JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.R.No.268 of 2016
M/s Zhongxing Telecom Pakistan (Pvt.) Ltd etc
Versus
Awais Ahmed

Date of Hearing:	05.10.2017
Petitioners by:	Mr. Raza Ullah Khan Niazi, Advocate,
Respondents by:	M/s Mohammad Umair Baloch, and Mirza Waqas Qayyum, Advocates.

MIANGUL HASSAN AURANGZEB, J:- Through the instant civil revision petition, the petitioners, M/s Zhongxing Telecom (Pvt.) Ltd. etc., impugn the order dated 17.06.2016, passed by the Court of the learned Civil Judge, Islamabad, whereby the petitioners' application under Order VII, Rule 11, of the Code of Civil Procedure, 1908 ("C.P.C."), praying for the rejection of the plaint, was dismissed.

2. Learned counsel for the petitioners submitted that the suit for declaration and recovery of damages instituted by the respondent before the learned civil Court was not maintainable, and was barred under Sections 21, 42, and 56 of the Specific Relief Act, 1877; that the terms of the respondent's employment contract dated 20.04.2007 provided that the respondent's services were terminable on one month's prior notice or one month's salary in lieu of such notice; that in pursuance of the said condition in the respondent's employment contract, the respondent's services were terminated and an amount of Rs.2,12,282/- was paid to him in full and final settlement of the amount due and payable by the petitioners to the respondent; that in this view of the matter, a suit for declaration and recovery of damages to the tune of Rs.6,766,200/- was simply not maintainable and was an abuse of the process of the Court. Learned counsel for the petitioners prayed for the impugned order dated 17.06.2016 to be set aside, and for the petitioners' application under Order VII, Rule 11 C.P.C., to be accepted. In making his submissions, learned counsel for the petitioners

placed reliance on the judgments reported as ***2013 SCMR 1383, 2015 PLC (C.S.) 1385, and 2004 PLC 69***.

3. On the other hand, learned counsel for the respondent submitted that the respondent had been serving petitioner No.1 since 20.04.2007; that the respondent was petitioner No.1's permanent employee since his services had been confirmed; that after serving petitioner No.1 for more than eight years, the respondent's services were unceremoniously terminated on 12.06.2015; that neither was any charge sheet or show cause notice issued to the respondent, nor was he given any reason for the termination of his services; that the petitioners violated the principle of *audi alteram partem* in terminating the respondent's services; that the petitioners violated the principle of "last come, first go" by terminating the respondent's services; that the respondent could be terminated only if he was being made redundant or if disciplinary proceedings had been taken against him; that the learned civil Court did not commit any jurisdictional irregularity in dismissing the petitioners' application for the rejection of the plaint; that the respondent had sued the petitioners for wrongful termination of his services; that the respondent is not interested in his reinstatement, but wants damages for his wrongful termination; and that the question whether the respondent was wrongfully terminated was to be determined by the learned civil Court after the framing of issues and recording of evidence. Learned counsel for the respondent prayed for the revision petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties, and have perused the record with their able assistance.

5. The record shows that on 22.04.2007, petitioner No.1 appointed the respondent as a Training Coordinator. The respondent's letter of appointment dated 22.04.2007 shows that after the completion of the respondent's probation period of three months, he could leave petitioner No.1's service by serving one month's notice. Petitioner No.1 also had the right to

terminate the respondent's services "*by giving one month notice or pay in lieu thereof*".

6. On 01.01.2009, an employment agreement was executed between petitioner No.1 and the respondent. The first two paragraphs of clause-14 of the said employment agreement are reproduced herein below:-

> "***Termination of Employment***
> *The company may terminate this Employment Agreement of the Employee without assigning any reason at any time before the expiration of the employment agreement on giving or sending by registered post one month's notice in writing to the Employee on his/her last known address or one month salary in lieu of. On the expiry of said one month's notice, the said agreement shall terminate.*
> *Similarly the employee may terminate his employment, upon notifying the company in writing on giving or sending by registered post one month's notice in writing to the company to its place of business or one month salary in lieu of."*

7. Vide letter dated 12.06.2015 the respondent's services were terminated by the petitioners. Since the termination letter is brief, the same is reproduced herein below:-

> *"With reference to the company rule related to the termination of employment, please take notice that your services are no more required by the management due to post become redundant; therefore your employment is being terminated with effect from today that is June 12, 2015. However, in lieu of one month's salary is being paid to you.*
> *Please note further that notwithstanding the termination of your employment you are obliged to comply with the Confidentiality Clause as per your employment contract signed between you and the Company. Any breach of the matters stipulates in this regard could result in serious legal action.*
> *Please contact HR Department for the clearance and settlement process."*

8. After the respondent's termination, an amount of Rs.2,12,282/- was paid by the petitioners to the respondent through a cheque. The said amount was received by the respondent under protest.

9. On 20.10.2015, the respondent instituted a suit for declaration and recovery of damages/compensation to the tune of Rs.6,766,200/- against the petitioners before the learned civil Court. In the said suit, it was *inter-alia* pleaded that the respondent's termination was without just cause and in violation of the principle of natural justice. The respondent calculated his

damages by assuming that if he would remain in petitioner No.1's employment until the year 2028. The petitioners contested the suit by filing a written statement. On 12.12.2015, the petitioners filed an application under Order VII, Rule 11, C.P.C. praying for the rejection of the plaint on the ground that the petitioners had committed no illegality by terminating the respondent's services in accordance with the terms and conditions of the employment contract executed between petitioner No.1 and the respondent. The respondent, in his reply to the said application, pleaded that the relationship between petitioner No.1 and the respondent was that of master and servant and that the respondent had no other remedy other than to approach the learned civil Court in order to question his wrongful termination. Vide order dated 17.06.2016, the learned civil Court dismissed the petitioners' application under Order VII, Rule 11 C.P.C. The said order has been impugned by the petitioners in the instant revision petition.

10. In the said order dated 17.06.2016, the learned civil Court observed that even if the termination was in violation of the contract, the same could not be annulled by the Court. Furthermore, it was observed that under the law, the only remedy available to an employee aggrieved by wrongful termination was to sue his master for damages. By holding that the suit instituted by the respondent was competent to the extent of claiming damages and compensation, the learned civil Court dismissed the petitioners' application for the rejection of the plaint.

11. The relevant clauses in the respondent's appointment letter and employment contract pertaining to the termination of the respondent's employment contract have been referred to herein above. Under the terms of the letter of appointment dated 22.04.2007, petitioner No.1 could terminate the respondent's services by giving him one moth notice or one month's pay in lieu of notice. Under the terms of the respondent's employment contract, petitioner No.1 was entitled to terminate the respondent's employment contract at any time, and without

assigning any reason, by giving one month's notice to the respondent, or one month's salary in lieu of notice. The termination letter dated 12.06.2015, does not in any manner stigmatize the respondent. It is a termination simplicitor in accordance with the provisions of the respondent's appointment letter and employment contract. Hence, it cannot be held that the respondent was 'wrongfully terminated'. Admittedly, petitioner No.1 does not have any statutory status, and is not owned or managed by the State. Therefore, it is my view that there was no need for the petitioners to have conducted disciplinary proceedings against the respondent. In holding so, I derive support from the law laid down by the Hon'ble Lahore High Court in the case of "ABN-AMRO Bank Vs. Wasim Dar" (2004 PLC 69). Paragraph-7 of the said report is reproduced herein below:-

> ***"7. ... The admitted facts of the case are that that though the petitioner is a corporate body, but neither has any statutory status nor is the State owned or managed concerned. For all intents and purposes, it is a private person in the eye of law, likewise the respondent also has the same status; the terms and conditions of employment between the parties are not governed by any statutory rules; rather the parties out of their free consent and will have entered into a valid contract of employment, which settles down the terms and conditions of the employment, this contract inter alia stipulates that the employment involved can be put to an end by one month notice in writing from either side.***
>
> ***On the basis of above admitted position, it is thus clear that the employment of the respondent with the petitioner was governed by the principles of Master and Servant. From the extensive case-law, cited by both the sides, it seems a settled proposition, that there are no fetters or checks upon the rights of a master to terminate the services of his servant according to his own evaluation, decision and wisdom. Even if the termination is in violation of the contract, such action shall not be annulled by the Court, thus compelling the master to keep intact the serve of his employee. Likewise, a servant cannot be forced to serve his master when he is not willing to do so. However, in the cases where the employer terminates the services of his employee, in violation of the contract, the only remedy available to the aggrieved servant shall be to sue his master for damages on account of wrongful termination.***
>
> ***Resultantly in view of above stated legal position, the key question calling for determination in this case is whether the termination is wrongful or not. Because wrongful termination is sine qua non for maintaining the right of the servant to claim the damages, otherwise he would have no cause of action."***

12. In the said case, the Hon'ble High Court allowed the revision petition against the order of the trial Court dismissing the application for the rejection of the plaint. Furthermore, the Hon'ble High Court rejected the plaint under Order VII, Rule 11 C.P.C. Since the learned author Judge of the said judgment rose to grace the Hon'ble Supreme Court of Pakistan, the said judgment deserves respect and reverence.

13. It is well settled that a court can look into the averments contained in the plaint as well as its supporting documents for the purpose of deciding whether or not to reject the plaint under Order VII, Rule 11, C.P.C. Besides this, a Court can also consider the pleadings of the other side, the documents brought on record along with the written statement while deciding an application under Order VII, Rule 11 C.P.C. Reference in this regard may be made to the cases of S.M. Sham Ahmad Zaidi Vs. Malik Hassan Ali Khan (2002 SCMR 338), Muhammad Saleem Ullah Vs. Addl. District Judge, Gujranwala (PLD 2005 SC 511), Muhammad Ashraf Vs. Mst. Kokab Benazir Fatima (2008 CLC 1398), Mst. Mazhar Khanam Vs. Sheikh Saleem Ali (2004 CLC 799), Mst. Bano alias Gul Bano Vs. Begum Dilshad Alam (2011 CLC 88), and Muhammad Sharif Vs. Aziz Bibi (2011 CLC 1319).

14. Since the respondent did not dispute the authenticity of any of the documents on the record (including the respondent's appointment letter and employment contract), the learned trial Court fell into error by observing that the civil suit was competent as regards the recovery of damages for wrongful termination. Since I do not find the termination of the contract to be in derogation of any of its terms. In view of the admitted document on the record, the inescapable conclusion is that the respondent's termination was within the four corners of the terms of his employment contract. The petitioners were not required to assign any reason for the termination of the respondent's employment contract.

15. In view of the above, this revision petition is allowed, and the impugned order dated 17.06.2016, passed by the learned

civil Court is set-aside. Resultantly, the plaint in the suit is rejected under the provision of Order VII, Rule 11 of C.P.C.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017

Sultan*

(JUDGE)

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