

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION No. 419 OF 2020

(Against the judgment of Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat dated 13.11.2019, in C.R.No.382-M/2018)

President, ZTBL, Head Office, Islamabad

...Petitioner

VERSUS

Kishwar Khan and others

...Respondents

For the Petitioner: Mr. Mian Muhammad Hanif, ASC
 Mr. Muhammad Sharif Janjua, AOR

For Respondent: N.R

Date of Hearing: 06.06.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. This Civil Petition for leave to appeal is directed against the judgment dated 13.11.2019, passed by learned Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat in Civil Revision No. 382-M of 2018, whereby the civil revision filed by the petitioner was dismissed.

2. The transitory facts of the case are as under:-

A team of State Bank of Pakistan on 5th & 6th August, 2015, carried out an inspection of Zarai Taraqati Bank Limited (ZTBL), Mingora & Behrain Branches, Swat and found certain violations of Standing Instructions of State Bank of Pakistan. As a consequence thereof, the penalties of Rs.14,20,000/- & Rs. 60,2000/- were imposed on the aforesaid branches respectively. The management vide Office Memo dated 30.05.2017, directed the present respondent employees to deposit the penalties in proportion to their responsibilities. Being aggrieved, they filed appeals to the higher-ups which remained undecided due to non-availability of BOD of ZTBL, hence a Civil Suit was filed. In the trial Court, the petitioner filed application under Order VII Rules 10 & 11 CPC on the plea that the Civil Court has no jurisdiction to entertain the suit for declaration and injunction with regard to the relationship governed under the rule of master and servant. The learned Civil Judge granted status quo against recovery and the dismissed both the applications vide Order dated 17.10.2017. The petitioner challenged the order before the learned Additional District Judge, Swat, which was dismissed, thereafter the petitioner filed Civil Revision before the learned Peshawar High Court, Mingora Bench which was also dismissed vide impugned Judgment dated 13.11.2019.

3. The learned counsel for the petitioner argued that the impugned Judgment is result of misinterpretation of provisions contained under Order VII Rules 10 & 11 CPC. He further argued that a right of appeal to the Board of Directors under the ZTBL Staff Regulations, 2005, was available against the impugned penalty order, therefore, the civil Court has no jurisdiction to entertain a suit for declaration and permanent injunction filed by an employee having the relationship of master and servant. However, he conceded that the aforesaid Staff Regulations were framed by the Board of Directors of the petitioner only for internal use without any statutory backing, hence the relationship between the petitioner and the respondent employees is of master and servant.

4. Heard the arguments. The bone of contention in this matter is that on 30.05.2017, Acting Zonal Chief of Zarai Taraqati Bank Limited (ZTBL) issued an Office Memorandum calling upon the private respondents/employees of the Bank to deposit penalties mentioned against their names in the table formulated in the aforesaid Office Memorandum. The employees (plaintiffs) were directed to deposit the amount of penalty on account of violations of SBP instructions committed by them during the financial year 2014-2015 and remit the same to Budget and Funds Management Department, ZTBL Head Office Islamabad. After imposition of penalty some employees filed their appeals but nothing placed on record as to whether their appeals were decided or not rather a plea was taken that the meeting of Board of Directors could not be convened to consider the appeals. Meanwhile the aggrieved employees filed their suit against the imposition of penalty and its recovery. The written statement was filed by the petitioner (i.e. defendant Nos.1 to 12) in the Civil Suit No.161/1/2017, instituted in the Court of Civil Judge/IIIaqa Qazi-X Swat but after filing written statement, two miscellaneous applications were also moved under Order VII Rule 10 C.P.C and under Order VII Rule 11 C.P.C. The contents of both applications were one and the same though the niceties and applicability of both provisions are distinct in nature and scope. The petitioner asserted that ZTBL is neither a government department nor has any statutory rules of service, hence the said employees have no right to file suit for declaration and injunction. Neither anything was accentuated precisely to empathize by the civil Court in actuality that the plaint was liable to be rejected nor any justifiable reason or law was

mentioned to comprehend or figure out that the civil Court had no jurisdiction, hence the plaint was liable to be returned for its presentation in an appropriate Court. If this plea is accepted that ZTBL has no statutory rules of service then obviously no other legal remedy was available to the employees (plaintiffs) to assail the imposition of penalty and its recovery except filing a civil suit. The learned counsel for the petitioner argued that the relationship between the parties is of master and servant and similar plea was also taken in the learned High Court but he further articulated that under the employees regulations framed by Board of Directors of the ZTBL the employees could file appeal rather than approaching civil Court but he failed to point out any specific regulation which impliedly or expressly barred the jurisdiction of civil Court. Nothing has been placed on record to show whether the penalty was imposed after issuing any show cause notice and holding any regular inquiry against the said employees to establish their guilt.

5. The master and servant is an archaic legal phrase meant to describe the relationship of employer and employee which arises out of an express contract of service which may contain certain terms and conditions agreeable to the parties. The general rule is that the master may hire and fire the services of the servants. The amount of compensation is ordinarily regulated by an agreement. The lawsuits encompassing the relationship of master and servant in fact leads to the claim of dismissed or terminated employee for award of damages/compensation against wrongful dismissal or termination. The employees, who are covered under the definition of workers or workmen, may approach to the labour courts or NIRC, as the case may be, and in case of civil servants, they may approach to the Service Tribunal and if the employment is covered and governed under the statutory rules of service then obviously in the event of any violation, such employees may file Constitution Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, but in case or category of employees who are neither covered under the labor laws nor the Civil Servants Act nor having any statutory rules or regulations of service, they may, due to lack and nonexistence of statutory remedy or statutory rules of service, can only file civil suit for satisfaction of their claims including the damages/compensation for wrongful dismissal. The relationship of master and servant is not

meant for mere exploitation. Laws exist to protect the fundamental human rights of the members of society. The function of the court is to do substantial justice and not to knockout or nonsuit the party on technicalities. At this juncture we would like to quote very celebrated phrase that "Law is made for man and not man for the law". Under Article 3 of our Constitution it is responsibility of the State to ensure the elimination of all forms of exploitation and the gradual fulfillment of fundamental principle from each according to the ability to each according to his work and under Article 37 (Principles of Policy) it is the responsibility of the State to ensure equitable and just rights between employer and employees and provide for all citizens, within the available resources of the country facilities of work and adequate livelihood with reasonable rest and leisure and now under Article 10-A of the Constitution, right to fair trial and due process is also a fundamental right of great magnitude, therefore, in all fairness, even under the relationship of master and servant, this fundamental right should be respected and followed being an integral part of due process.

6. The dictum laid down by this Court in the case of Tanweer-ur-Rehman (PLD 2010 SC 676) made it amply visible that due to non-statutory service rules and in case of no other equally efficacious and adequate remedy, the aggrieved employee can only file a civil suit for redressal of his grievance. All the more so, this Court in the case of PIAC vs. Syed Suleman Alam Rizvi, reported as 2015 SCMR 1545, while referring to the dictum laid down in the case of Tanweer-ur-Rehman, (PLD 2010 SC 676) Abdul Wahab & others v. HBL & others (2013 SCMR 1383), Pakistan Defence Officers' Housing Authority & others v. Lt.Col. Syed Jawaid Ahmed (2013 SCMR 1707) and Syed Nazir Gilani v. Pakistan Red Crescent Society & another (2014 SCMR 982) reaffirmed that in the relationship of master and servant, the only course left to the employees is to file a suit for redress of their grievances.

7. The philosophy and standards of Master and Servant relationship was premeditated to regulate relations between employers and employees during 18th and 19th centuries. The United Kingdom Act 1823 described its purpose as the better regulations of servants, labourers and work people. This particular Act greatly influenced industrial relations and employment law in the United

States, Australia (1845 Act), Canada (1847 Act), New Zealand (1856 Act) and South Africa (1856 Act). These Acts were generally regarded as heavily biased towards employers, designed to discipline employees and repress the combination of workers in trade unions. The aforesaid law required the obedience and loyalty from servants to their contracted employer with infringements of the contract punishable before a court of law often with a jail sentence of hard labour. It was used against workers organizing for better conditions from its inception until well after the first United Kingdom Trade Union Act 1871 was implemented which secured the legal status of trade unions.

8. While reinforcing the plea of master and servant relationship, the learned counsel for the petitioner relied on the dictum laid down by this Court in the case of Anwar Hussain Vs. Agricultural Development Bank of Pakistan and others (PLD 1984 SC 194) in which it was held as under:-

3. According to Halsbury's Laws of England, Vol. XXV, p. 446, para. 872: "The relationship of master and servant is expressed by a contract of service, express or implied, between the master and servant. A contract of service is one in which a person undertakes to serve another and to 'obey his reasonable orders within the scope of the duty undertaken. Whether or not a particular contract is a contract of service, is a question of fact depending upon the terms of the engagement, the method of remuneration, and the power of controlling and dismissing the worker although none of these factors is by itself conclusive." On the same question it has been commented in American Jurisprudence (Vol. 35 at pages 445 and 446) as follows: "In law, the term "master and servant" indicates the relationship which exists when one person who employs another to do certain work exercises the right of control over the performance of the work to the extent of prescribing the manner in which it is to be executed". While it is said that at common law there are four elements which are considered upon the question whether the relationship of master and servant exists, namely, the selection and engagement of the servant, the payment of wages, the power of dismissal and the power of the control of the servant's conduct, the really essential element of the relationship in the right of control the right of one person, the master to order and control another, the servant, in the performance of work by the latter, and the right to direct the manner in which the work shall be done. It is, moreover, essential that the master shall have control and direction not only of the employment to which the contract relates, but also of all of its details, and if these elements of control and direction are lacking, no relationship of master and servant exists. The test of the employer/ employee relation in the right of the employer to exercise control of the details and method of performing the work. It follows that if the relationship is the result of a contract freely entered into by the contracting parties then the principle of master and servant will apply. The principle, however, will not apply if some law or

statutory rule intervenes and places fetters upon the freedom of the parties in the matter of the terms of the contract. It is on this principle that a civil servant for whom there are constitutional safeguards, is not governed by the principle of master and servant, for he is possessed of a legal character for the enforcement of which he can bring an action. Even where the employee is not a civil servant but there are statutory safeguards governing his relationship with the employer and placing restrictions on the freedom of the parties to act, the general law of master and servant will not apply. In such cases the employer would be bound to follow the procedure provided for in the statute or the statutory rules before terminating the service of the employee and in the absence of conformity to such procedure, the termination of service would not be clothed with validity and the employee will be entitled to an action for his re-instatement.

4. Dealing with the principle, in *Akbar Ali Bokhari v. State Bank of Pakistan etc.* (PLD 1977 Lab. 234) it had been explained : "For relationship of master and servant as I understand it; there should be a freedom of contract both for master as well as the servant so as to act freely unfettered by any legal disability, but if for instance the servant is not free to leave service due to certain intervening, or conversely if master's pleasure to terminate service of his employee is similarly curtailed, then the case is no longer of a contract of service or of simple master and servant concept." Where a corporation is set up by a statute but the Government does not reserve to itself the power to regular the conditions of service of the employees under the corporation and the statute itself also does not prescribe any condition but leaves the matter entirely in the discretion of the corporation who is given the power to frame rules and regulations in that regard so that the employee is left with no protection under the statute itself, then the corporation must be held to be the sole arbiter in the matter of prescribing the terms and conditions of its employees and competent to deal with them in accordance with the terms and conditions so prescribed by it. In such situation the employee cannot claim to be a person possessed of any legal character within the meaning of section 42 of the Specific Relief Act and in case of his wrongful dismissal from or termination of service, the principle of master and servant will fully apply and he can only claim damages but not reinstatement to his post.

9. It is unequivocally visible that the respondent employees have not approached the civil Court for any declaratory decree against the termination or dismissal of service or damages but only seeking declaratory decree and injunctive relief against the imposition of penalty and its recovery. It is well settled that Order VII Rule 11 CPC enlightens and expounds rejection of plaint if it appears from the averments articulated in the plaint to be barred by any law or disclosed no cause of action. The court is under obligation to must give a meaningful reading to the plaint and if it is manifestly vexatious or meritless in the sense of not disclosing a clear right to sue, the court may reject the plaint. With the aim of deciding whether the plaint discloses cause of action or not, the court has to perceive and grasp the averments made in the plaint and the accompanying

documents. In case of any mix question of law and facts, the right methodology and approach is to let the suit proceed to written statement and discovery and determine the matter either on framing preliminary issues or regular trial. This Rule does not justify the rejection of any particular portion of the plaint or in piecemeal as the concept of partial rejection is seemingly incongruous to the provisions of Order VII Rule 11 CPC. Astute drafting for creating illusions of cause of action are not permitted in law but a clear right to sue ought to be shown in the plaint. It is trite law that a party should not be unnecessarily harassed in a suit and if no cause of action is disclosed, the courts may not unnecessarily protract the hearing of a suit. A litigation which is in the opinion of the court is doomed to fail would not further be allowed to be used as an apparatus or stratagem to harass the litigant. Whereas Order VII Rule 10 CPC provides that the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted. If the Court is of the opinion that it has no jurisdiction to entertain the suit, it is not open to that Court to dismiss the suit on that account, but the Court is required to proceed under Order VII Rule 10 CPC directing that the plaint should be returned to the plaintiff for presentation to the proper Court and on returning a plaint, the Judge must endorse the date of its presentation and return, the name of the party presenting it, with a brief statement of the reasons for returning it.

10. Seemingly, the issue of imposition of penalty whether rightly imposed or wrongly imposed, or whether it was imposed after providing any opportunity of hearing to the private respondents/employees or not, or whether any regular inquiry was conducted or not to fix the responsibility, require full-fledged trial and evidence. The petitioner and the other defendants in the suit have already filed their written statements and obviously after providing fair opportunity of adducing evidence and hearing, the learned Trial Court will decide the suit on its own merits. On one hand the petitioner filed an application under Order VII Rule 10 C.P.C for return of plaint which means that the proceedings were attacked on the grounds that the Court has no jurisdiction to entertain the suit but on the other hand, another application under Order VII Rule 11 C.P.C was moved for the rejection of the plaint. No

justification was placed before us of moving two applications simultaneously having different rudiments in CPC but the grounds in both applications were absolutely alike. So far as Staff Regulations framed by Board of Directors, the learned counsel himself confessed that these regulations are non-statutory and by all means the said regulations are meant for internal rules. For all intent and purposes, neither such regulations can be given weightage equivalent to the statutory rules of service nor can be enforced in the same way as if the statutory rules of service could be enforced in case of its violation, hence in this situation, the only recourse was to approach civil Court for questioning the imposition of penalty and its recovery. Under Section 9 of C.P.C., the Civil Courts have the jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. The ouster of civil court jurisdiction cannot be presumed or anticipated straightforwardly, save as the prerequisites laid down are fulfilled. The presupposition of dearth of jurisdiction may not be embedded until the unequivocal law legislated for debarring civil Court from exercising its jurisdiction.

11. In the wake of above discussion, we do not find any irregularity and perversity in the concurrent findings recorded by three Courts which are based on correct exposition of law. The Civil Petition is dismissed and leave is refused accordingly.

Judge

Judge

Islamabad the
6th June, 2022
Khalid
Approved for reporting.