

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. D – 1127 of 2021

Date of hearing	Order with signature of Judge
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Hearing of case (priority)

1. For orders on office objections at Flag-A
2. For hearing of CMA No.4337/2020 (S/A)
3. For hearing of main case

02-03-2022

Mr. Aamir Mustafa Kamario, Associate of Mr. Qurban Ali Malano, Advocate for the Petitioner.
M/s Irshad Hussain Dharejo and Saeed Ahmed Balouch, Advocates for Respondents-SEPCO.
Mr. Muhammad Hamzo Buriro, Deputy Attorney General.

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Through this Petition, the Petitioner has sought the following relief(s):

- a) *That this Honourable court may kindly be pleased to declare that the acts of respondents of imposing the major penalty of Compulsory Retirement after already imposing him a major penalty of pay one stage below is illegal unlawful and void ab-initio in the eye of law and against the basic guaranteed rights under the constitution, as nobody can be vexed twice for the same offence and further may be pleased to declare the impugned notice dated 26.12.2018, office order dated 31.01.2019 & impugned order dated 07.05.2021 is illegal, null and void ab initio and same is liable to be set aside.*
- b) *That this Honourable Court may kindly be pleased to direct the official respondents to restore the services of the petitioner with all back benefits with immediate effect, as the petitioner has been acquitted from the charge by the Honourable Court of law by judgment dated 21.01.2020.*
- c) *That this Honourable Court may kindly be pleased to suspend the operation of impugned office order dated 31.01.2019.*
- d) *That this Honourable Court may kindly be pleased to grant any other relief, which this Honourable court deems fit and proper in circumstance of the case.*
- e) *To award the cost of the petition.*

It appears that the Petitioner is employee of SEPCO, and the Hon'ble Supreme Court in **Civil Appeal No.749 of 2021** (*Pakistan Electric Power Company v. Syed Salahuddin & others*), in identical facts, has been pleased to hold that no writ petition of an employee is maintainable

against Power / Distribution Companies incorporated under the then Companies Ordinance, 1984, after bifurcation of Water and Power Development Authority (“WAPDA”) in terms of section 8(vii) of the WAPDA Act, 1958. The case before the Hon’ble Supreme Court was in respect of employees of Quetta Electric Supply Company (**QESCO**), to whom some relief was granted by the learned Baluchistan High Court and the Appellants (**PEPCO**) case was that since they do not have any statutory rules; hence, the employees cannot invoke the Constitutional jurisdiction of the High Court. As against this, the response of the employees was that since the Pakistan WAPDA Employees (Efficiency & Discipline) Rules, 1978 have been adopted by the Board of Directors of QESCO; hence, the said employees are governed by the statutory rules. The said contention has been repelled by the Hon’ble Supreme Court and the Court has been pleased to hold that mere adoption of such rules does not *ipso facto* makes such rules statutory in the context of QESCO. The relevant findings of the Hon’ble Supreme Court are as under:

“10. There is yet another aspect of the matter. A specific objection regarding jurisdiction of the High Court to entertain the petition was raised which was dealt within the following manner:

“The petitioners being employees of QESCO/PEPCO are governed by statutory rules and as such the constitutional petition filed by the Respondents under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is maintainable.”

We find that in the first place, there was no ground to hold that the Respondents were governed by the statutory rules. Admittedly, the Respondents by their own choice had joined QESCO which is a distinct and separate legal entity having been incorporated in the erstwhile Companies Ordinance, 1984 and has its own Board of Directors. Just by reason of the fact that QESCO had adopted existing rules of WAPDA for its internal use does not make such rules statutory in the context of QESCO. It was clearly and categorically held by this Court in Pakistan Defence Officers Housing Authority (ibid), Pakistan Telecommunication Company Ltd through its Chairman v. Iqbal Nasir and others (PLD 2011 SC 132) as well as Pakistan International Airlines Corporation and others v. Tanveer ur Rehman and others (PLD 2010 SC 676) that where conditions of service of employees of a statutory body are not regulated by rules / regulations framed under the Statute but only by rules or instructions issued for its internal use, any violation

thereof could not normally be enforced through constitutional jurisdiction and they would be governed by the principle of “master and servant”. The learned High Court appears to have not been assisted properly in the matter and therefore omitted to notice the said principle of law laid down in the aforementioned case and reiterated repeatedly in a number of subsequent judgments of this Court.

11. Further, while assuming jurisdiction in the matter, the learned High Court omitted to appreciate that in case of an employee of a Corporation where protection cannot be sought under any statutory instrument or enactment, the relationship between the employer and the employee is governed by the principle of “master and servant” and in such case the constitutional jurisdiction of the High Court under Article 199 of the Constitution cannot be invoked. We also find that although a judgment of this Court dated 07.03.2019 in the case of employees of IESCO was brought to the notice of the High Court in which a similar finding was recorded regarding non-availability of constitutional jurisdiction to the employees of IESCO, the Court appears to have misinterpreted and misconstrued the ratio of the same and therefore arrived at a conclusion which appears to be contrary to the settled law on the subject. We also notice that a judgment of a Division Bench of the same High Court escaped the notice of the High Court of Balochistan whereby it had clearly held that employees of QESCO could not invoke its constitutional jurisdiction. Further, a judgment of this Court rendered in the case of Chief Executive Officer PESCO, Peshawar (ibid) examined the question of jurisdiction of the High Court under Article 199 of the Constitution in matters relating to employees of PEPCO which is identically placed insofar as it was also incorporated under the Companies Ordinance, 1984 pursuant to bifurcation of various Wings of WAPDA into separate corporate entities and it came to the conclusion that since PEPCO did not have statutory rules, the High Court lacked jurisdiction to interfere in matters involving employment disputes between PEPCO and its employees. The ratio of the said judgment was clearly attracted to the facts and circumstances of this case, which appears to have escaped the notice of the High Court. We are therefore in no manner of doubt that in view of the fact that QESCO does not have statutory rules governing the terms and conditions of service of its employees, the relationship between the Appellant-PEPCO and Respondents No.1 and 2 was governed by the principle of “master and servant” and the Respondents could not have invoked the constitutional jurisdiction of the High Court for redressal of their grievances.

12. For the foregoing reasons, we find that the impugned judgment of the High Court dated 16.07.2020

rendered in C.P.No, 1233 of 2017 is unsustainable and is accordingly set aside. Consequently, the appeal is allowed.”

In view of hereinabove findings of the Hon’ble Supreme Court on identical facts, wherein it has been held that a Constitutional petition of an employee is not maintainable against QESCO as it has no statutory rules of service and the relationship is to be governed by the principle of master and servant, whereas, the present Respondent (SEPCO) has been incorporated in a similar manner and has also merely adopted the WAPDA Service Rules for internal purpose and is also performing the same functions as QESCO, therefore, no writ petition is maintainable against SEPCO filed by its employees in respect of their terms and conditions of service. It may be of relevance to further observe that this function test applied and settled by the Hon’ble Supreme Court is perhaps limited to a writ petition filed under Article 199 of the Constitution of Pakistan by an employee against companies like QESCO or for that matter SEPCO, and that too in respect of its terms and conditions of service. And this is for the reason that this aspect of the maintainability of petitions under the Constitution has all along already been settled by the Hon’ble Supreme Court in a number of decisions.

The Petition is **dismissed** as not maintainable with pending application, whereas, the Petitioner may avail alternate remedy, as may be available in law, for redressal of his grievance as agitated in this Petition.

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Abdul Basit