

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.750 of 2016

[Syed Farukh Mazhar Vs. SGS Headquarters & others]

Dates of hearing : 15.02.2017, 09.03.2017, 31.03.2017 and 05.04.2017.

Plaintiff : Syed Farukh Mazhar through Mr. Khawaja Shamsul Islam, Advocate.

Defendants No.1-4 : SGS Headquarters & others through Mr. Sajid Zaid, Advocate.

Alleged contemnors No.1 and 2 : Sidney Pereira and Ms. Saima Khalil through Raja Qasit Nawaz Khan, Advocate.

Case law cited by learned counsel for Plaintiff.

- 1. P L D 1987 Supreme Court page-304**
[Pakistan and others v. Public at Large and others]
- 2. 2006 Y L R page-2537**
[Zaheer Ahmed Chaudhry and 9 others v. City District Government, Karachi through Nazim-e-Ala and 13 others]
- 3. 1997 C L C page-1936**
[Shahid Mahmood v. Karachi Electric Supply Corporation Ltd.]
- 4. 2004 S C M R page-1874**
[Farasat Hussain and others v. Pakistan National Shipping Corporation and others]
- 5. 1994 S C M R page-2232**
[Mrs. Anisa Rehman v. P.I.A.C. and another]
- 6. P L D 2004 Lahore page-21**
[Muhammad Nawaz v. Barkat Ali]
- 7. 1997 M L D page-3066**
[Muhammad Arshad Khan v. Chairman, M.D.A. and 6 others]
- 8. 1999 M L D page-3173**
[Giorgio Beverly Hills Inc. v. Colgate Palmolive Pakistan Ltd. (Formerly Known National Detergents Limited) and another]
- 9. 2004 S B L R page-61 and**
[Lithuanian Airlines v. Bhoja Airlines (Pvt.) Ltd & others]

10. P L D 2014 Supreme Court page-283

[National Bank of Pakistan and 117 others v. SAF Textile Mills and another]

Case law relied upon by Defendants' learned Counsel.

1. P L D 2005 S.C. page-311

[Land Acquisition Officer and Assistant Commissioner, Hyderabad v. Gul Muhammad]

2. 2016 C L C page-189

[Syed Ali Asghar Shah v. Pakistan International Airline Corporation and others]

3. 2015 P L C (C.S.) page-1412

[Haider Ali Baig v. First Micro Finance Bank Ltd. and 3 others]

4. 1995 S C M R page-453

[Muhammad Umar Malik v. The Muslim Commercial Bank Ltd. and 2 others]

5. 2014 S C M R page-1573

[M/o IPC and others v. Arbab Altaf Hussain and others]

6. 1974 S C M R page-519

[Marghub Siddiqi v. Hamid Ahmad Khan and 2 others]

7. 2011 P L C (C.S.) page-654

[Lt.-Col (Retd.) Aamir Rauf v. Federation of Pakistan through Secretary Ministry of Defence and 3 others]

8. 2002 C L C page-857

[Syed Aziz Ahmad v. Messrs Bolan Bank Limited]

9. 2003 P L C (C.S.) page-11

[Syed Shahid Raza v. Oxford University Press]

10. 2007 M L D page-863

[Holgar Hahn v. Comset Services Limited and another]

11. P L D 2001 Karachi page-185

[Messrs Shakil Waqas & Co. and others v. General Manager / Marketing, Pakistan Railways and others]

12. 1995 M L D page-384

[Messrs Universal Business Equipment (Pvt.) Ltd. v. Messrs Kokusai Commerce Inc. and others]

13. 2013 P L C (C.S.) page-768

[Ghulam Nabi Shah v. Pakistan International Airlines Corporation and 4 others]

14. 2010 M L D page-800

[Lahore Stock Exchange Ltd. and another v. Messrs Hassan Associates]

15. 1991 C L C page-1950

[Mrs. Jannat Bi Khan v. Messrs National Motors Co.]

16. P L D 1991 Karachi 414

[Messrs Pakland Scientific Production v. Messrs Pioneer Insurance Company, Limited and another]

17. P L D 1961 (W.P.) Karachi, page-486

[Rajab Ali v. Messrs Gujrat Bus Service, Karachi and another]

Other relevant precedents

1. P L D 1970 Supreme Court 139

[Shahzada Muhammad Umar Beg v. Sultan Mahmood Khan and another]

2. 1940 AC 701 [House of Lords]

[Southern Foundries (1926), Limited v. Shirlaw]

3. P L D 2003 Karachi 691

[Jehan Khan v. Province of Sindh and others]

- Law under discussion:
- (i) Constitution of Islamic Republic of Pakistan, 1973.
 - (ii) Specific Relief Act, 1877.
 - (iii) Companies Ordinance, 1984.
 - (iv) Civil Procedure Code, 1908

ORDER

Muhammad Faisal Kamal Alam, J: Through this order, the

following civil miscellaneous applications will be decided:

- i) C.M.A.No5006 of 2016**
- ii) C.M.A.No.11973 of 2016**
- iii) C.M.A.No.11974 of 2016**

2. It is further clarified that any observation(s) contained in the order is purely of tentative nature and will not influence the trial followed by the Judgment to be given in present cause.

3. Plaintiff has brought this action at law against the defendants, against termination of employment of plaintiff by defendants,

particularly defendant No.3-Rachid Cherkaoui. Plaintiff *inter alia* is seeking a declaration that the impugned letters of termination dated 14.03.2016 and 21.03.2016 be declared as void *ab initio*, besides seeking an injunctive relief through C.M.A.No.5006 of 2016, filed under Order XXXIX, Rules 1 and 2 read with Section 151 of C.P.C., to the extent that above mentioned impugned termination letters/documents may be suspended and no further coercive action should be taken against the plaintiff, whereas the other C.M.A.No.11973 of 2016 has been preferred under Section 94 read with Section 151 of C.P.C., for an injunctive relief seeking suspension of the operation of Form-29 filed under Section 205 of the Companies Ordinance, 1984 (the “**Company Law**”), wherein name of the director Rachid Cherkaoui has been mentioned as new Chief Executive Officer instead of plaintiff.

4. Since by this order, interlocutory applications have to be decided, therefore, only those relevant facts are discussed herein below, which are necessary for deciding these applications.

5. Mr. Khawaja Shamsul Islam, learned counsel representing the plaintiff, has made submissions by giving a background that how plaintiff took up the challenge successfully from raising defendant-Company-SGS Pakistan (Private) Limited from a small size entity to a large size organization. It is not a disputed fact that plaintiff joined the said defendant No.2 way back in the year 1990 and promoted as Managing Director in the year 1998. Subsequently, plaintiff and defendant No.2 entered into an employment agreement (available at page-69 of the case file) dated 01.01.2007. This agreement contains rights and obligations of the respective parties.

6. Learned counsel for the plaintiff has referred to various undisputed documents in order to substantiate the credentials of plaintiff

that a rich tribute was paid to him by defendants on his meritorious services throughout. In order to show that during the course of time a personal relationship was developed between the plaintiff and defendants and that was one reason that defendant-Company shifted its business in the building owned by family of plaintiff and even at present it is housed in the said building located at Korangi Industrial Area. The grievance of plaintiff is that without any prior notice, the employment / services of plaintiff was terminated in a unique manner by making an 'organizational announcement' dated 14.03.2016 (available at page-217 of case file), whereunder all the concerned were informed that the plaintiff has left the Company 'with immediate effect'. That correspondence is addressed by defendant No.3-Rachid Cherkaoui from Dubai. According to learned counsel for the plaintiff, this 'Organizational Announcement' since was illegal, therefore, it was responded to by plaintiff vide an email dated 16.03.2016 (Annexure 'E' to the plaint at page-219), wherein plaintiff has disputed the claim of defendant No.3 while reiterating that plaintiff has not resigned. Somewhat similar correspondence was addressed to defendant No.1, the Company's Head Office at Geneva, but till date no reply has been received from SGS Switzerland. It was further argued by the plaintiff's side that the mala fide on the part of defendants is obvious when the latter in order to cover up lacunas in their impugned action has issued another correspondence of same date, that is, 14.03.2016, signed by defendants No.3 and 4 (Rachid Cherkaoui and Abdul Dawood) giving an impression that plaintiff was removed in a duly convened Board meeting. The abovementioned Rachid Cherkaoui has personal grudge against plaintiff and the impugned termination was orchestrated by said defendant No.3, it was further argued.

7. It was also contended by Mr. Shamsul Islam, the learned counsel for Plaintiff, that Articles of Association (“**AoA**”) is a constitution of a corporate entity and employment of plaintiff was terminated in violation of Article 85(v) of the AoA (Annexure ‘C/2’, page-167 of the case file) as even the Board meeting was not convened in the prescribed manner and particularly under Article 35 of the AoA, the Extraordinary General Meeting was never called by the plaintiff, who was at that time the Managing Director of the Company. Article 37 of the AoA was also relied upon to advance his argument that if in a Board meeting Special Resolution is to be passed then a prior notice thereof is required. Lastly, the plaintiff’s side has raised certain reservation with regard to the pleadings and counter affidavits filed by defendants and according to learned counsel for the plaintiff, the same are to be discarded as one of the written statements and counter affidavits to injunction application has been filed by employee of the Law Firm representing the present defendants and not by the duly authorized representatives of the defendants. To augment his arguments, that the concept of ‘Master and Servant’ has been eroded and is now replaced by a fair system of employment in which employer is no more a Master but has to act within the parameters of principles of Natural Justice, much emphasis was laid on the applicability of the Articles 9 and 10A of the Constitution of Islamic Republic of Pakistan, 1973 (“**Constitution**”), *inter alia*, as removal of plaintiff in such an unceremonial manner has stigmatized his professional career and thus blocked the prospects of getting a job of same status.

8. In rebuttal it has been argued that there is *ex facie* contradiction in the stance of Defendants and the service of Plaintiff was unlawfully terminated without resorting to relevant clauses of termination

simpliciter as contained in the Employment Agreement, hence, the Plaintiff was entitled to a show cause notice and the procedure as contained in the Employment Agreement relating to non-simpliciter should have been followed. Rule of estoppel is also attracted here and Defendants are estopped from taking a different plea of termination simpliciter. Plaintiff's legal team has tried to demonstrate that cited case law relied upon by the Defendants are not attracted to the facts of the present case. In the end, it was categorically stated that if plaintiff's ad-interim injunction is confirmed then plaintiff undertakes to perform his functions and duties in a due diligent manner. Learned counsel for the plaintiff has relied upon the reported judgments mentioned hereinabove.

9. The above submissions of plaintiff's counsel have been controverted by defendants' legal team. Mr. Sajid Zahid along with Mr. Mansoor Shaikh, have formulated the following parameters of arguments: -

- i) Can an employee of a private Company be imposed upon an unwilling employer?
- ii) In such a situation, can an injunction be granted ?
- iii) Under Section 56(f) of Special Relief Act, 1877, (“SRA”) the plaintiff has admittedly claimed a substantial amount of damages / compensation for his purported wrongful termination and the plaintiff even otherwise in terms of Section 80 and 191 of SRA, seized to be a Chief Executive Officer (“CEO”) by efflux of time.

10. In support of his arguments, Mr. Sajid Zahid, has first referred to undisputed public documents about the shareholding of defendant No.1, to show that defendant No.1 has a 99.5 percent shareholding in defendant No.2 and plaintiff never remained a shareholder or member of

defendant No.2-Company. These documents are basically information in prescribed format, which a Company is required to file with the Regulator-SECP. Through these documents, it was also shown that plaintiff was lastly elected as Director of defendant-Company amongst other persons including defendants No.3 and 4 in an Annual General Meeting held at Movenpick Hotel, Bahrain on 15.04.2013. According to defendants' plea, the term of plaintiff even otherwise would have ended by 15.04.2016. It was further argued by referring to page-151 of the second part of Court file, that the plaintiff has been shown as Chief Executive & Director Nominee of defendant No.1 in Form-29 submitted to SECP on 02.05.2013. In response to legal plea, the learned counsel for defendants has referred to Sections 180 and 199 of the Company Law, to fortify his stance that no Director or CEO can continue in the office, unless reappointed and / or re-elected in terms of aforereferred statutory provisions. Section 158(3) was referred to, in reference to a legal plea of plaintiff that notice is required to be issued only to shareholders and members, therefore, the Board meeting of 14.03.2016, in which the plaintiff was removed, was duly convened and the arguments of plaintiff's side in this regard are misconceived in nature.

11. Learned counsel (for defendants) has also apprised the Court about new development in the matter by referring to the 25th Annual General Meeting held at Jebel Ali Free Zone, Dubai on 29.04.2016, wherein defendants No.3 and 4 were elected as Directors of defendant No.2 (SGS Pakistan) and in proof thereof an extract of the minutes of meeting has been filed, which is available at page-155 of the second part of file. Subsequently, the names of the abovementioned persons have also been inserted in the relevant Form-29 submitted to SECP and at present defendant No.3 has been shown as the Chief Executive and

Director Nominee of defendant No.1. It is pertinent to point out that with regard to this very new development, the plaintiff has already filed an application being C.M.A.No.11973 of 2016 for initiating Contempt of Court proceedings not only against the present private defendants but also against the officials of SECP. Defendants side has categorically argued and so is also mentioned in their pleadings (Written Statement) as well as Counter Affidavits that the services of plaintiff were terminated simpliciter as per Clause 9.1 read with 9.3 of the aforementioned Employment Agreement and, therefore, no prior Show Cause Notice was required to be served upon plaintiff and defendants are ready to pay the terminal benefits of plaintiff. Learned counsel for the defendants has also invited Court's attention to the verification clause of the written statement filed by one Nadeem Maqbool Ahmed, who at that time was a Financial Controller of defendant No.2, in order to refute the allegations of plaintiff's counsel that the pleadings and the counter affidavits are unauthorizedly filed and are, therefore, liable to be discarded. Defendants' counsel has attempted to distinguish the case law [*2000 C L C 1551(1)*] cited from the plaintiff side, which is mentioned in the earlier ad-interim order of 30.03.2016, by arguing that admittedly in that case the respondent was a Joint Secretary and the cited case is that of a dispute between a Government Servant and the Government, whose services were terminated in violation of Service Rules, whereas in the present case, the relationship between the plaintiff and defendants No.1 and 2 is governed by the principle of Master and Servant.

12. I have thoughtfully considered the submissions of both learned counsel for the parties and with their able assistance have examined the case record relevant for the purposes of deciding the afore mentioned interlocutory applications.

13. The reported decisions relied upon by the learned counsel for the plaintiff primarily covers two parts of his arguments; firstly, that in view of present constitutional dispensation, particularly, after insertion of Article 10A (in the Constitution of Pakistan) and judicial pronouncements in relation thereto, have made the earlier reported decisions (as cited by plaintiff's counsel) more forceful, specially, about right of a fair trial of an employee, regardless whether such an employee is of a private corporate entity like that of defendants No.1 and 2, or some government department. Secondly, since written statement(s) and counter affidavit(s) have been filed unauthorizedly, therefore, the same have to be discarded and the present ad-interim injunctive order may be confirmed. As per plaintiff's counsel, written statement(s) and counter affidavit(s) have been verified and sworn not by a duly authorized officer of defendants No.1 and 2 but by an employee (Syed Junaid Zakir) of the Law Firm representing the defendants. Thus in view of the cited reported decisions, the pleadings and counter affidavits of defendants cannot be considered as a valid defence.

14. I intend to decide the second segment of the arguments of plaintiff's side first, with regard to the veracity of pleadings of defendants.

15. In response to the above, learned counsel for the defendants have specifically referred the Written Statement filed by defendant No.2 through Nadeem Maqbool Ahmed, who at that time was the Financial Controller and the Company Secretary of defendant No.2-SGS Pakistan. In this regard, documents have also been filed under a Statement dated 13.10.2016 (available at page-375, of the second part of Court file) to substantiate the above fact. Similarly, the Counter Affidavit filed on behalf of defendant No.2 to the interlocutory application has also been

sworn by the aforesaid person, whereas a copy of the Power of Attorneys issued by defendants No.1 and 3 have been filed with the written statement sworn by above named Syed Junaid Zakir, which instruments have been duly notarized from Geneva and Dubai and attested by Pakistani mission at these two Countries. It is not necessary to discuss the decisions relied upon by both the parties, but suffice it to observe that Courts have consistently deprecated this practice of swearing affidavits by advocates themselves, as, *inter alia*, it undermines the dignity of legal profession and invariably an Advocate exposes himself to be examined in evidence by an adversary counsel on the basis of facts averred. However, I find no defect in the pleadings (Written Statement) and counter affidavits) of defendant No.2. Even if the other written statement and counter affidavit on behalf of other defendants have been verified, signed and sworn by a person whose is an employee of the Law Firm representing defendants, then in due course, he could be subject to cross-examination, while leading the evidence, but subject to what has been observed hereinabove, the pleadings of other defendants also cannot be discarded at this stage. Even otherwise, it is a settled rule by now that a defect in pleadings of a civil litigation is a curable one, unless some mandatory provision is flouted or decided otherwise.

16. Now adverting to the main dispute.

17. Main theme of the argument from plaintiff's side is that if the Judgment of Hon'ble Shariat Appellate Bench (*Pakistan and others v. Public at Large and others*)[*ibid*] is read with reported decisions of Hon'ble Supreme Court handed down in National Bank of Pakistan's case, which has expounded the Article 10A of the Constitution, then even an employee of a private entity, is vested with certain rights, which cannot be over looked while terminating the services of such an

employee, in the instant case, the present plaintiff. The judgment of Hon'ble Shariat Appellate Bench is admittedly in respect of Government and Civil Servants of same cadre rendering services in different Provinces. One of the main issues before the Hon'ble Court (Shariat Appellate Bench) was a complaint of disparity of terms and conditions of service of Additional Secretaries serving in the Provinces. Similarly, in the case of National Bank of Pakistan in which provisions of Section 15 of the Financial Institutions (Recovery of Finances) Ordinance, 2001, have been held to be *ultra vires* to the Constitution, for the reasons, *inter alia*, that earlier a Financial Institution had the authority to sell / dispose of mortgaged property of a debtor / mortgager without resorting to Court proceedings and mentioning a reserve price. Primarily with this factual background, the above judgment was handed down. Similarly, another reported case of Shahid Mahmood v. Karachi Electric Supply Corporation Ltd. (*supra*), wherein relief of injunction was extended to the plaintiff, can hardly lend any support to the case of present plaintiff, as at that relevant time K.E.S.C., now K-Electric, was wholly owned and controlled by the Federal Government; that is, a State Owned Enterprise (SOE) and the plaintiff was working there as its regular employee. In this reported case also the conventional 'Master' and 'Servant' doctrine was not overruled. Hence, these reported decisions, in my humble view, do not support the arguments of Plaintiff's counsel. The cited decision of Farasat Hussain is also distinguishable, as the facts were that the appellant was an employee of P.N.S.C., a public sector Company and considering these specific and peculiar facts, the Hon'ble Supreme Court refused to apply the principle of 'Mater' and 'Servant' in favour of the employer-P.N.S.C., but followed the rule laid down through earlier judicial pronouncements including well-known case of Anisa Rehman Vs. P.I.A.C., which also is relied upon by the plaintiff's counsel, that the

statutory organizations do not enjoy unbridled or unfettered powers to act whimsically or capriciously by violating principle of natural justice while dealing with the employment related issues of their employees.

18. On the other hand, the two judgments of Hon'ble Supreme Court, relied upon by defendants' counsel are still holding the field; **1974 SCMR 519**, the well-known Marghub Siddiqi's case, and **1995 S C M R 453**. In both these judgments, it has been clearly laid down that an injunctive relief to an employee of a private organization cannot be granted, as it amounts to foisting an employee upon an unwilling employer. The grant of injunction has been considered in the light of Sections 21 and 56, clause (f) of SRA. The other reason is that if an employee is reinstated in the employment, it would involve performance of a continuous duty, which is also hit by Section 21(g) of SRA. Secondly, similar view till date has been reiterated in various judgments of our Court as well. In the case of Syed Aziz Ahmad (*supra*), the aforementioned judgment of Hon'ble Appellate Shariat Bench was discussed and the conclusion was that an employee cannot be forced upon an employer and if wrongful termination is proved then the remedy of compensation can always be granted to an employee. Various legal and factual aspects have been summarized in the reported case of Ghulam Nabi Shah (*supra*) by this Court, *inter alia*, that in such cases if the damages have been claimed by an employee claimant to remedy his (employee's) grievance, then that being the adequate remedy for the wrong done to him (employee/plaintiff/claimant), an injunctive relief cannot be granted. It is also necessary to mention that in the said cited decision of Ghulam Nabi Shah versus PIA, a reliance, *inter alia*, was placed upon a famous reported decision handed down by the Hon'ble Apex Court in PIAC versus Tanweer-ur-Rehman, while holding that if a

Corporation like PIA does not have statutory service rules then its employees cannot seek a re-instatement in service but their remedy lies in seeking damages, as relationship between the parties, viz. said Corporation and its employees will be governed by the rule of master and servant.

19. Taking into the account prevailing legal position pertaining to employment and service matters, an employment can broadly be categorized into following three categories, but, reinstatement in service can only be ordered in the first two categories; (i) and (ii) (a), (b):

- i) Under the Labour laws, in which statutory protection is provided for worker / labourers, which includes reinstatement in service,
- ii) (a) civil services, which are obviously governed by Civil Servants Act, 1973 together with different statutory rules including the Establishment (Esta.) Code, both at Federal and Provincial levels,

(b) persons, who are employees of State Owned Enterprises (SOE) and regarding which the rule has been laid down through a chain of judicial pronouncements, *inter alia*, that these employees are to be governed either by Statutory Service Rules and Regulations or principle of Natural Justice and hence the remedy of reinstatement in service is available, besides, extending an injunctive relief.
- iii) Persons employed in private organizations, including juristic and corporate entities; which is the present case; persons employed in this category of employment cannot be restored to or reinstated in service / employment by way of an injunction.

20. Considering peculiar facts of the case, there is another aspect, which needs some discussion. If the two impugned termination

documents are perused, the one is the 'Organizational Announcement' and the other is the extract of minutes of meeting dated 14.03.2016 held at Dubai, it appears, though subject to the evidence led by the parties, that there is some contradiction in the stance of defendants with regard to termination of plaintiff's service from defendant No.2, as in the 'Organizational Announcement', it is clearly mentioned that plaintiff has left the Company with immediate effect, whereas in the second document, which is the alleged minutes of meeting, it is mentioned that defendants No.1 to 4 had given the plaintiff three months' notice period while terminating his employment. However, from the pleadings of defendants, this aspect has been clarified that plaintiff's employment with defendant No.2 came to an end under clause 9.1 and 9.3 of the Employment Agreement (aforementioned) and, therefore, plaintiff is entitled to all the terminal and legal dues. This should include, a certification, that may help him in getting a new job so that his professional career is not jeopardized. The well-established Rule, which is still holding the field in view of plethora of case law and is also attracted in subject case, is that the persons / employees in the service of private organizations / employers do have a remedy but primarily in the nature of seeking damages and compensation against their employers, if they (present plaintiff) prove their grievance of wrongful termination or dismissal from service, but not reinstatement in the service / employment.

21. Thus, in view of the above discussion and with these observations, both the injunction applications of the plaintiff mentioned hereinabove are dismissed.

22. Another judgment, which can provide guidance in the present case is that of *Shahzada Muhammad Umar Beg v. Sultan Mahmood*

Khan and another, reported in *P L D 1970 Supreme Court 139*. In this case, respondent No.1 sought relief of temporary injunction against his reversion from the post of a District Excise and Taxation Inspector to Sub Inspector, besides, seeking declaration and permanent injunction. One of the main factors for refusal of injunction was, that Courts should not grant *status quo ante* (in such like situation) as in that case, the impugned order was passed on 18.11.1965, whereas the suit was instituted on 20.11.1965; after two days. The other factor for refusal to grant injunction, though the respondent was a government servant, was that such an injunctive relief can disturb functioning of public department. Eventually, order of learned Additional District Judge was restored while setting aside the order of High Court, which granted the injunction. Instant suit has also been admittedly filed after two weeks after the passing of impugned termination action on the part of defendants. This is an additional reason for not granting the injunction to the plaintiff as prayed for in his above listed applications.

23. From the documentary evidence, it is not a disputed fact that plaintiff was an employee of defendant No.2 and not its shareholder or member. However, the submission of learned counsel for the defendants is not convincing that the employment of plaintiff had ceased to exist due to efflux of time. Though this aspect is not material now, in view of the discussion in the foregoing paragraph, but, in my considered view, in such like situation, the employment contract of the nature is independent of the statutory provisions relating to tenure, though in practice, in such corporate entities it would be a remote possibility when a person holding a top position in the management is neither re-elected as Director nor re-appointed as Chief Executive Officer. Afore-mentioned judgment of House of Lords (United Kingdom) is of relevance.

24. With regard to the contempt application, Mr. Raja Qasit Nawaz Khan, the counsel representing alleged contemnors, who are officials of SECP, has referred to the Counter Affidavit of officials of SECP, wherein reliance has been placed on, *inter alia*, Sections 180 and 205 of the Company Law, in the first provision, the term of the Directors is mentioned as three years and under Section 205, every Company is liable to intimate the change to SECP in the prescribed Form-29. Similarly, in terms of Section 199 (of the Company Law), tenure of Chief Executive of a Company is also limited to three years, unless reappointed after expiry of the term, hence, the stance of alleged official contemnors is that they have to follow the law in letter and spirit, which they did. It was further argued by referring to various documents to show that officials of SECP were in good faith followed the Court orders. Learned counsel referred to earlier letter of 23.05.2016 and subsequent correspondence of 28.06.2016 addressed to Company Secretary of defendant No.2 and plaintiff, respectively, wherein in the first correspondence, the alleged contemnor No.2 refused to accept Form-29 dated 28.03.2016 from defendant No.2, wherein against the name of plaintiff, the remark 'Released' is mentioned, whereas in the second correspondence, the plaintiff was apprised of above situation and comments from the plaintiff were sought about notifying of his retirement dated 29.04.2016. The counsel further referred to the legal notice of plaintiff's counsel in this regard. Learned counsel of SECP by referring to various provisions of Company Law, which are mandatory in nature, has argued that amended Form-29 showing the name of defendant No.3 (Rachid Cherkaoui) as new Chief Executive and Director Nominee of defendant No.1 in place of plaintiff, was the result of a Board meeting of defendant-Company, in which new Chief Executive Officer and Directors were appointed and elected, respectively. Learned

counsel for the plaintiff, in rebuttal, has refuted various contentions of defendants and the alleged contemnors by arguing that SECP being Regulator should have acted justly, fairly and reasonably and must not have accepted changes in the composition of Chief Executive Officer and Board of Directors of defendant-Company in presence of restraining orders.

25. Defense put forth by the alleged official contemnors through their learned counsel, cannot be brushed aside for the reason that initially SECP refused to register the change in the composition of the Chief Executive Officer and Board of Directors in compliance of the Court order, but after lapse of **statutory three years'** term for Chief Executive Officer as well as Directors as envisaged under Section 180 and 199 of the Company Law cannot be lightly ignored, particularly when registering such change in the composition of Board of Directors of Defendant Company would not be prejudicial to the interest of plaintiff and is subject to and regulated by any judicial order passed during the course of present proceeding or the final judgment handed down in the matter. Obviously, the purpose of granting an ad-interim restraining order was not that routine business operations of the defendant No.2 should be grossly and adversely affected, or, any provision of law be rendered ineffective. In this regard, the arguments of learned counsel for the defendants also justifies consideration particularly in view of statutory provision of the Company Law under which Accounts are to be submitted to SECP by the Management of defendant No.2. In addition to the above, non-filing of rejoinder to the counter affidavits means that the above stated position is not disputed as such; in this regard, reported Judgment of learned Division Bench of our Court [*Jehan Khan v.*

Province of Sindh and others] is of relevance and its dictum is fully applicable to the present case.

26. The result of the above discussion is that the alleged contemnors, who have been named in the afore listed C.M.A.No.11973 of 2016, are not guilty of any contemptuous disobedience of Court's order and, therefore, with these observations and because of the fact that plaintiff is not entitled to the relief of injunction, I also dismiss the application (C.M.A.No.11973 of 2016), which was filed for initiating contempt of Court proceedings.

27. The upshot of the above is that all the afore-mentioned applications are dismissed and consequently ad-interim injunction orders granted earlier stand discharged.

Dated: _____

Judge