PRIME
Policy Research Institute of Market Economy
آزاد معیشت۔ خوشحال پاکستان

JUSTIFYING EMPLOYEMENT TERMINATION

Case Study on Court Settlement of Disputes in Pakistan

ATLAS NETWORK

WITH SUPPORT FROM: ATLAS NETWORK

"Justifying Employment Termination": Case Study on Court Settlement of Disputes in Pakistan

November, 2017

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This case study is part of the project being undertaken by Policy Research Institute of Market Economy (PRIME) with support from Atlas Network. The aim is 'Making Pakistan a Trusted Business Partner' through improving Pakistan's ranking and score in 'Enforcing Contracts' and to improve the overall ranking of the country in the World Bank's Doing Business Index over 2016-18.

A lengthy, cumbersome and costly mechanism to seek enforcement of contracts is detrimental to the business environment of a country. Investors shy away from such economies where rule of law is weak and uncertainty looms large. Therefore it is important for achieving a favourable investment climate in the country that business contracts get honoured and where a dispute arises, it can be settled at a suitable cost and time duration.

All names mentioned in the case herein have been changed to protect privacy. Real court cases, where final order has been passed, have been picked for illustrating the nature of disputes and the issues with the contract enforcement mechanism in Pakistan. The case studies do not mean to comment on the justness or unjustness of the arguments presented by any party to a case.

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Introduction

Mazoomdar was employed under an employment contract as a supervisor at Erste (Pvt) Ltd. Erste had its offices in a few major cities in Pakistan. Its clients were mainly multinational FMCG brands operating in the country.

In November 2006, Erste transferred Mazoomdar from its Peshawar office to its country headquarters located in Karachi. Upon Mazoomdar's failure to join his new place of posting at Karachi, he was terminated from service. Mazoomdar took legal action against Erste and filed a lawsuit in the Labour Court, Peshawar. After the lawsuit was dismissed for lack of jurisdiction, he then approached the court of Civil Judge, Peshawar. This case study is based on the case proceedings of Mazoomdar versus Erste in the court of Civil Judge, Peshawar.

The Plaint

Mazoomdar sued Erste through its Chief Executive, Director Human Resources, and Executive RMS at Peshawar. In his plaint Mazoomdar took the following stance:

- Mazoomdar was appointed as a supervisor in Takhliq which merged into MYD. MYD then merged into Erste and that is how Mazoomdar became an employee there.

- On 8th of November, 2006, with ill will towards Mazoomdar, Erste transferred him from Peshawar to its Karachi office. Mazoomdar sent a leave application to Erste in which he reasoned that due to his daughter's wedding he would be unable to join his new place of posting on 16th of December, 2006.

- Without considering his request for leave due to a genuine problem, he was terminated from service by his organization via a letter dated 27th of November, 2006. This termination notice was received by Mazoomdar on the 3rd of December, 2006. On the same day, he received another letter dated 13th November, 2006, informing him that his application for leave had been turned down.

- While terminating him from service, no right of hearing was provided to him. He had not received the notice of refusal of his application for leave in time and hence cannot be punished for his absence. Had he not been terminated from service, he would have gone on to serve in the organization till the age of retirement of sixty-three. Since he was illegally terminated, he adopted that he was entitled to receive full salary and benefits from the date of his termination till the age of retirement at the age of sixty-three.

- Plaintiff had a bill outstanding of Rs. 5,800 against the defendant (Erste), Rs. 500,000 outstanding on account of provident fund, and Rs. 523,249 outstanding as

salary till completion of his service at the age of sixty-three. He had based this calculation, of salary due till retirement, on the basis of the last salary of Rs. 16,879 that he drew as an employee at Erste.

He informed the court that he had earlier approached the Labour Court at Peshawar; however, his case was dismissed for want of jurisdiction. Reference was made to 1997 SCMR page 1552, and SCMR 1994 page 2232 which held that proper right of hearing and show cause is mandatory in case of some penalty. Plaintiff alleged that since the termination order is hit by these judgments, hence the plaintiff is entitled to damages of Rs. 500,000 for illegal termination from service. It was therefore requested that the decree as prayed for may please be awarded.

Defense Arguments

In response to the suit for declaration and damages, Erste submitted its written statement taking the following plea:

- Plaintiff had failed to prove any kind of relationship between Takhliq, MYD and Erste.
- Plaintiff had failed to produce any evidence in support of his argument that Erste had any ill will against the plaintiff at any time during his employment.
- In his statement, Defense Witness-1 (DW-I), Field Executive at Erste, Peshawar, had also attested the actual fact that according to the terms of the employment contract stated in his appointment letter, Erste had the right to terminate plaintiff's services even without assigning any cause whatsoever.
- As per the terms of the employment contract between the parties, plaintiff had no right to remain absent from his duties merely by allegedly filing an application for leave.
- Plaintiff had failed to produce any evidence that he had made submissions before the proper authority. He was asked to join Karachi office and file his leave application there before the competent authority.
- As per defendant company's regulations which form part of the employment contract age of retirement for permanent employees is sixty and not sixty-three, as falsely alleged by plaintiff. Thus, by submitting false information the plaintiff has deceived the court. Furthermore, the age of retirement is only for permanent employees whereas Mazoomdar was a contractual employee by his own admission.
- Plaint does not disclose any cause of action. His termination from service did not suffer from any illegality whatsoever. Therefore, the plaint be dismissed with costs.

- In was clearly mentioned in the terms of employment contract that labour laws were not applicable to the plaintiff, yet he approached the Labour Court with mala fide intention to harass Erste.
- The defendant had written a letter to the company seeking settlement of his accounts; which clearly shows that he had accepted his termination. Therefore, he was estopped by his conduct to bring the titled suit.
- Regarding the claimed damages to the tune of Rs. 500,000 for alleged illegal termination from employment, plaintiff never proved the quantum of damages, nor did he prove any breach of employment contract by Erste. He failed to prove any injury for suffering, which he claimed damages for.
- Plaintiff only mentioned his claim of damages remotely in the prayer clause and nowhere else in the plaint. Therefore, no damages can be awarded to him as he has miserably failed to prove any injury.
- The plaintiff has filed this suit three years after being terminated from service. No reason has been assigned by him for this delay in filing suit. The limitation of suit for damages is one year. Therefore, the suit is liable to be dismissed because of being hopelessly time barred.

Because of the abovementioned reasons, it was prayed to the court to dismiss the plaint without awarding any damages, and with exemplary costs.

Court's Judgment

After noting the arguments of both the parties to the case, the court framed the following issues:

1. Whether plaintiff has got a cause of action?
2. Whether the suit of the plaintiff is barred by time?
3. Whether the plaintiff is estopped by his conduct to bring instant suit?
4. Whether order dated, 27/11/2006, whereby the plaintiff was terminated from service is illegal and ineffective upon the rights of the plaintiff, and therefore, he is entitled to the salary with effect from 27/11/2006 till the completion of the age of 63 years fixed for retirement?
5. Whether the plaintiff is entitled to the damages, as claimed by him?
6. Whether the plaintiff is entitled for the decree as prayed for in Para A, B and C?
7. Relief

On Issue number 2, whether the suit is barred by time, the court ruled that the suit was indeed time barred.

For issue number 4, the onus of proof was on the plaintiff. It was ruled that the order of termination from service was justified on account of willful absence from duty. Regarding entitlement with effect from 27/11/2006 till age of retirement at sixty-three, plaintiff failed to prove any contractual terms, rules, or any contractual terms referring to rules which may confirm this age limit for retirement. It was established that there was no age limit prescribed for retirement. The general rule of superannuation, that is sixty years, will be applicable by default. But since the dismissal was justified, the question of payment of salary till superannuation is out of question.

On issue number 5, the court ruled that the basic act which is dismissal from service was termed justified; therefore, the building of damages constructed over that foundation, which had already been removed, would automatically fall. Hence, plaintiff was not entitled for any sort of damages either general or special; however, he was entitled for rendition of accounts/ settlement of accounts with the defendant company for which the latter showed no hesitation and were ready to do it as per the terms of contract.

On issues 1 and 6, since judgments under issues 2-5 revealed that the plaintiff had no cause of action thus he was not entitled to a decree as prayed for.

Relief

The suit of the plaintiff stood dismissed and the judge ruled that costs would have to follow the events.

Narrative

While it is arguable whether this case can be termed as frivolous or not but one thing is quite evident; the plaintiff failed to substantiate his claim with adequate proof. He failed to prove that Takhliq, MYD and Erste were in any way related; that the age of retirement was sixty-three; and that he had any cause of action. The plaintiff should have been aware of the fact that claims for damages have to be substantiated and that as per his employment contract, he was not a permanent employee; moreover, establishing a cause of action was evidently the first thing to consider and establish.

This matter could have been resolved earlier if the court had decided the issue of limitation at the earliest by framing a preliminary issue. A decision on the issue of limitation decided at the earliest would have avoided the futile exercise of facing the full trial. If courts decide the issue of limitation at the earliest then the number of cases before the courts would be less and enforcement of courts would be more effective.

Another debatable issue is that of Mazoomdar approaching the Labour Court earlier on. It is out of the purview of this case study to establish whether Mazoomdar had

approached the wrong forum with mala fide intent or whether he indeed was unaware of the court's jurisdiction. In either case, the fact of the matter is that a business corporation was involved in a lengthy lawsuit that it should not have had to face. The time and cost that the business had to incur in defending itself in courts could have been utilized more efficiently in the best interests of the company's shareholders. The precious time that the courts had spent on deciding this matter could have been more usefully spent.

Had the employee's service contract contained an arbitration clause, this issue could have been settled out of court more swiftly and at a lesser cost to both the parties. It is advisable for all parties carrying out business to include an arbitration clause in their business contracts, with the consultation of their legal counsel. The government at all levels/business associations/chambers of commerce/judiciary should play a role in setting up arbitration councils with vested authority to enforce their judgments so that the burden of cases on civil courts can be eased. This will also reduce the average time taken to enforce business contracts in Pakistan and the cost of enforcing contracts could also significantly decrease. Together, improvement in these measures will increase the ease of doing business in Pakistan thereby attracting more investment in the country.

Recommendations

Important reform legislation in this regard is the 'Cost of Litigation Act, 2017'. It received the Presidential assent on 23rdMay, 2017. It is an act to further amend the Code of Civil Procedure, 1908. This act is only applicable in the jurisdiction of Islamabad Capital Territory.

The act amends section 35 of C.P.C, 1908; it requires that all parties to a case shall, before the announcement of judgment, submit the details of their actual costs of litigation. This cost should include but not limit to, the court fee, stamp fee, fee paid to counsel and any other ancillary expense. The costs other than those mentioned under clause (i) shall be in the court's discretion. The court shall have full power to determine out of what property such costs are to be paid and recovered and to give all necessary directions for the purposes aforesaid. The consequence of this amendment is that the case file will not be forgotten in the record and judges would be able to enforce order pertaining to costs.

The act requires courts to grant adjournment to any party to a case on the condition that the party seeking adjournment must pay the other party Rs. 5,000 (or higher as may be prescribed) per adjournment, as the cost of adjournment; and the reasons for adjournment are to be recorded. If the court feels that the adjournment being sought is due to unavoidable reasons beyond the control of the party concerned, then the

adjournment cost can be waived off by the court.

Under the newly introduced section 35B, if in any proceedings, the Court finds that any averment made by any party is false or vexatious to the knowledge of such party, the Court shall award special costs to the opposite party against whom such averment has been made.

The Cost of Litigation Act, 2017, is a great step forward towards discouraging frivolous and weakly contested cases, addressing dilatory tactics by the litigants and/or their legal counsel; and towards providing for costs to be awarded to the litigants winning the case. This act has the tendency to reduce the cost of doing business (with respect to litigation expenses), and the time taken to settle cases in courts is also expected to go down. Legislation on similar lines should also be undertaken by all the provincial legislatures of Pakistan to reform their justice system.