

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, CJ
MR. JUSTICE MUHAMMAD ALI MAZHAR
MRS. JUSTICE AYESHA A.MALIK

CIVIL PETITION NO. 2933 OF 2019

(Against the Judgment dated 29.05.2019 passed by the Islamabad High Court, Islamabad in W.P. No.1057/2018)

Dr. Muhammad Amin

....Petitioner

VERSUS

Zarai Taraqati Bank Limited through Board of Director,
ZTBL, HO, Islamabad and others

...Respondents

For the Petitioner:

Petitioner in person

For the Respondents:

N.R.

Date of Hearing:

10.08.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This Civil Petition for leave to appeal is directed against the judgment dated 29.05.2019 passed by the learned Islamabad High Court in W.P.No.1057 of 2018, whereby the Writ Petition was dismissed with certain observations. In fact, the petitioner had challenged in the aforesaid Writ Petition, the Office Memorandum dated 7.3.2018, whereby his departmental appeal was dismissed.

2. By means of an Office Memorandum dated 15.04.2016, the major penalty of dismissal from service was imposed upon the petitioner by the Respondent No.1. Against the dismissal, the petitioner had filed a departmental appeal, but the same was also rejected on 07.03.2018. The record reflects that on 02.03.2016, the petitioner was issued a charge sheet with a statement of allegations of unauthorized absence from duty on numerous dates between July, 2015 and March, 2016. It was further alleged in the

statement of allegations that the petitioner had also tampered the attendance register and marked the attendance on the crossed columns with effect from 4.7.2015 to 4.9.2015 and also left the station unauthorizedly without prior permission or approval of the Competent Authority.

3. The inquiry proceedings were conducted under the Zarai Taraqati Bank Limited Officers Service (Efficiency and Discipline) Regulations, 1975 ("1975 E&D Regulations") and the inquiry report was submitted on 04.04.2016. The inquiry officer found the petitioner guilty of misconduct, therefore, on 05.04.2016, second show cause notice was issued to the petitioner as to why he should not be dismissed from service. Ultimately, vide Office Memorandum dated 15.04.2016, the petitioner was dismissed from service. The impugned judgment of the learned High Court also tracks the history of litigation instituted by the petitioner against the respondents which shows that at least three Civil Suits for declaration, mandatory and permanent injunction were filed by the petitioner. In the first suit, he challenged the statement of allegations issued to him along with the show cause notice. In the second suit, he again sought a declaration, mandatory and permanent injunction to the effect that the show cause notice dated 05.04.2016 was without lawful authority and in violation of the 1975 E&D Regulations. The third suit was also for declaration, mandatory and permanent injunction wherein the petitioner prayed for a declaration to the effect that his dismissal order from service was illegal and prayed for directions to the respondents for the withdrawal of his dismissal order and his reinstatement in service.

4. The memo of the petition shows that the petitioner only challenged the Office Memorandum dated 07.03.2018 which was issued by the Appellate Authority of the Respondent No. 1 (Disciplinary Proceeding Department, Investigation Unit-II) whereby the petitioner was informed that his appeal against the dismissal order has been duly considered and while rejecting the appeal, the

dismissal order dated 15.04.2016 was upheld. The prayer clause in the High Court unequivocally demonstrates that only the rejection order of the appeal was under challenge but nothing was alleged with regard to the imposition of the major penalty of dismissal from service while such cause of action was available to the petitioner. It is quite a strange methodology adopted by the petitioner that the Writ Petition was filed on 12.3.2018 against the rejection of departmental appeal alone, whereas the dismissal order was challenged separately in the suit which was instituted on 14.07.2018 after filing the Writ Petition. The ultimate challenge must have been to the dismissal order rather than assailing the rejection order of the appeal. Merely challenging the order of rejection of the appeal could not serve any purpose, unless, the declaratory suit is proceeded by the competent court of law to decide the fate of the Petitioner's dismissal from service.

5. According to Rule 1 of Order II, C.P.C., every suit shall as far as practicable be framed so as to afford ground for a final decision upon the subjects in the dispute and to prevent further litigation concerning them, whereas Rule 2 of Order II, C.P.C. explicates the niceties that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action but the plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. It is further provided under Sub-Rule (2) of Rule 2 of Order II CPC, that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. The expression "cause of action" means a bundle of facts which if traversed, a suitor claiming relief is required to prove for obtaining judgment which is always a fundamental element to confer the jurisdiction and enables a party to carry on an action in a court of law being a very significant constituent required to be incorporated in the plaint in terms of Rule 1 of Order VII C.P.C. The chequered history of the petitioner's litigation transpires that he selected multiple forums to institute multiple litigations to challenge the action of the

management instead of jotting down all the causes of action available to him for suing in one go. The petitioner could unite both the causes of action such as the rejection order of the appeal and the dismissal order from service promptly instead of splitting the claims and opting to challenge them separately in the High Court and Civil Court which created the complication of overlapping the proceedings and also multiplicity of proceedings.

6. Though the petitioner's Writ Petition was dismissed by the learned High Court but certain observations have also been made that the suit for declaration instituted by the petitioner on 08.03.2016 was dismissed as withdrawn by the Civil Court following his statement on 29.03.2018 that he had submitted an application to respondent No.1/Bank for an amicable settlement. In fact, the said suit was withdrawn after the representative of the respondent No.1/Bank confirmed that such an application has been received, therefore, the learned High Court observed in the impugned judgment that while deciding the application, the Competent Authority shall not be influenced by any observations made in the High Court judgment.

7. Seemingly, the petitioner has already availed the appropriate remedy of filing a suit in the Civil Court for challenging his dismissal order. The Order dated 29.3.2018, passed by the learned Civil Judge, 1st Class, Islamabad, West, demonstrates that the learned judge recorded the statement of petitioner and Law Officer of ZTBL, who confirmed that an application to the management has been submitted by the petitioner for an amicable settlement on humanitarian and compassionate grounds which will be processed in accordance with law. After recording the statements, the suit was dismissed as withdrawn with the permission to file a fresh suit in case of further grievance. In view of this situation, we do not find any justification to interfere in the impugned judgment. However, if the management of the respondent No.1 has not decided the application moved by the petitioner till to date, then the petitioner may avail a remedy of filing fresh suit or in alternate, he is also at

liberty to move proper application for resurrection of his suit and if such application is filed in the Trial Court and the suit is resurrected/restored to its original position, then the learned Civil Court shall decide the suit on merits within three months after providing an ample opportunity of hearing to the parties. This Civil Petition is disposed of accordingly.

Chief Justice

Judge

Judge

Islamabad the
10th August, 2022
Khalid
Approved for reporting.