

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. D-669 of 2025

(Rashid Aziz v Federation of Pakistan & others)

Constitutional Petition No. D-670 of 2025

(Abdul Qayoom Memon v Federation of Pakistan & others)

Constitutional Petition No. D-671 of 2025

(Ashfaqe Ahmed v Federation of Pakistan & others)

Constitutional Petition No. D-672 of 2025

(Aamir Siraj Ahmed v Federation of Pakistan & others)

Date	Order with signature of Judge(s)
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Before:

Mr. Justice Muhammad Karim Khan Agha

Mr. Justice Adnan-ul-Karim Memon

Date of hearing and order:- 24.03.2025

Mr. Ali Asadullah Bullo advocate for the petitioners.

ORDER

Adnan-ul Karim Memon, J: Through these constitutional petitions, Petitioners have prayed as follows:

Direct the respondents No. 1 to 4 to create service tribunals for the executive category of employees of the bodies who have non-statutory service rules/ regulations in the light of the judgment reported as 2024 SCMR 1458 passed by the Hon'ble Supreme Court of Pakistan.

2. These constitutional petitions, brought by retrenched/former employees of Pakistan Steel Mills, Sui Southern Gas Company Limited, Pakistan Industrial Development Corporation and National Database and Registration Authority, request the establishment of Service Tribunals to address the absence of an efficient and timely remedy for individuals governed by non-statutory service rules.

3. The petitioners, emphasizing their respect for the rule of law, contend their terminations were unlawful, breaching Pakistan Steel's service regulations. They argue the lack of a specialized tribunal for those with non-statutory rules necessitates time-consuming civil suits, and support their position with references to several Supreme Court cases, including *Muhammad Mubeen-us-Salma Versus Federation of Pakistan (PLD 2006 SC 602)*, *PIA versus Tanveer-ur-Rehaman & others (PLD 2010 SC 676)*, *PIA v. Suleman Alam Rizvi (2015 SCMR 1545)*, *President, Zarai Taraqiati Bank Limited, Head Office, Islamabad Vs Kishwar Khan and others (2022 SCMR 1598)*, *Ikram Bari versus National Bank of Pakistan (2005 SCMR 100)* and *The GENERAL MANAGER, PUNJAB PROVINCIAL COOPERATIVE BANK, LTD., and others Vs GHULAM MUSTAFA and others, 2024 SCMR 1458*. An excerpt of the judgment of the Supreme Court in *The GENERAL MANAGER, PUNJAB* case is reproduced as under:-

17. The Master and Servant laws were designed to regulate relations between employers and employees during the 18th and 19th centuries. The United Kingdom Act, 1823, described its purpose as to better regulate servants, labourers, and the working class. This particular Act greatly influenced industrial relations and employment law in the United States, Australia (1845 Act), Canada (1847 Act), New Zealand (1856 Act), and South Africa (1856 Act). These Acts were generally regarded as heavily biased towards employers, designed to discipline the employees, and repress the combination of workers in trade unions. The law required obedience and loyalty from servants to their contracted employer with infringements of the contract punishable before a court of law often with a jail sentence of hard labour. It was used against workers organising for better conditions from its inception until well after the first United Kingdom Trade Union Act, 1871 was implemented which secured the legal status of trade unions. Until then, a trade union could be regarded as illegal because of being in restraint of trade. An unfair dismissal in the United Kingdom is the part of the UK labour law that requires fair, just, and reasonable treatment by employers in cases where a person's job could be terminated. The Employment Rights Act, 1996, regulates this by saying that employees are entitled to a fair reason before being dismissed, based on their capability to do the job, their conduct, whether their position is economically redundant, on grounds of a statute, or some other substantial reason. Any dismissal by an employer becomes automatically unfair when based on discrimination, a right protected under the Equality Act, regardless of the employee's tenure. Even the creator and inventor of this phrase "master and servant" have changed the niceties and minutiae of this colonial tenet and precept and they brought some amendments to ventilate the ordeals and miseries of their employees/ servants and part with various harsh and punitive provisions [Ref: Sadiq Amin Rahman v. Pakistan International Airlines Corporation through Managing Director and 3 others (2016 PLC 335)].

18. Instead of espousing a rigid and inflexible application of this phrase, there is an acute need of expansion and development of some law and reforms in this sphere. The relationship of master and servant cannot be construed as so sagacious that the master i.e. the management of a statutory corporation or the corporation and/or company under the control of government having no statutory rules of service or the private sector may exercise the powers at their own aspiration and discretion in contravention or infringement of fundamental rights envisioned under the Constitution. Under Article 3 of our Constitution, it is the responsibility of the State to ensure the elimination of all forms of exploitation and the gradual fulfillment of the fundamental principle, from each according to his ability to each according to his work; and under Article 11, there is no concept of slavery, and the same is considered non-existent and forbidden and no law permits or facilitates its introduction into Pakistan in any form; while under Article 38 (Principles of Policy) it is the responsibility of the State to ensure equitable and just rights between employer and employees and provide for all citizens, within the available resources of the country, facilities of work and adequate livelihood with reasonable rest and leisure. Therefore, in all fairness, even under the relationship of master and servant, fundamental rights should be respected and followed, as the same are an integral part of due process [Ref: President, Zarai Taraqiati Bank Limited, Head Office, Islamabad v. Kishwar Khan and others (2022 SCMR 1598)].

19. The honorable Supreme Court in the case of Ikram Bari v. National Bank of Pakistan (2005 SCMR 100) held that an Islamic welfare state is under the obligation to establish a society which is free from exploitation wherein social and economic justice is guaranteed to its citizens. The Objectives Resolution, by virtue of Article 2A of the Constitution, has been made a substantive part of the Constitution which unequivocally enjoins that in Pakistan the principles of equity, and social and economic justice as enunciated by Islam would be fully observed which would be guaranteed as fundamental rights.

20. Now we want to advert to the forms of remedies available to the different class or classes of employees to challenge adversarial or departmental actions including dismissal and termination of service in the different laws of our country. A civil servant, if found

aggrieved of any adverse action, obviously, can approach the Service Tribunal after filing departmental appeal/ representation according to the relevant Civil Servant and Service Tribunal Acts. In tandem, if the employee is not a civil servant but is covered and regulated under the statutory rules of service, then of course, he may file a constitution petition in the High Court under Article 199 of the Constitution and challenge the violation of service rules or any other departmental action adverse to his interest. In juxtaposition, an employee of industrial and commercial establishment, if he is a worker/workman, he may approach the concerned labour courts and/or the National Industrial Relations Commission (NIRC) under the relevant Industrial Relation Laws, but the category of employees who are excluded from the purview and definition of worker or workman cannot approach the labour courts or the NIRC, and in case of any injustice, inequality, discrimination or any adverse action against any such employee who is neither covered under the definition of civil servants, nor is regarded as worker or workman, and nor his employment is covered or regulated by statutory rules of service, has the only remedy to approach the civil court and file a civil suit in terms of Section 9 of the Code of Civil Procedure, 1908, for seeking relief, under the relationship of master and servant. However, it is also a ground reality that under the rigors and exactitudes of lengthy and intricate procedures, several years are consumed till an ultimate decision of the civil suit is reached.

21. Judicial reforms backup and reinforce the administration of justice, which is indispensable for safeguarding, preserving, and maintaining the rule of law as well as encouraging timely delivery of justice. In our view, it is somewhat expedient and pragmatic to plan some special legislation (not in the fashion of Section 2A, inserted in the STA without amending the definition of civil servants in the Civil Servant Act 1973) to cope with the situation, deal with this grey area, and get rid of this archaic principle by establishing a special tribunal/court under a special law to approach the cases of the employees under the relationship of master and servant, which would not only uphold the basic human values which are vital to our social and economic lives but would virtually be a milestone by the government in safeguarding the fundamental rights of an extremely large category of employees who are deprived of expeditious access to justice as a consequence of no backing of statutory rules of service in various statutory organizations, corporations, autonomous bodies and, in particular, the persons employed in private, industrial and commercial establishments who are excluded from the definition of worker or workman under the labour laws due to the nature of their job. According to the master's mindset, the employee can be dismissed or terminated outrightly with good, bad, or no reason at all, without providing any opportunity of fair hearing on the justification of having no statutory flavor to regulate such employment. On account of no expeditious remedy or forum to challenge the adverse actions, such employees have to file civil suits and wait for a number of years for their decision, but if they are allowed a fast-track remedy under some legislation ensuring that some lawful justification for termination of contracts of employment is provided, and if such legislation also creates some rights and obligations for employers and employees with the formation of special courts or tribunals, then their cases will also be decided on a speedy pace, just as the cases of civil servants and workman/workers are decided by the Service Tribunal, NIRC, and labour courts within lesser time than the time normally consumed in civil courts. If any such tribunal or special court is constituted under some special law, it will not only ensure checks and balances but ardently and fervently ease and alleviate the sufferings of the aforesaid category of employees who presently have to go through the miseries and turmoil of the rigors and rigidities of procedure, and the backlog of cases, for a long time

22. As a result of the above discussion, the aforesaid cases are disposed of in the following terms:

1. Civil Appeals Nos. 795-L/12 and 123-L/ 13 are allowed. As a consequence thereof, the impugned judgment passed by the learned High Court on 16.12.2011 in W.P. No.3812/2005 and the impugned judgment dated 13.06.2012 in W.P. No.29117/2011 are set aside and writ petitions are dismissed.

2. *The Civil Petition No.2508-L/2017 is dismissed and the impugned judgment dated 26.09.2017, passed by the learned High Court in W.P. No. 16193/2011 is maintained.*

3. *According to the undertaking, given by the learned counsel for the Bank and Mr. Muhammad Raheel, Deputy Head (HR) PPCBL, the pending departmental appeals of employees will be decided by the competent authority after providing ample opportunity of hearing and speaking order shall be passed in accordance with Rule 40 of the Staff Service Rules, 2010, within a period of one month after receipt of the copy of this judgment.*

Copy of this judgment may be transmitted to the learned Attorney General for Pakistan, Secretary of Law, Advocate General of all provinces, Advocate General ICT, and provincial Law Secretaries, inviting their attention to paragraphs 17 to 21 of this judgment so that they may prompt their respective legislatures to contemplate some judicial reforms in the area identified in this judgment. Order accordingly."

4. Counsel for the petitioners contends that the application of the 'master and servant' doctrine contravenes fundamental constitutional rights, specifically Articles 3, 11, 18, 25, 4, and 38. He emphasized the necessity of implementing the Supreme Court's ruling *The GENERAL MANAGER, PUNJAB* supra which mandates the establishment of service tribunals for executive-level employees, pursuant to Article 187(2) of the Constitution. The petitioners underscore the inequity between the expedited remedies available to civil servants and laborers, and the absence of such recourse for those under non-statutory rules, seeking judicial action to establish a just and efficient grievance resolution framework. He prayed for allowing the petitions.

5. We have heard the learned counsel for the petitioners on the maintainability of the petitions and perused the record with his assistance.

6. Discriminatory dismissals, protected by the Equality Act, are deemed automatically unfair, regardless of tenure, as highlighted in *Sadiq Amin Rahman v. Pakistan International Airlines Corporation (2016 PLC 335)*. The Supreme Court has held in the judgment cited supra that the rigid application of the 'master and servant' doctrine is untenable and necessitates legislative reform. This relationship cannot justify allowing employers, whether in statutory corporations, government-controlled entities lacking statutory service rules, or the private sector, to exercise arbitrary power that infringes upon constitutional fundamental rights. Constitution, particularly Articles 3 (elimination of exploitation), 11 (prohibition of slavery), and 38 (principles of policy regarding equitable employer-employee rights), mandates the State to ensure fair labor practices. Consequently, even within the framework of the 'master and servant' relationship, constitutional fundamental rights must be upheld as an integral part of due process, as affirmed by the Supreme court in

President, Zarai Taraqiati Bank Limited v. Kishwar Khan (2022 SCMR 1598).

7. As held by the Supreme Court in the case of *The GENERAL MANAGER, PUNJAB PROVINCIAL COOPERATIVE BANK, LTD. Supra* that the available legal remedies for different employee categories facing adverse departmental actions, including dismissal. Civil servants can appeal to the Service Tribunal, following prescribed departmental procedures outlined in the Civil Servant and Service Tribunal Acts. Employees not classified as civil servants but governed by statutory service rules may file constitutional petitions in the High Court under Article 199 to challenge rule violations or other prejudicial actions. Workers in industrial and commercial establishments can seek redress through labor courts or the National Industrial Relations Commission (NIRC) under relevant industrial relations laws. However, employees who are neither civil servants nor workers, and whose employment is not regulated by statutory rules, are limited to filing civil suits under Section 9 of the Code of Civil Procedure, 1908, based on the 'master and servant' relationship. This process is notoriously lengthy and complex, often taking years to reach a resolution. It is further held that Judicial reforms are crucial for strengthening the administration of justice, upholding the rule of law, and ensuring timely justice delivery.

8. To address the current legal vacuum, the Supreme Court proposed targeted legislation, distinct from the problematic Section 2A of the Service Tribunals Act, to establish a specialized tribunal or court. This would replace the outdated 'master and servant' doctrine and provide a swift remedy for employees lacking statutory service rules. This reform would protect the fundamental rights of a substantial employee group, including those in statutory organizations, corporations, autonomous bodies, and private industrial and commercial establishments who are currently excluded from labor law protections. The prevailing 'master's mindset' allows for arbitrary dismissal without due process, due to the absence of statutory regulation. Establishing a fast-track tribunal with defined rights and obligations for both employers and employees would significantly reduce litigation delays, mirroring the efficiency of Service Tribunals, NIRC, and labor courts. This specialized court would introduce necessary checks and balances, alleviating the protracted suffering and procedural burdens currently faced by these employees.

9. Judgments of the Supreme Court of Pakistan are binding on all other courts, including High Courts, to the extent that they decide a question of law or enunciate a principle of law. All executive and judicial authorities throughout Pakistan are obligated to act in aid of the Supreme

Court, ensuring the enforcement of its judgments. As the Supreme Court is the final arbitrator of all cases where the decision has been reached, therefore the decision of the Supreme Court needs to be taken care of as directed in terms of Article 187(2) of the Constitution.

10. We must dismiss these petitions because the Supreme Court has already ruled on this.

JUDGE

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