JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

R.F.A No. 53/2015.

Schlumberger Seaco Inc. etc Vs Muhammad Iqbal Khan Niazi, etc

Appellants by: Mr.Azid Nafees, Advocate for appellant.

Respondents by: Ms.Hadiya Aziz, Advocate.

Date of Decision: 06.04.2016.

R.F.A No. 54/2015.

Schlumberger Seaco Inc. etc Vs Muhammad Iqbal Khan Niazi, etc

Appellants by: Mr.Azid Nafees, Advocate for appellant.

Respondents by: Ms.Hadiya Aziz, Advocate.

Date of Decision: 06.04.2016.

Cross-Objection Petition No.01/2015

Muhammad Iqbal Khan Niazi, etc Vs Schlumberger Seaco Inc. etc

Petitioners by: Ms.Hadiya Aziz, Advocate.

Respondents by: Mr.Azid Nafees, Advocate.

Date of Decision: 06.04.2016.

MOHSIN AKHTAR KAYANI, J:- Through this single judgment, we shall decide the above mentioned two appeals and cross-objection petition, as all the three have arisen from one and the same suit.

2. Facts, in brief, are that respondent No.1 filed a suit titled "Muhammad Iqbal Khan Niazi vs M/s Schlumberger Oilfield Services, etc" for recovery and damages amounting to Rs.42,848,600/- against the appellants on the grounds that he served for 28 years in the appellants' company since 1980 and during his service, he remained on different positions in various departments like Store, Office Administration, Purchasing, Air Ticketing, HTV Transport (including hazardous movement of explosives, radioactive sources etc) Journey Coordinator Pakistan, Logistic

Coordinator south, liasoning with Customs, Ministry of Industries and Explosives Department. Due to extra ordinary performance, commitment and dedication by respondent No.1, the appellants' company promoted him in Grade-10 and posted him as Manager Expediting vide order dated 18.09.2008. Respondent No.1 performed his duties with high standard of performance, therefore, he was recommended for promotion in his service tenure by the appellants' company.

3. Respondent No.1 in his plaint also claimed that normal age of retirement of an employee is 60 years. Keeping in view this provision, he planned his family future projects. The children of respondent No.1 were studying at different levels in different educational institutions causing sufficient financial impact upon him but all of sudden the appellants' company management terminated his employment vide order dated 22.12.2008 and the same was confirmed through subsequent letter dated 01.01.2009. Resultantly, respondent No.1 was deprived by the appellants' company from his legal and lawful service benefits and other entitlements provided under the HRC Manual of the appellant's company.

4. Due to the said termination respondent No.1 claimed and suffered mental and physical torture as well as faced financial and reputation loss. Even respondent No.1 claimed that his termination is against the constitution of Pakistan, by which the fundamental rights are protected. Respondent No.1 claimed that due to this stressful event of termination, he suffered heart problem in the year 2008 and was accordingly referred to Agha Khan Hospital, Karachi, where a stunt was inserted in his heart and under the service manual, he was entitled for medical treatment as well as the logistic expenses, therefore, the appellant's company was addressed through representation to resolve the issue as no reason or plausible reason has been assigned in the termination letter, hence, no right of hearing has been granted and respondent No.1 has been terminated without adopting the minimum standard of due process of law.

5. In view of above stated back ground, respondent No.1 claimed damages of Rs.40,000,000/- for mental torture, loss of service benefits and loss of reputation. He also claimed a sum of Rs.2,759,300/- from the appellants' company on account of termination of service (final settlement) duly admitted by the appellants' company in

their written response to the representation filed by respondent No.1. In addition to above mentioned, respondent No.1 also claimed Rs.78,000/- as expenses for temporary living (one month basic salary) vide expense report form dated 29.10.2008. Respondent No.1 also claimed Rs.2,848,600/- in addition to recovery of damages mentioned in Para No.19 of the plaint.

6. The said suit was contested by the appellants' company but the appellant's company failed to submit the written statement. The appellants put their appearance on 20.10.2009 in the learned Trial Court and kept on taking adjournments till 19.4.2010. The appellants managed to get 14 dates of hearing and even after the grant of last and final opportunity subject to payment of costs of Rs.1,000/- vide order dated 19.04.2010, the appellants failed to submit their written statement, therefore, their right to submit the written statement was struck off vide order dated 28.4.2010.

7. Issues were framed on 23.10.2013. Evidence of respondent No.1 was recorded. On 10.01.2015, through impugned order suit of respondent No.1 to the extent of Rs.2,759,300/- was decreed and on 14.02.2015, the impugned judgment and decree was passed in favour of respondent No.1 to the extent of Rs.8,577,300/-.

8. Feeling aggrieved by the order dated 10.01.2015 as well as by the judgment and decree dated 14.02.2015, the appellants filed two separate regular first appeals. Respondent No.1 also filed cross-objection petition against the impugned judgment and decree.

9. Learned counsel for the appellants mainly challenged the order dated 28.04.2010, whereby his defence was struck off and as a result whereof the appellants could not submit their written statement. Learned counsel for the appellants contends that the order dated 28.04.2010 is illegal as the appellant had approached the Court by filing an application U/O VII rule 11, CPC but the same was dismissed. Learned counsel for the appellants further contends that the appellants have only challenged a portion of the impugned judgment to the extent that learned Trial Court has erred while calculating damages of the remaining period of service of respondent No.1 till the age of superannuation, whereas neither evidence has been recorded nor such evidence was produced as to why respondent No.1 is entitled for the future

salary/service benefits for 8 years as learned Trial Court has taken the last salary into consideration and multiply the yearly salary with 8 years, hence, awarded the damages amounting to Rs.4,048,600/-. Learned counsel for the appellants further contends that respondent No.1 tendered the evidence beyond his pleadings and no reason has been referred or submitted in the evidence regarding breakup of the claim. Even the learned Trial Court has not taken into account the parameters and criteria for awarding damages. Learned counsel for the appellants further pointed out the illegalities committed by the learned Trial Court in Para No.12 of the impugned judgment as the said reliefs are beyond the pleadings especially the said facts and claims were not referred in the plaint by respondent No.1, even no evidence has been produced regarding mental and physical torture, therefore, impugned judgment and decree is contrary to the law. Learned counsel for the appellant has relied upon 2002 SCMR 1954, 2010 SCMR 1970, PLD 1968 Karachi 526 & 2004 PLC 69.

10. On the other hand, learned counsel for respondent No.1 has argued that respondent No.1 was terminated through termination letter dated 22.12.2008/Exh.P.1, which was further confirmed through subsequent detailed letter dated 24.12.2008/Exh.P.3 and the appellants have not mentioned any reason for termination and they have not taken any ground for redundancy, misconduct, closing of project or poor performance, hence, termination of respondent No.1 is illegal and he is entitled for all the service benefit for his remaining service of 8 years till the age of superannuation, hence, learned Trial Court has rightly decreed the suit in favour of respondent No.1. Learned counsel for respondent No.1 has emphasized on the claim in cross-objection filed by respondent No.1 in R.F.A No.53/2015, wherein she has objected on the calculation of salary by the learned Trial Court and claims that the annual salary of respondent No.1 as of 18.09.2008 is Rs.936,000/- and if the same is multiply with 8 years, it comes to Rs.7,488,000/- due to the fact that learned Trial Court has taken into consideration gross salary while calculating the amount, however, the correct formula is 15% increased per year, which has not been calculated in the impugned judgment. Learned counsel for respondent No.1 further argued that respondent No.1 was employed by the appellants till the age of superannuation,

whereby he was entitled for vacation salary, Eid bonus and annual salary for the period commencing from December, 2008 till February, 2015 but all these benefits have not been granted. Learned counsel for respondent No.1 has relied upon 2009 SCMR 109, 2001 SCMR 1733, 2000 CLC 1551(1) Lahore, 1999 CLC 192 Karachi, PLD 1996 SC 737, 2013 SCMR 507, PLD 1988 Karachi 489, 2006 PLC (C.S) 153, 2006 SCMR 2007, 2014 YLR 615 Peshawar and 2014 MLD 161 Lahore.

11. We have heard the arguments and have perused the record with able assistance of learned counsel for the parties.

12. From the perusal of record, it is evident that the appellants have not submitted their written statement rather they failed to comply with the directions of learned Trial Court, whereas the appellants were afforded numerous opportunities for submission of their written statement and finally the appellants were warned vide order dated 19.04.2010, in which absolute last opportunity was granted with costs of Rs.1,000/- but the appellants failed to comply with the direction and even on 28.04.2010, they failed to pay the costs, resultantly, learned Trial Court had rightly struck off their defence, hence, the appellants have not rendered any defence on record except their cross-examination on respondent No.1/P.W.1 during the evidence. Learned Trial Court after closing the defence of the appellant framed following single issue:-

ISSUES.

1. *Whether the plaintiff is entitled for recovery and damages amounting to Rs.4,28,48,600/- as prayed for?OPP*

2. *Relief.*

Thereafter respondent No.1 appeared as P.W.1 and submitted his documentary evidence from Exh.P.1 to Exh.P.27 and Mark-A to Mark-E on record.

13. It is also evident from the record that respondent No.1 was appointed in the appellants' company in the year 1980 till his termination vide letter dated 22.12.2008/Exh.P.1 and his last posting was in Islamabad as Manager Expediting after his promotion to Grade-10, whereas his last annual salary was Rs.936,000/- referred in Mark-A. After his termination, respondent No.1 had filed a representation/Exh.P.2 on 24.12.2008 to the Geo Market Manager of the appellants as well as grievance petition/Mark-B to the Country Manager of appellants and in response to grievance

petition, the appellants issued a letter/Exh.P.3 with reasons and acknowledgement of final settlement of the amount Rs.2,759,300/-. Respondent No.1 in his evidence as P.W.1 has admitted the following facts on record:-

(a) I joined the appellants' company on 03.09.1980 and my last posting as Expediting Manger was for three months till 22.09.2008.

(b) I was terminated due to personal grudge of Country Manager Najeeb Ali Khan.

(c) I was terminated without any reason in the year 2008, however, my services were terminated due to personal reasons.

(d) At the time of termination, my age was 52 years and according to HR manual, I can do the job till the age of 60 years.

(e) I am entitled for all benefits till the age of 60 years and as per letter dated 01.01.2009, appellants have admitted that my termination was not due to redundancy, golden handshake or poor performance.

(f) Due to malafide of Country Manager, I was posted to Islamabad for three months from Karachi and after getting the new position, I was terminated without assigning any reason.

(g) My final settlement amount is Rs.2,759,300/-, which has been retained by the defendants/appellants for 22 years and the same was under their utilization and the said amount has been admitted in the letter dated 01.01.2009.

(h) Due to Najeeb Ali Khan, I have not been given the medical entitlement and terminated and at the time of termination no service benefits were given in the final settlement.

(i) Two expense reports, Rs.78,000/- and Rs.11,300/- recommended by Accounts Manager were not given intentionally till December.

(j) It is correct that I have annexed only one page of manual alongwith the suit.

(k) It is correct that the representation against termination of employment order dated 22.012.2008 comprises of three pages, which is annexed with the plaint.

(l) It is also correct that letter dated 01.01.2009 is annexed with the plaint.

(m) It is correct that letter dated 24.12.2008 in the name of Najeeb Ali Khan, Country Manager has been written by me.

(n) It is also correct that termination letter dated 22.12.2008 has been received by me on 24.12.2008.

(o) I am not doing anything now a days and is free.

(p) Schlumberger Pakistan is a Pvt. Ltd. Company and its HR manual is not an official document.

(q) During the service, defendants have given me the benefits in accordance with the contract.

(r) During the service, I was satisfied with my salary and other benefits.

(s) It is correct that I was terminated on 22.12.2008 and during my service company was incurring expenses on my treatment of cardiac disease.

(t) I do not remember whether there is any clause in employment contract by which service will be completed till the age of 60 years.

(u) It is correct that company can terminate the contract by giving one month notice, volunteered with reasons.

(v) At the time of termination of my service, company did not level any allegation against me.

14. From the perusal of above mentioned admitted contents of evidence, it has been established that respondent No.1 neither placed any documentary evidence regarding terms and conditions of his service nor submitted any evidence, through which he can justify the procedure in case of termination, in which any violation has been committed by the appellants, even respondent No.1 has not discharged the basic onus of contested issue, which was the duty of respondent No.1/plaintiff in the suit as in order to prove issue No.1, it was the duty of the plaintiff, Firstly, to prove that there exists certain terms and conditions of employment, which were given due protection under any law or HR manual used by the appellants during the course of service but

instead of proving that the said requirements of fundamental issue, respondent No.1 has only placed three letters i.e. termination of employment/Exh.P.1, representation against termination of employment/Exh.P.2 and letter of termination of service/Exh.P.3 on record, whereas Exh.P.4 to Exh.P.26 are only related to medical treatment of respondent No.1 and the Court order of Special Judge Custom and Taxation Karachi, dated 9.7.2013 as Exh.P.27, in which the Special Judge Custom and Taxation Karachi has referred the illness of respondent No.1. Hence, the relevant documentary evidence for basic disputed questions has not been rendered rather some excerpt comprising of single page has been placed as Mark-C. On the basis of said document, respondent No.1 tried to prove his case although neither document has been exhibited nor referred, even no effort has been made by respondent No.1 to summon the record keeper of appellants' company in order to prove the terms of employment, terms of appointment letter and the procedure settled by appellants' company in HR manual for the purposes of procedure regarding termination. Hence, this Court can safely assume that the learned Trial Court has erred while recording the findings in Para 12 & 13 of the impugned judgment and decree dated 14.2.2015, in which no justified reason and basis of findings has been given as the learned Civil Court while writing the said portion of the judgment converted onus of proof upon the appellant/defendant by using the following words:

> "*the termination of plaintiff before attaining his age of superannuation has not been justified by the defendants".*

15. From the perusal of Exh.P.1/letter of termination of employment dated 22.12.2008, it is evident that the reason referred is the requirement of service in accordance with terms of appointment as the relationship between the parties is of master and servant on the basis of appointment letter as well as employment contract but no such documents were placed on record, as we have already observed that respondent No.1/plaintiff has not discharged his onus.

16. The golden principle with regard to master and servant relationship has already been settled by the Superior Courts and Court cannot annul the termination of service, even if the same is in violation of contract as the remedy of service in case of

wrongful termination would be to claim damages from master but where contract contains provision for termination of service of servant, then employer is not required to assign any reason thereof. We are fortified with the view taken in judgment reported as 2004 PLC 69 Lahore, in which it was held that:-

> *"the admitted facts of the case are 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 service 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.*
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> *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."*

17. From the above referred precedent, it is clear that the appellants could terminate the service of respondent No.1 without assigning any reason and the said fact has been admitted by respondent No.1 in his cross-examination.

18. Hence, the fact regarding one month notice and salary in lieu of one month notice has been admitted by respondent No.1 although voluntarily he stated that the termination must be with reason but no such evidence has been brought on record, therefore, in the light of Exh.P.1 & Exh.P.3, it can safely be assumed and prove on record that the appellant is well within authority to terminate service of respondent

No.1 as they no longer require service of respondent No.1, which is not due to redundancy, misconduct or any other reason of downsizing, the said factors were explained by the appellants in Para No.2 of Exh.P.3, which is reproduced here below:

> *"It is indeed unfortunate that you chose to misinterpret the company's good faith. Moreover, you have mistakenly attributed "downsizing and also perhaps appear to suspect your performance as reasons for the termination of your services. As mentioned above, your services are no longer required and have been terminated strictly in accordance with the terms of your contract. The Company has paid you salary in lieu of notice, among other, ex-gratia payments acknowledged by you."*

19. The other important moot in the instant appeals is assessment of damages, however, the said assessment and calculation can only be made, if the principle question of illegal termination has been proved by respondent No.1in his favour, the termination of respondent No.1 is within the authority of the appellants, hence, from the perusal of impugned judgment, it has been observed that learned Trial Court has failed to submit reasons for such findings on issue No.1 as the findings refer HR manual in different paragraphs of the impugned judgment but there is no such documentary evidence on record, which has to be called as HR manual, even there is no evidence of entitlement to serve till the age of 60 years and in last learned Trial Court has just calculated the damages with the following words in Para No.13 of the impugned judgment, which is reproduced here under:

> *"Moreover, out of Rs.40 million as damages, Rs.10 million have been prayed for mental torture and physical loss, Rs.20 million on account of loss of service benefits, Rs.10 million on account of loss of reputation. The employment contract of the plaintiff was terminated approximately before 8 years of his age of superannuation, and according to Mark A dated 18.09.2008 the annual salary of the plaintiff was Rs.9,36,000/-, hence on account of loss of service benefits the plaintiff is held entitled for 08 annual salaries on the above mentioned rate."*

20. With reference to above findings, the applied formula of calculation is without any basis and when the services were straight away terminated, wherein respondent No.1 is no more in service, how one can assume that he is entitled for the salary of future without performing his duties, therefore, entire evidence discussed in Para No.13 of the impugned judgment is beyond legal backing and is not sustainable in the eye of law.

21. In cases of illegal termination, the plaintiffs are bound to justify the reasons of termination with reference to law, employment contract or applicable HR manual subject to condition that there exists certain pre-requisite for termination, failing which the master/employer, who has an authority can issue termination without any reason, reliance is placed upon PLD 1968 Karachi 526, in which it was held that:-

> "*A servant complaining of wrongful dismissal from service cannot rest content by merely putting forward a claim for recovery in lump sum and in advance the entire amount of anticipated salary covering the whole period for which he expected to continue in service. The law which recognizes his right to recover damages for wrongful dismissal imposes a corresponding duty on him to do all that is possible to mitigate such damages. He is bound to act in that direction not only in his own interests but also in the interests of the opposite-parte against whom he has to sustain an action for damages. He has to use due diligence in endeavouring to obtain suitable employment with wages approximating that which he was getting in the service from which he was dismissed, even though he is not expected to accept a fresh engagement in a lower status. The possible chance of obtaining a suitable employment elsewhere has to be taken into account in assessing the measure of damages to be awarded to the plaintiff. The plaintiff has failed to mitigate such damages, and in these circumstances we hold that he is not entitled to it."*

22. Arguments advanced by learned counsel for respondent No.1 was mainly on the principles referred in 2009 SCMR 109, 2001 SCMR 1773, 2000 CLC 1551(1) Lahore, 2013 SCMR 507, which are based upon different criterion and reasons, as referred judgments are distinguishable and not applicable in the present case due to the reason that termination has not been proved as illegal, therefore, there is no reason to award damages, which were not directly attractable to the appellant. Respondent No.1 could not substantiate his case on the touch stone of the principles referred by the counsel for respondent No.1, even the yardstick and criteria for assessment is different with different reasons and there is no malafide on part of the appellants proved from the record.

23. Keeping in view the order dated 10.01.2015 on application U/O XII rule 6, CPC, whereby an amount of Rs.2,759,300/- was awarded in a preliminary decree to respondent No.1 on the basis of Exh.P.3 has also been assailed in R.F.A No.54/2015 but we are not inclined to accept the view referred by the appellants against the preliminary decree as Exh.P.3 clearly demonstrate the qualified admission of Rs.2,759,300/- as final settlement payable to respondent No.1 with following words:-

"As per the company accounts, a sum of Rs.2,759,300/- (after statutory tax) is payable to you on account of termination of services (final settlement), which you are advised to collect from the company office at Islamabad upon completing formalities in this regard. As a further gesture of goodwill, the company will reimburse you return air fare economy class at the time of collection of your cheque."

The appellants by qualified admission cannot resile from the said reference of amount, therefore, the amount awarded to respondent No.1 in terms of final settlement in compliance of Exh.P.1 has rightly been awarded to respondent No.1 by the learned Civil Court, however, certain other amounts, which were referred in the impugned judgment in Para 12 i.e Rs.78,000/- on account of temporary living expenses and Rs.11,300/- on account of cell phone has rightly been awarded due to the fact that the said two amounts are the service benefits, which respondent No.1 is entitled for.

24. In the light of what has been discussed above, we hereby partially accept R.F.A No.53/2015 and set aside the impugned judgment and decree dated 14.02.2015 except the amount of Rs.78,000/- on account of living expenses and Rs.11,300/- on account of cell phone, whereas order dated 10.01.2015 impugned in R.F.A No.54/2015, through which a preliminary decree to the tune of Rs.2,759,300/- was passed on the application U/O XII rule 6, CPC, is upheld and the appeal is dismissed.

25. We are also of the considered view that in the light of above mentioned findings, cross-objection petition filed by respondent No.1 is without any substance, therefore, cross-objection petition is also hereby dismissed.

(SHAUKAT AZIZ SIDDIQUI)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam

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