

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D – 629 of 2021

Date	Order with Signature of Judge
------	-------------------------------

1. For orders on office objections at Flag 'A'.
2. For hearing of main case.

Before
Adnan-ul-Karim Memon, J:
Mohammad Abdur Rahman, J

23.05.2024:

Mr. Sohail Ahmed Khoso, Advocate for the Petitioner.
Mr. Aamir Ali Bhutto, Advocate for Respondents 2-5.
Mr. Dareshani Ali Hyder 'Ada' Deputy Attorney General.

MOHAMMAD ABDUR RAHMAN, J. The Petitioner through this Petition, maintained under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has sought the following relief:

“ ... (a) To direct the respondents to issue appointment order to the petitioner against deceased quota as per his right.
(b) To grant any other alternate relief which this Court deems fit and proper in the circumstances of the case.

2. The Petitioner contends that his father was a “semi-skilled worker” employed by the Pakistan State Oil Corporation (Private) Limited (hereinafter referred to as “PSO”) and who passed away in the year 2011 when the Petitioner was a minor. The Petitioner attained the age of majority in 2018 and on 25 February 2019 a policy was formulated by PSO known as the ‘Deceased/Son Quota Policy’ and on which basis the Petitioner sought employment with P.S.O but whose application was declined and for which he has maintained this Petition.

3. Mr. Sohail Ahmed Khoso appearing on behalf of the Petitioner contended that as per the ‘Deceased/Son Quota Policy’ the Petitioner has a right to seek employment in PSO and the same has been declined by PSO illegally.

4. Mr. Dareshani Ali Hyder ‘Ada’ Deputy Attorney General Pakistan opposed this Petition, inter alia, on the ground that while PSO was a company that was owned and controlled by Federal Government of Pakistan, unless statutory rules have been formulated a Petition under Article 199 of Islamic Republic of Pakistan,

1973 was not maintainable.

5. We have considered the contentions of the Petitioner and PSO and have perused the record. In terms of the Functions Test¹, a Petition under Article 199 of the Constitution against a company either directly or indirectly owned or controlled by either the Federal Government, Provincial Government or a Local Government is maintainable. However, in the decision reported as **Pakistan International Airline Corporation vs. Tanweer ur Rehman**² an exception was carved out by the Supreme Court of Pakistan in respect of issues pertaining to employment disputes as between such companies and its employees in the following terms:

“ ... 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.”

6. While there is no cavil with the fact that PSO is a company that is owned and controlled by the Federation of Pakistan however as correctly pointed by Mr. Dareshani Ali Hyder 'Ada' in **Pakistan International Airline Corporation vs. Tanweer ur Rehman**³ it was specifically clarified that unless statutory rules have been formulated to regulate such obligations, a Petition under Article 199 of Constitution of Islamic Republic of Pakistan, 1973 would not be maintainable.

7. This issue was recently considered by a 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** and in which it was specifically held that a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 would not be maintainable as against such entities, it being specifically held by my brother Adnan Iqbal Chaudhary, J that:

“ ... 22. That being said, even if a writ can issue to the SSGC, it can issue under Article 199(1)(a)(i) only to do a thing „required by law to do“. It is in this context of what the

¹ 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, Pakistan Red Crescent Society** 2004 SCMR 189; **Pakistan Red Crescent Society vs. Syed Nazir Gillani** PLD 2005 SC 806; **Noor Jehan Shah vs. Pakistan Defence Officers Housing Authority** 1997 MLD 2261; **Salahuddin and 2 others vs. Frontier Sugar Mills & Distillery Limited Tokht Bhai and 10 others** PLD 1975 SC 244

² PLD 2010 SC 676

³ *Ibid*

“law” requires to be done, that the test of statutory rules came about in cases where the employee was on contract and not a civil servant. For service matters it has since been settled by a five-member Bench of the Supreme Court in Defence Officers Housing Authority v. Lt. Col. Jawaid Ahmed that even if the employer is a statutory body, “Where conditions of service of employees of a statutory body are not regulated by Rules/Regulations framed under the Statute but only Rules or Instructions issued for its internal use, any violation thereof cannot normally be enforced through writ jurisdiction and they would be governed by the principle of 'Master and Servant'.” The underlying jurisprudence is discussed in the cases of Anwar Hussain v. Agricultural Development Bank of Pakistan (PLD 1984 SC 194), Principal, Cadet College, Kohat v. Muhammad Shoab Qureshi (PLD 1984 SC 170), and Karachi Development Authority v. Wali Ahmed Khan (1991 SCMR 2435) as follows. The relationship between the employer and employee of a statutory corporation is ordinarily the result of a contract freely entered by the parties which evokes the principle of master and servant. However, if some law or statutory rule intervenes and places fetters upon the freedom of the parties in the matter of terms of the contract, that is an exception to the principle of master and servant, because the pleasure of the master is then taken over by the statutory provision/law and a violation thereof can be redressed by invoking constitutional jurisdiction. Conversely, where the terms and conditions of employment are not governed by statutory rules but only by regulations, instructions or directions intended for internal use, the violation thereof cannot be normally enforced through a writ petition...

28. Adverting to the case-law relied upon by learned counsel for the Petitioners, it is correct that in State Oil Company Ltd. v. Bakht Siddiqui (2018 SCMR 1181) and Pir Imran Sajid v. Managing Director, Telephone Industries of Pakistan (2015 SCMR 1257), the right to life and livelihood in Article 9 of the Constitution was cited to deprecate denial of regularization to employees who had given the prime of their life to the employer. However, in both those cases the High Court had exercised writ jurisdiction to implement a policy of the Federal Government for regularizing contract employees. In Bakht Siddiqui, that is apparent from the judgment of the High Court reported at 2017 PLC (C.S.) 1192. In Pir Imran Sajid that fact is noted in paras 3 and 10 of the judgment. It was therefore in the context of enforcing a Government policy on regularization that a reference was made to Article 9 of the Constitution. In the petitions before us there is no statute or Government policy that the Petitioners can rely on for regularization.”

8. Admittedly, PSO is a company that does not have any statutory rules and as I am bound to follow the decision of the Supreme Court of Pakistan and the recent decision of the Full Bench of this Court as quoted above, without dilating on the merits of the case, I simply hold that, in the absence of some law or statutory rule which would intervene to confer us such jurisdiction, a Petition against PSO, in respect of matters pertaining to employment, such as has been raised by the Petitioner in this Petition, cannot be entertained under Article 199 of the Constitution of this Islamic Republic of Pakistan, 1973. There being no such law or statutory rule that I have been referred to I am therefore of the opinion that this Petition is therefore, misconceived and is therefore, dismissed with no order as to costs.

JUDGE