IN THE HIGH COURT OF SINDH, KARACHI

C.P NO.D-3234 OF 2025

(Liaqat Ali Fazlani Versus GM SSGC and others)

Present:- ***Mr.Justice Zulfiqar Ali Sangi***
Mr.Justice Nisar Ahmed Bhambhro

Petitioner: Liaquat Ali Fazlani, In person
Date of hearing: 17.07.2025
Date of Order: 17.07.2025

O R D E R

NISAR AHMED BHABHRO, J. Through the instant Constitution Petition, the Petitioner has prayed for the following relief(s):

(I) ***To set aside the Show Cause Notice Dated 07.05.2025 ref No. E&D Exce. No. 10125/193 issued by AGM(IR/E&D)/ respondent No.4 in respect of absent from duty for 36 days during the period from October 2024 to April 2025***

(II) ***To direct the respondents to allow the petitioner to perform his duty into SSGC department without interference as such petitioner is going to retire from his job on 10.09.2025***

2. It is the case of the Petitioner that he is employed in Sui Southern Gas Company (SSGC) since 1995, he will retire from service on 10.09.2025 on attaining the age of superannuation. The Petitioner was placed under suspension vide office Memorandum dated 07.05.2025 (impugned memorandum) on the alleged misconduct of absence from duty without sanction of leave during the months of October 2024 until April 2025 in different intervals for a period of about 36 days. The Competent Authority issued Show Cause Notice vide office Memorandum dated 29.05.2025 for initiation of the disciplinary proceedings to probe into the alleged misconduct. The reply to the show cause notice filed by the Petitioner was found unsatisfactory, therefore, Competent Authority constituted an inquiry committee to proceed further in accordance with Human Resources Policy of SSGC. The Petitioner has challenged departmental proceedings through instant constitution petition.

3. At the very outset, petitioner was confronted to the maintainability of the instant Constitution Petition, as he was employed in SSGC, a state-owned entity having no statutory rules of service as evidenced from Office Memorandum dated 07.05.2025 and 29.05.2025. The Petitioner and Respondent SSGC were knotted in a relationship of Master and Servant and any action taken by the authority relating to the terms and conditions of the service of Petitioner was not amenable to writ jurisdiction of this Court.

4. In reply to the query, Petitioner contended that the Petition was maintainable as the SSGC was a state-owned Company and discharging its functions in connection with the affairs of the Federation. Petitioner was suspended without affording a right of hearing and he had no other remedy available under the law to challenge the disciplinary proceedings initiated by the Employer SSGC. He however conceded to the fact that SSGC had got non-statutory rules of services, and the services of employees of SSGC including Petitioner were governed under a HR Policy framed by SSGC through its Board of Director under an internal arrangement. He prayed for allowing this Petition.

5. Heard arguments, Perused material available on Record.

6. Perusal of record transpired that the Petitioner was working as Deputy Manager Billing Department Gulshan Zone in SSGC, which no doubt is a state-owned entity/Company. In state-owned entities or organizations like SSGC in the present case, there are Two categories of employees working under two different groups. First category of employees is the group of employees covered under the definition of worker or workman defined section 2 of the National Industrial Relations Act 2012 (NIRA 2012). The services of worker or workman are regulated by the provisions of the Industrial and Commercial Employment (Standing Orders) Ordinance 1968 (the Ordinance). In case of any action taken by the Employer in violation of the provisions of the Ordinance falling within the definition of unfair labor practice, legislation through NIRA 2012 has provided a forum in the shape of Labour Court, or National Industrial Relations Commission (NIRC) for redress of such grievance and vice versa. The Second Category of employees falls in the managerial group defined as non-workers. Under the service and labor laws of the Country this non-worker group of employees have got no forum in the shape of Tribunal or Court to agitate their grievance and to seek reversal of the wrongful orders passed by authority in relation to the terms and conditions of their service. The services of this Group of Employees are protected neither under the Labor or the Civil Service Laws. In certain cases, where state-owned entity or organization regulates the services of employees under statutory rules or regulations, the employees aggrieved by the orders passed by authority in relation to the terms and conditions of service can invoke the writ jurisdiction of this Court conferred under article 199 of the Constitution. In case of non-existence of statutory remedy or statutory rules of service, the aggrieved employees can only file civil suit for satisfaction of their claims including the damages or compensation for wrongful dismissal as the case may be. The case of the Petitioner falls under Second Group of employees, he is holding a managerial position in the SSGC, he cannot agitate his grievance before any Labor Court or Tribunal. The Petitioner cannot even get redress of his grievance under writ jurisdiction of this Court, for the simple reason that the SSGC regulates the services of its employees under a non-statutory Human Resources Policy, debarring this Court to entertain a petition under article 199 of the Constitution.

7. The terms and conditions of the service, in case of the Petitioner, are governed under the principle of “Master and Servant”. In case any action is taken against the Petitioner relating to the terms and conditions of service, he may avail the remedy of appeal or representation before the departmental hierarchy if made available under the SSGC HR Policy. The term Master and Servant describe the relationship of employer (Respondent SSGC in the present case) and employee (Petitioner in the present case) stemming out of an express contract of service containing terms and conditions of service agreeable to both the parties. The general rule is that the position of master is always at higher pedestal in case of hiring and firing the services. In case the master terminates the services of servant in violation of the settled norms, rules, regulations, policy and law, the remedy available to the aggrieved servant is to file a civil suit and to claim compensation or damages against wrong dismissal or termination.

8. We are fortified in our view, by the judgment of Honorable Supreme Court of Pakistan in the case of The General Manager, Punjab Provincial Cooperative Bank Ltd and others Versus Ghulam Mustafa and others reported in 2024 SCMR 1458, wherein it has been held as under:

> ***9. Time and again, this Court laid down in various dictums that in absence of statutory rules of service, the aggrieved employee cannot invoke the writ jurisdiction of the High Court. In the case of PIAC v.***

Tanweer-ur-Rehman (PLD 2010 SC 676), it was held by this Court that due to non-statutory rules of service, the constitution petition under Article 199 does not lie in the High Court. Whereas in another judgment rendered by this Court in the case of PIAC v. Syed Suleman Alam Rizvi (2015 SCMR 1545), while referring to the case of Tanweer-ur-Rehman (supra), Abdul Wahab v. HBL (2013 SCMR 1383), Pakistan Defence Officers' Housing Authority v. Lt.Col. Syed Jawaid Ahmed (2013 SCMR 1707) and Syed Nazir Gilani v. Pakistan Red Crescent Society (2014 SCMR 982), reaffirmed that no writ petition lies in the High Court in the matters where the terms and conditions of service are not governed by statutory rules. In view of the well-settled exposition of law, we feel no hesitation in our mind to hold that Writ Petitions in the Lahore High Court filed by the employees were not maintainable owing to the relationship of master and servant and the absenteeism of the statutory rules of service.

9. Petitioner in the instant lis has challenged suspension order issued by the Authority on account of his absence from duties during the months of October 2024 until April 2025 in different intervals for a period of about 36 days. The Petitioner was issued a show cause notice and his reply to the show cause notice was found unsatisfactory, pursuant thereto the Competent Authority has constituted a regular inquiry to probe into the allegations of misconduct, as provided under SSGC HR Policy. It is expected that the Petitioner shall be given a right of Fair Trial during enquiry proceedings as articulated under Article 10-A of the Constitution, which safeguards the rights of an individual to fair trial, and equally applied in the cases of employees whose terms and conditions of services are regulated under the non-statutory rules. It is the responsibility of the state to ensure that every citizen is subject to due process of law and provided a right of fair trial and this rule applies to the state-owned companies with great magnitude, therefore, in all fairness, this fundamental right granted under the Constitution should be respected and followed in stricto senso.

10. The contention of the Petitioner that he was an employee of an state – owned entity, discharging its functions in connections with affairs of the Federation, therefore, actions taken by the Respondent were amenable to the writ jurisdiction of this Court, has no force. The Petitioner is working with the SSGC under a contract agreed by the parties. Might be that at the time of induction of Petitioner in service SSGC was having different rules of service but the company has initiated disciplinary proceedings against the Petitioner under the HR Policy which is framed through its Board of Directors. The Petitioner has not challenged the vires of the HR Policy. The action by the Company taken under its HR Policy would not be amenable to the writ jurisdiction even if the Company was discharging its functions in connection with the affairs, in order to invoke the jurisdiction of this court under its writ jurisdiction Petitioner has to establish that impugned action was taken by the authority under the rules having statutory backing. Though powers conferred to this Court under article 199 of the Constitution to enforce fundamental rights of an individual cannot be abridged. This Court under its powers of judicial review can issue an appropriate writ, when an action on the part of an authority discharging its duties in connection with the affairs of the federation or province tantamount to impinging the fundamental right. But the power conferred under article 199 of the Constitution cannot be exercised in a situation when parties seek enforcement of contract involving the terms and conditions of the service, for that purpose the remedy available under the law would be to approach a civil court by filing civil suit as discussed in preceding paragraph.

11. We are fortified in our view by the judgment of Honorable Supreme Court of Pakistan in the case of Pakistan Electric Power Company vs. Syed Sallahuddin and Others, reported in 2022 SCMR 991, wherein the similar issue as involved in the instant lis was dealt in the following manner:

> ***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:***
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> ***"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."***
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> ***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 aforenoted case and reiterated repeatedly in a number of subsequent judgments of this Court.***
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> ***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 jurisdictional of the High Court for redress of their grievances.

12. For what has been discussed herein above, the Petitioner has failed to make out a case for indulgence of this Court in its writ jurisdiction conferred under article 199 of the Constitution. Petition thus being not maintainable fails and is hereby dismissed in "***limine***" along with pending applications if any. The Petitioner is at liberty to avail the remedy provided under the law and Policy if so advised.

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