

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No. D –6046 of 2017

Ghulam Murtaza Daudpoto

Versus

Province of Sindh and 05 others

Date of hearing & order: 14.10.2020

Mr. Muhammad Aqil Awan, advocate for the petitioner.

Barrister Zameer Ghumro for respondents 2 & 3.

Mr. Shakeel Ahmed, advocate for the respondent No. 4.

Mr. Ali Safdar Depar, Assistant Advocate General, Sindh.

ORDER

ADNAN-UL-KARIM MEMON, J. In this petition, the petitioner has impugned his termination order dated 25.8.2017 issued by the Sindh Tourism & Development Corporation Limited (STDCL).

2. Brief facts of the case are that the petitioner was initially appointed in a project titled as Promotion of Tourism in Sindh and Participation at Abroad vide office letter dated 12.02.2012 on a contract basis for two (02) years and the same was extended for one (01) year. After promulgation of the Sindh (Regularization of Adhoc and Contract Employees) Act, 2013 (*henceforth* Act-2013), petitioner's services were regularized on 08.5.2014 with effect from the date of promulgation of the Act-2013, on the post of Manager (Publicity and Promotion) BPS-17 in respondent-corporation. However, later on, the petitioner's services were dispensed with vide office memorandum dated 25.08.2017. Hence, the instant petition filed on 11.09.2017.

3. Mr. Muhammad Aqil Awan, learned counsel for the petitioner, has argued that the instant petition is maintainable against the respondent-corporation which is state enterprise ; the Government of Sindh owns the majority shares, and the same falls within the definition of "person" under Article 199 (1) (a) (ii) read with Article 199(5) of the Constitution. Thus, this Court has jurisdiction to exercise judicial powers in the affairs of respondent-corporation. He further maintains that the project known as 'Promotion Tourism in Sindh and Participation at Abroad' had been taken over by the Government of Sindh's

department i.e. Sindh Tourism & Development Corporation Limited ; and, that the petitioner was working on a contract basis and subsequently regularized against the post of Manager (Publicity and Promotion) BPS-17 and promoted in BPS-18. He further maintains that the respondents abruptly dispensed with petitioner's services vide impugned notification dated 25.8.2017. He states that the petitioner performed services for a considerable period, therefore, has vested right to be reinstated in service / regularized. In support of his contentions, he relied upon the cases of Pakistan Defence Officers Housing Authority vs. Col. Javed Ahmed, **2013 SCMR 1707**. Syed Faisal Ali and 16 others vs. Federation of Pakistan and 04 others, **2019 PLC (C.S) 751**, Kamran Ahmed Mallah and others vs. Federation of Pakistan and others, **2019 PLC (C.S) 41**, and Zafar Iqbal Zahid and 09 others vs. Federation of Pakistan and 05 others, **2019 PLC (C.S) 882**.

4. Barrister Zameer Ghumro, learned counsel representing respondents 2 and 3, has supported the impugned notification and argued that the instant petition is not maintainable against the respondent-corporation under the law. He further argued that the dispute between the parties related to contract employment. This Court has in various pronouncements settled the law that a contract employee of a non-statutory entity is debarred from approaching this Court in constitutional jurisdiction. The only remedy available to a contract employee is to file a suit for damages alleging breach of contract or failure thereof. In support of his contention, he relied upon the case of Syed Nazir Gilani V/S Pakistan Red Crescent Society & another **2014 SCMR 982** and Ministry of IPC through Secretary & others V/S Arbab Altaf Hussain & others **2014 SCMR 1573**.

5. Mr. Shakeel Ahmed, learned counsel representing respondent No. 4, has supported the stance of learned counsel for respondents 2 and 3 and has raised the identical question of maintainability of the instant petition. He further argued that the impugned termination order is well-reasoned based on settled principles of law and the conclusion drawn by the respondent-corporation is duly supported by the record. In support of his contention he relied upon the case of Pakistan Telecommunication Company Ltd. V/S Iqbal Nasir & others **PLD 2011 SC 132**, and Col. Shah Sadiq V/S Muhammad Ashiq & others **2006 SCMR 276**.

6. We have heard learned counsel for the parties on the point of maintainability of this petition, perused the material available on record and case-law cited at the bar.

7. The respondent-corporation is a non-statutory entity. The Sindh Tourism & Development Corporation Limited's regulations / service rules provide that these are non-statutory rules of service containing the instructions for internal control and management of the employees of the respondent-corporation.

8. It is an admitted position that terms and conditions of the employees of respondent-corporation are not governed by statutory rules. In such a situation, the relationship between respondent-corporation and its employees is that of "*Master and Servant*", therefore, the constitutional jurisdiction of this Court cannot be invoked. The same principle has been reiterated in the case of *Pakistan International Airline Corporation vs. Aziz-ur Rahman Chaudhary and others*, **2016 SCMR 14**.

9. We are cognizant of the fact that in the case of *Kamran Ahmed Mallah* and *Syed Faisal Ali* as discussed supra, the objection about the maintainability of the petitions was rejected by this Court on the premise that petitioners were seeking declaration to the effect that their services may be regularized and not enforcement of the Service Rules. So far as the case of *Zafar Iqbal Zahid* is concerned, the petitioners in the said petition sought reinstatement in service under the Sacked Employees (Reinstatement) Act, 2010, which was a statutory dispensation of service. It is well-settled proposition of law that regularization of service is not a part of expression "terms and conditions of service". On the aforesaid proposition, we are fortified with the decision rendered by the Hon'ble Supreme Court in the case of *M/s Pakistan State Oil Company V/S Bakht Siddiq and others* **2018 SCMR 1181**. However, in the present matter the petitioner is seeking reinstatement of his service which is part of terms and conditions of service of a non-statutory entity having no statutory rules of service, for which the Hon'ble Supreme Court in its various pronouncements has held that non-statutory rules of service cannot be enforced in writ jurisdiction. On the similar proposition, this Court vide judgment dated 30.03.2017 passed in the case of *Dr. Amir Bakhsh & others V/S Federation of Pakistan & others* **2018 PLC CS 398** reiterated the said proposition and the same was maintained by the Hon'ble Supreme Court in CPLA No.1772 of 2017.

10. That in view of the following judgments of the Hon'ble Supreme Court of Pakistan, there is no occasion of detailed discussion by us on the question of maintainability of the instant Petition:

- i. Government of Balochistan V/S Dr. Zahida Kakar and 43 others (2005 SCMR 642)
- ii. Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others (PLD 2010 SC 676)
- iii. Federation of Pakistan v. Muhammad Azam Chattha (2013 SCMR 120)
- iv. Muzafar Khan & others V/S Government of Pakistan & others (2013 SCMR 304)
- v. Abdul Wahab and others v. HBL and others (2013 SCMR 1383)
- vi. Pakistan Defence Officers Housing Authority vs. Col. Javed Ahmed (2013 SCMR 1707)
- vii. PIA Corporation v. Syed Suleman Alam Rizvi (2015 SCMR 1545)
- viii. Pakistan International Airline Corporation Vs. Aziz-ur Rehman Chaudhary and others (2016 SCMR 14)
- ix. Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others (2017 SCMR 2010)
- x. Pakistan International Airlines Corporation & another vs. Zaeem Aziz Qureshi another (2019 PLC (C.S) 194)
- xi. Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others (2019 SCMR 278)
- xii. Qazi Munir Ahmed Versus Rawalpindi Medical College and Allied Hospital through Principal and others (2019 S C M R 648)
- xiii. Province of Punjab through Secretary Agriculture Department, Lahore, and others Vs. Muhammad Arif and others (2020 SCMR 507).
- xiv. Miss Naureen Naz Butt vs Pakistan International Airlines and others (2020 SCMR 1625).

11. Learned counsel for the petitioner while arguing the case has stressed that in view of the judgment of the Hon'ble Supreme Court given in the DHA Case (2013 SCMR1707), regardless of whether rules are approved by the Government or not, if the authority is a Government-owned organization and there is a violation of statute / law, the same can be enforced through constitutional jurisdiction. However, he was unable to convince us that the petition is maintainable in spite of the admitted position that the respondent is a non-statutory entity having non-statutory rules of service.

12. The disciplinary matters fall within the expression 'terms and conditions of service' which in this case are non-statutory rules of service. Hence, the same cannot be called into question within the ambit of constitutional jurisdiction of this Court. Our view is supported by the latest decision rendered by the Honorable Supreme Court in the case of Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals , **2019 SCMR 984**.

13. In view of the above legal position of the case, the instant constitution petition is held to be not maintainable under the law, hence is dismissed along with the listed application(s) with no order as to costs.

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