

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2089 of 2019

Plaintiff:	Gohar Ajmal Through Mr. Nadir Khan Burdi along with Mr. Ali Khimani Advocates.
Defendants No. 2 & 3:	Textile Institute of Pakistan & another Through Mr. Afaq Ahmed Advocate.

For hearing of CMA No. 17198/2019.

Date of hearing: 28.01.2020.

Date of order: 28.01.2020.

ORDER

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration. Injunction and Damages, whereas, through listed application the Plaintiff seeks a restraining order against the Defendants from taking any adverse action pursuant to the impugned Show Cause Notice and other proceedings pending final disposal of this Suit.

2. Learned Counsel for the Plaintiff submits that Defendant No. 2 is a statutory body established under Sindh (Textile Institute of Pakistan) Ordinance, 2001 (“**Ordinance 2001**”); that Plaintiff is a permanent faculty member of Defendant No.2; that pursuant to Section 12(h) of the Ordinance, 2001, the Board of Directors of Defendant No. 2 have framed regulations which are called as “Service Rules”; that as per Plaintiff’s information there is no sanction of the Government of Sindh for promulgation of these Service Rules; hence, they are non-statutory in nature; that Plaintiff was working as a visiting faculty member in September 2015 and had requisitioned mannequins which were purchased by the authorized person of Defendant No.2; that on 19.07.2016 he was appointed as a permanent faculty member against the post of program coordinator - fashion design management and apparel manufacturing and merchandising and was thereafter confirmed on 13.03.2017; that a Show Cause Notice was issued to the

Plaintiff on 18.9.2019 alleging that in respect of purchase of mannequins made in October 2015-16, some irregularity had been found and as to why disciplinary action should not be initiated; that a proper reply was furnished and the Defendants were confronted and asked for a detailed inquiry and the material on the basis of which the allegations were leveled; however, through communication dated 18.9.2019 which was received subsequently by the Plaintiff as it was back-dated and was issued after reply to the show cause notice, the Plaintiff was relieved from the responsibility of Program Coordinator, but was asked to continue as a faculty member; that on 21.10.2019 Plaintiff was informed that the case has been forwarded to Defendant No.3 with the instructions to conduct in-depth investigation; that the Plaintiff time and again wrote various letters and asked for a proper inquiry; however, again on 23.10.2019 he was informed that this is not some investigation but it is before a Grievance Committee and he should wait for a decision, whereas, on 24.10.2019 he was communicated with the decision of the Grievance Committee that purportedly the Plaintiff was involved in false purchase and as a consequence thereof, the amount of alleged losses would be recovered from him; that thereafter, he was informed that his responsibilities have been assigned to someone else and he being aggrieved filed instant Suit; however, after issuance of notice / summons, the Defendants took a summersault and on 31.12.2019 issued a discontinuation notice by terminating the service of the Plaintiff in terms of Clause 25.3 of the Service Rules by giving 30 days' notice; that the act of the Defendants is based on malafide and appears to be a case of personal grudge of the Defendants including Defendant No.3 who instead of conducting a regular inquiry as claimed by the Plaintiff, first suspended the Plaintiff from service and relegated his position and after issuance of notice in this Suit have come up with a 30 days' notice of termination which speaks of malafide; that the alleged purchases were made in 2015-16 and Plaintiff has no role in the said purchase; however, notwithstanding this, the audit for such period already stands concluded and no adverse findings have been given in the audit report and now suddenly the impugned proceedings have been initiated; that the actual purchasing authority is the inquiry officer in this matter; hence, there is conflict of interest; that a finding has already been recorded for recovery of amount which is in violation of the service rules as it could not be done

without a proper inquiry and permitting the Plaintiff to participate in the same; that Plaintiff is a permanent employee; hence, cannot be terminated or removed without proper procedure; that the Defendants cannot be allowed to first issue a Show Cause Notice alleging misconduct against the Plaintiff, and then come up with a simplicitor termination notice of 30 days period as it is against the dicta laid down in the case reported as ***A.B.M. Habibar Rehman V. The Director of Technical Education, East Pakistan, Dacca and others (P L D 1969 Dacca 948)***; that the Defendants are a public funded body; hence, required to act in accordance with law and not at the whims and desire of an individual like Defendant No.3; that the allegation of corruption has been circulated amongst various Institute of like nature, causing irreparable loss and damage to the Plaintiff as according to the Plaintiff's information the Defendants No.2 & 3 have started some exercise of interviewing other potential candidates; that this Court is competent to take notice of the facts and circumstances of this case and pass appropriate orders even in respect of the subsequent notice dated 31.12.2019 issued after receiving summons in this matter. In support he has further relied upon ***Syed Mir Muhammad V. N.W.F.P. Government (P L J 1981 SC 545)***, ***Federation of Pakistan and 2 others V. Abdul Razzak (P L J 1982 SC 519)***, ***Pakistan Defence Officers Housing Authority V. Mrs. Itrat Sajjad Khan and others (2017 SCMR 2010)***.

3. On the other hand, learned Counsel for Defendants No.2 & 3 submits that the service rules clearly provide that a termination notice with 30 days' notice period could be issued anytime, and therefore, the Plaintiff cannot agitate the notice dated 31.12.2019; that Plaintiff never participated in the inquiry and as of today, it is the case of the Defendants that even otherwise, there is no need of inquiry as a new notice of discontinuation has been issued which is expiring on 30.01.2020 and from such date the Plaintiff's service would stand terminated; that in view of such position no case is made out for any indulgence.

4. I have heard both the learned Counsel and perused the record. As to the employment of the Plaintiff there appears to be no dispute inasmuch as he was appointed as "Program Coordinator – Fashion

Design Management (FDM) and Apparel Manufacturing & Merchandising (AMM)” with effect from 1.9.2016 with a probationary period of four months with the Defendants reserving their right to terminate service during such period without assigning any reason; whereas, the appointment letter further provided that after confirmation, the service can be terminated by giving one month notice, whereas, if the Plaintiff intends to resign he was required to give a three months’ notice, failing which he was to surrender three months’ salary in lieu thereof. It appears that on 13.3.2017 the Plaintiff was confirmed as program coordinator and the terms and conditions of the employment were to remain unchanged. It further appears that thereafter, the Plaintiff has been issued a Show Cause Notice on 18.9.2019 wherein, it has been alleged that in respect of three purchases of mannequins in the year 2015-2016, loss had been caused due to his involvement and he was directed to submit his written explanation within 48 hours as to why disciplinary proceedings should not be taken against him. Such Show Cause Notice was replied on 19.9.2019 and thereafter, not only the Plaintiff was suspended from acting as Program Manager but so also certain observations have been recorded against him and were communicated. In this regard the response dated 23.10.2019 and 24.10.2019 given by the Defendants is relevant and reads as under: -

“TEXTILE INSTITUTE OF PAKISTAN
PRESIDENT’S OFFICE (INTER OFFICE MEMO)

Addressee	:	Gauhar Ahmed (Program Coordinator AMM & FDM)
Originator	:	Humayun Zafar (President TIP)
Info	:	Dr. Abdul Jabbar (Dean TIP)
Subject	:	Reply to two letters dated October 22, 2019
Date	:	October 23, 2019

This is in response to your letters dated October 22, 2019 regarding ongoing investigation. You are advised to note the following and oblige:

- a) This is not some special investigation committee or a designated officer; it is a grievance committee as per the existing rules.
- b) Your observation that Dean TIP has personal grudges against you due to direct appointment is totally baseless. He was taken into confidence as a Dean before your appointment and he had no objection, rather he has always been supportive as per my observation in last few years. You never had any complaint against the Dean before this case.

- c) You are advised to wait and let the committee work as per its TORs before making any statement.
- d) With reference to receiving of the notice of your suspension as Program Coordinator, you are advised not to use this designation in your correspondence at any level till further order.
- e) It has also been brought to our knowledge that you are pressurizing students to write a positive feedback about you. This is a highly unacceptable behavior on your part and warrants strict disciplinary action.

Sd/-
HUMAYUN ZAFAR
President TIP”

“TEXTILE INSTITUTE OF PAKISTAN
PRESIDENT’S OFFICE (INTER OFFICE MEMO)

Addressee	:	Gauhar Ahmed (Assistant Professor Fashion & Apparel)
Originator	:	Humayun Zafar (President TIP)
Info	:	Dr. Abdul Jabbar (Dean TIP)
Subject	:	Attention!
Date	:	October 24, 2019

With reference to the show cause notice issued to you dated September 18, 2019 and your subsequent reply dated September 19, 2019, the Grievance Committee was entrusted to investigate the matter at length. Today i.e. on October 24, 2019, the Committee called you and asked you to fill out a questionnaire in detail, which you flatly refused, not only that you also kept silent throughout the proceedings and did not cooperate, the undersigned was present in that meeting as an observer.

The Committee has reached to a conclusion that the mannequins purchased through Usman Bhatti were over invoiced, as the same were much higher than the market price, the purchases were made to cater to the needs of FDM Program.

This shows clearly malafide intentions on your part and thus you were directly responsible for inflicting a substantial loss to the Institute, the same would be recovered from your emoluments, at a cost which shall be determined later.

Sd/-
HUMAYUN ZAFAR
President TIP”

5. From perusal of the above stance of the Defendants, it appears that when Plaintiff had asked for a regular inquiry and for providing necessary material on the basis of which further proceedings were continuing against him on the basis of the Show Cause Notice; he has been informed that, firstly, this is not any special investigation being conducted by a designated officer; but is a matter before a Grievance

Committee as per existing rules. As to the Plaintiffs allegation that Defendant No.3 has some personal grudge, he was informed that such allegation is baseless, whereas, he was asked to wait and let the committee decide the issue as per its TORs and he was further advised not to use his designation as Program Coordinator. It further appears that immediately one day after that on 24.10.2019 the Plaintiff was informed that he has failed to appear before the Grievance Committee, whereas, the Committee has reached to a conclusion that the mannequins purchased in question were over priced which shows clear malafide intention on his part and he was held directly responsible for inflicting a substantial loss to the Institute and the same would be recovered from him at a cost which shall be determined later. This is nothing but a clear cut adverse finding of guilt against the Plaintiff. It appears that the Plaintiff kept on agitating for an inquiry in accordance with law, and left with no other choice, came before this Court by way of instant Suit on 20.12.2019 and on such date a notice was ordered. On 10.01.2020 Plaintiff filed a statement along with a notice of discontinuation of service dated 31.12.2019 which reads as under: -

“December 31, 2019

To,
Gauhar Ajmal
Assistant Professor,
AMM/FDM

Subject: DISCONTINUATION OF SERVICES

Dear Mr. Gauhar,

This is to inform you that your employment with Textile Institute of Pakistan will end as of January 31, 2020. Your services are being terminated in accordance with Clause # 25.3 (Chapter 25, Service Rules TIP) of the termination policy which is applicable and binding on your case. Under this policy, either party may terminate the relationship without cause or without notice.

You are required to properly discharge all your responsibilities to the designated person which includes all the relevant files, list of courses for Spring 2020 semester, students’ statistics and updated information of all on-going projects and dissertation. You will be required to mark all papers and submit the consolidated grade sheet within the stipulated time provided by the Department of Examination.

Furthermore, you will serve your notice period during which your presence at the main campus and city office will be as and when required.

You will be required to submit your clearance form in HR Department on the last day of your notice.

We wish you the best in your future endeavors.

Sincerely,

Sd/-
HUMAYUN ZAFAR
President”

6. Perusal of the aforesaid notice reflects that it has been issued in accordance with Clause 25.3 i.e. Chapter 25 of the Service Rules TIP and the Plaintiff has been informed that under this policy either party may terminate the relationship without cause or without notice. After having gone through the record and the material placed before me as well as in view of the above discussion, it appears that the conduct of Defendants No.2 & 3 is prima facie based on malafide as well as dishonesty. In fact, it appears to be a case of personal grudge of Defendant No. 3. Once the Plaintiff was issued a Show Cause Notice by alleging that he was involved in some purchases, which resulted in losses to the Defendants, without conducting a proper inquiry as required by an organization like Defendant No.2, a finding of guilt was recorded against the Plaintiff. It has not been denied that on record there is no inquiry report for perusal of the Court. When the Plaintiff impugned the said conduct of Defendants No.2 & 3, they have come up with a simplicitor termination notice in terms of Chapter 25 and have based their entire case on the ground that as per rules and the terms of employment a 30 days' notice is sufficient for terminating the service of the Plaintiff. To that, there appears to be no cavil; however, at the same time, it needs to be appreciated that if that was the case, then at the very first instance there was no need to issue a Show Cause Notice alleging fraud or misconduct and then referral of the matter to the Grievance Committee which has then recorded a finding of guilt without proper procedure and inquiry. The subsequent notice of 31.12.2019 appears to be an afterthought and an attempt to circumvent the proceedings before this Court. Any such notice of termination with 30 days' period as above could have only been sustained in ordinary circumstances and surely this isn't the case. In any other situation, this appears to be a case of putting the cart before the horse. The Defendants No. 2 & 3 cannot be allowed and permitted to act in such a manner, as after all the Defendant No.2 is a statutory body under the

Ordinance, 2001 and is funded by public money requiring audit of its accounts and funds as well as provided in section 17 of the Ordinance *ibid*. It is not a private organization simpliciter. It may not have statutory rules of service; but notwithstanding this, a Government organization is to act in a fair and judicious manner and can only take action in accordance with law, by following the norms as prescribed by the Superior Courts in respect of its relations with its employees. If this is not done, then the employees would be left at the mercy and discretion of its superiors who would be acting like a master and in case of a Government Organization, cannot be left to exercise such unfettered discretion. Reliance on the reported case of ***A.B.M. Habibar Rehman V. The Director of Technical Education, East Pakistan, Dacca and others (P L D 1969 Dacca 948)*** is fully justified in the given facts of this case, wherein it has been observed as under:

“The Appointing Authority could have, as we see from the appointment letters (Annexures “C” and “B”), easily terminated the service of the Petitioner who was a temporary hand in terms of one of the conditions of appointment, i.e. the appointment being terminable at any time without any notice and without assigning any reason whatsoever. Had the Appointing Authority done so, no complaint could have been made against the termination order. But since the Appointing Authority has assigned some reason which adversely affects the career of the petitioner, it was but incumbent upon the Appointing Authority to have disclosed to the petitioner the nature of adverse political records against him and to have given him an opportunity to explain his conduct. The Appointing Authority, not having done so, has clearly violated the principle of *audi alteram partem*.”

7. It may also be of relevance and needs to be appreciated that insofar as Defendant No.2 is concerned, it is admittedly a statutory body formed under the Ordinance, 2001, under the control and management of the Government of Sindh, indirectly, and under the Board of Governors, directly. The Government of Sindh has the authority and mandate to nominate them. This organizational structure of Defendant No.2 is of pivotal importance and is required to be kept in mind while dealing with the present grievance of the Plaintiff. It has to be understood that there is a marked difference in employment with a Government and/or a Statutory Corporation (“Corporation”) and a private organization. There may be a situation that an employee of a Corporation can be aggrieved of the conduct and the manner in which his employment has been or is being regulated or dealt with. The element of governance should be there as after all a Corporation working under the control of the Government has an element of public

duty to perform and is required to act within the mandate of its rules be it statutory or otherwise. The norms of good governance being based on reasons and rule of law must be free from nepotism and jobbery. The foundations of good governance are not based on decisions taken what one feels to be right; but on reasons, transparency, consensus, ethics and responsiveness. And this could only have been achieved if the Plaintiff was provided with the inquiry report and dealt with in accordance with law.

8. In the case reported as ***Sadiq Amin Rahman v Pakistan International Airlines Corporation and 3 Others (2016 PLC 335)*** a learned Single Judge has been pleased to dilate upon the relationship of an employee with PIA (a Corporation owned by Government) and has been pleased to hold as under in somewhat similar circumstances: -

17.....The management of PIAC is not supposed to act so recklessly or sabotage the professional norms and transparency in the affairs of their management but in the case in hand the defendant No.1 in utter disregard of the terms and conditions of the agreement decided to benefit the opportunity of transition course to some persons without clearance of promotion board. A statutory corporation or the corporation/company in which government has substantial shareholding lacks service rules, it does not mean that they are above the law and they can do anything on their own whims and pleasure but they should follow the principle of good governance and maintain transparency and fair-mindedness in their affairs.

18. The learned counsel for the defendants forcefully argued that in the relationship of master and servant, the plaintiff has no right to claim declaratory relief or injunction except damages. Every now and then statutory corporations or institutions those have no statutory rules of service come up with the same plea. In my view, there must be some distinction and differentiation between the relationship of master and servant and master and slave. We are living in Islamic Republic of Pakistan in 21st Century where a range of fundamental rights are guaranteed and secured in our Constitution. There is no doubt that in PIAC Government has majority shareholding and recently Pakistan International Airlines Corporation (Conversion) Ordinance, 2015 has been promulgated which repealed Pakistan International Airlines Corporation Act, 1956. Despite repeal and conversion of Corporation into public limited company there is no substantial change in substratum and unless assets are transferred wholly and or shareholding is substantially reduced, the government cannot get rid of their obligations towards the employees. It is further provided in the Ordinance that all the guarantees given by Federal Government shall remain in full force and effect as though they were given on behalf of company and under Section 3 of the same Ordinance, the rights of employees and all agreements are also protected. 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 11 there is no concept of slavery which is non-existent and forbidden and no law permits or facilitates its introduction into Pakistan and in any form while 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.

9. Insofar as the issue that when this Suit was filed, the impugned notice of termination dated 31.12.2019 was not in field and can the Court grant any relief in respect of such a termination notice issued subsequent to the filing of this Suit is concerned, it may be observed that first of all a Government controlled organization like Defendant No. 2 is not expected to proceed any further or take any action in respect of a matter for which, though no restraining orders have been passed; but a proper notice has been issued by the Court which has been received by it. Reference in this regard may be made to the case of **Noor Muhammad Vs. Civil Aviation Authority and another** reported in **1987 CLC 393**, wherein a learned Single Judge of this Court has held as under: -

“10. On the basis of the law, referred to above, I am of the view that the principle of the law laid down by the English, American as well as Indian Superior Courts, as referred to above, is applicable to the present case. When the proceedings were instituted by the plaintiff and a notice of the injunction application was issued to the defendants calling upon them to show cause why a stay order should not be issued, its practical effect was to lay off for the time being, owing to the Court notice, as it is expected that the Government Institution and their functionaries will assist the Court in administration of justice and they will not try to change the factual position unilaterally to their advantage, in normal circumstances, particularly when a Court notice is received by the said Authority or functionary and the matter is fixed for hearing in the Court just the other day.” (Emphasis supplied)

10. This decision as referred above was challenged in High Court Appeal before a learned Division bench of this Court in the case of **Civil Aviation Authority Vs. Noor Muhammad** reported as **PLD 1988 Karachi 401** and the findings of the learned Single Judge were not disturbed by the learned Division bench of this Court and it was held as under: -

“In our view, the point for consideration in the present case is, as to whether simplicitor service of summons and notice upon a defendant in respect of filing of a suit for declaration and permanent injunction and an application for ad interim injunction by a plaintiff, is sufficient to place restraint upon the defendant against taking any adverse action against the plaintiff before the grant of an ad interim injunction by the Court. There cannot be any doubt that the Court can undo any act on the part of a defendant which he might have taken malafidely after the service of the notice of an injunction application, if the Court is satisfied that the dictates of justice so demand and, therefore, in a fit case the Court can pass an order of status quo ante i.e. restoring the parties to the position which was obtaining at the time of the filing of the suit and the injunction application but, in our view, this does not necessarily mean that in every case where a defendant after service of notice of a stay application takes some adverse action / step against the

plaintiff, the Court as a matter of course should order restoration of status quo ante without examining the merits of the case. However, it is desirable that a defendant should not take any action after the service of notice of a stay application with the intention to render the stay application infructuous, as it may create complications for him. (Emphasis supplied)

11. From the above precedent, it is clear that the act of Defendants in this matter for issuing termination notice dated 31.12.2019 was unwarranted, and appears to be an attempt to take a turnaround in their stance and to defeat the very purpose of filing of instant proceedings by the Plaintiff. Nonetheless, while confronted, learned Counsel for Defendants No.1 & 2 has frankly conceded that issuance of this subsequent notice, does not abate the earlier proceedings initiated pursuant to the Show Cause Notice; nor the said proceedings have been recalled or set-aside; but are in field as they stand culminated and decided as above. Such a conduct cannot be appreciated in any manner; more so in respect of a service matter of an employee of a statutory body. Even otherwise, it is settled law that Courts can always take notice of subsequent proceedings and can mold the relief sought by a party keeping in mind the prevailing facts and circumstances of the case. Reliance in this case may be placed on the case reported as ***Mst. Amina Begum v Mehar Ghulam Dastgir*** (PLD 1978 SC 220), ***Amritlal N Shah v Alla Annapurnamma*** (AIR 1959 AP 9), and ***Municipal Committee Chakwal v Ch. Fateh Khan*** (2006 SCMR 688).

12. In view of hereinabove facts and circumstances of the case I am of the view that the Plaintiff has made out a prima facie case and balance of convenience lies in his favor, whereas, he would suffer irreparable loss and injury if the injunctive relief is withheld. Accordingly, by means of a short order on 28.01.2020 in the following terms, the listed application was allowed and these are the reasons thereof.

“For reasons to be recorded later, listed application is allowed and Defendants, by way of an interim injunction till pendency of this Suit, are restrained from taking any adverse or coercive action against the Plaintiff pursuant to show cause notice and inquiry proceedings in question, whereas, the suspension Notification / order dated 18.9.2019 (pg:337-Annexure P/12) as well as Notice of discontinuation of service dated 31.12.2019 shall remain suspended as well.”

J U D G E

ARSHAD/