

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D- 629 of 2021
(Javed Ali vs. Federation of Pakistan & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;

Adnan-ul-Karim Memon, J;
Muhammad Abdur Rahman, J;

Date of hearing: 23.05.2024

Date of Order : 30.05.2024

Mr. Sohail Ahmed Khoso, Advocate for the petitioner.
 Mr. Amir Ali Bhutto, Advocate for Respondents Nos. 2 to 5.
 Mr. Dareshani Ali Hyder 'Ada' Deputy Attorney General.

ORDER.

Adnan-ul-Karim Memon J:- Petitioner Javed Ali seeks appointment, on deceased quota, in Pakistan State Oil Company Limited (PSO), in terms of the Memorandum of Understanding (MOU) dated 25.2.2019 signed by PSO and PSO Workmen Union (CBA).

2. The issue of maintainability of the captioned Constitutional petition has been raised, because of the verdict rendered by the Supreme Court of Pakistan in the case of *Pakistan International Airline Corporation vs. Tanweer ur Rehman* **PLD 2010 SC 676** and Full Bench of this Court in an unreported Petition bearing **CP-No. D 875 of 2020** entitled *Muhammad Arif and others vs. Federation of Pakistan and others*, as such I would confine to that issue only and refrain from dilating upon the merits of the case if I find the instant petition is not maintainable under the law.

3. Upon perusal of the pleadings and arguments extended thereon by the learned counsel for both Parties, three basic primordial questions require determination of this Court, which are as follows:

-Whether or not a writ could be issued against the respondent-PSO under Article 199 of the Constitution.

Whether "PSO" is a "person" and is owned and controlled by the Federal Government, because its majority shares are held by the Government of Pakistan?

Whether PSO has statutory rules of service and writ could be issued against the respondent-PSO under Article 199 of the Constitution.

4. My brother **Mohammad Abdur Rahman, J** has decided the lis in hand and dismissed the instant petition with the findings that the Petition against the Pakistan State Oil Company (PSO) is not maintainable.

5. I have gone through the order authored by my learned brother Judge in the captioned petition, however, I have reservations about the analogy so put forward, while dismissing the petition; and, with respect disagree with the reasons and conclusion reached. My reasons and conclusion for the aforesaid approach are as follows:-

6. To answer the first and second proposition, the profile of the Respondent/PSO reveals that PSO is a Public Sector Company, in terms of Section 2 (g) of Public Sector Companies, (Corporate Governance) Rules, 2013 as amended up to date and falls within the meaning of Article 199(1) (a) (ii) read with Article 199(5) of the Constitution. Additionally, the post of Chief Executive/Managing Director of PSO is also a Public Office/Public Sector Post, therefore, falls within the purview of Sub-Clause (1) (b) (ii) of the Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, which permits the High Court to issue a writ of quo-waranto requiring a person within its territorial jurisdiction of the Court holding or purporting to hold a Public Office to show under what authority of law he claims to hold that office. It is also clear that, while acting under clauses (b) (ii) of Article 199 of the Islamic Republic of Pakistan, 1973 of the Constitution, the High could declare that holder of Public Office is entitled, if the office in question of that

post, it comes to the conclusion that incumbent has no authority to hold the same; therefore, the Office of PSO is amenable of the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Keeping in view such analogy, the writ of mandamus can also be issued under Article 199 of the Constitution. So far as statutory and non-statutory rules are concern the same shall be effective as and when the candidate is appointed in PSO, which is not the case in hand; therefore, at this stage to hold that the petition is not maintainable is a premature stage. As such the decisions relied upon cannot be helpful, in presence of the view of larger Bench of the Supreme Court on the subject issue. References are being made to the decisions rendered by the Supreme Court in the cases of Ramna Pipe and General Mills (Pvt.) Ltd. v. Sui Northern Gas Pipe Lines (Pvt.) (2004 SCMR 1274), Abdul Wahab and others Vs. HBL and others (2013 SCMR 1383), Pakistan Defence Officers' Housing Authority and others v. Lt. Col. 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), Messrs State Oil Company Limited v. Bakht Siddique and others [2018 SCMR 1181], Airline Pilots Association and others Vs. Pakistan International Airline Corporation and others [2019 SCMR 278].

7. For the reasons given in the aforesaid judgments, in my view, there can hardly be any doubt that Respondent-Company is also a “person” within the meaning of Article 199(1) (a) (ii) read with

clause (5) thereof. The learned five Member Bench of the Supreme Court in the case of Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed and other connected appeals supra has answered the question about the maintainability of the petition against the government-owned and controlled companies.

8. The Supreme Court in the aforesaid case, at paragraph No. 59 has held that the cases reported as (Pakistan International Airlines Corporation PLD 2010 SC 676, Executive Council Allama Iqbal Open University 2010 SCMR 1484, and Hyderabad Electric Supply Co. 2010 PSC 1392 did not declare or enunciate any principle of law but were rendered in their peculiar facts and circumstances and may not be treated as precedent on the issue we are seized of.

9. The learned three Member Bench of the Supreme Court, in the case of Messrs.' State Oil Company limited v. Bakht Siddique and others. [2018 SCMR 1181], has clarified the issue of maintainability of the Petition against the Respondent-Company, as such there is no further deliberation required on my part.

10. In the present matter, the Petitioner is seeking appointment in PSO based on the deceased quota as per the CBA settlement. Much emphasis has been laid on the point of law that when the matters about the terms and conditions of service of Employees of a Respondents-PSO, the Constitutional jurisdiction of this Court cannot be invoked, on the premise that the terms and conditions of the employees of the Respondents/PSO are not governed by any Statutory Rules and the relationship between the Respondent-PSO and its employees is that of "Master and servant". There is no cavil to the aforesaid proposition, regarding Non-Statutory Rules of Service of the Respondent-PSO, besides this court is also cognizant of the fact that the Full Bench of this Court in the case of Muhammad Arif and others vs. Federation of Pakistan and others, supra, the objection about the maintainability of the Petitions against Sui Southern Company Limited (SSGC) was sustained, as the issue of regularization of service of the employees of SSGC was involved

therein; and, in my humble view in the regularization of the service cases statutory and non-statutory rules of service, if any, cannot be looked into as the regularization of service is not a part of the terms and conditions of service of the employees, for which there need to be some statutory rules but it depends upon the length of service, however the subject petitions were dismissed on the analogy that SSGC has no statutory rules of service.

11. In the present case, the situation is altogether different as petitioner is simply seeking the appointment in PSO and not enforcement of service rules of the Respondent-PSO, therefore, in presence of the decision of the learned five Member Bench of Supreme Court in the case of Pakistan Defence Officers' Housing Authority and others v. Lt. Col. Syed Jawaid Ahmed and other connected appeals and latest decision of Supreme Court in time, rendered in the case of Messrs.' State Oil Company Limited v. Bakht Siddique and others supra, the decision of this Court cannot be cited as precedent over the decisions of the Supreme Court, which has binding force under Article 189 of the Constitution, as such this Court has to finally determine to whether the case of the petitioner is about the enforcement of CBA settlement agreement; and, whether in such a situation, the jurisdiction would be of the National Industrial Commission (NIRC), therefore, this matter needs to be heard and decided on merits. Let this matter be placed before Honorable Chief Justice of this Court for appropriate order as his Lordship may deem fit and proper. Office to act accordingly.

J U D G E