

IN THE HIGH COURT OF SINDH, AT KARACHI

BEFORE:

MR. JUSTICE OMAR SIAL

MR. JUSTICE MUHAMMAD HASAN (AKBER)

Constitution Petition No.D-5714 of 2024

Petitioner: Through, Mr. Moulvi Iqbal Haider, Advocate
Respondents 3 to 7: Through, Ms. Mehwish Ali Advocate
Respondents 1 and 2: Mr. Arshad Naqvi Additional Advocate General
Date of hearing: 16.04.2025
Date of Judgment: 05.05.2025

JUDGMENT

MUHAMMAD HASAN (AKBER), J.- Through this petition, the letter dated 31.10.2024 (the impugned letter) issued by Respondent No.3, has been challenged whereby services of the petitioner were terminated. Brief facts of the case are that the Petitioner was appointed on contractual basis on 29.07.2024 for a period of five years, by Respondent No.3, Dow University of Health Sciences (established under the Act of 2004). Clause 10 of the appointment letter stipulated the notice period for termination as, ".....one month or salary in lieu of the notice period by either party upon termination of the contract, however, contract may be terminated with immediate effect in case of misconduct". Through the impugned letter, pay order for one month's salary was sent to the petitioner by Respondent No.3 in lieu of the notice period specified under the contract. Per learned counsel for the petitioner, since there was no misconduct, hence petitioner's termination was illegal. Conversely, learned counsel for Respondents 3 to 7 vehemently opposed the petition.

2. Heard learned counsels for the parties and perused the record with their able assistance. Features of 'regular appointment' are distinct from 'contractual appointment', and such terms are neither synonymous nor interchangeable. A contractual appointment is subject to the terms and conditions, as enumerated in the contract executed between the employer and the employee, whereas a regular appointment is subject to the relevant service laws and rules, governing the service, and the question of its applicability would be dependent upon terms and conditions of its appointment rules. The employees who are appointed on contractual basis, fall under an entirely distinct class, not belonging to any

Integrated service, and therefore a line of distinction was drawn by the Supreme Court between, service under the rules and service under the contract in *'(R) Nisar Ali v. Pakistan Atomic Energy Commission and another'*¹.

3. on the same subject, a Six-Member Bench of the Honourable Supreme Court in the case of employees of Habib Bank Limited observed in *'Abdul Wahab and others v. HBL and others'*², that when contractual employees had duly accepted the appointment offer, the same culminated into a valid and a binding service contract between the parties, which for all intents and purposes was meant to govern and regulate the relationship *inter se* parties, and in such circumstances, Constitution petition for enforcement of their service rights, was held as not maintainable. It was also observed that for agitation of a service grievance by a person/employee who was not governed by statutory rules of service, a writ before the High Court under Article 199 of the Constitution shall not be maintainable.

4. Even for those employees of a Government Corporation, being a statutory body, whose conditions of service were not regulated by rules/regulations framed under the Statute, but only by rules or instructions issued for its internal use, it was held by the Supreme Court, that the same would be governed under the principle of "master and servant" and invocation of constitutional jurisdiction of the High Court under Article 199 was not approved in *'Pakistan Electric Power Company v. Syed Salahuddin and others'*³. It was further held that mere adoption of existing rules of Pakistan WAPDA Employees (Efficiency and Discipline) Rules, 1978 by the Corporation for its internal use, would not make such rules statutory, in the context of the Corporation. Same principles were followed in a petition concerning employees of Hyderabad Electric Supply Corporation (HESCO) by a Division Bench of this Court, in *'Khan Shar V. Federation of Pakistan and others'*⁴, and writ petition of such employees was dismissed, being not maintainable.

5. The same principles were applied in *'Chairman NADRA, Islamabad, through Chairman, Islamabad and another v. Muhammad Ali Shah and others'*⁵ it was held that although NADRA was a statutory organization, however its contractual employees cannot invoke constitutional

1. 2004 P L C (C.S.) 758
2. 2013 SCMR 1383
3. 2022 SCMR 991
4. 2024 PLC (C.S.) 1213
5. 2017 SCMR 1979

Jurisdiction of the High Court for regularisation or alteration in the terms of their service employment, since High Court did not have jurisdiction for the same under Article 199 of the Constitution.

6. On the same analogy, writ petition by contractual employees of Quetta Electric Supply Corporation (QESCO) was discouraged in *'All Gohar Mazar v. Federation of Pakistan through Chief Executive Officer, Quetta Electric Supply and others'*⁶. Further discussion on the subject can also be found in *'Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed'*⁷.

7. Likewise, in *'Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others'*⁸, it was categorically held that Pakistan International Airlines Corporation was performing functions in connection with the affairs of the Federation but since services of the Respondent employees were governed by the contract executed between the parties and not by statutory rules framed under its Act of 1956 with prior approval of Federal Government, therefore, such employees would be governed by the principle of 'Master and Servant'.

8. In *'Tahir Pervaiz, Director-General, Legal Affairs, Pakistan Railways V. Federation Of Pakistan and 6 others'*⁹, a Constitutional petition under Article 199 of the Constitution filed for enforcement of terms of his contract, by the Director General (Legal affairs) of Pakistan Railways, was declared as not maintainable, on the principle that where employment was on contractual basis, there was a relationship of 'master and servant' and in such cases, writ jurisdiction under Article 199 was not attracted.

9. Furthermore, the expression "performing functions in connection with the affairs of the Federation or a Province", as provided under Article 199(1)(a)(i) & (5) of the Constitution also requires consideration, which clearly connotes governmental or State functions involving element of exercise of public power. Learned counsel has also not been able to establish if DUHS could be considered as performing the functions of the Province, in the light of PIAC case⁸ *supra* and Khan Shar case⁴ *ibid*.

6. 2010 PLC (C.S.) 353

7. 2013 SCMR 1707

8. PLD 2010 Supreme Court 676

9. PLD 2019 Lahore 178

10. Upshot of the above discussion is that since the terms and conditions of employment of the petitioner are governed by a contract of employment between the petitioner and Dow University of Health Sciences, hence the same would be governed under the principle of 'master and servant', and therefore, writ jurisdiction under Article 199 of the Constitution for enforcement of terms of such a contract cannot be invoked. The petition is therefore, dismissed along with all pending applications.

sd/- Omar Haf
Judge

sd/- Muhammad Hasam (Akbar)
Judge