JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.274/2017
Muhammad Amir Akram Rao
Versus
Pakistan Telecommunication Company Ltd through its President and others

Date of Hearing:	30.11.2018
Petitioner by:	Ch. Muhammad Junaid Akhtar, Advocate.
Respondents by:	Mr. Shafiq ur Rehman Dab, Advocate. Mr. Raheel Zafar, Manager (Legal), PTCL.

MIANGUL HASSAN AURANGZEB, J:- Through this judgment, I propose to dispose of C.R.No.274/2017 and C.R.No.275/2017 since they entail common questions of law and fact.

2. Through civil revision petition No.274/2017, the petitioner, Muhammad Amir Akram Rao, impugns the judgment and decree dated 19.06.2017, passed by the Court of the learned Additional District Judge, Islamabad, whereby respondents No.1 to 3's appeal against the judgment and decree dated 11.04.2017, passed by the Court of the learned Civil Judge, Islamabad, was allowed, and suit No.484/2014 for declaration, permanent and mandatory injunction and recovery of service benefits, instituted by the petitioner, was dismissed being time barred. Vide said judgment and decree dated 11.04.2017, the learned Civil Court had decreed the said suit as prayed for except payment of salary/arrears/gratuity etc.

3. Through civil revision petition No.275/2017, the petitioner, Muhammad Amir Akram Rao, impugns the judgment and decree dated 19.06.2017, passed by the Court of the learned Additional District Judge, Islamabad, whereby respondents No.1 to 3's appeal against the judgment and decree dated 11.04.2017, passed by the Court of the learned Civil Judge, Islamabad, was allowed, and suit No.398/2014 for declaration and permanent injunction, instituted by the petitioner, was dismissed. Vide said

judgment and decree dated 11.04.2017, the learned Civil Court had decreed the said suit as prayed for.

4. The facts essential for the disposal of the said petitions are that on 16.03.2007, the petitioner was appointed as Operations Engineer in Pakistan Telecommunication Company Limited ("P.T.C.L.") on contract basis. Clause 10 of the terms and conditions of the petitioner's employment contract provided that the appointment could be terminated by either side by giving one month's notice or one month's salary and allowances in lieu of such notice. On 15.05.2014, the petitioner tendered his resignation. Along with his resignation letter, the petitioner also gave a pay order for an amount of Rs.50,961/- being one month's salary. This pay order is said to have been encashed by P.T.C.L.

5. Prior to the said resignation having been tendered, charge sheet dated 24.04.2014 had been issued to the petitioner. In the said charge sheet, the petitioner was said to have committed gross misconduct, corruption, serious irregularities between January 2013 to February 2014. Furthermore, it was alleged that the petitioner had failed in the performance of his duties in a diligent and efficient manner. The said charge sheet was also accompanied with a statement of allegations against the petitioner.

6. The inquiry conducted by two senior officers of P.T.C.L. culminated in findings adverse to the petitioner. In the inquiry report, it was recommended that major penalty of termination from service may be imposed on the petitioner. Furthermore, it was recommended that the petitioner's resignation may not be accepted until the loss caused by him is recovered.

7. After the petitioner's reply to the abovementioned charge sheet was found to be unsatisfactory, the petitioner was issued notice dated 06.08.2014 to show cause as to why he should not be terminated from service. On 15.08.2014, the petitioner submitted a detailed reply to the show cause notice. Vide letter dated 03.10.2014, a major penalty of dismissal from service was imposed on the petitioner.

8. Prior to the issuance of dismissal order, the petitioner, on 02.10.2014, filed suit No.398/2014 for declaration and permanent injunction. This suit was subsequently amended so as to challenge the dismissal order dated 03.10.2014. In the said suit, the petitioner had prayed for a declaration to the effect that the said dismissal order was unlawful and without lawful authority. Furthermore, the petitioner had prayed for a permanent injunction restraining the respondents from taking any action prejudicial to the petitioner's employment career.

9. On 18.09.2014, the petitioner was issued another charge sheet. In this charge sheet also, the petitioner was alleged to have committed gross misconduct, negligence and corruption in the period between June 2013 and March 2014. On 12.12.2014, the petitioner filed suit No.484/2014 for declaration, permanent and mandatory injunction and recovery of service benefits. In the said suit, the petitioner had prayed for a declaration to the effect that the disciplinary proceedings against the petitioner and the charge sheet dated 18.09.2014 were mythical and unjust since the petitioner was not P.T.C.L.'s employee after submitting his resignation dated 15.05.2014.

10. Respondents contested the said suits by filing written statements. The position taken by the respondents was that the enquiry proceedings against the petitioner were taken strictly in accordance with the law; that the said inquiry proceedings culminated in the recommendations to terminate the petitioner from service and to recover the misappropriated amount from him; that show cause notice dated 06.08.2014 along with the inquiry report was served on the petitioner; that the reply to the said show cause notice was found to be unsatisfactory; that vide letter dated 03.10.2014, a major penalty of dismissal from service was imposed on the petitioner; that the petitioner did not raise any objection to the manner in which the inquiry proceedings were conducted; that the petitioner's request for personal hearing was acceded to by the respondents; that since the petitioner was seeking a declaration as to his rights under an

employment contract, a suit under section 42 of the Specific Relief Act, 1877 was not maintainable; and that the petitioner chose not to file an appeal against the imposition of major penalty upon him.

11. After the framing of the issues and the recording of evidence, the learned Civil Court decreed both the suits through judgments and decrees dated 11.04.2017. The respondents challenged the said judgments and decrees in the appeals before the Court of the learned Additional District Judge, Islamabad. Vide judgments and decrees dated 19.06.2017, the said appeals were allowed, and both the suits instituted by the petitioner were dismissed. The said judgments and decrees passed by the learned Appellate Court have been impugned by the petitioner in these civil revision petitions.

12. Learned counsel for the petitioner, after narrating the facts leading to the filing of the civil revision petitions, submitted that after the petitioner had tendered his resignation, the disciplinary proceedings against him abated; that the petitioner's employment contract gave him the right to terminate the said contract by giving on month's notice or one month's salary in lieu of such notice; that along with his resignation letter, the petitioner had also given a pay order to the respondents for an amount equivalent to his one month's salary; that by encashing the said pay order, the respondents had impliedly accepted the petitioner's resignation; that the inquiry proceedings conducted by the respondents were biased and based on *malafides*; that the petitioner had not committed any misconduct; that the petitioner's dismissal with a stigma had prejudiced his future employment prospects; that P.T.C.L. had already filed a recovery suit against the petitioner, and the said suit is still pending adjudication; that the learned Appellate Court had decided the appeals in a hasty manner and without affording an adequate opportunity to the petitioner to present his case; that the learned Appellate Court erred by not appreciating that the causes of action in the two suits instituted by the petitioner were different;

that the first suit pertained to the proceedings pursuant to the charge sheet dated 24.04.2014, whereas in the second suit, the charge sheet dated 18.09.2014 was challenged; that the learned Appellate Court erred by dismissing the second suit by invoking the provisions of Order II, Rule 2 C.P.C; and that the judgments and decrees passed by the learned Civil Court did not suffer from any legal infirmity. Learned counsel for the petitioner prayed for the revision petitions to be allowed and for the impugned appellate judgments and decree dated 11.04.2017 to be set-aside.

13. Learned counsel for the respondents submitted that the relief sought by the petitioner in the subsequent suit for declaration, permanent and mandatory injunction and service benefits, was barred under the provisions of Order II, Rule 2 C.P.C. that the grievance raised by the petitioner in the subsequent suit pertained to events which were already in existence when the earlier suit for declaration and permanent injunction was instituted by the petitioner; that in the subsequent suit, the petitioner had challenged the charge sheet dated 18.09.2014 which was already in existence when the earlier suit was instituted by the petitioner on 02.10.2014; and that the learned Appellate Court correctly held that the petitioner's subsequent suit was barred under Order II, Rule 2 C.P.C. Learned counsel for the respondents prayed for the petitions to be dismissed.

14. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the civil revision petitions are set out in sufficient detail in paragraphs 2 to 9 above and need not be recapitulated.

15. I propose, in the first instance, to decide the question as to whether the second suit (i.e., suit No.484/2014) instituted by the petitioner was barred under Order II, Rule 2 C.P.C. Now in the earlier suit (i.e., suit No.389/2014) the petitioner had challenged the dismissal order dated 03.10.2014. The said dismissal order

was passed in proceedings pursuant to the charge sheet dated 24.04.2014. This is clearly mentioned in the said dismissal order. As mentioned above, the earlier suit was instituted a day before the dismissal order was passed against the petitioner. The petitioner had to amend the said suit in order to challenge the dismissal order.

16. Order II, Rule 2 C.P.C. provides *inter-alia* 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 a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court. Charge sheet dated 18.09.2014 had already been issued to the petitioner when he instituted the first suit on 02.10.2014. Since the thrust of the petitioner's stance in both the suits was that after he had resigned from service, the disciplinary proceedings could not have been continued or initiated against him, he ought to have challenged the second charge sheet dated 18.09.2014 in the earlier suit filed on 02.10.2014. In his second suit instituted on 12.12.2014, the petitioner did not plead that he came to know about the charge sheet dated 18.09.2014 after the institution of the earlier suit. Therefore, it is my view that the learned Appellate Court did not commit any illegality by holding that the relief prayed for by the petitioner in his second suit was barred under Order II, Rule 2 C.P.C.

17. As regards the earlier suit, the petitioner did not plead that there was any irregularity or procedural impropriety in the disciplinary proceedings conducted against him. He, however, pleaded that the proceedings against him were biased, malafide, discriminatory, and illegal but there was no pleading with any particularity regarding the allegation of bias and malafide made by him. As mentioned above, the thrust of his stance in the suit was that disciplinary proceedings could not have been continued against the petitioner after he had tendered his resignation.

18. There is no denying the fact that the petitioner's employment contract empowered him to terminate the contract

by giving one month's notice or paying an amount equivalent to his one month's salary in lieu of such notice. The petitioner's resignation letter makes explicit reference to clause 10 of his employment contract. Along with the said resignation letter, the petitioner also submitted a pay order for an amount of Rs.50,961/-. Although the said pay order was encashed by the respondents, it is an admitted position that the petitioner's resignation was not expressly accepted by the respondents.

19. It is well settled that when an employee submits a letter of resignation, his service/employment stands terminated from the date on which his employer accepts the resignation. In the case of Hafiz Hamdullah Vs. Saifullah Khan and others (PLD 2007 SC 852), the Hon'ble Supreme Court of Pakistan held as follows:-

> ***".....on mere tendering/submitting of resignation the services of Government /Civil Servant would not come to an end and the same has to be accepted for its effectiveness by the competent authority. It also reveals that till such time as the resignation is accepted by the competent authority, the Civil/Government servant would continue to be in government service and would be under an obligation to perform his duties. In case he fails or omits to perform his duties without prior authorization or leave, he would be deemed to be an absentee rendering himself liable for disciplinary proceedings under the appropriate law and rules. In view of the clear, express and unambiguous language used in instructions at serial No.13 of the Esta Code there can be no doubt that the resignation tendered/submitted by a civil servant does not become effective /operative unless it is accepted by the competent authority and till such time the resignation is accepted the government/civil servant shall be deemed to be in the service."***

20. The same view, as above, was taken by the Hon'ble Supreme Court of Pakistan in the case of Anwar-ul-Haq Vs. Secretary, Ministry of Industries and Production, Government of Pakistan Islamabad and others (2010 SCMR 1386).

21. In the case of Chaudhry Khush Akhtar Subhani Vs. Returning Officer and another (2008 YLR 2132), it has been held by the Hon'ble High Court of Sindh at paragraph 5 of the report as follows:-

> ***"..... If for the sake of argument we accept that respondent No.2 had resigned, the fact remains that mere tending or submitting of resignation is not tantamount to termination of service of a Government servant. In order for the same to become effective, its acceptance by the competent authority is an essential***

requirement. Till such time the resignation is accepted by the competent authority, the Civil / Government servant would continue in service and would be under an obligation to perform his duties and if he omits to perform his duties without prior authorization, he would be deemed to be an absentee and would be liable for disciplinary action……"

22. The same view, as above, has been taken in the cases of Mrs. Neelam Yasmin Abbasi Vs. Returning Officer and two others (2010 MLD 527), Saifullah Khan Vs. Hafiz Hamdullah and 4 others (PLD 2005 Quetta 145), Tahsin Ahmad Mehmoodi Vs. Pakistan Steel Mills Company Ltd (1990 MLD 1132), Muhammad Mansha Vs. Government of Punjab (1984 CLC 2231) and Mohammad Khan Vs. Pakistan through Secretary, Ministry of Interior, Karachi (PLD 1958 Karachi 75).

23. Although the petitioner's resignation was formally not accepted by the respondents but the pay order for an amount equivalent to his one month's salary submitted by him along with his resignation letter was encashed by the respondents. The reason why the petitioner submitted the said pay order was because clause 10 of his employment contract entitled him to terminate the same by giving one month's notice or one month's salary in lieu of such notice. This caused the petitioner to take a position that since his employment contract had already been terminated, the respondents could not continue the disciplinary proceedings against him. Learned counsel for the petitioner had emphasized that the said proceedings could not have been continued against the petitioner after he had resigned. Since the petitioner's resignation letter had not been accepted by the respondents, I would not disagree with the learned Appellate Court holding that the petitioner's resignation cannot be said to have been accepted by the mere encashment of the pay order submitted along with the resignation letter.

24. The petitioner's relationship with the respondents was based on an employment contract. There is no denying the fact that the petitioner was, in effect, enforcing clause 10 of his employment contract by asserting that the disciplinary proceedings could not have been continued against him after the

submission of resignation letter in which express reference has been made to clause 10 of the petitioner's employment contract. It is well settled that a declaration under section 42 of the Specific Relief Act, 1877, could only be passed in respect of a status or a right of a person, if he had any title or legal character or right to any property, etc. Where the relationship between the parties was that of "master and servant", a person serving under such contractual employment could, at best, claim damages for wrongful penalty imposed on him. Reference in this regard may be made to the law laid down in the cases of Aurangzeb Vs. Gool Bano Dr. Burjor Ankalseria (2001 SCMR 909), Hasnat Ahmed Bukhari Vs. Bayer Pakistan (Pvt.) Ltd. (2011 PLC (C.S.) 1607), Gool Bano Vs. Aurangzeb (2000 CLC 1796), Syed Aziz Ahmad Vs. Bolan Bank Limited (2002 CLC 857), M. Rashid Ahmed Vs. National & Grindlays Bank Ltd. (PLD 1971 Lahore 598), Karsaz Construction Company Vs. Pakistan (1999 CLC 1719), Presbyterian Medical College Vs. Dr. Nalson Azeem (2007 MLD 666) and Muslim Commercial Bank Ltd. I.I. Chundrigar Road, Karachi Vs. Muhammad Shafi (2002 PLC 124).

25. In view of the above, I do not find any merit in these civil revision petitions which are accordingly dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2018.

*Qamar Khan**

(JUDGE)

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