.

3. Learned counsel for the petitioner submits that the impugned Judgment & Decree of the learned ADJ is against the law and fact; case of the petitioner is within the ambit of Section 74 of the Contract Act which provides

that when pre-estimated damage/loss is mentioned therein then respondent is liable to pay the same; that service bond was duly executed by the respondent with the Petitioner Company with his free consent wherein, it is agreed that in the event, he leaves the company, six months' salary will be paid to the Petitioner Company. It is added that Judgment of the learned Trial Court is based on reasoning and liable to be restored. Learned counsel placed reliance upon case laws reported as 1988 CLC 2014, PLD 2015 Balochistan 135, 2014 MLD 109, 1986 MLD 1477, PLD 1982 Karachi 590, 1989 CLC 636, PLD 1985 SC 69, 1991 SCMR 1436, 1988 CLC 1555, AIR 1955 Kolkata 315 (Volume 42, C.N. 91), 2007 PLC (CS) 647, PLD 1969 SC 80, PLD 1971 SC 743, 1995 SCMR 1431.

4. Learned counsel for the respondent also relied upon said provision of law i.e. Section 74 of Contract Act and emphasized that respondent worked for 53 days in total with the petitioner company, while petitioner is seeking payment of six months' salary through the instant civil revision; that no training was ever conducted by the Petitioner Company which was the main condition for invoking the provision of the Bond; that when clause 2.2 & 7.4 of the appointment agreement are interpreted then it reveal that the respondent left the company during the period of probation in which one month notice was only requirement and that he was actually paid salary of Rs.12000/- per month instead of Rs.20,000/- per month.

5. Heard the learned counsel for the parties and perused the record with their able assistance.

6. When record examined with the able assistance of learned counsel for the parties, it is find that employment contract Ex.P2 contains clause 2.2. For clear understanding, said provision of employment contract is reproduced hereunder:-

“The first targeted ninety (90) days of the employment will serve as probationary period, during which mandatory training sessions will be conducted by the Employer. Employee may be terminated by the Employer on one week’s notice and by the employee on one month notice given in writing at any time during probationary period.”

The perusal of above clause reveals that initial period of ninety (90) days is treated as probation period during which mandatory training session will be conducted by the petitioner company, during said probation period, employee/respondent may be terminated by the employer/petitioner on one week notice in writing while employee may leave the company by giving one month notice. Admittedly, respondent left/resigned the job during probation period by invoking clause 2.2 wherein one month notice was served. When Bond, Ex.P4 is evaluated/scanned then same revealed that in case of breach of conditions 7.1 & 7.5 of the employment contract, referred above, employee shall pay compensation which is agreed to be six months gross salary equal to salary of the employee at the relevant time. The referred clauses being relevant are reproduced hereunder:-

“7.1. The Employer may at any time terminate the employment, without assigning any reason whatsoever, on thirty (30) days written notice or payment of salary in lieu thereof.

7.5. In case the Employee is required to furnish the Bond, he/she shall not terminate his/her employment and shall continue to serve the Employer for as long as the Bond remains in effect and, in case of breach of this provision, shall pay all damages, compensation and indemnity as may be specified in the Bond. The Employee further acknowledges and affirms that the Employer has or shall incur substantial expense in training the Employee and for imparting specialized skills to perform his duties and that on account of such skills

being specialized and not readily available in the market for the instant substitution, the Employer will suffer loss not readily measurable in damages apart from and in addition to severe interpretation in the business operations of the Employer. Accordingly, the Employer shall have the right to seek and obtain an order for specific performance together with a mandatory injunction against the Employee in addition to bringing a claim in damages in case of threatened discontinuation of his employment by the Employer contrary to the terms of the Bond.”

When above provisions of employment contract are considered in juxtaposition of Bond, Ex.P4, it signifies that these are in respect of termination of employee/respondent when he becomes permanent after completion of probation period. In that eventuality, employer had the authority to terminate employment by giving thirty days written notice or payment of salary to the employee, while clause 2.2 deals with severance of services, either by employer or by the employee wherein for employee one month notice is mandatory while for employer one week's notice is provided.

The resignation was accepted by the petitioner company during the period in which respondent was on probation under clause 2.2 and not under the provisions of 7.1 & 7.5 of the employment contract which are relevant for the purposes of the Bond which contains punitive clause i.e. six months salary, hence punitive provision of six months' salary is not applicable in the case of respondent.

7. It is the case of respondent that no training was provided to him which was mandatory during probation period. This appears to be correct while evaluating the evidence of DW-1, father of the respondent in this respect, states in his examination in chief:-

"میرے بیٹے کو اس پیریڈ ملازمت کے دوران کوئی ٹریننگ نہ دی گئی۔"

No cross-examination upon the above statement of DW-1 was made except a suggestion that:-

"یہ غلط ہے کہ میرے بیٹے کو کمپنی میں کوئی ٹریننگ دی گئی تھی۔"

8. The above statement/suggestion supports version of the respondent therefore, the assertion of the petitioner that huge amount had been spent on training of the respondent, does not find support from the record.

9. I have gone through the case law relied upon by learned counsel for the petitioner. The dictums reported as **PLD 1971 SC 743**, **PLD 1969 SC 80**, **1988 CLC 1555 Karachi**, **PLD 1985 SC 69**, **1989 CLC 636 Karachi**, **PLD 1982 Karachi 590** and **AIR 1955 CAL 315** laid down principles in case of breach of contract while, in the instant case same is not applicable because respondent left the petitioner company during his probation period. The case law reported as **1995 SCMR 1431** relates to clarification of ambiguity in a contract document while no such ambiguity exists in the employment contract, executed between the parties in the present case. The ratio set in case reported as **PLD 2015 Balochistan 135** pertains to conversion of revision petition into appeal while the judgment rendered in **2014 MLD 109 Lahore** relate to the filing of application under section 12(2) CPC for setting aside a compromise decree. Likewise case law reported as **2007 PLC (CS) 647** and **1988 CLC 2014 Karachi** have no relevance to the facts of the present case as former is with respect to breach of contract where there are no statutory rules while the latter laid down the principle regarding impleadment of a party. In case reported as **1991 SCMR 1436** there was claim of respondents to have suffered damages due to non-completion of contract within specified period while **1986 MLD 1477 Karachi** relates to the trainee serving

government and forfeiture of the bond amount. Hence, the citations referred to above entail distinct subject matter and proposition of law, therefore, do not extend any help to the petitioner.

10. In the light of above, the learned Appellate Court has rightly come to the conclusion that suit of the petitioner was not competent. No jurisdictional defect has been pointed out in the impugned judgment. The findings of learned Appellate Court do not suffer from illegality or material irregularity and, therefore, requires no interference. Consequently, revision petition fails and is accordingly dismissed.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Suhail