

Order Sheet
IN THE HIGH COURT OF SINDH KARACHI
Constitutional Petitions No. D- 4039/2018, 1335/2019,
1116/2017 and 645/2019

Date	Order with Signature of Judge(s)
------	----------------------------------

C.P. No. D-4039/2018

1. For hearing of Misc. No.9694/2020.
2. For hearing of main case.

C.P. No. D-1335/2019

1. For order on Misc. No.21783/2020.
2. For order as to maintainability of petition.

C.P. No. D-1116/2017

1. For order on Misc. No.21784/2020.
2. For order on Misc. No.1745/2020.
3. For hearing of main case.

C.P. No. D-645/2019

1. For order on Misc. No.21782/2020.
2. For order as to maintainability of petition.

26.5.2021

Mr. Muhammad Akram Tariq, advocate for the petitioners in all petitions.
Mr. Muhammad Nishat Warsi, DAG.
Mr. Basil Nabi Malik, advocate for respondents No.2 and 3/HBFC.
Mr. Faisal Mahmood Ghani, advocate for respondent No.2/HBFC in C.P. No. D-4039/2018

ORDER

M/s Faisal Mahmood Ghani and Basil Nabi Malik learned counsel for respondent-HBFC have raised the question of maintainability of these petitions in terms of alleged conflicting decisions given by this Court vide Judgment dated 24.12.2019 in C.P No.D-1425/2013 and order dated 24.12.2019 passed in C.P No.D-1247/2017 and prayed for referring the matter to the Hon'ble Chief Justice for formation of Larger Bench in terms of the decision of the Hon'ble Supreme Court in the case of Multiline Associates v. Ardeshir Cowasjee and 2 others (PLD 1995 SC 423).

2. Mr. Muhammad Akram Tariq, learned counsel for the Petitioners has answered the question of maintainability of these petitions, as raised by the respondent-HBFCL, and argued that on 24.05.2018, the Parliament has enacted the Act No. XXV of 2018, whereby HBFC Act 1952 has been repealed. He further submitted that the previous enactment of HBFC is protected under Article 264 of the Constitution and General Clause Act 1897. He further argued that the question of statutory or non-statutory Rules of Service does not arise as the Respondent-Company has violated Section 18 of the SRO 941 (1)/ 2009, which is a statutory dispensation. Learned counsel further argued that the question of statutory and non-

statutory rules of service is irrelevant, when the violation of the statutory provision takes place therefore, the petition is maintainable. An excerpt of the relevant Clause 18 is reproduced as under:-

“The employees of HBFC who were in the service of HBFC before the Effective Date shall stand transferred to and become employees of the Company as of the Effective Date on the same terms and conditions of their service and rights including pension benefits to which they were entitled as employees of HBFC. The terms and conditions of service and pension benefits of any such employees shall not be revised to their disadvantage by the Company except in accordance with law or with the consent of such employees.”

3. M/s Faisal Mahmood Ghani and Basil Nabi Malik, learned counsel for respondent-HBFC have argued that HBFCL is a public limited company, which was incorporated under the Companies Ordinance, 1984 and is being managed by an autonomous Board of Directors for Policy guidelines and overall control under the provisions of the Companies Ordinance, 1984 and has its own Memorandum and Articles of Association respectively; that HBFCL has no statutory rules of service, therefore the petition is not maintainable. According to them the disputed facts involved in the instant Petitions require recording of evidence, which cannot be done in a Constitutional Petition. In addition to the above, the applicable HBFCL Service Rules are not statutory, as such the relationship between HBFCL and the Petitioners is that of “Master and Servant”. In support of their contentions they relied upon the cases of Muhammad Ali Gohar Zaidi 5 Vs. House Building Finance Corporation & others (2011 SCMR 247) and Abdul Wahid & others Vs. HBL & others (2013 SCMR 1383). They prayed for the dismissal of the instant petitions on the point of maintainability.

4. We have heard the learned counsel for the parties on the question of maintainability and on the ground that the matter may be referred to the Hon’ble Chief Justice for formation of Full Bench and have also perused the case-law cited at the bar.

5. Firstly about the question of maintainability, the Respondent-HBFCL indeed is a Company, which is performing the function in connection with the affairs of the Federation and as such, is amenable to the Constitutional jurisdiction of the High Court. The mere fact that the company is a Limited Company, registered under the Companies Ordinance, 1984, limited by shares, is not sufficient to hold that the Constitution petition could not be maintained against it. In our view, if companies are registered under the Companies Ordinance but are funded by the Federal or Provincial Government and are under the dominative

control of the State, the jurisdiction under Article 199 of the Constitution would lie against such companies. On the aforesaid proposition, we seek guidance from the decision of the Honorable Supreme Court in the case of Ramna Pipe and General Mills (Pvt.) Ltd v. Sui Northern Gas Pipe Lines (Pvt.) Ltd (2004 SCMR 1274). Our view is further supported by the law laid down by the Hon'ble Supreme Court in the case of Pakistan Defence Housing Authority & others vs. Lt. Col. Syed Jawaid Ahmed (2013 SCMR 1707). The Hon'ble Supreme Court has discussed the status and the functions of various authorities. The aforementioned test is applicable on HBFCL as well which mostly follow the policies laid down by the Government of Pakistan, being a Public Utility Company providing basic facilities to the public at large. Therefore, we have no hesitation to hold that HBFCL is a body corporate performing functions in connection with the affairs of the Federation since the involvement of the Government is not limited to the fact that its majority shares are held by the Government of Pakistan, which establishes control of the Government over the affairs of the Respondent-Company. The Hon'ble Supreme Court in Salahuddin v. Frontier Sugar Mills and Distillery Ltd. (PLD 1975 SC 244), has laid down a similar test to assess, whether a body or authority is a person within the meaning of Article 199 of the Constitution. The aforesaid view was further affirmed in Aitcheson College, Lahore through Principal v. Muhammad Zubair (PLD 2002 SC 326). Even otherwise, the very issue about the maintainability of the petition against respondent-HBFC has already been set at naught by the Hon'ble Supreme Court vide unreported order dated 06.02.2014 in the case of Muhammad Ali Gohar Zaidi v. House Building Finance Corporation and others passed in C.A No.26-K of 2012. An excerpt of Paragraph Nos.3 and 4 are reproduced as under:-

“3. Learned A.S.C for the respondent Nos. 1 to 3, when confronted with the proposition of law raised in the leave granting order, applicable to the facts of the present case, candidly conceded that those employees of House Building Finance Corporation, who were in service before change of its status as House Building Finance Corporation Limited, by virtue of clause 18 of S.R.O dated 25.07.2007, as reported above, will not be governed by the principle of Master and Servant, but will have their remedy under Article 199 of the Constitution before the High Court as held in the cases reported as Masood Ahmed Bhatti and others vs. Federation of Pakistan through Secretary M/O Information Technology and Telecommunications and others (2012 SCMR 152) & Zarrari Taraqiati Bank Limited and others vs. Sajid Rehman and others (2013 SCMR 642).

4. This being the position, the impugned judgment, being passed on misapplication of law is liable to be set aside and the case is remanded to the High Court for fresh disposal of Constitutional

Petition No.D-527 of 2010 in accordance with law, preferably within three months. Order accordingly.”

6. In the light of the aforesaid Judgments of the Hon'ble Supreme Court of Pakistan, the objection on the maintainability of the captioned Constitution Petition is not sustainable in law and is accordingly rejected.

7. Adverting to the plea that this Court is bound by the judgment delivered by a Bench of co-equal strength as discussed supra, therefore, this Court could not take the contrary view and if any contrary view is to be taken Full Bench is required to be formed to reconsider the earlier view. There is no cavil to the aforesaid principle of law, however, in the present cases, on the subject issue, there is a clear judgment of the Honorable Supreme Court in the case of Muhammad Ali Gohar Zaidi as discussed supra, as such the decision of this Court cannot be made precedent to deviate from the ratio of the judgment of the Honorable Supreme Court, as such we are not inclined to refer the matter to the Honorable Chief Justice for formation of Full Bench.

8. In view of the above, this petition is held to be maintainable which can be heard and decided on merits. Resultantly, the applications listed at serial number one in all petitions are entirely misconceived and are hereby dismissed.

9. Relist, after summer vacations. The office is directed to place a copy of this order in all the connected petitions.

JUDGE

JUDGE

Shahzad/