

# IN THE HIGH COURT OF SINDH AT KARACHI

Present: **Adnan-ul-Karim Memon** and **Agha Faisal, JJ.**

Constitution Petition No. D1259 of 2012

Kazim Uddin Pasha  
Vs.  
Prime Minister of Pakistan & Others

For the Petitioner	Mr. Nadeem Ahmed Pirzada, Advocate
For Respondents Nos.1 & 5:	Mr. Sheikh Liaquat Hussain Deputy Attorney General
For Respondents No.2:	Mr. Muhammad Asghar Malik, Advocate
Date of Hearing:	06.08.2018

## **JUDGMENT**

**Agha Faisal, J:** The crux of the matter herein is whether in the present facts and circumstances a claim for contractual dues can be maintained and sustained in the exercise of writ jurisdiction of this Court.

2. Briefly stated the facts in the present petition are that the Petitioner was a producer for the Pakistan Television Corporation (“PTV”), being Respondent No.2 herein, and retired from service in the year 2005. Subsequent thereto the services of the Petitioner were engaged upon contract, renewed from time to time. The tenure of the contractual relationship expired in 2010. The Petitioner seeks to recover contractual dues for a period of 15 months, post expiration of the tenure of the aforesaid contract. In order to illustrate

the nature of the claim, it may be prudent to reproduce the prayer clause from the memorandum of petition herein below:

- “(a) To direct the respondent No.1 to issue letter to the Respondent No.2 to clear the outstanding salary of the petitioner for the period of on or about 15 months & five days, served the petitioner with the Respondent No.2,3 & 4 on their request by writing the letter of confirmation from the office of the respondent No.1.*
- (b) To declare the case of petitioner is case of hardship and bears the exceptional circumstances and the petitioner is a victim of circumstances.*
- (c) To declare further that the petitioner served with the respondent No.2,3 & 4 with their request and the respondent No.1,2,3 & 4 are liable to pay the contractual amount of rupees 2,645,554/- (twenty six lacs forty five thousand & five hundred fifty four only) .....*”

**3.** Mr. Nadeem Ahmed Pirzada, learned Counsel for the Petitioner, argued that the Petitioner retired upon attaining the age of superannuation on 10.10.2005. It was demonstrated from the record that the services of the Petitioner were retained on contract for a period of two years, vide the letter of contract dated 21.11.2005. It was next shown that the contractual relationship was extended for a further period of two years. The said extension contained an enhancement of the remuneration package and was to remain in effect for the period so determined. Finally, the aforesaid contract was extended for another period of one year, vide office order dated 17.9.2009.

**4.** Per learned Counsel, notwithstanding the cessation of the contractual period on 10.10.2010, the Petitioner continued to render services to the PTV and was entitled to remuneration upon the agreed contractual terms for the period from 10.10.2010 to 05.01.2012. A quantification of the said dues was also undertaken by the Petitioner and a statement in respect thereof was submitted before the Court.

5. Mr. Muhammad Asghar Malik, learned Counsel for Respondent No.2, at the outset, submitted that the present Petition was an amalgamation of disputed questions of fact, which could only be addressed through a trial after recording of evidence. He submitted that the Petitioner had submitted a contractual claim, the adjudication whereof is impermissible in the exercise of writ jurisdiction. The learned Counsel read out the contents of the prayer clause and submitted that the same was precisely in the nature of a recovery suit for which an alternative remedy was available.

6. Learned Counsel relied upon the judgments reported as 2017 MLD 272, 2017 YLR 661, 2017 PLC (CS) 250, 2017 PLC (CS) 304, 2016 YLR Note 10, 2016 YLR 1631, 2016 YLR 1842, 2016 PLC (CS) 424, 2016 CLC Note 116, 2016 MLD 95, PLD 2016 Sindh 420, PLD 2016 Sindh 547 and 2015 PLC (CS) 1385 in order to cement his submissions.

7. With respect to the factual controversy, the learned Counsel submitted that the Petitioner had retired from PTV after having attained the age of superannuation and was receiving his end of term dues / pensionary benefits in accordance with law. It was next contended that the services of the Petitioner were engaged for the period, stipulated *supra*, and that payment in respect of the contractual period had admittedly been received by the Petitioner.

8. It was further submitted that the Petitioner's claim was for services purportedly rendered after termination of the contract and that the quantification done in respect thereof is contrary to the facts. It was submitted that the extension in the contractual period was provided to the Petitioner was that he may complete his unfinished tasks however he failed to do so. It was further submitted that even

after termination of the contractual period the Petitioner was provided an opportunity to conclude his unfinished assignments and despite his failure to do so, he was paid an amount of Rs. 720,000/- in respect of the time and efforts that had purportedly been expended in such regard. It was further submitted that the said amount was received by the Petitioner without any objection and/or reservation and the claim in the present Petition is an unfair attempt of the Petitioner to unjustly enrich himself at the cost of PTV.

**9.** We have heard the submissions of the learned Counsel and have also had the benefit of perusing the record. The primary question for the Court to determine is whether it can enter into an exercise to determine the rights and obligations of the parties under a contract, post admitted termination thereof, and render a pronouncement in in such regard.

**10.** It is well settled law that disputed questions of facts requiring full-fledged inquiry / trial for their resolution cannot be agitated in the constitutional jurisdiction. Reliance is placed in such regard upon the judgments of the honorable Supreme Court in the case of *Ahmed Developers vs. Muhammad Saleh* reported as 2010 SCMR 1057 and *Arshad & Company vs. Capital development Authority Islamabad* reported as 2000 SCMR 1557.

**11.** The present Petition, inter alia, seeks a declaration of entitlement in respect of contractual dues and thereafter requires the Court to decree the recovery of the amount so quantified. It is the considered opinion of this Court that such an exercise could only be conducted by a Court of appropriate plenary jurisdiction after leading of evidence and the same could not be agitated in the writ jurisdiction of this Court.

**12.** For the reasoning and rational contained herein above, the present Petition is hereby dismissed with no order as to costs.

**13.** It is pertinent to record that the Petitioner shall remain at liberty to institute any claim, emanating from the relationship with PTV subject matter herein, if the same is permissible within the confines of the law, before the forum of competent jurisdiction. Any such proceedings shall remain uninfluenced by the observations made hereinabove.

JUDGE

JUDGE

Karachi.

Dated 13<sup>th</sup> August 2018.