

IN THE HIGH COURT OF SINDH, KARACHI

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

1.	Const. P. 875/2020	Muhammad Arif & Others VS Fed. of Pakistan & Others
2.	Const. P. 5332/2018	Fahad Arshad & Others VS Fed. of Pakistan & Others
3.	Const. P. 6047/2018	Asif Mehmood & Others VS Fed. of Pakistan & Others
4.	Const. P. 6676/2018	Attaullah Sirohi & Others VS G.M Human Resources SSGC & Others
5.	Const. P. 1087/2020	Muhammad Qaiser Alam & Others VS Fed. of Pakistan & Others
6.	Const. P. 1253/2020	Sadam Hussain & Others VS Fed. of Pakistan & Others
7.	Const. P. 1355/2020	Syed Yasir Shabbir & Others VS Fed. of Pakistan and Others
8.	Const. P. 1441/2020	Rashid Azeem & Others VS Fed. of Pakistan & Others
9.	Const. P. 1863/2020	Muhammad Bashir & Others VS Fed. of Pakistan & Others
10.	Const. P. 1923/2020	Rao Muhammad kamran & Others VS Fed. of Pakistan & Others
11.	Const. P. 3428/2020	Hakim Ali Khokhar & Others VS Fed. of Pakistan & Others
12.	Const. P. 3429/2020	Allah Wasayo & Others VS Fed. of Pakistan & Others
13.	Const. P. 4015/2020	Asif Soomro VS Fed. of Pakistan & Others
14.	Const. P. 4361/2020	Syed Samar Abbas VS Fed. of Pakistan & Others
15.	Const. P. 4577/2020	Syed Muhammad Yunus & Others VS Fed. of Pakistan & Others
16.	Const. P. 5027/2020	Mushk Mona Ayaz VS Fed. of Pakistan & Others
17.	Const. P. 5073/2020	Sartaj Ahmed & Others VS Fed. of Pakistan & Others
18.	Const. P. 5273/2020	Asia Kausar Ali VS Fed. of Pakistan & Others
19.	Const. P. 5420/2020	Wahid Bux Bhutto & Others VS Fed. of Pakistan & Others
20.	Const. P. 5999/2020	Muhammad Arif & Others VS Fed. of Pakistan & Others
21.	Const. P. 6182/2020	Ahsan Nisar Siddiqui VS Fed. of Pakistan & Others
22.	Const. P. 645/2020	Imran & Others VS Fed. of Pakistan & Others
23.	Const. P. 6526/2020	Aftab Mahmood & Others VS Fed. of Pakistan & Others
24.	Const. P. 1366/2021	Naeem Faisal Saleem & Ors VS Fed. of Pakistan & Others
25.	Const. P. 1604/2021	Qayyum & Others VS Fed. of Pakistan & Others
26.	Const. P. 1892/2021	Muhammad Akhtar & Others VS Fed. of Pakistan & Others
27.	Const. P. 317/2021	Iftikhar Ahmed & Others VS Fed. of Pakistan & Others

28.	Const. P. 3451/2021	Muhammad Khan & Others VS SBCA
29.	Const. P. 1349/2022	Rizwan & Others Vs. Federation of Pakistan & Others
30.	Const. P. 8200/2019	Muhammad Sumair Gul VS Fed. of Pakistan & Others
31.	Const. P. 1573/2020	Usama Mir & Others VS Fed. of Pakistan & Others
32.	Const. P. 4431/2020	Ashraf Ali Khan & Others VS Fed. of Pakistan & Others
33.	Const. P. 6378/2020	Muhammad Zafar & Others VS Fed. of Pakistan & Others
34.	Const. P. 3943/2021	Saddam Hussain & Others VS Fed. of Pakistan & Others
35.	Const. P. 4340/2021	Ayub Khan & Others Vs. Province of Sindh & Others
36.	Const. P. 2051/2022	Naseem A & Others Vs. Federation of Pakistan & Others

For the Petitioners:

M/s. Malik Naeem Iqbal, Faizan Hussain Memon, Muhammad Saleem Khaskheli, Syed Noa-un-Nabi, Shazia Zafar, Tariq Ahmed Memon, Mamoon Sherwani, Choudhry Azhar Illahi, Ghazi Khan, Ameer Noshawan, Nabi Bux Leghari, Samiullah Soomro, Kashif Hanif, Shahryar Ahmed Advocates.

For the Respondents:

M/s. Ijaz Ahmed Zahid, Mukesh Kumar G. Karara, Asim Iqbal, Farmanullah Khan, Syeda Khizra Fatima, Advocates. Mr. Bilal Farooq Alvi, Senior Legal Counsel Legal Department, SSGC

Federation of Pakistan:

Through Mr. Muhammad Nishat Warsi, DAG.

Date of hearing:**26.08.2022****Date of Order:****26.08.2022.****ORDER****Muhammad Junaid Ghaffar, J:**

Through all these Petitions, the Petitioners seek regularization of their employment with M/s. Sui Southern Gas Company Limited (“SSGCL”). Earlier these petitions were allowed vide judgment dated 17.05.2021 and 19.05.2021; however, SSGCL impugned it before the Hon’ble Supreme Court, whereas, after remand of these matters by the Hon’ble Supreme Court vide order dated 09.03.2022, on

17.08.2022 Petitioners Counsel were directed to assist the Court as to maintainability of these Petitions.

2. Mr. Malik Naeem Iqbal, learned Counsel appearing for some of the Petitioners has led the arguments¹ and has contended that since the matter of regularization is not part of terms and conditions of employment; therefore, notwithstanding that SSGCL has no statutory Rules of Employment, these Petitions are competent; that in the case of *Messrs State Oil Company Limited V/s. Bakht Siddique & others* (2018 SCMR 1181), it has been held that regularization is not part of terms and conditions of service; that the judgment of the Hon'ble Supreme Court in the case of *M/s. Sui Southern Gas Company Limited Vs. Saeed Ahmed Khoso* (2022 SCMR 1256), is not applicable to the present case inasmuch as all the Petitioners are seeking regularization, whereas, since the earlier judgment in the case of *Pakistan State Oil (Supra)* is still in field, the subsequent judgment in the case of *Sui Southern Gas Company Limited (Supra)* is per in curium; hence, is not binding on this Court; that the Petitioners are seeking regularization pursuant to some decision of the Federal Government notified through an Office Memorandum, whereas, various other similarly placed persons have been regularized from time to time and therefore, all these Petitions are maintainable and be heard and decided on merits in accordance with their own facts as directed by Hon'ble Supreme Court as per remand order dated 09.03.2022. In support he has relied upon the cases reported as *Messrs State Oil Company Limited V/s. Bakht Siddique & others* (2018 SCMR 1181), *Raja IVIZ Mehmood V/s. Federation of Pakistan through Secretary Information and Technology and Telecommunication* (2018 SCMR 162), *Pir Imran Sajid V/s. Managing Director/General Manager (Manager Finance) Telephone Industries of Pakistan*, (2015 SCMR 1257), *Sui Southern Gas Company Limited V/s. Zeshan Usman* (2022 PLC (C.S) 424).

3. Mr. Ijaz Ahmed Zahid learned Counsel appearing in some of the Petitions on behalf of the Contractors of SSGCL has contended that these Petitions are not maintainable in view of the recent pronouncement in the case of *Sui Southern Gas Company Limited (Supra)*; that the case of *Pakistan State Oil Limited (Supra)* is a leave refusing order; hence, has no binding precedent; that there are no statutory rules of service / employment insofar as SSGCL is concerned, hence, the Petitions are not

¹ Duly adopted by all others

maintainable; that even otherwise, no writ lies against private contractors, whereas, dismissed employees cannot be restored in this constitutional jurisdiction.

4. Mr. Mukesh Kumar Advocate appearing in some of the cases on behalf of SSGCL in addition to adopting the argument of Mr. Ijaz Ahmed has contended that the relationship remains that of a master and servant; hence, Petitions are not maintainable, whereas, the Hon'ble Supreme Court in the very case of *Sui Southern Gas Company Limited (Supra)* has now settled this proposition, therefore, all these Petitions are liable to be dismissed. In support he has relied upon *Khushhal Khan Khattak University V/s. Jabran Ali Khan (2021 SCMR 977)*.

5. Mr. Asim Iqbal Advocate also appearing on behalf of SSGCL in some of the cases has contended that all Petitioner's contracts stand expired and they stand relieved; hence, cannot be reinstated or regularized by way of these petitions; therefore, no case is made out and Petitions are liable to be dismissed.

6. Learned DAG has argued that there are various categories of Petitioners including workmen and therefore, they have to avail the alternate remedy under the Standing Order Ordinance, 1968, whereas, the other set of Petitioners are contract employees; either directly employed by SSGCL or through Contractors; hence, they have no right to invoke Constitutional Jurisdiction for redressal of their grievance and therefore, these Petitions are incompetent. In support he has relied upon *Pakistan International Airlines V/s. Sindh Labour Court No.5 (PLD 1980 SC 323)*.

7. We have heard all the learned Counsel as well as learned DAG and perused the record. Though there are various categories of petitioners before us; however, they all seek regularization of their service with SSGCL, again on various grounds. Earlier all these petitions were earlier allowed by another Division Bench of this Court vide orders dated 17.05.2021 and 19.05.2021. The said order(s) was impugned by SSGCL before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide its order dated 9.3.2022 passed in Civil Appeal No.1376 of 2021 and other connected matters (*Sui Southern Gas Company Limited v Muhammad Arif & Others*) has remanded the matter to this Court in the following terms.

We have heard the learned counsel for the parties and perused the impugned judgment. We find that the certain portions of the judgment, specifically the last paragraph of the same is unclear and open to various interpretations which have been pointed out by the learned counsel for both the sides. We find that there is lack of clarity in the operative part of the judgment which is likely to cause legal complications and multiplicity of litigation. Further, the merits of each case have not been discussed. Further, with due respect, the factual aspects of the matter have not been taken into consideration and reliance has broadly been placed on judgments which have been passed on different facts. In this view of the matter, with the consent of both the sides, we set aside the impugned judgment and remand the matter to the High Court with direction to hear both the sides, attend all aspects of the matter and decide the same in accordance with law through a detailed and reasoned judgment in each case.

2. These appeals are allowed and remanded.”

8. Thereafter, the matter was fixed before this Bench on 17.08.2022 and we had confronted the petitioners Counsel as to maintainability of these petitions in view of the judgment recently passed by the Hon'ble Supreme in the case of *Sui Southern Gas Company Limited (Supra)* and had passed the following order:-

“It appears that these petitions were earlier decided by this Court vide order dated 17.05.2021 and the respondents/Suit Southern Gas Company Limited (SSGCL) being aggrieved had approached the Hon'ble Supreme Court of Pakistan and the Hon'ble Supreme Court vide order dated 09.03.2022 has remanded the matter for decision a fresh. However, it appears that the Hon'ble Supreme Court vide its order dated 01.03.2022 passed in Civil Appeal No.1477 of 2021 has been pleased to hold that no writ lies against SSGCL under Article 199 of the Constitution in respect of service matters. Thereafter this Bench has also passed an order dated 11.08.2022 in CP No.D-1173 of 2022. In view of the above, all learned counsel for the petitioners as well as respondents are directed to first assist us as to how these petitions are maintainable before this court.

To come-up on **26.08.2022**. Office to place copy of this order in connected matters.”

9. The Hon'ble Supreme Court in the case now reported as *M/s. Sui Southern Gas Company Limited Vs. Saeed Ahmed Khoso (2022 SCMR 1256)* has dealt with the issue of maintainability of Petitions under Article 199 of the Constitution against SSGCL and the following observations are relevant for the present purposes which reads 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 C. P. No. D-1056 of 2022 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).

6. Having gone through the aforementioned 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.

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.***

10. From perusal of the aforesaid findings of the Hon'ble Supreme Court, it clearly reflects that where employment rules are non statutory in nature, the relationship of employer and employee is governed by the *principle of master and servant*, whereas, there appears to be no dispute that insofar as SSGCL is concerned, the rules of service are non-statutory. The only attempt which has been made by the Petitioner's Counsel for distinguishing this judgment of the Hon'ble Supreme Court is, that in the case of *Sui Southern Gas Company Limited (Supra)* the employee stood terminated and therefore, it was held that the Petition is not maintainable before a High Court under Article 199 of the Constitution, whereas, in the present case the petitioners are seeking regularization. However, this argument, though attractive but on the face of it, appears to be misconceived and not tenable. Once, it has been held that where the employment rules are non-statutory, and the relationship between an employee and the employer is to be governed under the principle of master and servant, then, admittedly, in that case no writ lies against an employer under Article 199 of the Constitution. Merely, for the fact that the present Petitioners seek regularization as against any dismissal or

termination from service would not ipso facto make a Petition competent. At best the Petitioners before us are either contract employees or temporary employees who are seeking regularization of their services on one pretext or the other. In that case as well, a contract employee cannot seek enforcement of a contract in writ jurisdiction; nor even otherwise, a writ by a contract employee is competent against a Company duly incorporated under the Companies Act, 2017; and therefore, no distinction can be drawn insofar as the case of *Sui Southern Gas Company Limited (supra)* is concerned.

11. This argument, even otherwise has also been answered in the case reported as ***Sui Southern Gas Company Limited v Zeeshan Usmani (2021 SCMR 609)***, by the Hon'ble Supreme Court. In that case objection of the Petitioners Counsel that a petition of an employee of SSGCL seeking regularization is maintainable on the ground that it is not part of the terms and conditions of service has been dealt with and repelled by the Hon'ble Supreme Court. In fact the same learned Counsel² appeared for Respondents before the Hon'ble Supreme Court. A learned Division Bench of this Court had allowed the petition of employees of SSGCL vide its judgment dated 7.4.2020 in CP Nos. D-5850 and D-5851 of 2020 and ordered their regularization in service by following an earlier judgment which in fact had even been upheld by the Hon'ble Supreme Court. However, It has been categorically held by the Hon'ble Supreme Court that *"admittedly, the respondents were contract employees and their relationship was governed by the principle of 'master and servant'. This Court in a number of cases has held that contract employees have no vested right to claim regularization"*.

12. At the same time we may further observe that 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 and or managed 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 exercise its jurisdiction in terms of Article 199 of the Constitution. However, it may be of relevance to further observe that this

² Malik Naeem Iqbal

function test settled by the Hon'ble Supreme Court in *Sui Southern Gas Company Limited (Supra)* is in respect of a constitutional petition filed under Article 199 of the Constitution of Pakistan and the selection of forum by an employee against companies owned and operated by the Government in respect of its terms and conditions of service or of employees under contractual employment. 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.

13. In the case 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, wherein, it has been held 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 any have 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:-

"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.

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:

"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 Nos.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 redress 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."

14. 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 SSGCL, as it has no statutory rules of service and the relationship is to be governed by the principle of master and servant, all listed Petitions which have been filed by the employees of SSGCL seeking regularization of their services are not competent and therefore, after hearing all the learned Counsel for the parties as well as learned DAG on 26.08.2022 by means of a short order we had dismissed these Petitions as being not maintainable and these are the reasons thereof.

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