54/23

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

(AFR)

CIVIL APPEAL NO.371 OF 2020

(Against the judgment of the High Court of Sindh at Karachi dated 14.05.2019 passed in High Court Appeal No.57 of 2006)

Habib Bank Ltd. thr. its Attorney

...Appellant(s)

VERSUS

Mehboob Rabbani

...Respondent(s)

For the Appellant:	*Mr. Faisal Mehmood Ghani, ASC* *Mr. M.S. Khattak AOR (absent)*
For L.R.s of Respondent:	*Mr. Umer Abdullah, ASC* *Mian Liaquat Ali, AOR (absent)*
Date of Hearing:	22.11.2022 **(J.R)**

JUDGMENT

IJAZ UL AHSAN, J-. Through this instant Appeal by leave of the Court, the Appellant has challenged a judgment of the High Court of Sindh at Karachi dated 14.05.2019 (the "**Impugned Judgment**") whereby the appeal of the Appellant was dismissed, and the judgement of the Single Judge of the High Court dated 17.01.2006 was upheld.

2. Briefly stated, the facts giving rise to this *lis* are that the Respondent was inducted as an officer in Habib Bank Ltd. (the "**Appellant**") and was posted to Bahrain in 1979 as Officer

Incharge of the Investment Department of the Appellant's Manama branch. In 1981, he was promoted to Senior Banker/Assistant Vice President, Foreign Exchange Branch and Money Market. In 1987, the Appellant was promoted as Vice President. In 1990, he was posted as Vice President, Chief Dealer and Manager Habib Bank, I.B.F. New York, USA, where he started Treasury Operations in the International Banking Facilities Zone of Appellant's New York branch. His responsibilities at New York included setting up deals between parties for the Appellant, serving interbank credit loans exceeding USD 500 million, and buying and selling international currencies for the Appellant. All of the Respondents' activities were, according to the Appellant's internal hierarchy, monitored and authorised by the General Manager, New York. During the Respondent's time at the New York branch, the branch ran into significant financial losses which prompted the Appellant to start an enquiry into the matter. On 29.04.1991, the Respondent was served a suspension order wherein he was informed that the Appellant-Bank had discovered serious irregularities in the affairs of the New York branch; that an enquiry had been ongoing concerning the matter; and until such the enquiry was concluded, the Respondent was suspended from service *w.e.f.* 30.04.1991. The Respondent was transferred to Karachi on 04.06.1991 and was, on 04.08.1991, served a show cause notice wherein he was charged with serious allegations of causing the Appellant colossal financial loss during his time at the New York branch. The Respondent submitted his reply to

the show cause notice on 30.08.1991 but was dismissed from service on 03.10.1991. A departmental appeal was preferred by the Respondent but the appeal was dismissed vide letter dated 05.01.1992. A review of the appellate authority's decision was sought by the Respondent but the review was also dismissed vide letter dated 05.07.1992. Thereafter, in June 1993, the Respondent filed a suit for damages for wrongful dismissal against the Appellant. The suit was contested by the Appellant and after pro and contra evidence was led, the Single Judge of the High Court, vide judgement dated 17.01.2006, decreed the suit of the Respondent to the effect that the Single Judge awarded the Respondent Rs.5,000,000/- out of Rs.20,000,000/- sought as general damages as well as USD $45,0000/- plus Rs.750,000/- as special damages. Aggrieved, the Appellant filed a High Court appeal which was dismissed through the impugned judgement. The Appellant now assails both judgements by way of this Appeal.

3. Leave to appeal was granted by this Court vide order dated 08.07.2020 which is reproduced below for ease of reference:

> *"It is, inter alia, contended that the respondent was terminated from service on 03.10.1991. He filed his first review petition, which was dismissed on 05.01.1991. According to the learned counsel, the second review petition was also dismissed on 05.07.1992. It is urged that the service rules and regulations are not statutory, therefore, filing of review petition or its pendency will not enlarge the limitation period for filing of suit for damages on account of termination.*
>
> *2. It is further contended that the respondent has already been awarded USD $45,000/-, whereas*

he has admitted in his cross examination that he has received USD $23,000/-. His admission is available at Page No.247 of the Court file, which was not taken note by the learned Court below while awarding the same.

3. Point noted above, inter alia, do call for examination. Accordingly, leave is granted to consider the same.

4. It is next pointed out that pursuant to the judgement and decree the decretal amount has already been deposited with the learned High Court and execution is pending. Since leave has been granted, CMA No.7457/2019 is allowed and the operation of the impugned judgement is suspended. The amount so deposited, if not invested, may be invested in some profit bearing scheme and subject to final outcome of the controversy, the same shall be paid to the successful party."

4. The Learned ASC for the Appellant has argued that the suit of the Respondent was barred by time and owing to the fact that cause of action had accrued to the Respondent when he was dismissed from service *i.e.* on 03.10.1991. The Respondent could not have extended the period of limitation by averring that the cause of action had accrued again on 05.01.1992 and 05.07.1992 on dismissal of his appeal and review respectively. He maintains that the Single Judge had arbitrarily decreed the suit of the Respondent to the tune of Rs.5,000,000/- as general damages and the entirety of the special damages when the Respondent had failed to prove any present or future economic loss caused to him by the Appellant. He maintains that onus fell on the Respondent to prove both general and special damages and that by failing to do so, the suit ought to have been dismissed by the Single Judge. In reference to the discharge of evidentiary burden vis-à-vis general damages, he has relied on *Sufi Muhammad*

Ishaque vs. Metropolitan Corporation, Lahore (**PLD 1996 SC 737**), *Kalb-e-Haider and Company vs. National Bank of Pakistan* (**2008 CLD 576**), *Dr. Muhammad Raza Zaidi vs. Glaxo Wellcome Pakistan Ltd.* (**2018 MLD 1268**), and *Chairman, Mari Gas Co. Ltd. vs. Abdul Rehman* (**2017 YLR 2504**). In reference to the evidentiary burden required to be discharged vis-à-vis special damages he has relied on *Abdul Majeed Khan vs. Tawseem Abdul Haleem* (**2012 PLC (C.S.) 574**), *Gul Muhammad Awan vs. Federation of Pakistan* (**2013 SCMR 507**), and *Kalb-e-Haider and Company vs. National Bank of Pakistan* (**2008 CLD 576**). He further maintains that the relationship of the Appellant and the Respondent was one of master and servant and therefore the Respondent could not have brought a suit for damages arising out of a breach of contract since the Respondent had been dealt with in accordance with the internal service rules of the Appellant and could not further agitate the matter before a court of law. Lastly, he maintains that even if it was found that the Respondent had not been dealt with in accordance with internal service rules, the Court ought to have remanded the matter to the Appellant and directed the Appellant to proceed with the matter in accordance with the law and pass an appropriate order instead of decreeing the suit of the Respondent. He prays that the impugned judgement be set aside and that the suit of the Respondent be dismissed.

5. The Learned counsel for the Respondent on the other hand defended the impugned judgements.

6. We have heard the learned counsel for the parties at length and gone through the case record with their assistance. Before we go on to discuss the merits of the Appeal, we find it appropriate to answer the contentions of the Learned ASC for the Appellant concerning jurisdiction of the High Court to adjudicate the matter as well as the argument that the suit filed by the Respondent was barred by time.

7. The consequences of breach of contract are laid down in Chapter VI of the Contract Act, 1872 (the "**1872 Contract Act**"). Sections 73 of the Contract Act is relevant for the purposes of this Appeal. The relevant portion whereof is reproduced below for ease of reference:-

> "***73. COMPENSATION FOR LOSS OR DAMAGE CAUSED BY BREACH OF CONTRACT***
>
> *When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.*
>
> *Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.*"

What is important to note for the purposes of this Appeal is that the High Court of Sindh was exercising its original civil jurisdiction in terms of notifications in this regard issued

from time to time. Therefore, the argument of the learned ASC for the Appellant that the service rules were non-statutory and internal in nature and therefore no Court had jurisdiction in the matter is repelled as misconceived. Admittedly, the Respondent alleged a wrong committed against him and it would be absurd to suggest that he could be left remediless. Whenever a Court is adjudicating a civil suit, it is regulated by the requisite laws and civil procedure applicable to it at the time the suit is filed and adjudicated upon. At no point has the Appellant taken the stance that the Civil Courts set up under the 1908 CPC were barred from adjudicating a suit for damages arising out of a breach of contract or taken the ground that the High Court exercising its original civil jurisdiction was not the appropriate forum for adjudicating the matter. In the absence of any such plea relating to lack of jurisdiction, the Appellant could not have sought preliminary dismissal of the suit on the ground that the service rules of the Appellant were non-statutory in nature and therefore the High Court was barred from adjudicating on the matter in exercise of its original civil jurisdiction.

8. We find that the High Court of Sindh on the original side was the proper forum for adjudicating a suit for damages arising out of breach of contract for the purposes of the present *lis* keeping in view the relevant determination of pecuniary jurisdiction made by the High Court of Sindh under Section 9 of the Sindh Civil Courts Ordinance, 1968. The Appellant in its

written statement raised legal objections that the suit of the Respondent was time barred, as the Respondent was dismissed from service on 03.10.1991 and his Review Petition filed on 15.10.1991 was rejected by the Competent Authority of the Appellant on 05.01.1992. The Review Petition of the Respondent dated 19.04.1992 was rejected by the Competent Authority on 05.07.1992. The Respondent filed his suit on 12.06.1993, after almost one year. We are in agreement with the High Court when it came to the conclusion that a cause of action to file a suit for compensation/damages arose to the Respondent on 05.07.1992 and was therefore within the limitation of one year provided in Article 22 of the Limitation Act, 1908 for claiming compensation for any other injury to the person.

We therefore have no qualms in arriving at the conclusion that the suit of the Respondent was filed within time. The argument of the Learned ASC for the Appellants that the suit of the Respondent was time-barred fails as a result thereof.

9. Having addressed both the contentions of the Learned ASC for the Appellant insofar as jurisdiction as well as limitation are concerned, we now go on to discuss the merits of the Appeal.

10. Since there is no definition as to what constitutes damages in the 1872 Contract Act itself, which only stipulates compensation for breach of contract which would have "*naturally arisen in the usual course of things from such breach*"

or "*which the parties knew, when they made the contract, to be likely to result from the breach of it*" , it may be prudent to first define exactly what damages arising out of a breach of contract is.

11. The etymology of the word "*damages*" reveals that the word damages stems from the words "*dommage*" in French and "*damnum*" in Latin, signifying that a thing is being taken away or that a thing is being lost which a party is entitled to have restored to him so that they may be made whole again.

Damages have also been defined by the UK's House of Lords in the case of *Livingstone vs. Rawyards Coal Co.* (**(1880) 5 App. Cas. 25**) wherein damages have been defined as:-

> *"... that sum of money which will put the party who has been injured or who has suffered in the same position as he would have been if he had not sustained the wrong for which he is now getting his compensation or reparation."*

Similarly, while dealing with the *para materia* section of Section 73 in the Indian Contract Act of 1872, the Calcutta High Court in *Great Easter Shipping Co. Ltd. vs. Union of India* (**AIR 1971 Cal. 150**) has held that:-

> *"Chapter VI of the Act deals with the consequences of a breach of contract and Section 73 is in Chapter VI of the Act. First paragraph of Section 73 of the Act inter alia provides that whenever a party has suffered loss or damage in consequence of a breach of contract he is entitled to receive compensation from the party who*

has broken the contract Principle upon which such compensation is to be assessed is that a party injured by a breach of contract should be placed in the same position in terms of money as far as possible had the contract been performed by the party in default."

(Underlining is ours)

Another judgement of the UK's Courts of Exchequer in *Robinson vs. Harmain* (**(1848)1 Exch 850**) has held that:-

"The rule of the common law is, that by where a party sustains a loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation with respect to damages as if the contract had been performed."

Damages therefore are costs that are imposed not as a deterrent or as a means to punish person(s) or party(s) who has/have breached a contract but instead to bring the person(s) or party(s) who has/have suffered from the breach of contract into a position which they would have been had the breach of contract not accrued. This principle is now legally known known as the principle of *restitutio in integrum* (*restoration to original condition*). It therefore stands to reason that damages are in fact the compensation that the law awards when a breach of contract occurs as compensation for the loss that a person or party has suffered from a breach of contract.

12. Coming to Section 73 of the 1872 Contract Act itself, the proviso to the said Section has defined that only those damages which are not too remote or unforeseeable if the contract in question were to be breached are to be awarded.

13. The concept of awarding damages is, by its very nature, inclusive of awarding both general as well as special damages. However, the nature of general and special damages and proving the two are different compared to each other. In the case of *Hadley & Anor vs. Baxendale* (**[1854] EWHC Exch J70**), the UK's Courts of Exchequer held that:-

> *"Now we think the proper rule is such as the present is this: Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it. Now, if the special circumstances under which the contract was actually made where communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract, which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from a breach of contract under these special circumstances so known and communicated. But, on the other hand, if these special circumstances were wholly unknown to the party breaking the contract, he, at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by any special circumstances, from such a breach of contract. For such loss would neither have flowed naturally from the breach of this contract in the great multitude of such cases occurring under ordinary circumstances, nor*

were the special circumstances, which, perhaps, would have made it a reasonable and natural consequence of such breach of contract, communicated to or known by the defendants."

Similarly, this Court has held in the case of *Messrs. A.Z. Company, Karachi vs. Government of Pakistan* (**PLD 1973 SC 311**) that:-

"Section 73 of the Contract Act incorporates the above, principles by providing that the party who suffers by the breach may claim compensation "for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it". Such compensation is not, however, to be givens "for any remote and indirect loss or damage sustained by reason of the breach".

Even generally speaking, onus would lie on a plaintiff or claimant to prove that there had been a contract entered into between the parties; that there had been a breach of contract; and the extent of the damages claimed thereof. The onus to prove both the said facts was successfully discharged by the Respondent as correctly held by the High Court.

In his additional note in *Abdul Majeed Khan vs. Tawseen Abdul Haleem* (**2012 PLC (C.S.) 571**), his Lordship Iftikhar Muhammad Chaudhary, HCJ (as he was then) has elaborately bifurcated the difference between general damages and special

damages for the purposes of claiming damages. It was held as follows:-

> *"3. At this stage, it is to be noted that there are two types of damages namely; 'special damages' and 'general damages'. The term 'general damages' refers to the special character, condition or circumstances which accrue from the immediate, direct and approximate result of the wrong complained of. Similarly, the term `special damages' is defined as the actual but not necessarily the result of injury complained of. It follows as a natural and approximate consequence in a particular case, by reason of special circumstances or condition. It is settled that in an action for personal injuries, the general damages are governed by the rule of thumb whereas the special damages are required to be specifically pleaded and proved. In the case of British Transport Commission v. Gourley [(1956) AC 185] it has been held that special damages have to be specially pleaded and proved. This consists of out-of-pocket expenses and loss of earnings incurred down to the date of trial, and is generally capable of substantially exact calculation. The general damages are those which the law implies even if not specially pleaded. This includes compensation for pain and suffering and the like, and, if the injuries suffered are such as to lead to continuing or permanent disability, compensation for loss of earning power in the future. The basic principle so far as loss of earnings and out-of-pocket expenses are concerned is that the injured person should be placed in the same financial position, so far as can be done by an award of money, as he would have been had the accident not happened. The same principle has been referred to in the case of Qazi Dost Muhammad v. Malik Dost Muhammad (1997 CLC 546), in the following terms:-*

"It is a settled principle of law that in respect of special damages it is the duty of an aggrieved person to prove each item of the loss, on the basis of evidence and as far as general damages are concerned, relating to mental torture, defamation etc. those are to be measured, following the 'Rule of Thumb', according to which, discretion rests with the Court to calculate such compensation keeping in view the attending circumstances of the case... As far as inconvenience is concerned, this item can be considered while assessing the general damages."

In the case of Islamic Republic of Pakistan v. Sh. Nawab Din 2003 CLC 991 the principles for ascertaining the quantum of general and special damages have been discussed in the following words:-

"13 ... Principle for ascertaining the quantum of general and special damages is laid down in the leading case of Hadly v. Baxendale (1854) 9 Exch. 341 which clearly provides the distinction between the two. The provisions of section 73 of the Contract Act, 1872 are not much different for purpose of practical application. Claim for damages was rejected as being too remote in the case of Banco de Portugal v. Waterlow and Sons Ltd. (1932) A.C. 452 and again in the case of Commell Lairds and Co. v. Managanese Bronze and Brass Co. (1993) 2 KB 141. General damages naturally arising according to the usual course of things from the breach of contract are recoverable in the ordinary circumstances. Special damages are awarded in cases, as may reasonably, be supposed to have been in contemplation of both parties at the time of contract. The law does not

record consequential damages arising of delay in respect of money as one in the case of Graham v. Campbell. (1877) 7 Ch. D. 494 and Urquhart Lindsay and Co. v. Eastern Bank Ltd. (1992) 1 K.B. 318. Same view has been taken by honourable Supreme Court of Pakistan in the case of Syed Ahmad Saeed Kirmani v. Messrs Muslim Commercial Bank Ltd. 1993 SCMR 441."

While relying upon the above said judgment, this Court in the case of Azizullah Sheikh v. Standard Chartered Bank Ltd. (2009 SCMR 276) has held as under:

"6. The petitioners did not produce any evidence to show that in fact they suffered any loss due to breach of contract. Solitary statement of petitioner No.1 is not sufficient to decree the colossal suit amount, as P.W.2 did not state anything about the damages. Besides the reasons advanced by the learned High Court (single Bench and Division Bench) for declining the total claim of the petitioners, we may add here that the petitioners through production of evidence comprehensively failed to prove that due to breach of contract they are in fact entitled to damages and to what extent, which are sine qua non for the grant of damages under section 73 of the Contract Act. Thus we are clear in our mind that the petitioners could not prove that they suffered any loss. They also failed to prove, through production of evidence on record, that they were entitled for decree of the total amount claimed in the suit."

In the case of Mrs. Alia Tareen v. Amanullah Khan (PLD 2005 SC 99), it has been held that in a suit for damages, the wrong done to the plaintiff must be

proved to be the immediate, direct and proximate result of the act or acts attributed to the defendants."

(Underlining is ours)

14. We shall now determine in more detail whether or not the Respondent had proved, through a preponderance of evidence, that a breach of contract had accrued and that he was entitled to damages as a result of the breach of contract.

15. The Respondent himself appeared before the Single Judge and gave his evidence as PW-1. In his examination-in-chief before the High Court he deposed as follows:-

i. *Admitted that he was subordinate to the General Manager of the New York branch.*

ii. *Levelled specific allegations against the General Manager for causing loss to the Appellant due to his decisions.*

iii. *Contended that he assisted and joined the preliminary enquiry that was being conducted by the Appellant to investigate the loss being occasioned by the Appellant.*

iv. *Was not offered a personal hearing before he was dismissed from service on 03.10.1991.*

v. *Submitted that the General Manager was fully informed and aware of all actions and decisions being taken by the Respondent.*

vi. *Was singled out by the Bank and dismissed from service.*

vii. *Was dismissed from service whereas the General Manager had been asked to resign instead of being dismissed from service.*

During the cross-examination of the Respondent by the Appellant, the following facts have come on record:-

i. *The Respondent was acting under the supervision and instructions of the General Manager.*

ii. *No enquiry was ever conducted in pursuance of the charge sheet that had been framed against the Respondent.*

iii. *The Respondent had denied that he was not entitled to all the general and special damages being claimed by him in his suit for damages.*

16. Mr. Qamar Ali Shaikh, Assistant Vice President (DW-1) appeared as a witness on behalf of the Appellant before the Single Judge. In his affidavit before the High Court, he has gone on to reiterate the allegations made against the Respondent. However, in his cross-examination, the following facts have come to the fore:-

i. *The authority to sell and purchase foreign currency was with the General Manager as well as the Respondent.*

ii. *The Respondent acted under the supervision of the General Manager.*

iii. *Administratively, the General Manager was in charge of New York Operations.*

iv. *The General Manager filed an appeal against his dismissal which was allowed and he was allowed to tender his resignation as opposed to being dismissed from service.*

v. *The Appellant was to bear all expenses of travelling from the Head Office to the branch where the employee is posted and for return at the Head Office.*

We note that at no point did the Appellant during cross-examining of the Respondent ever try to rebut or deny the allegations made by him against the involvement of the General Management in the losses that had led to the initial preliminary inquiry and subsequent dismissal of the Respondent by the Appellant. In fact, the Respondents have agreed that the Respondent had allowed the General Manager to resign as opposed to being dismissed from service.

17. However, in order to ascertain whether or not the dismissal of the Respondent from service was a breach of contract, we will need to determine whether the dismissal of the Respondent had been undertaken in breach of any of the Appellant's internal service rules, or that his dismissal was wrongful.

18. The Appellant's service rules *i.e.* the Habib Bank Limited (Staff) Service Rules of 1981 (the "**1981 Bank Rules**") are the internal service rules that regulate the conduct of the Appellant's employees. Rule 39 of the 1981 Bank Rules deals with disciplinary action and its procedure. It is reproduced below for ease of reference:-

> "***39. DISCIPLINARY ACTION – PROCEDURE***
>
> *(1) When, as a result of preliminary investigation, an employee is reported to have committed any irregularity mentioned in rule 37, the competent authority shall cause a charge sheet to be issued to him and shall appoint an enquiry officer or an enquiry committee to hold an enquiry in the case. The competent authority may delegate the powers to issue charge sheet and to appoint enquiry officer or enquiry committee to a subordinate authority.*
>
> *(2)*
> *(a) The enquiry officer or the enquiry committee so constituted shall require the accused within a reasonable time, which shall not be less than 7 days and more than 14 days from the date charge sheet has been communicated to him, to put on a written defence and to state at the same time whether he desired to be heard in person;*
>
> *(b) The enquiry officer or the enquiry committee, as the case may be, shall enquire into the charges and may examine such oral or documentary evidence in support of the charges or in defence of the accused as may be considered necessary and the accused shall be entitled to cross examine the witnesses against him;*

(c) Where the enquiry officer or the enquiry committee, as the case may be, is satisfied that the accused is hampering or attempting to hamper the progress of the enquiry, he or it shall administer a warning, and if thereafter he or it is satisfied that the accused is acting in disregard to the warning, he or it shall record a finding to that effect and proceed to complete the enquiry in such a manner as he or it thinks best in the circumstances;

(3) The report together with the employee's statement shall be laid before the authority ordering the enquiry which shall consider the matter and award such punishment, as it deems proper, if it is competent authority itself under rule 37; otherwise lay the said report before the authority competent with its recommendations. The decisions of the competent authority shall be conveyed in writing to the employee concerned:

Provided that in the light of facts of the case the requirements of sub-rules (1), (2) & (3), may be dispensed with by the competent authority and it will be just and proper for the competent authority to take an explanation of the employee and award punishment forthwith.

(Underlining is ours)

When the Respondent responded to the show-cause notice issued to him by the Appellant, he demanded a "*full and complete*" hearing before the Enquiry Committee. However, the Enquiry Committee constituted for probing the allegations against the Respondent dispensed with Rule 39 and proceeded to dismiss the services of the Respondent on 03.10.1991 vide letter dated 03.10.1991 (Exh.5/8). We note that no reason was given for Rule 39 being dispensed with.

19. In the case of *Mrs. Anisa Rehman vs. P.I.A.C. and another* (**1994 SCMR 2232**), this Court held that:-

7. From the above stated cases, it is evident that there is judicial consensus that the Maxim audi alteram

partem is applicable to judicial as well as to non-judicial proceedings. The above Maxim will be read into as a part of every statute if the right of hearing has not been expressly provided therein. In the present case respondent No. 1 in its comments to the writ petition (at page 41 of the paper book) admitted the fact that no show-cause notice was issued to the appellant nor she was heard before the impugned order dated 6th August, 1991 reverting her Grade VI from Grade VII was passed. In this view of the matter, there has been violation of the principles of natural justice. The above violation can be equated with the violation of a provision of law warranting pressing into service Constitutional jurisdiction under Article 199 of the Constitution, which the High Court failed to exercise. The fact that there are no statutory service rules in respondent No. 1 Corporation and its relationship with its employees is of that Master and Servant will not negate the application of the above Maxim audi alteram partem. The above view, which we are inclined to take is in consonance with the Islamic Injunctions as highlighted in the case of Pakistan and others v. Public at Large (supra), wherein, it has been held that before an order of retirement in respect of a civil servant or an employee of a statutory Corporation can be passed, he is entitled to be heard.

(Underlining is ours)

While the above-quoted judgement of this Court is relates to reverting to a lower grade as opposed to dismissal from service, we would like to state that if this Court has held that the principle of *Audi alteram partem* is applicable to employees that an organisation wishes to retire or revert to a previous scale/grade, then it is only logical that the same principle of being granted a hearing before an adverse order is passed

applies to employees who are to be dismissed from service since dismissal entails reputational as well as financial loss.

20. In this case, the Enquiry Committee dispensed with the requirements under Rule 39 of the 1981 Regulations but in doing so has infringed on the right of the Respondent to present oral evidence and cross examine anyone who might have testified against him. By dispensing with the requirements of Rule 39, the Respondent was denied a fundamentally important right of an opportunity to defend himself. The Enquiry Committee could only have dispensed with Rule 39 by assigning cogent reasons for doing so, which it failed to do, and in doing so the Enquiry Committee had breached a tenet of natural justice which enshrines that a person must not be condemned unheard and must be given a fair opportunity to defend himself before any adverse order is to be passed against them.

21. Even if for a moment it were to be assumed that there were cogent reasons for dispensing with Rule 39, the fact that the Appellant had not treated the General Manager and the Respondent in the same manner would appear to be discriminatory in of itself. Admittedly the General Manager was the person who the Respondent reported to; under whose instructions the Respondent acted; and who admittedly appeared to be reason the New York branch of the Appellant faced colossal financial loss. Surprisingly enough, no civil proceedings were initiated by the Appellant against the General Manager and he was ultimately asked to resign from service

whereas the Respondent was dismissed from service by the Appellant after dispensing with the need to conduct an enquiry against the Respondent. While the reason for dispensing with Rule 39 was never disclosed, it raises a possibility that if a regular enquiry had been conducted, the result of the said enquiry may not have met the requirements needed to dismiss the Respondent from service. Instead, the Enquiry Committee chose to dispense with Rule 39 and summarily dismiss the Respondent from service. *Prima facie*, it would appear that the instant case is a classic example of discrimination, and the Respondent may have been made the scape goat for the General Manger's mistakes and faults which led to the Respondent facing financial loss as well as reputational loss owing to denial of a fair opportunity to defend himself.

22. We therefore find that the Appellant had breached the Respondent's employment contract when it dispensed with Rule 39 without assigning any reason for doing so; dismissing the Respondent on the basis of unproven allegations when it failed to conduct an enquiry into the said allegations; and by discriminating against the Respondent by treating him differently than it treated the General Manager who was admittedly working in a supervisory capacity and had more responsibility. The legal and contractual rights of the Respondent were unjustly and unlawfully denied to him.

23. The final question that needs to be determined is whether or not the Respondent was entitled to be compensated

for the damages he had sustained as a result of the breach of contract.

24. We note that the rationale behind Section 73 of the 1872 Contract Act is to award damages for breach of contract which include damages that would "*naturally arise in the usual course of things*" or "*which the parties knew, when they made the contract, to be likely to result from the breach of it*". However the said Section also stipulates that "*such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach*". It would go without saying that one aspect of a breach of contract would be the direct damages a party would be entitled to if a contract were to be broken. However, often, a breach of contract results in other consequences which may be harmful or detrimental to the party who suffers from the breach of a contract.

25. In the present case, the Respondent had specifically deposed in his examination-in-chief that he had suffered mental agony, financial loss as well as reputational loss after he was wrongfully dismissed from service by the Appellant. While specific suggestions had been put to the Respondent that he had not suffered any mental agony, financial loss or economic loss by the actions of the Appellant, we note that the Respondent has specifically denied all such suggestions. It is only logical that when the Respondent was dismissed from service, it would have been difficult for the Respondent to be employed again owing to the fact that a dismissal from service on his record would have had the effect of either barring him

from further employment or making it considerably more difficult for the Respondent to be employed again. That blot on his service permanently marked the Respondent for the rest of his life and was only washed away when the Respondent passed away. Had the Appellant treated the Respondent in a just and fair manner and conducted a fair, open and impartial inquiry giving him the opportunity to defend himself, the financial and reputational aspect of a claim in tort would have been non-existent or too remote. Dismissal from service is clearly a stigma and financial and reputational loss apart from mental torture, agony and distress are logical consequences. In the present case, owing to denial of the right to defend himself without just cause leads towards a conclusion of wrongful dismissal and financial as well as economic loss and therefore could naturally be considered to arise out of the wrongful dismissal of the Respondent by the Appellant. Since we have also arrived at the conclusion that the Respondent had been wrongfully dismissed from service, the Appellant cannot be granted the premium of not being made to compensate the Respondent especially when the Appellants have failed to prove that the damages the Respondent sought were too remote or did not naturally arise out of the breach of contract. Once the Respondent had proved that he had been wrongfully dismissed from service, the onus shifted on the Appellants to prove that the damages claimed by the Respondent were either too remote or did not arise out of the breach of contract. In the absence of anything to the contrary, the Respondent was entitled to such damages that in the opinion of the Court considering the facts

and circumstances of the case arose directly out of the breach of contract as well as all damages claimed for wrongful dismissal from service.

26. Having carefully examined the impugned judgements, we find ourselves in agreement with the High Court when it arrived at the conclusion that considering the facts and circumstances of the case, and the evidence produced, it would be fair, just and reasonable to decree the suit of the Respondent to the extent that it did. No misreading or misapplication of the relevant principles of law by the High Court has been pointed out. We find ourselves in agreement with the yardstick used by the High Court in determining the quantum of damages by the High Court which has been found to be just, fair and duly supported by settled principles of law on the subject. The discretion exercised by the High Court in this regard has not been found by us either to be perverse or arbitrary.

27. Coming to the specific contention of the Appellant that the Respondent had already been paid USD $23,000/- out of a total or USD $45,000/-, we note that the said ground was not agitated by the Appellant in their memo of appeal before the High Court. The same ground, being factual in nature, had been available to the Appellant at the time when it preferred its appeal before the High Court. It therefore cannot be raised before this Court at a belated stage and as an afterthought.

28. The Learned ASC for the Appellant has also failed to point out any ground which would lead us to a different conclusion than the one arrived at by the High Court. Even otherwise, the impugned judgement is well reasoned, discusses all material aspects of the case and assigns reasons that are factually and legally sustainable.

29. For the aforenoted reasons, we do not find any merit in this appeal. It is accordingly dismissed. No order as to costs.

ANNOUNCED IN OPEN COURT ON 04.05.2023 **AT ISLAMABAD**

Khalil Sahibzada, LC/-*

NOT APPROVED FOR REPORTING*/-