IN THE HIGH COURT OF SINDH, KARACHI

C. P No. 1928 of 2020 along with
C. P Nos. D-1929, D-1930, D-1931,
D-1932 & D-1933 of 2020

Date	Order with signature of Judge

Present: ***Mr. Justice Muhammad Junaid Ghaffar***
Mr. Justice Agha Faisal

Petitioners in all Petitions:	**Shahzad Sher Ali & others Through Mr. Altamash Arab, Advocate.**
Respondents:	**National Insurance Company Limited Through M/s. Syed Khurram Niazam and Hasan Khurshid Hashmi, Advocates.**
Federation of Pakistan:	**Mr. Muhammad Nishat Warsi, DAG.**
Date of hearing:	**11.08.2022**
Date of Order:	**11.08.2022.**

J U D G E M E N T

Muhammad Junaid Ghaffar, J: The Petitioners were employees of Respondent No.3 i.e. National Insurance Company Limited and are aggrieved by their respective dismissal orders passed by the said Respondent. Today, at the very outset, learned Counsel appearing on behalf of Respondent No.3 has raised an objection as to maintainability of these Petitions and has placed reliance on an order dated 22.12.2021 passed in C.P No.D-5833 of 2021 (***Muhammad Aslam v Federation of Pakistan & Others***) by a Division Bench of this Court comprising one of us namely *Agha Faisal J.* and submits that in view of such judgment these Petitions are liable to be dismissed, as being not maintainable. While confronted, learned Counsel appearing on behalf of the Petitioners has controverted this aspect and submits that at the time of filing of these Petitions, no such objection was raised, whereas, prior to the order relied upon hereinabove by the Respondents, another Division Bench of this Court had taken a contrary view, whereas, seeking enforcement of fundamental rights, cannot be denied or withheld on any pretext; hence these Petitions are maintainable. He has further submitted that if not, the matter be referred to

the Hon'ble Chief Justice for constitution of a Larger Bench to resolve the conflicting opinions of the two different benches.

2. We have heard the Petitioners' Counsel as well as Counsel for Respondent on the maintainability of these Petitions. Insofar as the judgment passed in case of ***Muhammad Aslam (Supra)***, as above is concerned, admittedly same has been authored by one of us namely *Agha Faisal J.* and in that case now this Bench cannot take another view and is bound by the said judgment as relied upon by the Respondents' Counsel. It would be advantageous to refer to the relevant finding in the above judgment, which reads as under:-

> "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 entertained. Since the petitioner's counsel has admitted the absence of statutory rules of service, 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.
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> 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 and recently in the Pakistan Olympics Association case. While eschewing a voluminous repetition 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 power.
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> 6. The respondent's learned counsel demonstrated that the august Supreme Court has already observed that NICL does not have statutory rules of service and that the honorable Lahore High Court and Islamabad High Court 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 test, hence, a writ ought not to be entertained there against.
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> 7. Our attention has also been drawn to pronouncements 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 be had before the civil courts. The law enunciated remains binding precedent in view of the Multiline principles.
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> 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* . 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 appreciated. 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 discretionary writ jurisdiction of this Court, hence, the listed petition, and accompanying application, is hereby dismissed."

3. Notwithstanding the above since the controversy now stands settled by the Hon'ble Supreme Court in identical facts; hence, the question of referring the matter to a larger bench does not arise and would be of no help to the case of the Petitioners. The Hon'ble Supreme Court vide its Judgment dated 01.03.2022 in Civil Appeal No. 1477 of 2021 (***Sui Southern Gas Company Limited v Saeed Ahmed Khoso and another***) has been pleased to hold that where employment rules are non-statutory, the relationship of an employee and his employer is to be governed by the principle of master and servant; notwithstanding the fact, that the employer is a Company registered under the Companies Act, 2017, and is fully owned or operated by the Government. While applying this principle the Hon'ble Supreme Court has also drawn a distinction in the treatment of statutory bodies and Corporation as opposed to the Limited Companies owned by the Government and the argument that a Company in which the Government has a shareholding is to be treated at par with statutory Corporation and Authority has also been repelled. The relevant finding of the Hon'ble Supreme Court in the case of ***SSGCL (Supra)*** is as under;

> "5. We have heard the learned Counsel for the parties and gone through the record. The only question requiring determination by this Court is whether or not the High Court correctly exercised the jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. It is settled law by this court that where employment rules are non-statutory in nature, the relationship of employer and employee is governed by the principle of master and servant. The learned ASC for the Respondent does not contest, neither that the rules governing terms and conditions of employment of the Respondent are non-statutory nor that ordinarily the principle of master and servant would apply in governing the relationship between the employer and the employee. However, he has attempted to draw a distinction between the Companies owned by the Federal Government and the companies registered under the Companies Ordinance, 1984 / Act, 2017 which have private shareholders to argue that where the State has a stake in the company then it has to be treated on a different footing and its rules are to be treated as statutory in nature. In this context, he has relied upon the judgments of this court reported as Muhammad Rafi v. Federation of Pakistan (2016 SCMR 2146) and Pakistan Defence Offices Housing Authority v. Itrat Sajjad Awan (2017 SCMR 2010).
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> 6. Having gone through the aforenoted judgments, we find that the said judgments relate to the Securities and Exchange Commission of Pakistan, the Civil Aviation Authority and the Defence Housing Authority. There is a clear distinction in the treatment of statutory Bodies and the Corporations as opposed to the limited companies. Consequently, we are not impressed by the argument of

> learned counsel for the Respondent that a Company in which the Government has a shareholding is to be treated at par with statutory Corporations and Authorities.
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> 8. Further, the learned High Court has unfortunately not noticed three judgments of this Court noted in paragraph 5 above which directly relate to the questions in hand and has instead relied on general principles of law relating to statutory corporations and authorities which were clearly not attracted to the facts and circumstances of the case. The argument of the learned counsel that the Respondent was entitled to due process where his civil rights were to be determined may could have substance. However, in the instant case, only question before us is which forum was available to him in the facts and circumstances of the case before which the rights claimed by the Respondent be asserted. The instant case, we are in no manner of doubt that such forum was not the High Court in exercise of its constitutional jurisdiction under Article 199 of the Constitution."

4. Insofar as the argument of the Petitioners Counsel regarding enforcement of fundamental rights and principle of natural justice is concerned, there cannot be any cavil to that; but it must be kept in mind that for that there is an exception. If a writ is filed for enforcement of any fundamental right against a Limited Company owned by the Government and engaged in discharge of any public duty, then it still can be maintained and the Court in the given facts and circumstances of a particular case can still exercise its jurisdiction in terms of Article 199 of the Constitution. However, it may be of relevance to further observe that this function test applied and settled by the Hon'ble Supreme Court is limited to a writ petition filed under Article 199 of the Constitution of Pakistan by an employee against companies owned and operated by the Government in respect of its terms and conditions of service. For that in absence of any Statutory Rules of Employment, the principle of master and servant will apply and the test has already been laid down by the Hon'ble Supreme Court way back in the year 1984 in the case reported as ***Principal Cadet College, Kohat and another v Mohammad Shoaib Qureshi*** (**PLD 1984 SC 170**) and thereafter followed in the case of ***Pakistan International Airline Corporation v Tanveer-Ur-Rehman*** (**PLD 2010 SC 676**) and ***Pakistan Telecommunication Co. Ltd., v Iqbal Nasir*** (**PLD 2011 SC 132**) by holding that if the Rules of Employment are non-statutory then no writ would be maintainable under Article 199 of the Constitution of Pakistan.

5. In the case of reported as ***Pakistan Electric Power Company v Syed Salahuddin*** (**2022 SCMR 991**), a somewhat similar controversy came before the Hon'ble Supreme Court viz-a-viz the maintainability of a Petition against a Company controlled and managed by the Government

having no Statutory Rules and the Hon'ble Supreme Court has been pleased to hold as under:-

> "9. We also find that there was no justification or basis for the High Court to come to the conclusion that GM (HR), PEPCO had acted with malice. We have scanned through the record and do not find any material that may even remotely point towards mala fide or malice on the part of the functionaries of the Appellant. We therefore find that the finding recorded by the High Court relating to malice and absence of lawful reasons or justification for promoting different officers on different dates was not based on the record and arose out of misinterpretation and misconception of proceedings of the Selection Board as reflected in the Minutes. We are also of the view that the PEPCO Selection Board was competent in the matter and imposition of conditions including evaluation of officials in view of their performance on the basis of defined KPIs for a period of three months extendable by another three months was neither unlawful nor unreasonable and squarely fell within the parameters of the Policy and directives of the competent authorities.
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> 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 with in the following manner:
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> > "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."
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> 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 aforenoted case and reiterated repeatedly in a number of subsequent judgments of this Court.
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> 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 Nos.1 and 2 was governed by the principle of "master and servant" and the Respondents could not have invoked the constitutional jurisdictional of the High Court for redress of their grievances.
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> 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."

6. In view of hereinabove facts and circumstances of this case, and for the reasons that admittedly there are no statutory rules of Respondent No.3 regulating the employment; hence Petitions do not appear to be maintainable before this Court under Article 199 of the Constitution; therefore, all listed Petitions are dismissed as being not maintainable. However, the Petitioners are at liberty to seek any other appropriate remedy as may be available to them in accordance with law.

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