

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

**Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Adnan-ul-Karim Memon**

C.P. No. D- 521 of 2017

Muzafar Ali,

Petitioner through:

Mr. Ali Asadullah Bullo advocate

Federation of Pakistan

Through:

Mr. Muhammad Nishat Warsi DAG

Printing Corporation of Pakistan

and another through:

Muhammad Arif Baloch advocate

C.P. No. D- 7140 of 2016

Muzafar Ali Chandio,

Petitioner through:

Mr. Ali Asadullah Bullo advocate

Federation of Pakistan

Through:

Mr. Muhammad Nishat Warsi DAG

Printing Corporation of Pakistan

and another through:

Muhammad Arif Baloch advocate

Date of hearing:

02.09.2019

Date of order:

02.09.2019

ORDER

ADNAN-UL-KARIM MEMON, J. Both the above referred Constitutional Petitions are being disposed of by this common order as the issues raised are similar in nature.

2. The petitioner has assailed the order dated 25.01.2017 passed by the Respondent-Printing Corporation of Pakistan (Pvt.) Ltd. (*herein after referred to as "PCP"*), whereby major penalty of compulsory retirement from service has been imposed upon him, without undertaking the disciplinary proceedings as required under the law.

3. We asked the learned Counsel for the Respondent-Corporation whether petitioner, before imposition of major penalty of compulsory retirement from service, was heard as provided under the law. He replied that petitioner stood retired from Service in the light of Rule 10 (v) of the Printing Corporation of Pakistan Employees Service Rules, 1977. He next submitted that PCP is a private limited company incorporated under the Companies Act, 1913 (now the

Companies Ordinance, 1984) managed by an autonomous Board of Directors for policy guidelines and overall control under the provisions of Companies Ordinance, 1984 and has its own Memorandum and Articles of Association and is engaged in printing of Government publications. He next contended that PCP does not perform functions connected with the affairs of Federation, Province or Local Authority. According to him, the disputed facts involved in the instant petition require recording of evidence, which cannot be done in a Constitutional Petition. In addition, the applicable PCP Service Rules-1977 are not statutory and the Petitioner is not covered by Section 2(1) (b) of Civil Servant Act, 1973, as such the relationship between "PCP" and the Petitioner is that of "master and servant". The learned Counsel further stated that services of the petitioner were terminated and subsequently he was reinstated and finally major penalty of compulsory retirement was imposed upon him; that the Respondent-Corporation is fully empowered to deal with his case in accordance with their own service rules; hence, the petitioner cannot invoke jurisdiction of this Court under Article 199 of the Constitution.

4. Mr. Ali Asadullah Bullo, learned Counsel for the petitioner refuted the claim of the Respondents and contended that the impugned penalty imposed by the respondents was issued without fulfilling codal formalities; that during the pendency of the aforesaid petition, the Respondent-Corporation terminated the service of the petitioner vide order dated 01.12.2016 and the petitioner instituted contempt proceedings against the PCP; that this Court vide order dated 23.12.2016 disposed of the petition bearing No.D-6519 of 2016 with direction to the Respondent-Corporation to withdraw the termination order and issue fresh show cause notice to the petitioner so as to provide him an opportunity of hearing. However, the petitioner was suspended from the service by the respondents vide letter dated 26.12.2016 and petitioner assailed the suspension order by instituting another petition No.7140/2016 before this Court and the suspension order was suspended by this Court vide order dated 29.12.2016. The petitioner was finally compulsorily retired from service vide order dated 25.01.2017 and being aggrieved by and dissatisfied with his compulsory retirement from service filed the instant

petition bearing No.521/2017 before this Court and this Court vide order dated 27.01.2017 suspended the operation of the order dated 25.01.2017, whereby he was compulsory retired. Respondent- Corporation being aggrieved by and dissatisfied with the order dated 27.01.2017 called in question the same by filing Civil Petition No.2606/2018 before the Hon'ble Supreme Court, which was too dismissed vide order dated 09.07.2018 being time barred by 443 days; that the Respondent No.3 has not stopped here and acted with malafide intention by imposing penalty of compulsory retirement of the petitioner from service; that chain of the proceedings clearly demonstrates that the Respondent No.3 has acted with malafide intention against the petitioner, which is violative of law and has no legal sanctity. Learned Counsel states that the Respondent No.3 is at the verge of retirement i.e. age of superannuation 60 years and aforesaid action is unjustified and caused prejudice to the petitioner.

5. Today, Mr. Muhammad Arif Baloch, learned Counsel representing the Respondents No.2 and 3 raised the question of maintainability of the instant petition on the premise that the rules of the Respondents-Corporation are not statutory rules; hence, the captioned petition is not maintainable. He further stated that office order dated 25.01.2017 has been issued in pursuance of Rule 10(5) of Rules 1977; that the Competent Authority has compulsory retired the petitioner in the line of length of service of the petitioner i.e. 20 years, thus no illegality has been committed. He lastly prays for dismissal of the instant petition.

6. Learned DAG has supported the stance of the learned Counsel for the Respondent-Corporation.

7. Mr. Ali Asadullah Bullo, learned Counsel for the petitioner in rebuttal has argued that the instant petitioned is maintainable in the light of order dated 23.12.2016 passed by this court in C.P No.6519 of 2016 whereby the aforesaid petition was disposed of consequently termination from service order was set-aside; that the respondents have undertaken the fresh disciplinary action against the petitioner in violation of Article 10-A of the Constitution, thus the captioned petition is maintainable. At this juncture, we confronted him with service rules of the Respondent-corporation being non-statutory, then how the service issues of the

petitioner can be thrashed out in writ petition. He argued that the Respondent-Corporation is government owned and controlled corporation, therefore this petition is maintainable.

8. We have noticed that the order dated 23.12.2016 was passed with the consent of the parties, therefore the Petitioner cannot rely upon the order dated 23.12.2016 passed by this Court. The learned Counsel for Petitioner failed to refer any Judgment of this Court, which had allowed the petition of the petitioner on merits. The consent order obviously cannot be cited as precedent, as observed by the Hon'ble Supreme Court of Pakistan Vide judgment dated 01.04.2015, in the unreported case of Muhammad Arif & others in Civil Petition No. 186-K of 2013.

9. We have heard the learned Counsel for the parties on the point of maintainability of the instant petition and have perused the material available on record. The case of the petitioner is that the Respondents have some personal grudge against the petitioner, therefore, he has been penalized from time to time and finally he was compulsory retired from the service by the Respondent-Corporation vide their letter dated 25.01.2017.

10. Looking to legal and factual aspects, we feel that following questions require consideration:-

- (i) **Whether P.C.P. Employees -Service Rules, 1977 framed pursuant upon section 6 of Pakistan Essential Services (Maintenance) Act, 1952, shall remain operative for regulating terms and conditions of petitioner's service or other employees of the Corporation; despite the fact that Pakistan Essential Services (Maintenance) Act, 1952, has not been extended to the P.C.P. beyond April, 1995?**
- (ii) **Whether in the peculiar circumstances and nature of controversy raised between the parties, petition for mandamus is maintainable against the impugned order?**

11. The status of Printing Corporation of Pakistan (Pvt.) Limited (PCP) is that it was incorporated on January 01, 1969 as a private limited Company under the Companies Act 1913 (previously Companies Ordinance 1984). The Corporation is principally engaged in the printing of Government publications and to fulfill the following main objectives:-

- i) To acquire and undertake the business, property and assets and liabilities of all or any of the Government Printing Presses and to reorganize them, operate, manage and run them as commercial printing houses and undertake the government printing work.
- ii) To undertake printing and publishing of text books.

12. The issue of maintainability of the captioned Constitutional Petition is involved in the present proceedings in view of the decisions rendered by the Honorable Supreme Court of Pakistan in the cases of *Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others* (PLD 2010 SC 676), *Abdul Wahab and others v. HBL and others* (2013 SCMR 1383), *PIA Corporation v. Syed Suleman Alam Rizvi* (2015 SCMR 1545), *Pakistan International Airline Corporation Vs. Aziz-ur Rehman Chaudhary and others* (2016 SCMR 14), *Pakistan Defence Housing Authority vs. Mrs. Itrat Sajjad Khan & others* (2017 SCMR 2010), *Pakistan International Airlines Corporation & another vs. Zaeem Aziz Qureshi & another* [2019 PLC (C.S) 194] and *Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others* (2019 SCMR 278), as such we would confine to that issue only and refrain ourselves to dilate upon the merits of the case on the issue involved in this petition, if we find this Petition is not maintainable under the law.

13. To answer the aforesaid proposition of law, the latest judgment passed by the Honorable Supreme Court in the case of *Pakistan Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others* (2019 SCMR 278), on the issue of maintainability of the Writ Petition, against the corporation, before this Court, has provided guiding principle in the aforesaid matter. In our view, once the findings recorded by the Honorable Supreme Court on the aforesaid issue cannot be assailed by resorting to filing of Writ Petition before this Court under Article 199 of the Constitution.

14. On the issue involved in the present proceedings, the decision of the Honorable Supreme Court in the case of *PIA Corporation Vs. Syed Suleman Alam Rizvi* (2015 SCMR 1545), is very clear in its terms.

15. Much emphasis has been laid on the issue of non-statutory rules of service of the Respondent-PCP. We have noticed that the Respondent-PCP have framed the service rules 1977 vide SRO No. 170 (1) 78 dated 12th February, 1978 with the application of Section 6 of the Pakistan Essential Service (Maintenance) Act, 1952. The aforesaid Service Rules are non-statutory rules of service as the same have been framed in connection with the agreement between the Printing Corporation of Pakistan and four Unions.

16. To elaborate on the issue of non-statutory rules of service, broadly the salient characteristics of statutory rules are threefold:-

- a) *Rules or Regulations are framed by statutory or public body;*
- b) *They are framed under the authority or powers conferred in the statute; and*
- c) *They have statutory Governmental approval or statutory sanction.*

17. The question as to which rules or regulations are statutory and how they affect the rights of the employees, in this respect we seek guidance from the Judgments rendered by the Hon'ble Supreme Court of Pakistan in the cases of *Shafique Ahmed Khan and others versus NESCOM through Chairman Islamabad and others* (PLD 2016 SC 377) and *Muhammad Zaman etc. versus Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad* (2017 SCMR 571). The Judgments passed by the Honorable Supreme Court as discussed supra provide complete mechanism on the aforesaid proposition of law, which requires no further discussion on our part.

18. It is an established fact that when the matters pertaining to the terms and conditions of service of Employees of Respondent-PCP, Constitutional jurisdiction of this Court cannot be invoked, on the premise that the terms and conditions of the employees of the Respondent-PCP are not governed by any Statutory Rules and the relationship between the Respondent-PCP and its employees is that of "Master and Servant". The same principle has been reiterated in the case of *Pakistan International Airline Corporation Vs. Aziz-ur Rehman Chaudhary and others* (2016 SCMR 14).

19. In our view, the case of the Petitioner is fully answered by the aforesaid judgments of the Honorable Supreme Court. The Printing Corporation of Pakistan Employees Service Rules, 1977 also provides that these are non-statutory rules of service. We may also state that where conditions of service of employees are not regulated by a statutory provision, then such employees are to be governed by the principle of "Master and Servant" as discussed supra. As the terms and conditions of employment in PCP are admittedly not governed by any statutory provision and the employees are amenable to the Rule of "Master and Servant", therefore, if there is any violation of the breach of the terms and conditions of the service, the same is

not enforceable under Article 199 of the Constitution of Islamic Republic of Pakistan 1973.

20. The learned Counsel for the Petitioner while arguing the case has stressed that in view of the Judgment of the Hon'ble Supreme Court in DHA Case (2013 SCMR1707), regardless whether rules are not approved by the Government, if the authority is Government owned organization and there are violation of statute/law, the same can be enforced through constitutional jurisdiction and rule of Master and Servant has been diluted. We asked the learned counsel which law has been violated; he is unable to reply the query.

21. To appreciate the aforesaid contention of the learned counsel for the petitioner. We have to see as to whether there is any violation of Statutory Law, compelling the Petitioner to invoke the Constitutional Jurisdiction of this Court?

22. We have scanned the file, but could not find any violation of statutory rules and procedures by the Respondents warranting interference by this court. In our view, the disciplinary matters fall within the expression "Terms and Conditions of Service" and admittedly, the same are non-statutory rules of service, which is an internal matter of service of the Respondent-Corporation, which in our view cannot be thrashed out in a Writ Petition.

23. For the aforesaid reasons, we are of the view that the relationship of `Master and Servant` exist between the Petitioner and the Respondent-Corporation, hence, his grievance pertains to the terms and conditions of service which cannot be enforced through a Writ. As to the Service Rules-1977, these are non-statutory and mere instructions for internal control and management of the employees of the Respondent-PCP. The Respondent-PCP is a non-statutory entity and Petitioner is not governed under statutory rules of service, hence his terms and conditions of service are not enforceable through Constitutional Petition. The case of Petitioner is neither covered under enforcement of terms of Removal from Service Ordinance-2000 nor is violation of Rule of natural justice attracted in absence of infringement of any vested rights of the Petitioner or any disciplinary proceedings undertaken against him under any statutory rules of service. On the aforesaid proposition, we are fortified with the decision of the Honorable Supreme Court in the case of

Printing Corporation of Pakistan versus Province of Sind and others (PLD 1990 Supreme Court 452).

24. We, thus, are of the view that it is for the Respondent-PCP to place its employees in accordance with its Service Rules, which is an internal matter of the Respondent-corporation, thus does not need any Constitutional interference. At this juncture, 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).

25. In view of the above legal position of the case, the instant Constitution Petitions are not maintainable in law, hence are dismissed along with listed application(s).

JUDGE

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