

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Irfan Saadat Khan, J.
Agha Faisal, J.

CP D 5833 of 2021 : Muhammad Aslam vs.
Federation of Pakistan & Others

For the Petitioner : Mr. S. Ashikue Raza, Advocate

For the Respondents : Mr. Abdul Wahab Baloch
Deputy Attorney General

Mr. Zahid F. Ebrahim, Advocate
Mr. Furkan Ali, Advocate

Date/s of hearing : 21.12.2021

Date of announcement : 22.12.2021

ORDER

Agha Faisal, J. The petitioner is aggrieved at his services having been terminated by National Insurance Company Limited (“NICL”), hence, this petition. On 11.10.2021, being the first date of hearing post issuance of notice herein, the impugned letter of termination was suspended and the said restraint subsists till this date. Respondents’ counsel has raised the issue of maintainability hereof and it is to such extent that the matter was heard and reserved for orders.

2. Per respondent’s learned counsel NICL is devoid of statutory rules and therefore no recourse to writ was available to the petitioner. It was further contended that the relationship, since lapsed, between the parties was governed by the master servant principle, hence, the question of reinstatement was even otherwise not warranted.

3. Petitioner’s learned counsel unequivocally admitted that NICL was devoid of statutory rules, however, rested his plea in respect of maintainability upon his contention that NICL performs the affairs in connection with the state, therefore, the present petition was maintainable there against.

4. Heard and perused. It is a general principle of law that in the absence of statutory rules of service a writ petition ought not to be entertained¹. Since the petitioner’s counsel has admitted the absence of statutory rules of service,

¹ 2021 SCMR 609 (SSGC case); 2019 SCMR 278 (PALPA case); PLD 2010 Supreme Court 676 (PIAC case).

therefore, no further deliberation is merited in such regard. No case has been endeavored to have been set forth before us to suggest that the internal regulations were anything but instructions for internal use and / or they ever became statutory in nature; or that the petitioner's rights predated the reorganization / corporatization of NICL.

5. In so far as the issue of functions of the state is concerned, the same was elaborated by the august Supreme Court in the *PIAC case*² and recently in the *Pakistan Olympics Association case*³. While eschewing a voluminous repetition⁴ of the law illumined, it would suffice to observe that the petitioner's counsel been unable to demonstrate that NICL, being an insurance company, was performing functions connected with the affairs of the state involving exercise of sovereign power⁵.

6. The respondent's learned counsel demonstrated that the august Supreme Court⁶ has already observed that NICL does not have statutory rules of service and that the honorable Lahore High Court⁷ and Islamabad High Court⁸ have declined jurisdiction in petitions against NICL in view of the same. The respective High Courts maintained that NICL was admittedly devoid of statutory rules of service and also did not qualify on the anvil of the functions test⁹, hence, a writ ought not to be entertained there against.

7. Our attention has also been drawn to pronouncements¹⁰ of Division benches of this Court wherein writ jurisdiction has been declined in respect of NICL, on account of the manifest absence of statutory rules. In the *Arain case*, *Gulzar Ahmed J* observed that in the absence of statutory rules, service at NICL was to be governed by the rules of master and service and that recourse to remedy may behad before the civil courts. The law enunciated remains binding precedent in view of the *Multiline*¹¹ principles.

² PLD 2010 Supreme Court 676.

³ 2019 SCMR 221.

⁴ Per *Mansoor Ali Shah J.* in the yet unreported judgment dated 18.08.2020 in *Farooq Hussain vs. Shaikh Aftab Ahmed (CRP 104-L of 2019 & connected matters)*.

⁵ PLD 1975 Supreme Court 244; 2000 SCMR 928; PLD 2002 Supreme Court 326; PLD 2005 Supreme Court 806.

⁶ Chaudhry Aurangzeb vs. NICL (CP 437 of 2010) Judgment dated 26.05.2010.

⁷ Muhammad Ashraf vs. NICL (WP 34270 of 2016) judgment dated 21.04.2017; Ayub Siddique Ahmad Butt vs. Pakistan (WP 4138 of 2016) judgment dated 03.10.2017.

⁸ Aysha Farooq vs. Pakistan (WP 1796 of 2019) Judgment dated 19.08.2020 & ICA 229 of 2020 (Judgment dated 04.09.2020); Chaudhry Aurangzeb vs. Ministry of Finance (WP 219 of 2012) Judgment dated 21.07.2016 & WP 598 of 2016 (Judgment dated 21.07.2016); Khurram Saleem vs. NICL (WP 4215 of 2016) Judgment dated 08.03.2017.

⁹ 2013 SCMR 1707.

¹⁰ Jamil Ahmed Arain vs. Pakistan (CP D 1557 of 2009) Judgment dated 20.09.2011 and the order in review dated 24.10.2012 ("Arain").

¹¹ *Multiline Associates vs. Ardeshir Cowasjee* reported as 1995 SCMR 362.

8. The desirability of the subsisting interlocutory order, suspending the termination of the petitioner, was also placed before us. It was submitted that the object of rendering an interlocutory order was to maintain status quo and not alter the same prior to any determination of the *lis*¹². The august Supreme Court has disapproved of granting interim relief amounting to the final order¹³. It has been illumined that reinstatement by way of interim relief could not be appreciated¹⁴. However, since the fate of the interlocutory application herein follows that of the main petition, therefore, we deem it prudent to eschew any further deliberation in such regard.

9. In view hereof, we are constrained to observe that in the *lis* before us the petitioner's counsel has been unable to set forth a case for the invocation of the discretionary¹⁵ writ jurisdiction of this Court, hence, the listed petition, and accompanying application, is hereby dismissed.

JUDGE

JUDGE

¹² 1997 SCMR 1508; 1989 SCMR 1855.

¹³ 1998 SCMR 60; 1998 SCMR 68; 2014 SCMR 320.

¹⁴ 1961 PLC 555 (Supreme Court).

¹⁵ Per *Ijaz Ul Ahsan J.* in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.