

# IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Adnan-ul-Karim Memon

**C.P No. D-4445 of 2013**

Aftab Ali

V/s

Federation of Pakistan & others

Petitioner Through Mr. Ali Asadullah Bullo advocate

Respondent No.1 Through Mr. Muhammad Aslam Butt DAG

Respondents No.2to 4 Through Mr. S. Javed Iqbal, advocate

Dates of hearing 13.03.2017 and 27.03.2017

## **J U D G M E N T**

**ADNAN-UL-KARIM MEMON, J:-** The Petitioner, through the captioned Constitutional Petition, seeks compliance of the reinstatement orders issued in favour of Petitioner by OGDCL vide letter dated 24<sup>th</sup> March, 2011 and service benefits from the date of two offer letters dated 8<sup>th</sup> June, 2009 and 24<sup>th</sup> March, 2011 respectively, as per the Sacked Employees Reinstatement Ordinance, 2009 and Sacked Employees Reinstatement Act, 2010.

2. Necessary facts as averred in the pleadings of the parties are that the Petitioner was appointed as Management Trainee on 03.03.1996 in

the Oil and Gas Development Corporation, which subsequently became a limited company (herein after referred to as "OGDCL"). However, after 15 months of employment the services of the Petitioner were terminated on 17.06.1997. However on 08.06.2009, the Petitioner was offered the post of management trainee at a consolidated emolument of Rs.20, 000/- per month by the OGDCL. It is asserted in the petition that, in response there to, the Petitioner accepted the terms of the offer letter for joining the Department.

3. Consequently, on 24.03.2011, the Petitioner was reinstated by the Respondent-Company as Assistant Material Officer in EG-II, in pursuance of the Sacked Employees Reinstatement Act, 2010 ("the Act") and was directed to report for duty within 90 days' of the issuance of the said letter and that on his failure to do so, the reinstatement letter stood cancelled. The Petitioner has stated that when the contents of the said letter came to his knowledge, he travelled from Malaysia to Islamabad and reported to HRD/Rectt/OGDCL. Vide letter dated 16.06.2011, the Petitioner was further directed to undergo medical examination. The contention of the Petitioner being that he was deliberately restrained from joining the duty whereas some other persons, who were medically unfit, approached the Chairman of Cabinet Sub-Committee and through him to gain employment with the Respondent department. The Petitioner claims that he also approached the Chairman Cabinet Sub-Committee for his reinstatement, as per the policy of the Government and upon his intervention a letter was issued from Establishment Division dated 03.09.2012 to the respondent company directing them to take the Petitioner on duty but he was not

allowed to join the duty and the Respondent-Company, vide letter dated 19.11.2012 informed him that his "request cannot be acceded to since it does not fall within the ambit of said Act." The Petitioner once again approached the Chairman Cabinet Sub-Committee, since the Respondent-Company was adamant not to allow the petitioner to join his duty inspite of the issuance of reinstatement letter, which letter also subsequently was cancelled by the respondent, hence this petition .

4. Mr. Ali Assadullah Bullo, learned counsel for the Petitioner has contended that the Petitioner was appointed as Management Trainee in OGDCL, and his service was terminated on 17.06.1997. He next contended that the Petitioner was offered to join in OGDCL vide letter dated 08.06.2009, which the Petitioner accepted and reported the respondent company's medical center Islamabad for medical examination and arranged his medical reports, which are available at pages 79 to 95. He stated that the petitioner was verbally asked to wait for the regular duty, but the waiting period, according to the learned counsel never ended. He next contended that the Petitioner was illegally stopped to join the respondent company, but subsequently the Petitioner was re-instated in service, as Assistant Material Officer in Executive Group-II with retrospective effect vide letter dated 24.03.2011. He next contended that the Petitioner was asked for medical examination vide letter dated 16.06.2011 and the petitioner reported to join the duty in time, but was kept on waiting without any rhyme or reason and finally he was informed through the refusal letter dated 19.11.2012 that the request of the petitioner cannot be acceded to, since it does not fall within the ambit of Act. He contended that the said refusal by the respondent company is

illegal and unjustified, compelling the petitioner to approach the Chairman Sub-Committee for redressal of his grievances but he could not succeed in convincing the respondent company to allow him to join the duty and finally cancellation of reinstatement letter dated 05.01.2012 was issued by the Respondent company, which act, on the part of the Respondent-Company is violative of Article 10-A of the Constitution. He added that under the Act, it was the responsibility of the Respondent Company to allow the petitioner to join the duty as they cannot refuse him to join the same, and that the said refusal has been made in violation of the Act which compelled the petitioner to file the instant petition for issuing directions to the respondent company to comply with the reinstatement orders issued in favour of the Petitioner. He lastly argued that the medical examination of the Petitioner had already been made hence, the Petitioner could not be required to go through the same process again.

5. Mr. S. Javed Iqbal, learned counsel for the Respondents No.2 to 4 has argued that the Petitioner joined OGDCL as Management Trainee in the year 1996 and his service was terminated on 17.06.1997. He added that in compliance of the Act, the Management of Respondent-Company reinstated as many as 322 sacked employees including 299 Management Trainee. Out of those 322 sacked employees, 24 reinstated employees, including the Petitioner, did not resume their duties within the statutory period of 90 days and the management in view of section 8 of the Act cancelled the re-instatement letters, including the reinstatement letter of the Petitioner vide letter dated 05.01.2012. He then contended that the re-instatement letter was conditional subject to the joining of duty within

a period of 90 days and upon the failure of the petitioner to act upon it the offer had become void. He further stated that the Petitioner was advised to report for medical examination at OGDCL Medical Center, F-8, Markaz, Islamabad, but the Petitioner neither resumed his duty within 90 days nor reported for his medical examination. Consequently, the said reinstatement letter of the Petitioner was cancelled on 05.01.2012. He next argued that the conduct of the Petitioner had remained negligent and he did not join the duty within the prescribed time, giving rise to a negative presumption compelling the respondent company to cancel his reinstatement letter under section 8 of the Act.

6. The counsel for the Respondent-Company emphatically averred that an offer was given to the petitioner vide letter dated 08.06.2009, but the petitioner did not join and responded. He submitted further that as far as letter dated 12.09.2012 is concerned, the Respondent No.1 was intimated that the request of the Petitioner cannot be acceded to as his case for reinstatement does not fall within the sphere of the Act. He finally argued that the Petitioner was not entitled to be reinstated in service under section 8 of the Act and the time of 90 days for joining the service, as provided under the law, cannot be condoned.

7. Mr. Muhammad Aslam Butt learned DAG representing respondent No.1 has adopted the point of view of the learned counsel for the Respondents No.2 to 4.

8. We have considered the contentions of the learned counsel for the Parties and have minutely gone through the material available on record with their assistance.

9. In the first place, we would like to examine the issue of maintainability of the instant Petition under Article 199 of the Constitution. A perusal of the pleadings and arguments extended by the learned counsel for the parties and Section 3 of Oil & Gas Development Corporation (Re-Organization) Ordinance, 2001, it revealed that the OGDCL got status of a company limited by shares with effect from the date of incorporation of the company with the Securities and Exchange Commission of Pakistan, under the Companies Ordinance, 1984 (XLVII of 1984). Section 2 (g) of Public Sector Companies (Corporate Governance) Rules, 2013 defines the company as under:-

- (g) *“Public Sector Company” means a company, whether public or private which is directly or indirectly controlled, beneficially owned or not less than fifty percent of the voting securities or voting power of which are held by the Government or any instrumentality or agency of the Government or a statutory body, or in respect of which the Government or any instrumentality or agency of the Government or a statutory body, has otherwise power to elect, nominate or appoint majority of its directors, and includes a public sector association not for profit, licensed under Section 42 of the Ordinance.”*

10. This Court in the case of Ramesh Kumar Ukrani vs. Federation of Pakistan (2016 CLC 1152) has maintained the Constitutional Petition against a Public Limited Company by placing reliance on the case of Ramna Pipe and General Mills (Pvt.) Ltd vs. Sui Northern Gas Pipe Lines (Pvt.) reported in 2004 SCMR 1274.

11. In view of the above discussion the Respondent-Company would be deemed as Government owned entity because the Government of Pakistan owns the majority of shares at 74%. The status of OGDCL can

ordinarily be regarded as a 'person' performing functions in connection with the affairs of the Federation under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution. Thus, the High Court has jurisdiction to interfere in the subject affairs of OGDCL under the Constitution. The test laid down by the Honorable Supreme Court in the case of Pakistan Defense Housing Authority & others vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707), is fully applicable in the present case. The Honorable Supreme Court while discussing status and the functions of various authorities held that **these are statutory bodies, performing some of the functions which are functions of the Federation State and through the exercise of public power, these bodies create public employments. These bodies are therefore "persons" within the meaning of Article 199(1)(a)(ii) read with Article 199(5) of the Constitution.** If their actions or orders passed are violative of the Statute creating those bodies or of Rules/Regulations framed under the Statute, the same could be interfered with by the High Court under Article 199 of the Constitution. (Emphasis added).

12. The OGDCL, mostly follows the policies laid down by the Government of Pakistan being a Public Limited Company, therefore, OGDCL is a body corporate performing functions in connection with the affairs of the State, which establishes control of Federation over the affairs of the Respondent-Company. The functions of Company have element of public authority therefore, the same are amenable to writ jurisdiction. In this regard guidance is also taken from the decision of Supreme Court in the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383). In this judgment, the Honorable Supreme

Court has held that two factors are most relevant i.e. the extent of financial interest of the State/Federation in an institution and the dominance in controlling the affairs thereof. On the same issue reliance is also placed upon the case laws decided by Honorable Supreme Court in Salahuddin v. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244), OGDCL etc v. Nazar Hussain etc (2010 SCMR 1559) and Sayed Tahir Abass Shah v. OGDCL etc (2012 PLC CS 885) wherein it has been held by the Honourable Apex Court, in the former citations, that the Oil and Gas Development Corporation Employees (Service) Regulation, 1994 have statutory force.

13. In the light of above dicta, we are of the view that the instant Constitutional Petition is maintainable against the Respondent-Company. On merits, the moot point involved in this petition is whether the present Petitioner can be re-instated in service of Respondent-Company under the provisions of the Act.

14. Firstly we would take up the plea of Respondent-Company that the service of the petitioner cannot be restored in view of the bar contained in Section 8 of the Act. For convenience Section 8 of the Act is reproduced as follows:-

***“8. Joining of duty by sacked employees—Sacked employee shall resume his duties within ninety days of the letter issued for his re-instatement or the day the sacked employee stands re-instated under the provisions of this Act.”***

15. We have carefully gone through Section 8 of the Act and examined the above arguments. In the reinstatement order dated 24.03.2011 there was clear direction that if the petitioner does not report for duty within



90 days of the issuance of the letter of re-instatement the same shall be treated as cancelled. The Petitioner has contended that he had joined his service within the stipulated time period of 90 days. Petitioner has admitted in paragraph-10 of the memo of Petition that he received reinstatement order dated 14.03.2011 directly at his residence in Karachi. And in those days, he was out of country and upon coming to know about the reinstatement order he approached the Respondent-Company for allowing him to join the duty. However, the said claim is contradicted by the Passport of the Petitioner annexed with the memo of Petition which reveals that the date of Petitioner's exit from Malaysia was 26.06.2011 whereas, the 90 days period started from the date of issuance of reinstatement letter viz. 24.3.2011 and expired on 24.06.2011. Therefore, it was impossible for the Petitioner to report for service within the stipulated time period of ninety days. As per the record, the Petitioner did not join the Respondent-Company within the stipulated time period and there is no provision in the Act to condone such delay in joining the service. Therefore we conclude that the Petitioner did not join the service within the statutory time period of 90 days.

16. Second point raised by the learned counsel for the Petitioner is that Petitioner was advised by the Respondent-Company to report to the Deputy Chief Admin Officer, Medical Center, Islamabad for his medical examination. To which the Petitioner replied that he has already undergone the Medical Examination and the he could not be required to go through the same process again.

17. The basic requirement for appointment in service is that **“the candidate must be in good mental and bodily health and free from any physical defect likely to interfere with the discharge of his duties”**. Whereas, in the instant case it is an admitted position that the Petitioner did not report for medical examination. It is well settled law that on entry into service the medical certificate of the fitness is the basic requirement which has to be produced for the purpose of joining. Furthermore, it is also an admitted position that there was a substantial gap of about 15 years between the previous medical examination of the Petitioner, if any and subsequent directions for his medical examination in the year 2011 and no premium could be given to the Petitioner on the ground that previously he was declared medically fit, though petitioner has admitted in the memo of petition that he was suffering from Hepatitis “C” and he underwent medical treatment. Hence, this plea of the Petitioner is also not tenable in the eyes of law. We are also not impressed with the contention of the learned counsel for the Petitioner that the Petitioner had already undergone the Medical Examination, although the Petitioner has not corroborated this claim with any documentary evidence.

18. Third point raised by the Petitioner is that he approached the Chairman, Cabinet Sub-Committee (regularization on contract/daily wages) and succeeded in getting directions for the Respondent-Company that he be taken on duty and the same should have been complied with by the Respondent-Company. However, this assertion of the Petitioner was clearly refuted by the Respondent-Company vide letter dated 19.11.2012 wherein it is mentioned that in the light of the Act, the

request of the Petitioner could not be acceded to as his case for reinstatement does not fall within the ambit of the said Act.

19. That under the Act the Sub-Committee (regularization of contract/daily wages employee) has no powers in the cases of reinstatement therefore the same could not be approached for the said purpose. Therefore, in our view the claim of the Petitioner was rightly rejected by the Respondent-Company.

20. We are of the view that the Petitioner has failed to make out a case for indulgence for this Court because, firstly the reinstatement order dated 24.03.2011 issued by the Respondent-Company in favour of the Petitioner was rightly cancelled on 05.01.2012 due to non-joining of the Petitioner within the statutory period of 90 days. Secondly, the Petitioner also failed to undergo medical examination as required under Rule 30 (5) of the Oil and Gas Development Corporation Employees (Service) Regulation, 1994.

21. In view of the facts and circumstances stated above the instant Petition is dismissed along with pending application(s) accordingly.

JUDGE

JUDGE