

IN THE HIGH COURT OF SINDH KARACHI

Present

Mr. Justice Muhammad Shafi Siddiqui

Mr. Justice Adnan-ul-Karim Memon

C.P No.D-7655 of 2017

Syed Kashif Ali VERSUS **Federation of Pakistan & 02 others**

Date of hearing: 23.09.2019

Date of short order: 23.09.2019

Mr. Muhammad Khan Lakho, Advocate for Petitioner.

Ch. Muhammad Ashraf Khan, Advocate for Respondents No.2 to 3.

Mr. Muhammad Nishat Warsi, DAG.

J U D G M E N T

ADNAN-UL-KARIM MEMON-J: Mainly, the Petitioner seeks disposal of the instant Petition, with the prayer to set aside the disciplinary proceedings initiated against him by the Pakistan State Oil Company Limited [“Respondent-Company”], on account of Misconduct which finally culminated in his termination from service on 02.6.2017.

2. At the outset, we asked from the learned Counsel to satisfy this Court with regard to maintainability of the instant Petition on the premise that Respondent-Company is a non-statutory company, having no statutory rules of service; hence the service matter of Petitioner is to be governed by the principle of `Master` & `Servant`.

3. Mr. Muhammad Khan Lakho, learned counsel for the petitioner, in reply to the query, has submitted that this Petition is maintainable under the law and invited our attention to the various decisions rendered by this Court as well as by the Honorable Supreme Court. He further pointed out that in the said decisions, the principle has been

settled that Pakistan State Oil Company Limited is a `person` within the meaning of Article 199(1) (a) (ii), read with clause (5) of the Constitution, hence, Petition against Respondent-Company is maintainable. There is no cavil to the aforesaid proposition set forth by the Honorable Supreme Court in the Case of Pakistan State Oil Company Limited vs. Siddique Bakht and others [2018 SCMR 1181]. However, we may observe that in the aforesaid matter; the issue of Regularization of service of the employees of Respondent-Company was involved and the same is not part of the terms and conditions of service of the employees for which there has to be some statutory rules but it depends upon the length of service of the said employee. The question involved in the present proceedings however is altogether different. Learned Counsel attempted to convince us that the Petitioner was dismissed from service without providing ample opportunity of hearing to him, therefore, he intends that at least directions may be issued to the Respondent-Company to conduct a fresh and impartial inquiry into the allegations of his Misconduct; that the Respondent-Company had transgressed the basic spirit of law, while exercising the powers not vested in them and this court is empowered under the Constitutional jurisdiction to protect the rights of any individual regarding fair trial as guaranteed under Articles 4, 10-A, 11 of the Constitution as well as Section 24-A of the General Clauses Act, 1897; that the penalty of dismissal from service imposed upon the Petitioner was unjustified; that under the similar circumstances this Court has allowed petition against Respondent-Company; that Respondent-Company is a public utility company providing basic amenities to the public at large, therefore, is a body Corporate performing functions in connection with the affairs of the State and therefore, amenable to the Constitutional jurisdiction of

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this Court; that the disciplinary proceedings merged into termination from service of the petitioner can be called in question under Article 199 of the Constitution; that when any action of the public functionaries is based on malafide, coram-non-judice or without jurisdiction the same could be assailed through a Constitutional Petition by an aggrieved person; that the fundamental right of the petitioner as guaranteed by Article 10-A of the Constitution had been violated and he had been terminated from service without resorting with the principles of due process of law, and this court can take cognizance under the Constitution; that the larger Bench of the Hon'ble Supreme Court has already held that the Constitutional Petition is maintainable against Pakistan State Oil Company Limited; that the concept of Master and Servant cannot be stretched to confer unbridled powers to the Respondent-company so as to act whimsically, capriciously or in violation of the principles of natural justice and well settled norms of law and justice; that there was no Misconduct on his part and therefore, the Petitioner should not have been terminated from service on the purported ground of `Misconduct`, therefore, the impugned termination order dated 2.7.2017 is liable to be set aside. He lastly prayed for allowing the instant petition. The learned Counsel, in support of above contentions has also placed reliance in the case of PAKISTAN DEFENCE OFFICERS' HOUSING AUTHORITY and others v. Lt. Col. Syed JAWAID AHMED and other connected appeals [2013 SCMR 1707].

4. We have noticed that the Petitioner was initially appointed in the year 2001 as a Trainee Engineer in the Respondent-company, after completion of probationary period his service was confirmed on 15.5.2003. Per petitioner, he was promoted to the post of Executive Engineer on 1.10.2006 and then on 22.1.2013 as senior Executive

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Engineer. He was appreciated by the Management of PSO from time to time and was awarded performance Excellence certificates. Learned Counsel has drawn our attention to the charge sheet dated 27.6.2016, whereby Respondent-Company served him with the allegations of un-satisfactory/negligence performance and insubordination / failure to obey the legitimate instructions of the Company. Petitioner was further charge sheeted with the accusation that he misused the property of the Company and his activities had caused disrepute to the credibility of the Company etc. Petitioner replied to the aforesaid charge sheet with vehemence and denied the allegations leveled against him, with the elaborate plea vide letter dated 15.7.2016. As per record, the enquiry proceedings were initiated against him vide report dated 25.11.2016 (available at page 103 to 109 of the court file) and he claims to have denied the allegations of his involvement in the matter. Resultantly he was terminated from service on 2.6.2017. Petitioner being aggrieved by and dissatisfied with the aforesaid termination letter has filed the instant Petition on 26.10.2017.

5. Conversely, Chaudhary Ashraf Khan, learned Counsel representing Pakistan State Oil Company Limited, has raised the question of maintainability of the instant Petition, on the grounds that the Respondent-Company is not established under the Statutes, but incorporated as a Company under the Companies Ordinance, 1984, having non-statutory Rules of service and is being managed by the Human Resource Manual; that service matters of the employees of Respondent-Company are governed under the rule of `Master` & `Servant`, thus no writ lies against Respondent-Company. Learned Counsel referred to the comments filed on behalf of the Respondent-Company and further argued that the Authorities of the answering

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Respondent-Company have not acted malafidely nor violated any provisions of law or service Rules in discharging their duties; that the Petitioner had earlier been served with Show Cause Notice, thereafter, he was served with Charge Sheet on account of `Misconduct`, thereafter he was issued notices to appear before the Inquiry Officer, the Petitioner participated in the inquiry proceedings and miserably failed to prove his innocence, thus, all procedures were adopted. Consequently, the Petitioner was terminated from service by the Competent Authority of the Respondent-Company, vide letter of termination dated on 2.6.2017. He lastly prayed for dismissal of the instant Petition.

6. Mr. Muhammad Nishat Warsi, learned DAG, representing Respondent No.1 has adopted the arguments of learned counsel for the Respondent-Company.

7. The learned counsel for the Petitioner, in exercising of his right of rebuttal has emphasized that it would be unfair if the Petitioner is shorn off his right of hearing, and would be violative of his fundamental right to a "fair trial and due process" as ordained in Article 10-A of the Constitution; thus, the Petitioner can invoke Constitutional jurisdiction of this Court under Article 199 of the Constitution to seek enforcement of his right guaranteed under Article 4 of the Constitution, which inter alia mandates that every citizen shall be dealt with in accordance with law.

8. We have heard the learned Counsel for the parties at length, so also perused the entire material available on record and the decisions relied upon by the learned Counsel.

9. As we said in the preceding paragraph that Respondent-company meets the test as laid down by the Honorable Supreme Court in the case of Salahuddin v. Frontier Sugar Mills and Distillery (PLD 1975 SC

244) which was relied upon in the case reported as Abdul Wahab and others v. HBL and others (2013 SCMR 1383) in which this Court, while holding that Habib Bank Limited was a private entity, observed that:-

" in order to bring the Bank within the purview and the connotation(s) of a 'person' and 'authority' appearing in Articles 199, 199(5) and 199(1)(c) of the Constitution and also for the purposes of urging that appropriate order, in the nature of a writ can be issued independently by this Court under Article 184(3) (Constitution), to the Bank, the learned counsel for the petitioners has strenuously relied upon the 'function test' In this context, it may be held that for the purposes of resorting to the 'function test', two important factors are the most relevant i.e. the extent of financial interest of the State/Federation in an institution and the dominance in the controlling affairs thereof "

On the aforesaid proposition references are being made to the decisions rendered by the Honorable Supreme Court in cases of HUMAN RIGHTS CASE NO. 3654 OF 2018 (2019 SCMR 1):Ramna Pipe and General Mills (Pvt.) Ltd. v. Sui Northern Gas Pipe Lines (Pvt.) (2004 SCMR 1274), Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed and other connected appeals [2013 SCMR 1707], Khawaja Muhammad Asif v. Federation of Pakistan (PLD 2014 SC 206), Pir Imran Sajid and others Vs. Managing Director/General Manager Telephone Industries of Pakistan and others (2015 SCMR 1257), Pakistan Telecommunication Employees Trust vs. Muhammad Arif and others [2015 SCMR 1472], Shafique Ahmed Khan and others versus NESCOM through Chairman Islamabad and others(PLD 2016 SC 377),P.T.C.L. and others vs. Masood Ahmed Bhatti and others [2016 SCMR 1362], Muhammad Rafi and others Vs. Federation of Pakistan and others (2016 SCMR 2146), Muhammad Zaman etc. versus Government of Pakistan through Secretary, Finance Division (Regulation Wing), Islamabad (2017 SCMR 571) Pakistan Defence Housing Authority Vs. Mrs. Itrat Sajjad Khan and others (2017 SCMR 2010), Messrs State Oil Company Limited v. Bakht Siddique and others [2018 SCMR 1181], Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others [2019 SCMR 278]. For the reasons given in the

aforesaid judgments, in our view, there can hardly be any doubt that Respondent-Company is also a “person” within the meaning of Article 199(1) (a) (ii) read with clause (5) thereof.

10. At this stage the learned Counsel representing the Respondents have objected the maintainability of the instant petition on the analogy that the Respondent-Company is not established under the Statutes, but incorporated as a Company under the Companies Ordinance, 1984, as such no writ can be issued. We do not agree with the aforesaid assertion of the learned Counsel for the simple reason the Honorable Supreme Court while discussing status and the functions of various Government Owned Entities/Authorities/Companies held that these are statutory bodies, performing some of the functions which are the 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. The aforementioned test is applicable on Respondent-Company, which mostly follow the policies laid down by the Government of Pakistan regarding supply of petroleum products, being a Public Sector Company. Therefore, we have no hesitation to hold that the Respondent-Company is a body corporate performing functions in connection with the affairs of the State, which establishes the control of Government over the affairs of the Respondent-Company too, making the Company amenable to judicial review under Constitutional jurisdiction. Thus, in view of the above discussion, we do not find any substance in the claim of the learned counsel for Respondent-Company

that the jurisdiction to this Court is barred on the ground that the Respondent-Company is not a "person" as discussed above.

11. Having decided on the maintainability, the instant Petition relates to the service of the Petitioner, whereby Respondent-company vide order dated 2.6.2017 dispensed with his service, on the allegations of misconduct as discussed supra and during the inquiry proceedings, he was found guilty of the charges of unsatisfactory, negligent performance, intentional damage to company property and activities bringing disrepute to the company, which he is asking for setting aside, through the instant Petition. Petitioner, who admittedly, is not a Civil Servant as defined under Section 2(1)(b) of Civil Servants Act, 1973, but an employee of a non-statutory Company, 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 Judgments rendered in the cases of Muhammad Mobeen-ul-Islam Vs. Federation of Pakistan and others (PLD 2006 SC 602) and Muhammad Idrees Vs. Agricultural Development Bank of Pakistan and others (PLD 2007 SC 681). However, the Full Bench of this Court in MUHAMMAD DAWOOD and others v. FEDERATION OF PAKISTAN and others [2007 P L C (C.S.) 1046] found a way out for only the employees of a Statutory Corporation, Authorities, Bodies, etc. who were proceeded under Removal from Service Ordinance, 2000 to invoke jurisdiction of this Court under Article 199 of the Constitution.

12. Progressing on the aforesaid proposition put forwarded by the learned Counsel, 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?

13. The record reveals that the disciplinary proceedings were initiated against him and finally culminated in the termination from service vide order dated 2.6.2017. 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-company, which in our view cannot be thrashed out in a Writ Petition.

14. Since the Petitioner is governed as per the terms of his appointment letter and terms and conditions of service attached thereto, therefore, there is no violation of the law and if there is any breach of contract including the terms and conditions of the service the same is not enforceable being neither a statute nor conferring any statutory protection to the Petitioner.

15. The learned counsel for the Petitioner while arguing the case has heavily relied upon Pakistan Defence Officers Housing Authority and others v. Lt. Col. Syed Javaid Ahmed (2013 SCMR 1707) to stress that in view of the Judgment of the Honourable Supreme Court, regardless whether rules are not approved by the Government, if the authority is Government owned organization and violation of statute, it can be enforced through Constitutional jurisdiction and rule of Master and Servant has been diluted. We have carefully gone through the aforesaid judgment of the Honorable Supreme Court, the ratio *decidendi* in this judgment is, where employees of Government owned and statutory organization are removed from service under Removal from Service (Special Power) Ordinance, 2000, the Constitutional Petition will be maintainable. In the aforesaid judgment, the Larger Bench of Honorable Supreme Court has deduced and summarized the matter at paragraph No.50 of the judgment and settled the principles of law.

16. Applying the aforesaid principles of law to the case of the Petitioner, we feel no hesitation in drawing inference that the Respondent-Company is non-statutory entity and Petitioner is not governed under statutory rules of service, hence contractual terms and conditions of service are not enforceable through Constitutional Petition. The case of Petitioner is neither covered under enforcement of terms of RSO-2000 nor is violation of rule of natural justice attracted in absence of infringement or any vested rights of the Petitioner or any disciplinary proceedings undertaken against him under any law. These rules are non-statutory, therefore, for all intent and purpose, these are contractual terms for internal use, hence, the law laid down by the Honourable Supreme Court in Pakistan Defence Officers Housing Authority case (supra), does not support the case of the Petitioner as there has been no violation of law.

17. For the aforesaid reasons, we are of the view that the relationship of Master and Servant exists between the Petitioner and the Respondent-Company, hence, his grievance pertains to the terms and conditions of service which cannot be enforced through a Writ. As to the Service Rules, these are non-statutory and mere instructions for internal control and management of the employees of the Respondent-Company.

18. We, thus, are of the view that it is for the Respondent-Company to place its employees in accordance with its Service Rules and Regulations, which is an internal matter of the Respondent-Company, thus devoid of any Constitutional interference, at this juncture. Our view is supported by the latest decision announced on 13.5.2019 by the Honourable Supreme Court in an unreported case of Maj. (R) Syed Muhammad Tanveer Abbas and other connected Appeals (2019 SCMR 984). The Honourable Supreme Court, in the aforesaid Appeals has

provided guiding principles on the issue of statutory and non-statutory rules of service (NADRA) and its enforcement, contractual service of employees (NADRA) and their remedy and finally the issue of maintainability of Constitutional Petition in like matters.

19. In the light of above discussion and case law referred, we are not inclined to interfere in the terms and conditions of the service of the Petitioner, in Constitutional Jurisdiction, being non-statutory Rules of Service, therefore, the instant petition is dismissed along with pending application[s], with no order as to costs.

20. These are the reasons of our short order dated 23.09.2019, whereby we have dismissed the instant Petition.

JUDGE

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