

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-2905 of 2023

Dated: Order with signature of Judge(s)

- 1.For orders on Misc. No.13904/2023.
- 2.For orders on office objection No.1.
- 3.For orders on Misc. No.13905/2023.
- 4.For orders on Misc. No.13906/2023.
- 5.For hearing of Main Case.

Yousuf Ali Sayeed, J.
Mohammad Abdur Rahman, J.

Date of hearing : 08.06.2023.

Petitioner : Muhammad Shahid through Mr. Noor
Ahmed Domki, Advocate.

Respondents : Province of Sindh & Others.

ORDER

Mohammad Abdur Rahman, J. The Petitioner maintains this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 challenging a letter dated 28 April 2023 issued by the Respondent No. 6 i.e. a private society known as the “Government Teachers Cooperative Housing Society Limited” dismissing the Petitioner from his employment with them.

2. It is submitted by the Petitioner that he had on 15 August 2016 been appointed as a “Computer Operator / Record Keeper” by a cooperative housing society known as “Government Teachers Cooperative Housing Society Limited” and on an allegation made against the Petitioner that he was creating “false accounts” was terminated from his post by them on 28 April 2023.

3. Being aggrieved and dissatisfied by his service being terminated by the Government Teachers Cooperative Housing Society Limited the

Petitioner has now preferred to institute this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 seeking the following relief:

- “ ...
- i. To set aside the impugned dismissal order dt: 28-04-2023 and direct the respondent No.4 to 7 to reinstate the petitioner in his previous same position/post along with outstanding salaries with all back benefits on immediate basis.
 - ii. To direct the respondent No.1 to 3 to take immediate legal and departmental action against the respondent No.4 to 6.
 - iii. To declare that the acts of respondent No. 4 to 6 are illegal, unlawful, arbitrary and beyond the land of law and grip able offence by the hands of law.
 - iv. To grant permanent injunction in favour of petitioner by directing the respondent No.4 to 7, their nominees, agents and persons, workers, subordinates, who are working for and on their behalf not try to illegally appoint any person on the same posts of the petitioner with all benefit till final decision of this petition.
 - v. To grant such relief that may be deems fit and proper in circumstances of the case.”

4. It is noted that the Government Teachers Cooperative Housing Society Limited is a private organization operating under the Sindh Cooperative Societies Act of 2020.

5. While noting this fact we confronted the Counsel for the Petitioner to clarify as towards the maintainability of this petition keeping in mind that the main prayer clause that he was seeking was in respect of his reinstatement of his employment by the Government Teachers Cooperative Housing Society Limited. In response to this the counsel for the Petitioner candidly responded that his alternate remedy would have been to maintain a suit on the original civil side and which would be time consuming and as such had preferred to institute this Petition.

6. The main prayer clause of the Petitioner is prayer clause (i) which reads under:

“ ... i. To set aside the impugned dismissal order dt: 28-04-2023 and direct the respondent No.4 to 7 to reinstate the petitioner in his previous same position/post along with outstanding salaries with all back benefits on immediate basis.”

7. It is to be noted that the main prayer clause (i) seeks relief against private respondents which *prima facie* cannot be enforced in our jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.¹ While a petition can be maintained against the Federation, a Province or a Local Authority or of any institution which are directly or indirectly controlled by these institutions; the test to consider whether or not a petition can be maintained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 against a private person has been clarified by the Supreme Court of Pakistan in the seminal decision reported as **Salahuddin and 2 others vs. Frontier Sugar Mills & Distillery Limited Tokht Bhai and 10 others**² wherein it was held that:³

“ ... However private organizations or persons, as distinguished from government or semi-government agencies and functionaries cannot be regarded a person performing functions in connection with the affairs of the Federation or a Province simply for the reason that their activities happen to be regulated by laws made by the State. Accordingly, a joint-stock company, incorporated under the Companies Act, for the purpose of carrying on commercial or industrial activity for the benefit of its shareholders, cannot be regarded as a person performing State functions, just for the reason that its functioning is regulated by law or that the distribution of its manufactured products is subject to governmental control in the public interest. The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving same exercise of sovereign or public power; whether the control of the organization vests in a substantial manner in the hands of Government; and

¹ See **Abdul Wahab vs. HBL** 2013 SCMR 138; **Muhammad Ashraf vs. United Bank Limited** 2015 SCMR 911;

² PLD 1975 SC 244

³ *Ibid* at pg. 257

whether the bulk of the funds is provided by the State. If these conditions are fulfilled, then the person, including a body politic or body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not.”

This test which has come to be known as the “Functions Test” has been applied consistently by the Supreme Court of Pakistan⁴ and in particular has been considered with respect to the application of the relationship of master and servant in respect of private corporations which are controlled by the government in the decision reported as **Pakistan International Airline Corporation vs. Tanwaer ur Rehman**⁵ wherein it was held:⁶

“ ... 19. However, this question needs no further discussion in view of the fact that we are not of the opinion that if a corporation is discharging its functions in connection with the affairs of the Federation, the aggrieved persons can approach the High Court by invoking its constitutional jurisdiction, as observed hereinabove. But as far as the cases of the employees, regarding their individual grievances, are concerned, they are to be decided on their own merits namely that if any adverse action has been taken by the employer in violation of the statutory rules, only then such action should be amenable to the writ jurisdiction. However, if such action has no backing of the statutory rules, then the principle of Master and Servant would be applicable and such employees have to seek remedy permissible before the Court of competent jurisdiction.”

8. We are clear that as the Respondents No. 4 to 7 are representatives of a private entity this petition cannot be maintained under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as against them. In addition as the Government Teachers Cooperative Housing Society Limited albeit not a party to petition, is not governed by any “statutory rules”, the relationship as between the Petitioner and the Government Teachers Cooperative Housing Society Limited is governed solely by the principles of master and servant and which cannot be

⁴ See **Aitchson College Lahore vs. Muhammad Zubair** PLD 2002 SC 326; **Federal Government Employees Housing Foundation vs. Muhammad Akram Alizai, Deputy Controller** 2002 PLC (C.S.) 1655; **Ziaullah Khan Niazi vs. Chairman, Paksitan Red Crescent Society** 2004 SCMR 189; **Pakistan Red Crescent Society vs. Syed Nazir Gillani** PLD 2005 SC 806; **Pakistan International Airline Corporation vs. Tanweer ur Rehman** PLD 2010 SC 676; **Noor Jehan Shah vs. Pakistan Defence Officers Housing Authority** 1997 MLD 2261

⁵ *Ibid*

⁶ *Ibid* at pg. 689

enforced in this Court's Jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. This Petition is therefore misconceived and is therefore dismissed along with all listed applications with no order as to costs.

JUDGE

Nasir PS.

JUDGE