

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Syed Hassan Azhar Rizvi
Mr. Justice Adnan-ul-Karim Memon

C.P No.D-846 of 2015

CDR. (R) Mansoob Ali Khan.....Petitioner

Versus

Federation of Pakistan and othersRespondents

C.P No.D-1360 of 2015

Adil RashidPetitioner

Versus

Federation of Pakistan and othersRespondents

C.P No.D-2082 of 2015

Brigadier (Retd) Kamran Jalil.....Petitioner

Versus

Federation of Pakistan and othersRespondents

C.P No.D-6171 of 2016

Muhammad Ayub Khan.....Petitioner

Versus

Pakistan Telecommunication Company
Limited and anotherRespondents

C.P No.D-6546 of 2016

Bheru LalPetitioner

Versus

Pakistan Telecommunication Company
Limited and anotherRespondents

C.P No.D-284 of 2017

Roshan Ali DeroPetitioner

Versus

Federation of Pakistan and anotherRespondents

C.P No.D-499 of 2017

Inam HafizPetitioner

Versus

Pakistan Telecommunication Company
Limited and anotherRespondents

H.C.A No.D-348 of 2016

Pakistan Telecommunication
Company Limited and another.....Appellant

Versus

Muhammad Ayub KhanRespondent

H.C.A No.D-376 of 2016

Pakistan Telecommunication
Company Limited and another.....Appellants

Versus

Bheru LalRespondent

H.C.A No.D-149 of 2017

Pakistan Telecommunication
Company Limited and another.....Appellants

Versus

Inam Hafiz.....Respondent

Date of hearing 02.11.2017, 29.11.2017 & 30.11.2017

Mr. Ravi R. Pinjani Advocate for the Petitioners in C.P No.D-6171 & 6546 of 2016.

Mr. Mushtaque Hussain Qazi Advocate for the Petitioner in C.P No.D-284/2017.

Syed Ansar Hussain Zaidi and Masood Ahmed Bhatti Advocates for the Petitioner in C.P. No.D-499 of 2017 and for Respondent in HCA No. 149/2017.

Mr. Faisal Mahmood Ghani Advocate for Respondents in C.P. No. 6171 of 2016.

Mr. Abdul Salam Memon Advocate for the Petitioner in C.P. No.D-846 of 2015.

Barrister Murtaza Wahab Siddiqui for the Petitioner in C.P No. 1360 of 2015.

Mr. Basil Nabi Malik Advocate for Appellants in HCAs Nos. 348, 376 of 2016 and HCA No. 149 of 2017 and for the Respondents in C.P. No. 6546 of 2016.

Mr. Muhammad Arshad Khan Tanoli Advocate for Respondent /Port Qasim Authority in C.P. No.D-284 of 2017,C.P. No. D-846 of 2015,C.P. No. D-No. 1360 of 2015 and C.P. No. D-2082 of 2015

Mr. Shaikh Liaquat Hussain, Assistant Attorney General.

ORDER

ADNAN-UL-KARIM MEMON,J:- The above captioned matters pertain to common points of law and facts, therefore, we intend to decide the issue involved in the present proceedings by this common order.

2. Brief facts of the above referred matters are that:

i) Petitioner in C.P. No.D-846 of 2015 filed Civil Suit bearing No. 1084 of 2014 against Federation of Pakistan and others, for Declaration, Cancellation and Injunction and sought following relief(s).

- a) Declare that the Impugned Letters dated 16.04.2014, 14.05.2014, 18.06.2014 and 23.06.2014 to the Plaintiff is illegal, mala fide without jurisdiction, arbitrary has been issued to cause prejudice to the Plaintiff, is discriminate and of no legal effect and set aside the same.

The learned Single Judge (Original Side) vide order dated 11.02.2015 has passed the following order:-

“Learned counsel for defendant No.2 submits that defendant No.2 Port Qasim Authority against whom the plaintiff is seeking the relief being its employee enjoy statutory rules of service and as such suit in the present form is hit by recent pronouncement of Hon’ble Supreme Court wherein it has been observed that the suits filed by the employees of the corporation/statutory authority having statutory rules are to be referred to the learned Division Bench for adjudication in accordance with law. Accordingly, the plaintiff is directed to provide one more set of pleadings/annexures, it shall once such additional set is made available to the concerned branch it shall refer the matter to the concerned Writ Branch for its presentation before the learned Division Bench for appropriate orders.”

ii) Petitioner in C.P. No.D-1360 of 2015 filed Civil Suit bearing No. 1100 of 2014 against Federation of Pakistan and others for declaration cancellation and injunction and sought following relief(s).

- a) Declare that the Impugned Letters dated 18.06.2014 and 23.06.2014 to the Plaintiff is illegal, mala fide without jurisdiction, arbitrary has been issued to cause prejudice to the Plaintiff, is discriminate and of no legal effect and set aside the same.

The learned Single Judge (Original Side) vide Order dated 30.01.2015 has passed the following order:-

“Both the learned counsels submit that the defendant No.2 has statutory rules of service and as such both the employees and employer are bound by these rules. Hence in view of recent pronouncement the Hon’ble Supreme Court in Civil Review Petition No. 159 of 2013 whereby the suits of the employees of statutory

body having statutory rules are to be referred to the learned Division Bench for adjudication, this suit is also to be referred accordingly. Accordingly, learned counsel for the plaintiff is directed to file another set of pleadings along with annexures in the office. Once such are filed office is directed send this matter to the concerned writ branch for its presentation before learned Division Bench for appropriate orders.

iii) Petitioner in C.P. No.D-2082 of 2015 filed Civil Suit bearing No. 1096 of 2014 against Federation of Pakistan and others for declaration cancellation and injunction and sought following relief(s).

- a) Declare that the Impugned Letters dated 18.06.2014 and 23.06.2014 to the Plaintiff is illegal, mala fide without jurisdiction, arbitrary has been issued to cause prejudice to the Plaintiff, is discriminate and of no legal effect and set aside the same.

The learned Single Judge (Original Side) vide Order dated 13.02.2015 has passed the following Order:-

“Both the learned counsels agree that the rules of service of defendant No.2 are statutory and hence in terms of recent pronouncement of Hon’ble Supreme Court the matter is to be referred to the learned Division Bench for adjudication. Accordingly, the plaintiff is directed to file another set of pleadings along with annexures in the office. Once such set is received the office is directed to send it to the concerned writ branch for its presentation before learned Division Bench for appropriate orders.

iv) Petitioner in C.P. No.D-284 of 2017 filed Civil Suit bearing No. Nil of 2016 against Federation of Pakistan and others for declaration and permanent injunction and sought following relief(s).

- a) Declare that the Impugned posting order dated 22.04.2016, impugned order of inquiry dated 05.05.2016, impugned charge sheet dated 05.05.2016 and the impugned statement of allegations dated 05.05.2016 are coram non judice, arbitrary, contrary to law, illegal, unlawful, unconstitutional, mala fide, void ab initio and of no legal effect;

The learned Single Judge (Original Side) vide order dated 12.01.2017 has passed the following order:-

“In the circumstances, after hearing counsels by consent in terms of Para 158 of the judgment passed in Civil Review Petition No. 193 of 2013 by the Hon’ble Supreme Court I deem it appropriate to direct the plaintiff to provide one more set of the pleadings along with annexures to the office. Once such additional set is made available to the concerned branch, the Additional Registrar of the office shall then refer the matter to the writ branch for its presentation before the learned Division Bench as per roster for appropriate orders as required under the law for its treatment as writ petition under constitutional jurisdiction.

v) Petitioner in C.P. No.D-6171 of 2016 filed Civil Suit bearing No. 1030 of 2010 against PTCL and another for declaration, permanent injunction and damages and sought following relief(s).

a) That this Hon’ble Court would be pleased to declare that the Impugned order of removal from service dated 19.05.2010 is void-ab-initio and quash the same and reinstate the plaintiff in service with full back benefits; that in alternate this Hon’ble Court would be pleased to grant decree of damages in favour of Plaintiff to the tune of Rs. 26,086,121/- (Rupees Two Crore Sixty Lac Eighty six Thousand One hundred and Twenty one only) and defendants be directed to pay the same on the usual bank rate of interest from the date of filing of the suit till the actual amount is paid to the Plaintiff.

The learned Single Judge (Original Side) vide order dated 26.09.2016 has passed the following order:-

“I have heard the learned Counsel and perused the material available on record. This case is distinct and distinguished from the case of Anil Kumar in Suit No. 1029/10 as scrutiny has not been affected in this case. It is on the basis of scrutiny that the decision of either referring the matter to the Division Bench or its continuation would be effected. It seems that subsequent judgment of Hon’ble Supreme Court would hold the filed insofar as appreciation of law by earlier Benches are concerned. Any action on the basis of earlier appreciation of law which was reviewed cannot be considered to be a past and closed transaction. The judgment of the Hon’ble Supreme Court is a final judgment in this regard wherein the rules were considered as statutory. Since I intend to refer the matter to the Division Bench, I feel it necessary to keep this question open and alive since the defendant could raise such objections as to the maintainability of petition before the Division Bench and would not comment much about the applicability of the subsequent review judgment of Masood Bhatti case passed in Civil Review Petition No. 247/2011 to 249/2011 in

terms whereof rules were held to be statutory to enable the employees to initiate and file writ petition as to their terms and conditions of service. The plaintiff is directed to file another set of pleadings which may be sent to the concerned writ branch to be placed before the Division Bench by the concerned branch as per orders as required under the law in terms of judgment reported in 2015 SCMR 456.”

vi) Petitioner in C.P. No.D-6546 of 2016 filed Civil Suit bearing No. 1661 of 2010 against PTCL and another for declaration permanent injunction and damages and sought following relief(s).

- a) That this Hon’ble would be pleased to declare that impugned order of removal from service dated 19.05.2010 is void abinitio and quash the same and reinstate the plaintiff in service with full back benefits; that in alternate this Hon’ble Court would be pleased to grant decree of damages in favour of plaintiff to the tune of Rs. 27,419,641/- (Rupees Two Crore Seventy four Lac Nineteen thousand six hundred and forty one only and defendants be directed to pay the same on the usual bank rate of interest from the date of filing of the suit till the actual amount is paid to the plaintiff.

The learned Single Judge (Original Side) vide order dated 28.10.2016 has passed the following order:-

“Learned counsel for the plaintiff submits that earlier when the connected matter Suit No. 1030/2010 was fixed this application ought to have been disposed along with the application bearing CMA No. 7438/16 in the connected suit however it remained pending inadvertently. Both the learned Counsels submit that without prejudice to the rights of the parties in the connected suits as well as in this suit it is now agreed that the application be disposed of in terms of the order dated 26.09.2016 disposing of the earlier application bearing CMA No. 7438/16 in Suit No. 1030/2010. Order accordingly.

vii) Petitioner in C.P. No.D-499 of 2017 filed Civil Suit bearing No. 595 of 2011 against PTCL and another for declaration, permanent injunction and damages and sought following relief(s).

- a) That this Hon’ble Court be pleased to declare that the impugned order dated 07.02.2011 of compulsory retirement of the plaintiff is void abinitio and of no legal effect and set-aside the same and

reinstate the plaintiff with all the back benefits and continuity of service; that this Hon'ble Court be pleased to suspend and set aside the impugned order of compulsory retirement of the plaintiff dated 07.02.2011 and permanently restrain the defendants, their managers agents, employees or any other person on their behalf to give effect to the same.; that in alternative this Court be pleased to grant a decree of Rs. 35,191,721.00/- (Rupees Three crore, fifty one lac, ninety one thousand Seven hundred and twenty one only) in favour of the plaintiff and against the defendants and defendants be ordered to pay the same to the plaintiff.

The learned Single Judge (Original Side) vide order dated 19.01.2017 has passed the following order:-

“In view of above discussion and in my considered view this suit also falls in the second category and is to be heard and decided by a learned Division Bench of this Court in its Constitutional jurisdiction. Therefore the office is directed to place this case before a Division Bench of this Court for a decision in accordance with law, after notices to the parties.”

viii) PTCL and another impugned the order dated 26.09.2016 passed by the learned Single Judge in Suit Nos. 1030 of 2010 and Order dated 28.10.2016 passed in Suit No. 1661 of 2010 and Order dated 19.01.2017 passed in Suit No. 595 of 2011 in HCAs No. 348 of 2016, 376 of 2016 and 149 of 2017.

3. The office of this Court, in compliance of the orders passed by the learned Single Judge has assigned constitution petition numbers to all Civil Suits and the matters were fixed before this Court for hearing of main case on different dates.

Gist of the Arguments:

4. Mr. Ravi R. Pinjani learned counsel for the petitioners in C.P. No. D-6171 and 6546 of 2016 has supported the impugned orders passed by the learned Single Judge and argued that HCAs filed by the Respondent Company/PTCL against the orders passed by the learned Single Judge

are not maintainable in law, in view of the dicta laid down by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch and others vs. Province of Sindh (2015 SCMR 456); that PTCL is a statutory body created under section 34 of the P.T. (Re-Organization) Act, 1996, which has statutory rules of service, thus writ petition is maintainable under Article 199 of the Constitution of Islamic Republic of Pakistan 1973. Learned Counsel States at the bar that petitioners shall not press the claim of damages, if the petitions are allowed to be heard and decided by this Court. In support of his contention, the learned counsel has placed reliance upon the case of PTCL and others Vs. Masood Ahmed Bhatti and others (2016 SCMR 1362). He lastly prays for dismissal of the above referred HCAs.

5. Mr. Basil Nabi Malik learned counsel for the Appellant in HCA No. 348 of 2016, HCA No. 376 of 2016 and HCA No. 149 of 2017 and for Respondent in C.P. No. D-6546 of 2016 has contended that as per paragraph 158 of the judgment rendered by the Hon'ble Supreme Court in the case of Ali Azhar Khan Baloch supra, the learned Single Judge is not competent to refer the matter in question to this Court as he was not assigned the scrutiny matters by the Hon'ble Chief Justice of this Court in terms of the judgment passed in the case of Ali Azhar Khan Baloch (supra); that this Court has no jurisdiction to determine as to whether a conversion of the suit into Constitution Petition; that the orders passed by the learned Single Judge are in violation of the directives given by the Hon'ble Supreme Court in paragraph 158 of the case of Ali Azhar Khan Baloch (supra); that it is the mandate of the Hon'ble Chief Justice of this Court for constituting the Benches of this Court to hear and decide the

matters as per roster sitting and this Court has no power to convert a Civil Suit into a Constitution Petition; that the Appellant has impugned the Orders passed by the learned Single Judge in the above referred HCAs which need consideration by this Court as an Appellate Court and the matters after hearing the parties may be remanded to the learned Single Judge to decide the lis between the parties in accordance with Code of Civil Procedure; that in certain Civil Suits issues have been framed and matter is ripe for recording of evidence of the parties, therefore at this juncture, the learned Single Judge cannot order for transferring the matters to this Court for converting into Constitution Petitions; that the Respondents have also sought relief of damages in the Civil Suits that cannot be adjudicated in Constitutional Jurisdiction. Learned counsel in support of his contention has relied upon the case of Nasiruddin Ghouri Vs. Federation of Pakistan (2010 PLC 323), Pakistan Telecommunication Company Ltd Vs. Iqbal Nasir (PLD 2011 SC 132), Masood Ahmed Bhatti Vs. Federation of Pakistan (2012 PLC C.S. 470), Pir Bux Vs. the Chairman (PLD 1987 SC 145), Multiline Associate Vs. Arder Sheer Cowasjee (PLD 1995 SC 423). He lastly prays for allowing the HCAs and dismissal of Constitution Petition 6546 of 2016.

6. Mr. Faisal Mahmood Ghani learned counsel for the Respondents in C.P. No. D-6171 of 2016 has adopted the argument of Mr. Basil Nabi Malik advocate for the appellant in the above referred HCAs.

7. Mr. Masood Ahmed Bhatti and Syed Ansar Hussain Zaidi learned counsel for the petitioner in C.P. No. D-499 of 2017 and for the Respondent in HCA No. 149 of 2017 argued that the petition against

PTCL is maintainable and opposed the grant of relief sought by the PTCL in HCA No. 149 of 2017.

8. Mr. Mushtaque Hussain Qazi learned counsel for the Petitioner in C.P. No. D-284 of 2017, Barrister Murtaza Wahab learned counsel for the Petitioner in C.P. No. D-1360 of 2015 and Mr. Abdul Salam Memon learned counsel for the petitioner in C.P. No. 1084 of 2014 supported the impugned orders passed by the learned Single Judge in Civil Suits and argued that the petitions are maintainable against Respondent Port Qasim Authority which is a statutory body having statutory rules of service. They lastly pray for decision of the Constitution Petitions on merits. Learned Assistant Attorney General supports the imputed orders.

9. Mr. Muhammad Arshad Khan Tanoli learned counsel representing the Respondent Port Qasim Authority has candidly conceded that the Constitution Petitions can be heard and decided on merits by this Court.

10. We have heard learned counsel for the Petitioners, learned counsel for the Respondents and learned Assistant Attorney General and perused the material available on record minutely with their assistance as well as impugned orders passed by the learned Single Judge in respective civil suits and the decisions relied upon by them.

11. Upon perusal of the pleadings and arguments extended thereon by the learned counsel for both the Parties, three basic primordial questions require our determination, which are as follows:

i) Whether civil suits filed by the employees of statutory bodies relating to their terms and conditions of service inclusive the disciplinary proceedings, having statutory service rules can be converted into the constitution petitions and transmitted to be heard by a Division Bench in Constitutional jurisdiction treating them as constitutional petition for disposal in accordance with law?

ii) Whether a writ could be issued against the Respondent Port Qasim Authority under Article 199 of the Constitution?

iii) Whether “PTCL” is 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?

12. We would, first address the question formulated hereinabove relating to the conversion of Civil Suits into Constitutional Petitions and the maintainability of the instant Petitions under Article 199 of the Constitution.

13. To address the above proposition of law with regard to the Power to convert and or convert one kind of proceeding into another is always existed and can be exercised by the High Court not only at an advance stage in order to prevent injustice. No fetters or bar could be placed on the powers of High Court to convert one kind of proceeding into another and to decide the matter either itself in exercise of its jurisdiction or to order its transfer to another Court having jurisdiction or may remit it to Court/forum/authority having jurisdiction on merits. The High Court in number of cases converted appeals into revisions or vice versa or Constitution Petitions into appeals or revision and vice versa. Reference is made to the following case law:-In the case of Jane Margret William v. Abdul Hamid Mian (1994 SCMR 1555), Capital Development Authority v. Khuda Baksh and 5 others (1994 SCMR 771), Shams-ul-Haq and others v. Mst. Ghoti and 8 others. (1991) SCMR 1135), Muhammad Anis and

others v. Abdul Haseeb and others (PLD 1994 Supreme Court 539), Province of Sindh and another v. Muhammad Ilyas and others (2016 SCMR 189) Engineer Musharaf Shah v. Government of Khyber Pakhtunkhwa through Chief Secretary and 2 others (2015 PLC (C.S) 215), The Thal Engineering Industries. Ltd. v. The Bank of Bahawalpur Ltd and another (1979 SCMR 32), Karamat Hussain and others v. Muhammad Zaman and others (PLD 1987 Supreme Court 139), and in the case of Mian Asghar Ali v. Government of Punjab and others (2017 SCMR 118).

14. The Civil Suits filed by the aggrieved person against the statutory bodies with regard to their terms and conditions of service in the organization. They cannot invoke the jurisdiction of civil Court to seek enforcement of their terms and conditions of service. Section 9 of the Code of Civil Procedure provides complete mechanism relating to the Jurisdiction of Courts to try all civil suits unless barred by any law. The provision as contained in Article 212 of the Constitution ousts the jurisdiction of all other Courts in respect of matters of civil servants/ statutory bodies having statutory rules of service and in respect of matters relating to their terms and conditions of persons in the service of Pakistan, including disciplinary matters. Section 9 of Civil Procedure Code bars jurisdiction of the employees of statutory organization with regard to their terms and conditions of service and therefore a suit on the subject cannot be filed by an employee.

15. Second proposition with regard to the question of maintainability of Constitution Petitions against Statutory Bodies/Companies, reference

may usefully be made to the case of Ramna Pipe and General Mills (Pvt.) Ltd v. Sui Northern Gas Pipe Lines (Pvt.) reported in 2004 SCMR 1274. The Respondent-Company is indeed a Company which is performing function in connection with affairs of Federation and as such, is amenable to Constitutional jurisdiction of High Court. Mere fact that Company is a Limited Company, registered under the Companies Ordinance, 1984, limited by shares could not be made a ground to hold that Constitutional petition is not maintainable. A company registered under the Companies Ordinance funded by the Federal or Provincial Government and or is fully owned and controlled by the Federal or Provincial Government would be subject to the jurisdiction of the High Court and a writ is maintainable against them.

16. The third question raised by Mr. Faisal Mehmood Ghani and Mr. Basil Nabi Malik, learned counsel for the Respondent Company (PTCL) that Pakistan Telecommunication Corporation Limited is not under the control of the Federal Government and it cannot be construed as a person in terms of Article 199(5) of the Constitution. This contention of the learned counsel is misconceived as this question has been set at rest by the Hon'ble Supreme Court in the case of PTCL and others Vs. Masood Ahmed Bhatti and others (2016 SCMR 1362) the relevant portion of the judgment is as under:-

“The question whether the PTCL was a ‘person’ performing functions in connection with the affairs of the Federation within the contemplation of Article 199(5) of the Constitution was first dilated upon by this Court at great length in Muhammad Zahid’s case in which the plethora of case law was gone into and it was held that the employees of the erstwhile T&T Department transferred to the Corporation [PTC] under the relevant provisions of the Act of 1991 and later/on succeeded by the PTCL, discharging their functions and duties in the International Gateway Exchange as Operators were inducted permanently or

regularized subsequently under the rules necessarily related to one of the affairs of the Federation within the purview of provisions of Article 199 of the Constitution; hence similar duties and functions in the International Gateway Exchange being discharged by the private respondents as Operators could not be distinguished to say that the same did not relate to the affairs of the Federation though conferred upon the Corporation [PTCL] and finally upon the PTCL. It was further held that the Telecommunication undisputedly was the subject which dischargeable now through the PTCL; hence such entity involved in the same exercise of the sovereign powers, essentially fell within the connotations of the Constitution; accordingly, the grievance of the private respondents was amenable to the writ jurisdiction of the High Court. However, be that of a 'worker' or a 'civil servant' or a 'contract employee' had no nexus to the maintainability of the writ petition on the ground of discrimination meted out to them.

23. It may also be added here that as rightly held by a learned Division Bench of the High Court of Sindh in the judgment impugned in C.A. No. 883 of 2010 that the Federal Government has first sold 12% shares through public subscription and then it sold 26% all of B class shares to the EIP and the remaining 26% shares of PTCL were still owned by the Federal Government and as long as the Government owned majority of partially in the name of any other organization or entity be amenable to the jurisdiction of the High Court under Article 199 of the Constitution. in this view of the matter the argument that the PTCL was not a person within the meaning of Article 199 (5) of the Constitution is not tenable.

24. However, this Court in the case of *Principal Cadet College Kohat v. Muhammad Shoaib Qureshi* (PLD 1984 SC 170), while dealing with the question, as to whether in absence of any breach of statutory provision the employees of a corporation can maintain an action for reinstatement, held that where the conditions of service of an employee of a statutory body were governed by statutory rules, any action prejudicial taken against him in derogation or in violation of the said rules could be set aside by a writ petition; however, where his terms and conditions were not governed by statutory rules but only by regulations instructions or directions, which the institution or body, in which he was employed, had issued for its internal use, any violation thereof would not, normally, be enforced through a writ petition. Recently, this Court in *Tanweer-ur-Rehman's case* (supra), while dealing with issue of invoking of jurisdiction of the High Court under Article 199 of the Constitution by the employees of the PIAC, held that although the appellant-Corporation was performing functions in connection with the affairs of the Federation; but since the contracts executed by them with the employer, and not by the statutory rules formed under section 30 of the Pakistan International Airlines Corporation Act, 1956 with the prior approval of the Federal Government,, therefore, they would be governed by the principle of 'Master and Servant'. On the question whether in absence of any breach of statutory provision, the

employees of appellant could maintain an action for reinstatement etc., it was observed that the said question needed no further discussion in view of the fact that this Court was not of the opinion that if a Corporation was performing its functions in connection with the affairs of the Federation, the arrived persons could approach the High Court by invoking its constitutional jurisdiction. But as far as the cases of the employees regarding their individual grievances were concerned, it was held that they were to be decided on their own merits, namely if any adverse action was taken by the employer in violation of the statutory rules, only then such action would be amenable to the writ jurisdiction. Therefore, in absence of statutory rules, the principle of 'Master and Servant' would be applicable and such employees would be entitled to seek remedy permissible before the Court of competent jurisdiction. Similarly, in *M. Tufail Hashmi (supra)*, after discussing the aforesaid two judgments in detail, it was held that the employees of those organizations, which were performing functions in connection with the affairs of Federation, were eligible to approach the High Court under Article 199 of the Constitution if their services were governed by statutory rules. It was further held that since the employees of AIOU, SME Bank and Pakistan Steel Mills, who approached the Service Tribunal for redressal of their grievances, were not enjoying the protection of statutory rules, therefore the Service Tribunal had no jurisdiction to adjudicate upon such matters and they would be governed by the principle of 'Master and Servant.'

9. The same view was held in the case of *Pakistan Telecommunication Company Limited through General Manager and another v. Muhammad Zahid and 29 others (2010 SCMR 253)* which attained finality as review there against was also dismissed. We depart much less outright from the dicta of this Court laid down in the cases of *Principal Cadet College, Lohat v. Muhammad Shoaib Qureshi*, *Pakistan Red Crescent Society v. Syed Nazir Gillani*, *Executive Council, Allama Iqbal Open University, Islamabad through Chairman and another v. Muhammad Tufail Hashmi*, *Pakistan Telecommunication Company Ltd. through Chairman v. Iqbal Nasir and others*, *Pakistan International Airlines Corporation and others v. Tanveer-ur-Rehman and others*, *Oil and Gas Development Company and others v. Nazar Hussain and others*, *Syed Tahir Abbas Shah v. OGDCL through M.D Head Office, Islamabad and another*, *Muhammad Tariq Badar and another v. National Bank of Pakistan and others*, *Pakistan Telecommunication Employees Trust (PTET) through M.D Islamabad and others v. Muhammad Arif and others*, *Pakistan Telecommunication Corporation and another v. Riaz Ahmed and 6 others*, and *Divisional Engineer Phones, Phones Division, Sukkur and another v. Muhammad Shahid and others (supra)*.

17. As per the profile of PTCL and the dicta laid down by the Hon'ble Supreme Court in the case of *PTCL and others (supra)* as well as in the

case of Pir Imran Sajid and others vs. Managing Director/General Manager Telephone Industries of Pakistan and others (2015 SCMR 1257). The Respondent Company falls within the defined category of 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 intervene under Article 199 of the Constitution. The Hon'ble Supreme Court in the case of PTCL and others (supra) at paragraph No. 06 of the judgment has held as under:-

“A fleeting glance at the provisions quoted above would reveal that the departmental employees on their transfer to the Corporation became employee of the Corporation under section 9 of the Act of 1991 and then of the Company under section 35 of the Act of 1996. Their terms and conditions of service were fully protected under section 9(2) of the Act of 1991 and 35(2) of the Act of 1996. None of the terms and conditions could be varied to their disadvantage as is provided by the sections reproduced above. Not only that the legislature also bound the Federal Government to guarantee the existing terms and conditions of service and rights including pensionary benefits of the transferred employees. **Since they by virtue of the aforesaid provisions became employees of the Corporation in the first instance and then the Company, they did not remain Civil Servants any more. But the terms and conditions of their service provided by sections 3 to 22 of the Civil Servants Act and protected by section 9(2) of the Act of 1991 and sections 35(2), 36(a) and (b) of the Act of 1996 are essentially statutory. Violation of any of them would thus be amenable to the constitutional jurisdiction of the High Court.** Though in the cases of Pakistan Telecommunication Corporation and another v. Riaz Ahmed and 6 others and Divisional Engineer phones, Phones Division, Sukkur and another v. Muhammad Shahid and others (supra) it was held that the departmental employees on their transfer to the Corporation and then to the Company would continue to be the Civil Servants but this interpretation does not appear to be correct as they on their transfer became employees of the Corporation under section 9 of the Act of 1996. Retention of their status as civil servants is thus not supported by the words used in the aforesaid provisions. **Emphasis added**

18. The test laid down by the Honourable Supreme Court in the case of Pakistan Defence Housing Authority & others vs. Lt. Col. Syed Jawaid

Ahmed (2013 SCMR 1707), is also applicable in the case in hand. The Honorable Supreme Court while discussing status and the functions of various public authorities/ statutory bodies has held as under:-

"Keeping in view the Statutes which established and the functions of the appellants' authorities, and having considered in the light of "function test", we hold and declare 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)"

19. The aforementioned dicta is applicable on PTCL, which mostly follow the policies laid down by the Government of Pakistan being a Public Utility Company providing basic amenities to the public at large. Therefore, we have no hesitation in holding that PTCL is a body corporate performing functions in connection with the affairs of the State, and is amenable to judicial review under the Constitutional Jurisdiction. A reference can be made to the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383). In this case, 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 the controlling affairs thereof. In Salahuddin v. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244), the Honourable Supreme Court laid down similar test to assess whether a body or authority is a person within a meaning of Article 199 of the Constitution and observed:---

"The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving some exercise of sovereign or public power; whether the control of the organization vests in a substantial manner in the hands of Government; and whether the bulk of the funds is provided by the State. If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not." (Emphasis added)

20. In the light of the dicta laid down by the Honorable Supreme Court, we are of the considered view that the Respondent-Company falls within the definition of "person" as given under Article 199 (5) of the Constitution and is amenable to writ jurisdiction. Thus, in view of the above discussion, we do not find any substance in the arguments of the learned counsel for Respondent-Company that the jurisdiction of this Court is barred on the ground that the Respondent-Company is not a "person" as discussed above. To further strengthen the above proposition that has been answered in the case of Pakistan International Airlines Vs. Tanweer-ur-Rehman (PLD 2010 SC 676), the Hon'ble Supreme Court has endorsed the three pronged test, and therefore, we are fortified in our view that the instant Constitutional Petitions are maintainable against the Respondent-Company.

21. The arguments put forward by the learned counsel for the Respondent-Company that in the present Petitions relate to the service of the Petitioners, who admittedly, are not Civil Servants as defined under Section 2(1) (b) of Civil Servants Act 1973, but employees of a non-statutory Company, they having non-statutory rules of service thus cannot invoke the jurisdiction of Service Tribunal, the only remedy if any, lies by way of Civil Suit before the Civil Court pursuant to the Judgment

rendered in the case of Muhammad Mubeen us Islam's case (PLD 2006 SC 602) and Muhammad Idrees's case (PLD 2007 SC 681). However, the Full Bench of this Court in Dawood's case (supra) found a way out for the employees of a Statutory Corporation, Authorities, Bodies etc., who were proceeded under Removal from Service Ordinance, 2000 can invoke jurisdiction of High Court under Article 199 of the Constitution. The Hon'ble Apex Court in the case of DHA (supra), has held as under:

“57. The right of appeal is a substantive right. The respondents were deprived of the said right not by an legislative amendment, but by a judicial opinion and that too on the analogy of the law laid down in Mubeen us Islam's case (PLD 2006 SC 602) and Muhammad Idrees's case (PLD 2007 SC 681). In both these cases, the effect of the Ordinance 2000 and that it was a statutory intervention was not a moot point. It is well established that an appeal is continuation of trial. Would it be a fair trial if an accused is shorn off his right of appeal? Would the deprivation of right of appeal not amount to judicial sanctification of all the orders passed by the departmental authorities awarding various penalties to the employees and would it not be violative of the fundamental right to a “fair trial and due process” as ordained in Article 10A of the Constitution? Could the respondent-employees not invoke Article 199 of the Constitution to seek due compliance of the Ordinance, 2000 for ensuring fair trial and due process? If the constitutional scheme and the purpose of law are kept in view, the answer to all these queries has to be in the affirmation and the constitutional petitions filed by the respondents seeking enforcement of their said right would be maintainable.

60. It was not disputed before this Court by appellants learned counsel that the respondent-employees were “persons in corporation service” within the meaning of section 2(c) of the Ordinance, 2000 and except in the case of N.E.D University, they were proceeded against under the said law. **This was a ‘statutory intervention and the employees had to be dealt with under a said law. Their disciplinary matters were bang regulated by something higher than statutory rules i.e. the law i.e. Ordinance, 2000.** Their right of appeal (under section 10) had been held to be ultra vires of the Constitution by this Court as they did not fall within the ambit of the Civil Servants Act, 1973, [(in Mubeen us Islam's case (PLD 2006 SC 602) and Muhammad Idrees's case (PLD 2007 SC 681)]. They could in these circumstances invoke constitutional jurisdiction under Article 199 of the Constitution to seek enforcement of their right guaranteed under Article 4 of the Constitution which inter alia mandates that every citizen shall be dealt with in accordance with law. The

judgment of this Court in Civil Aviation Authority (2009 SCMR 956) supra is more in consonance with the law laid down by this Court and the principles deduced there from as given in para 50 above.”

22. So far as the maintainability of the instant petitions against Respondent port Qasim Authority is concerned, which is a statutory body established under the statute. Undoubtedly, the Port Qasim Authority Employees Service Regulations, 2011 are statutory service Rules and admittedly the same were framed by the Board of Directors of Port Qasim Authority with the prior approval of the Federal Government, pursuant to Section 51 of the Port Qasim Authority Act No. XLIII of 1973. For the aforesaid reason, we are fortified by the view enunciated by the Hon’ble Supreme Court in the case referred to hereinabove.

23. To sum up the matter in hand and after seeking guidance from the decision rendered by the Hon’ble Supreme Court in the case of Muhammad Akram Vs. DCO Rahim Yar Khan and others (2017 SCMR 56). We are of the considered view that the Courts are sanctuaries of justice and in exercise of authority to do ex-debito justitiae, that is to say remedy a wrong and to suppress a mischief to which a litigant is entitled. No fetters or bar could be placed on the High Court to convert and treat one kind of proceedings into another kind and proceed to decide the matter either itself as provided in the constitution or transfer to any other court having jurisdiction or remit to the competent authority/forum or Court for decision on merits.

24. The case law cited by the learned counsel for the Respondent-Company is distinguishable on the facts and circumstances of the case in hand.

25. For the reasons given in the aforesaid judgments, we are of the view that these petitions are maintainable under Article 199 of the Constitution.

26. In the light of above facts and circumstances of the case the findings given in the preceding paragraphs, HCA No. 348 of 2016, 376 of 2016 and HCA No. 149 of 2017 filed by PTCL/Respondent Company have become infructuous. The question of law raised in the above matters is answered accordingly. Office is directed to place these matters before the concerned Bench according to the roster, for decision on merits

JUDGE

JUDGE