

*Order Sheet*  
**IN THE HIGH COURT OF SINDH KARACHI**

Before:

Mr. Justice Adnan-ul-Karim Memon

Mr. Justice Adnan Iqbal Chaudhry

**Constitutional Petition No. D – 3100 of 2016**

Surriya Kanwal

*Versus*

The Federation of Pakistan & 04 others

Date of hearing : 23.04.2021

Mr. Abdul Salam Memon, advocate for the petitioner.

Pir Riaz Muhammad Shah, advocate for respondents 2 to 5.

Mr. Muhammad Nishat Warsi, DAG.

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through this petition, the petitioner is seeking the following relief(s): -

- a) *Declare that the act of acceptance of the resignation by the Respondents before said resignation was withdrawn by the petitioner, is illegal, arbitrary, not warranted by the law and liable to be set-aside.*
- b) *Declare that the petitioner has lawfully withdrawn her resignation from service of the Respondents by means of letters dated 10.03.2008, 15.03.2008 and 05.06.2008 before acceptance of the resignation by the respondents and the petitioner was accordingly entitled to be allowed to rejoin the duty.*
- c) *Direct the Respondents to reinstate the Petitioner in service from the date the resignation was withdrawn by the petitioner with all back and consequential service benefits, as admissible according to law.*

2. Mr. Abdul Salam Memon, learned counsel for the petitioner, attempted to give a brief history of the case and contended that initially the petitioner was appointed as Junior Clerk in respondent- Pakistan Bait-ul-Mal (PBM) vide order dated 28.7.2005, however, during her service tenure she was served with disciplinary proceedings and finally, her services were terminated vide office order dated 07.05.2007. However, the termination order was later on recalled and then she opted for tendering her resignation from service vide letter dated 20.11.2007; and after recovering from her illness, she moved applications to the competent authority for withdrawal of her resignation, which applications remained pending, however, later on after more than three years, the same was

accepted on 05.07.2011. She being aggrieved by and dissatisfied with the aforesaid decision preferred Service Appeal No 06(K)CE/2015 before the learned Federal Service Tribunal which was later on dismissed for want of jurisdiction vide order dated 21.3.2016, then she filed this petition on 26.05.2016. Learned counsel argued that the impugned order as to the acceptance of the petitioner's resignation after its withdrawal by the petitioner is illegal, arbitrary and not sustainable in law in view of Section 11.4 of Pakistan Bait-ul-Mal Service Rules, 1995; that the resignation tendered by her lost its worth and efficacy, the moment it was withdrawn by the person who tendered the same, therefore, the petitioner ought to have been restored to her original position rather accept her so-called resignation. He emphasized that there exists no master and servant relationship between the parties while referring to various sections of Act, 1992. He next contended that the impugned acceptance of resignation in the year 2011, was in gross violation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Further that the action on the part of respondents was arbitrary and capricious thus untenable in law; that Section 24- A of the General Clauses Act, 1897, obliges every person exercising powers conferred by a statute, to act "reasonably, fairly, justly and for the advancement of the purpose of the enactment". It also stipulates that the person making any order under the power conferred by any enactment shall, so far as necessary or appropriate, "give reasons for making the order". He referred to the various sections of the Act, 1992 and argued that impugned action was much after the withdrawal of resignation in the year 2007, therefore for all practicable purposes the case of petitioner falls within the preview of section 11.4 of Rules, 1995; that there is no other efficacious and adequate remedy available with the Petitioner but to invoke the Constitutional Jurisdiction of this Court for the relief(s) as prayed in the Memo of Petition. Reliance has been placed on the cases of MUHAMMAD ZAMAN and others Versus GOVERNMENT OF PAKISTAN through Secretary, Finance Division (Regulation Wing), Islamabad and others, 2017 SCMR 571, BAHADUR KHAN and others Versus FEDERATION OF PAKISTAN through Secretary M/o Finance, Islamabad and others, 2017 SCMR 2066 and SHAKEEL SARDAR AWAN and another Vs ELECTION APPELLATE AUTHORITY, TEHSIL GUJRANWALA (CITY) and others, PLD 2016 Supreme Court 377. He prays for allowing the instant petition.

3. Mr. Muhammad Nishat Warsi, learned DAG assisted by Mr. Riaz Muhammad Shah, learned counsel representing the respondents 2 to 5, at the

outset, argued that this Petition is not maintainable in its form against the PBM by virtue of its non-statutory Service Rules; and, the relationship between the parties is of Master & Servant, which factum oust the jurisdiction of this court from the entertaining petition of its employees. On merits, he argued that the conduct of the petitioner throughout her service had remained sketchy, therefore, she is not entitled to be reinstated in service, after acceptance of her resignation. Learned DAG referred para-wise comments filed on behalf of PBM and further argued that this petition also suffers from serious laches, thus liable to be dismissed on this score alone. He further contended that once the resignation of a public servant is accepted and notified, the same could not be withdrawn or taken back as per law.

4. In exercising the right of rebuttal, on the point of maintainability, the learned counsel for the petitioner argued that service Regulations framed under Section 24 of the Act, 1992 are statutory, the controversy has been set at rest in the case of PAKISTAN DEFENCE OFFICERS' HOUSING AUTHORITY and others Versus Lt. Col. Syed JAWAID AHMED, 2013 SCMR 1707, ZARA/TARAQIATI BANK LIMITED and others Versus SAID REHMAN and others, 2013 S C M R 642 and Shafique Ahmed Khan and others v. NESCOM through Chairman Islamabad and others (PLD 2016 SC 377), therefore, another exercise to determine the status of Petitioner is not called for. He then contended that when the very purpose of making Rules is to carry out the purposes of the Act it would be a contradiction in terms to shear them of statutory status; that publication of a statutory instrument or a notification in the official gazette meets mandatory requirement, therefore, it has statutory force. The learned counsel lastly contended that where the Rules prescribe the terms and conditions of service and provide safeguards against their violation, they are statutory by all means and have to be treated as such.

5. We have heard learned counsel for the parties and perused the material available on record and case law cited at the bar.

6. To address the question of the maintainability of the instant petition, we have gone through the entire scheme of the Bait-ul-Mal Act, 1992 (Act, 1992). Pakistan Bait-ul-Mal (PBM) is a charity and social welfare organization to help the poor and needy in Pakistan. PBM is a statutory body set up through Act, 1992; and the provision of section (5) (1) thereof, which provides that the Federal Government has pivotal role for administration of the Bait-ul-Mal.

Section 9 thereof, further provides that Managing Director of the Board is the nominee of the Federal Government. Section 15 also authorizes the Board to employ such officers and servants on such terms and conditions. Moreover, section 16 empowers the Board to prescribe the procedure for appointment and terms and conditions of service for its officers and servants, and is competent to take disciplinary action against them; besides above Section 23 empowers the Federal Government to make rules for carrying out the purposes of the aforesaid Act; and last, but not the least section 24 authorizes the Board to make regulations with the approval of the Federal Government, for the conduct of its business and its meetings.

7. In view of the above, the plain language of the Act, 1992 as amended up to date is quite clear that the status of Pakistan Bait-ul-Mal can be regarded as a "Person" performing functions in connection with the affairs of the Federation under Article 199 (1) (a) (ii) read with Article 199 (5) of the Constitution. Thus, this Court has jurisdiction to entertain a Constitutional Petition against PBM. As PBM is a statutory Body and performing functions in connection with the affairs of the State, as such the same will be amenable to the Writ Jurisdiction. Guidance has also been taken from the decision of the Honorable Supreme Court in the case of Abdul Wahab and others v. HBL and others (2013 SCMR 1383). In this case, the Honorable Supreme Court has held that two factors are most relevant i.e. the extent of the financial interest of the State/Federation in an Institution and the dominance in the controlling affairs thereof. References are being made to the other decisions rendered by the Honorable Supreme Court in cases of 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. & other connected Petitions 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], Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others [2019 SCMR 278] and Salahuddin v. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244), as such the instant matter, could be heard and decided on merit.

8. Having dilated upon the aforesaid proposition, the instant Petition relates to the service of the Petitioner. Primarily the case of Petitioner is that she was appointed as Junior Clerk in respondent- Pakistan Bait-ul-Mal (PBM) vide order dated 28.7.2005; and due to her poor health condition, she remained mentally disturbed; and, thereafter tendered her resignation, voluntarily, from the aforesaid post. Surprisingly, the *Respondents* vide office order dated 5.7.2011 accepted the resignation tendered by her with retrospective effect i.e. from 10.11.2007. Though before the acceptance of her resignation, she withdrew the same vide applications dated 10.3.2008, 15.3.2008 and 5.6.2008, which were duly acknowledged by the respondents. The Respondents then vide letter dated 12.1.2012 appointed her on daily wages for 89 days, however, the same assignment was cancelled by them vide order dated 18.1.2012; and, finally, they declined her request. She being aggrieved by and dissatisfied with the impugned letter dated 5.7.2011, filed an Appeal/review application dated 26.2.2013 against the aforesaid impugned letter to the respondents for reconsideration of her case; and, to reinstate her on the premise that she withdrew her resignation much before its acceptance as discussed supra i.e. in the year 2008. However, the same was not replied. She then filed constitution petition No.D-2688 of 2013 before this court in the year 2013, which was remitted to learned Federal Services Tribunal vide order dated 21.1.2015; and, the same was numbered as Service Appeal No 06(K)CE/2015, which was later on dismissed for want of jurisdiction vide order dated 21.3.2016. She thereafter has filed the instant petition on 26.5.2016.

9. The prime question involved in this petition is whether the resignation once tendered by the civil servant voluntarily and accepted by the competent authority and communicated to him/her could be considered to be final and cannot be revoked afterwards?

10. The word resignation has been defined in Corpus Juris Scandium, Volume LXXVII on page 77 as follows:-

“Resignation: It has been said that “resignation” is a term of legal on, having legal connotations that describe certain legal results. It is characteristically the voluntary surrender of a position by the one resigning, made freely and not under duress, and the work is defined generally.

11. When a civil servant / public servant submits a letter of resignation, his service/employment stands terminated from the date on which the letter of resignation is accepted by the Competent Authority. Rule 11.4 of Pakistan Bait-ul-Mal Service Rules, 1995, which envisages as under:

a. If an employee submits his resignation from service and withdraws it before it is accepted by the competent authority, the resignation shall be deemed to have been withdrawn.

12. Besides the above, Part III of Chapter-4 of the Civil Establishment Code (Volume I, II), Edition 2015, which deals with the term “Resignation from Government Service” and its effective date, which is as under:-

“(ii) Withdrawal of resignation after its acceptance but before it becomes effective (i.e. before the government servant concerned is relieved). It should be open to the authority accepting the resignation to allow the government servant concerned to withdraw the resignation on the merits of the case.”

13. Primarily, resignation is characteristically the voluntary surrender of a position by the one resigning, made freely and not under duress, here petitioner moved an application to the competent authority for withdrawal of her resignation before its acceptance, but the competent authority remained mum and waited for three years to decide the fate of her application; and, after a considerable period, they accepted the same with retrospective effect. Prima facie, respondents under the law/rules/regulations were responsible for expediting the process of the resignation of the petitioner in time, failure thereof, petitioner could not be held responsible.

14. On the issue of the back benefits, we have noticed that the petitioner has not pleaded specifically for grant of back benefits in her pleading; and, prima facie the service record of the petitioner is not up to the mark, thus we are not inclined to grant such back benefits to the petitioner, even otherwise the back benefits do not automatically follow the order of reinstatement where the order of dismissal or removal has been set aside; and, the onus of proof in cases where a workman 'is entitled to receive the back benefits it lies on the employer to show that the workman was not gainfully employed during the period of the workman was deprived of service till the date of his reinstatement thereto,

subject to the proviso that the workman has asserted at least orally, in the first instance, that he was (not) gainfully employed elsewhere. On his mere statement to this effect, the onus falls on the employer to show that he was so gainfully employed. On the aforesaid proposition, we are fortified by the decision of the Hon'ble Supreme Court in the case of *Dilkusha Enterprises Ltd. v. Abdul Rashid and others* (1985 SCMR 1882).

15. For the aforesaid reasons, we in the given circumstances do not find any justifiable reasons to maintain the findings of the respondent-Pakistan Baitulmal/ departmental authority, which order dated 05.07.2011 hurts the career of the petitioner, who has a long way ahead. On the aforesaid proposition, we seek guidance from the decisions of the Honorable Supreme Court in the cases of *Qaiser Zaman Versus Federal Board of Revenue, Islamabad and others*, 2014 SCMR 1199, and *Chief Manager, State Bank of Pakistan, Lahore and another v. Muhammad Shafi*, 2010 SCMR 1994. The Hon'ble Supreme Court directed the Secretaries, Establishment Division and Cabinet Division to ensure that the resignation cases of the Civil Servants be immediately processed and the concerned Civil Servant be also informed about its fate forthwith as per Rules. The delinquent officers/officials who caused the delay in processing such cases be made accountable and proceeded against departmentally.

16. Before parting with this order, we may observe that if the petitioner after joining her service continues to remain absent from her duties, the competent authority shall be at liberty to take disciplinary action against her under the law.

17. In view of the aforesaid legal position of the case in hand, this petition is allowed along with the pending application(s), resultantly the impugned order of acceptance of her resignation vide office order dated 05.07.2011 issued by Assistant Director (Admn.) Pakistan Baitulmal Provincial Office Sindh is set aside. The competent authority of respondent Pakistan Baitulmal is directed to allow her to join the subject post.

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