

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 versus Federation of Pakistan and 02 others

1. For order on CMA No.26956/2019. (Granted)
2. For order on CMA No.26957/2019.

Date of hearing: 25.09.2019

Date of Order: 25.09.2019

Mr. Ali Asadulah Bullo, advocate for the petitioner.

Mr. Muhammad Nishat Warsi, DAG.

ORDER

ADNAN-UL-KARIM MEMON, J:- The captioned Petition was disposed of vide dated 02.09.2019, with the following observations:-

“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)."

On 19.9.2019, the Applicant filed an application under Order 47 read with Section 114 of Civil Procedure Code (CMA No. 26957/2019) for review of the order dated 02.09.2019 passed by this court.

At the very outset, we directed the learned Counsel for the Petitioner to satisfy this Court regarding maintainability of the review application (CMA No. 26957/2019).

Mr. Ali Asadullah Bullo, learned Counsel, representing the Applicant, in reply to the query, has referred to the Gazette Notification No.SRO.170(1) 78 as amended upto 2008 and argued that the aforesaid factum has not been appreciated in its true perspective, in the impugned order; therefore, the impugned order needs to be reviewed on this score alone. He next argued that the service of the applicant is governed under the Printing Corporation of Pakistan Limited Employees' Service Rules, 1977, which are statutory in nature and duly approved by the Central Labour Commissioner and the same was duly gazetted in the official Gazette of Pakistan vide aforesaid SRO, but the impugned order suggest that the aforesaid rules are non-statutory having no backing of law, which is erroneous decision and come in the way of applicant in future. He next added that this matter may be reopened and decided in accordance with law on the basis of the documents available on record. He lastly prayed for allowing the listed application and matter may be posted for hearing.

We are not in agreement with the contention of the learned Counsel for the Petitioner for the simple reason that this Court considered the aforesaid submissions of the learned Counsel for the Petitioner at paragraph Nos.16 to 18 and gave finding on the issue which he is now raising in the Review Application.

We have scanned the record and found the contention of the learned Counsel for the Petitioner untenable, in view of the aforesaid legal position of the case.

Mr. Muhammad Nishat Warsi, learned DAG states that he has no notice of the listed application, however, he has supported the impugned order passed by this Court.

Perusal of record shows that the Petitioner has not assailed the order dated 2.9.2019 passed by this Court, before the Honorable Supreme Court yet.

In our view, the review of the order can only be made by the party, if there is mistake or error apparent on the face of the record as provided under Order XLVII (Section 114 CPC). The Petitioner through the review application has attempted to call in question the validity of the order dated 2.9.2019 passed by this Court without assailing the same before the Appellate Forum.

The grounds taken by the Petitioner in the review application were considered at the time of hearing of main petition and the request of the Petitioner regarding the factum of non-statutory rules of service of the Respondent-corporation, which is basically a non-statutory Corporation and claiming that Respondent-corporation has statutory rules of service is not the correct legal position of the case for the simple reason that merely publishing the service rules of a non-statutory body in the official gazette does not make the rules statutory *ipso facto* which even otherwise requires approval of the Government, whereas the service rules of Respondent-corporation have been made under the directions of the Chairman of the NIRC in connection with the agreement between the Printing Corporation of Pakistan Press Islamabad and 04 unions therefore, reviewing the order does not merit consideration.

For the aforesaid reasons, we are not persuaded by the contention of the learned Counsel for the Petitioner that any case of review is made out. Therefore, the review application merits dismissal, which is accordingly dismissed as, in our view, the order dated 2.9.2019 passed by this court was based on correct factual as well as legal position of the case and we do not find any inherent flaw floating on the surface of the record requiring our interference.

Consequently, the application bearing CMA No.26957/2019 is dismissed.

JUDGE

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